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- How potent are the new (?) due diligence and KYC provisions?
- How can you evidence investment and job creation (especially where there is investment into an existing entity)?

# Why new regulations?

- The new Money Laundering Regulations, Regulations 2017 (SI ref 2017 No 692) took effect on Monday 26<sup>th</sup> June 2017.
- The main purpose of the new provisions was to address the Fourth EU Directive on Money Laundering (“MLD4”) which required all member states to have addressed its provisions by the date of implementation.

# What were the main requirements?

- a significant increase in risk considerations in relation to all aspects of the controls over money laundering and terrorist financing;
- enhanced compliance management arrangements that will have to be adopted; and
- a need to be able to demonstrate that the arrangements in place meet the specific concerns of relevant regulators (the SRA for law firms) and are effective.

# Being an EU requirement can we forget about all this if and when 'Brexit' occurs?

- **NO.**
- Taking into account the vast amounts of money that flow through the UK's economy every day, and its pre-eminence as a financial centre, the UK will need to retain the highest levels of AML controls, and these are the European provisions.
- There are also many other issues of needing to conform to European standards in order to be able to continue to trade with EU states

# Do the Regulations apply to my firm?

- As has always been the case, the answer is '**not necessarily**'.
- To check whether your firm is subject to the Regulations you need to consult the Law Society Practice Note on the subject. The guidance provides that the regulations extend to situations where lawyers are involved with:
  - buying and selling land or businesses;
  - managing client money, securities or other assets;
  - opening or management of bank, savings or securities accounts;
  - organisation of contribution for the creation, operation or management of companies; or
  - creation, operation or management of trusts, companies or similar structures.

# The following, however, are specifically excluded:

- payments on account of costs or payments of solicitors' bills
- provision of legal advice
- participation in litigation or Alternative Dispute Resolution (ADR)
- will writing (but consider tax advice)
- legal aid work

# But we operate a client account - does this make a difference?

- **Not as such.**
- Operating a client account and taking fees from clients does not of itself take you into the regulated sector as payments of fees are not “transactions” according to the Law Society advice.

So what should our approach be if not all the firm's services are covered by the Regulations and so not all the firm's services are in the regulated sector?

- You do, of course, need to comply with the Regulations for those parts of the practice where the Regulations apply - if you do some conveyancing, for example.
- Most mixed firms tend to regard the whole firm as being covered by the MLR 2017 and so insist on full identity checking ("CDD") in all cases on grounds that it will cause confusion if required sometimes but not always.

# The main obligations if you are subject to the MLR 2017 are to:

- 1) undertake a risk assessment on your practice to decide the extent to which you need or wish to comply with the regulations and to determine the appropriate compliance arrangements for your firm (r.18).
- 2) appoint an “officer responsible” for your compliance with the Regulations. This new requirement at r.21(1) is in addition to the need that has always existed for a “nominated officer” (MLRO), also under r.21, who in most cases will be the same person - probably a partner, director or the Principal.
- 3) advise the SRA, when requested to do so, of these appointments (r.21.4).

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4) adopt or revise your AML policy, to include reporting arrangements to the MLRO and instructions on your firm's approach to identity checking (r.19).

5) if undertaking client identity checks by way of customer due diligence ("CDD") under rr.27- 28 advising clients of the purposes for which this data is being collected and for how long it will be retained (rr 40-41).

6) conduct or arrange training for all relevant personnel - i.e. fee earners, accounts personnel and anyone else who is involved in undertaking identity checks (r.24).

# How to identify the investment in a Tier 1 (Entrepreneur) extension application?

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Since IR changes on 29th March 2019, we shall focus on the applications currently working towards the extension, and potentially settlement.

## *What sort of investments are approved by the Home Office?*

An Applicant can decide to invest his funds into a new or existing business as below:

**Paragraph 45 of Appendix A** of the Immigration Rules provides the specified evidence needed to evidence the investment.

1) Direct cash investment where at the time of extension applicant would be expected to provide:

- The Financial accounts of that business for assessment, and such accounts must show the investment in money made directly by applicant, in their own name.

2) Share capital where at the time of extension applicant would be expected to provide:

- The business accounts showing the shareholders in the business.
- The amount and value of the shares (on the date of purchase) owned by the applicant (in applicant's name as it appears on applicant's application) must be shown, and
- A copy of the company's register of members from Companies House must be provided, If the value of applicant's share capital is not shown in the accounts.

## *What sort of investment are approved by the Home Office?*

3) A director's loan as long as it is unsecured and subordinated in favour of third-party creditors, where applicant will be required to provide:

- The Business accounts of the business showing the loan made to the business
- Personal and business bank statements showing identifiable transactions of the applicant's intended loan to the company, if the investment was made after 19 November 2015 and the date of application is before 19 November 2021, and
- Loan agreement, which should contain all of the below:
  - 1) the terms of the loan,
  - 2) any interest that is payable,
  - 3) the period of the loan, and
  - 4) that the loan is unsecured and subordinated to other creditors' loans to the business;

## *What sort of investment is excluded by the Home Office?*

- Investment in any residential accommodation, or
- Investment in any property development defined in the Tier 1 Guidance as,
  - any development of property (real estate) owned by the applicant or his business to increase the value of this property with a view to earning a return either through rent or a future sale, or both
- Investment in any property management defined in the Tier 1 Guidance as
  - the management of property (regardless of who owns it - whether or not it is owned by the applicant or his business) for the purposes of renting it out or for resale.

# Job creation into a UK existing business

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**(Paragraphs 49-50 of Appendix A of the Immigration Rules)**

## *Who can work for the business as an employee?*

- A national of the UK;
- An EU or EEA national
- A person present and settled in the UK

# What does it mean full-time?

**Paragraph 49** of Appendix A to the Immigration Rules explains that:

- A full-time job is one involving at least 30 hours of paid work per week

“The equivalent of” a full-time job means two or more part-time jobs that add up to 30 hours per week, if each of the jobs exists for at least 12 months. However, **one full time job of more than 30 hours of work per week will not count as more than one full-time job.**

## *Assess whether the post created in the business, has resulted as a contribution to the business*

An Applicant will be required to provide evidence of the posts created after the date he/she started work in the business. The following will be required as part of the specified evidence:

- Full payment submission
- Copies of their payslips
- Copy of their ID
- A form 35 Full Payment Submissions show the dates of employment of the worker, and the applicant must supply them the application, or,
- Full payment submission of all jobs created before the applicant had joined the business.
- Confirmation of the employment start date, job title, job description, hours paid per pay period and the hourly rate for each settled worker relied upon to claim points, including any changes in the hours worked per pay period or the hourly rate and the dates of those changes.

## *Assess whether the post created in the business, has resulted as a contribution to the business*

- A signed and dated letter from an accountant, showing:
- The name and contact details of the business,
- The Applicant's status in the business,
- The number of jobs created in the business and the hours paid in each of the jobs, the start dates and end dates (where applicable) of the jobs the applicant is relying on to claim points,
- The registration or permission of the accountant to operate in the UK,
- The date that the accountant created the letter on applicant's behalf, if the business did not employ workers before you took over or joined it, confirmation of this, and
- Confirmation that the accountant will verify the contents of the letter to the Home Office on request

# Questions?

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# Thank You



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