

Client Matter Level Risk Assessment

Non-Natural Persons

Guidance Notes

RISK ASSESSMENT

Please see sections **5.9 to 5.16** of [Legal Sector Affinity Group Guidance](#) (LSAG) for further information on how to conduct your client and matter level risk assessments. Reference is also made to specific sub-sections of the guidance below. For further information on AML risks associated with the Scottish legal profession please see the LSS Sectoral Risk Assessment.

Holistic Overview

1. In assessing the level of risk in a particular case, the relevant person must take account of factors including, among other things:
 - the purpose of an account, transaction, or business relationship
 - the level of assets to be deposited by a customer or the size of the transactions undertaken by the customer.
 - the regularity and duration of the business relationship.
2. Personal and long-standing clients do not negate your obligation to comply with the Regulations. Please see section **6.2** of the LSAG guidance for information regarding how this may affect the risk profile and due diligence you are required to perform.
3. You should take into consideration the elevated risks attached to certain sectors when carrying out your risk assessments. Certain sectors have been identified by credible sources as giving rise to an increased risk of corruption.

Sectors that may indicate higher risk, particularly when coupled with a high-risk jurisdiction(s) include (but are not limited to)

- domestic and international public work contracts and construction, including post-conflict reconstruction.
- businesses utilising new or unproven technology, that might make them vulnerable to
- being used for money laundering
- high value goods businesses



- items of archaeological, historical, cultural, and religious significance or of rare
- scientific value (this may be of particularly high risk in jurisdictions with exposure to
- terrorism or terrorist financing activities)
- aspects of the nuclear industry with vulnerability to proliferation risk
- mining (including precious metals, diamonds or other gemstones and trading of these
- materials)
- arms manufacturing/supply and the defence industry
- tobacco products
- gambling
- crypto-asset wallet providers and exchanges
- unregulated charities (particularly those operating in higher risk jurisdictions)
- money transfer businesses.
- ivory and other items and materials related to protected species.
- real estate and property development
- the oil and gas industry (with the exception of the buying and selling of fuel for domestic consumption or retail).

Please see **r.33(6)** and section **5.6.1.3** of the LSAG guidance for further information.

- 4.** You may wish to consider the risk of any reputational damage that may arise from completing work which could be viewed as unethical. E.g.– guns/arms, illegal wildlife trade, sanctioned individuals, palm oil.

CLIENT LEVEL RISK ASSESSMENT – RISK FACTORS

Client Information

5. Where the customer is a body corporate, you must identify and verify:

- the name of the company
- its company number or other registration number
- the address of its registered office, and if different, its principal place of business
- information about the beneficial owners of the company

As well as take reasonable measures to determine and verify:

- the law to which the company is subject.
- its constitution (whether set out in its articles of association or other governing documents)
- the full names of the board of directors (or if there is no board, the members of the equivalent management body)

For all other legal entity types, please see LSAG sections **6.14.11 to 6.14.20**.

6. A beneficial owner is normally an individual who ultimately owns or controls the client.

r.5(1) defines the beneficial owner of a body corporate, other than a listed company, as meaning:

any individual who:

- exercises ultimate control over the management of the body corporate
- ultimately owns or controls, directly or indirectly, including through bearer share holdings or other means, more than 25% of the shares or voting rights in the body corporate
- otherwise controls the body:
 - by satisfying one or more of the conditions set out in Part 1 of Schedule 1A to the Companies Act 2006 (persons with significant control);
 - if the individual were an undertaking, the body corporate would be a subsidiary undertaking of the individual under section 1162 of the Companies Act 2006 read with Part 7 of that Act

r.6(1) defines beneficial owner, in relation to a trust as being:

- the settlor

- the trustees
- the beneficiaries
- 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
- any individual who has control over the trust

Beneficial Owners must be identified, and reasonable measures must be taken to verify their identities so that you are satisfied you know who the beneficial owner is and that they are in fact the beneficial owner in question.

In complex structures, practices may have to look through layers of ownership (and consider any associated dilution of that ownership) to arrive at any natural persons owning or controlling the client entity.

Please see LSAG guidance sections **6.15** and **6.16** for further information on this.

7. **r.28(3A)** states that where the customer is a legal person, trust, company, foundation or similar legal arrangement the relevant person must identify the customer and take reasonable measures to understand the ownership and control structure of that legal person, trust, company, foundation or similar legal arrangement. Please see **r.28(4)**, **28(9)** and section **6.14.10 to 6.14.11.3** of the LSAG guidance for further information.

r.28(9) confirms that the register of people with significant control, or the confirmation statement, which is published on the Companies House website, cannot be solely relied upon for the purpose of identifying or verifying the identity of the beneficial owner of a company or LLP client. Remember, if you are not satisfied with the information you have on the identity of your client/beneficial owner, you should not undertake business with that client, (or cease business if an existing client) as per the requirements of R31. Please see section **6.14.10 to 6.14.11.3** of the LSAG guidance for further information.

8. **r.33(6)(a)** highlights complex corporate structures being a risk factor to be considered. Please see section **6.14.10** of the LSAG guidance for further information.
9. If you identify a discrepancy between information relating to the beneficial ownership of the company, and information which becomes available to you whilst carrying out your duties under the ML Regulations (during the onboarding process), the discrepancy must be reported to Companies House (**r.30A(3)**). Please see section **12.6** of the LSAG guidance for further information.

Client Location

10. Higher Risk jurisdictions - You should note that there may be other jurisdictions that present a higher risk of money laundering that are not on the below High-Risk Third Country list.

Further resources to help you consider whether a country is higher risk include:

[AML and geographical risk | Law Society of Scotland \(lawscot.org.uk\)](#)

[Transparency International's corruption perception index](#)

[The Basel AML Index](#)

[CIA World Factbook](#)

[International Narcotics Control Strategy Reports](#)

[FATF Jurisdictional Information](#)

[The Know Your Country rating table](#)

Please also see **r.33(3)** and sections **5.6.2.1, 5.6.2.3 & 6.19.1** of the LSAG guidance for further information and useful links which will assist you.

11. High Risk Third Countries (HRTC)

HM Treasury released an Advisory notice which came into force on 22 January 2024, this note amended the definition of HRTC. It removes Schedule 3ZA containing the list of HRTCs in the MLRs. Instead of referring to a separate schedule, Regulation 33(3)(a) will now define an HRTC as:

- a country named on either of the following lists published by the Financial Action Task Force (FATF) as they have effect from time to time—
 1. High-Risk Jurisdictions subject to a Call for Action;
 2. Jurisdictions under Increased Monitoring

In order to keep abreast of which countries are HRTCs, relevant persons will now have to refer directly to lists published by the Financial Action Task Force ('FATF') of 'Jurisdictions Under Increased Monitoring' and 'High-Risk Jurisdictions subject to a Call for Action'. These lists are updated three times a year, on the final day of each FATF Plenary meeting, held every February, June and October.

Client Interaction

- 12.** ID&V is often undertaken in person, on the premises of your practice using suitable identification documents. Alternatively, you can use software products that enable video conferencing to assist with the identification and verification process. Your practice's definition of face-to-face should be documented in your AML policies, controls and procedures. The LSS website provides guidance on [non-face-to-face identification and verification](#). Please also see sections **6.14.5**, **6.14.6** and **6.6** of the LSAG guidance for further information.
- 13.** When you do not meet the client, you should consider the reason for this and whether this represents an additional risk which should be considered within your risk assessment and the extent of the due diligence measures you apply. Electronic ID&V may be a particularly useful tool in these circumstances. Please see sections **6.14.5** and **6.14.6** of the LSAG guidance for further information.
- 14.** If the client acting or planning to act through an intermediary, you must establish why and ensure that the rationale for doing so makes sense. You must also:
- verify that the intermediary, agent or representative is authorised to act on your client's behalf (i.e., obtain written confirmation from your client)
 - identify the intermediary, agent or representative
 - verify the identity of the intermediary, agent or representative on the basis of documents and information from a reliable source which is independent of both the representative and the client e.g., via a copy of their passport or driving license.

Please see **r.28(10)** and section **6.14.9** and **6.6** of the LSAG guidance for further information.

Sanction, Peps and Adverse Media Screening

- 15.** Screening should be considered in areas where it will be most useful and effective. As the sanctions regime is absolute, practices should ensure there are appropriate measures in place to ensure they do not undertake unauthorised business with sanctions targets in areas of less risk. Practices should take a risk-based approach to PEP and adverse media screening and how this is completed. Please see sections **5.10**, **6.19.3** and **7.11** of the LSAG guidance for further information.

MATTER LEVEL RISK ASSESSMENT – RISK FACTORS

Matter risk assessments should focus on the specific risk factors that a matter presents, beyond the client risks already identified. Please see LSAG section **5.11** for further information.

- 16.** Consider if the transaction / matter is within your area of expertise and, importantly, within your practice's risk appetite. Being aware of your practice's risk appetite is imperative when deciding whether to onboard a client or complete a transaction. Risk appetite is defined as the level of risk a practice is willing to accept. For some practices this may mean that higher risk transactions fall outside of 'the normal' risk appetite – e.g., commercial conveyancing involving cash intensive business when the majority of the work undertaken at your practice is residential conveyancing.

When considering risk appetite you should take into account the normal locations, clients, services and sectors in which your practice operates, and the risk level your practice is willing to tolerate as well as governance and decision-making processes.

- 17.** Under the new money laundering regulation statutory instrument brought in September 2022, the Government brought in the amendments **16A**, **18A** and **19A** in relation to the proliferation of financing (PF).
- **r.16A** defines PF
 - **r.18A-19A** further adds the requirement on all practices in scope of the regulations to carry out a practice wide risk assessment incorporating PF and further include PF in their policies, controls, and procedures.

Further information on this can be found within **r.16A**, **r.18A**, **r.19A** and Guidance on Proliferation Financing Risk Assessment and Mitigation ([fatf-gafi.org](https://www.fatf-gafi.org)).

- 18.** For example, conveyancing with additional high-risk factors – e.g., geographical risks / use of TCSP), abnormal or unusual use of trust or company services e.g., nominee shareholders or use of a company or trust with no logical rationale etc.

Source of Funds

- 19.** A fundamental element of CDD is understanding the nature, background, and circumstances of the client, including their financial position – and making an assessment as to whether the legal services provided to the client are in keeping with your understanding of the background and circumstances. The extent to which you must obtain, review and evidence your client's financial position is dependent upon the risk profile of the client or matter. In enhanced due diligence situations this requirement is more stringent. Section **6.17 to 6.17.2** of the LSAG guidance provides comprehensive and detailed information on source of funds.
- 20.** Care should be given when the source of funds derives from a geographic location which is associated with a higher AML, corruption, or criminality risk. Please see sections **5.6.2.1, 5.6.2.3** and **6.19.1** of the LSAG guidance for further information and useful links. Please see sections **5.6.2.1, 5.6.2.3 & 6.19.1** of the LSAG guidance for further information and useful links.
- 21.** Where you have identified that funds are coming from a third party, you are obliged to verify that person and their source of funds and, where applicable, source of wealth. Please see Section **6.17.2.1** of the LSAG guidance for further information.
- 22.** Examples may include (but are not limited to):
- Regular or round-amount cash payments / deposits into the account
 - A lack of what could be described as “normal” current account patterns – salaries paid in / bill payments, living expenses
 - An unusual volume of cash withdrawals or transfers out to third parties
 - Third party credits that cannot be explained
 - A high volume of gambling activity – especially when outside of the clients financial means
 - Means tested benefit credits, alongside a salary
- 23.** The Law Society of Scotland has recently released an updated FAQ on the use of crypto derived funds. Please see [AML FAQs | Law Society of Scotland \(lawscot.org.uk\)](#) for further information.

Source of wealth *(if applicable)*

- 24.** Source of Wealth refers to the origin of a client's entire body of wealth. It describes the economic, business and/or commercial activities that generated, or significantly contributed to, the client's overall net worth/entire body of wealth. Section **6.17.3** and **6.18** of the LSAG guidance provides comprehensive and detailed information on source of wealth.
- 25.** Consideration should be given on whether the client has a clear and documented legitimate business generating income. Have you seen public information snapshots to verify this?

Reliance

- 26.** Reliance has a specific meaning within the Regulations and relates to the process under **r.39** where, in certain circumstances, you may rely on another person to conduct CDD for you, subject to their agreement. **r.39** provides a full definition of what constitutes Reliance and who can be relied upon. Please see Section **6.23** of the LSAG guidance provides further information. Please note that accepting certified documentation from a suitable person does not constitute Reliance.

Risk Appetite consideration

- 27.** It is recommended that the most recent practice wide risk assessment approved by your senior management documents the practices risk appetite. Should the client or matter be outside of your practice's risk appetite, you may wish to consider seeking senior management/MLRO approval. This approval should be documented. Further information on risk appetite can be found within guidance note 13.

Escalation/Senior management approval

- 28.** Gaining senior management approval is mandatory under certain circumstances – i.e., in matters which involve onboarding a PEP or a client from a high-risk third country. However, dependent on the size and nature of your practice, it could be considered best practice to have an escalation procedure for client and matters which are of higher inherent risk following completion of your client and matter level risk assessment.