

If you don't know everything about

THE Money Laundering Regulations 2007 came into force on Saturday, implementing the European Commission's Third Money Laundering Directive. The aim of these new regulations is to put in place a tougher, more appropriate regime to prevent money laundering and combat the financing of terrorism.

The major change within the new regulations is the introduction of a "risk-based" approach to anti-money laundering procedures. This includes obtaining more information, both in terms of volume and detail, about customers – what is now called "customer due diligence".

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For example, solicitors now have to determine the extent of customer due diligence measures on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction.

This then means, having verified who the customer is, it should be easy to check that any money or assets that are being dealt with do actually belong to that customer.

The risk-based approach then kicks in again to ask: "And do they have any good reason to

have any such assets and money?"

In some circumstances, except where there is a suspicion of money laundering or terrorist financing, the 2007 Regulations allow for "simplified due diligence". This would apply, for example, if there are reasonable grounds for believing that the client is a credit or financial institution which is already subject to the requirements of the money laundering directive.

Conversely, firms may be required to apply, on a risk-sensitive basis, "enhanced due diligence" measures and more "enhanced" ongoing monitor-

ing in certain high risk situations. This could include situations where the client is not physically present for identification (for example, a client abroad) or the client is what is called "politically exposed" (those who, because of some position they have held, could be more likely to be corrupt). Enhanced due diligence would then involve carrying out additional measures to verify the information about the customer including, in particular, where the customer's money comes from.

As a small subset of customer due diligence, it is essential that

your client, you could be facing jail

firms establish and identify who exactly they are acting for and who is actually behind the transaction – that is, the beneficial owner. The previous regulations required that "reasonable measures be taken" to identify the beneficial owner. However, the 2007 regulations put much more emphasis on identification of the beneficial owner (for example, of a company or trust) and require that adequate measures, on a risk-sensitive basis, are carried out to confirm the identity. This will involve much more digging around in the background of more complex customers by the solicitor.

Monitoring of clients and business relationships, while contained in the previous regulations, is now mandatory and, essentially, must be ongoing. For solicitors, this involves scrutinising transactions throughout the course of the relationship to ensure the business being carried out is consistent with the knowledge of the customer, the customer's business and risk profile. Ongoing monitoring will also ensure that documents, data or information obtained for the purpose of customer due diligence are kept up-to-date.

In order to give the full desired effect to this new regime,

new policies and procedures are required. Hence, appropriate risk-sensitive policies and procedures must be established and maintained in order to prevent operations relating to money laundering or terrorist financing. The money laundering reporting officer is responsible for establishing these new policies and procedures.

In order to comply with the new regime, we must keep up-to-date – the prevention of money laundering is strictly enforced. In unconnected events, two solicitors have recently been jailed: one for failing to report suspicions of money laundering,

and the other for allowing criminal property to pass through his client account. Breach of the 2007 Regulations can attract a sentence of 14 years' imprisonment.

With the changes, solicitors, accountants, financial intermediaries, banks and others have an overriding duty to ensure their business is not used to advance criminal activities. Clients will, hopefully, understand and tolerate the need for solicitors to be more than usually nosy about their affairs.

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