MONEY LAUNDERING REGULATIONS Module

Objectives
Completion of this Module will ensure that an individual understands:-

- The basic principles of the Money Laundering Regulations, what it is and how to identify suspicious circumstances;
- Their and their company’s responsibilities under the Act;
- The importance of reporting any Money Laundering suspicions.

What is Money Laundering?
No one can be really sure when money laundering first began. However, we can be confident that it is not new.
Some believe that, in China, merchants some 2000 years BC would hide their wealth from rulers, who would simply take it off them and banish them. In addition to hiding it, they would move it and invest it in businesses in remote provinces or even outside the country.
The term "money laundering" is also said to originate from Mafia ownership of Laundromats in the United States. Gangsters were earning huge sums in cash from extortion, prostitution, gambling and bootleg liquor. They needed to show a legitimate source for these monies. One of the ways in which they were able to do this was by purchasing outwardly legitimate businesses and to mix their illicit earnings with the legitimate earnings they received from these businesses. These gangsters chose laundromats because they were cash businesses.
In today's global economy, organised crime groups generate huge sums of money by drug/people trafficking, arms smuggling, sex, financial crime, tax evasion, benefit fraud, proceeds of theft, terrorism, corruption, robbery, blackmail, forgery, counterfeiting, etc.
"Dirty money", however, is of little use to organized crime because it raises the suspicions of law enforcement and leaves a trail of incriminating evidence.

Criminals who wish to benefit from the proceeds of large-scale crime have to disguise their illegal profits without compromising themselves. This process is known as money laundering.
Criminals launder illegally gained money and make it appear to be legitimate wealth because:-

- Illegal or ‘hot’ money is dangerous to hold, especially in cash.
- When carried it attracts attention of the Police and Customs.
- Traders are suspicious of customers offering large sums in cash instead of cheques or credit cards.
- Cash is difficult to protect against theft by other criminals.
- They have to conceal the origin of the funds & keep control of the "new" capital
**Why Is It a Problem?**

Financial crime affects everyone. Every criminal needs to "launder" the proceeds of crime, but where organized crime, drug trafficking and corruption are involved; the consequences of money laundering are bad for business, development, government and the rule of law. Worldwide it costs £2,000 Billion and in the U.K £20.5 Billion with London being the second largest Money Laundering centre in the world after New York. Money Laundering is funding organised crime, drug dealing and terrorism. Because they deal with other people's money, banks (and other financial and professional institutions) rely heavily on a reputation for probity and integrity. Companies need a good name to build business and an organisation with a reputation for shady dealing will be shunned by legitimate enterprise. The prestige of even a well-known company that is revealed to have assisted in the laundering of money can be severely damaged. In summary, Money Laundering is bad for business.

Some of the consequences can include:-

- Increased taxes for those that do not evade tax;
- Increased insurance policy premiums for those that do not make fraudulent claims;
- It results in higher taxes for those that do not make fraudulent claims for benefits;
- It results in higher costs to businesses, which means a combination of less profits and higher prices to consumers;
- The vulnerable such as the elderly are at risk from offences such as doorstep frauds;
- Shopping on the internet or even at the local supermarket is more risky because the trader may be a fraudster and it means that money flows into the hands of corrupt politicians and businessmen, including those engaged in trafficking in drugs, arms and people;
- The cost of living is higher, and there is less to spend on the things people want to spend their money on, including cars and motor bikes.

Money laundering is not a victimless crime. **Everyone** is a victim.

**The Legislation**

The Money Laundering Regulations 2007 came into force in December 2007, updating and superseding all previous legislation relating to the prevention of money laundering. All businesses that are covered by the regulations have to put in place suitable anti-money laundering controls. It requires certain businesses to register with HMRC (HM Revenue and Customs), have systems in place to prevent money laundering and to report suspicious transactions. In particular, there is an emphasis in the new Regulations on the adoption of a risk-based approach by regulated persons to the carrying out of their compliance obligations. This means that companies are expected to form a view on the level of risk presented by prospective clients and by particular situations and to determine, on the strength of this assessment, the extent of the compliance work they feel they need to carry out. The new regulations implement the requirements of the EU's Third Money Laundering Directive: accordingly, similar changes are happening throughout the EU. Sometimes the money launderer will be prosecuted under the law that governed the crime that created the 'dirty' money in the first place, for example, the Drug Trafficking Act.
How Money Is Laundered

There are 3 stages to the money laundering process:

1. Placement - Physical disposal of illegally gained cash into the financial system
   This is the first stage in the washing cycle. Crime is a "cash intensive" business, generating vast amounts of cash from illegal activities (for example, street dealing of drugs where payment takes the form of cash in small denominations). The monies are placed into the financial system or retail economy or are smuggled out of the country. The aims of the launderer are to remove the cash from the location of acquisition so as to avoid detection from the authorities and to then transform it into other asset forms; for example: travelers cheques, bearer bonds, etc.

2. Layering - Separates this cash from its source by creating many transactions to confuse the audit trail and break the link with the “dirty” cash.
   In the course of layering, attempts are made to conceal or disguise the source of the ownership of the funds by creating complex layers of financial transactions. These are designed to disguise the audit trail and provide anonymity.
   Thus the purpose of layering is to disassociate the illegal monies from the source of the crime by purposely creating a complex web of financial transactions aimed at concealing any audit trail as well as the source and ownership of funds.
   Typically, layers are created by moving monies in and out of the offshore bank accounts of bearer share shell companies through electronic funds’ transfer (EFT). Given that there are over 500,000 wire transfers - representing in excess of $1 trillion - electronically circling the globe daily, most of which is legitimate, there isn’t enough information disclosed on any single wire transfer to know how clean or dirty the money is, therefore providing an excellent way for launderers to move their dirty money.
   Other forms used by launderers are complex dealings with on the financial markets such as stock, commodity and futures brokers. Given the sheer volume of daily transactions, and the high degree of anonymity available, the chances of transactions being traced are slight.

3. Integration - Moving the money into the legitimate economy in such a way that no one suspects where it first came from.
   This is the final stage in the process. It is this stage at which the money is integrated into the legitimate economic and financial system and is assimilated with all other assets in the system. Integration of the "cleaned" money into the economy is accomplished by the launderer making it appear to have been legally earned. By this stage, it is exceedingly difficult to distinguish legal and illegal wealth.
   Methods popular to money launderers at this stage are:
   1. The establishment of anonymous companies in countries where the right to secrecy is guaranteed. They are then able to grant themselves loans out of the laundered money in the course of a future legal transaction. Furthermore, to increase their profits, they will also claim tax relief on the loan repayments and charge themselves interest on the loan.
   2. The sending of false export-import invoices overvaluing goods allows the launderer to move money from one company and country to another, with the invoices serving to verify the origin of the monies.

3. A simpler method is to transfer the money (via EFT) to a legitimate bank from a bank owned by the launderers or 'off the shelf banks', which are easily purchased in many tax havens.
How does this affect you?
Your organisation has had to establish anti-money laundering procedures. Under the requirements, businesses willing to accept cash for transactions over the current €15,000 limit are obliged to register with HMRC. The Money Laundering Regulations impose obligations to establish procedures in respect of:

Identification of customers by verification of address and identity.
Under United Nations Sanctions residency or nationality of all applicants must be checked before processing. Watch out for the following:- Afghanistan/Taliban, Democratic Republic of the Congo, Iraq, Zimbabwe or Federal Republic of Yugoslavia & Serbia, Ivory Coast, Liberia, Sudan, Zimbabwe. Also watch out for non co-operative countries and territories such as Nigeria and Myanmar (Burma).
Caution is required when dealing with these countries and territories, as they are regarded as “requiring to improve their anti-money laundering procedures”.
The suggestion is that identity is derived via a copy of the picture page of a passport and a copy of a recent utility bill. The evidence must be kept for five years from the end of the business relationship - and businesses should not forget the regulations also cover existing clients.

Record keeping
The Regulations require firms to keep all money laundering records, including client ID evidence, for five years.

Reporting of suspicious transactions.
There is a duty to report all suspected money laundering activity. Firms need to nominate someone to receive information from within the organisation should they suspect money laundering - it would be their job to report it to the Serious Organised Crime Agency (SOCA).

Training and communication of policies to employees.
To comply with the Money Laundering Regulations there is a need to establish documented procedures and reporting methods and train staff to ensure full adherence to these procedures. Internal procedures must be put in place to minimise the risk of the firm being used for money laundering purposes.

A money laundering reporting officer (or ‘nominated officer’) must be appointed by firms to act as the conduit for intra-firm reporting of suspicions and to assume responsibility for making final decisions on behalf of the firm as to whether particular matters stand to be reported to the Serious Organised Crime Agency (SOCA). Persons in the regulated sector must not themselves infringe the statutory money laundering offences and must report knowledge or suspicions of money laundering or terrorist financing: in the case of persons other than nominated officers, such reports must be made to the firm’s nominated officer, while the nominated officer must make the decision on behalf of the firm as to whether or not to make an external report to SOCA.
Who Are SOCA?
The Serious Organised Crime Agency (SOCA), formed in 2006, is an Executive Public Body sponsored by, but operationally independent from, the Home Office. The Serious and Organised Crime Agency receives and analyses Suspicious Activity Reports, and uses them to identify the proceeds of crime. It counters money laundering and terrorism by passing on important information to law enforcement agencies, to take action.

Statutory Offences and Defences

1. Assistance
   It is a criminal offence for any person to provide assistance to obtain, conceal, retain, invest the proceeds of crime if that person knows or suspects that the other person has been engaged in, or has benefited from, criminal conduct. Such assistance is punishable on conviction by a maximum of fourteen years imprisonment, or a fine, or both.

2. Tipping Off
   It is an offence for anyone to take any action likely to prejudice an investigation by informing or “tipping off” the person who is the subject of a suspicious transaction report. The punishment on conviction for “tipping off” is a maximum of five years imprisonment, or a fine, or both.

3. Failure to report: Drug Trafficking and Terrorist Activity
   There is a duty to report all suspected money laundering activity. This includes any dealings that you ‘ought to suspect’, but in case of drug trafficking and terrorist activity, it is also a criminal offence for any person who acquires knowledge of a suspicion of money laundering in the course of their employment, not to report the knowledge or suspicion immediately. Failure to report is punishable on conviction by a maximum of five years imprisonment, or a fine, or both, and may also give rise to the offence of money laundering which carries a penalty of fourteen years imprisonment.

"I've always wondered how they laundered money!"
What to look out for?

The types of transactions used to launder money are many and varied and not always as obvious as receiving large sums of cash. A suspicious circumstance is really anything which raises an uncertainty or question in your mind as to the underlying purpose of a transaction. The key to recognising a suspicious transaction is knowing enough about your customer’s business to recognise an unusual transaction. A suspicious transaction will often be one that is inconsistent with a customer's known business or personal activities. So the more that we know about your customers the better equipped we are to fight this crime.

Examples to look out for can include:-
- A transaction that is not in keeping with the customer’s normal activity;
- Refunding large or irregular premiums or cancelling a policy, possibly at a loss to the customer, for no clear reason;
- A transaction is not in keeping with the customer’s circumstances, i.e. student pays in large amounts for a new vehicle;
- Cancellation made as soon as payment has been cleared;
- Premiums or instalments paid off in full.
- Any individual or business wishing to make an unusually large purchase in cash;
- Any unusual requests from individuals or businesses regarding help with insurance claims;
- Any requests for monies to be paid for or collected by individuals or businesses that have bank accounts in different names;
- Any requests for monies to be paid for or collected by individuals or businesses that have insurance policies in different names.

What Happens Once I’ve Reported My Suspicions?

The company will consider all relevant information available to validate your suspicions and decide whether or not to report the incident to the Serious Organised Crime Agency (SOCA). Once it has been decided there are reasonable grounds to suspect money laundering they must tell SOCA at the earliest possible opportunity. They shouldn't wait until a transaction has been completed before reporting it.
If the case is referred to SOCA, they will investigate and take the appropriate actions. When SOCA are informed of suspicious circumstances your name will not be disclosed and therefore the customer will not know who reported them.

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