



ANTI MONEY LAUNDERING UPDATE

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www.mercia-group.com

TOPICS

- Boring but important stuff!
- 'Firm level risk assessment'
- Client due diligence – a six step approach
- Politically exposed persons
- Reporting suspicions
- AML legislation – the direction of travel

Boring but important stuff!

Section 1

Main legislation

Proceeds of Crime Act 2002 (POCA)

Terrorism Act 2000

Criminal Finances Act 2017 (CFA)

Money Laundering Regulations 2017

Overview of requirements



Risk management practices

Customer due diligence (CDD)

Reporting

Record keeping

Recruitment and training

Monitoring/management of compliance

BOOMs

What?

- Beneficial owners (>25%), principals and managers responsible for managing AML compliance
- Professional bodies need to be aware

Rule

- BOOMs cannot have unspent criminal convictions (per schedule 3 MLR 2017)
- DBS checks to evidence this

Criminal record checks

- Professional bodies will check (originals required)
- Higher risk v lower risk firms
- Reliance on existing checks - within three months of professional body request

OPBAS

What is it?

Office for Professional Body Anti-Money Laundering Supervision

Regulates and oversee professional bodies

Cost

Charge via annual Practicing Certificate fee

£28-£49 per annum from 2019-2020 (ICAEW)

<https://www.fca.org.uk/publication/opbas/themes-2018-opbas-anti-money-laundering-supervisory-assessments>

Trust & Company Service Providers

Relevant activities

- (a) forming companies or other legal persons;
- (b) acting, or arranging for another person to act:
 - i. as a director or secretary of a company;
 - ii. as a partner of a partnership; or
 - iii. in a similar capacity in relation to other legal persons;
- (c) providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or legal arrangement;
- (d) acting, or arranging for another person to act, as:
 - i. a trustee of an express trust or similar legal arrangement; or
 - ii. a nominee shareholder for a person other than a company whose securities are listed on a regulated market.

Register maintained by HMRC



Firm level risk assessment

Section 2

Risk-based approach

Extension of approach	<ul style="list-style-type: none"> Country level (Treasury/Home Office) – regulation 16 Supervisor level (e.g. ICAEW/ACCA) – regulation 17 Organisation level (individual firm) – regulation 18
Risk analysis	<ul style="list-style-type: none"> Procedures devised to respond to risks Requires senior management approval Regular updating will respond to changing risk profile
How?	<ul style="list-style-type: none"> Organisational level and service line level? Product – geographic – transaction – delivery channel – customer risk High – medium – low Prompts in Appendix E of CCAB guidance
Response to elevated risks	<ul style="list-style-type: none"> Enhanced due diligence More regular due diligence reviews Additional controls in relation to service offerings

Assessing risk

Product/Service risk	Geographic risk	Transaction risk
Trust and company service	Consider client operations, funding, sales and purchases	Payroll
Aggressive tax schemes	Activities in Financial Action Task Force high risk jurisdictions	Transactions of assets
Payroll	Operate in jurisdictions with significant levels of corruption/criminal conduct	Use of client's money bank accounts

FATF high risk and monitored jurisdictions

Country	Call for action	Monitored jurisdiction
Bahamas		✓
Botswana		✓
Cambodia		✓
North Korea	✓	
Ethiopia		✓
Ghana		✓
Iran	✓	
Pakistan		✓
Panama		
Sri Lanka		✓
Syria		✓
Trinidad & Tobago		✓
Tunisia		✓
Yemen		✓

Assessing risk

Delivery channel risk

Have you met the client face to face?

Intermediary introduction – and no direct client contact?

Reliance on intermediary due diligence?

Client risk

Cash based businesses

Client activity outside normal range of goods/services

Undue client secrecy

Feedback so far

Professional body templates helpful (e.g. ICAEW, ICAS)

Mixed messages on level of challenge

Evaluate risks (likelihood/impact)

Limited systemic risks for smaller firms

Team approach for service line level assessment

Important link to risk assessment at individual client level

October 2017 risk assessment



Company formation – greater risk than through formation agency

Company liquidation and associated services – mitigated by licencing of practitioners

False accounting – accountancy services can provide ‘vener of legitimacy’

Misuse of accountants’ client money accounts

Tax evasion and VAT fraud

NCA National Strategic Assessment



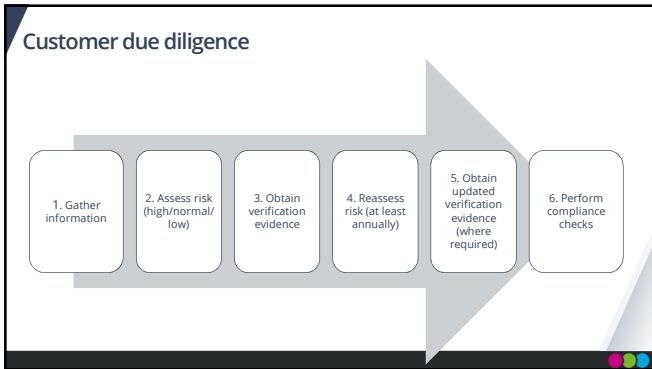
NCA National Strategic Assessment - Money Laundering

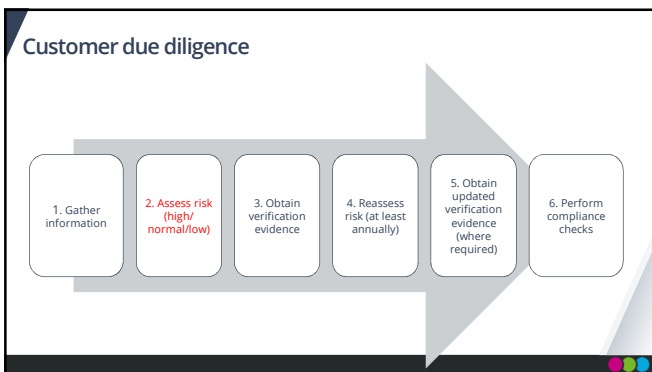
High end money laundering	Professional enablers	Cash
<ul style="list-style-type: none">Facilitated by legitimate processes and servicesLLPs and Scottish Liability PartnershipsAbuse of foreign exchange services and alternative banking platforms	<ul style="list-style-type: none">Witting or unwittingTrust and company service providers particularly at riskCorrupt individuals within financial institutions	<ul style="list-style-type: none">Scrap metal wholesalers, nail bars and takeawaysAs banks de-risk, criminals look for other ways to move funds

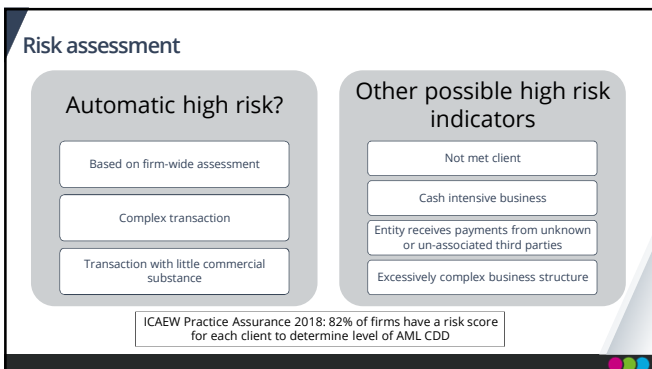
Client due diligence – a six step approach

Section 3

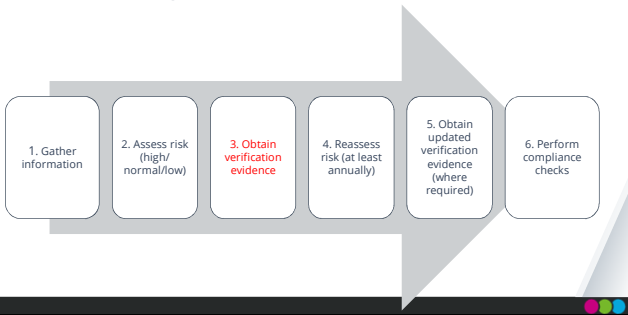








Customer due diligence



Customer due diligence

What?

- Identify any customer unless the identity of that customer is known to, and has been verified by, the relevant person
- Verify the customer's identity; and
- Assess, and where appropriate, obtain information on, the purpose and intended nature of the business relationship or transaction
- Verification of person purporting to act for customer

Customer due diligence

Beneficial owner

- Identify the **beneficial owner**
 - ✓ 25% threshold remains
- Take reasonable measures to verify identity of the beneficial owner so that the relevant person is satisfied that it knows who the beneficial owner is
- If the beneficial owner is a legal person, trust, company, foundation or similar legal arrangement, take measures to understand the relevant ownership and control structure

Verification - Individuals

Normal risk

- The original, or an acceptably certified copy, of one of the following documents:
- Valid passport, valid photo card driving licence, national Identity card (non UK nationals), identity card issued by the Electoral Office for Northern Ireland

Detailed guidance in Appendix C of CCAB guidance

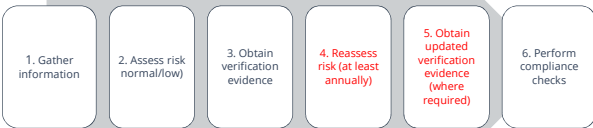
Verification - Individuals

High risk

The original of one of the following documents should be seen and a copy retained:
 Valid passport, valid photo card driving licence, national identity card (non UK nationals), identity card issued by the Electoral Office for Northern Ireland
 The original of a second document should be seen and a copy retained. (e.g. current utility bill).

Detailed guidance in Appendix C of CCAB guidance

Customer due diligence



Possible ongoing DD checklist

1. Have there been any changes in the directors or partners?	2. Have there been changes to shareholdings / beneficial owners?	3. Has there been any change to the nature of the business – or to the services that we are providing?
4. Are there any unusual transactions we have not been able to substantiate?	5. Are there any cash transactions outside the normal transactions of the business we cannot substantiate?	6. Are there any other issues which increase the level of perceived risk?

**EVERY CLIENT
MORE FREQUENT FOR HIGHER RISK CLIENTS
TRIGGER EVENTS IN SECTION 5 OF CCAB GUIDANCE**

Due diligence questions

1. What verification checks should I carry out on the majority shareholder of my client's German parent company?

2. I'm getting mixed messages on the need to get a copy of a new passport once my client's existing passport expires. What is the requirement?

Due diligence questions

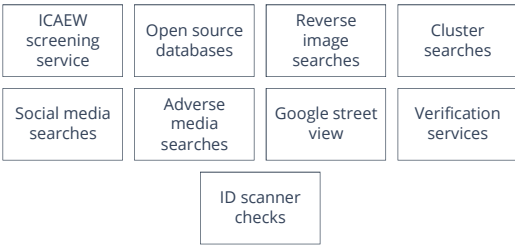
1. Majority shareholder of client's German parent company

- MLR17 require 'reasonable measures' to verify identity of ultimate beneficial owner
- Normally photographic ID – appropriately certified
- Alternative sources a potential if not available – subject to reasons why not

2. Need for copy of new passport

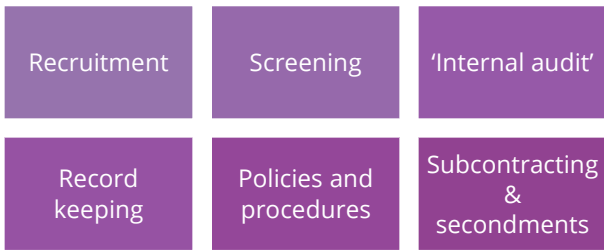
- No specific requirement – did the passport provide you with adequate evidence at the time?
- Risk-based approach required on a case by case basis

Know your client resources



ICAEW helpsheet - Electronic Client Due Diligence

Other procedural requirements



Latest ICAEW feedback



- Warnings re electronic checks
- Use of commercial manuals
- Firm wide risk assessments
- Review of compliance (all service lines)
- Trust and Company Service Provider Register



Politically Exposed Persons

Politically Exposed Persons
Who?

- Natural persons entrusted with public functions
- Includes UK PEPs
- Includes family members of PEPs
 - Spouse/civil partner of PEP
 - Children of PEP and spouses or civil partners of PEP's children
 - Parents of PEP
- Also consider known close associates of PEPs

Politically Exposed Persons

Politically Exposed Persons
What?

- Consider risks on case by case basis
- UK PEPs may be 'low risk PEPs'
- Also:
 - Obtain senior management approval for establishing/continuing business relationships
 - Take adequate measures to establish source of wealth and source of funds involved in business relationship or transaction
 - Conduct enhanced ongoing monitoring of business relationship



7 key questions

1. Has a crime been committed?
2. Has it been committed with knowledge and intent?
3. Has someone benefited?

Detailed list of prompts in Appendix D of CCAB guidance

7 key questions (continued)

4. Is it knowledge?
5. Is it suspicion - or speculation?
6. Did information come in the course of business in the regulated sector?
7. Can 'normal commercial enquiries' help?

Detailed list of prompts in Appendix D of CCAB guidance

Section 333A (Tipping Off)

•333A(1) – Person discloses that –

- Disclosure (SAR) made by that person (or another) to a constable, HMRC or NCA; AND
- disclosure is likely to prejudice any investigation that might be conducted as a result of that SAR; AND
- the information on which the disclosure is based came to the person in the course of a business in the regulated sector

Section 333A (Tipping Off)

•333A(3) – Person discloses that –

- An investigation into allegations of an offence of money laundering is being contemplated or carried out; AND
- the disclosure is likely to prejudice the investigation; AND
- the information on which the disclosure is based came to the person in the course of a business in the regulated sector

Tipping off - accountancy sector guidance

Exceptions to prohibition	Disclosure to another within the same profession	Dissuading clients from committing offences
Normal commercial enquiries	Discussing suspicions with client senior management	Release of documents to third parties

Reporting questions

1. Your firm has recently suffered financial loss as a result of an email phishing attack. Should you make a report to the NCA?

2. You notice when preparing a set of accounts for a client that gross margin is much higher than you would expect. What could the potential money laundering implications be?

Reporting scenarios

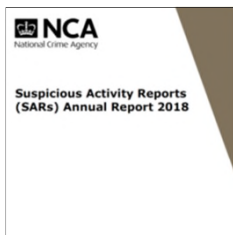
1. Email phishing attack

- No – no 'subject' that you can point the finger at
- Action Fraud/ Police

2. Gross margin is much higher than you would expect

- Important to gain an understanding by talking to the client
- Comparing two years is rarely enough!
- Making enquiries is not tipping off
- Be aware of the layering risk (mixing 'dirty' and 'clean' money)

SARs Annual Report



SARs submitted

	2017-18	2016-17 (17-month period)	2015-16	2014-15	2013-14	2012-13
Total SARs received	463,938	634,113	419,451	381,882	354,186	316,527
SARs from accountants (% total)	5,036 (1.2%)	6,693 (1.0%)	4,254 (1.0%)	4,618 (1.2%)	4,834 (1.3%)	5,289 (1.6%)
Defence against Money Laundering SARs	22,619	27,471	18,198	14,672	14,155	14,103

The direction of travel

Section 6



Criminal Finances Act 2017



Corporate offence – facilitation of tax evasion

The **corporate offences** of failure to prevent the criminal facilitation of **tax evasion** – effective from **30.9.17**

ICAEW advice to firms

- Prominent messaging to staff
- Contractual terms with employees and contractors
- Regular training for staff
- Clear reporting procedures for suspected facilitation of tax evasion offences
- Carrying out documented partner/second partner reviews on tax advice given
- Monitoring of compliance

5th Anti Money Laundering Directive

New 'obliged' entities

- Letting agents, art intermediaries, cryptoasset exchanges
- Indirect provision of tax advice

HMRC trust register

- Trust register expanded to include trusts with no 'tax consequences'
- Discrepancies in BO registers will need to be reported

Due diligence

- Verification requirements where senior managing official is beneficial owner
- CDD measures where legal duty to contact the customer to review 'any relevant information'

June 2018 Directive
For implementation by 10 January 2020

5th Anti Money Laundering Directive

Electronic databases

- Greater recognition for electronic processes
- More guidance needed here??

Harmonisation

- Harmonised EU approach when dealing with high risk third countries
- Stricter blacklist of high risk third countries

Politically exposed persons

- EU list to identify PEPs
- FCA guide currently available

Information requests

- Greater powers for Financial Intelligence Units where SARs not filed

June 2018 Directive
For implementation by 10 January 2020

Wrapping up

Firm level risk assessments should now be in place

Due diligence fundamentals still a problem for regulators

No change to POCA or SARs regime - yet

Reputable firms are targets for criminals

Procedural changes for Corporate Tax Evasion should now be in place

Watch this space for 5AMLD implementation in January 2020



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