

Recruitment Industry Update

The Money Laundering Regulations 2007

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Money laundering is the process by which criminally obtained money is exchanged for “clean” money with no obvious link to their criminal origins.

Prior to 15 December 2007, an extensive anti-money laundering regime already existed. However, on 15 December 2007, further legislation was introduced by way of the Money Laundering Regulations 2007 (“the Regulations”). They are designed to identify and prevent money laundering and terrorist financing by requiring those persons involved in businesses in which money laundering may occur, to take various actions, including checking the identity of their customers and reporting suspicious activity.

For the first time, such legislation will affect some, but not all, recruitment companies.

If you are a recruitment company involved in arranging for a person to act as a director or secretary of a company, as a partner of a partnership or in a similar position (e.g. as a shadow director) then the Regulations categorise the recruitment company as a “trust and company service provider” (“TCSP”) to which the Regulations apply.

If you are a recruitment company that also acts as a payroll agent, then the Regulations categorise you as an “accountancy service provider” (“ASP”) to which the Regulations apply. The term “payroll agent” is not specifically defined, but in our opinion, a recruitment company acts as a payroll agent if it administers the payroll of workers or employees directly engaged or employed by a client. In our view, a recruitment company is not acting as a payroll agent when it pays workers or employees that are directly employed or engaged by the recruitment company itself.

If your company places directors (whether registered, shadow or de facto), company secretaries or partners,

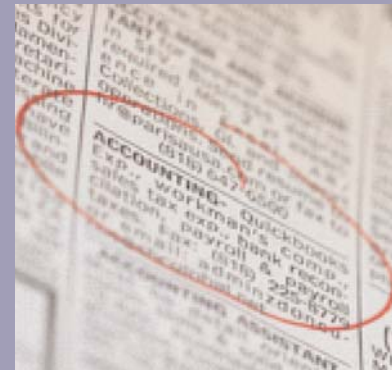
or acts as a payroll agent, the anti-money laundering regime requires you to undertake measures to identify and prevent money laundering, including the following:

1. **Appoint a “nominated officer” or “money laundering reporting officer”:** This individual will be responsible for receiving internal reports of suspicious activity and deciding whether these should be reported (see paragraph 7 below).

2. **Establish procedures:** TCSPs and ASPs are required to establish and maintain policies and procedures relating to customer due diligence, reporting, record keeping, internal control, risk assessment and management, monitoring and management of compliance in order to prevent money laundering and terrorist financing. Senior managers are responsible for ensuring that the business’s policies and procedures operate effectively to manage the risk of the business being used for financial crime and to fully meet the requirements of the Regulations.

3. **Establish internal controls and communication measures:** Businesses must ensure that management controls are put in place that will alert the business to the possibility that criminals may be attempting to use it to launder money or fund terrorism so as to enable appropriate action to be taken to prevent or report it.

4. **Establish and implement customer due diligence procedures:** TCSPs and ASPs must set up customer due diligence measures to verify customer identity including the identity of any beneficial owners and to ascertain the intended nature and purpose of the business relationship. For recruitment companies, the customer is the client, not the candidate. The aim of this requirement is to ensure that the customer is genuine and not a front for illegal activity. Customer due



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If you would like further information about the issues raised in this newsletter, or any other aspect of employment law or the recruitment industry, please contact Helen Wyatt, Head of Employment, or any other member of Goodman Derrick LLP’s employment department.

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This guide is for general information and interest only and should not be relied upon as providing specific legal advice.



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diligence measures should be taken before any business is carried out with the customer. Businesses should conduct ongoing monitoring of their relationship with their customers.

5. **Train staff:** Businesses are required to take appropriate measures so that all relevant employees are made aware of the law relating to money laundering and terrorist financing and are given regular training on how to recognise and deal with transactions or activities which may be related to money laundering or terrorist financing.

6. **Registration:** The Regulations require that TCSPs and ASPs be subject to registration with a supervisory authority that is responsible for monitoring them and securing compliance. For TCSPs and ASPs the supervisory authority is HM Customs and Revenue. TCSPs must register by 1 April 2008. ASPs must register by 30 June 2008. If you carry out both functions, then you must register by 1 April 2008. Registration can be carried out online at HMRC and there is a £95 fee. In respect of TSCPs, as part of registration, the applicant, persons that direct the business (usually directors), the beneficial owner(s) and the nominated officer will have to pass a "fit and proper" test, for which there is also a fee of £50 per person.

7. **Reporting:** TCSPs and ASPs are required to make a report to the Serious Organised Crime Agency (SOCA) if they know or suspect or have reasonable grounds for knowing or suspecting that another person is engaged in money laundering or terrorist financing. They must also maintain internal reporting procedures which ensure that employees report suspicious activity to the nominated officer.

8. **Record keeping:** To demonstrate compliance with the Regulations, businesses are required to keep records of due diligence checks made.

The obligations placed on TCSPs and ASPs by the Regulations are extensive and full details are beyond the scope of this bulletin. Further guidance can be found on the HMRC website at www.hmrc.gov.uk. The obligations should not be underestimated as failure to comply with the Regulations can result in the following consequences:

Civil penalties: HMRC has the power to impose civil penalties on businesses that fail to comply with the requirements of the Regulations. There is no upper limit on the amount of the penalty that can be imposed. The penalty will be an amount that is considered appropriate for the purposes of being effective, proportionate and dissuasive.

Criminal offences: It is also a criminal offence to fail to comply with the Regulations. If convicted the maximum penalties are 2 years imprisonment and/or an unlimited fine.

An officer in a corporate entity or a partner in a partnership who consents to or is involved in the commission of an offence under the Regulations by their corporate entity or partnership, or where any such offence is due to neglect on his part, will be individually liable to prosecution for the offence as well as the corporate entity or partnership.

Readers are advised to take specific advice on this issue, if they believe they may be classed as a TCSP or ASP, at an early stage, given the registration deadline for TCSPs of 1 April and the deadline for ASPs of 30 June.