

Legal Sector Affinity Group – Changes and approval by HM Treasury

We are pleased to announce that the anti- money laundering (AML) guidance (often referred to as the “LSAG guidance”) issued in 2021 has now been approved by HM Treasury (HMT).

This means that according to The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (“the regulations”) the LSAG guidance has full standing, including in regulation 86(2)(b)(ii). This specific regulation sets out that when judging whether a legal practitioner or practice has committed an offence by not following the regulations, the court must decide whether the guidance has been followed. It is similarly relevant where the imposition of civil penalties is being considered (under regulation 76).

The fact that the guidance is approved by HMT also means firms must consider it when deciding how to comply with the regulations, specifically:

- Regulation 19 – policies controls procedures
- Regulation 21 - internal controls
- Regulation 24 – training and
- Regulation 35 - enhanced due diligence on politically exposed persons

LSAG Summary of changes

There are several minor amends to the previously published LSAG guidance (mainly corrections and/or formatting changes), but the key areas of change to note are:

1. Updated content around the verification of the identities of beneficial owners (6.14.10) which underlines the expectations of supervisors and HMT for new beneficial owners to be verified, in general, to the same standard as you would apply to a client that is a natural person
2. Redirecting away from the old EU High Risk Third Country lists and towards the UK’s own list (5.6.2.1 which relates to risk assessments and 6.19.1 which relates to EDD).
3. Small clarifications to the section on Legal Professional Privilege, particularly where it may not apply as you know or suspect a money laundering offence has occurred, invoking the need to make a Suspicious Activity Report (13.4.2 and 13.4.3)
4. Clarification on what is not “an arrangement” for the purposes of POCA (16.3.6) and further clarification on the “adequate consideration” defence 16.4.2

Other guidance changes

From time to time, the LSAG group issues advisory notes. While they do not have the same standing as the LSAG guidance, as they are not approved by HM Treasury, they still contain useful content and express the expectations of the Legal Sector Professional Body Supervisors.

At the beginning of the Covid 19 outbreak, LSAG issued an advisory note on changes to risk caused by the different ways of working, the need to social distance and the changes in the market.

In view of the permanence of some of the changes to ways of working LSAG have revised this note so it continues to be relevant. In time we will seek to wind elements of this into the formal LSAG guidance.

This content is split into two notes:

1. Remote Working, Client Interaction and associated use of AML technology

2. Impacts of economic instability

If you have any questions about the content of either this note, or the wider LSAG guidance, please contact us.