

Money Laundering and Terrorist Financing (Amendment) Regulations 2019

The requirements of the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 were laid before Parliament on 20th December and come into force on 10th January 2020.

We have put together a 'to-the-point' list of the changes that we think will affect law firms under the amended regulations, plus our recommendations for you.

Previous requirement	New requirement	What this means / our recommendations
Reg 9 (4) (a) (i) Enhanced Due Diligence must be conducted for cases where: <ul style="list-style-type: none"> a transaction is complex <u>and</u> unusually large, or there is an unusual pattern of transactions, <u>and</u> the transaction or transactions have no apparent economic or legal purpose... 	Amendment 4 (9) (a) Enhanced Due Diligence must now be conducted for cases where: <ul style="list-style-type: none"> a transaction is complex <u>or</u> unusually large, or there is an unusual pattern of transactions, <u>or</u> the transaction or transactions have no apparent economic or legal purpose... 	Now, if any of these criteria are met, EDD applies. Previously, all had to apply. You should: <ul style="list-style-type: none"> Update your AML policies to reflect this change; Advise all staff of new requirement.
Reg 9 (4) (c) Policies, controls and procedures must ensure that when <u>new technology</u> is adopted by the Firm, appropriate measures are taken in preparation for, and during, the adoption of such technology to assess and if necessary mitigate any money laundering or terrorist financing risks this new technology may cause.	Amendment 4 (9) (b) Policies, controls and procedures must ensure that when <u>new products, new business practices (including new delivery mechanisms) or new technology are</u> adopted by the Firm, appropriate measures are taken in preparation for, and during, the adoption of such <u>products, practices or technology</u> to assess and if necessary mitigate any money laundering or terrorist financing risks this new <u>product, practice or</u> technology may cause.	Now, new products and/or business processes (not just new technology) must reflect AML requirements. You should: <ul style="list-style-type: none"> Update your policies, including Risk Register and Firmwide Risk Assessments, and anywhere else as appropriate, to describe how you assess the risk of, from an AML point of view, the Firm looking at adopting new products, practices, delivery mechanisms and technology. Ensure your Firm's MLRO and MLCO are aware of the new requirement

Money Laundering and Terrorist Financing (Amendment) Regulations 2019

Previous requirement	New requirement	What this means / our recommendations
<p>Reg 24 (1) The Firm must:</p> <p>(a) take appropriate measures to ensure that its <u>relevant employees</u> are:</p> <ul style="list-style-type: none"> made aware of the law relating to money laundering and terrorist financing, and to the requirements of data protection, which are relevant to the implementation of these Regulations; and regularly given training in how to recognise and deal with transactions and other activities or situations which may be related to money laundering or terrorist financing; <p>(b) maintain a record in writing of the measures taken under sub-paragraph (a), and in particular, of the training given to its <u>relevant employees</u>.</p>	<p>Amendment 4 (11) The Firm must:</p> <p>(a) take appropriate measures to ensure that its relevant employees, <u>and any agents it uses for the purposes of its business whose work is of a kind mentioned in paragraph (2)</u> are:</p> <ul style="list-style-type: none"> made aware of the law relating to money laundering and terrorist financing, and to the requirements of data protection, which are relevant to the implementation of these Regulations; and regularly given training in how to recognise and deal with transactions and other activities or situations which may be related to money laundering or terrorist financing; <p>(b) maintain a record in writing of the measures taken under sub-paragraph (a), and in particular, of the training given to its <u>relevant employees and any agents it uses for the purposes of its business whose work is of a kind mentioned in paragraph (2)</u>.</p>	<p>AML training requirements now extend to include agents (who conduct work covered by the money laundering regulations on behalf of the Firm) as well as employees.</p> <p>You should:</p> <ul style="list-style-type: none"> Update your AML policy to reflect this new training requirement Ensure your Firm's MLRO and MLCO are aware of the new requirement Consider how the Firm will roll out AML training to its agents
<p>Reg 28, addition of (3A) after paragraph (3)</p>	<p>Amendment 5 (2) (a), addition of (3A) <u>Where the customer is a legal person, trust, company, foundation or similar legal arrangement, the relevant person must take reasonable measures to understand the ownership and control structure of that legal person, trust, company, foundation or similar legal arrangement.</u></p>	<p>New requirement to understand the "control structure" and ownership of a corporate client. However, Reg 28 (5) has not been amended, and still reads:</p> <p><i>(5) Paragraphs (3)(b) and (4) do not apply where the customer is a company which is listed on a regulated market.</i></p> <p>It's therefore not clear that taking steps to understand the ownership of a listed company was deliberate – but it now appears to fall outside this exemption.</p> <p>We are awaiting LSAG guidance.</p>

Money Laundering and Terrorist Financing (Amendment) Regulations 2019

Previous requirement	New requirement	What this means / our recommendations
<p>Reg 28 (6)-(8)</p> <p>(6) If the customer is a body corporate, and paragraph (7) applies, the relevant person may treat the senior person in that body corporate responsible for managing it as its beneficial owner.</p> <p>(7) This paragraph applies if (and only if) the relevant person has exhausted all possible means of identifying the beneficial owner of the body corporate and—</p> <ul style="list-style-type: none"> • has not succeeded in doing so, or • is not satisfied that the individual identified is in fact the beneficial owner. <p>(8) If paragraph (7) applies, the relevant person must keep records in writing of all the actions it has taken to identify the beneficial owner of the body corporate.</p>	<p>Amendment 5 (2) (b)</p> <p>(6) If the customer is a body corporate, and paragraph (7) applies, the relevant person may treat the senior person in that body corporate responsible for managing it as its beneficial owner.</p> <p>(7) This paragraph applies if (and only if) the relevant person has exhausted all possible means of identifying the beneficial owner of the body corporate and—</p> <ul style="list-style-type: none"> • has not succeeded in doing so, or • is not satisfied that the individual identified is in fact the beneficial owner. <p>(8) If paragraph (7) applies, the relevant person must:</p> <ul style="list-style-type: none"> • keep records in writing of all the actions it has taken to identify the beneficial owner of the body corporate; • take reasonable measures to verify the identity of the senior person in the body corporate responsible for managing it, and keep records in writing of: <ul style="list-style-type: none"> ◦ all the actions the relevant person has taken in doing so, and ◦ any difficulties the relevant person has encountered in doing so. 	<p>New additional requirement to identify the senior management of a client where the firm has been unable to identify the beneficial owners (or is dissatisfied with their enquiries), record the actions taken and the difficulties encountered.</p> <p>You should:</p> <ul style="list-style-type: none"> • Update your AML policies, in particular CDD procedures, to reflect this new requirement • Advise all staff of new requirement.

Money Laundering and Terrorist Financing (Amendment) Regulations 2019

Previous requirement	New requirement	What this means / our recommendations
Reg 28, addition of (19) after paragraph (18)	<p>Amendment 5 (2) (c), addition of (19)</p> <p>For the purposes of this regulation, information may be regarded as obtained from a reliable source which is independent of the person whose identity is being verified where:</p> <ul style="list-style-type: none"> it is obtained by means of an electronic identification process, including by using electronic identification means or by using a trust service (within the meanings of those terms in Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23rd July 2014 on electronic identification and trust services for electronic transactions in the internal market(a)); and that process is secure from fraud and misuse and capable of providing an appropriate level of assurance that the person claiming a particular identity is in fact the person with that identity. 	<p>Now, for electronic identification to be relied upon for ID verification, two tests MUST be met, namely the process must:</p> <ul style="list-style-type: none"> be secure from fraud and misuse; and provide an appropriate level of assurance that the person claiming a particular identity is in fact the person with that identity <p>We assume therefore that electronic ID suppliers will need to meet these requirements in order to sell their product to firms if the intention is that it should form part of the ID verification process.</p> <p>Subject to any further clarification from LSAG, we would advise the following:</p> <p>You should:</p> <ul style="list-style-type: none"> check the T&C of your agreement with any Electronic ID suppliers and, if there is no warranty that the product meets the requirements, insist that the supplier provides one as soon as possible If no such warranty is forthcoming, you will need to either make alternative arrangements to satisfy yourself that these requirements are met, or make alternative arrangements to verify ID.

Money Laundering and Terrorist Financing (Amendment) Regulations 2019

Previous requirement	New requirement	What this means / our recommendations
Addition of (30A) after reg 30	<p>Amendment 5 (3), addition of (30A)</p> <p>Requirement to report discrepancies in registers</p> <p>(1) Before establishing a business relationship with:</p> <ul style="list-style-type: none"> a company which is subject to the requirements of Part 21A of the Companies Act 2006 (information about people with significant control)(b), an unregistered company which is subject to the requirements of the Unregistered Companies Regulations 2009(c), a limited liability partnership which is subject to the requirements of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009(d), or an eligible Scottish partnership which is subject to the requirements of the Scottish Partnerships (Register of People with Significant Control) Regulations 2017(e), <p>a relevant person must collect proof of registration or an excerpt of the register from the company, the unregistered company or the limited liability partnership (as the case may be) or from the registrar (in the case of an eligible Scottish partnership).</p> <p>(2) The relevant person must report to the registrar any discrepancy the relevant person finds between information relating to the beneficial ownership of the customer:</p> <ul style="list-style-type: none"> which the relevant person collects under paragraph (1); and 	<p>A. New requirement to obtain “proof of registration” from a company/LLP prior to entering into a business relationship.</p> <p>Government consultation document suggests that they accept that obtaining the document from Companies House direct would meet this requirement.</p> <p>You should:</p> <ul style="list-style-type: none"> Update AML Policies and CDD procedures to reflect this new requirement Advise all staff of new requirement (and ensure that they know how to obtain such a document) <p>B. New duty to report discrepancies relating to beneficial ownership to Companies House (unless the information is legally privileged)</p> <p>You should:</p> <ul style="list-style-type: none"> Update AML policies to reflect this and define an internal reporting procedure if necessary Advise all staff of new requirement

Previous requirement	New requirement	What this means / our recommendations
	<ul style="list-style-type: none"> • which otherwise becomes available to the relevant person in the course of carrying out its duties under these Regulations. <p>(3) The relevant person is not required under paragraph (2) to report information which that person would be entitled to refuse to provide on grounds of legal professional privilege in the High Court (or in Scotland, on the ground of confidentiality of communications in the Court of Session).</p> <p>(4) The registrar must take such action as the registrar considers appropriate to investigate and, if necessary, resolve the discrepancy in a timely manner.</p> <p>(5) A discrepancy which is reported to the registrar under paragraph (2) is material excluded from public inspection for the purposes of section 1087 of the Companies Act 2006 (material not available for public inspection), including for the purposes of that section as applied:</p> <ul style="list-style-type: none"> • to unregistered companies by paragraph 20 of Schedule 1 to the Unregistered Companies Regulations 2009; • to limited liability partnerships by regulation 66 of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009; and • to eligible Scottish partnerships by regulation 61 of the Scottish Partnerships (Register of People with Significant Control) Regulations 2017. 	

Money Laundering and Terrorist Financing (Amendment) Regulations 2019

Previous requirement	New requirement	What this means / our recommendations
	(6) A reference to the registrar in this regulation is to the registrar of companies within the meaning of section 1060(3) of the Companies Act 2006.	
<p>Reg 33 (1) (b) (1) A relevant person must apply enhanced customer due diligence measures and enhanced ongoing monitoring, in addition to the customer due diligence measures required under regulation 28 and, if applicable, regulation 29, to manage and mitigate the risks arising: (b) in any business relationship or transaction with a person established in a high-risk third country;</p> <p>and</p> <p>Reg 33, addition of (3A) after (3)</p>	<p>Amendment 5 (4) (a) (ii) (1) A relevant person must apply enhanced customer due diligence measures and enhanced ongoing monitoring, in addition to the customer due diligence measures required under regulation 28 and, if applicable, regulation 29, to manage and mitigate the risks arising: (b) in any business relationship with a person established in a high-risk third country or in relation to any relevant transaction where either of the parties to the transaction is established in a high-risk third country;</p> <p>and</p> <p>Amendment 5 (4) (d), addition of (3A) The enhanced due diligence measures taken by a relevant person for the purpose of paragraph (1)(b) must include:</p> <ul style="list-style-type: none"> • obtaining additional information on the customer and on the customer's beneficial owner; • obtaining additional information on the intended nature of the business relationship; • obtaining information on the source of funds and source of wealth of the customer and of the customer's beneficial owner; • obtaining information on the reasons for the transactions; 	<p>Enhanced CDD is now to be applied if any party (not just a client or a beneficial owner) to a transaction is established in a high-risk third country.</p> <p>So there is now a requirement to identify where any other counterparty is established.</p> <p>In many cases this will not be an issue, however if there is any uncertainty, then further enquiries MUST be made into counterparties and enhanced due diligence implemented, including the NEW requirement for:</p> <ul style="list-style-type: none"> (a) obtaining additional information on the customer and on the customer's beneficial owner; (b) obtaining additional information on the intended nature of the business relationship; (c) obtaining information on the source of funds and source of wealth of the customer and of the customer's beneficial owner; (d) obtaining information on the reasons for the transactions; (e) obtaining the approval of senior management for establishing or continuing the business relationship; (f) conducting enhanced monitoring of the business relationship by increasing the number and timing of controls applied and selecting patterns of transactions that need further examination.

Money Laundering and Terrorist Financing (Amendment) Regulations 2019

Previous requirement	New requirement	What this means / our recommendations
	<ul style="list-style-type: none"> obtaining the approval of senior management for establishing or continuing the business relationship; conducting enhanced monitoring of the business relationship by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination. 	<p>You should:</p> <ul style="list-style-type: none"> Update AML Policies and CDD procedures to reflect this new requirement Advise all staff of new requirement
<p>Reg 33 (3) For the purposes of paragraph (1)(b), a “high-risk third country” means a country which has been identified by the European Commission in delegated acts adopted under Article 9.2 of the fourth money laundering directive as a high-risk third country.</p>	<p>Amendment 5 (4) (c) For the purposes of paragraph (1)(b)—</p> <ul style="list-style-type: none"> a “high-risk third country” means a country which has been identified by the European Commission in delegated acts adopted under Article 9.2 of the fourth money laundering directive as a high-risk third country; a “relevant transaction” means a transaction in relation to which the relevant person is required to apply customer due diligence measures under regulation 27; being “established in” a country means— <ul style="list-style-type: none"> in the case of a legal person, being incorporated in or having its principal place of business in that country, or, in the case of a financial institution or a credit institution, having its principal regulatory authority in that country; and in the case of an individual, being resident in that country, but not merely having been born in that country. 	<p>Clarification that for individuals “established in” a high-risk country can mean being a resident, rather than having to have been born there.</p> <p>You should:</p> <ul style="list-style-type: none"> Update AML policies to reflect new requirement

Money Laundering and Terrorist Financing (Amendment) Regulations 2019

Previous requirement	New requirement	What this means / our recommendations
<p>Reg 33 (6) (b) (vi), addition of (vii)</p> <p>(6) When assessing whether there is a high risk of money laundering or terrorist financing in a particular situation, and the extent of the measures which should be taken to manage and mitigate that risk, relevant persons must take account of risk factors including, among other things—</p> <p>(b) product, service, transaction or delivery channel risk factors, including whether—</p>	<p>Amendment 5 (4) (f) (iii)</p> <p>(6) When assessing whether there is a high risk of money laundering or terrorist financing in a particular situation, and the extent of the measures which should be taken to manage and mitigate that risk, relevant persons must take account of risk factors including, among other things—</p> <p>(b) product, service, transaction or delivery channel risk factors, including whether—</p> <p>(vii) there is a transaction related to oil, arms, precious metals, tobacco products, cultural artefacts, ivory or other items related to protected species, or other items of archaeological, historical, cultural or religious significance or of rare scientific value;</p>	<p>New requirement to include transactions including the following to be treated as high risk of Money Laundering:</p> <p><i>Oil, arms, precious metals, tobacco products, cultural artefacts, ivory or other items related to protected species, or other items of archaeological, historical, cultural or religious significance or of rare scientific value</i></p> <p>You should:</p> <ul style="list-style-type: none"> • Update AML Policies including risk assessments where appropriate • Advise all staff of new requirement

View the full amendment regulations here:

<http://www.legislation.gov.uk/ukxi/2019/1511/contents/made>