

Guidance on Analysis of Client Risk, Identification of Material Red Flags, Source of Wealth (SOW) Establishment, Ongoing Monitoring of Clients and their Transactions and Suspicious Transaction Report (STR) Filing Timeline

General Comments

This guidance outlines in further detail the responsibilities of legal practitioners and law practices under the Practice Direction [3.2.1] on Prevention of Money Laundering (including Proliferation Financing) and Financing of Terrorism (Practice Direction)¹ so as to further strengthen the anti-money laundering, countering the financing of terrorism and countering proliferation financing (AML/CFT/CPF) framework in the legal sector.

While this set of further guidance does not impose new regulatory requirements on legal practitioners and law practices, it provides further elucidation of the existing framework to enable legal practitioners and law practices to develop their respective processes, taking into account the risk profile of their business activities and clients. Where legal practitioners and law practices identify gaps between their existing practices and the details set out within this guidance, they are strongly encouraged to take immediate steps to remediate and enhance their AML/CFT/CPF framework and controls. Senior management should exercise close oversight of the gap analysis and ensure the effective implementation of follow-up actions, as appropriate. This will enable law practices, legal practitioners and the regulators to work hand in hand to counter the risks of money laundering, terrorism financing, and proliferation financing (ML/TF/PF).

A	Analysis of Client Risk or Client Risk Analysis (CRA) <ul style="list-style-type: none"> Consider ML/TF/PF risks emanating from clients with ML/TF/PF red flags
	1. What are the supervisory expectations? <ul style="list-style-type: none"> Have a good understanding of the client's profile in order to conduct a proper ML/TF/PF risk assessment of the client before entering into a transaction and during ongoing monitoring of the business relationship with the client. Exercise vigilance in identifying material ML/TF/PF red flags as part of the customer due diligence (CDD) process, through explicitly requiring key categories of information to be provided during the client onboarding process. Set clear guidance for staff of your law practice to take reasonable steps to identify and escalate material red flags of clients and transactions to detect potential suspicious ML/TF/PF activities promptly. Be alert to material red flags when reviewing the documents and information collected from clients during CDD and ongoing monitoring. While legal practitioners and law practices are not expected to perform or function as investigators, when material red flags are detected, further due diligence measures should be taken.

¹ Prevention of Money Laundering (Including Proliferation Financing) and Financing of Terrorism, Practice Direction [3.2.1] dated 3 October 2023 [<https://law-society-singapore-prod.s3.ap-southeast-1.amazonaws.com/2023/10/practice-direction-3.2.1-prevention-of-money-laundering-incl-proliferation-financing-and-financing-of-terrorism.pdf>]

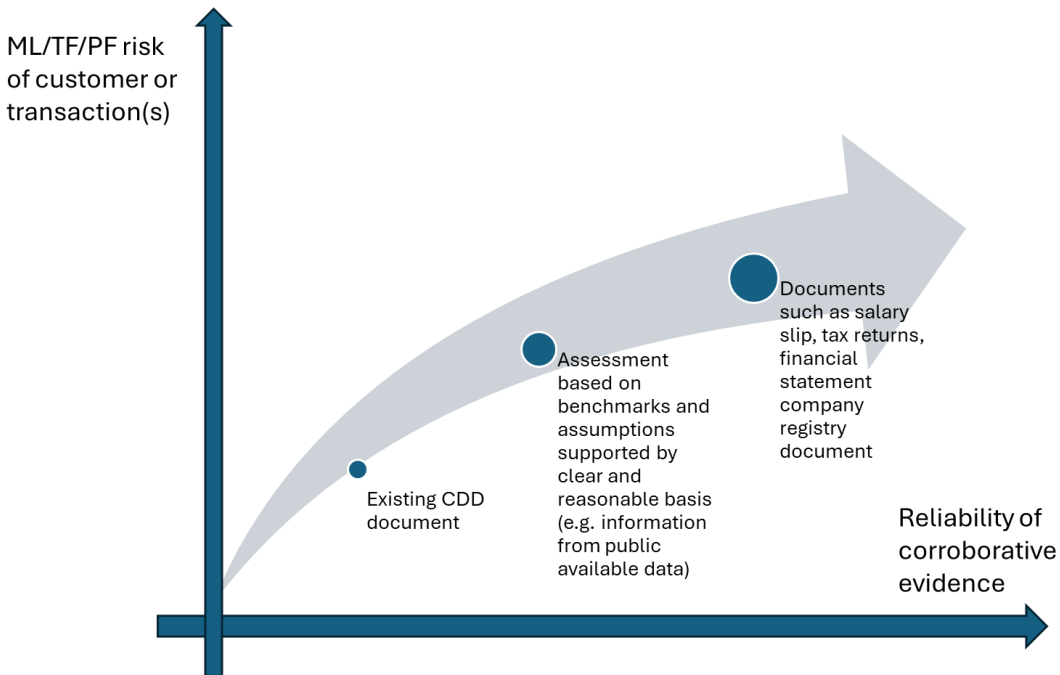
A	Analysis of Client Risk or Client Risk Analysis (CRA) <ul style="list-style-type: none"> Consider ML/TF/PF risks emanating from clients with ML/TF/PF red flags
	<ul style="list-style-type: none"> Material red flags may include but not limited to: <ul style="list-style-type: none"> ➤ Significant discrepancies in client's representation against independently sourced documents, such as corporate documents on shareholdings/ directorship. ➤ Incongruent description of the nature of business stated in company's business licence/profile or website vis-à-vis client's representation. ➤ Documents furnished by client appear to contain discrepancies, be products of tampering or are potentially fraudulent. ➤ Client holding multiple nationalities without legitimate reasons. ➤ Client who refuses to provide requested information. ➤ Client or related persons connected to adverse news related to ML/TF/PF, corruption, tax evasion. <p>(Refer to Practice Direction for more ML/TF/PF red flags/ high risk factors)</p> <ul style="list-style-type: none"> Do not assess a client to be presenting low ML/TF/PF risk solely based on negative screening results, payments through credit cards, bank transfers, cheques or remittance from licensed remittance agents in Singapore. Where there are doubts about the legitimacy of documents/representations obtained from or made by the client, conduct further follow-up actions. For example, a law practice would be expected to conduct additional inquiry and independent due diligence on the client (such as obtaining corporate ownership information from independent sources), and/or take additional risk mitigation measures (such as terminating the transaction, exiting the business relationship and/or filing a STR). To facilitate further follow up and to fully discharge its duties, the law practice should take steps to document the follow-up actions and the corresponding assessment. In circumstances or situations where material ML/TF/PF red flags are detected, the law practice should treat the client or transaction to be of high ML/TF/PF risk and conduct enhanced customer due diligence (ECDD) measures to mitigate and manage the risks. Communicate to staff the expectations of the roles and responsibilities of the three lines of defence² in relation to the detection of potentially fraudulent or tampered documents, so that they are aware of and understand their individual ownership and accountability.

² Client-facing employees constitute the first line of defence in charge of identifying, assessing and controlling the ML/TF/PF risk of their business. The second line of defence includes the law practice's AML/CFT/CPF compliance function, as well as other support functions such as operations, which work together with the AML/CFT/CPF function to identify ML/TF/PF risks when they process transactions. The third line of defence is the law practice's internal audit function.

A	Analysis of Client Risk or Client Risk Analysis (CRA) <ul style="list-style-type: none"> Consider ML/TF/PF risks emanating from clients with ML/TF/PF red flags
	<ul style="list-style-type: none"> Conduct ongoing monitoring of clients and their transactions to detect inconsistencies against the clients' known profiles. Proper documentation of CRA should be maintained, particularly for clients and transactions assessed to present high ML/TF/PF risks. An individual's wealth or signs of wealth should not by itself be a single determining factor of one's ability to fund a transaction. <div data-bbox="220 577 1385 1176" style="border: 1px solid black; padding: 10px;"> <p>Some examples of poor practices in respect of CDD and CRA</p> <ul style="list-style-type: none"> ➤ Not using any CDD form to document the CDD/ ECDD conducted, thus preventing an objective recording that CDD or ECDD was in fact conducted or conducted adequately. ➤ Failing to conduct CRA or document the CRA conducted, thus preventing an objective recording that CRA was in fact conducted or conducted adequately. ➤ Not indicating the risk rating accorded to clients in the CDD form or CRA. ➤ Assessing clients as low risk solely based on negative screening results, funds received from MAS licensed banks or simply because they were existing clients. ➤ Assessing clients as low risk even though there were high-risk factors, such as payments received from unrelated third-party accounts. </div>
	<div data-bbox="220 1238 1385 1948" style="border: 1px solid black; padding: 10px;"> <p>Some examples of recommended practices (drawn from actual practices of law practices)</p> <p>Law practices identifying the following clients to be presenting higher ML/TF risk:</p> <ul style="list-style-type: none"> ➤ A client purchased high value luxury estate in Singapore using only cash and was unwilling to provide information/ document(s) for the determination of SOW. ➤ The purchase of real estate was found to be inconsistent with the known income profile and SOW declared by the client. ➤ A client purchased a property and paid a significant amount in cash as stamp duty. When enquired, the client informed that the Source of Funds (SOF) was from her father overseas, but further details could not be obtained. ➤ A corporate client, which purchased two office properties fully paid in cash, had bank statements which showed incoming wired transactions from unknown entities and few business transactions. The corporate client was owned by foreigners who held employment passes and its registered address was that of a co-working space. </div>

B	<p>SOW establishment</p> <ul style="list-style-type: none"> • Apply rigor in assessing the plausibility of SOW, commensurate with the level of ML/TF/PF risks
<p>1. Why is establishing SOW important?</p> <ul style="list-style-type: none"> (i) It helps to ensure the legitimacy of the clients' SOW. (ii) It informs the legal practitioners and law practices' ongoing monitoring of their clients' transactions, where applicable. (iii) It helps legal practitioners and law practices and their staff guard against ML/TF/PF and reputational risks of dealing with illicit assets. <p>2. What are the supervisory expectations?</p> <ul style="list-style-type: none"> (i) Take appropriate and reasonable means to establish the SOW of their clients and independently corroborate information obtained from the clients against documentary evidence or public information sources. (ii) Apply rigor in assessing the plausibility of clients' SOW and avoid overreliance on clients' representations. (iii) Closer senior management oversight and enhanced ongoing monitoring are needed if the SOW, which is of higher risk, or a significant portion of a client's wealth could not be established. (iv) Consider a range of measures to establish the SOW of clients, while minimising any undue delay to the onboarding of legitimate clients. For example, for clients with prominent public profiles, their representations on their SOW may be corroborated against reliable public information sources. (v) SOW establishment entails: (a) minimally obtaining a base set of SOW information from the client and (b) corroborating the SOW by obtaining additional documents/information to independently verify the SOW information where there are heightened ML/TF/PF risks. The base set of SOW information from the client should give an indication about the origin and size of wealth the client and beneficial owner would be expected to have and how the client and beneficial owner acquired the wealth. There should not be sole reliance on the client's representations. (vi) Do not assume that all funds received through financial institutions are legitimate. Where the amounts received from financial institutions far exceed the known income level or estimated net worth of the client, there should be inquiry on the activity that generated the funds and efforts to obtain additional information/ document to verify the explanation. For example, where a client explained that the funds were from his overseas business, the law practice should inquire on the company's name, business activity/ turnover, shareholding, and verify the information through measures, such as obtaining certificate of incorporation and/or shareholdings, financial statements and information from publicly available sources. (vii) Ensure that the policies and procedures to establish the SOW of clients are risk-proportionate and reasonable, taking into account the unique circumstances and profile of each client. They should not apply a one-size-fits-all approach for all clients. 	

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<p>3. What are the key principles in establishing the SOW of clients?</p> <p>In designing policies and procedures to establish SOW of clients in a risk proportionate and reasonable manner, legal practitioners and law practices should consider the following key principles:</p> <p>A <u>Materiality</u></p> <ul style="list-style-type: none"> • Obtain information on a client’s wealth to the extent practicable and possible. For example, there may be situations where it may not be possible or practical to corroborate the SOW, e.g. SOW from many years ago for which documents may no longer be easily available. • Focus on corroborating the more material or higher risk SOW, e.g. SOW from higher risk countries or higher risk businesses. • Assess whether the residual risk of the uncorroborated wealth is acceptable and whether additional risk mitigating measures are needed. <p>B <u>Prudence</u></p> <ul style="list-style-type: none"> • For material SOW, attempt to use more reliable corroborative information, such as audited accounts or documents issued by independent third parties (e.g. tax accountants). • Benchmarks and/or reasonable assumptions may be used to (i) assess the plausibility of information received from clients, or (ii) estimate a segment of a client’s wealth in the absence of corroborative evidence. If so, ensure that such benchmarks and assumptions are reasonable, relevant and appropriate for the client’s specific risk profile and circumstances. For example, in determining the income level of a client, estimate the salary range using benchmarks of the occupation from publicly available sources. • Document and periodically review the basis for the benchmarks and assumptions used. • Benchmarks and assumptions should not be exclusively relied on if there are reasons that cast suspicion on the circumstances or explanations provided by the client to justify the SOW. <p>C <u>Relevance</u></p> <ul style="list-style-type: none"> • Seek to obtain pertinent corroborative evidence to the extent practicable. • Exercise reasonable judgment in determining which documents are critical for corroborating a client’s SOW and which documents they may reasonably do without. For example, documents from many years ago which may no longer be easily available and are not of high relevance to the generation of the client’s existing wealth would not be necessary for this exercise. 	

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	<ul style="list-style-type: none"> • Where possible, utilise independent and reliable documents and information obtained from credible public sources to support their assessment of clients' SOW, without solely relying on clients to provide corroborative evidence. <p>4. Risk-Based Approach for SOW procedures</p> <p>Legal practitioners and law practices may consider taking a risk-based approach in designing procedures for SOW checks and corroboration.</p>  <p>(i) For transactions/ matters involving unusually high values which exhibit material ML/TF/PF red flags, the client and/or beneficial owners' SOW should be corroborated using more reliable corroborative evidence, such as salary slips, tax returns, audited financial statements, company registry information, casino winning receipt.</p> <p>(ii) For other transactions/ matters involving lower values, the SOW may be corroborated against credible and reliable government issued documents such the work permit or employment pass.</p>
	<p>Some examples of poor ECDD and SOW corroboration practices</p> <ul style="list-style-type: none"> ➤ Not conducting ECDD measures for clients who should be risk rated as high risk due to the presence of high-risk factors, such as inconsistency between transaction and known client profile or where the client refused to provide requested information.

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	<ul style="list-style-type: none"> ➤ Not conducting ECDD measures after the risk of the client was effectively raised after an STR was filed on the client. ➤ After filing STRs on the transactions, continuing to complete the transactions involving large amounts of cash without senior management's approval to continue with the transaction and the corresponding risk mitigating measures. ➤ Overreliance on the client's representations during ECDD and not taking reasonable measures to corroborate SOW/SOF. For example, accepting the representation of a client who claimed to be a businessman without making further enquiries or taking reasonable measures to corroborate the SOW/SOF.
	<p>An example of recommended practice (drawn from actual conduct of a law practice)</p> <p>A potential client indicated that high value luxury estate in Singapore would be paid using only cash from inheritance and from the spouse. The law practice made enquiries with the spouse, the spouse's SOW and obtained the spouse's latest income tax statement. However, the income tax statement showed an income, which was far below the balance purchase price of the property and no other sources of funds were provided. The spouse was also mentioned in an adverse news related to a ML case. After conducting further due diligence measures, the law practice declined to act for the client.</p>

C	Ongoing Monitoring controls and close oversight over higher risk clients <ul style="list-style-type: none"> • Ensure that ongoing monitoring controls consider the clients' risk profiles
1.	What constitutes ongoing monitoring of clients? <ul style="list-style-type: none"> • Ongoing monitoring refers to the continuous process of assessing the clients and their transactions to detect and mitigate the ML/TF/PF risks.
2.	What are the supervisory expectations? <ul style="list-style-type: none"> • Regularly review and update the client's due diligence information to ensure accuracy and relevance • Scrutinise transactions undertaken throughout the course of the business relationship, not just at onboarding, and includes scrutinising the payments and payment instructions • Ensure that the transactions are conducted in the manner consistent with the knowledge of the client, the client's business, the client's risk profile and if available, the SOF. • Seek clarification from client when transactions are inconsistent with known profile. The clarifications should not be limited to verbal clarifications and should

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	<p>be recorded, and corroborated with independent and reliable sources, where possible. In particular, close attention should be paid to:</p> <ul style="list-style-type: none"> ➤ Transactions involving significant sums which are not in line with the previous knowledge of the client's profile ➤ Transactions, single or cumulative, which appear to be beyond the means of the client based on the stated or known occupation, income or business profile ➤ Unusually frequent transactions or sums involved in the transactions/ matters which appear to be incompatible with the clients' low share capital or short period of incorporation ➤ Payments are received from a third party or multiple third parties for the same transaction ➤ Transactions involved unusual or complex payment arrangements without a legitimate business purpose • In circumstances or situations where material ML/TF/PF red flags are detected, the law practice should treat the client or transaction to be of high ML/TF/PF risk and conduct ECDD measures to mitigate and manage the risks. <p>How can the senior management of law practices exercise close oversight over higher risk accounts?</p> <p>Establishing the SOW of clients is part of a wider set of AML/CFT/CPF controls to ensure the legitimacy of the clients' wealth and transactions. Therefore, senior management of law practices should exercise close oversight of the business relationship with the client including but not limited to:</p> <ul style="list-style-type: none"> • Set clear expectations for higher risk clients/ transactions to be escalated to senior management for attention and ensuring that appropriate risk mitigating measures, including any revision to the client risk rating and enhanced ongoing monitoring of business relationships, are taken. • Monitor the higher risk accounts on an ongoing basis, rather than by individual transactions/ matters, against their profiles. This would enable better triangulation and identification of any red flags on an ongoing basis. • Ongoing monitoring controls should take into account client information gleaned from SOW establishment, such as the client's total net worth and expected SOF, to facilitate the assessment of whether the client's transactions/ matters are in line with their profile. • Put in place timely and appropriate risk mitigation measures, including enhanced ongoing monitoring, when an STR is filed or where there are reasonable grounds for suspicion that would warrant an STR to be filed on a client. This is to ensure that legal practitioners and law practices are not exposed to risks of facilitating ML/TF/PF activities, while deciding whether to retain the client or processing the termination of the business relationship with the client.

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Some examples of poor ongoing monitoring of business relationship with clients by law practices <ul style="list-style-type: none"> ➤ Not scrutinising the transactions throughout the course of business relationship to ensure that the transactions were consistent with the law practices’ knowledge of the client, business, risk profile and SOF. For example, not seeking clarification when funds received were substantially more than the amount in the bank account statement provided or not verifying that the funds received via cashier orders were indeed from the clients. ➤ Client funds received from banks deemed to be legitimate without further checks, solely on the basis that the onus to check lays on banks. ➤ The risk of the client not being raised even after STR was filed against the client, and consequently, ECDD was not conducted. 	
An example of recommended practice (drawn from actual conduct of a law practice) <p>The client informed the law practice that the purchase of a property under construction would be funded by a bank loan. However, the client later informed that the property would be paid in cash instead as the client’s bank loan was rejected. The law practice enquired with the client on the reason for the bank loan rejection and verified with the bank. The law practice also enquired on the SOF for the cash received and followed up closely with the client on the repayment plan for the balance purchase amount.</p>	

D	STR Filing Timeline <p>STRs should be filed as soon as reasonably practicable upon the establishment of suspicion.</p>
What is “as soon as reasonably practicable”? <ul style="list-style-type: none"> • “As soon as reasonably practicable” should be no longer than 5 business days. • This will include some flexibility for exceptions e.g. prioritise STR filing for higher risk cases; and STRs for targeted financial sanctions/ sanctions cases are to be filed within one business day, if not immediately 	

Legal Services Regulatory Authority

Ministry of Law

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