



**ANTI-MONEY LAUNDERING & FRAUD/IDENTITY
THEFT PREVENTION SOLUTIONS FOR DURING
THE CORONAVIRUS CRISIS**

AML SECTION

POLICY & PUBLIC AFFAIRS DEPARTMENT

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1. *Introduction*

- 1.1. European and Irish Anti-Money Laundering (AML)¹ rules are a challenge to navigate at the best of times and this is considerably amplified by the coronavirus crisis. The Society has developed the following guidance to help solicitors navigate these challenges to ensure you can maintain business continuity by adopting simple and innovative compliance solutions.
- 1.2. It is important to know that, **with all eyes on the coronavirus threat, firms may be more vulnerable to fraud and there is a significant risk too that criminals may seek to exploit firms to launder funds. Coronavirus social distancing policies present new opportunities for identity theft** while, at the same time, restrict the key fraud and crime prevention tool that is face-to-face identity verification. Non-face-to-face instructions can be a red flag but telephone and video instructions are suddenly the norm.
- 1.3. AML compliance is highly adaptable and may assist solicitors in taking a risk based pragmatic approach to reduce their exposure to fraud and crime.
- 1.4. Solicitors may find it helpful to implement the following 3 Step Approach during the crisis.
Step 1 – Risk Assess and Document
Step 2 – Take a pragmatic approach to the non-face-to-face red flag
Step 3 – Adopt new ways to verify client identity
- 1.5. It is important that solicitors and their staff stay safe at this time, the focus must be on safety. The objective of this guidance is to facilitate crime/fraud risk management and AML continuity as much as is possible while adhering to social distancing rules.

¹ including Countering the Financing of Terrorism (CFT) rules

2. *Step 1 – Risk Assess and Document*

- 2.1. It may be beneficial to consider the impact of the coronavirus across all legal services you provide: while the money laundering risk itself may be exceptionally low, the coronavirus crisis may introduce an opportunity for heightened risk of fraud or identity theft.
- 2.2. While the statutory duty to complete a risk assessment arises for specific legal services vulnerable to money laundering (e.g. financial transactions and asset transfers known), the AML-regulated legal services,² litigation services have been targeted in the past by fraudulent debt collection scams. Consequently, **in a crisis such as this, it may be especially important to be vigilant across all of the legal services your firm provides. A risk based approach can help** with this and we recommend solicitors consider completing some form of risk assessment on all legal services they provide. This enables solicitors to place all relevant circumstances in context and, should the need arise in the future, enables solicitors to demonstrate their level of knowledge and rationale for proceeding with a legal service or not and the rationale for the client/customer due diligence (CDD)³ applied, if required.
- 2.3. The FATF’s recommended method for interpreting red flags may be especially helpful to keep in mind when risk assessing: “...the methods and techniques used by criminals...may also be used by clients with legitimate means for legitimate purposes. Because of this, red flag indicators should always be considered in context. **The mere presence of a red flag indicator is not necessarily a basis for a suspicion** of money laundering or terrorist financing, as **a client may be able to provide a legitimate explanation... Where there are a number of red flag indicators, it is more likely that a legal professional should have a suspicion...**”
- 2.4. A solicitor’s **first line of defence** has always been to document their risk assessment together with the compliance steps to be taken and subsequently completed. Typically, just a few sentences are necessary. The Society’s two sample adaptable forms may be of help to you when assessing risk and determining pragmatic risk-based compliance tailored to each client or legal service:
 1. [Risk Factor Questionnaire for Customer Risk Assessment](#)
 2. [‘Document your Thought Process’ forms for Customer Risk Assessment](#)
- 2.5. **Risk assessment is an ongoing process** throughout the life cycle of a legal service. **Stay alert to changing instructions.** Adopt an ongoing risk assessment mind-set by remaining alert to potential new red flags from the start of a legal service through to its conclusion. For example, risk assess red flags which may emerge during a legal service such as requests for names not to be connected with property, requests for different names to be used on different

² These include (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.

³ The term ‘customer’ is used in the relevant legislation and, for solicitors, is taken as meaning clients.

documents, last minute name substitutions etc. Remain alert to the well-known money laundering red-flags including activities which have no apparent purpose (or which make no obvious economic sense, involve unusual losses, are unnecessarily complex, involve non-resident accounts/companies/structures), activities which are without reasonable explanation (are out of the ordinary range of services or inconsistent with client). Risk assess transactions involving areas outside of Ireland, no apparent ties to Ireland, which cross many international lines, involve wire transfers or foreign currency exchanges with locations of concern known to facilitate money laundering or which have secretive banking and corporate law, illicit drug production or no effective AML system. **Maintain a healthy level of scepticism – if it sounds too good to be true, it probably is.**

3. *Step 2 – Take a pragmatic approach to the non-face-to-face red flag*

3.1. The risk posed by any mechanism (e.g. post, telephone, or electronic) which avoids face-to-face contact between a solicitor and a prospective new client inevitably remains high. **Virtual legal services add a new dimension to risks and open up new mechanisms for fraud, crime and money laundering.** At the same time, while non-face-to-face instructions remain a red flag, **telephone/video instructions are the new norm.** The question is how to treat the red flag that is non-face-to-face instructions and whether non-face-to-face instructions during the coronavirus crisis should automatically elevate a legal service which would in normal circumstances have been categorised as being of zero, low or medium risk.

3.2. **When risk assessing:**

1. Focus on what clients are asking you to do for them. **Ask yourself whether what you are being asked to do could ultimately facilitate a crime?** Is there a heightened risk of crime, fraud or money laundering to the legal service? For example, if you are being asked to transfer funds via your client account, non-face-to-face instructions may be a key red flag, especially in the presence of other red flags.
2. Continue to treat non-face-to-face instructions as a red flag, while, at the same time, **re-orienting** the risk assessment where coronavirus social distancing guidelines may be a legitimate reason for providing a legal service without meeting a client. **If the coronavirus social distancing guidelines are the only reason you are not able to meet your client in person, then it may be that, without other red flags, the overall risk posed by not meeting face-to-face may be significantly reduced.**
3. Mitigate risk by engaging with red flags and taking a pragmatic approach to due diligence.

3.3. Remain mindful of the extent to which the difficulties in undertaking CDD caused the coronavirus will present an opportunity for solicitors firms to be used as vehicles for money laundering: extra vigilance is important.

4. *Step 3 – Adopt new ways to verify client identity*

- 4.1. The risk brought by coronavirus social distancing policies coupled with the rapid adoption of new virtual/electronic business models also underlines **the importance of continuing to verify the identity of clients for all legal services.**
- 4.2. The Society's long standing recommendation has been to **verify the identity of all clients** and there is a statutory requirement to verify the identity of clients in receipt of an AML-regulated legal service. Specifically, solicitors should **verify** the customer's identity (in accordance with the customer risk assessment) and on the basis of documents or information which there are reasonable grounds to believe can be relied upon to confirm identity.
- 4.3. Typically, solicitors easily comply with this requirement when they **meet a prospective client in-person** to discuss the nature of the proposed legal service and **have regard to the person's original photographic identity documentation** to confirm that the person is who they say they are and request utility bills to confirm current address. Following this, copy documentation is retained to confirm compliance with the statutory requirement to verify identity. **Social distancing policies now mean that solicitors cannot verify a client's identity on a face-to-face basis as they normally would.**
- 4.4. **The Society has developed the following cost-neutral alternative solution** which solicitors may wish to adopt **during the crisis** where they have not subscribed to an electronic verification provider.
- 4.5. Remember, when you act for clients without meeting them you should (1) complete a risk assessment, (2) be satisfied that it makes sense in all the circumstances to verify without meeting in person and (3) be comfortable that you can mitigate the risks of identity fraud.

Video Conferencing with Photographic ID Selfie Approach

- 4.6. Using video conferencing⁴ to conduct face-to-face verification of client identity, solicitors should:
 - a) **Request the client email a high-resolution image of the identification document by secure means** in advance of the video conference together with **an image of a document which confirms their address** (e.g. a recent utility bill)
 - b) **Save the images** to an AML compliance folder or your case management system and/or **print the images** for hard copy records
 - c) Ensure that they are **reasonably satisfied** that the identification document is **authentic, valid and current**
 - d) **Schedule a video conference with your client to verify the identity documents** are those of the client. During the video conference, ask the client to **show the original identification document.**

⁴ Information about possible video conferencing providers is accessible in the President's eBulletin on 23 March 2020 - [Remote technology: practical solutions to consider](#)

- e) During the video conference, **examine** (1) the image in the identification document shown during the video and (2) the electronic images of identity documents received by email: **are you reasonably satisfied that the identity documents verify the identity of the client?**
- f) The Society suggests also informing the client that the verification of identity video call will be **recorded with the client's consent**. This may be an especially important step where statutory verification of identity is required as it may deter money launderers and provides solicitors with a highly reliable record. Information about how to record video calls is available from individual suppliers. Zoom have a helpful video for [Zoom paid subscribers](#), with step-by-step instructions for [Microsoft Teams](#) is also available
- g) Document the reason why the solicitor was unable to verify the client's identity in accordance with the existing requirements together with the method used to verify the client's identity. Also note the date on which verification took place by video conference

Security Tips

- 4.7. **If you do not have encrypted email, you can reduce the risk of ID documentation being vulnerable to hacking** by:
 - a) saving attachments containing images of ID documents to an AML compliance folder or your case management system and/or print the images for hard copy records. (to your computer/cloud storage/case management)
 - b) deleting the email
 - c) emptying the folder containing deleted items
 - d) remember: if you reply to an email containing ID attachments, you will also need to delete your reply from sent and deleted items folders
- 4.8. For **added security**, where your client has access to a computer, they may wish to cut and paste the images of their ID documents into a Word file which can then be encrypted prior to emailing to their solicitor. Information about how to encrypt Word files is available in the recent [Practice Note from the Technology Committee on secure email systems](#).

Reminder: Key Identity Verification Guidance

- 4.9. In terms of the **types of documents/information** you can rely upon, the legislation indicates that you should have **reasonable grounds to believe that the documents or information can be relied upon to confirm identity including documents from a government source**.
- 4.10. Additional key identity verification guidance includes:
 - a) **Identification** of a client or a beneficial owner means establishing a client's identifying details, such as their name and address. It is simply the process whereby a solicitor

obtains from a client the information they consider necessary to know who the client is.

- b) **Verification** of identity means obtaining some evidence which supports a client's claim of identity. It is the process through which the solicitor establishes that the information obtained in relation to the client's identity is correct on the basis of satisfactory evidence. Verification requires more than the collation of copy identity documentation and utility bills. Typically, verification means using credible photographic identity documentation to confirm that a person is the person they claim to be.
- c) Very limited flexibility around the timing of the statutory duty to verify identity is available. When providing an AML-regulated legal service, the verification of the identity of the client must take place **prior to the establishment of a business relationship** or the carrying out of a transaction or service. (Also, identification and verification must take place prior to carrying out any service for a customer if there are reasonable grounds to suspect money laundering/terrorist financing (ML/TF) with regard to specific statutory factors.) Verification of the identity of the client may be completed during the establishment of a business relationship **if this is necessary not to interrupt the normal conduct of business and there is no real risk of money laundering** or terrorist financing occurring, **provided that the verification is completed as soon as practicable after the initial contact**. Where a solicitor enters into a business relationship in advance of verification of identity, he/she should be extremely careful regarding the acceptance of any funds from the client, including the return of any funds transferred by the client to the solicitor prior to the completion of verification. The Society's best practice guidance is that solicitors complete CDD prior to agreeing to provide an AML-regulated legal service – this will be in the firm's best interest from a risk management perspective.

5. *AML Resources & Supports*

- 5.1. The following suite of AML Resources are available.
- a) [2018 AML Guidance](#) (these supplement the [2010 Guidance Notes](#))
 - b) Three [Infographics](#) which communicate solicitor AML obligations visually
 - c) Four Sample Adaptable Forms:
 - 1. [Business Risk Assessment](#)
 - 2. [Policies, Controls and Procedures](#)
 - 3. [Risk Factor Questionnaire for Customer Risk Assessment](#)
 - 4. [‘Document your Thought Process’ forms for Customer Risk Assessment](#)
- 5.2. Also available is the Society’s NALA approved [AML Client Care Leaflet](#) designed to help solicitors communicate their AML duties to clients.
- 5.3. Solicitors can email the AML Helpline aml@lawsociety.ie for support with AML guidance. While the AML Helpline cannot confirm the adequacy of AML documentation or approach in specific circumstances and legal advice cannot be provided, the Helpline assists solicitors in navigating best practice guidance.
- 5.4. In order to provide the most up-to-date guidance to best meet the needs of solicitors, this Guidance is a ‘living document’ which may be updated as needed.