## THE MONEY LAUNDERING REGULATIONS 2007
### SUPERVISION BY THE OFT

### Frequently Asked Questions
#### Version 7 – August 2013

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1. INTRODUCTION

The OFT has been given a role under the Money Laundering Regulations 2007 (the Regulations) to supervise the anti-money laundering controls of:

- estate agents – those businesses engaged in estate agency work as defined by section 1 of the Estate Agents Act 1979 including overseas property (this includes property finders and property/land auctioneers and covers both residential and commercial premises). Also see the OFT's Estate Agency Guide (OFT031).¹

- consumer credit financial institutions (CCFIs) – those businesses engaged in consumer credit lending which are not either authorised by the Financial Conduct Authority (FCA)² or supervised by HM Revenue and Customs (HMRC) as a money service business. From the 1 October 2012 very low risk lenders have been exempted from the Regulations these are businesses that provide consumer credit by giving customers time to pay for the provision of services which they themselves provide and the time to pay covers a period of 12 months or less. Services may include, for example, gym or golf club membership or veterinary services.

Estate agents or CCFIs may, under certain limited circumstances, also be supervised by the FCA or HMRC but it is the intention that businesses will only have to deal with one supervisor. If a business is already registered with another supervisor you should make enquiries with the OFT before registering.

It is a criminal offence to carry on the business of an estate agent or a CCFI and not be registered with the OFT. The OFT can prosecute or impose a penalty upon unregistered businesses that continue to carry out supervised activity.

The OFT has sought in these FAQs to address the main questions which may arise as businesses consider whether they need to comply with the Regulations and if so, whether they are supervised by, and therefore need to

¹ www.of.t.gov.uk/shared_of/2usiness_leaflets/general/of031.pdf
² Until 1 April 2013 the FCA was known as the Financial Services Authority.
register with, the OFT. The answers to these FAQs represent the views of the OFT as a Supervisory Authority under the Regulations.

If these FAQs do not answer your question here email your query to us at amld3@oft.gsi.gov.uk or you can ring us on 020 7211 8200. Further information is available on the Regulations from the OFT’s website: www.oft.gov.uk/mlr
2. **WHO IS MY SUPERVISOR?**

**General**

Q1. I trade with UK consumers but my company is registered abroad – am I supervised by the OFT?

The relevant test is where you carry on business, and not where your company is registered. If you are either an estate agent or CCFI and carry on business within the UK, the Regulations will apply to that business and you will be supervised by the OFT.

Whether you are carrying on business in the UK will depend on the facts and your particular circumstances. If you have a presence in the UK (including agents acting on your behalf) and carry out significant business activity here, you are likely to be covered by the Regulations. However, in some circumstances you may be regarded as carrying on business here even if you are not physically present in the UK and only do business with UK consumers through distance means of communication, for example, foreign internet-trading lenders providing consumer credit in the UK.

Other factors that may be taken into account when considering whether business is being carried on in the UK are:

- whether advertising is directed at, or services/facilities offered to, prospective clients in the UK (eg costs given in pounds sterling)
- whether agreements are subject to UK law
- whether agreements are concluded in the UK
- whether services/facilities are provided in the UK eg loans paid into UK bank accounts.

If you are in doubt, please contact the AML helpline on 020 7211 8200.
Q2. What responsibility does a franchise company have towards ensuring compliance by the franchisees?

As separate legal entities the franchisees are responsible for their own compliance with the Regulations and the franchise must be registered.

Q3. I am a limited company and my parent company has registered with the OFT. Do I also need to register?

If you are a CCFI or an estate agent you will need to also register with the OFT because you are a separate legal entity. A parent company’s registration does not cover any separate legal entities that it controls even if they are wholly owned subsidiaries. In fact the parent company may not need to register if it does not itself carry out estate agency work or provide consumer credit.

Q4. I am a business with a number of brand names under which I trade. Do I have to register all the brand names?

No. It is the legal entity, for example, the limited company, sole trader or partnership, that must register with the OFT as an estate agent or CCFI. However, when filling in the application form you must list all the brand or trading names that you use along with all the addresses where the supervised activity, or part of that activity, takes place.

Q5. There are several different legal entities operating out of the same business premises, do I need to register them all?

If these separate legal entities are estate agency and/or CCFI businesses, then you will need to submit separate registration applications for each. Registration is required from each separate legal entity conducting supervised activities.
Estate Agency

Q6. I only carry out commercial estate agency work – am I supervised by the OFT?

Yes. For the purposes of the Regulations there is no distinction between residential and commercial estate agency work.

Q7. I am a member of an Ombudsman scheme and/or a professional body – do I still have to register and be supervised by the OFT’s AML regime?

Yes. The Ombudsman schemes and professional bodies are separate from the AML regime and the need to register with the OFT for AML purposes.

Residential agents must join an approved Ombudsman scheme for the purposes of the Consumers, Estate Agents and Redress Act 2007. These schemes provide redress for consumers and residential estate agents will need to be a member of one of these schemes and also be registered with the OFT for AML. Commercial estate agents need only register with the OFT for AML although membership of a redress scheme may be a requirement of the membership of your professional body.

Estate agents’ professional bodies do not have a supervisory role under the Regulations although they may provide information and advice for their members on compliance. Whilst an estate agent may choose to join such a body the business must also register with the OFT for AML purposes.

Q8. I am a lettings/property management agent – am I supervised by the OFT?

No. If you are strictly a lettings or property management agent and do not carry out any estate agency work within the meaning of section 1 of the Estate Agents Act 1979, then you are not supervised by the OFT and are not covered by the Regulations.

You should note, however, that any lettings agency which offers, or plans to offer, estate agency services to its landlord clients, albeit that such
transactions may arise infrequently, should register with OFT. Such services could include, for example, contacting other estate agents on behalf of a landlord with a view to identifying potential buyers for the landlord’s property. Registration fees are not calculated with reference to numbers of transactions but on the number of premises from which the estate agency work is carried out.

It is important to remember that you are still subject to the money laundering provisions of the Proceeds of Crime Act 2002 including the reporting duties of any nominated officer you may have appointed.

Q9. I am a land agent/real property auctioneer – am I supervised by the OFT?

Yes. Estate agency covers not just the sale of property but also the sale of land and so if the work you carry out falls within the definition of estate agency work in section 1 of the Estate Agents Act 1979, the business must register with the OFT for AML purposes.

Q10. I am a housing association – am I supervised by the OFT?

If you carry out estate agency work or are a CCFI in respect of, for instance, granting second charge shared equity mortgages then you will be supervised by the OFT and must register for AML purposes.

You may be engaging in estate agency if you act on behalf of another Housing Association in respect of the sale of a property or if you act on behalf of the home occupier with whom you co-own a property in respect of the sale of their interest.³

³ Further information is available from the National Housing Federation at www.housing.org.uk/policy/finance/assurance-risk-regulation/anti-money-laundering
Q11. I am a housing association/construction company and I maintain non permanent sales offices at my construction sites – do I need to register these premises?

These premises need only be included in your application for registration, or notified to us after registration,4 where you conduct regulated activity there, for example, negotiate and agree shared equity loans, or undertake estate agency work, that is, sell property which is owned by a third party and not by your business.

It may be useful to note that the taking of a deposit or reservation fee for a property is not regulated activity provided that these do not constitute part of a loan agreement.

Q12. I am a relocation agent or private acquisitions specialist – am I supervised by the OFT?

Yes. If you act as an agent for a buyer and carry out estate agency work within the meaning of section 1 of the Estate Agents Act 1979, you are covered by the Regulations and will be supervised by the OFT.

Q13. I am a solicitor practising in England and I carry out estate agency work – am I supervised by the OFT?

If you are a solicitor engaged in estate agency as part of your work as a solicitor then the OFT is not your supervisory authority. If, however, you engage in estate agency work outside your practice as a solicitor then that business will be supervised by the OFT.5

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4 Regulation 27(4)(a) – change in the number of premises constitutes a ‘material change’ which must be notified to the OFT within 30 days of the change.
Q14. My business provides financial services as well as estate agency. The FCA is the AML supervisor for the financial services part. Does the estate agency side of my business also need to register?

Many FCA authorised estate agency businesses are currently supervised by both the FCA and OFT under the Regulations. Such firms must register with the OFT, and if they have queries, can contact the OFT or the FCA (on 0845 606 9966). The possibility of a single supervisor having oversight of anti-money laundering arrangements for individual businesses will be considered by the FCA and OFT on a case by case basis. The FCA will, of course, retain oversight of these businesses’ compliance with their wider obligations under the Financial Services and Markets Act 2000.

Estate agency business that are appointed representatives of FCA authorised firms are only supervised by the OFT under the MLR and must register with the OFT.

Q15. I carry out estate agency work but only occasionally and on a very limited basis. Can I rely on the exemption set out in Schedule 2 of the Regulations?

No. The exemption set out in Schedule 2 relates to financial activity carried out on an occasional or very limited basis and does not extend to estate agency work. This exemption can only be used by CCFIs who satisfy all of the conditions specified in paragraph 1 of Schedule 2. If you are a CCFI and believe that the exemption may apply to you, you should contact OFT to discuss the evidence that is required in order to benefit from the exemption.

Q16. How do the Regulations affect Scottish estate agents?

In Scotland, if you are a Solicitors Property Centre or a free standing estate agent carrying out estate agency work under section 1 of the Estate Agency Act you are subject to the Regulations and will be supervised by the OFT.

In Scotland, if you are a solicitors’ practice which carries out estate agency work as part of that practice, but not as a separate business you will be supervised by the Law Society of Scotland.
Q17. I am an estate agent and all my customers have bank accounts and their transactions are handled by solicitors – why should I be covered by the Regulations?

This is not a decision made by the OFT. It stems from a European Directive implemented in the UK through HM Treasury. This reflects the fact that estate agents are involved in large value property transactions and are a central party to the property transactions as they generally meet both sides – normally face to face and are therefore best placed to see trends in certain areas and to spot any suspicious activity.

It is not just about handling cash, although agents’ approach to cash should be cautious because of the risk of money laundering.

Q18. Do I have to carry out customer due diligence measures on the executor of a will under which a property is being sold?

An executor of the estate of a deceased person is the 'beneficial owner' for the purposes of the Regulations,\(^6\) and therefore falls within the customer due diligence obligations even where the executor is a solicitor. It makes no difference that a solicitor is subject to AML supervision by the Law Society. When they are acting as executor, it is perfectly reasonable that their identity should be subject to checks by the estate agent to ensure they are who they say they are in order to avoid the risks of money laundering. For further information on appropriate customer due diligence measures see the Joint Money Laundering Steering Group guidance.\(^7\)

Q19. I am an asset management company engaged by a client to facilitate the sale of land and property – am I supervised by the OFT?

If the work you carry out falls within the definition of estate agency as defined by section 1 of the Estate Agents Act 1979, the business must register with the OFT for AML purposes.

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\(^6\) Regulation 6(8) ‘meaning of beneficial owner’

\(^7\) [www.jmlsg.org.uk/what-is-jmlsg](http://www.jmlsg.org.uk/what-is-jmlsg)
However, the need for registration will vary dependent upon the specific instructions you receive from your client. If you are in doubt about the need to register, please email your query to amld3@oft.gsi.gov.uk or contact the AML helpline on 020 7211 8200.

**Consumer Credit Financial Institutions**

CCFIs are businesses that provide consumer credit. This includes lending money and providing for payment for goods or services by instalments (unless exempted as described in the introduction). The Regulations do not cover credit brokerage, that is, the introduction of a consumer to a third party who provides credit.

**Q20. I hold a category A licence – am I supervised by the OFT?**

If your business provides consumer credit you will be supervised by the OFT providing you

- are not authorised by the FCA
- are not supervised by HMRC as a money service business
- offer consumer credit other than time to pay for a service you yourself provides over a period of less than 12 months.

If your business is engaged in credit brokerage (where your business does not offer the consumer credit itself but ‘introduces’ the consumer to the financial institution that does) then you will not be required to register with the OFT for anti-money laundering purposes.

In providing consumer credit the business should hold a consumer credit licence for category A. However, the OFT will supervise those businesses that require a category A licence whether they hold a current licence or not. The requirement to hold a CCL is separate to the obligation to be registered for anti-money laundering purposes. If you are engaged in providing consumer credit but do not hold a current consumer credit licence for category A you should apply for one immediately.
Q21. What if I hold a category A licence but I’m not in the business of lending?

If you hold a category A licence but do not provide consumer credit then you will not be a CCFI and so you will not be supervised by the OFT.

Q22. I am a consumer credit lender whose parent company is supervised by the FCA as it is an authorised firm – am I also supervised by them?

Not necessarily. As a separate legal entity it will depend on whether your company is also authorised by the FCA, and if it is, then it will be supervised by them. If it is only your parent company that is authorised and your company (even if it is an Appointed Representative) is not then you will be supervised by the OFT.

If you are an appointed representative of an FCA authorised firm and you do not:
- provide any sort of credit/lending (except as a broker through a third party lender), nor
- carry out estate agency activity
then you will not be supervised by the OFT. However if you do provide credit and are a CCFI or you do carry out estate agency work (see chapter 1), then you will be required to register with the OFT.

Q23. I am a pawnbroker – am I supervised by the OFT?

If you carry out pawn broking and/or payday lending then you will be providing consumer credit and therefore supervised by the OFT. However, if you also
- carry out third party cheque cashing
- carry out money transmission or
- act in any other way as a money service business
you will be supervised by HMRC and not the OFT. For more information see HMRC’s website at www hmrc gov uk/mlr.
Q24. I am a payday lender – am I supervised by the OFT?

Some payday lenders will be supervised by the OFT (see Q20 above) but the majority will be supervised by HMRC because you are likely to be carrying out third party cheque cashing, money transmission or act in other ways as a money service business. For more information see HMRC’s website.

Q25. I am a debt collector – am I supervised by the OFT?

Yes, but only if you purchase debts by way of legal assignment. If you purchase books of debts under regulated consumer credit agreements and require a category A consumer credit licence in order to carry on a consumer credit business you will be supervised by the OFT.

If you are collecting only your own debts or collecting debts on behalf of a third party then you are not covered by the Regulations and so not supervised by any of the Supervisory Authorities.

Q26. I am an asset leasing company with a category A consumer credit licence and I am authorised by the FCA but only for insurance purposes – am I supervised by the OFT?

No. You will be supervised by the FCA as you are an authorised firm. All CCFI firms authorised for mortgages or insurance are supervised by the FCA.
3. HOW WILL I BE SUPERVISED?

Q27. How will the OFT approach compliance?

Like other supervisors under the Regulations, the OFT operates a risk based supervisory regime. We will identify the highest risk businesses and target our level of supervision accordingly. In order to effectively supervise our businesses the OFT has established a register of estate agents and CCFIs. In consequence a business may not carry on as an estate agent or a CCFI after unless included in the OFT's register.8

The OFT will help business to reduce the risks of being used for money laundering by producing guidance, giving advice to business and raising awareness levels generally. We have powers to take enforcement action where appropriate against those businesses that fail to put in place the required anti-money laundering system and controls, or fail to register with the OFT when required to do so. We have powers to prosecute and to impose civil financial penalties.9

Q28. Do Local Authority Trading Standards Services (TSS) have a role in compliance?

Local Authority TSS may share monitoring and enforcement powers with the OFT under agreements individually negotiated and which last for a specified period of time. Unless any such arrangements are in place the OFT is solely responsible for supervision although we will continue to work with TSS and act on information of non-compliance that we receive. TSS also have the power to prosecute for breach of the Regulations any relevant individual to whom the Regulations apply. This power is used by TSS in conjunction with breaches of consumer protection legislation.

Q29. Will there be fees for businesses supervised by the OFT?

Yes. The initial fee is a registration fee but businesses are required to pay an annual fee. Annual fees are payable by businesses when requested by the

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8 The on-line register can be accessed at www.oft.gov.uk/OFTwork/aml/amlsearch
9 See the OFT’s Enforcement Principles on our website OFT1094
OFT and, like the registration fee, will be based on the number of premises from which a business carries out supervised activity.

**Q30. Do I need to register with the OFT?**

All businesses carrying out supervised activity are required to register (see Q27). More information is available on our website including the level of fees payable: [www.oft.gov.uk/mlr](http://www.oft.gov.uk/mlr).

*It is a criminal offence to trade in the relevant supervised activity without being registered with the OFT. It may also result in an unlimited civil financial penalty.*

The FCA and HMRC also require businesses that they supervise to register with them.

**Q31. What should I do if I suspect a business is not registered?**

If you suspect a business is carrying on a supervised activity without being registered you should check the on-line register (see footnote 7) where you can search on the business or trading name and premises address. If your suspicion appears correct then report the matter to the OFT. You can contact the OFT either by telephone on 020 7211 8200, or e-mail the AML team at amld3@oft.gsi.gov.uk. Your information remains confidential.
4. WHERE CAN I FIND MORE INFORMATION

Q32. Where can I find more information on the OFT regime?

More information is available on our website at www.oft.gov.uk/mlr or if you cannot find the answer to your question on the website you can email us at amld3@oft.gsi.gov.uk.

Your trade association may also be able to assist you with further information:


Royal Institution of Chartered Surveyors: www.rics.org/uk/regulation/regulation-uk/guidance-for-regulated-firms/money-laundering/

National Federation of Property Professionals: www.nfopp.co.uk/money-laundering-guidance/

Association of Relocation Professionals: www.arp-relocation.com/?p=money.laundering

The Joint Money Laundering Steering Group has also produced guidance for credit businesses which can be found at www.jmlsg.org.uk/bba/jsp/polopoly.jsp?d=754.

Q33. Where can I find more information on the FCA regime?

This will be available at www.fca.org.uk

Q34. Where can I find more information on the HMRC regime?

This will be available at www.hmrc.gov.uk
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