

Explanatory Note - Anti-Money Laundering Obligations

Background

The UK is a major international financial and legal centre, with a strong reputation for honesty and integrity. Unfortunately, that is why financial and professional businesses, like banks and solicitors' firms, are attractive to those criminals who try to hide stolen money by turning it into legitimate income. On 22 June 2017 the UK government passed the Regulations (see below) implementing the latest European Union law. These regulations impose even more stringent compulsory measures than under the previous 2007 regulations, under which solicitors must make identity checks on their clients. Being asked for identification does not mean you are under suspicion. The new identification requirements apply to all clients when they are establishing a business relationship with us or, in any 'occasional transaction' where there is or is likely to be a transfer of funds exceeding €1,000 (one thousand euros).

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the "Regulations")

Undertaking ordinary identity checks:

- Under the Regulations we must obtain evidence of identity from you and we must understand the intended nature and purpose of the relationship and/or particular case for any transaction and, in many cases, before we may advise you.
- For individuals, such evidence must satisfactorily identify who you are and your address.
- For companies and other corporate bodies, trusts and foundations, we must obtain and verify the name, corporate number, registered address and principal place of business of the client, its constitutional and governing documents, the legal jurisdiction in which it operates, the full names of all the directors (or, if there is no board of directors, its equivalent management body) **and** of the senior individuals responsible for its operations. We must also satisfactorily identify the shareholders of the client and, if the shareholder is also a corporate body, then we must understand the ownership and control structure of that body, progressing upwards until the individual owners are identified.
- For individuals who claim to act for a client (whether an individual or a body corporate or similar), we must verify that person's identity **and** his or her authority to act for the client obtained through or from a reliable source which is independent of that person – in other words, not supplied by that person.
- The requirements apply to all clients. They also apply to existing clients unless we already hold up to date evidence of your identity and address.
- In limited circumstances, we may begin work arising out of a business relationship but we must not carry out a transaction if the evidence we have sought is not provided.
- The Regulations require us to conduct on-going monitoring of a transaction and/ or relationship, irrespective of whether the compulsory measures outlined above have had to be applied and to keep the identification and other information up-to-date.
- In certain circumstances, our scrutiny of a transaction or relationship may include enquiries as to the source of the funds and, where we must undertake enhanced identity checks (mentioned below), we may also have to undertake adequate measures to establish the source of your wealth.

- We must retain such evidence in our records for at least 5 years and to produce it on request to the Police. Thereafter, we must destroy the records we have for you (unless we have your consent not to do so) and undertake fresh client identity checks.
- The person having conduct of your matter will tell you what evidence of your identity we will require, but it must be sufficient to establish your identity to any person who does not otherwise know you.

Undertaking enhanced identity checks

We must carry out enhanced identity and monitoring in specified circumstances, the most likely being:

- If our checks reveal that any existing or new client who, being an individual person, holds a prominent public function, or such a person owns or controls a body corporate that is to be our client, or is a close family relation to a person who holds a prominent public function, or is a close business or personal associate of such a person; or
- If the proposed transaction or business relationship is one which suggests a high risk of money laundering or terrorist financing; or
- If the client (or an individual person involved with the client) is established in another country or geographic area regarded as 'high risk' for money laundering or terrorist financing.

Where such circumstances arise, we may ask you or third parties for, amongst other things, further identification evidence from additional independent, reliable sources to verify information or documents supplied to us, or to take further steps to understand better the ownership and financial situation of the client.

***Proceeds of Crime Act 2002 and Anti-Terrorism Crime and Security Act 2001* (the "Legislation")**

- The Legislation requires us to report to the National Crime Agency ("NCA") (i) any circumstances which cause us to suspect, or which are considered such that we ought to suspect, that you or anyone else involved in the matter with which we are dealing has benefited, or will benefit, from some financial crime and (ii) if, for example, by acting for you, we as lawyers become concerned in any arrangements relating to the criminal property.
- A "financial crime" means dealing with "criminal property", that is, the proceeds of any criminal activity, whether committed in the UK or abroad, including theft, fraud, terrorism, drug trafficking, the failure to pay any income tax or other tax or duty, and other crimes. The benefit can be of any amount so, for example, failure to pay a vehicle road fund licence or television licence fee would be covered by the Legislation. Failure by us to comply with the Legislation is itself a criminal offence.
- If we make a report to NCA, the Legislation requires us to undertake no further work until we receive from NCA authorisation to proceed. The Legislation also prevents us from telling you that a report has been made or from giving you an explanation as to why we have ceased work. Our retainer will be suspended until authority to proceed is received.
- **Our duties under the Legislation take precedence over all our professional and contractual obligations to you. Accordingly, by instructing us you accept that we will not be liable for any loss you may suffer because we have made a report under the Legislation and/or have ceased work while we await authority to proceed or if authority to proceed is refused.**

You are referred to clause 2 our terms of business for further information.

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June 2017