AML – a year of change

We have seen a lot of change in the AML world recently. Here we provide an overview of some of those changes and how they may impact your practice.

Criminal Finances Act 2017

Amendments have been made to Proceeds of Crime Act 2002, through the Criminal Finances Act 2017. The amendments aim to strengthen law enforcement, investigative powers and expand the powers to seize the proceeds of crime and combat corruption.

Some of the key changes include:

- Increased sharing of information between regulated organisations.
- Enhanced ability to investigate and recover proceeds of crime.
- Strengthening the Suspicious Activity Reporting (SARs) regime, including powers to extend the moratorium period during which reports are investigated.
- New criminal charges for companies for corporate failure to prevent tax evasion.

MLR 2017

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017) came into effect on 26 June 2017 and replaced the Money Laundering Regulations 2007. Whilst much of the 2007 Regulations remain relevant, there are many amendments and additions to consider.

We have produced guidance which highlights the changes that are most relevant to CLC Practices. You can see the guidance here.

In addition, the AML Legal Supervisors have prepared the Legal Sector Anti-Money Laundering Guidance which was approved by HM Treasury in March 2018. The guidance takes into account the changes introduced by the MLR 2017. The AML Legal Supervisors comprise the CLC, along with other legal sector regulators and representative bodies.

National Risk Assessment

The second National Risk Assessment of money laundering and terrorist financing (NRA) was published in October 2017.

The NRA sets out the key money laundering and terrorist financing risks for the UK, how these have changed since the UK's first national risk assessment was published in 2015, and the action taken since 2015 to address these risks.

The latest report highlighted the need for more liaison between the private sector and law enforcement to improve information sharing with the aim of disrupting criminal activity.

It also determined that the real estate sector, the lack of transparency of beneficial owners including Trust and Company Service Providers, and the abuse of the client account are areas of high risk of money laundering.

We have produced a summary of the findings relevant to CLC Practices which you can find here.

5MLD

Terrorist attacks and the Panama Papers leak highlighted weaknesses in the current EU financial crime legislation. To address some of these weaknesses, the Council of the EU adopted the Fifth Anti-Money Laundering Directive (5MLD) on 14 May 2018.

The scope of 5MLD will be widened to require auditors, accountants, tax advisors, auction houses and estate agents (when letting property with a monthly rent of €10,000 or more) to perform anti-money laundering checks.

Companies will be required to check the identity of customers, particularly those from high-risk countries, and ensure they have ongoing monitoring in place to identify the true beneficial owners of all physical and digital assets.

Some of the other changes that 5MLD introduces include:

- **Prepaid instruments (e.g. gift cards, travel cards)**: The threshold requirement for more vigorous customer verification will be reduced from €250 to €150.
- **Digital currencies**: All virtual currency exchange platforms and digital wallet holders will be subject to due diligence checks.
- **High-risk countries**: Banks will be required to carry out enhanced due diligence checks on financial transactions from high risk countries.
- **Access to beneficial owners' registers**: A higher level of transparency on the true beneficial owners of companies will be achieved through the creation of national registers (this is already available in the UK) and information sharing between EU member states.
- **Increased powers for Financial Intelligence Units (FIUs)**: FIUs will have access to information in centralised banks and payment account registers to strengthen the identification of account holders.

EU members have 18 months to transpose 5MLD into law and it is expected that the UK will transpose it into UK law by January 2020. The Treasury will consult on its approach to implementing 5MLD by the end of 2018 and will consult on the regulations mid-2019.

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