



## *Anti-money laundering and counter-terrorist financing—training materials*



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Summary and questions



## Part 1

What are money laundering and terrorist financing?

**What?**

**Money laundering:** proceeds of crime and their origin/ownership changed to make proceeds appear legitimate

**Terrorist financing:** providing/collecting funds from legitimate or illegitimate sources for terrorist acts

**How?**

1. Placement
2. Layering
3. Integration

## Why are they important to me?

- criminal penalties
- substantial fines
- SRA disciplinary action
- damage to reputation



## Part 3

Recognising money laundering and terrorist financing

# Recognising money laundering and terrorist financing

- Remain alert to warning signs
- Make reasonable enquiries

# Money laundering or terrorist financing signs

- obstructive or secretive
- using an intermediary without good reason
- avoids personal contact
- reluctant to provide information
- provides false documents
- business you can't find online/uses gmail, Hotmail etc
- known to have criminal convictions
- asks repeated questions re AML
- located far away with no apparent reason for using us
- changed legal advisor/service refused



## Money laundering or terrorist financing signs

### The parties

- based in a high risk country
- connected without apparent reason
- nature of ties between parties causes doubts
- multiple appearances of same parties
- age is unusual
- attempts to disguise the parties
- person directing matter is not a formal party

## The instructions

- unexpected change in instructions
- instructions outside usual range of expertise
- retainers involving high-risk jurisdictions
- transactions with no apparent logical, economic or legal purpose
- loss-making transactions where loss is avoidable
- complex/unusually large transactions
- client wants to pay higher fees
- unusual
- abandoned with no concern for fee level
- exclusively relates to keeping documents/holding deposits



### The money

- asked to return/send funds to third party
- money transfers where account holder and signatory vary
- payments to or from third parties with no connection
- large amounts of cash/private funding used
- large payment on account and instructions terminated
- movement of funds without reason/high risk country
- multiple bank accounts
- private matter funded by company/business/government
- request to change payment procedures
- unusual source



## Signs—litigation

- Easy settlements (sham litigation?)
- Direct payments between parties
- Third party funding

## Signs—private client

- Foreign/high-risk jurisdictions
- Deceased accused or convicted of criminal offence
- Unusual structures
- Unusual funds for charities
- Improper transactions

## Signs—property

- Nominee companies or multiple ownership
- Sudden or unexplained ownership changes
- Mortgage fraud
- Third party or private funding
- Direct payments
- Unusual sale price



- Foreign jurisdictions
- Unusual requests to use our client account

## Enquiries you should make

- Financing
- Benefit
- Proceeds
- People
- Scale

## Part 3

### The law



## Money laundering offences

### **Proceeds of Crime Act 2002 (POCA 2002)**

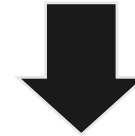
principal  
offences

failure to  
disclose  
offences

tipping-off  
offences

## Money laundering offences (cont)

person's benefit



in whole/in part



from *criminal conduct*



whether directly/indirectly



## Principal offences under POCA 2002

### s 327

conceal, disguise, convert, transfer or remove criminal property from the UK

### s 328

enter into or become concerned in arrangement facilitating the acquisition, retention, use or control of criminal property for/on behalf of another

### s 329

- acquire, use or have possession of criminal property



## Concealing (s 327)

- conceal
- disguise
- convert
- transfer, or
- remove from the UK

## Arrangement (s 328)

- Enter into or become concerned in
- An arrangement that you know or suspect facilitates
- Acquisition, retention, use or control of criminal property
- By or on behalf of another

## Acquisition (s 329)

- Acquire
- Use, or
- Have *possession* of criminal property



## Penalties

### Failure to comply:

- maximum penalty of 14 years' imprisonment
- fine, or
- both

### Defence:

- submit SAR to the nominated officer

## Failure to disclose







- Making a SAR to the nominated officer can be a defence
- Failure to disclose can result in:
  - five years' imprisonment
  - a fine, or
  - both

## Knowledge and suspicion

POCA 2002 defines:

- *knowledge*: actual knowledge
- *suspicion*: a possibility which is more than fanciful



-  disclose that you have made a SAR
-  disclose that an investigation is being contemplated or carried out
-  interfere with documents
  
-  discuss concerns with nominated officer
-  warn our clients of our duties under the AML/CTF regime
-  make normal enquiries about our clients' instructions

## Terrorist financing offences

- Terrorism Act 2000 (TA 2000)
- Terrorist financing is:
  - provision and collection of funds
  - from legitimate or illegitimate sources
  - with intention or in the knowledge
  - that they should be used in order to carry out any act of terrorism
  - whether or not those funds are in fact used for that purpose



## Terrorist financing offences (cont)

- Fundraising
- Use or possession
- Arrangements
- Money laundering
- Failure to disclose
- Tipping-off



## Money Laundering Regulations 2007

- Administrative requirements
- Failure to comply:
  - two years' imprisonment
  - fine
  - both
- Systems and controls

## Part 4

### Our policy and procedures—general

## Our policy and procedures—general

<b>Who?</b>	All relevant staff
<b>When?</b>	<ul style="list-style-type: none"> <li>• induction</li> <li>• every two years</li> <li>• substantial change in the law or our policy and procedure</li> </ul>



# Policy compliance

**Failure  
to  
comply**



- criminal record
- 14 years' imprisonment for committing a principal money laundering/terrorist financing offence
- disciplinary action including dismissal

**Monitoring  
compliance**

- file audits
- review of records maintained by the nominated officer
- staff reports or feedback
- routine policy monitoring exercises

## Part 5

Our policy and procedures—reporting suspicions

## Reporting suspicions

When?	ALWAYS!
How?	Complete SAR form
Unsure?	<ul style="list-style-type: none"> <li>• <b>DO NOT</b> complete the SAR form</li> <li>• discuss concerns with nominated officer</li> </ul>



# What happens after SAR?

**1st**

- Reasons for suspicion considered by nominated officer

**2nd**

- External SAR to NCA required?

**3rd**

- Consent to act for client must be indicated in SAR form

## What happens after SAR? (cont)



transfer funds



take an irrevocable step in the matter



tell the client a SAR has been made

## Part 6

Our policies and procedures—client due diligence



## Client due diligence (CDD)

- Identifying and verifying identity
- Beneficial ownership
- Purpose and intended nature of the business relationship
- Ongoing monitoring

## CDD (continued)

<b>What?</b>	<ul style="list-style-type: none"> <li>• Simplified due diligence (SDD)</li> <li>• Enhanced due diligence (EDD)</li> <li>• Regular due diligence (RDD)</li> </ul>
<b>When?</b>	<ul style="list-style-type: none"> <li>• Before establishing client business relationship</li> <li>• Before carrying out one-off transaction for client</li> <li>• Inadequate CDD carried out on an existing client</li> <li>• Client's identifying details have changed</li> <li>• Client has not been in regular contact with us</li> <li>• Suspicion of money laundering or terrorist financing activities</li> </ul>
<b>How?</b>	<ul style="list-style-type: none"> <li>• Assess the risk</li> <li>• Complete the form</li> </ul>

# CDD (continued)

SDD	<ul style="list-style-type: none"> <li>• little chance of money laundering or terrorist financing</li> <li>• reduced CDD exercise</li> </ul>
EDD	<ul style="list-style-type: none"> <li>• greater perceived risk of money laundering or terrorist financing</li> <li>• additional steps to understand ownership and control</li> <li>• <b>must</b> conduct EDD on: <ul style="list-style-type: none"> <li>○ individual clients not met face-to-face</li> <li>○ politically exposed persons (PEPs)</li> <li>○ other high risk clients</li> </ul> </li> </ul>
RDD	<ul style="list-style-type: none"> <li>• SDD and EDD do not apply</li> </ul>



## Source of funds

- Any warning signs of corruption?
- Any evidence that government/state funds being misused?
- Third party funding?

## Beneficial ownership



**CDD on beneficial owners is different  
to CDD clients**

You must:

- identify any beneficial owners
- validate their identity on a risk sensitive basis

## Beneficial ownership

<b>Body corporate (LLP)</b>	<p>Any individual who:</p> <ul style="list-style-type: none"> <li>owns/controls more than 25% of the shares or voting rights of the body</li> <li>otherwise exercise control over management of the body</li> </ul>
<b>Partnership (not LLP)</b>	<p>Any individual who:</p> <ul style="list-style-type: none"> <li>is entitled to/controls more than a 25% share of the capital or profits of or more than 25% of the voting rights in the partnership</li> <li>otherwise exercise control over the management of the body</li> </ul>
<b>Trust</b>	<p>Any individual entitled to specified interest in at least 25% of capital of the trust property</p>



## Beneficial ownership

**1st**

- Identify beneficial owners using reliable public source

**2nd**

- Consider client's risk profile, structure of business and nature of transaction

**3rd**

- Consider level of verification required

## Reliance on third parties

Where third party has already conducted CDD on the client...  
you **must not** unilaterally decide to rely on CDD conducted by a third party

## Existing/returning clients

Must apply CDD measures at appropriate times to all existing clients on risk-sensitive basis, eg:

- gap in retainers of [*three years*] or more
- details have changed
- risk profile has changed
- instructed on a high-risk matter



## Nature of the business relationship

understand  
purpose and  
intended nature  
of the business  
relationship



enables risk  
assessment



know more  
about client and  
their normal  
activities

## Ongoing monitoring

- Scrutinise transactions
- Stay alert
- Keep documents etc up to date

## What if I cannot conclude CDD exercise?

### The general rule:

- do not carry out transaction for the client
- do not establish business relationship with a client
- do not accept funds from/transfer funds to a client or third party
- terminate existing business relationship
- consider whether SAR is required



## Receiving funds

<b>Funds from client?</b>	Must not accept funds from/transfer funds to a client until the CDD process is complete
<b>Funds from third party?</b>	<ul style="list-style-type: none"> <li>• Beware of third party payments from unverified source</li> <li>• Consider: <ul style="list-style-type: none"> <li>○ any obvious warning signs</li> <li>○ knowledge about client, third party and their relationship</li> <li>○ why the third party gives client money</li> <li>○ proportion of the third party funding</li> <li>○ how third party obtained the funds</li> </ul> </li> </ul>
<b>Accept cash?</b>	Beware of large amounts of cash. Follow the Cash policy on accepting cash

# Summary

## Summary

- **Money laundering:** proceeds of crime and their origin/ownership changed to make proceeds appear legitimate
- **Terrorist financing:** providing/collecting funds from legitimate or illegitimate sources for terrorist acts
- Remain alert to the warning signs of money laundering and terrorist financing
- Our AML and CTF policy contains our systems and controls to forestall money laundering and terrorist financing—it applies to all staff
- Always report suspicion
- Understand your client



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