



technical factsheet 92

The role and obligations of the nominated officer (money laundering reporting officer)

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For Nominated Officer read MLRO.

1 BACKGROUND

- 1.1 There have been stiff penalties for non-compliance with money laundering laws and regulations for almost a decade. But rarely have professionals found themselves getting as far as court – let alone jail – in respect of breaches of those regulations. All that is changing though. In July 2002, Jonathan Duff (a solicitor) was jailed for six months for not reporting a suspicion of money laundering. He had allowed a client to put money into a client account, without there being a proper underlying transaction or reason. He argued in court that he had misunderstood his obligations under the law – but as we all know ignorance is not (and was not for Mr Duff) an adequate defence.
- 1.2 So we have seen one person imprisoned for non-compliance with the law on money laundering, but the problem for professionals is actually much greater than this case might indicate. This is because there are a number of changes in money laundering laws and regulations. Firstly there is the new Proceeds of Crime Act which received royal assent in 2002. The new act brings together a number of provisions regarding money laundering contained in other acts, but more importantly, it widens the scope of those regulations.
- 1.3 After repeated delays, the UK's new Money Laundering Regulations (SI 2003/3075), issued to implement in the UK the second Money Laundering Directive, were laid before Parliament on 28 November 2003. They come into effect on 1 March 2004. This act extends the types of businesses and professionals covered by the regulations.
- 1.4 This ACCA Technical Factsheet provides additional guidance for members in practice and should be read alongside CCAB guidance. (See Technical Factsheet 85.)
- 1.5 This Technical Factsheet is for guidance purposes only. It is not a substitute for obtaining specific legal advice. Whilst every care has been taken with the preparation of this Technical Factsheet neither ACCA nor its employees accept any responsibility for any loss occasioned by reliance on the contents.
- 1.6 This document has no regulatory status. It is issued for guidance purposes only. Nothing contained in this document should be taken as constituting the amendment or adaptation of the *ACCA Rulebook*. In the event of any conflict between the content of this document and the content of the *ACCA Rulebook*, the latter shall at all times take precedence.

2 GUIDANCE

- 2.1 The legislation and implications behind the Money Laundering Regulations have been explained in Technical Factsheet 86 and have therefore not been duplicated here.
- 2.2 While these guidance notes have been prepared primarily with firms and members employed in practice in mind, much of the material will also apply to members employed elsewhere. Members employed in financial services should refer, where necessary, to the guidance produced by the Joint Money Laundering Steering Group, 'Money Laundering – Guidance notes for the Financial sector' which is available from Pinnars Hall, 105-108 Old Broad Street, London, EC2N 1BX. (www.jmlsg.org.uk). Members employed in other sectors may also find that guidance is available from any external regulator or trade body. In the absence of suitable guidance, members should consider the procedures recommended for firms in this Technical Factsheet and adapt them as appropriate.
- 2.3 Members should note that the *ACCA Rulebook 2004* (3.3.1) refers to the Money Laundering Regulations 2003 and should be referred to for guidance.

3 KEY OBLIGATIONS

- 3.1 The key obligations to be placed on firms as a result of the Money Laundering Regulations 2003 are as follows:
- set in place responsibilities, policies, controls and procedures to prevent the business/practice being used for money laundering purposes and to appoint a Money Laundering Reporting Officer (MLRO) to act as the key person with responsibility for money laundering prevention and compliance within the firm
 - verify the identities of clients and customers
 - establish arrangements to facilitate the reporting of suspicions by employees of the firm to “an appropriate person”
 - provide training for all relevant staff when joining a firm, and at regular intervals thereafter, covering, as a minimum, statutory obligations and how to discharge them
 - maintain records of business undertaken, the verification of identities and of suspicions reported.
- 3.2 Failure to comply with these obligations renders the firm liable to unlimited fines and its executive management (directors, partners, or as appropriate) to possible imprisonment for up to two years. In addition, the Financial Services Authority has the power to prosecute any person or firm for breaches of the Money Laundering Regulations. This is irrespective of whether the person or firm is actually regulated by the FSA. A useful way of identifying weaknesses in your firm is to devise a checklist, which addresses these areas. This should be completed annually and is a useful way of identifying weaknesses within the firm. (An example checklist can be found in Appendix A).

4 LEGISLATION

- 4.1 Factsheet 86 does discuss the main changes to the legislation as a result of the Money Laundering Regulations 2003. However detailed below are the key offences dealt with by Part 7 (money laundering) of the Proceeds of Crime Act:
- 4.2 **Section 327 concealing or transferring the proceeds of criminal conduct**
A person commits an offence if he/she conceals, disguises, converts, transfers or removes criminal property from the UK. To understand this offence, and the ones that follow, it is necessary to look at the definition of criminal conduct and criminal property given in the Act. Criminal conduct is conduct which constitutes an offence in any part of the UK, or would constitute an offence in any part of the UK if it occurred there. Property is criminal property if it constitutes a person’s benefit from criminal conduct, or it represents such a benefit (in whole or part and whether directly or indirectly), and the alleged offender knows or suspects that it constitutes or represents such a benefit. This means that it does not matter what the nature of the offence is – if it gives rise to proceeds of some sort, this will meet the definition of criminal property. If the proceeds are then concealed in any way, and there is either knowledge or suspicion of the criminal nature of the property, the offence under s327 may be committed.
- 4.3 It is important to realise that a number of functions accountants carry out could amount to concealing if the property involved is criminal – for example, holding money in a client account, arranging for the transfer of money or assisting in the purchase of a business or other asset.
- 4.4 It is vital to have proper procedures to ensure consideration of the risk of money laundering when the firm accepts client monies. If an appropriate disclosure is made, wherever there is a suspicion of money laundering, you will be protected against being convicted of concealing. This protection exists, as long as consent to carry out the business has not been refused by SOCA.
- 4.5 **S328 arrangements**
This offence is committed if a person enters into or becomes concerned in an arrangement which he/she knows or suspects facilitates the acquisition, retention, use or control of criminal property by, or on behalf of, another person. As with the offence of concealing, an accountant could inadvertently be guilty of this offence. For example, assisting with setting up a business could be construed as part of an arrangement.

4.6 **S329 acquisition, use or possession**

An offence is committed if a person acquires, uses, or has possession, of criminal property. There is an exception for property acquired for adequate consideration (consideration is inadequate if significantly less than the value of the property). It is perhaps less likely that an accountant will find themselves in breach of this section, although some of the examples given under the previous two offences could result in the accountant being guilty of this offence.

4.7 The penalties for the above three offences are all up to 14 years in prison or a fine, or both! This reflects the fact that they are regarded as “mainstream” money laundering offences. Any suspicions of money laundering must be reported to help in a possible defence against these charges. In addition, you should not provide any service that you think might be helping a money launderer.

4.8 **S330 failure to disclose**

An offence is committed if each of the following three conditions apply:

- the person knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering
- the information or other matter on which the knowledge or suspicion is based, or which gives reasonable grounds for the knowledge or suspicion came to him/her in the course of a business in the regulated sector
- the person does not make the required disclosure as soon as is practicable after the information or knowledge comes to him.

4.9 The required disclosure is a disclosure of the information or other matter to:

- a nominated officer (the firm’s MLRO for example) or a person authorised by SOCA (Serious Organised Crime Agency) in the form and manner prescribed by SOCA. The required form can be found on the SOCA website under www.soca.gov.uk/financialIntel/disclosure.html

4.10 **S331 failure to disclose: nominated officers in the regulated sector**

This offence is basically the same as that detailed above for failure to disclose, but is aimed at those nominated to receive disclosures (normally the MLRO) and, therefore, is concerned with the disclosures made to them in this role which they must then pass on to SOCA if they believe there is suspicion or grounds for suspicion.

4.11 **S333 tipping off**

Members must guard against making any disclosures which may tip-off (potential) money launderers that they are under investigation or doing any other thing that may prejudice such an investigation. Tipping-off can be by word or action or by failure to speak or act when such would normally be expected. Tipping-off is in itself a criminal offence.

4.12 A tipping-off offence cannot arise unless the person making the disclosure knows and suspects that a suspicion report has been made. However, an offence of prejudicing an investigation can arise regardless of whether a report has, or is suspected to have, been made. The above key offences should be clearly understood by the MLRO as he/she will need to ensure that both himself/herself and his/her firm are compliant with the law.

5 APPOINTING AN MLRO

5.1 The Money Laundering Regulations 2003 require firms to nominate a person to whom all employees within the firm should report their suspicions of money laundering (“the nominated officer”). This role has now been combined with the wider MLRO role required under the FSA’s Money Laundering Rules and although the term has not been formalised in the 2003 Regulations, it is already well established in the financial services sector and is expected to prevail.

5.2 The Proceeds of Crime Act requires internal reports (Appendix B) to be made to a nominated person or a person authorised by the Director General of SOCA and again this is generally the MLRO.

- 5.3 The person appointed as the MLRO should have a suitable level of seniority and experience, comprehensive knowledge of the firm's business and ability to act without reference to, or being influenced by, anyone else in the firm. Employees must report suspicions of money laundering to the MLRO in the form of an internal report. The MLRO is then required to consider the internal report in relation to all relevant information that is available to the firm. If the internal report does justify the knowledge or suspicion then the matter must be reported by the MLRO to SOCA in the form of a suspicion report. If in doubt the MLRO should report a suspicion to SOCA. The MLRO must always document the reasons why an internal suspicion report is not submitted to SOCA. The suspicion report form is available from the SOCA website at <http://www.soca.gov.uk/financialIntel/disclosure.html> along with a guide to completion.
- 5.4 The MLRO can be held to be personally liable if he/she receives reports of valid money laundering suspicions and fails to report them on to SOCA.
- 5.5 The role of the Money Laundering Reporting Officer (MLRO) is critical in enabling a firm to achieve compliance with its statutory and regulatory obligations.
- 5.6 The job of the MLRO is to act as the focal point within the relevant firm for the oversight of all activity relating to anti-money laundering. He/she needs to be senior, to be free to act on his/her own authority and to be informed of any relevant knowledge or suspicion in the relevant firm. In turn he/she has to pass on issues to SOCA as he/she thinks appropriate. He/she liaises with SOCA on any question and whether to proceed with a transaction in the circumstances.
- 5.7 The person selected as the MLRO will vary according to the organisation, the organisational structure and size. It is, however, important that the requirement for seniority does not over-ride the vital need to appoint an MLRO who possesses the relevant knowledge and experience to undertake the role effectively. The ability to manage effective liaison with law enforcement is one part of the role that should not be under-estimated and the synergy with fraud prevention is an obvious one (particularly with the requirement to report fraud under the Proceeds of Crime Act 2002).
- 5.8 To fulfil the role of a MLRO, the MLRO must therefore:
- be a senior person in the firm
 - be independent and autonomous
 - possess the trust and confidence of management and staff
 - have sufficient knowledge of the organisation, its products, services and systems
 - have access to all relevant information throughout the organisation and, of course, have knowledge as to the existence of such information
 - warrant the trust and confidence of the enforcement agencies.
- 5.9 Once appointed all staff should be made aware of the identity of the MLRO.

6 APPOINTING DEPUTIES AND PLANNING FOR SUCCESSION

6.1 The Deputy MLRO

When appointing a deputy MLRO, there are a number of issues to consider. It goes without saying that a deputy MLRO will need the same professional qualities as the MLRO, and will need to understand the legal and institutional expectations of the role. In the absence of the MLRO (due perhaps to sickness or to annual leave), the deputy MLRO must assume the full responsibilities of the role. It is important to ensure that the MLRO and his/her deputy are not absent at the same time, so that the MLRO role is permanently staffed.

- 6.2 If the role of MLRO is one of many responsibilities for the person concerned, it should not necessarily be assumed that the person who succeeds him/her in his/her main role would also automatically become the new MLRO. At all times, it is essential to ensure that the post of MLRO is filled by someone who fits the "approved

person” suitability criteria detailed in the FSA's Money Laundering Sourcebook. This suitability should be reviewed periodically, and particularly when a successor is appointed.

- 6.3 If a MLRO knows that he/she is leaving the post and has time to prepare a successor, he/she should encourage the successor (who, as mentioned earlier, may be the existing deputy MLRO) to “shadow” him/her. The successor will then learn at first hand the suspicion evaluation process and, even more beneficial, be privy to the disclosure decision processes of the MLRO. Just as knowledge of a customer’s activity is a prerequisite to detecting unusual transactions, so the experience of numerous suspicion reports and their outcomes is invaluable to the MLRO. This is not to say that experience alone can take the place of a thorough internal enquiry, but the more enquiries that have been made, the more aware the MLRO will be of the pitfalls and vulnerabilities.
- 6.4 The MLRO can also help his/her successor by sharing information on contacts with SOCA, with the Police and Customs, and with other MLROs.

7 ROLE AND RESPONSIBILITIES OF THE MLRO

- 7.1 The role and responsibilities of the MLRO cover:
- receiving internal reports
 - making external reports to SOCA
 - contact between the firm and investigators.
- 7.2 The MLRO may also make annual reports to the firm's partners. This is good practice but not in the regulations. (see 10.)
- 7.3 The following are frequently delegated to the MLRO although responsibility rests with senior management:
- policy and procedures
 - monitoring the day to day operation of the firm's anti-money laundering policies
 - taking reasonable steps to establish and maintain adequate arrangements for awareness and training.
- 7.4 All staff are responsible for the recognition and reporting of suspicions.

8 POLICY AND PROCEDURES

- 8.1 From the MLRO’s point of view, a corporate policy is important in that it provides the corporate mandate for the MLRO role. It provides the basis for communication to staff and it encourages motivation. The policy should address the key compliance principles set out below to assist in the prevention of Money Laundering. The MLRO will need to monitor compliance with the policy and procedures and make a report to senior management on an annual basis in respect of compliance.
- 8.2 Whilst all management and staff have obligations under the criminal law, specific responsibilities and accountabilities within a firm’s own strategy and procedures should be set out in the policy. This should cover the requirements imposed upon:
- senior management
 - the MLRO and any deputies
 - audit and compliance
 - staff in general.

8.3 The key items which should be included within the procedures manual are as follows:

- verification of identity and any exceptions to the normal procedures
- reliance on intermediaries and the acceptance of introduced business
- the extent of additional Know Your Client (KYC) and Know Your Business (KYB) information and the updating of that information on an ongoing basis
- the means of monitoring transactions and/or clients' activities against the expected norm
- the arrangements for internal reporting of suspicions
- how the awareness raising and training obligation will be met
- keeping and updating records.

8.4 It is the responsibility of management to ensure that the firm's procedures comply with the requirements of the Regulations and Rules, adequately reflect the relevant guidance notes, and are tailored to the specific needs and risks of the firm. Any general exceptions to the procedures should be approved by senior management and set out in the manual. The above aspects have been covered in Technical Factsheet 86.

9 MONITORING

9.1 The act of establishing compliance procedures and policies creates the reasonable regulatory expectation that these will be followed by the firm at all times. It is therefore imperative for the MLRO to know that this is the case and to be able to provide solid evidence in relation to the adequacy of the firm's compliance to the regulators, senior management and possibly to law enforcement.

9.2 Thus monitoring the completion of basic anti-money laundering processes such as verification of identity and/or record keeping is now a pre-requisite for the firm's MLRO. The MLRO will provide output of such monitoring to senior management. Senior management is responsible for monitoring compliance and providing an annual report to the governing body of the firm. The findings from compliance monitoring should be used to form the basis of the section(s) of the MLRO Annual Report, (see 10.1) covering the adequacy of compliance.

9.3 Compliance monitoring will identify compliance defects and, once these have been identified, the defects should be rectified in a timely fashion. It will not be acceptable for the MLRO to argue that he/she must wait until the next annual report is submitted before recommendations for change can be made. The next annual report should be used as a means of assessing the success (or otherwise) of the changes that have been implemented. (see 10.1)

9.4 The core issue to remember is that as soon as the MLRO is aware that there is a significant problem within the firm he/she needs to be thinking about notifying the management of the firm.

9.5 **Monitoring Approach**

There are several different initiatives that the MLRO needs to consider and these can contribute significantly to the support work for the MLRO annual report:

- a) the number of internal queries and suspicion reports raised by the different parts of the firm needs to be kept under review. If there are a number of areas that never raise an internal query, let alone an internal suspicion report, then this may indicate a problem. It is, of course, down to the skill and experience of the MLRO to determine what level he/she considers to be appropriate
- b) the MLRO may insert him/herself into the new client acquisition procedures requiring that all new customers documentation/files are reviewed and approved before new client work commences. The MLRO also needs to set up records to identify common problems both by type and by location. All common problems indicate that action is needed by the MLRO; procedures may need to be reviewed and additional training may be required

- c) the MLRO may implement a series of compliance review visits to subsidiaries, branches and departments, as appropriate. Such visits serve a number of purposes in addition to verifying compliance with policies and procedures
- d) increasingly firms are evaluating the use of computer software to assist staff in recognising the unusual and determining the existence or not of suspicion. In many cases the software will highlight the unusual which could have been spotted by vigilant staff and the MLRO should monitor results with this in mind
- e) the level of risk of money laundering abuse must be considered higher in the more poorly legislated and regulated jurisdictions. Therefore, the MLRO must monitor the ongoing effectiveness of policies and procedures against this changing level of risk. Thus to monitor the ongoing effectiveness of policies and procedures, the MLRO must monitor the changing risks on the international stage and be prepared to flex and change procedures to address changing levels of risk.

10 THE ANNUAL REPORT

10.1 It is not a requirement for the MLRO in unregulated businesses to prepare an annual report, however this is something that ACCA would recommend. The following is a list of items that could be included within the annual report:

- any changes made or recommended in respect of new legislation
- serious compliance deficiencies that have been identified relating to current policies and procedures, indicating the seriousness of the issues and either the action taken, or recommendations for change
- a risk assessment of any new types of products and services, or any new channels for distributing them and the money laundering compliance measures that have either been implemented or are recommended
- the means by which the effectiveness of ongoing procedures has been tested
- the nature of the actions taken following the publication of findings concerning a non co-operative jurisdiction, the results of that review and the measures taken to monitor business with that jurisdiction
- the number of internal reports that have been received from each separate division, product area, subsidiary, etc
- the percentage of those reports that have been submitted to SOCA
- any perceived deficiencies in the reporting procedures and any changes implemented or recommended
- information concerning which staff have received training during the period, the method of training and any significant key issues arising out of the training
- any additional information concerning communications to staff
- any recommendations concerning resource requirements to ensure effective compliance.

Other items that could be included within the annual report are highlighted in the Joint Money Laundering Steering Group guidance notes. (See 2.2)

10.2 Consideration of reports and recording the results of decisions

Senior management should consider the contents of the report and to action any procedural or other deficiencies identified in the report. Thus, it is important that the annual report, once submitted, is given adequate consideration by the senior management and the results of any decisions properly recorded. The ideal is for the report to be submitted for consideration at a meeting of senior management that is subject to a record and follow-up action.

10.3 The key to the approach taken by the MLRO to the annual report is that it is neither in the interests of the firm nor the MLRO to fudge or play down issues. However, balance is important and overstatement of issues is likely to bring unwarranted regulatory interest. Fundamentally, it is the MLRO's responsibility (as an FSA Approved Person) to tell it like it is and, if there are significant issues within the firm, these must be included within the report. A sample report can be seen in (Appendix C).

10.4 **Staff Training**

The statutory training requirement is the one aspect of money laundering compliance where management must ensure that resources are sufficient. The MLRO's annual report should be used as a means of stating that need to senior management when resources are judged to be inadequate.

10.5 **Communications to staff**

The MLRO will need to ensure management and staff are advised of any changes in their personal legal obligations, any amendments to internal procedures and any significant changes in the risk profile of the firm's products, services or customer base. Before each annual report, the MLRO should assess the effectiveness of the communication mechanism and advise senior management of any changes to be made or where significant changes are required.

10.6 **Resource Issues**

It is the responsibility of senior management to ensure that the MLRO has sufficient resources, including his/her own time, and the annual report should be used as the vehicle to confirm that this is the case, or to seek additional resources. The effectiveness of compliance monitoring, and the need to have the capacity to deal with reports promptly, should be used where appropriate to reinforce the arguments for additional resources.

11 **RECOGNITION AND REPORTING OF SUSPICIONS**

11.1 Employees have an obligation to report any knowledge or suspicions of money laundering, including where there are reasonable grounds to suspect, regardless of the amounts involved or the nature of the underlying crime that produced the funds or assets to be laundered. Failure to report is itself an offence. The Proceeds of Crime Act requires institutions to put in place arrangements for the recognition and reporting of suspicions and the MLRO must design, implement and facilitate this process.

11.2 Once employees have reported their suspicions to the MLRO or the "nominated officer", they have fully satisfied their statutory obligations. All firms therefore have a clear obligation to ensure that:

- employees know the person to whom they should report suspicions
- there is a clear reporting chain along which reports of suspicions are conveyed, without delay, to the MLRO.

11.3 In designing the recognition and reporting procedures, the MLRO must balance the potentially conflicting requirements of:

- meeting the legal obligation to report suspicion of money laundering in a voluntary and timely manner
- providing information on a timely basis to enforcement agencies, whilst continuing to meet the basic obligation to clients not to breach confidentiality rashly, irresponsibly and without ensuring that there are reasonable grounds for suspicion
- assisting to preserve funds and assets held on behalf of "suspect" clients, whilst meeting the basic contractual obligation to respond promptly to client instructions.

11.4 **Financial Threshold**

A common misunderstanding, which must be avoided, is the application of a financial limit on the recognition and reporting process. Some MLROs have been known to believe that suspicion reporting only applies to transactions of \geq 15,000 (or equivalent) and above. The \geq 15,000 financial threshold applies only in respect of identification processes when a non account holder or some other person without an established relationship with an institution requires a one-off transaction for an amount above \geq 15,000.

11.5 There is no financial threshold below which the obligation to recognise and report suspicion does not apply. Indeed, as an extreme example, under the Proceeds of Crime Act, even the failure to file a company's annual return (a criminal act) provides a criminal benefit of £15 being at the disposal of the company and is, in theory, because of the benefit, reportable.

11.6 **Process of Recognising Suspicions**

Illustrations of the type of situation that might give rise to reasonable grounds for suspicion in certain circumstances include:

- transactions which have no apparent purpose and which make no obvious economic sense
- where the transaction being requested by the client, without reasonable explanation, is out of the ordinary range of services normally requested or is outside the experience of the firm in relation to the particular client
- where, without reasonable explanation, the size or pattern of transactions is out of line with any pattern that has previously emerged
- where the client refuses to provide the information requested without reasonable explanation
- where a client who has entered into a business relationship uses the relationship for a single transaction or for a very short period of time
- the extensive use of offshore accounts, companies or structures in circumstances where the client's needs do not support such economic requirements
- unnecessary routing of funds through third-party accounts
- unusual investment transactions without an apparently discernible profitable motive.

(See Technical Factsheet 86 for more examples and guides on recognising suspicious transactions. In addition see section 19 of this factsheet and the following website address: www.accaglobal.com/transparency/moneylaundering).

11.7 **Monitoring, Profiling and Exception Reports**

There are various techniques and processes that an MLRO can consider implementing to assist the recognition process. Whilst there is a commonly-held perception that in the UK there is no requirement to “detect” money laundering, this does not stop an MLRO implementing procedures and monitoring programmes to ensure that unusual transactions are identified for review by appropriate managers, partners or the MLRO. Whilst the MLRO may introduce an “unusual transaction” reporting regime internally, it is vital that only suspicious transactions are disclosed to the authorities.

11.8 **Procedures for Reporting Suspicions to the MLRO**

Reporting lines for suspicions should be as short as possible, with the minimum number of people between the person with the suspicion and the MLRO. Once produced, all internal suspicion reports must reach the MLRO; no other person may stop the process, even if they have knowledge or information that negates the suspicion. The hallmarks of an effective internal reporting system are speed, confidentiality, ease of accessibility to the MLRO and the maintenance of full and accurate records.

11.9 The reporting requirements and procedures should be communicated to all employees, perhaps in a staff handbook. It is essential that staff are kept informed of changes in the reporting procedures and of the identities of those designated to receive the reports. If staff have been trained properly and kept informed of the structure of their organisation, they will know how and to whom to report their suspicion.

11.10 All procedures should be documented in appropriate manuals or handbooks, and job descriptions should clearly state the accountabilities and responsibilities of those who are designated to handle suspicion reports. Larger organisations generating a significant number of suspicion reports may choose to delegate the receipt and investigation of suspicions to a “nominated person” who reports to the MLRO. However, the accountability for all reports passed to SOCA, including those that are set aside, rests solely with the MLRO. (see Appendix E for a flow chart on reporting transactions).

12 TRAINING

12.1 Every firm must take reasonable steps to ensure that all staff are aware of:

- the identity and responsibilities of the MLRO
- the potential effect of money laundering on the firm, on its employees and its clients, of any breach of the law
- their own personal statutory obligations, and that they can be personally liable for failure to report information in accordance with internal procedures
- the need to co-operate fully and to provide a prompt report of any suspicious activities
- the importance of KYC requirements for money laundering prevention purposes. The training in this respect should cover not only the need to know the true identity of the client, including their address, but also, where a business relationship is being established, the need to know enough about the type of business activities expected in relation to that client at the outset in order to know what might constitute suspicious activity at a later date. Relevant staff should be alert to any change in the pattern of a client's transactions or circumstances that might constitute criminal activity. However, it is also necessary to indicate that KYC does not need a very high level of personal knowledge of the client.

12.2 Although directors and senior managers may not be involved in the day-to-day procedures, it is important that they too understand the statutory duties placed on them, on their staff and on the firm itself. Some form of high-level general awareness training is therefore required.

12.3 Awareness raising delivery is possible through insertions in existing procedure manuals, but firms might find benefit from considering specific booklets and handbooks for employees.

12.4 Firms must provide training which:

- a) deals with the law on money laundering, and the responsibility of staff under the firm's arrangements
- b) is applicable to all staff whose activities provide opportunities to become aware of or to suspect money laundering activities
- c) takes place with sufficient frequency to ensure that within any period of 24 months it is given to substantially all relevant staff
- d) provides adequate knowledge of the day-to-day work being undertaken so that any circumstances specific to that job that could provoke knowledge or suspicion of money laundering can be recognised by the job-holder.

12.5 **Developing a Handbook**

The MLRO will usually have responsibility for overseeing the production of the staff handbook on money laundering. There may well be "house style" considerations to bear in mind – e.g. the handbook will have to fit in with other firm's publications – but there are some specific guidelines which should be borne in mind when preparing a money laundering handbook.

In particular, the handbook should:

- be practical, so that staff can see the relevance of the guidelines to their everyday work
- be user-friendly, so that staff can quickly and easily find the information they need
- be non-legalistic, with any legal terms that have to be used explained clearly
- apply the Regulations and laws to the activities of the firm
- provide a "one stop shop" for money laundering prevention within the firm.

12.6 **Section 330(7) of the Proceeds of Crime Act**

The above section of the Act provides a defence for staff against a criminal charge of not reporting knowledge or suspicion when reasonable grounds existed for knowing or suspecting that another person is engaged in money laundering and that employee has not been provided by the employer with appropriate training. If such a defence should prove to be successful, an employer would have demonstrably breached the Regulations.

12.7 **Money Laundering Reporting Officers**

The MLRO must not overlook his/her own training requirements in order to maintain the necessary level of competence for an Approved Person. In depth training will be needed concerning the on-going development of international money laundering standards, the UK's statutory and regulatory requirements and the changing compliance requirements. The MLRO will also need an adequate level of (access to) knowledge of the anti-money laundering strategies in place in the countries in which the institution operates and those that are classified as high risk or non-co-operative. In addition, the MLRO will require extensive training on the validation and reporting of suspicious transactions and events and on new money laundering trends and patterns of criminal activity.

12.8 **Methods of Training**

When devising initial or on-going training for staff, the MLRO has several options:

- to develop and present the training using in-house resources alone
- to develop and present the training using a combination of in-house resources and outside materials (e.g. videos to highlight vulnerabilities, obligations and cases)
- to contract out the training to a consultant or a training production company to produce computer-based or multi-media training
- to undertake a co-operative training venture with a similar firm.

12.9 It is important to keep staff training materials as current and relevant as possible. Staff will soon lose interest if the same information is used time after time, and will think that they have nothing new to learn.

12.10 More importantly, money laundering techniques change so rapidly that one of the aims of on-going training should be to inform staff of the latest developments and alert them to the newest laundering techniques. In particular, new case studies should be introduced, particularly ones which have been detected in-house and can be used to show staff that their efforts to detect and deter money laundering lead to success.

12.11 **ACCA**

There are several courses and materials that are available through ACCA. These have been detailed below:

- Technical Factsheets 85 and 86
- courses on money laundering. Details available by calling courses on 0207 396 5910.
- visit www.mlro.net/acca to view a demonstration of a web-based course developed with MHA Consulting to help practitioners with the new obligations. For more information in respect of this web link view:- www.acca.co.uk/publications/inpractice/61/1004003
- visit www.accaglobal.com/transparency/moneylaundering

12.12 **Competence and Awareness**

Those firms regulated by the FSA are generally required to be able to demonstrate staff competence specifically in respect of money laundering awareness. To defeat an "I was not trained" defence by an employee in court, firms would need to be able to demonstrate that training had been provided effectively and that the employee was aware. The practical realities of demonstrating awareness and the effectiveness of training mean that a testing regime will need to be put in place.

13 RECEIVING INTERNAL REPORTS

13.1 Internal suspicion reports should include:

- the reporting department or branch
- full details of the customer/client, including name, address, date of birth, occupation or profession and nationality or country of residence and/or other business details as appropriate
- as full a statement as possible of the information which has given rise to the suspicion
- the date on which the person with the suspicion first became suspicious
- the date and time of the report.

13.2 The report must be signed and dated by the person holding the knowledge or suspicion.

13.3 An example internal report can be found on Appendix B.

13.4 Acknowledgement of Report

The MLRO should acknowledge receipt of the report in writing to the reporting individual (Appendix C). He/she should take this opportunity to remind the staff member concerned of his/her legal obligation to do nothing that might prejudice enquiries – i.e “tipping-off”. Other staff as appropriate should also be reminded of this obligation. This offence could be committed through contact with the customer or the disclosure of information to a third party, regardless of whether it is known that the disclosure has been passed to SOCA.

13.5 Staff should, therefore, ensure that their actions do not prejudice an investigation of suspected money laundering offences. Members should not inform the person who is subject to a suspicious transaction report or anybody else that a disclosure has been made, or that the police, customs or other authorities are carrying out, or intending to carry out, a money laundering investigation. The punishment on conviction for such tipping-off is a maximum of five years’ imprisonment, or a fine, or both.

A tipping-off offence cannot arise unless a suspicious transaction report has been made either internally (i.e to the MLRO), or externally to SOCA in the case of a sole practitioner.

13.6 The MLRO should remind relevant management and staff that the submission of a suspicion report in respect of an account or customer does not remove the requirement to submit further reports if suspicions continue to arise in respect of other transactions, instructions or events undertaken by or on behalf of that client.

13.7 Enquiries of Other MLROs

The MLRO is not required to undertake any enquiries with other firms. However, it has been found that making discreet enquiries of MLROs in other organisations can be of use in assessing an unusual transaction or circumstance where another firm is involved. It is important, however, to maintain strict confidentiality when making such enquiries. Members are also able to call the Technical Advisory Service on 0207 059 5920 for additional assistance.

14 MAKING EXTERNAL REPORTS TO NCIS

14.1 All internal suspicions must be considered and documented without delay. After making internal enquiries, the MLRO must decide whether or not the suspicion report is well founded or there are reasonable grounds to suspect that the funds or activity are linked to criminal conduct or terrorist activity. If this is so, then the MLRO must submit the disclosure without delay to NCIS to avoid committing the offence of failing to report. The enquiries undertaken, the decision, and the reasoning behind the decision should all be documented and retained securely. This information will be required either for disclosure itself, or as evidence of good practice and best endeavour if at some future date there is an investigation and the suspicions are confirmed. (See Appendix E for a flowchart on reporting transactions).

- 14.2 The MLRO's evaluation record should include:
- a documented outline of the research that the MLRO has undertaken into the transaction and the information that is held in relation to the client
 - a list of any documents examined during the enquiry (which should also be retained with this record)
 - what conclusions he/she has drawn from his/her findings
 - what decision he/she has reached as regards whether or not to disclose
 - how his/her conclusions have led to that decision
 - the date and time of the final completion of the record.
- 14.3 The MLRO should sign the evaluation record and, subject to firm policy, the reporting person should be advised of the MLRO's decision.
- 14.4 No MLRO is expected to be infallible in validating reports of suspicions or deciding whether or not to make a disclosure. Decisions which, with hindsight, prove to have been wrong will not constitute prima facie evidence of non-compliance (or of money laundering), providing that the reasons for non-disclosure are justified, fully documented and retained with the original suspicion report.
- 14.5 **MLRO Disclosure to SOCA**
UK suspicion reports may be made to SOCA by fax or post. If the MLRO believes that the situation is urgent, e.g. because consent is required, he/she should contact the SOCA Duty Desk within the Economic Crime Branch on telephone number 0207 238 8282 (outside office hours, an answer phone operates on that number) and follow up by fax submission. The disclosure form is available on SOCA's website under www.soca.gov.uk/financialIntel/disclosure.html
- 14.6 The MLRO needs to bear in mind that reporting of a transaction must never be delayed until after the completion of a transaction since to do so would constitute assisting a criminal offence.
- 14.7 **Providing Full Information**
Wherever possible, the MLRO should provide as much additional information as possible with regard to the suspicion. For instance, in the section on the Disclosure Form headed "Reasons for Suspicion", the content might include:
- information and suspicion initially reported to the MLRO
 - enquiries undertaken by the MLRO
 - the MLRO's reason for disclosing.
- 14.8 "One line" disclosures with references to documents attached are not satisfactory, as the documents themselves often require interpretation and incomplete disclosures will inevitably delay the investigative process. SOCA staff are trained financial investigators, but cannot be expected to understand the complexities and intricacies of each and every transaction or activity.
- 14.9 Once a SOCA disclosure has been made, the MLRO should inform the reporting member of staff (and the supervisor) and remind them that any further suspicious activity should be reported to the MLRO without delay.
- 14.10 **SOCA consent acknowledgement and follow-up**
SOCA has seven working days from the date when the disclosure is received to provide or withhold consent. In the absence of a response within that time, consent can be assumed. Whilst seven working days is allowed under the legislation, SOCA has undertaken to provide a response within a faster time scale whenever possible and two working days is often the normal timescale. If consent is denied, then SOCA and law enforcement have a further 31 calendar days in which to decide on further action.

- 14.11 Whilst SOCA will not normally provide any advice on what might be said to the client to explain any delay during the initial seven working day period, advice from law enforcement will normally be provided if consent is denied.
- 14.12 In most cases where pre-transaction consent is not required or applicable, SOCA will provide written acknowledgement of all disclosures. However, such acknowledgement does not form an instruction to continue with the relationship or indicate that the transaction is either without suspicion or under investigation. Whilst every effort is made to provide an immediate or early acknowledgement, this cannot be guaranteed.
- 14.13 It is vitally important for the protection of the reporting organisation that the appropriate acknowledgement from SOCA is received. The MLRO should establish a follow-up procedure to ensure that it is received in each case as, without acknowledgement, the firm does not have the appropriate statutory defence against having undertaken the otherwise prohibited transaction.
- 14.14 **Handling the business risk**
If a firm has a client whom it suspects to be laundering money, the first reaction may be to terminate the business relationship before the firm is further implicated in the money laundering. However, if the suspicious transaction or activity is to be undertaken, the relationship must not be terminated until a disclosure has been made to SOCA to enable the firm to obtain its consent or acknowledgement which is the firm's defence against a possible charge of assisting to launder the proceeds of crime.
- 14.15 The consent or acknowledgement from SOCA is not, however, an order to proceed - it is simply permission to do so. If the firm feels that undertaking the transaction would involve unnecessary commercial risk, it is not obliged to proceed.
- 14.16 If a decision is made not to undertake a transaction because of unacceptable commercial risk, it is recommended that the MLRO first discusses the situation with the investigating officer. The aim should be to decide how to proceed in such a way that the termination does not "tip-off" the client or prejudice the investigation in any other way.

15 RECORD KEEPING

- 15.1 The MLRO will receive and be required to keep a great deal of sensitive information, often for long periods of time. Procedures must be established for the secure and confidential production, distribution and storage of this information. Steps which should be considered include:
- putting in place procedures for the secure storage of documentation
 - retaining original documents in protective folders and, where distribution is necessary, distributing only copies
 - distributing copies of documents only to those people who really need to see them, and ensuring that all copies are returned
 - introducing a "clear desk policy" which requires all documents to be secured in desk drawers and filing cabinets outside office hours
 - controlling employee access to relevant departments and offices by the use of keycode or ID pass locks on internal doors.
- 15.2 The MLRO should keep a full list of all documents which have been called during an investigation, and, if possible, keep copies of those documents with the investigation file and his/her own evaluation record.
- 15.3 **Secure Document Retention**
All copies of reports and records should be retained and stored securely. The minimum requirement is lockable (and locked) filing cabinets with known key distribution.

- 15.4 It is suggested that the original of all internal reports should be filed upon receipt, with a copy provided for the MLRO's use. The MLRO's own suspicion evaluation record should be treated similarly: the original should remain on file and any subsequent work done on a copy.
- 15.5 The period for which records of suspicions should be kept varies according to the outcome of the investigation:
- records of suspicions raised internally but not disclosed to SOCA should be retained for five years from the date of the suspicion
 - records of suspicions which were disclosed to SOCA but which SOCA has not advised are of interest should be retained for five years from the date of the suspicion
 - records of suspicions which were disclosed to SOCA and which are of interest should be retained for a minimum of five years or until the MLRO is advised by SOCA that they are no longer needed, whichever comes later – if this causes any difficulties, the problem should be raised with SOCA or the investigating officer from Police or Customs/Inland Revenue.
- 15.6 **Public Relations and Networking**
Other links that the MLRO should make are with MLROs in other firms. This facilitates the sharing of information, and also provides personal contacts who might be able to provide that vital detail which convinces the MLRO that a disclosure is worth making.
- 15.7 **Investigation, Prosecution and Confiscation**
The MLRO is the principal point of contact between the firm and SOCA, Police, HM Customs and Excise, other investigators and the FSA. As the principal contact, he/she must follow up on disclosures made by the firm, co-ordinate and oversee the collection of evidence within the firm and respond to general requests.
- 15.8 To understand this aspect of the role the MLRO needs to understand:
- how disclosures are processed through SOCA and how investigations are undertaken by trained financial investigators into suspicions of money laundering
 - other activities and financial investigation processes undertaken in support of operational investigations which will generate contact from enforcement requiring information, evidence, etc
 - processes following the arrest and charging of the suspect.
- 15.9 **Processing the Disclosure**
The disclosure from the MLRO is first sent to the Financial Desk of the Economic Crime Branch at SOCA. SOCA acts only as an analysis and clearing house for disclosures: it has no authority to investigate or make determinations on those disclosures. SOCA reviews and assesses the disclosure by reference to ELMER (its analytical financial disclosure database). There are three possible outcomes:
- 1) If the enquiry scores a hit – i.e the name is known in connection with a case that is already being investigated and is of “flagged interest” – the information in the disclosure is passed to the financial investigation team concerned. These will be within the National Crime Squad, Police Forces, HM Customs & Excise (Customs) or the Inland Revenue, all of which have set up specialist Financial Investigation Units (FinVUs), staffed by trained financial investigators. The same units receive and enquire into disclosures.
 - 2) If the system finds no match with a case under investigation, the disclosure is passed to financial investigators for further enquiry into its validity. The task of the financial investigators conducting the enquiry is to collect further information to confirm or refute the suspicion of money laundering.
 - 3) During the evaluation process, the organisation making the disclosure may be approached with a request for explanation, amplification or updated information. The MLRO must exercise judgement in responding to such requests and consider the nature of the information being requested. In general it has, to date, proven safe to give assistance concerning the disclosure, but other material/records concerning the customer or account should only be provided in response to a Court Order. The Proceeds of Crime Act 2002 provides five powers for use in financial investigations.

- 15.10 If the enquiries into the validity of the disclosure suggest that an investigation is justified, a full investigation is mounted and the appointed financial investigation team returns to the organisation making the disclosure for further information.

16 CONTACT BETWEEN THE FIRM AND INVESTIGATORS

- 16.1 The MLRO should be the principal contact for Police, Customs and other Authorised Investigators during investigations. Investigating officers may wish to speak with other members of staff (such as the reporting person and/or his/her supervisor), but they should not contact anyone without first clearing this with the MLRO. Staff who are approached directly without this prior clearance should refer the officers back to the MLRO. If this protocol is not observed, it will prove impossible for the MLRO to maintain control of the internal provision of evidence to the investigation. Throughout the investigation, it is of paramount importance to maintain the confidential relationship that has been painstakingly established between the law enforcement agencies and financial institutions in general.

16.2 Arrest and Charge of the Suspect

Once the investigating team has obtained sufficient evidence to proceed against the suspect, they may seek to arrest the suspect and search any relevant premises for the purpose of obtaining additional evidence. The suspect will be interviewed and the evidence put to him/her.

- 16.3 At the conclusion of this process, the investigating officers and the prosecutor will decide whether there is sufficient evidence to charge the suspect. If there is, the prosecutor will draft a charge.

- 16.4 After charging, the suspect, who has now become the defendant, will be taken to court for remand. The prosecutor will make this and all subsequent remand applications to the court.

16.5 Prosecution

If the investigation leads to a trial, and in the unlikely event that a witness from the organisation is required, the MLRO should put him/herself forward, having made the report and having knowledge of the client relationship. However, this may not be possible if the court needs evidence of the actual transaction or the particular circumstances that led to the suspicion.

16.6 Responding to Court Orders

Most Court Orders which an MLRO has to handle will be issued either under the Proceeds of Crime Act or the Terrorism Act 2000 as strengthened by the Anti-Terrorism, Crime and Security Act 2001. However, this does not mean that Orders under other Acts, e.g Police and Criminal Evidence Act (PACE), will not be seen. Court Orders may be served at any time during the investigation, after arrest and even after conviction or possibly, in the case of Orders obtained by the Director of the Assets Recovery Agency, when no conviction has occurred.

- 16.7 As part of the control of evidence, the MLRO must make sure that investigating officers, when requesting the provision of documents, information and other evidence, produce the necessary Orders and/or Warrants. Moreover, once an Order or Warrant has been served, the MLRO should ensure that all information covered by the Orders or Warrants is provided, but no information in excess of this. If the firm acts only in accordance with the Orders and Warrants, it will have a good defence should the customer later bring a charge of breach of customer confidentiality against the institution.

17 TRANSITIONAL ARRANGEMENTS

- 17.1 Firms not within the regulated sector until the effective date of the 2003 Regulations will only need to report knowledge or suspicions of money laundering based on knowledge or suspicion current on or after the date on which the 2003 Regulations come into effect. i.e. 1 March 2004 (or if a report is necessary because the firm or the individual would commit one of the main money laundering offences).
- 17.2 After repeated delays, the UK's new Money Laundering Regulations (SI 2003/3075), issued to complete implementation in the UK of the second Money Laundering Directive, were laid before Parliament on 28 November 2003. They come into effect on 1 March 2004.

- 17.3 Despite the transitional provision outlined above, firms should be aware that they may still be under an obligation to make a report under the Terrorism Act 2000, or under the legislation which preceded the Proceeds of Crime Act 2002, including the 1993 Regulations and the Drug Trafficking Act 1994.
- 17.4 Unless specified below, firms will not need to implement and maintain identification procedures for clients until the date on which the 2003 Regulations come into effect. From that date, firms are obliged to confirm the identity of new clients for relevant business, but not existing clients for relevant business with whom there is already a business relationship. Nevertheless, adequate KYC/KYB information will need to be held for all clients to enable compliance with the Proceeds of Crime Act.
- 17.5 Firms which are authorised under the FSMA 2000, or are otherwise bound by the 1993 Regulations, have to continue to maintain identification procedures under the 2003 Regulations except in relation to clients with whom a business relationship was formed before 1 April 1994 (reg 30 (1)). That is the date the now outgoing 1993 Regulations took effect. Firms which are authorised under FSMA 2000 and authorised by the FSA need to follow the FSA's requirements as well, which expect firms to have records of pre-1994 clients as good as if the verification process had been undertaken.

18 WHEN SHOULD A REPORT TO SOCA BE MADE?

- 18.1 It will be the responsibility of the MLRO to decide when a report to SOCA should be made. This requires judgement and can only be decided in the light of the facts of that particular case.
- 18.2 Tax evasion is a criminal offence irrespective of the amount involved and irrespective of whether the Inland Revenue or HM Customs and Excise are prepared to settle on a civil basis. Suspected tax evasion, including for example the deliberate under declaration of income or the intentional over claiming of expenses, falls within the scope of the money laundering rules and needs to be reported to SOCA even if the Revenue and or/Customs are already aware of it.
- 18.3 It is not necessary to seek legal advice as to whether or not something is criminal. The question is whether you suspect that a criminal offence from which proceeds have arisen has been committed. Suspicion that something constitutes a criminal offence and the fact that your client (or someone else) has committed the offence are sufficient to require you to make a report. On the other hand, if you feel a need to take legal advice in order to decide whether you have such a suspicion, you are entitled to do so. It needs to be realised though that a suspicion needs to be reported as soon as practicable after it is found. A desire to seek legal advice ought not to be used as a delaying tactic.
- 18.4 The MLRO must make a report to SOCA if he/she believes that something that they have come across in the course of their profession involves criminal conduct and represents funds or property that derive from a criminal offence. In addition something that occurred overseas and would be a criminal offence had it taken place in the UK is reportable.
- 18.5 The MLRO is expected to have the knowledge that a reasonable person in his/her position would have. He/she would also be expected to have a more detailed knowledge of certain areas because of the nature of his/her work, for example tax. Therefore it could be expected that the major offences that are likely to generate proceeds are theft, fraud and tax evasion. Burglary, shoplifting, robbery, drug smuggling and gun running are also obvious criminal offences that are likely to generate proceeds or other property.
- 18.6 The MLRO does not have to be sure. It does not matter whether or not something is actually a criminal offence. It is sufficient that you suspect that it is. If a criminal offence does not generate money (or some other benefit) there is nothing to launder or report. See below some questions and answers, which highlight reportable offences.

19 QUESTIONS AND ANSWERS

Question A

If I discover that a client has prepared an incorrect VAT return/Tax return. Should I make a report to SOCA?

Answer

It would depend on the nature of the original error. The MLRO would need to determine whether in his/her opinion it was negligent or fraudulent. Accidentally omitting something which, if the Inland Revenue/Customs and Excise knew about it, would create a tax liability would give rise to a criminal offence if the Revenue/Customs and Excise are not notified of the error when it comes to light. Making the error is not necessarily the offence but a decision not to rectify it gives rise to an intention to evade the tax therefore requiring a report to SOCA.

Question B

Where a cash business has a difference on its cash control account – should I investigate this further? Does this suggest money laundering?

Answer

If there is no indication of theft you are not required to do anything. A difference on the cash control account is not in itself an indication of a criminal offence. A difference could for example arise from poor record keeping, mistakes in giving change or, if a business operates several tills, putting cash into the wrong till. It is only if you suspect that the difference is due to defalcation that the obligation to report arises. Even then in many cases no offence will take place until accounts reflecting under declared income are submitted to the Revenue or a VAT return under declaring output tax is sent to Customs. If it were discovered that this was the case, the difference would need to be rectified. If the client refuses to rectify the situation you would need to make a report to SOCA.

Question C

One of my new clients has not previously accounted for his affairs under the IR35 regime. If I believe that he should do, what are my obligations?

Answer

It is important that you do not assist a client in preparing an incorrect return. If you are convinced that IR35 applies and the client refuses to go along with your view you should refuse to act for him. If you reasonably suspect that tax has been underpaid because earlier returns are incorrect you need to inform SOCA.

Question D

Where a client refuses to repay an overpayment from the Inland Revenue, Should I inform SOCA?

Answer

Yes. The action appears to be theft and the money laundering reporting legislation provides for no de minimis limit.

Question E

Does an illegal distribution, e.g. where a company pays a dividend that exceeds its distributable reserves, require a report to SOCA?

Answer

No. It is not a criminal offence. The director who receives an unlawful dividend is liable to repay the money to the company if he or she has reasonable grounds for believing that the dividend was paid in contravention of ss 263 or 264 of the Companies Act 1985.

Question F

What about crimes committed overseas?

Answer

These need to be disclosed if the act would have been a criminal offence if it would have been a criminal offence if it had been committed in the UK. Thus, if you suspect evasion of foreign tax, that is a reportable offence.

Question G

Suppose that I make a report to SOCA that I suspect a client of tax evasion, the Revenue subsequently open an enquiry and the client expects me to handle the enquiry. How do I avoid tipping off?

Answer

You should not indicate to the client that you have made a report to SOCA, nor should you do anything that will prejudice the enquiry. It is highly unlikely that simply representing the client in the Revenue enquiry will constitute tipping off. Indeed, pressing the client to disclose irregularities and helping him or her to present these to the Revenue is hardly likely to prejudice the enquiry; it is far more likely to assist it. You obviously should not say to the client, "The enquiry probably arises because someone has told SOCA that they suspect you of tax evasion."

Question H

How can I be sure that the Inland Revenue will not let slip to the client that an investigation has started with a notification by me to SOCA?

Answer

The Revenue is used to maintaining confidentiality where a tax investigation starts from a tip off by a third party. They recognise the importance of not discouraging people from providing such information to them. The information passed on by the Revenue Intelligence Unit to operational teams in SCO or local offices includes neither the identity of the source provider nor even the fact that the intelligence originated via SOCA.

Question I

My client has for last the four years been underpaying tax due to an incorrect accounting treatment. This is the first year that I am acting for the client. He has agreed to inform the Inland Revenue and correct the situation. However do I still need to make a report to SOCA?

Answer

In general it is not possible to accidentally commit a criminal offence. To do so requires :

- (a) knowledge (that what you are doing is wrong), and
- (b) intention (to carry out the criminal act knowing that it is criminal).

If a person unintentionally does something and puts it right it is probably not a crime at all. If he or she puts it right only because he or she is caught out it may be a criminal offence though. There are some absolute offences which are criminal even though the necessary knowledge and intention is lacking. However such offences are rare. It should be stressed that in the vast majority of cases:

- (a) an error is not a criminal offence
- (b) something that attracts only civil penalties is not a criminal offence (but remember that some tax and company law provisions provide for both civil and criminal penalties so a breach of such a provision would be reportable and the fact that the Revenue accepts negotiated civil settlements does not mean that your client might not have committed a criminal offence)
- (c) something that is unlawful under the Companies Acts is not necessarily a criminal offence (but see below).

A criminal offence lays the perpetrator open to a fine or imprisonment; a civil offence lays him open to a penalty.

It should however also be stressed that something that is not of itself a criminal offence may give rise to such an offence. Thus:

- (a) not correcting an error when it is discovered may well create a criminal offence of cheating the public revenue if the decision not to correct it results in tax that should be paid going unpaid or a repayment that was not due being made. Not correcting an error will not always constitute an offence. For example, suppose the mistake results in overpaying tax; there is no offence of paying too much tax.
- (b) the fact that the Revenue may accept a civil penalty for fraud does not stop it being a criminal offence. Where a civil penalty applies in circumstances where a prosecution is possible the duty to report arises.
- (c) it is unlawful for a private company to make a loan to a director. If the purpose of the loan was to defraud creditors the fraud will be a criminal offence even though the loan itself is not. It is a criminal offence for a public company, i.e. a plc, to make a loan to a director.

Question J

If I report suspected tax evasion to SOCA, will they pass it on to the Revenue or Customs and Excise?

Answer

Yes! The tax authorities may not act on it immediately, in order to see if the taxpayer rectifies the situation, but it will be passed on. And don't forget, your report to SOCA should be detailed enough to enable them to assess the suspicion properly.

APPENDIX A: MONEY LAUNDERING CHECKLIST

Have you carried out a review of processes in your business to identify where money laundering is most likely to occur?

Is this review regularly updated?

Have you established procedures and controls to prevent or detect money laundering?

Do you have a comprehensive written policy on money laundering?

Are all staff aware of this policy?

Are all staff aware of their responsibilities with regard to money laundering?

Do they receive regular training to prevent money laundering and is it effective?

Are all members of staff sufficiently capable of identifying suspicious transactions and activities?

Do all members of staff know the identity of their Money Laundering Reporting Officer (MLRO)?

Do you thoroughly check and verify the identity of all your clients?

Are you aware of all the information you currently hold which should be made available to the Money Laundering Reporting Officer?

Does your MLRO have sufficient seniority and experience to discharge his/her role?

Does your MLRO have sufficient resources to carry out his/her role effectively?

Are senior management in your firm aware of their responsibilities in respect of money laundering?

Are your records easily retrievable?

Do you have checks in place to ensure transaction records are not destroyed until five years after the completion of the transaction and other records, e.g. client identification records, until five years after termination of the relationship?

Are you aware that records which relate to suspected money laundering activities cannot be destroyed without prior consent of the appropriate authority?

Have you provided money laundering training to all relevant staff in the last 24 months?

The above are just examples of what could be included on a checklist and is not meant to be a complete list.

APPENDIX B: INTERNAL REPORT TO MLRO

No:

Client:

Date:

Partner responsible for client

Second partner

Transaction/circumstances giving rise suspicion

.....

.....

.....

Explanation and evidence to justify a report (please attach copies of evidence)

.....

.....

.....

.....

.....

.....

Please note the information on this form should not be discussed with any individual within the firm without consent from the MLRO. Any further action to be taken should not be taken until consent given by the MLRO first and no disclosure should be made to client

Signed

Dated

Name of person making report

APPENDIX C: INTERNAL ANNUAL REPORT – RECOMMENDED HEADINGS

PRIVATE AND CONFIDENTIAL

This report is for internal purposes only and should not be given to external parties

SUMMARY FOR THE YEAR

--

REPORTS MADE TO SOCA

--

SUSPICIONS NOT REPORTED

--

NUMBER OF CLIENTS REFUSED DUE TO UNSATISFACTORY INFORMATION

--

The above is for guidance only and should be tailored for individual firm's requirements

APPENDIX D: REPLY FROM MLRO

No:

To:

From:

Date:

Client:

This is to confirm receipt of your internal report no xxxx dated xxxx. Please do not discuss this further with any individual or the client. I am seeking appropriate guidance and will contact you shortly.

[Please continue to carry out/please refrain from carrying out] any further work for the above client until further notice.

You should be aware that under the Proceeds of Crime Act 2002 it is an offence for any individual to make a disclosure to another individual (including the client) which is likely to prejudice any investigation, which might be conducted.

Should you have any questions with the above, please come and see me at a mutually convenient time.

This above is for guidance only and should be tailored for the individual firm's requirements.

APPENDIX E: REPORTING SUSPICIONS AND KNOWLEDGE OF MONET LAUNDERING TO SOCA

