Anti Money Laundering Update

Introduction:

Further to the guidance note issued earlier in 2008 on Anti Money Laundering Regulations 2007 relative to Trust and Company Service Providers and the seminar held in May 2008, this paper provides an update on the current position. Please find below the following:

- Historical information regarding Anti Money Laundering (“AML”) legislation
- How this affects some of our members
- Past, Present and Future actions
- FAQs

Historical Information regarding Anti Money Laundering legislation:

- AML regulations originally affected limited sectors such as banking and other parts of the finance industry. However, as time progressed, AML and terrorism threats to other business sectors grew. The international standards and European regulations were reviewed to consider which other sectors should be included. As a result new international and European rules were adopted.
- Mindful of the need to effectively implement new European legislation HM Treasury (“HMT”) issued two consultations in June 2006 and January 2007, to which interested parties could respond. It was at this point that ICSA would have needed to respond both to the content of the proposed AML regulations and applied to join the supervisory body list.
- Final Anti Money Laundering Regulations were introduced in July 2007 and came into force on 15 December 2007.

How the Anti Money Laundering Regulations 2007 affects some of our members:

- Members could fall within the scope of the regulations as either, a Trust or Company Service Provider (“TCSP”) and / or an Accounting Service Provider (“ASP”). Although both Trusts and Company Service Providers were included in the Money Laundering Regulations (“MLRs”) 2003 the definitions of the businesses within the T&CSP sector were not very detailed and not all of the businesses falling within scope as either an ASP or a TCSP were supervised. The new regulations define TCSPs more clearly and appoint HM Revenue and Customs (“HMRC”) as the supervisor for those ASPs and TCSPs that are not already supervised by a professional body or FSA. These TCSPs need to register with HMRC who will supervise them for compliance with the regulations. In very simple terms a TCSP is any firm or sole practitioner who by way of business provides certain services to third parties including amongst others, acting or arranging for others to act as a director or co sec, providing registered office or business address. However not all individuals providing their services as company secretary or company director will fall within the scope of the regulations. ASPs include businesses providing accountancy services such as bookkeeping, accounting and tax advice.
- This means that some of our public practitioners or freelance Co Secs will need to register and follow AML procedures. There are approximately 150 potentially affected members. However, please note that the HMRC has updated their MLR9 Registration Notice to reflect feedback from businesses in their discussions with HMT about the interpretation of the regulations. This guidance was made available from 31 July 2008.
- The date of registration for TCSPs was originally 1 April but the HMRC announced at the end of March that the application date has been pushed back until 31 May 2008 and then subsequently advised that they were to update MLR9 Registration Notice and that registration would be delayed again. The new date for applications for registration has now been
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confirmed as 30 September 2008. All applications previously submitted but not processed were placed in a pending file until the revised rules were published. Applicants will be asked to review their applications and decide whether they are still required to register. If businesses are no longer required to be registered they will have their application fees and fit and proper test fees refunded.

- Our affected members will need to register with HMRC if they are not already supervised by one of the designated professional bodies, as ICSA is not a supervisory body (SB) (only in rare circumstances would a member be covered by the FSA).

Past, Present and Future actions:

Past:
- Consultations were open in June 2006 and January 2007. The HMT contacted those parties that they perceived to be interested and affected by the regulations and included them in any discussions and in the provisional SB list. The consultation was also open to anyone else who thought they might be affected to either comment or apply to be included on this list. Historically, although AML regulations did include TCSPs, we were not aware that this affected our industry and consequently it was not foreseen or brought to ICSA’s attention until after the regulations were in place that some of our members might be so affected.
- Those bodies on the original list had an established relationship with HMT in addressing AML issues and were known – for example – to have robust and effective AML supervisory systems. Those that had not previously satisfied HMT as to their suitability were required to demonstrate that they had the necessary qualities and experience to act as effective supervisors. Generally, this was done through a combination of written submissions and meetings with HMT. HMT reviewed the application and if satisfied, added the body to the SB list. Not all applicants were successful. The list had been finalised by the time the regulations were introduced in July 2007, after which it was too late for new applications.

Present:
- Since October 2007, as it came to light that the provisions relating to TCSPs might affect some of our members, ICSA has researched the historical position, investigated the current position and identified possible future actions.
- It should be noted that ICSA does not have an in-house AML expert and attempts to find a consultant / lawyer not only with AML expertise but also in depth knowledge of the TCSP aspect of the regulations has not been successful. ICSA has worked closely with HMT and HMRC representatives, the latter being our members SB, in establishing how our members are affected and what steps we can take as an Institute to become a SB, should this option be available in the future.
- A brief guidance note has been issued providing affected members with basic information and directions to relevant guidance both at FSA and HMRC as well as other useful information links.
- HMRC sent an e-mail around in March with suggested advertisement wording that ICSA included in various publications and made an offer to come and speak to our members on the subject which we accepted. An AML seminar for TCSPs was held on 19 May 2008 at 4pm at 76 Portland Place. At which a Q&A panel was present which included the HMRC.
- Earlier in 2008, initial discussions were entered into with the Institute of Certified Bookkeepers (“ICB”) regarding the possibility of them providing an alternative regulatory AML service to our members. However, the HMT had not clarified the situation with regards to TCSPs at that point and ICB where under the impression that it could regulate anyone from the ASP sector.
or any related sector where members did not have a natural regulator via their own professional body. However following further responses and indications from the HMT, regarding the provision of AML regulatory services to other professional bodies’ members, ICB no longer feel that it would be appropriate to regulate ICSA members unless they have or are willing to enter into ICB membership in the normal route or is an ASP. Any members that have tried to register with ICB for AML supervisory services have therefore had their cheques returned and have been advised by the ICB to register with the HMRC directly if affected.

- Some ICSA members have objected to being regulated by the HMRC because they claim that under the regulations, the HMRC maintain the right to visit their client premises unannounced, if the ICSA member is in breach of AML regulations. As a result some members’ clients have objected to this and refuse to do business with ICSA members unless regulated by an alternative SB, who they believe will deal with the offending member and not visit client premises unannounced. **ICSA has checked with both HMT and HMRC and it has been confirmed this belief is INCORRECT.** As a supervisor, HMRC would only visit the supervised business in order to ensure that the business is complying with the regulations. They would not visit their clients unless exceptionally they were investigating primary money laundering offence in which case HMRC and any other law enforcement body such as the Serious Organised Crime Agency (“SOCA”) would be able to visit any business. This applies irrespective of who their supervisor is, so HMRC supervised businesses or their clients are at no disadvantage in this sense compared to businesses supervised by anyone else.

**Future:**

- Future steps available to ICSA in terms of applying to become a SB: HMT have advised that there should be a consultation about the second anniversary of the introduction of the regulations i.e. December 2009. This consultation might review how the AML regulations have been working in practice and may provide a chance for those affected to comment on their experiences and highlight any changes that would assist in improving the system. The SB list might be opened for new applications at that time but this cannot be guaranteed. If the list were to be opened again, then the aide memoire drawn up previously setting out the criteria applied to applications from accountancy bodies might be used.

- ICSA would need to prove that it could meet all of the above criteria. Further research needs to be done regarding this and we would need to speak to other supervisory bodies about what and how they achieved the criteria (presuming they are willing to share this information). However, initial observation of this list is that we could not satisfy all of the criteria set for accounting bodies. Therefore key questions to be considered by ICSA are:
  - Does ICSA feel it can achieve the criteria should the list be opened again?
  - If yes, can ICSA justify the work and resources involved in such an application (N.b. ICB have indicated that their systems cost c£250k to implement) and how would this be funded bearing in mind not all members are affected by AML regulations?
  - Are there any other alternative actions?

- If becoming a SB is not an option open to ICSA it has been suggested that other Supervisory Bodies such as the ICAEW or the Law Society be approached with a view to providing AML services to our members as an alternative to HMRC. ICSA had planned to speak with both bodies to investigate whether either could provide a complete alternative service to our members. However, HMT have emphasised that the scheme for the supervision by professional bodies is founded on the basis that those bodies supervise their own members. Professional bodies are generally likely to be familiar with their members and their activities, and supervision can be expected to be effective in that context. Regulation 23(1)(c) provides

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that 'each of the professional bodies listed in Schedule 3 is the supervisory body for relevant persons who are regulated by it'. This envisages that it is the professional body itself that does the supervising, and it cannot contract that out to another body. There is a qualification in regulation 23(2) so that where there is more than one supervisory authority for a relevant person the authorities may agree that one of them is to act. Regulation 24 sets out the duties of supervisory authorities. **What does this mean for ICSA and its members?** Unless, ICSA members fall under the qualification provided by Reg 23(2) i.e. the ICSA member is also an accountant or a lawyer and therefore a member of another body that is a supervisor under the regulations:

- ICSA, which is not a supervisory body under Schedule 3, cannot itself make alternative arrangements for another supervisory body listed in Schedule 3, to regulate ICSA members instead of the HMRC.
- Neither HMT nor the HMRC can agree to ICSA members being regulated by other supervisory bodies listed in Schedule 3.
- A supervisory body can only supervise its bona fide members. Other bodies might be able to provide advice and guidance, but any affected ICSA member who is not a bona fide member of another supervisor will still need to register and be regulated by HMRC.

- If ICSA is unable to supervise its members, or in the intervening period before such an application can be submitted, the following suggestions have been made to assist those members that are affected:
  - An AML TCSP forum should be established with the HMRC, HMT and other bodies in the same position as ICSA in order to meet periodically to discuss AML issues relating purely to TCSPs.
  - ICSA to send HMRC a monthly list of member queries, so that the most frequently occurring queries can be included in their FAQs on the HMRC web site.
  - ICSA to attempt to enlist an AML expert to provide guidance for members.

**FAQs:**

**Q1. Why is ICSA not a Supervisory Body?**
A1. See Historical section above.

**Q2. When/ Will ICSA become a Supervisory Body?**
A2. As indicated above in the Past, Present and Future Section, the list is now closed and there is no guarantee HMT will open again. ICSA will review the criteria set by the HMT in the past for accountancy body applications and decide whether it is able to pursue an application should the list be opened again. If ICSA does apply there is no guarantee it would be successful.

**Q3. What are the costs involved with AML supervision by the HMRC and would these be lower if ICSA was a Supervisory Body?**
A3. Those ICSA members affected by the AML regulations need to be regulated by HMRC as their supervisory body and for this there is a £95 administration fee. Regulation 28 on the MLRs 2007 requires HMRC to refuse to register a business if they are not satisfied that the applicant, a person who effectively directs the business, a beneficial owner of the business or a nominated officer is “fit and proper”. Applicants are therefore required to complete a “fit and proper purpose test” application, for which HMRC charge a one off £50 administration fee. Some supervisory bodies are providing AML services to their members as part of their membership fee. However, if ICSA were to become a Supervisory Body we would need to consider whether we could absorb such a service into members or public practice member...
fees, bearing in mind that the AML regulations only affect a small number of members. Members of the ICSA Public Practice Scheme pay an annual fee (currently £91.65 inc VAT) to appear on the ICSA Public Practice Register. A decision would need to be made as to whether the cost of providing AML Supervisory Body services to those PP members affected could be included in this cost or whether additional administration fees would need to be charged.

Q.4 Who needs to register?
A.4 The HMRC has updated the guidance relating to TCSPs and this was published on 31 July 2008. Until then all applications sent but not processed were being held in pending.

Q.5 What if I have already registered with the HMRC?
A.5 If your application has already been confirmed HMRC will write to you asking if you wish to continue to be registered. If you are no longer subject to the regulations you will receive a refund. If your application is pending and you are no longer subject to the regulations your cheque will be returned.

Q.6 When do I need to register?
A.6 The last date for registration of applications is 30 September 2008.

Q.7 Will a template letter of Engagement with regards to Money Laundering be provided?
A.7 HMRC do not have such a template for TCSPs but ICSA will look into this to see what other bodies are providing.

Q.8 Are ICSA members covered by grandfathering if work is undertaken for accountants or lawyers?
A.8 The HMRC have advised that it will depend on the circumstances of the situation but there could be situations where another bodies “know your customer” procedures could be relied upon. HMRC advice is to refer to their revised guidance.

Q.9 What sort of work is covered by the regulations?
A.9 Please refer to the revised HMRC guidance MLR9 Registration Notice published on 31 July 2008.

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- HMT
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