

AML Guidance - Section 6 - Client Due Diligence (CDD)

Wednesday 10 February 2021 | 10.00am – 11.00am

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Presenters



Jo Riddick

Money Laundering Taskforce and General Counsel, MLCO and MLRO,
Macfarlanes LLP

Fiona Fleming

Money Laundering Taskforce, English Solicitor, Guernsey Advocate (non-practising) and Associate Member and Chartered Governance Professional of ICOSA

Mark Boyle

Policy Manager, Anti Money Laundering, Solicitors
Regulation Authority

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Housekeeping



- We encourage you all to participate in today's session
- You can do this by asking questions in the chat box at the top left of the screen
- If you have any technical issues, please post these in the chat box and one of our team will respond to you via a private message
- You can also email queries to events@lawsociety.org.uk



LSAG 2021 Section 6 Client Due Diligence (CDD)

Mark Boyle
Policy Manager: Anti-Money
Laundering

Headlines

Largest section of the guidance –
50 pages

Source of Funds/Wealth

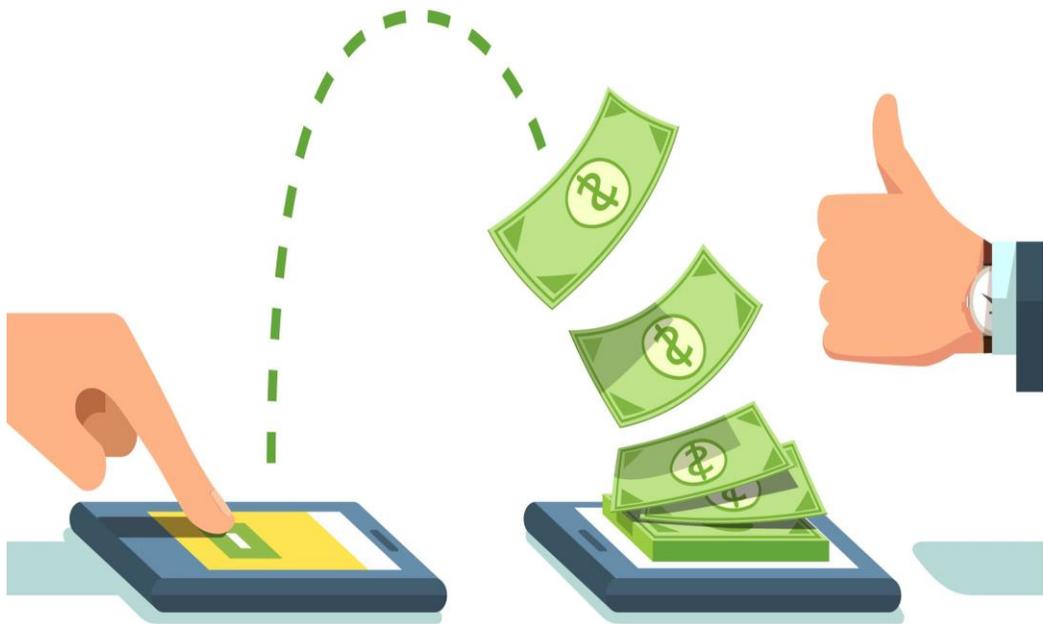
Clarifying supervisory
expectations



Source of Funds

“Where did the money for the transaction come from,”

It is not enough to know the money came from a UK bank account.



Source of Wealth

Why and how does the individual have the amount of overall assets they do – and how did they accumulate/generate these?

– holistic risk-based judgement



Simplified/Enhanced Due Diligence

SDD - We were keen to clearly state what the requirements now are as we have noticed that the 2007 regs were surprisingly sticky and are now very much out of date

EDD - High Risk Third Countries



Other issues

Ongoing Monitoring

Reliance

Help explaining checks to clients



Fiona Fleming

Money Laundering Taskforce, English Solicitor, Guernsey Advocate (non-practising) and Associate Member and Chartered Governance Professional of ICSA

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Aims: To look at the Changes and new clarification in the Guidance in particular:

- Changes to the Guidance on Regulation 27 - times when you need to revisit Client Due Diligence
- Changes to the Guidance on Regulation 28 - Client Due Diligence on non-natural persons and the new guidance on requirements to identify senior managers
- Changes to the Guidance on Regulation 33 - Enhanced Due Diligence
- Clarification on when we can rely on electronic identification

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Regulation 27 - The times when you need to revisit Client Due Diligence for existing clients



Where you have any legal duty in the course of the calendar year:

- To review information relevant to your client / practice-wide / matter risk assessment; or
- To review information concerning the beneficial ownership information of the client, including information to understand the ownership or control structure of any entity that is the beneficial owner of the client; or
- Where the practice has a duty to contact the client under the International Tax Compliance Regulations 2015 (DAC 6)

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Regulation 28 - client due diligence on non-natural persons



Where your client is a legal person, trust, company, foundation or similar, there's a new requirement to take reasonable measures to understand their ownership and control structure.

Requires you to trace the ownership back to any ultimate beneficial owner and then to take reasonable measures to verify the identity of the beneficial owner so you are satisfied you know who they are.

Test of reasonableness - are you comfortable that you would be able to demonstrate and evidence the extent to which you have sought information and verification to your supervisor on request?

Regulation 28 - the new guidance on identification of senior managers



Where the client is a company and you are unable to identify the ultimate beneficial owner or if you are not satisfied that an individual is the beneficial owner you must take reasonable measures to identify and verify the identity of the senior responsible manager of the company.

This may be the Chief Executive Officer or president of the group.

Must record all actions you have taken and any difficulties encountered.

Regulation 33 - the new guidance on Enhanced Due Diligence



Three key changes:

- Changes to the red flag transactions
- Changes to considerations on high risk third countries
- Introduction of additional factors to consider when something is high risk

Regulation 33 - Changes to Red Flag Transactions



Must apply Enhanced Due Diligence wherever the transaction is:

- Complex (in relation to the normal activity of the practice and the normal activity of the client)
- Unusually large (in relation to the normal activity of the practice and the normal activity of the client); there is unusual pattern of transactions
- The transaction(s) has/have no apparent economic or legal purpose

Previously, all of those elements had to be met for you to have to apply Enhanced Due Diligence, now where any one of those elements applies you must apply Enhanced Due Diligence.

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Regulation 33 - Changes on High Risk Third Countries



Must apply Enhanced Due Diligence when either the client or the counterparty is “established in” a high-risk third country.

“Established in” means:

- incorporated in; or

- has its principal place of business in; or

- its principal regulator is in; or

- where it is a natural person, it is resident in,

a high risk third country (identified by the European Commission).

Regulation 33(3A) sets out the due diligence you must obtain if your client fits those parameters.

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Regulation 33 - Additional factors you must consider when assessing whether a client or matter is high risk:



- Is the person the beneficiary of a life insurance policy? Considered to be indicative of higher risk where the matter relates directly to the policy
- Is the person seeking residence / citizen rights in exchange for investments in an EEA state?
- Is the person involved in the oil, arms, precious metals, tobacco products, cultural artefacts, ivory, protected species etc trades?
- Does the transaction involve non-face-to-face business relationships or transactions without certain safeguards? e.g. an electronic identification process?

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Clarification on reliance on electronic Client Due Diligence



An electronic identification process may be regarded as reliable where:

- it is secure from fraud and misuse, and
- it is capable of providing appropriate assurance that the clients are who they say they are

You should be able to adequately demonstrate to your supervisor that any electronic verification system you use properly establishes your client's identity.

Client due diligence - an MLCO's approach

Jo Riddick

General Counsel, MLCO and MLRO at Macfarlanes LLP



The Money Laundering & Terrorist Financing (Amendment) Regulations

Immediate changes

- New real estate fraud risk assessment introduced in October 2019 - post Dreamvar
- Then in January 2020:
 - categories of client/matters requiring EDD expanded
 - counterparty checks introduced
 - discrepancy reporting mandated

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Impact of the LSAG Guidance - January 2021



Further changes to our PCPs - the holistic approach



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‘Second round’ changes

- Chapter 18 - red flags
- High risk individual clients – CDD refresh
- Update ‘high risk third countries’ list
- Rejigging discrepancy reporting



If the firm is acting as or advising trustees:



Bear the revised trust registration regime and HMRC's 25 January 2021 guidance in mind...

- **All UK express trusts (with no UK tax liability) unless specifically excluded** - UK trusts are generally those where all of the trustees are based in the UK
- **Non-UK express trusts** - generally those where all the trustees are resident outside the UK – which have either:
 - at least one UK resident trustee when the trustees enter into a 'business relationship' with an obliged entity or
 - regardless of UK resident trustees, the trust acquires UK land or property
 - non express trusts and specifically excluded express trusts which have a UK tax liability

From 10 March 2022

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Some of the exemptions



And some of the gaps

- UK registered pension schemes and UK registered charitable trusts
- Trusts used to hold a life insurance policy, income protection policy, or retirement benefits **with no surrender value**; trusts holding policy benefits **if paid out within 2 years**
- ‘Pilot’ trusts **if set up before 6 October 2020 for a future use and hold no more than £100**
- Co-ownership property trusts held by ‘tenants in common’ - but **not co-ownership trusts where trustees and beneficiaries are different persons**
- Will trusts but not **if they hold estate assets for more than 2 years after death**
- Professional trusts for holding client money or other assets

Questions

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