

AML for Solicitors

Everything You Need To Know

Why Should You Care?

And what happens if you don't?

- Proceeds of Criminal Conduct
- Terrorist Financing
- Non Compliance Can Lead to a Criminal Offence
- Summary: Fine < €5,000 and/or imprisonment for < 12 months
- Indictment: Fine and/or Imprisonment for < 14 years
- Civil Liability, Reputational and Professional Consequences

Legislative Framework

- Criminal Justice (Money Laundering and Terrorist Financing) Act 2010
- Criminal Justice (Money Laundering and Terrorist Financing) Act 2013
- <http://revisedacts.lawreform.ie>
- Solicitors (Money Laundering and Terrorist Financing) Regulations 2016
- www.lawsociety.ie/Solicitors/Regulations/Anti-Money-Laundering/

Offence

Section 7, 2010 Act

A person commits an offence if

(a) the person engages in any of the following acts in relation to property that is the proceeds of criminal conduct:

- (i) concealing or disguising the true nature, source, location, disposition, movement or ownership of the property, or any rights relating to the property;
- (ii) converting, transferring, handling, acquiring, possessing or using the property;
- (iii) removing the property from, or bringing the property into, the State,

and

(b) the person knows or believes (or is reckless as to whether or not) the property is the proceeds of criminal conduct.

Criminal Conduct and Terrorist Financing

Proceeds of Criminal Conduct: means any property that is derived from or obtained through criminal conduct (an offence committed here or elsewhere), whether directly or indirectly, or in whole or in part

Benefits (e.g. in the form of saved costs) arising from a failure to comply with a regulatory or legal requirement where that failure is an offence, (e.g. benefits obtained from tax evasion);

Benefits obtained through bribery or corruption, including benefits (such as profit or cash flow) from contracts obtained by these means

Terrorist Financing: funds intended to be used in whole or in part in order to carry out terrorist offences

To Whom Does the Legislation Apply?

Designated person

means any person, acting in the State in the course of business carried on by the person in the State, who, ... is

... a relevant independent legal professional

“relevant independent legal professional” is defined, in section 24(1), as a barrister, solicitor or notary carrying out specific services

To What Services Does the Legislation Apply?

- (a) the provision of assistance in the planning or execution of transactions for clients concerning any of the following:
 - (i) buying or selling land or business entities;
 - (ii) managing the money, securities or other assets of clients;
 - (iii) opening or managing bank, savings or securities accounts;
 - (iv) organising contributions necessary for the creation, operation or management of companies;
 - (v) creating, operating or managing trusts, companies or similar structures or arrangements;

- (b) Acting for or on behalf of clients in financial transactions or transactions relating to land;

Law Society's Guidance (All Services)

“While solicitors are not obliged by the legislation to identify, or perform any of the other Client Due Diligence (CDD) measures, on clients when the services provided to them fall outside of the AML regulated areas, the Society is of the view that best practice and risk management requires solicitors to identify all clients to whom they wish to provide any legal service. As a consequence the Society recommends that solicitors should identify *all clients and verify their identification documents.*”

What Is Required To Be Done by the Legislation?

Risk Based Approach

- make a reasoned assessment of the risks
- take reasonable steps to conduct Client Due Diligence (CDD)
- use your judgement and discuss issues with colleagues
- document what you find
- be able to demonstrate that you undertook due diligence and took reasonable steps to protect the firm

How Do You Assess Your Firm's Risk Profile?

Depends on:

- firm's size,
- type of clients
- the practice areas engaged in.

You should consider the following factors:

- Client demographic
- Services and areas of law

How Do You Assess Your Firm's Risk Profile?

Client demographic:

- high turnover of clients or a stable existing client base
- acts for 'politically exposed persons' (PEPs)
- acts for clients without meeting them
- practices in locations with high levels of acquisitive crime or for clients who have convictions for acquisitive crimes, which increases the likelihood the client may possess
- criminal property
- acts for clients affiliated to countries with high levels of corruption or where terrorist
- organisations operate
- acts for entities that have a complex ownership structure
- can easily obtain details of beneficial owners of their client or not

How Do You Assess Your Firm's Risk Profile?

Services and areas of law:

- complicated financial or property transactions
- providing assistance in setting up trusts or company structures, which could be used to obscure ownership of property
- payments that are made to or received from third parties
- payments made by cash
- transactions with a cross-border element

How Do You Assess An Individual's Risk Profile?

You should whether:

- the client is within a high risk category
- you can be easily satisfy the CDD material for the client is reliable and allows you to identify the client and verify that identity
- You can be satisfied that you understand their control and ownership structure
- the retainer involves an area of law at higher risk of laundering or terrorist financing
- the client wants you to handle funds without an underlying transaction, contrary to the Solicitors' Accounts Regulations
- there are any aspects of the particular retainer which would increase or decrease the risks

Use Categories to Assess Risk

1. Country/Geographic Risk

- Countries subject to sanctions, embargoes or similar measures issued by, for example, the
- United Nations (“UN”);
- Countries identified by credible sources, e.g. FATF or the EU Commission, as lacking
- appropriate money laundering laws and regulations;
- Countries identified by credible sources as providing funding or support for terrorist activities; and
- Countries identified by credible sources as having significant levels of corruption, or
- other criminal activity.

Use Categories to Assess Risk

2. Client Risk

- Significant and unexplained geographic distance between the solicitors' firm and the location of the client;
- Frequent and unexplained movement of legal work to different solicitors' firms or of funds between various geographic locations;
- Where there is no commercial rationale for the client engaging in the transaction;
- Requests to associate undue levels of secrecy with a business relationship;
- Situations where the origin of wealth and/or source of funds cannot be easily verified,
- The unwillingness of corporate clients to give the names of their real owners and controllers
- Cash (and cash equivalent) intensive businesses
- Casino-like activities, betting and other gambling related activities;

Use Categories to Assess Risk

3. Transaction/Service Risk

- Services capable of abuse, e.g. debt collection/recovery
- Requests for services intended to render a client anonymous
- Transactions which allow/facilitate use by third parties
- E-mail/Internet contacts that facilitate easy non-face to face access.

Use Categories to Assess Risk

4. Variables That May Impact Risk

- The size of a transaction to be undertaken
- The regularity or duration of the relationship
- The familiarity with a country, including knowledge of local laws, regulations and rules, as well as the structure and extent of regulatory oversight, as the result of a solicitor's own operations within the country
- The use of intermediate corporate vehicles or other structures that have no apparent commercial or other rationale or that unnecessarily increase the complexity or otherwise result in a lack of transparency

The Importance of Written Policies and Procedures

Section 54 provides that each solicitors' firm should adopt written policies and procedures to prevent money laundering and terrorist financing, including the following:

- Assessment and management of risks of money laundering or terrorist financing;
- Internal controls, including internal reporting procedures for suspicious transactions;
- Procedures to identify large/complex transactions and unusual patterns and any other activity that is likely to be related to money laundering or terrorist financing;
- Measures to be taken to prevent transactions that favour or facilitate anonymity;
- Monitoring, communication and management of compliance with the policy and procedures; and
- Ongoing training for all staff.

Client Due Diligence (CDD)

Three Types

- Simplified (Section 34, 2010) – Limited exceptions
- Enhanced (Sections 37 & 39) – Politically Exposed Persons or high risk following assessment
- Standard (Section 33 – 35) – Most situations

Standard Client Due Diligence (CDD)

- verify a client's identity, which cannot be done on a risk sensitive basis
- verify the identity of beneficial owners and understand control structures on a risk sensitive basis
- obtain information on the purpose and intended nature of the business relationship
- conduct ongoing monitoring

What Must You Do As A Solicitor?

Definitions

“client” includes the personal representative of a client and any person on whose behalf the person who gave or is giving instructions was or is acting in relation to any matter in which a solicitor or his or her firm had been or is instructed; and includes a beneficiary to an estate under a will, intestacy or trust and a debtor under an insolvency arrangement; and also includes any person on whose account a solicitor receives, holds, controls or pays clients' moneys in the course of and arising from his practice as a solicitor

“transaction” means the subject of a service carried out for a client by the independent legal professional of a kind referred to in paragraph (a) or (b) of the definition of “relevant independent legal professional” in this subsection;

Regulation 2, Solicitors (Money Laundering and Terrorist Financing) Regulations 2016

What Must You Do As A Solicitor?

Definitions

“relevant independent legal professional” means a practising solicitor who carries out any of the following services:

- (a) the provision of assistance in the planning or execution of transactions for clients concerning any of the following:
 - (i) buying or selling land or business entities including, without limitation, conveyancing services;
 - (ii) managing the money, securities or other assets of clients including, without limitation, providing litigation services to the extent that this involves the managing of money, securities or other assets;
 - (iii) opening or managing bank, savings or securities accounts;
 - (iv) organising contributions necessary for the creation, operation or management of companies;
 - (v) creating, operating or managing trusts, companies or similar structures or arrangements;
- (b) acting for or on behalf of clients in financial transactions or transactions relating to land

Regulation 2, Solicitors (Money Laundering and Terrorist Financing) Regulations 2016

What Must You Do As A Solicitor? Application

3. (1) These Regulations shall apply to a solicitor who is *a relevant independent legal professional*, in the course of and arising from his or her practice as a solicitor, engaged in the provision of legal services, whether as a sole practitioner or as a partner in a firm of solicitors and shall, for the avoidance of doubt, apply to a solicitor carrying on practice as a personal insolvency practitioner as defined in the Act of 2012.

(2) Wherever in these Regulations an obligation is specified as being that of a solicitor, such obligation of the solicitor shall be a personal one notwithstanding that the solicitor may have caused some other person or persons to perform the act or function comprising such obligation; and it shall be assumed unless and until the contrary be shown to the satisfaction of the Society that such other person or persons had the express or implied authority of the solicitor to perform such act or function.

Regulation 3, Solicitors (Money Laundering and Terrorist Financing) Regulations 2016

What Must You Do As A Solicitor?

Policies and procedures

5. (1) A solicitor shall adopt policies and procedures, in relation to the solicitor's business to which these regulations apply, to prevent and detect the commission of money laundering and terrorist financing.

(2) In particular, a solicitor shall adopt policies and procedures to be followed by persons involved in the conduct of the solicitor's business, that specify the solicitor's obligations under this Part, including-

- (a) the assessment and management of risks of money laundering or terrorist financing, and
- (b) internal controls, including internal reporting procedures for the purposes of Part 5.

Regulation 5, Solicitors (Money Laundering and Terrorist Financing) Regulations 2016

What Must You Do As A Solicitor?

Policies and procedures

- (3) The policies and procedures referred to in subsection (2) include policies and procedures dealing with-
- (a) the identification and scrutiny of complex or large transactions, unusual patterns of transactions that have no apparent economic or visible lawful purpose and any other activity that the solicitor has reasonable grounds to regard as particularly likely, by its nature, to be related to money laundering or terrorist financing,
 - (b) the measures to be taken to prevent the use for money laundering or terrorist financing of transactions or products that could favour or facilitate anonymity,
 - (c) the measures to be taken to keep documents and information relating to the clients of that solicitor up to date,
 - (d) the additional measures to be taken in accordance with section 39 of the Act of 2010 and the circumstances in which such measures are to be taken, and
 - (e) the measures to be taken to prevent the risk of money laundering or terrorist financing which may arise from technological developments including the use of new products and new practices and the manner in which services relating to such developments are delivered.

Regulation 5, Solicitors (Money Laundering and Terrorist Financing) Regulations 2016

What Must You Do As A Solicitor?

Policies and procedures

(4) The solicitor shall also adopt policies and procedures in relation to the monitoring and management of compliance with, and the internal communication of, the policies and procedures referred to in subsection (2).

(5) A solicitor shall ensure that persons involved in the conduct of the solicitor's business are-

- (a) instructed on the law relating to money laundering and terrorist financing, and
- (b) provided with ongoing training on identifying a transaction or other activity that may be related to money laundering or terrorist financing, and on how to proceed once such a transaction or activity is identified.

(6) A reference in this section to persons involved in the conduct of a solicitor's business includes a reference to employees, of the solicitor.

Regulation 5, Solicitors (Money Laundering and Terrorist Financing) Regulations 2016

What Must You Do As A Solicitor?

Records

6. (1) A solicitor shall keep records evidencing the procedures applied, and information obtained, by the solicitor in relation to each client.

(2) Without prejudice to the generality of subsection (1), a solicitor shall take the original or a copy of all documents used by the solicitor for the purposes of Part 4, including all documents used to verify the identity of clients or beneficial owners in accordance with Regulation 13.

(3) A solicitor shall keep records evidencing the history of services and transactions carried out in relation to each client of the solicitor.

(4) The documents and other records referred to in subsections (1) to (3) shall be retained by the solicitor for a period of not less than 5 years.

(7) A solicitor may keep the records referred to in subsections (1) to (6) wholly or partly in an electronic, mechanical or other non-written form only if they are capable of being reproduced in a written form.

Regulation 6, Solicitors (Money Laundering and Terrorist Financing) Regulations 2016

What Must You Do As A Solicitor?

Responsibility of a partner

7. Each partner in a firm of solicitors shall be responsible for securing compliance by the firm with these Regulations.

Regulation 7, Solicitors (Money Laundering and Terrorist Financing) Regulations 2016

What Must You Do As A Solicitor? Client Due Diligence

13(2) The measures that shall be applied by a solicitor under subsection (1) are as follows:

- (a) identifying the client, and verifying the client's identity on the basis of documents (whether or not in electronic form), or information, that the solicitor has reasonable grounds to believe can be relied upon to confirm the identity of the client including documents from a government source (whether or not a State government source);
- (b) identifying any beneficial owner (25%) connected with the client or service concerned, and taking measures reasonably warranted by the risk of money laundering or terrorist financing—
 - (i) to verify the beneficial owner's identity to the extent necessary to ensure that the solicitor has reasonable grounds to be satisfied that the solicitor knows who the beneficial owner is, and
 - (ii) in the case of a legal entity or legal arrangement ... to understand the ownership

Regulation 13, Solicitors (Money Laundering and Terrorist Financing) Regulations 2016

What Must You Do As A Solicitor? Client Due Diligence

13(3) Nothing in subsection (2)(a) limits the kinds of documents or information that a solicitor may have reasonable grounds to believe can be relied upon to confirm the identity of a client.

Regulation 13, Solicitors (Money Laundering and Terrorist Financing) Regulations 2016

What Must You Do As A Solicitor?

Client Due Diligence

13(4) Without prejudice to the generality of subsection (2)(a), one or more of the following measures shall be applied by a solicitor under subsection (1), where a client who is an individual does not present to the solicitor for verification *in person* of the client's identity:

- (a) verification of the client's identity on the basis of documents (whether or not in electronic form), or information, that the solicitor has reasonable grounds to believe are reliable as confirmation of the identity of the client in addition to any documents or information that would ordinarily have been used to verify the client's identity if the client had presented to the solicitor for verification in person of the client's identity;
- (b) verification of documents supplied, for the purposes of verifying the identity of the client under this section to the solicitor by the client;
- (c) verification of the client's identity on the basis of confirmation received from an acceptable institution that the client is, or has been, a customer of that institution.

Regulation 13, Solicitors (Money Laundering and Terrorist Financing) Regulations 2016

What Must You Do As A Solicitor?

Client Due Diligence

Notwithstanding subsection (1)(a), a solicitor may verify the identity of a client or beneficial owner, in accordance with subsections (2) and, where applicable, (4), during the establishment of a business relationship with the client if the solicitor has reasonable grounds to believe that-

- (a) verifying the identity of the client or beneficial owner (as the case may be) prior to the establishment of the relationship would interrupt the normal conduct of business, and
- (b) there is no real risk that the client is involved in, or the service sought by the client is for the purpose of, money laundering or terrorist financing, but the solicitor shall take reasonable steps to verify the identity of the client or beneficial owner, in accordance with subsections (2) and, where applicable, (4), as soon as practicable.

Regulation 13, Solicitors (Money Laundering and Terrorist Financing) Regulations 2016

What Must You Do As A Solicitor? Client Due Diligence

13(6) A solicitor who is unable to apply the measures specified in subsection (2) or (4) in relation to a client, as a result of any failure on the part of the client to provide the solicitor with documents or information required under this section—

- (a) shall not provide the service or carry out the transaction sought by that client for so long as the failure remains unrectified, and
- (b) shall discontinue the business relationship (if any) with the client.

Regulation 13, Solicitors (Money Laundering and Terrorist Financing) Regulations 2016

What Must You Do As A Solicitor?

Purpose and intended nature of a business relationship

15(1) A solicitor shall obtain information reasonably warranted by the risk of money laundering or terrorist financing on the purpose and intended nature of a business relationship with a client prior to the establishment of the relationship.

(2) A solicitor who is unable to obtain such information, as a result of any failure on the part of the client, shall not provide the service sought by the client for so long as the failure continues.

(3) A solicitor shall monitor dealings with a client with whom the solicitor has a business relationship, including (to the extent reasonably warranted by the risk of money laundering or terrorist financing) by scrutinising transactions and the source of wealth or of funds for those transactions, to determine whether or not the transactions are consistent with

- (a) the solicitor's knowledge of the client and the client's business and pattern of transactions, and
- (b) any knowledge that the solicitor may have that the client may be involved in money laundering or terrorist financing.

Regulation 15, Solicitors (Money Laundering and Terrorist Financing) Regulations 2016

What Must You Do As A Solicitor?

Politically exposed persons

“politically exposed person” means an individual who is, or has at any time in the preceding 12 months been, entrusted with a prominent public function, including any of the following individuals (but not including any middle ranking or more junior official):

- (a) a head of state, head of government, government minister or deputy or assistant government minister;
- (b) a member of a parliament;
- (c) a member of a supreme court, constitutional court or other high level judicial body whose decisions, other than in exceptional circumstances, are not subject to further appeal;
- (d) a member of a court of auditors or of the board of a central bank;
- (e) an ambassador, chargé d'affaires or high-ranking officer in the armed forces;
- (f) a member of the administrative, management or supervisory body of a state-owned enterprise;

Regulation 17, Solicitors (Money Laundering and Terrorist Financing) Regulations 2016

What Must You Do As A Solicitor?

Politically exposed persons

17(5) If a solicitor knows or has reasonable grounds to believe that a client residing in a place outside the State is a politically exposed person or an immediate family member or close associate of a politically exposed person, the solicitor shall—

- (a) ensure that approval is, formally documented by a sole practitioner, or is otherwise formally documented by senior management of the solicitor nominated for this purpose, before a business relationship is established with the client, and
- (b) determine the source of wealth and of funds for the following transactions: (i) transactions the subject of any business relationship with the client that are carried out with the client or in respect of which a service is sought, or (ii) any occasional transaction that the solicitor carries out with, for or on behalf of the client or that the solicitor assists the client to carry out. and
- (c) apply such additional measures in the course of monitoring the business relationship with the client in accordance with Regulation 15 (including monitoring of the source of wealth and funds), that the solicitor considers to be warranted by the risk of money laundering or terrorist financing.

Regulation 17, Solicitors (Money Laundering and Terrorist Financing) Regulations 2016

What Must You Do As A Solicitor?

Reporting of Suspicious Transactions

20. In this Part a reference to a solicitor includes a reference to any person acting, or purporting to act, on behalf of the solicitor, including any agent, employee, partner, director or other officer of, or any person engaged under a contract for services with, the solicitor.

21. (1) A solicitor who knows, suspects or has reasonable grounds to suspect, on the basis of information obtained in the course of carrying on business as a solicitor, that another person has been or is engaged in an offence of money laundering or terrorist financing as defined in the Act of 2010 shall report to the Garda Síochána and the Revenue Commissioners that knowledge or suspicion or those reasonable grounds.

(2) The solicitor shall make the report as soon as practicable after acquiring that knowledge or forming that suspicion, or acquiring those reasonable grounds to suspect, that the other person has been or is engaged in money laundering or terrorist financing.

(3) For the purposes of subsections (1) and (2), a solicitor is taken not to have reasonable grounds to know or suspect that another person commits an offence on the basis of having received information until the person has scrutinised the information in the course of reasonable business practice (including automated banking transactions).

goAML Website: <https://fiu-ireland.ie/Home>

Regulation 20, Solicitors (Money Laundering and Terrorist Financing) Regulations 2016