Anti-Money Laundering, Combating Terrorist Financing and Sanctions

Guidance

Introduction

Overriding Principle 2 of the ***CLC Code of Conduct*** requires you to maintain high standards of work. The approach set out below aims to help you comply with that principle. You are not obliged to adopt this approach, but it offers you an example of the minimum commitment that the ***CLC*** considers is likely to be needed for compliance.

Should you use the provided example as your starting point, you will need to make amendments to ensure that it matches your particular circumstances. The CLC has found that just copying and pasting the example AML policy/procedure is normally a strong indicator of a weak compliance culture and of non-compliance with the CLC's ***Regulatory Arrangements*** in respect of anti-money laundering, combatting terrorist financing and sanctions.

The procedures you adopt should apply a risk-based approach, taking into account the services you offer, your ***client*****s** and the size and nature of your practice.

Contents:

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1. ***Example Policy***

IMPORTANT

It is essential that that the business and its ***employee*****s** comply with the letter and spirit of this policy since failure to do so may amount to a criminal offence for which it is possible to be sentenced to a term of imprisonment.

1. As a business, we are committed to complying with the ***anti-money laundering legislation***, in particular the Proceeds of Crime Act 2002, the Terrorism Act 2000 (each as amended) and the Money Laundering Regulations 2017 (as amended by the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 and subsequent

amendments) (the **AML Regulations**).

2. We must at all times take steps to ensure that our business is not used to launder the proceeds of crime or to assist terrorist financing.

3. We must explain to ***client***s the need to obtain proof of identity and the limitations on our duty of confidentiality to them either in our ***terms of engagement*** or otherwise in writing.

4. We accept that the ***Nominated Officer*** has full autonomy in carrying out their duties.

5. We will ensure that you are given appropriate and regular training to help you comply with AML/CTF, this policy and the procedures of the business.

6. We will communicate to you details of any types of business we have decided not to accept.

7. We will regularly monitor and review our policies, procedures and training. The AML policy and procedure must be evidenced as having been reviewed **at least annually** and also whenever new AML legislation is implemented or when significant changes are made to the practice's AML processes and procedures.

8. We require all of the business's members to follow carefully the procedures set out in the AML procedure.

Effective Date:	**[Insert date]**
Review Date:	**[insert review dates]**
Review record	**Reviewed [Set out review dates]**

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2. *Example Procedure*

IMPORTANT

It is essential that that the business and its ***employees*** comply with the letter and spirit of these procedures since failure to do so may amount to a criminal offence for which it is possible to be sentenced to a term of imprisonment.

MLCO [Insert name [if applicable]] MLRO [Insert name of manager] Deputy MLRO [Insert name of manager]

Procedures

Risk Assessment:

1. This practice has undertaken a comprehensive Practice Wide Risk Assessment (**PWRA**) which assesses the risk of money laundering that this practice is exposed to in line with Regulation 18 of the AML Regulations. The conclusion is that the practice is at a [low/medium/high risk] of being used to launder the proceeds of crime.

2. As part of the PWRA, the risk of each of the services that this practice undertakes has also been assessed. The conclusions that have been reached are:

   A. [List Service (eg residential conveyancing) and risk conclusion]

   B. [List Service (eg probate) and risk conclusion]

C. Proliferation financing [Note this is a mandatory element of a PWRA[1]];

3. This practice also undertakes client/matter level risk assessments in order to assess the level of risk arising in each transaction in accordance with Regulation 28(12) of the AML Regulations. A template of this risk assessment can be found [Specify where] and is to be used on every matter. These risk assessments will be carried out by [specify members of staff] at [Specify stages].

4. The client/matter risk assessment will include all relevant risk factors in a particular matter and will come to a conclusion as to the level of Client Due Diligence (CDD) to be undertaken by the Practice[2]. The risk assessment should take into account the risk factors identified in paragraph 5.11 of the LSAG Guidance.

5. The practice will not accept cash payments in excess of [amount] made either to any individual or to any practice bank account.

Client Due Diligence:

6. You must not act or continue to act for a ***client*** until all requirements for ***Customer Due Diligence*** (***CDD***) or ***Enhanced Customer Due Diligence*** (EDD) have been met.

   If these cannot be met, you must:

   a) not establish a new business relationship; or

   b) terminate any existing business relationship.

   You must then consider whether to make an internal report to the ***Nominated Officer***.

7. The purpose of ***CDD*** and ***EDD*** is to help you decide whether your ***client***s are the persons they say they are and that you can:

   a) know with some certainty whether your ***client***s are acting on behalf of another (called a ***beneficial owner***).

   b) establish there is nothing to prevent you providing the service requested.

   c) assess whether the purpose of the instruction is consistent with the lifestyle and economic means of your ***client*****s**.

   d) establish there are no obvious elements which suggest that any transaction is unusual or overly complex in the context of those instructions.

8. Whenever instructed by any ***client*** you must obtain evidence as early as possible that:

   a) the ***client*** is the person he or she claims to be, for example, by a current signed passport or current UK photo driving licence or by using an electronic ID system; and

   b) a person of that name lives at the address given, for example, by a utility bill less than 3 months old or mortgage statement; and

   c) in transactions where the client is contributing funds either themselves or through a third party, that you obtain evidence of and understand the client's and/or giftor's source of funds and/or source of wealth.

9. The **extent of CDD** to be carried out is determined by:

[1] Please see the CLC's sectoral risk assessment for an in-depth examination of proliferation financing.
[2] If the practice undertakes Enhanced Due Diligence (EDD) on all matters please amend this paragraph accordingly.

(a) The Practice Wide Risk Assessment (PWRA); and

(b) The client/matter risk assessment which has been completed at the outset and repeated at various stages during the transaction.

10. The measures that you take when applying CDD must be completed **as early as possible** before any client money has been accepted from the client (with the exception of money on account of costs/fees).

11. You must take copies of all relevant documentation relating to client due diligence and keep them for at **least 5 years** after the end of the client relationship.

12. The levels of CDD which this practice carry out are:

- [Specify – for example, simplified, standard and enhanced]

13. Photocopies **must** always be certified as being true copies of the original and signed and dated by the person making the copies (not applicable if electronic ID checks have been used).

14. Regulation 39 Reliance of the 2017 AML Regulations: In certain circumstances CLC practices can rely on other regulated professionals to undertake and conduct CDD for them, subject to a written agreement.

15. This practice does/does not use Regulation 39 reliance.

16. [If applicable] This practice has agreements with the following regulated organisations who we rely on to undertake CDD, pursuant to Regulation 39:

A. [Insert name of organisation]

17. [If applicable] The procedure for relying on another organisation to undertake CDD pursuant to Regulation 39 is [Elaborate upon procedure to be followed if following this regulation].

18. There are three levels of CDD which may be applied, depending on the circumstances.

Simplified Due Diligence (SDD): [Outline if SDD is something your practice undertakes]

19. SDD is the lowest applicable level of due diligence and only applies in certain situations where the practice has concluded that the risk of money laundering in the transaction is **low** having considered the PWRA, guidance from the CLC and certain client risk factors.

20. Regulation 37 of the 2017 AML Regulations contains several risk factors which must be taken into account when considering whether SDD is appropriate:

a. Client risk factors: for example, whether the client is a publicly owned body or is a company whose securities are listed on a regulated market.

b. Product, service, transaction or delivery channel risk factors: for example whether the service provided relates to a child trust fund.

c. Geographical risk factors: whether the country where the client is resident, established or registered is the UK or a third country which has effective money laundering controls and systems.

21. The consideration of the risk factors in paragraph 20 above must be evidenced in the client/matter level risk assessment.

22. Even if you have concluded that SDD is appropriate, the transaction must be subject to ongoing monitoring and the risk reassessed should any new information be received.

23. The measures that this practice will take if SDD is assessed as being appropriate are:

A. [List practice's procedure for SDD]

24. CLC Guidance note: SDD is unlikely to ever be appropriate in relation to either **residential** or **commercial conveyancing** in light of the conclusion of the National Risk Assessment (2020) and the CLC's sectoral risk assessment that both of these services are at a high risk of being exploited by money launderers. If you do apply SDD to a conveyancing transaction you must make sure you clearly document the reasons for doing so on the file and ensure that it is reflected in the client/matter risk assessment. For other services, such as probate or will writing, please have regard to the CLC's sectoral risk assessment.

Standard Due Diligence (StDD):

25. This level of due diligence will be applied in the following situations:

A. [list the situations where StDD will be applied – for example all residential and commercial conveyancing transactions which have been assessed as medium risk]

26. Under this level of CDD, the practice will take the following steps to ensure that clients are being identified appropriately in line with the AML Regulations and the relevant CLC codes:

A. [List the specific procedures being undertaken at your practice: for example we will undertake electronic ID checks using [X] provider on all clients.]

B. [When it is not possible to undertake electronic checks on a client we will [Insert procedure].

Enhanced Due Diligence (EDD):

27. This level of due diligence is the most comprehensive and it is critical to note that in certain situations application of it is mandatory under the 2017 AML Regulations (as amended).

28. The situations where EDD is mandatory are:

A. Where the matter or service that the practice is dealing with is of a type that has been assessed as **high risk** by the CLC in the **sectoral risk assessment** or in the practice's own practice wide risk assessment (PWRA).

B. If the client or a counter party to the transaction is "established" in a High Risk Third Country (HRTC)[3];

C. If a client has been identified as a Politically Exposed Person (PEP) or is a family member or known close associate of a PEP.

D. If the practice has concluded in the client/matter risk assessment that a matter is high risk or there is another indicator that the matter is high risk due to

[3] For a natural person this means being resident in that country (and not just that they were born there) and for a non-natural person that would mean having been incorporated in or having their head office in the country in question. For further guidance see LSAG at paragraph 6.19.1. See paragraph 58 for further information on the current lists for HRTC's.

conclusions in the PWRA or the NRA.

E. The matter is considered to be high risk having taken into account the factors listed in Regulation 33(6) which can be found in the LSAG Guidance under paragraph 6.19.2.

F. The transaction:
   (i) Is complex or unusually large;
   (ii) Forms an unusual pattern of transactions, or
   (iii) Has no apparent economic or legal purpose.

[CLC Guidance note: As to whether a transaction is "complex" or "unusually large", both of these factors are to be judged in relation to the normal activity of the practice and for the client]

29. The practice has considered the AML Regulations and its own range of services and has concluded that the following transactions are to be considered "unusually large" and/or complex:

A. "Unusually large" transactions are any above [Insert value over which EDD will be applied – for example in excess of £1 million]
B. In relation to transactions this practice considers that the following is to be considered "complex": [Insert what the practice considers to be complex – for example if the transaction involves complex corporate structures]

30. The measures which this practice will undertake if it is concluded that the matter is high risk and that EDD should be applied are:

A. [List the additional measures the practice will take if this conclusion is reached – having regard to Regulation 33(5)]

Ongoing monitoring:

31. Ongoing monitoring of business relationships is required under Regulation 28(11) and relates to scrutinising transactions throughout their life cycle to ensure that the transactions are consistent with the practice's knowledge of the client and their business and risk profile.

32. An important component of ongoing monitoring is ensuring that existing records are reviewed and kept up to date. The other aspect of ongoing monitoring is to ensure that source of funds and source of wealth is being appropriately understood and scrutinised.

33. This practice's procedure with respect to renewing CDD for existing clients is:

[Insert the practice's position on renewing CDD for repeat or existing clients or where the client's circumstances change]

[CLC Guidance note: CDD must be applied for existing clients on a risk-based approach or when the circumstances of a client have changed. For this latter point the factors in Regulation 27(9) must be considered. Where there has been a significant gap between instructions (over a year in a high-risk matter as assessed by the practice or the CLC in the sectoral risk assessment) then the practice should consider refreshing CDD).

34. If the practice becomes aware that a client's circumstances have changed since they last instructed us, then we must reapply CDD on a risk-based approach. Examples of a

change in circumstances are:

A. [Insert what the practice considers would be a change in circumstances – for example if the identity of the client or beneficial owner of the non-natural person changes]

35. Whenever the practice undertakes ongoing monitoring this must be recorded on the file to capture what was considered, what action was taken (if any), the reasons for the decision, who carried out the monitoring work and when.

36. If a matter has been concluded to be high risk and therefore subject to Enhanced Due Diligence (EDD), then Enhanced Ongoing Monitoring (EOM) must be applied. This practice will undertake the following additional steps if EOM is applicable:

A. [Insert additional steps practice will take to discharge its obligations of enhanced ongoing monitoring].

Source of funds and Source of wealth:

37. **Source of funds** relates to the funds which are being used for the particular matter for which the practice has been instructed. The LSAG guidance describes the key question as being not just "where the money for the transaction comes from," but also "how and from where did the client get the money for this transaction or business relationship?".

38. **Source of wealth** relates to how a client generated their entire wealth or assets. The LSAG guidance again highlights a useful question to address this obligation: "Why and how does the individual have the amount of overall assets they do – and how did they accumulate/generate these?".

39. You must scrutinise the source of funds and source of wealth in all relevant transactions where the client has contributed funds to the transaction[4]. This scrutiny must involve (a) recording the SOF/SOW on file and (b) ensuring the evidence you obtain to answer the questions is recorded on file.

40. The extent of the checking will be guided by the risk assessment of the matter **and** the risk assessment of the particular service. In high-risk services/matters, more evidence should be obtained and recorded on file in line with Enhanced Due Diligence (EDD).

41. The practice has developed a SOF/SOW checklist to use which can be found here [Insert where this can be located] and must be used by fee earners on every relevant matter and recorded on file.

42. The procedure which this practice adopts for scrutinising the source of funds and source of wealth is:

A. [Insert how the information will be obtained – eg through a questionnaire at the outset]

B. [Insert when the information will be obtained – CLC Guidance: this should be as early in the transaction as possible]

C. [Insert which information/documents will be obtained – for example if the client

[4] For example, in conveyancing transactions where the client is contributing funds towards the transaction or is receiving a gifted deposit. This also applies to trusts where your client has a trust funding role or probate/estate administration where there are unexplained monies in the deceased's estate.

is purchasing a property using the proceeds of a property sale, then we will obtain (i) a completion statement and record this one file]

D. [For savings – the practice will obtain at least [x] months of bank statements and then request follow-up documents as necessary until satisfactory evidence of savings having been legitimately accumulated by the client, has been received.

E. [For source of wealth – in low risk/medium risk situations the practice will obtain [for example payslips]. In high risk matters the practice will obtain [enter appropriate evidence].

43. Please note that the due diligence undertaken on **giftors** to any transaction, which includes the requirement to scrutinise the SOF and SOW, is to be completed in the same way and to the same standard as a client of the practice.

44. **Residential and commercial conveyancing:** In light of the high-risk nature of these services, SOF and SOW must be checked in every purchase transaction. Any deviations from this policy must be discussed with the MLRO.

45. **Probate and estate administration:** The PWRA concluded that this service is at a [Insert risk level] of exploitation by money launderers: [Insert practice's policy on ensuring that monies coming into the client account are appropriately scrutinised].

46. **Services involving trusts:** The PWRA concluded that this service is at a [Insert risk level] of exploitation by money launderers: [Insert practice's policy on ensuring that the SOF/SOW of relevant individuals is adequately checked].

47. **Cryptocurrency:** This practice does/does not accept crypto assets, including crypto assets which have been converted to Pounds Sterling (or other currencies) as a source of funds t. This practice is able/not able to accept cryptocurrency under its professional indemnity insurance (PII) provider.

48. **[If the practice is able to accept cryptocurrency and is able to accept crypto assets]** – Outline procedure for establishing SOF and SOW in such transactions.

49. CLC Guidance note: With respect to trusts and trust related matters, the LSAG guidance requires that where your client **has a trust funding role** you must undertake SOF/SOW checks on a risk appropriate basis. If the matter has been assessed as high risk, then the CLC would expect practices to assess and check the source of funds which form the basis of the assets in the trust or which were used to acquire them. In medium or low risk situations the practice should ask the client about the source of funds. If the answer is satisfactory and in line with the practice's knowledge of the client, it should then be recorded on file.

Beneficial Owners and Non-Natural Persons:

50. Identifying who exercises ultimate control over a client is crucial in discharging the obligations which are contained in Regulation 28(4)(a). For natural persons the client may be treated as the beneficial owner.

51. For non-natural persons the "beneficial owner" can change according to the type of entity or organisation which the practice is dealing with. The Regulations require that the beneficial owner must be identified and reasonable measures taken to verify their identity.

52. For a **body corporate**[5] the Regulations define a beneficial owner as any individual who:

A. Exercises ultimate control over the management of the body corporate[6];

B. Ultimately owns or controls, including through bearer share holdings or other means, more than 25% of the shares or voting rights in the body corporate[7];

C. Meets the definition of a person with "significant control" over the company as specified under Part 1 of Schedule 1A of the Companies Act 2006[8].

53. For a **trust** the Regulations provide the following definition of who is a beneficial owner:

A. The settlor;

B. The trustees;

C. The beneficiaries (or if not yet determined – the class of persons in whose main interest the trust is set up);

D. Any individual who has control over the trust.

54. This practice acts for the following entities [delete as appropriate]:

(a) Public companies listed on regulated markets;

[Insert the practice's CDD procedure for this type of entity, what steps will be taken to understand ownership and control structure and what documents will be obtained]

(b) Private and unlisted companies in the UK;

[Insert the practice's CDD procedure for this type of entity, what steps will be taken to understand ownership and control structure, ID beneficial owners and what documents will be obtained]

(c) Private and unlisted companies based overseas;

[Same as above – also take into account the Register of Overseas Entities requirements]

(d) Partnerships;

[Same as above]

(e) Trusts;

[Insert the practice's CDD procedure for trusts + which types of beneficial owners will be identified + what documents will be obtained]

(f) Other (for example foundations or charities);

[Same as above]

55. If you discover a **material**[9] discrepancy between the information you collect about a

[5] This does not apply to companies listed on a regulated market.
[6] Bodies corporate include Limited Liability Partnerships (LLPs).
[7] If no individual owns or controls more than 25% then it will be appropriate that the senior managers (for example the CEO or the Board) are the relevant beneficial owners.
[8] The individual holds more than 25% of shares or more than 25% of the voting rights, has ownership of the right to appoint or remove directors, has significant influence or control over the company and in respect of trusts has significant influence or control over the activities of that trust or firm.
[9] If you conclude that a discrepancy is not 'material', in cases where a discrepancy could not reasonably be

non- natural client and information collected from a relevant register, you must report the discrepancy to Companies House as soon as reasonably possible.

Politically Exposed Persons:

56. The policy of this practice is that we act/do not act for **domestic** and **non-domestic** Politically Exposed Persons (PEPs) or their family members or known close associates. PEPs are individuals who are or have been entrusted with prominent public positions within the last year. The list of such positions can be found under Regulation 35(14) and includes heads of state, members of courts or ambassadors.[10]

57. This practice will identify PEPs through [specify the CDD measures that the practice will undertake to identify PEPs such as electronic checking and which provider].

58. If the practice does not undertake an electronic check we will take the following measures to identify PEPs: [Insert practice's procedures for manual checks on PEPs for example using open source information].

59. If a client is flagged up as a PEP or their family member or known close associate, then the practice will [Insert procedure – for example record this on the matter risk assessment and ensure that EDD is undertaken].

60. The AML Regulations have created a distinction between **domestic PEPs** and **non-domestic PEPs**. The changes stipulate that domestic PEPs may be considered to be lower risk than non-domestic PEPs provided that there is no other enhanced risk factors and also that a **lower level of EDD** can be applied for domestic PEPs.

> CLC Guidance note: The Regulations require that where a PEP has been identified, **senior management approval** must be obtained for establishing or continuing the business transaction with that person, "adequate measures" must be taken to establish SOF and SOW and closer **ongoing monitoring** must be conducted. Further guidance, including for PEPs no longer entrusted with public functions and timeframes, can be found in the FCA guidance which can be found here: https://www.fca.org.uk/publication/finalised-guidance/fg17-06.pdf

Sanctions:

61. Sanctions checking must be undertaken irrespective of the risk level and applies to all services this practice offers. This includes payments on account: the sanctions regime can be considered to be broader than the AML regulations.

62. The practice must have regard to the latest sanctions lists and ensure that legal services are not being offered to any individual or entity which is a Designated Person (DP) as this could, in the absence of a licence from the Office of Financial Sanctions Implementation (OFSI), constitute a **criminal offence**.

63. [If offering trust services] – Please note that it is an offence to offer trust services to or for the benefit of any DPs or any person **"connected with"** Russia under the Russian sanctions regime unless permitted to do so by a licence or if the trust is being offered under an ongoing arrangement that was in existence prior to 16 December 2022.

> CLC Guidance note: A person is considered to be "connected with" a DP if they live in

considered to be linked to money laundering, terrorist financing or conceal the details of the business of the customer, this does not need to be reported to Companies House.

[10] PEPs can also include – family members of a PEP and known "close associates".

or are located in Russia. For non-natural persons such as a corporate body this would be if they are incorporate or constituted under Russian law or domiciled in Russia.

Regular training should be provided to employees who are undertaking work in scope of the sanctions regime and risk assessments at all levels should consider the sanctions risk which can play a role in determining the overall money laundering risk.

64. It is crucial that CDD is applied to both individuals and entities and is also able to identify beneficial owners and any individuals who exercise control over the entity.

65. The test for control of an entity under the sanctions regime is different to the AML regime and is defined as:

A. The person holds (directly or indirectly) more than 50% of the shares or voting rights in an entity;

B. The person has the right (directly or indirectly) to appoint or remove a majority of the board of directors of the entity;

C. It is reasonable to expect that the person would be able to ensure that the affairs of the entity are conducted in accordance with the person's wishes.

66. This practice undertakes sanctions checks by [Insert practice's procedure such as electronic checks or manual checks].

67. If the practice's client due diligence identifies that a client or counter party (such as a giftor) are a DP then the practice's policy is to [Insert procedure – eg no action to be taken on file, report made to OFSI].

68. CLC Guidance note: the sanctions regime applies to all authorised practices and applies to payments for legal services including payments on account. There is strict liability on behalf of the practice and a report to OFSI must be made if you know or suspect that: a breach of the sanctions has occurred, that a client or other party is a DP or that you are holding assets which are frozen. Extra care should be taken if you are undertaking manual checks – OSFI has a specific system it has introduced which enables easier searching of current sanctions lists: https://sanctionssearchapp.ofsi.hmtreasury.gov.uk/

<u>High Risk Third Countries:</u>

69. The UK's list of such countries is derived directly from the Financial Action Task Force (FATF) lists which can be split into: countries subject to a call for action ('**Black List'**) and countries subject to increased monitoring ('**Grey List'**).

70. If a client is "established"[11] in any country on either the black list or the grey list then this practice will undertake Enhanced Due Diligence (EDD). Please note this applies to both natural and non-natural persons such as companies and trusts.

71. If a client is established in such a country then this practice's procedure is [Insert the actions that the fee earner should take in this situation such as contacting the MLRO and/or filling out a document for the file].

72. The current combined list can be found at the following link and must be consulted for

[11] Which means that a natural person is resident in that country (not just born in that country) and for a non-natural person that the entity's has been incorporated in that country or has its principal place of business there.

every matter and client: here. Please note that the list is regularly updated at FATF plenary meetings, details of which can be found here.

Training:

73. The Money Laundering Regulations (MLRs), under Regulation 24, require that practices must ensure that employees are made aware of the law relating to money laundering and terrorist financing and also given regular training "in how to recognise and deal with transactions and other activities or situations which may be related to money laundering or terrorist financing".

74. This practice will ensure that employees are given AML training:

    A. At induction shortly after a new employee starts.

    B. On an [insert frequency – recommended to be at least annually] basis.

75. The practice will also ensure that more senior members of staff, such as the [MLCO, MLRO, DMLRO] receive appropriate enhanced AML training.

76. The modes of training will be [Delete as appropriate]:

    a. Internal training;

    b. External training;

    c. [other types of training];

77. A record of the AML training that the practice's employees undertake will be maintained and produced to the CLC upon request in accordance with Regulation 24(1)(b).

Internal controls:

Independent audit:

78. The AML Regulations require that practices undertake independent audits under Regulation 21 where appropriate to the size and nature of the business.

79. In light of the size and nature of work that this practice undertakes, it has been decided that an independent AML audit will/will not be undertaken [on an [frequency of audit] basis by [auditor name or position].

80. [If applicable] The reasons for not having an AML independent audit are that [provide explanation].

81. [If applicable] Our independent auditor will be [external/internal]. [If internal] To ensure their independence is maintained we will [insert measures to ensure that the auditor is separate from the function being reviewed].

82. We will ensure as a CLC practice that we keep records of any audits that have been undertaken and provide them to the CLC on request.

Screening:

83. The practice is obliged to screen all employees who are undertaking relevant services in scope of the AML Regulations. This requirement is contained in Regulation 21(b) and relates to screening (a) prior to the appointment and (b) during the course of the employment.

84. The MLRs set out that screening must involve assessing the "skills, knowledge and

expertise of the individual to carry out the functions effectively" and also "the conduct and integrity of the individual."

85. This practice will adopt the following approach to screening relevant employees:

a. On appointment: [List all the steps the practice will take – for example [**Skills, knowledge and expertise:** qualification checks, test of knowledge/skills pertaining to role, validating practising status via the relevant register etc].

Conduct and integrity: Taking up references, checking criminal history (DBS), finance or credit check, checking disciplinary history etc.

b. During appointment (Annual checks): [List all the steps the practice will take – for example [**Skills, knowledge and expertise**: annual competence declaration, appraisal procedures, review of any AML related training].

Conduct and integrity: Adverse checks via search engines, checking disciplinary history via relevant register.

86. CLC Guidance note: The LSAG Guidance contains detailed guidance as to what checks should be adopted to discharge obligations under the AML Regulations – see page 127. As the guidance notes, the practice should carefully consider what is appropriate for their own practice. The term "relevant employees" is quite broad and can cover not only MLRO but also other staff responsible for risk assessments, CDD and other AML related controls.

Approval of BOOMs:

87. Regulation 26 of the MLRs requires that **Beneficial Owners, Officers and Managers** (BOOMs) in practices and firms are approved by their supervisory authority. This practice is regulated by the CLC and therefore all BOOMs must be approved – BOOMs acting without approval could subject to a **criminal conviction**.

88. Those who are included in the BOOM definition are:

- Beneficial Owners: Individuals with significant control of the entity – 25% share ownership or a body corporate or direct/indirect control of said shares.
- Officers: officers, executives (CEO, CFO, CTO etc), managing directors, board members and would include the MLCO (who is typically a board member).
- Managers: roles which sit below Officers which includes: senior leadership team, heads of departments and also includes the MLRO.

89. Any BOOMs which meet the definition above must be approved prior to appointment by the practice. Contact should be made directly with the CLC licensing team: licensing@clc-uk.org.

90. The current list of BOOMs at this practice can be found [insert location of list of BOOMs].

Warning Signs:

91. Examples of Warning Signs which we must take into account in deciding whether to make an internal suspicion report are set out in the Acting for Lenders and Prevention & Detection of Mortgage Fraud Code and ***Guidance***, paragraph 16, and include:

- secretive ***client***s;
- involvement of unconnected third parties
- unusual instructions
- variance in signatures
- an existing ***Client*** asks you to rely on former identity checks i.e. 'reliance' exemption
- where a ***Client*** is introduced by a third party who is not well known to the ***Authorised Person*** or the firm
- ***Client*** declines to be met or come to the office and/or uses an intermediary to communicate with the body and/or asks the body to contact him at his business or another address rather than at his home address
- the ***Client***'s credit history is not aligned to their age (it might be longer or shorter than expected)
- monies paid by someone other than ***Client***
- the transaction does not seem consistent with your knowledge of the ***Client***'s financial position and income sources
- impatient parties putting pressure on you to complete the transaction quickly where the reason for urgency is not immediately apparent
- where another ***Authorised Person*** has previously been acting
- document not signed in front of you
- reliance on the diligence of another party
- discrepancies in value recorded in documents
- where a ***Client*** shares an address with one or more parties to the transaction
- overpayments of money.

This list is not exhaustive and you will need to exercise your skill and judgment to assess any circumstances involved in a transaction which may seem to you or to an ordinary member of the public to be unusual or out of the ordinary.

<u>Suspicious Activity Reporting and MLRO:</u>

92. Disclosures of money laundering or terrorist financing suspicions are mandatory within the regulated sector under POCA 2022 and TACT 2000. Disclosures must be made where the individual "knows" or "suspects" that money laundering or terrorist financing is taking place.

93. An **internal suspicion report** must be submitted to the MLRO as soon as possible if anyone working at the practice has knowledge or suspicion that money laundering or terrorist financing has taken place.

94. This practice's internal suspicion reporting template can be found [Insert location of template].

95. Upon receipt of each internal suspicion report from any of the business's staff, the

MLRO must acknowledge receipt in writing to the person making the report. The MLRO must then consider carefully whether a report should be made to the ***National Crime Agency*** (NCA).

96. The MLRO must make a report to NCA in the prescribed form where they have **actual** knowledge or suspicion, or where (based on what an ordinary member of the public might think) there are **reasonable grounds** to know or suspect that a person is engaged in money laundering[12].

97. The practice must maintain a record of each decision you have made and keep it for at least 5 years, whether or not you send a report to NCA.

98. The MLRO must support and advise members of staff who make internal suspicion reports, emphasising the implications for them of "tipping off". In particular the MLRO must do this where we are waiting for Consent to proceed from NCA.

99. The MLRO must have access to all files, records and information and be given sufficient resources and authority to fulfil the role and be allowed to carry out their duties without fetter, influence or interference.

CLC Guidance note: There are two kinds of SARs: intelligence SARs (Which provide information to the NCA) and defence against money laundering (DAML) SARs. Where a DAML SAR is submitted, if the practice does not receive a response from the NCA within **7 working days from the day after the SAR is submitted** then they are deemed to have "implied consent" to continue with the transaction[13].

CLC Guidance note: The practice must not tip off a client that either (a) a SAR has been made to the NCA or (b) that an internal suspicion report has been made to the MLRO or (c) that an investigation into money laundering is being contemplated or carried out.

Effective Date:	**[Insert date]**
Review Date:	**[insert review dates]**
Review record	**Reviewed [Set out review dates]**

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3. Checking identity by electronic means

100. This practice makes use of the following electronic/digital providers as follows:

a. [Insert name of provider – such as Infotrack] – this service is used for [insert name of function]

b. [Insert more if appropriate] – this service is used for [insert name of function]

101. The following individuals at the practice will have access to the services above: [Outline who at the practice has such access – such as fee earners, supervisors etc].

[12] Please note that this is both a subjective and objective test.

[13] Please note that submitting a DAML to proceed if the matter has not yet exchanged may be considered to be unethical. In such circumstances where the practice has actual or reasonable grounds for knowledge or suspicion, the practice should terminate the instruction and submit an information only SAR.

102. The following individuals at the practice will be responsible for interpreting results: [Outline who will be responsible for this]

103. You must obtain "satisfactory evidence of identity", which must be reasonably capable of establishing (and does in fact establish to the satisfaction of the person who obtains it) that the potential ***client*** is the person they claim to be. Electronic evidence obtained should provide you with a strong level of certainty that any individual is the person they claim to be and that a person of that name lives at the address given using the ***client***'s full name, address and date of birth as its basis.

104. You must satisfy yourself that any **system or product** used must be sufficiently robust to provide the appropriate level of assurance that ***client***s are who they say they are and that it is secure from fraud and misuse. Data accessed from a single source (e.g the Electoral Roll) will not normally be sufficient on its own. Some databases will offer a higher degree of confidence than others.

105. Before using a commercial agency for electronic verification, you must be satisfied that:

a) The information supplied by the data provider is considered to be sufficiently extensive, reliable and accurate; and

b) The agency has processes which allow its users to capture and store the information that they have used to verify an identity.

c) That the product has access to the latest sanctions and PEP lists and will check them.

The assessment should be cumulative and you may consider it appropriate to seek additional evidence (e.g. a copy of a document bearing a signature and a date of birth) in all cases or, at least, where any ***client*** poses a higher risk of identity fraud, money laundering or terrorist financing, or where the result of any electronic verification check gives rise to concern or uncertainty over the ***client***'s identity.

106. You may wish to consider whether the provider meets each of the following criteria, namely that it:

a) Is recognised to store personal data through registration with the Information Commissioner's Office;

b) Uses a range of positive information sources that can be called upon to link an applicant to both current and previous circumstances;

c) Accesses negative information sources such as databases relating to identity fraud and deceased persons;

d) Accesses a wide range of alert data sources; and

e) Has transparent processes that enable you to know what checks were carried out, what the results of these checks were and what they mean in terms of how much certainty they give to the identity of the subject of the identity enquiry.

107. Data from more robust sources where inclusion is based on proof of identity (such as government departments) ought to be included (under paragraph 12(b) of the AML Regulations). Negative information checks (under paragraph 12(c) of the AML Regulations) minimise the risk of impersonation fraud.

108. It is also important for:

a) The process of electronic verification to meet a standard level of confirmation before it can be relied on. In circumstances which do not give rise to concern or uncertainty, the standard level would be expected to be:

i One match on an individual's full name and current address *and*

ii A second match on an individual's full name and *either* their current address or their date of birth.

b) If the result of a standard verification check gives rise to concern or uncertainty over the ***client***'s identity, the number of matches required to provide reasonable satisfaction as to their identity should increase. You should ensure you understand the basis of the system you use in order to be satisfied that the sources of the underlying data reflect the ***CLC***'s requirements and cumulatively meet the standard level of confirmation set out above as commercial agencies use various methods of displaying results (e.g. by the number of documents checked or through scoring mechanisms, etc).

4. Example of AML/CTF Training Record

Date	Details of training and topics covered	Name of attendee	Training provider	Attendee's signature	Trainer's signature

The signature of the attendee acknowledges that training has been received to satisfy the current requirements of the practice's AML/CTF policy.

The individual at the practice responsible for keeping the training record up to date is: [Insert name]

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5. Example of Internal Reporting Form and Record of Decision

NB: Neither this form nor any copy is to be kept on the ***client*** file

PART 1

Name of Person making report	
Name of Nominated Officer	
Name(s) of client	
File Reference Number	

Address of Property involved	
Reasons for making the report / reasons for suspicion of money laundering	
Additional Information Signature of person making the report: Date:	
PART 2	
(To be completed by the Nominated Officer) Date received Additional information requested	
External report: Yes / No Reason for decision	Ref

Signature of Nominated Officer	Date

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6. Example of wording to be incorporated into the *Terms of Engagement*

6.1. Proof of Identity

We must by law obtain satisfactory evidence of your identity and address. Please help us to do so by giving us the information and documentation we ask for. We are unable to proceed with your transaction and will not be able to exchange contracts until this has been provided.

6.2 Source of Funds/Source of Wealth:

Under the AML Regulations, the practice is obliged to not only obtain and verify evidence of your identity, but also to scrutinise the source of funds and source of wealth being contributed towards the transaction (if applicable). This means that you will not only be asked to provide the practice with bank statements to show where the funds are but also other related documents such as evidence of related sales or documents relating to inheritances. It is vital that you provide this evidence to the practice as quickly as possible and also that you are fully open and transparent with the practice.

6.2. Confidentiality

As lawyers, we are under a general professional and legal obligation to keep your affairs private. However, we are required, by current legislation, to make a report to the National Crime Agency (NCA) where we know or suspect that a transaction involves Money Laundering or Terrorist Financing. By instructing us to act on your behalf in accordance with these ***terms of engagement*** you give us irrevocable authority to make a disclosure to NCA if we consider it appropriate.

6.3. You agree that this authority overrides any confidentiality or entitlement to legal professional privilege. We shall be unable to tell you if we have made a report.

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7. External Reporting Form

7.1 Suspicious Activity Report (SAR) reports must now be made through the SAR portal which you must be registered for and can be accessed here: https://sarsreporting.nationalcrimeagency.gov.uk/

7.2. For information or assistance with submitting SARs, SARs online queries, consent issues or general Financial Intelligence Unit matters there is an FAQ page here: https://sarsreporting.nationalcrimeagency.gov.uk/faq

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