

Anti-Money Laundering Newsletter - July 2017

New requirements under the Money Laundering Regulations 2017 - In force from 26th June 2017

[The Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017](#)¹ (known as Money Laundering Regulations (MLR) 2017) will have implications for all those working in practice.

It may take some time before the updated CCAB guidance is approved by HM Treasury but we expect that a draft edition will be issued later this year. Detailed guidance will also be available from training providers but in the meantime the main changes members need to be aware of are set out below. Please note this newsletter is an introduction only.

a) Anti-money laundering (AML) risk assessment for the business to be evidenced in writing (Regulation 18).

As expected MLR 2017 require much more compliance to be evidenced **in writing** and place more emphasis on risk assessment. As before the approach should be risk based and appropriate to the size and nature of the business.

As a starting point appropriate steps must be taken to identify and assess the risks of money laundering and terrorist financing to which the business is subject. Factors to be taken into account include: types of customers, the services provided and the countries in which the business operates. The firm's risk assessment should also take into account any information in relation to the sector made available to them by their supervisory body (for example in our AML Newsletters and on our websites, etc.)

As your supervisory body the ATT and CIOT can ask you to provide a copy of this risk assessment and the supporting information used to formulate it.

Remember that risk assessment does not stop here. It is also required in relation to each customer at the start of a customer relationship and on an ongoing basis. Firms therefore need to consider how they would evidence this if asked.

¹ <https://tinyurl.com/yclwbfbp>

b) AML policies, controls and procedures to be evidenced in writing (Regulation 19)

Supervised businesses have always been required to have policies, controls and procedures to mitigate and manage the risk of money laundering and terrorist financing. However, these must now be recorded in **writing**. Firms must now also consider the firm-wide risk assessment and ensure that appropriate policies, controls and procedures (policies) are in place to manage this risk.

In addition, MLR 2017 includes obligations to:

- Regularly review and update the policies
- Maintain a written record of changes
- Maintain a written record of steps taken to communicate the policies within the business.

Again these policies must be proportionate to the size and nature of the business but the requirement for them to be in writing applies whether you are a sole practitioner or a large firm with offices worldwide.

MLR 2017 sets out in further detail what should be included in the policies document.

c) Customer due diligence (CDD) changes

i) Enhanced and Simplified CDD (Regulations 33 and 37)

The requirement to undertake CDD continues but there are some significant changes.

MLR 2017 gives more detail on the extra checks needed to meet enhanced due diligence (EDD) (Regulation 33) requirements and set out a list of circumstances in which **EDD must be applied** which include:

- where there is a high risk of money laundering or terrorist financing;
- where a transaction or business relationship involves a person established in a 'high risk third country'.
- if the customer is a Politically Exposed Person (PEP), or a family member or known close associate of a PEP (see below for the extension to the definition of PEPs);
- in any case where the customer has provided false or stolen identification documentation or information on establishing a relationship;
- in any case where you identify that the customer has entered into transactions that are complex and unusually large, or there is an unusual pattern of transactions, and the transaction or transactions have no apparent economic or legal purpose

There is also a list of factors that must be taken into account in assessing whether a high risk of money laundering exists in relation to an individual customer which include:

- 'the customer is resident in a geographical area considered to be an area of high risk';
- 'the customer is a business that is cash intensive';
- 'the corporate structure of the customer is unusual or excessively complex given the nature of the company's business';

Written records will again be a key issue here to evidence that EDD requirements have been met.

Simplified due diligence (SDD) will no longer be the default option for certain entities such as listed companies but instead SDD can be applied where considered appropriate (Regulation 37). MLR 2017 gives a list of low risk factors but if challenged members will need to justify why SDD was appropriate and therefore suitable records should be maintained. Low risk factors include whether the customer is:

- A public administration or publicly owned enterprise;
- An individual resident in a geographical area of low risk

ii) Company formation work (Regulation 4 (2))

CDD also now has to be undertaken where a company is being formed for a customer. This is the case even where that is the only transaction required for the customer. We are aware that many members use company formation agents so you should be aware that they may ask you for certified CDD for your customers or ask to rely on your CDD.

iii) Company CDD changes (Regulation 28)

Listed Companies

MLR 2017 now makes it clear that you do not need to obtain details of a beneficial owner of a listed company and sets out precisely what details are required which are:

- Company name and number
- Address of Registered office and, if different, place of business

Unlisted Companies & LLPs

For unlisted companies and LLPs the following information must be obtained and verified:

- Company name and number
- Address of Registered office and, if different, place of business

- Articles of association or other governing documents and the law it's subject to
- Names of board members and senior persons responsible for operations.

MLR 2017 makes it clear that reliance cannot be placed solely on Companies House information and therefore it will be necessary to ask the customer for this information as well. Regulation 43 requires the corporate body to provide the above information and details of its legal owners and beneficial owners if requested by you.

This ties in to the fact that as before beneficial owners will have to be identified and reasonable steps must be taken to verify their identity.

During the course of the business relationship the corporate body also has a responsibility to notify you within 14 days of any changes to the individuals involved in the capacity mentioned.

iv) Persons acting on behalf of your customer (Regulation 28 (10))

Whilst we have always advised members to check that the individual they are dealing with in an organisation is authorised to act on behalf of the customer this is now specifically covered in MLR 2017.

It is important not only to verify that the individual is authorised to act on the customer's behalf but also to identify the individual and verify the identity on the basis of documents or information from a reliable source independent of both that individual and the customer they are representing.

v) Trust changes (Regulations 6, 44 and 45)

There are tougher rules on checking the beneficial owners of trusts. The definition of the beneficial owner has been expanded and includes the settlor, trustees, beneficiaries and anyone with control of the trust (Regulation 6). Where the individuals (or some beneficiaries) have not been determined the beneficial owner includes the class of persons in whose main interest the trust is set up or operates. It may not be possible to id check this class of people but firms need to be satisfied with the explanations provided here.

Firms must take reasonable measures to verify beneficial ownership. Trustees will have to keep a record of the beneficial owners and they must provide details if requested where a business relationship has been entered into. Where during the course of the business relationship these details change then trustees must notify the relevant person within 14 days.

A register of trusts will be maintained by HMRC. Where a trust has a tax liability in respect of income tax, CGT, IHT, SDLT, land and buildings transaction tax or stamp duty reserve tax the trustees will have to supply specified information to HMRC for inclusion in the register. This is similar to the register of people with significant control (PSC register) recently introduced for companies.

vi) Politically exposed persons (PEPs) (Regulation 35)

The previous regulations requiring foreign PEPs to undergo enhanced due diligence have been extended to include UK PEPs. This is likely to mean that when taking on a UK based customer it will be necessary to ask more about their occupation and family and business connections to be sure that all relevant individuals are identified.

From a practical perspective firms may want to consider the use of online checks to identify PEPs. Senior management must approve continuing business relationships with PEPs and must agree that any new customers who are PEPs can be taken on.

MLR 2017 also provides that EDD measures must be applied to a person for at least 12 months after they cease to be a PEP (Regulation 35 (9)).

The FCA have written helpful [guidance](#)² on the treatment of politically exposed persons under the new MLR 2017.

vii) Reliance on third parties (Regulation 39)

Changes have been introduced here with the intention of making reliance more attractive to businesses in the regulated sector.

Where firm A wants to agree to rely on the CDD undertaken by another firm (firm B) it must have an agreement in place and this must include:

- Confirmation that B has carried out CDD on the customer, beneficial owner of the customer and any person purporting to act on behalf of the customer (as relevant).
- Confirmation that if requested B will immediately provide copies of any ID and verification data
- Confirmation that B will retain copies of the data and documents for at least five years from the end of the customer business relationship to which the agreement relates

B must fall within the definition of 'persons' set out in the regulation. It would appear that an agreement will be required in relation to each individual customer where reliance is sought.

Note though that the firm providing services to the customer continues to be liable for any failure in relation to CDD.

d) Training (Regulation 24)

We would recommend that training is reviewed to ensure all principals and staff are aware of all the current requirements under MLR 2017. MLR 2017 is explicit that employees should be:

- Made aware of the law relating to money laundering and terrorist financing and to the requirements of data protection relevant to the implementation of MLR 2017.

² <https://tinyurl.com/yckk2lmu>

- Regularly given training on how to recognise relevant transactions.

A record **must** be maintained in writing of measures taken to meet these requirements.

e) Retention of records (Regulation 40)

As before CDD records must be retained for five years from the end of the business relationship. Transaction records, in the context of a customer relationship, must be kept for ten years from the end of the work, or for five years after the end of the relationship, whichever comes first. However a new requirement under Regulation 40 (5) is that any personal information must be deleted **after** the five years has expired unless

- The business is required to retain it under statutory obligation, or
- The business is required to retain it for legal proceedings, or
- The data subject has consented to the retention.

f) Approval of beneficial owners, officers or managers of supervised firms (Regulation 26)

Under MLR 2017 no one can be a beneficial owner, officer or manager of a supervised firm unless approved by the supervisory body. No one can be approved if they have been convicted of a relevant offence (set out in schedule 3 of MLR 2017).

g) Firms other than sole practitioners

Firms with more than one principal will need to consider whether the following requirements under MLR 2017 apply to them, depending upon the size and nature of the firm. Where a firm decides it does not need to comply with regulation 21 MLR 2017 it would be advisable to record its reasoning for reaching this conclusion. It is likely that many firms already fulfil these obligations in the normal course of running their firm.

i) AML responsibility of senior management (Regulation 21)

‘Where appropriate with regard to the size and nature of the business’, a board member or a member of senior management must be appointed as the officer responsible for compliance with MLR 2017. This role can be separate from that of the nominated officer (MLRO) or the same individual can perform both functions. If a firm wishes the MLRO to fulfil both roles it will need to check that the current MLRO is either a board member or a senior manager.

The appointment of the senior manager and of a nominated officer (MLRO) must be reported to the ATT or CIOT as your supervisory body **within 14 days of the appointment**. Unless you inform us otherwise, the ATT and CIOT will presume that the senior staff member is the same individual as the MLRO on your AML Supervision Registration Form. However, if this is not the case or if the appointment changes, please remember to tell us within this timescale.

ii) Screening of staff (Regulation 21 (1) (b))

Under MLR 2017 there are additional responsibilities on employers relating to the screening of employees both before appointment and during their appointment. The officer responsible for AML compliance must ensure this screening takes place and involves an assessment of the skills, knowledge and expertise of the individual to carry out their functions effectively in relation to AML requirements. The screening must also include the conduct and integrity of the individual.

iii) Review of AML compliance (Regulation 21)

Under MLR 2017 larger firms will need to ensure that they establish an independent audit function to assess the adequacy and effectiveness of the firm’s AML policies, controls and procedures. We expect that very few of the firms supervised by the CIOT and ATT are of a size which would bring them within these requirements. Firms should keep AML policies and procedures under review and as part of that process review the effectiveness of the systems in place.

iv) Firms with branches and subsidiaries overseas (Regulation 20)

Businesses with branches and subsidiaries based outside the UK need to ensure their policies, procedures and controls also apply to those entities. They must also ensure local AML requirements are met.

Checklist of main actions to consider

(Not every firm will need to take all of the actions set out)

Action	Completed
Ensure there is a written risk assessment for the firm. Keep a record of the information used to formulate this and make a diary note to ensure it is kept under review.	
Start to keep a written policies and procedures document if there has not been one previously.	
Review any current policies and procedures document and ensure it reflects the changes brought about by MLR 2017 particularly in relation to the updated CDD and record keeping requirements.	
Arrange training for staff so they are aware of the new requirements under MLR 2017. Don’t forget to maintain a record of all AML training.	
Where reliance is placed on the CDD of another firm ensure an agreement is in place which meets the requirements.	
Consider changes required to engagement letters in relation to the retention of records/how to ensure personal data is destroyed under the requirements of MLR 2017.	
Non sole practitioner firms should consider whether the obligations at (g) above apply to their firm and if so:	
Consider whether the MLRO is already a Board member or at senior management level or whether an additional individual needs to be appointed.	
Advise CIOT or ATT of changes to the MLRO or the appointment of a Board Member/Senior Manager within 14 days of appointment	

Ensure appropriate measures are put in place regarding AML screening of staff in addition to existing screening on other issues.	
Consider how the firm will review the effectiveness of AML policies and procedures.	

Seminar

The CIOT and ATT plan to hold a joint seminar in London in the autumn to update members on MLR 2017. If you have any queries in relation to the new regulations please email standards@ciot.org.uk or Ml@att.org.uk.