

WARNING! New Money Laundering Regulations



New Money Laundering Regulations come into force in the UK on 15 December 2007 (the “2007 Regulations”) which apply to firms operating in the regulated sector, of which real estate is part. The 2007 Regulations adopt a less prescriptive and risk based approach for the first time, but increased levels of client due diligence will be required in certain circumstances. In many cases firms will now be obliged to identify not only the client, but also any beneficial owners of the client at the outset. Firms will also be required to monitor their ongoing relationship with a client in all cases.

Who is a beneficial owner?

The definition of the “beneficial owner” differs depending on the client entity concerned, however, broadly the requirement is to identify a natural person :

- who ultimately owns more than 25% of the client entity or more than 25% of voting rights; or
- on whose behalf the transaction is conducted; or
- who exercises control over management of a legal entity; or
- who – in respect of a trust – has at least a 25% specified interest in trust capital or the class of persons in whose main interest the trust operates or who controls a trust.

The good news is that simplified due diligence will apply for clients listed on recognised stock exchanges or certain regulated financial or credit institutions, which means that no investigation is required into their beneficial ownership.

Although the risk-based 2007 Regulations are more flexible than the current regime, there will be a heavier burden on lawyers to obtain all necessary “KYC” information (now to be called “CDD”, customer due diligence) before we carry out any work. Furthermore, these requirements will also now apply to existing clients, not only new clients, and CDD will need to be reviewed and refreshed from time to time.

How clients can help us

We do try to meet our KYC (and going forward our CDD) requirements from publicly available sources wherever practical. However, we will need you to provide information or confirmations regarding beneficial ownership. In addition, difficulties will arise in transactions where the purchasing structure and entities have not been finalised (or even established) at the outset. In these cases we will need to receive CDD materials immediately the purchase vehicles and structures are in place otherwise we will be unable to progress the transaction as it is a criminal offence to do so if we do not have CDD information for the “real” entity for which we act.

If you have any questions or require specific advice on any matter discussed in this publication, please contact Suzanne Dray (sdray@mayerbrown.com), Charles Leach (cleach@mayerbrown.com) or your regular contact in the Real Estate Group.

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London Office: 11 Pilgrim Street, London EC4V 6RW Tel: +44(0)20 7248 4282 Fax: +44(0)20 7248 2009

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