

Due Diligence

Simplified?

Standard?

Enhanced?



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Why do we carry out client due diligence?

It is a requirement of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (as amended). The 5th Directive introduced on 10th January 2020

- 27.—** (1) A relevant person must apply customer due diligence measures if the person —
- a) establishes a business relationship;
 - b) carries out an occasional transaction that amounts to a transfer of funds within the meaning of Article 3.9 of the funds transfer regulation exceeding 1,000 euros;
 - c) suspects money laundering or terrorist financing; or
 - d) doubts the veracity or adequacy of documents or information previously obtained for the purposes of identification or verification.

Simplified Client Due Diligence

- ❁ Simplified due diligence means not having to verify the client'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 necessary to conduct ongoing monitoring of the business relationship

Simplified Client Due Diligence

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

The client is a:

- Regulated financial institution
- Public administration or a publicly-owned enterprise
- Company whose securities are listed on a regulated market
- The business relationship or transaction presents a low degree of risk of money laundering and terrorist financing

Standard Client Due Diligence

- Also known as Standard Identity & Verification (ID&V)
- **Identifying the client:** ascertaining Full Name, Residential Address & Date of Birth
- **Verifying the client's identity:** 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 shown on list A & B but:
- **Ideally – original** passport/photo-card driving licence + **original** utility bill/bank statement (within 3 months)

Group A Documents

- Current, valid UK passport
- Current, valid passport of any other nationality
- Current, valid photocard driving licence if it was issued by the DVLA in Great Britain
- Current, valid photocard driving licence **and its paper counterpart** issued by the DVA in Northern Ireland
- UK original birth certificate issued within 12 months of birth
- Current, valid UK biometric residence permit card

Group B Documents - 1

- Bank or building society statement issued to current address, less than three months old
- Utility bill (gas, electric, telephone landline, water, satellite, cable) issued to the client's current address within the last three months
- A credit card statement sent to the client's current address within the last three months
- Council Tax statement issued in the last 12 months
- Mortgage statement issued in the last 12 months

Group B Documents - 2

- Letter from H.M. Revenue & Customs, Department of Work and Pensions, employment service, or local authority issued within the last three months
- P45 statement of income for tax purposes on leaving a job issued in the last 12 months
- P60 annual statement of income for tax purposes issued in the last 12 months
- Current UK driving licence - paper version (not the paper counterpart to a photocard)
- Driving licence photocard (without a paper counterpart) – but not if it was used in Group A
- Pension, endowment or ISA statement issued in last 12 months
- Valid UK firearms licence with photo

Enhanced Due Diligence

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

Dependent 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.

Enhanced Due Diligence

33.—(1) A relevant person must apply enhanced customer due diligence measures and enhanced ongoing monitoring, in addition to the customer due diligence measures required under regulation 28 and, if applicable, regulation 29, to manage and mitigate the risks arising—

- (a) in any case identified as one where there is a high risk of money laundering or terrorist financing—
 - (i) by the relevant person under regulation 18 (1), or
 - (ii) in information made available to the relevant person under regulations 17 (9) and 47;
- (b) in any business relationship or transaction with a person established in a high-risk third country;
- (c) in relation to correspondent relationships with a credit institution or a financial institution (in accordance with regulation 34);
- (d) if a relevant person has determined that a customer or potential customer is a PEP, or a family member or known close associate of a PEP (in accordance with regulation 35);

Enhanced Due Diligence

- e) in any case where the relevant person discovers that a customer has provided false or stolen identification documentation or information and the relevant person proposes to continue to deal with that customer;
- f) in any case where—
 - (i) a transaction is complex and unusually large, or there is an unusual pattern of transactions, and
 - (ii) the transaction or transactions have no apparent economic or legal purpose, and
- g) in any other case which by its nature can present a higher risk of money laundering or terrorist financing

Check whether your client is on the sanctions list by reviewing the HM Treasury and the Office of Financial Sanctions Implementations' consolidated list. If they are, you cannot act for them without a licence from the OFS

Are they in a high risk country? Check against FATF website

What is a Politically Exposed Person (PEP)?

A PEP is someone who's been appointed by a community institution, an international body or a state, including the UK, to a high-profile position within the last 12 months

Under anti-money laundering regulations, the main aim of applying additional scrutiny to work involving PEPs is to mitigate the risk that the proceeds of bribery and corruption may be laundered, or assets otherwise stripped from their country of origin.

Politically Exposed Person List

- A foreign person who has held any time in the preceding year a prominent public function outside the United Kingdom, in a state or international institution
- Members of courts of auditors or of the boards of central banks
- Ambassadors, chargés d'affaires and high-ranking officers in the armed forces
- Members of the administrative, management or supervisory bodies of state-owned enterprises
- Heads of state, heads of government, ministers and deputy or assistant ministers
- Members of parliaments
- Members of supreme courts, constitutional courts or of other high-level judicial bodies

Politically Exposed Person

PEP status also extends to relatives, close associates and beneficial owners.

Relatives and close associates include a spouse, a partner, children and their spouses or partners and parents.

And beneficial owners of the person's property (someone who enjoys the benefits of ownership even though the title of the property is in another's name)

Situations which might suggest you have a PEP client include:

- receiving funds in the retainer from a government account
- receiving communications on official letterhead from the client or a related person
- general conversation with the client or person related to the retainer which links the person to a PEP
- news reports suggesting your client is a PEP or is linked to one

Beneficial Owner – Regulation 5

- a) any individual who exercises ultimate control over the management of the body corporate;
- b) any individual who ultimately owns or controls (in each case whether directly or indirectly), including through bearer share holdings or by other means, more than 25% of the shares or voting rights in the body corporate;
or
- c) an individual who controls the body corporate

In relations to Trusts:

- a) the settlor;
- b) the trustees;
- c) the beneficiaries;
- d) where the individuals (or some of the individuals) benefiting from the trust have not been determined, the class of persons in whose main interest the trust is set up, or operates;
- e) any individual who has control over the trust

Ongoing Monitoring

This means scrutinising transactions to check that they remain consistent with what is known about the client. For instance:

- They change their name
- There is a change in the beneficial ownership
- The client instructs you in relation to a transaction that is not consistent with your knowledge of them
- You should check the client due diligence information each time you open a matter for the client.
- Your policy should detail the time scale for carrying out due diligence from the time of the end of the last retainer

Record Keeping

Reg 40 requires that a relevant person must keep records for 5 years from the conclusion of the retainer. This will be your file opening and closing forms and any client due diligence that you carried out

Assistance

- <https://www.lawsociety.org.uk/topics/anti-money-laundering/anti-money-laundering-guidance>
- <https://www.sra.org.uk/solicitors/resources/money-laundering/money-laundering/>
- <https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/consolidated-list-of-targets>
- [http://www.fatf-gafi.org/publications/?hf=10&b=0&q=sanctions%2520list&s=desc\(fatf_releasedate\)](http://www.fatf-gafi.org/publications/?hf=10&b=0&q=sanctions%2520list&s=desc(fatf_releasedate))
- SRA Ethics Helpline Option 2 – AML - 0370 606 2577 available 10.00 to 12.00 and 14.00 to 16.00
- The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

Summary

- Carry out your risk assessment
- Identify the type of due diligence required
- Apply that due diligence
- Review at appropriate time
- Document your decision - what
- Document your decision – when
- Document your decision - why

Any Questions?

Thanks for watching!

