

IN THIS SECTION

News

21 Money laundering

23 Auto directive

Eurofile

24 Consumer credit directive



MONEY LAUNDERING

Surviving the legislation

The money laundering regulations came into force in March this year. David Bowden looks at motor dealers' progress with the legislation.

FOR the first time, the new European money laundering regulations require dealers in high value goods including motor dealers to have systems and controls in place to prevent, detect and report suspicions of money laundering. A transaction is regarded as high value if it is over 1E 15 ,000 (€ 10,000) . This means the regulations cover the sale of all but the most modest cars.

Registration procedure

For the first time, dealers in high value goods are required to register. The registration scheme in the UK is administered by Customs and Excise, but it is run separately from VAT. There are instructions in two customs leaflets (MLR 6 & 7) which require a registration form (MLR100) to be completed

and returned with a fee. At present the fee is £60 per premises per year. A registration certificate is issued. The renewal date will need to be put in the diary so that it is not missed. At the moment it is not clear how many dealers have registered yet because it is not a public register.

Unfortunately, organised criminals are already seeking to take advantage of this statutory registration scheme by offering a bogus registration or renewal service. To date this has surfaced with mailings using the guise of "National Training Scheme" and "Anti Money Laundering Support Team".

This scam letter has asked for a fake registration fee of £75 per employee. Crewe Police have made two arrests. As we have

seen with bogus data protection agencies, it is likely that this sort of scam will be on the increase and those in the motor trade will need to remain vigilant.

THE CATCH

For those in the motor trade, the five main obligations can best be summed up using the acronym CATCH.

- Control your business by having an anti money laundering system in place
- Appoint a money laundering reporting officer
- Train your staff
- Confirm the identity of the customer
- Hold all records for at least five years

Control your business

Control your business by having an anti money laundering system in place. Fundamental to this is deciding where money laundering compliance will sit in a motor business. A survey was sent out to a cross section of car dealers in the UK as part of the research for this feature. The respondents to our survey all seemed to be content to leave this to their external auditors. This is not satisfactory and there must be a clear "owner" of the process in any motor business. For larger dealerships, the decision may not be clearcut as to whether it sits with training or company secretarial or with finance. Motor dealers must have a system in place to go through the books and look for and monitor suspicious transactions. Respondents to our survey either had no process in place or were going to leave it to external accountants to try and pick it up on the annual audit. This is not a sufficient system. There is software available to go through books to pick up, for example, large cash transactions or irregular movements in funds. Someone internally must be appointed to do this and a decision taken as to how often it should be done be it daily, weekly, monthly or quarterly. Getting this wrong can have disastrous results. In October 2004, a Northern Irish solicitor, Mr McCarthy, was given an eight month jail sentence for money laundering offences. He had taken a £70,000 cash deposit for a house purchase without questioning the source of funds.

Appoint a money laundering officer

Someone in the dealership must be appointed as the money laundering reporting officer. Sales staff in the business must report any concerns to the officer who will make a decision as to what to do. The officer has



responsibility for making a "suspicious transaction" report to the National Criminal Intelligence Service if there are any suspicions of money laundering. Customs and Excise give as examples of behaviour liable to arouse suspicion as the following:

- Is checking identity proving difficult?
- Is there a genuine reason for paying a large amount in cash?
- Is customer paying in used notes or small denominations?
- Is there an unusual request for delivery or collection?
- Is the source of cash known or reasonable?

During 2003, the National Criminal Intelligence Service received nearly 100,000 disclosures via suspicious transaction reports. This was a 60 per cent increase on 2002. Surprisingly none of the motor dealer respondents to our survey had made a report to the NCIS although one dealer reported a sale had fallen through when documentation was asked for to confirm identity. This should of itself have warranted an internal report to the money laundering reporting officer.

Train your staff

All the respondents to our survey reported that they had received assistance in "bedding down" compliance with these new regulations in their business with the finance company that they usually use. Training for new sales staff was half an hour but no respondents had yet addressed the issue of when refresher training should be given. As this is still a fluid area, it is likely that this will need to be done at least annually. If there is a large turnover of staff, then this may need repeating more regularly.

"DURING 2003, THE NATIONAL CRIMINAL INTELLIGENCE SERVICE RECEIVED NEARLY 100,000 DISCLOSURES VIA SUSPICIOUS TRANSACTION REPORTS. THIS WAS A 60 PER CENT INCREASE ON 2002."

The Retail Motor Industry Federation reports that it had a 20 per cent increase in calls to its helpline for the year ending 31 August 2004, and some of these were generated by these new money laundering regulations. The federation is now running extra training on risk management, directors' liabilities and responsibilities. The Financial Action Task Force keeps so called "non cooperative countries" under review. Some of the high risk countries on this list include Nigeria, Israel, Lebanon, Indonesia and Philippines. It is important that sales staff know where to go when documentation is produced that is out of the ordinary, or when unusual requests are made. Not every possible situation can be covered in a 30 minute induction session.

Confirm customer

By October 2003, all car dealers in the UK should have received from the Finance & Leasing Association a free

ultraviolet scanner to help them detect forged driving licences. All the respondents to our survey were asking for a driving licence to confirm identity. This is not the only documentation that can be used. A separate check also needs to be used to confirm address and the driving licence should not be used for this. The Metropolitan Police has a dedicated Money Laundering Investigation Team. The team says that in three quarters of all money laundering cases investigated the "red flags were there".

There is no room for complacency on this score. CIFAS, the UK Fraud Prevention Service, has recently published the fraud figures for the year ending 31 March 2004 and reported fraud is up by 29 per cent. CIFAS says it received 58,436 reports of false identity fraud and 44,329 reports of impersonation in 2003 2004.

Hold all records

Record keeping should not be new for car dealers used to the VAT requirements. If there is an ongoing relationship within the trade, then the records will need to be kept for five years after any such arrangement ends. The regulators appear very hot on this one. In December 2002, the Financial Services Authority fined The Royal Bank of Scotland £750,000 for money laundering control failings. To date Customs and Excise appear to have taken no publicised enforcement action against the motor trade, but it can only be a matter of time before they make an example. Do not let it be your dealership!

Proposals for reform

The European Commission was meant to have prepared a report by 4 December 2004 on the operation of the European directive behind these regulations. This has not

happened as continuing terrorist activity has pushed the fight against financial crime to the top of the political agenda internationally. Instead, in June 2004, the Commission published a proposal for yet another money laundering directive to consolidate and tighten up the rules throughout Europe. The Dutch hold the presidency of the EU until the end of December 2004 and have said that this is a key action area for them. In the UK, the Treasury has published a summary of responses it had received on the new ELI proposals to which the RMIF contributed. Although it is planned to keep the €15,000 limit, there are concerns on the overlap with data protection rules, beneficial ownership and the personal liability of money laundering reporting officers. Finalising the proposal on this has slipped a little because of the elections to the European Parliament in June 2004 and the appointment of the new European Commission but we will see some movement on this shortly which when implemented will hit the car trade once again.

Making an example

Although complying with money laundering rules is new to the car trade, this issue needs to be taken seriously and kept under review. It is likely that Customs and Excise will want to make an example of someone in the car trade. Although most in the car business have a system in place to confirm the identity of new customers, there is still no room for complacency given the increasing amount of fraud. Finally, car dealerships will need to address properly how they monitor their books to detect suspicious transactions. It cannot merely be left to the annual statutory audit.

*David Bowden is representative of
Lobby and Law Limited*