HAT
Group of Accountants

MEMORANDUM

To: **Technical Representatives**

From: **Andrew Jarvis**

Date: **10th July 2017**

Ref: **TM 09/17**

THE MONEY LAUNDERING, TERRORIST FINANCING AND TRANSFER OF FUNDS (INFORMATION ON THE PAYER) REGULATIONS 2017 ("MLR 2017")

The MLR 2017 became effective on 26th June, replacing the existing Money Laundering Regulations 2007. The revised Regulations make a number of changes to the anti-money laundering regime in the UK, which everyone at your firm needs to be aware of. However, it is also vital to understand that most key requirements and the procedures that you follow on a daily basis have not changed.

We are not currently in a position to issue an updated Anti-Money Laundering Procedures Manual as the supervisory bodies (the ICAEW / ACCA / ICAS) have not issued guidance, and guidance from other sources (for example JMLSG and HMRC) is in draft or not fully complete. This guidance is vital, as the Regulations themselves simply set objectives which firms need to meet. The mechanism by which firms must meet these objectives and most importantly, how your supervisory body will interpret the legislation is contained in guidance from these bodies.

Once further information is available, we will update the Procedures Manual. However, in the interim period there are a number of points to be aware of, which should be communicated to all team members:

Areas where action is required immediately (and applied retrospectively to new clients taken on or new assignments conducted after 26 June 2017):

- **Company creation** – previously, the formation of a company where you were not going to undertake any further work was outside the scope of the Regulations. This exemption has now ceased so Regulation 4(2) requires that adequate client identification and verification procedures must now be undertaken prior to undertaking such 'one-off' assignments.

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- **Verification of beneficial owners** – it is now a requirement to verify as well as identify all natural direct beneficial owners of the client (i.e. obtain evidence to confirm the identity of all Directors who are considered to exercise day to day 'control' and shareholders owning more than 25% who are real people). Previously this was 'normal' practice but not always necessary. Where the shareholder is not a natural (real) person, e.g. it is another company or trust you are required to 'understand' (although subject to further guidance, not necessarily verify) that entity's ownership and control structure. The definition of 'beneficial owner' in relation to trusts is now also more explicit in Regulation 6.
- **Key client contacts** – there is an explicit requirement in Regulation 28 to verify both the identity of any person acting on behalf of the client in their dealing with you (i.e. your main contact) *and* to confirm they have the authority to act on their behalf. For most clients this will be covered by existing verification procedures but where, for example your only contact with the client is a manager or third party service organisation (rather than a Director or equivalent) you would need, for new clients, to verify their identity.
- **Enhanced verification procedures for higher risk clients** – there is additional guidance in Regulation 33 on the situations and types of clients considered to be high risk, which now include:
    - Entities operating in a high risk jurisdiction (the FATF provides a list of such jurisdictions);
    - Where the client is a Politically Exposed Person (PEP) or is linked to a PEP (see below);
    - Where you suspect the client has provided false or stolen evidence of their identify;
    - The transactions with the client are complex, unusually large or follow an unusual pattern (in which case further work is required in understanding the transaction initially and monitoring it going forward).
- **Politically Exposed Persons (PEPs)** – the definition and implications of acting for someone caught in the PEP regime is extended. Whereas, previously, it was relatively uncommon for firms to act for PEPs, this will become much more common. The key changes are as follows:
    - Clients where a beneficial owner is a PEP are now 'high risk' (previously it was technically only where the PEP was your client that additional consideration was required);
    - PEPs now include any UK (as well as overseas) individual who is entrusted with 'prominent public functions, other than as a middle-ranking or more junior official.' In practice, this includes:
        - Heads of state, heads of government, ministers, members of parliament and people on governing bodies of political parties;

        - Judges in courts whose rulings are not normally subject to appeal (so therefore most judges will not be caught);
        - Ambassadors and high ranking military officials;
        - Senior management of state-owned enterprises;
        - Members of boards of international organisations.
    - Family members of PEPs (defined as their spouse / civil partner, children of the PEP and their spouse or civil partner and the parents of the PEP) are also caught;
    - A 'known close associate' of a PEP is also covered and is someone who is known to have joint beneficial ownership of a legal entity with a PEP, has other close business relationships with them or has sole beneficial ownership of an entity which is known to have been set up for the benefit of the PEP. It is interesting that the term 'known' is used above. Obviously anyone who has high profile connections to a PEP, or where the firm's existing procedures should have identified the relationship will be caught but is unclear to what extent the firm has to investigate further.
    - Where you act for anyone caught above, the firm's senior management must approve the relationship, you must undertake procedures to establish the source of the funds involved (for existence in the business in question) and monitor the relationship going forward. The rules above also apply to people who *were* PEPs for at least twelve months after they cease to meet the definition.

Other areas to note and forthcoming likely changes (although most firms will not need to action these immediately):

- **Risk assessments** – a new 'tiered approach' is included in the Regulations (Regulations 16-18). The UK Government must conduct a risk assessment covering the UK as a whole, documenting the risks of money laundering and terrorist financing. Based on this, individual supervisory bodies must risk assess their own sector, and then taking into account the results of your supervisor's risk you have to conduct a firm-wide risk assessment, which then feeds into individual client risk assessments. This will necessitate changes to how firms work, but until we have more guidance from the Government (which has until June 2018) and supervisory bodies to complete their risk assessment the precise impact is unclear.
- **Verification of corporate clients** – the information which must be obtained is now more prescriptive, although many firms may have obtained this information anyway. Going forward you must verify a company's full legal name, registered number, registered office and principal place of business as well as obtaining its constitutional document (i.e. Articles of Association). Similar principles would apply to LLPs. It is worth noting that Regulation 43 imposes a legal duty on corporate entities to readily supply this information to you.

- **Use of 'online verification' –** as with the existing Regulations, verification must be undertaken using suitable documentary evidence. This could be by obtaining and copying documents such as a passport or by conducting searches with online providers such as Equifax. Although developments such as the change in the definition of a PEP make online verification more appealing as such services will automatically flag up whether your potential client falls into the definition, online verification is still not mandatory.

- **Persons with Significant Control (PSC) Register** – there is a reminder in Regulation 28(9) that you cannot simply rely on the information on your client's PSC Register to identify and verify beneficial owners. Going forward, supporting evidence must be obtained if you do not already have it (for example, as you have assisted the client in creating and maintaining their register).

- **Retention of documentation** – copies of documents used to verify the client and their beneficial owner must be retained (this was previously best practice). Regulation 40 requires that documents used to verify the client must be retained for five years after the relationship with the client has ceased and any *personal data* contained within those records must be deleted at that point (you cannot retain it to be 'safe'). Regarding documents recording individual transactions, (e.g. working paper files, bank transactions) these must be retained for at least five years after the relationship with the client has ceased, or ten years after the transaction occurred, whichever, is sooner. It appears that the ten year rule applies prospectively, so will not actually impact on firm's current retention policies.

- **Data protection** – There is a reminder in Regulation 41 that personal data obtained can only be used for the purpose obtained, e.g. you cannot enter beneficial owners onto mailing lists without their permission and that this must be explained to clients. Therefore the wording of letters of engagement may need to be amended going forward if these are used to obtain "consent" to be included on mailing lists. Staff training must also explicitly consider data protection issues to the extent that is relevant to the records retained for money laundering purposes. We will amend our training material in due course to deal with this.

- **Firm procedures** - Regulation 19 requires the firm's procedures to be formally documented (firms using our Procedures Manual will already comply with this) and also for written evidence to exist of how these procedures (and changes to procedures) are approved by 'senior management' and communicated to staff and others. Our updated Manual will reflect these additional requirements.

- **Money Laundering Reporting Officer (MLRO)** – in practice the MLRO will normally be a member of the 'senior' management of the firm, i.e. sit on the 'management board' of a large firm, or be an equity partner or Director / shareholder (or equivalent) in a smaller firm. This should continue, but, where, unusually, the MLRO holds a more junior position, a member of senior management must be nominated to supervise them.

- **Monitoring of internal procedures** – there will be requirements for firms to appraise staff, considering their skills, knowledge and expertise in relation to the

prevention and detection of money laundering, and also if appropriate, to conduct an internal audit of their compliance with the Regulations (Regulation 21). Where firms conduct staff appraisals and conduct an annual review of compliance as we recommend, this is unlikely to have any real impact.

- **Ownership of accountancy firms** – the owners of accountancy firms must be approved by the relevant supervisory body – in reality this makes no difference to firms supervised by a professional body, although HMRC must now consider in greater detail the 'fit and proper' status of firms they regulate and have introduced an online form for this. Certain criminal convictions of the senior management of a firm must also be notified to the supervisory body.
- **Timing of client identification and verification procedures** – there is clarification that this process should be undertaken *before* agreeing to act for the client, or in low risk situation (which can often be justified) during the client set-up process (but before any substantial work is undertaken).
- **Clients who deal in cash** – firms who receive funds in cash in excess of €10,000 in exchange for the provision of goods must now register as a high value dealer with HMRC (this was previously €15,000). In addition, businesses who make payments in excess of €10,000 in cash for goods must also register.
- **Firms with overseas operations** – where your firm has branches or subsidiaries outside of the UK you must ensure those overseas operations also comply with the UK regulations and also that information is shared throughout the group.

As noted above, it is important that relevant team members are aware of the above points. We will cover this in greater detail in our Quarter 4, 2017 update, and provide more guidance and an updated Anti-Money Laundering Procedures Manual once guidance from the supervisory bodies are available. In the meantime if you have any questions please call our technical helpline on 020 7213 9911.