

Anti-Money Laundering Webinar



DGLEGAL

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Presenters



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AML Legislative Framework

- The latest UK National Risk Assessment rates the legal sector as at high risk of money laundering
- Solicitors and legal firms are central to many of the methods, techniques and transactions criminals seek to use to launder their proceeds of crime.
- As such, the legal profession have a significant role to play in ensuring their services are not used in this manner
- Indeed – solicitors are legally obliged to safeguard against this by way of the requirements laid out in the following legislation:
 - Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (as amended),
 - Proceeds of Crime Act 2002
 - Terrorism Act 2000

Relevant Persons and Regulated Business

- Regulation 12 of the MLR identifies what business a person must be engaged in before they are subject to the regulations.
- The main activities likely to impact solicitors are work as a:-
 - a) tax adviser
 - b.) independent legal professional
 - c.) trust or company service provider
 - d) estate agent
 - e.) high value dealer
- Relevant Business:
 - 1) Buying and selling of property or business entities;
 - 2) Managing of client money, securities or other assets;
 - 3) Opening or management of bank, savings or securities accounts;
 - 4) Organisation of contributions necessary for the creation, operation or management of companies
 - 5) Creation, operation or management of trusts, companies or similar structures

Non-Regulated Business - Common Examples

- Receipt of client money alone may not meet the definition of “managing client money”. E.g. funds paid in in error which are automatically retrieved by a Bank, a cheque sent to a solicitor from an insurer which is passed directly on to the client.
- Solicitors fees and outlays are not subject to the MLR (although they may give rise to Proceeds of Crime Act 2002 issues).
- Litigation is not subject to the Regulations but some related work maybe (e.g. sale of matrimonial home).
- The collection of monthly rent from a tenant on a monthly basis for a landlord client (due diligence required on landlord, not on tenant, albeit POCA reporting requirements may still be relevant).
- Preparation of a Will – please note that related Tax Planning advice would bring the matter under the scope of the Regulations.
- Representing a client in a criminal court

MLRO / Nominated Officer Responsibilities

- Requirement to appoint a MLRO (Nominated Officer) under ML Regulation 21 (3)
 - No requirement for single person practices (that person will be the MLRO)
- **Important:** The MLRO should be of sufficient seniority to:
 - Make decisions on reporting which can impact your firm's business relations with clients and your exposure to criminal, civil, regulatory and disciplinary sanctions.
 - Access all client files and business information to enable them to make the required decisions
- The MLRO is also responsible for ensuring adequate ML systems & controls (e.g. policies, procedures, training, record keeping) are in place
- The MLRO has ultimately responsible for deciding on submission of a SAR, and the submission to the NCA of that SAR

AML Policies & Procedures – Structure & Content

High Level Risk Assessment

Detailed Procedures
(internal documents)

AML Working Documents
(Checklist/Records/Risk Assessments)

AML Policies & Procedures

Requirement to have appropriate policies & procedures in place (ML Regulation 19).

These must include provisions for:

- Customer due diligence measures and ongoing monitoring
- Reporting
- Record-keeping
- Risk assessment and management
- The monitoring and management of compliance with, and the internal communication of, such policies and procedures
- Determination of PEP status
- Scrutiny of unusual transactions

* We would recommend this policy also includes provisions in relation to training of staff (ML Reg. 24).

A Risk-Based Approach

ML Regs 28 (16) - Application of customer due diligence measures

A relevant person must:

“be able to demonstrate to its supervisory authority that the extent of the measures it has taken to satisfy customer due diligence are appropriate in view of the risks of money laundering and terrorist financing, including risks identified in its own firm risk assessment (under reg 18) and identified by its regulator under regs 17 (9) and 47”.

Risk Assessment across 3 levels:

- Overall Firm Risk – “Know Your Own Business” (This is now a requirement of the 2017 regulations)
- Client Risk – “Know Your Customer”
- Individual Transaction Risk – “Know Your Customer’s Business”

When?

- **Start:** assess client AML risk at the start of the relationship and Transaction Risk when instructed on a particular piece of business
- **Middle:** re-assess (if appropriate) through the course of the deal – has anything changed?
- **End:** Finalise the risk assessment just before the deal is sealed and cash changes hands
- Record what you have done, why you did it, and when you did it!

Risk Factors For Consideration

Firm Risk Factors – Know Your Own Business:

- High turnover of clients or a stable existing client base?
- High proportion of one-off clients/deals?
- Mostly F2F or non-F2F contact with clients?
- Geographical location of practice – high levels of crime?
- Act for clients across both criminal and civil matters?
- International element to your business?

Risk Factors For Consideration - 1

Client Risk Factors – Know Your Customer:

- Is robust due diligence in place – ID and address? Did you see originals, or certified copies? Are you using R.39 reliance?
- Have you met them face to face?
- Is the client co-operative in the CDD process?
- If the client is an entity – do you have full visibility of ultimate beneficial owners and directors/controllers?
- Is instruction from the client channelled through a 3rd party? How much direct interaction do you have with your client?
- Is your client a known criminal?
- Does the source of wealth/source of funds and amount of money involved stack up with what you know of your client? E.g. occupation/age?
- Is your client involved in/run a high risk or high cash turnover business?

Risk Factors For Consideration - 2

- Is your client from a high risk jurisdiction? Are funds being sent to/from overseas?
- Is your client a Politically Exposed Person (PEP)? (Enhanced Due Diligence required)
- Is your client a sanctioned entity or individual – are they resident in a sanctioned country? If so, you cannot undertake business
- Is your client involved in/run a high risk or high cash turnover business?

Risk Factors For Consideration - 3

Transactional Risk Factors – Know Your Customer’s Business:

- Does the level and type of transaction fit the client's profile?
- Does the transaction makes sense? Is it overly complex? Why?
- Does the client’s choice of representation (i.e. you!) make sense?
- Is the subject matter of the transaction or source of funding situated overseas?
- Could the type of transaction be used for the purposes of money laundering (property purchase yes, writing a will – not so much...)
- Where is the money coming from

Risk Factors For Consideration - 4

Overall Considerations:

- Ask questions of your potential clients. Tailor them dependent upon the nature of your business, your client, and the particular transaction
- Develop a checklist you can refer to
- Take a step back, and ask yourself, does this all make sense – does it pass the smell test?
- A Common Sense Approach
- For each client, and for each individual transaction, record your decision making, and apply the appropriate level of due diligence (see next page)

Due Diligence Measures

- Considered Risk Factors? ✓
- Decided on the risk level of the client/transaction? ✓
- Documented this on the file? ✓
- Now apply & undertake the appropriate level of due diligence:

Risk	Level of Due Diligence
Low	Simplified / Standard
Medium	Standard
High	Enhanced

Simplified Due Diligence

Regulation 37 permits and sets out the circumstances where simplified due diligence can be applied.

Your client is a:

- Regulated financial institution
- Public administration or a publicly-owned enterprise
- Company whose securities are listed on a regulated market

Or the transaction relates to:

- Certain insurance policies, pensions or electronic money products
- Investment in certain long term assets

In Simple Terms!

- Simplified due diligence means not having to verify the customer's identity or having to obtain information on the purpose or intended nature of the business relationship.
- It is still necessary to record why simplified due diligence should be applied, along with recording identity full name/entity name, residential/registered address, date of birth
- It is, however, still necessary to conduct ongoing monitoring of the business relationship.

Standard Identity & Verification (ID&V)

What are we trying to achieve?

- **Identify:** ascertaining Full Name, Residential Address & Date of Birth
- **Verify:** obtaining acceptable documentation and undertaking a review/checking of these documents to ensure they are genuine, and the client are who they say they are – generally by meeting the client and checking ID is actually theirs – and not forged
- Remember - requirement is to identify & verify **Full Name, Residential Address & Date of Birth**
- Various methods of achieving this, and various acceptable documents but:
- **Ideally – original** passport/photo-card driving licence + **original** utility bill/bank statement (within 3 months).

Identifying Corporate Entities:

- **Required for all Companies:** Company Name, Registered Number, Business Address and Registered Address. If PLC or regulated – proof of listing, or proof of regulation.
- **Also required for Private Companies:** ID&V for at least 1 directors, those with >25% shareholdings and any other person (natural or entity) exercising control over the Company. Bear in mind dilution.

Enhanced Due Diligence

When you have assessed the client/transactional risk as “high”*, you have determined the client as a PEP, the transaction is unusual, or the client is established in a high risk 3rd country

Obtain standard ID&V + Source of Wealth + Source of Funds

- Source of wealth: inheritance, salary, investments, sale of assets
- Source of funds: method and means of transmission - electronic transfer from bank, cash deposit, cheque.

Dependant on the situation and types/level of risk involved, enhanced due diligence could also mean:

- Seek further verification of the client or beneficial owners identity
- Obtain more detail on the ownership and control structure of the client
- Request further information on the purpose of the retainer or the source of the funds conducting enhanced ongoing monitoring
- Increasing the degree and nature of monitoring
- From 10 January 2020, all obliged entities must inform Companies House if there is a discrepancy between the information that they hold about a beneficial owner and information on the Companies House people with significant control (PSC) register.

Other Due Diligence Considerations

Reg. 39 Reliance:

- Reliance on certain professionals/institutions/individuals to certify ID documents.
- Should have contact with the person they are seeking to rely upon independent of their client
- Should ask what CDD enquiries have been undertaken in order to satisfy yourself of appropriate measures
- Should verify their status (e.g. via international bar association, FCA register etc.)
- Your firm remains legally responsible for ML Regulation requirements, including CDD

E-Verification:

- A useful tool, but not a panacea
- It's in the name – should be used to verify main sources of photographic ID
- It is not a substitute – it cannot prove that the person you are dealing with is who they say they are – especially in non F2F relationships

AML Training Requirements

- **Regulation 19:** requires that you communicate your AML/CTF obligations to your staff
- **Regulation 24:** requires that you give staff appropriate training on their legal obligations and information on how to recognise and deal with money laundering and terrorist financing risks

**Our recommendation is that training should be tailored to specific roles
(MLRO, Fee Earners / Partners, Customer Facing / Reception Staff)**

Factors to Consider:

- Which staff require training
- What form the training will take
- How often training should take place
- How staff will be kept up-to-date with emerging risk factors / new developments for the firm

AML Record Keeping Requirements

- **Regulation 40** requires that firms keep records of CDD material and supporting evidence and records in respect of the relevant business relationship or occasional transaction.
- Records must be kept in order to evidence compliance with the regulations and defend any allegations against the firm in relation to money laundering and failure to report offences.

Relevant records could be:

- AML Policies, Procedures, Manuals
- Risk Assessments
- CDD Evidence
- Evidence of staff training
- Suspicious Activity Reports
- E-Verification records
- PEP/Sanction Screening Searches
- AML Procedures must outline what records are to be kept, the form in which they should be kept and the records retention period.

Records should be kept for (at least) 5 years from the date on which the business relationship/transaction ends.

SAR Reporting Requirements

S.330 POCA:

- Know, suspect or reasonable grounds to suspect another person is engaged in money laundering
- Information giving rise to suspicion came to you in course of business in regulated sector:
 - **Must disclose**, as soon as is practicable, to:
 - Nominated officer
 - Nominated officer to NCA
 - Identity of suspected money launderer
 - Whereabouts of any laundered property
 - Information giving rise to suspicion
- Privilege exception if advice on underlying issue has been sought by the client but:
 - No privilege exception under s.338 – if/where the firm itself is involved in the transaction
- **Failure to disclose is a criminal offence**

SARs Information to be Detailed – Concise & Focused

- **Who** is involved, what and where the criminal/terrorist property is and its value (estimated as necessary),
- **When** and how circumstances arose and are planned to happen, and ultimately why you are suspicious or have knowledge.

Principal Offences

PoCA 2002

- Ss 327-329; undertaking activities relating to “criminal property”
 - maximum of 14 years imprisonment
- Ancillary Offences
 - Ss 330 – 332; failure to disclose knowledge or suspicion of money laundering
 - maximum of 5 years imprisonment
- Tipping Off & Related Offences
 - Ss 333A-D and 342; tipping off and prejudicing investigations
 - maximum of 5 years imprisonment plus

Defences

- Report – submit a Suspicious Activity Report (SAR) to National Crime Agency
 - Authorised disclose to the NCA and obtain appropriate consent where disclosure is made before the act
 - Authorised disclosure can be made after the act, but only where there is good reason for failure to make disclosure before the act and disclosure is made as soon as practicable to make it (S338)
- There is no suspicion (S340(3)(b) – there must be a possibility, which is more than fanciful, that the relevant facts exist. The statute does not require that the suspicion is clear or firmly grounded, however a vague feeling of unease does not suffice.

Consent

“Consent”:

- When submitting a SAR you will often be asking the NCA for consent to undertake acts which may be prohibited as a principal money laundering offence
- It is vital in these situations that you directly ask for consent to proceed – and that you clearly outline all the remaining steps in the transaction that could be a prohibited act.
- In these situations you are effectively requesting for a defence against money laundering or terrorist financing charges
 - NCA have 7 working days to review and make a decision regarding giving consent.
 - If you have asked for consent, you should not act in that period
 - Should you not hear back in this time period – you may proceed
 - If consent is refused, the moratorium period is a further 31 calendar days from the date of refusal.
 - If consent not granted – you must not undertake the prohibited act

Summary

- AML Legislative Framework
- Relevant Persons & Regulated Business
- MLRO/Nominated Officer Responsibilities
- AML Policies & Procedures
- A Risk Based Approach – Factors to Consider
- How this transfers into Due Diligence Requirements
- What Each Level of Due Diligence Actually Means
- Other Due Diligence Considerations – E Verification & S.17 Reliance
- AML Training & Record Keeping Requirements
- SARs, Consent & Defences

Any Questions?

Thanks for watching!

