Anti-Money Laundering and Counter-Terrorist Financing

Guidance for the Accountancy Sector

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INTRODUCTION

Accountants are key gatekeepers for the financial system, facilitating vital transactions that underpin the UK economy. As such, we have a significant role to play in ensuring our services are not used to further a criminal purpose. As professionals, accountants must act with integrity and uphold the law, and must not engage in criminal activity.

This guidance is based on the law and regulations as of 13 July 2021. Please note that while most requirements remain, some requirements of the regulations relating to EU lists no longer apply since the UK has left the EU. This guidance covers the prevention of money laundering and the countering of terrorist financing. It is intended to be read by anyone who provides audit, accountancy, tax advisory, insolvency, or trust and company services in the UK and has been approved and adopted by the UK accountancy anti-money laundering supervisory bodies.

The guidance has been prepared jointly by the CCAB bodies:

Institute of Chartered Accountants in England and Wales

Association of Chartered Certified Accountants

Institute of Chartered Accountants of Scotland

Chartered Accountants Ireland

The Chartered Institute of Public Finance and Accountancy

It has been approved and adopted by the UK accountancy supervisory bodies:

Institute of Chartered Accountants in England and Wales – www.icaew.com

Association of Accounting Technicians – www.aat.org.uk

Association of Taxation Technicians – www.att.org.uk

Association of International Accountants – www.aiaworldwide.com

Institute of Certified Bookkeepers – www.bookkeepers.org.uk

Chartered Institute of Management Accountants – www.cimaglobal.com

Institute of Financial Accountants – www.ifa.org.uk

International Association of Bookkeepers – www.iab.org.uk

Association of Chartered Certified Accountants – www.accaglobal.com

Chartered Institute of Taxation – www.tax.org.uk

Insolvency Practitioners Association – www.insolvency-practitioners.org.uk

Insolvency Service – www.gov.uk/government/organisations/insolvency-service

HM Revenue & Customs – www.gov.uk/government/organisations/hm-revenue-customs

Institute of Chartered Accountants of Scotland – www.icas.com

Chartered Accountants Ireland – www.charteredaccountants.ie

Note: A Tax Appendix exists as supplementary guidance and should be consulted by tax practitioners:

Link: **/Supplementary-Anti-Money-Laundering-Guidance-for-Tax-Practitioners-.pdf**

An Insolvency Appendix exists, HMT approved, so should be consulted by insolvency practitioners as supplementary guidance.

Link: **/Insolvency-Appendix.pdf**

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1 ABOUT THIS GUIDANCE

- What is the purpose of this *guidance*?
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1.1 What is the purpose of this guidance?

1.1.1 This *guidance* has been prepared to help accountants (including *tax advisers* and *insolvency practitioners*) comply with their obligations under UK legislation to prevent, recognise and report money laundering. Compliance with it will ensure compliance with the relevant legislation (including that related to counter-terrorist financing) and professional requirements.

1.1.2 The term 'must' is used throughout to indicate a mandatory legal or regulatory requirement. In all cases where the *business* deviates from a requirement labelled as a must, the *business* should document its decision and the justification for the decision. If *businesses* require assistance in interpreting the UK *money laundering and terrorist financing* (*MLTF*) regime, they should seek advice from their *anti-money laundering (AML) supervisory authority* or consider seeking legal advice.

1.1.3 Where the law or regulations require no specific course of action, 'should' is used to indicate good practice, sufficient to satisfy statutory and regulatory requirements. *Businesses* should consider their own particular circumstances when determining whether any such 'good practice' suggestions are indeed appropriate to them. Alternative practices can be used, but a *business's AML supervisory authority* will expect the *business* to be in a position to explain its reasons for deviating from the *guidance*, including why it considers its approach compliant with law and regulations.

1.1.4 The UK *MLTF* regime applies only to *defined services* carried out by designated *businesses*. This *guidance* assumes that many *businesses* will find it easier to apply certain *AML* processes and procedures to all of their services, but this is a decision for the *business* itself. It can be unnecessarily costly to apply anti-money laundering provisions to services that do not fall within the UK *MLTF* regime.

1.1.5 This *guidance* refers, in turn, to guidance issued by bodies other than *CCAB*. When those bodies revise or replace their guidance, the references in this document should be assumed to refer to the latest versions.

1.1.6 *Businesses* may use *AML* guidance issued by other trade and professional bodies, including the Joint Money Laundering Steering Group (*JMLSG*), where that guidance is better aligned with the specific circumstances faced by the *business*. Where the *business* relies on alternative guidance, the *business's AML supervisory authority* will expect the *business* to be in a position to justify this reliance. *Businesses* supervised by HMRC should also take into account its published content on GOV.UK.

1.1.7 The law which comprises the *UK MLTF regime* is contained in the following legislation and relevant amending statutory instruments valid as at the date of this *guidance*:

- The Proceeds of Crime Act 2002 (*POCA*) as amended. Particular attention is drawn to the Serious Organised Crime and Police Act 2005 (*SOCPA*);
- The Terrorism Act 2000 (*TA 2000*) as amended. Particular attention is drawn to the Anti-Terrorism, Crime and Security Act 2001 (*ATCSA*) and the Terrorism Act 2006 (TA 2006);
- The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the *2017 Regulations*) as amended. Particular attention is drawn to The Money Laundering and Terrorist Financing (Amendment) Regulations 2019);
- Terrorist Asset-Freezing etc. Act 2010; [1]
- Anti-terrorism, Crime and Security Act 2001;
- Counter-terrorism Act 2008, Schedule 7; and
- Criminal Finances Act 2017.

Businesses should ensure that they take account of all subsequent relevant amendments.

1.1.8 *POCA* and *TA 2000* contain the offences that can be committed by individuals or organisations. The *2017 Regulations* set out in detail the systems and controls that *businesses* must possess, as well as the related offences that can be committed by *businesses* and individuals within them by failing to comply with relevant requirements.

1.2 What is the scope of this guidance?

1.2.1 This *guidance* is addressed to *businesses* covered by Regulations 8(2)(c) and 8(2)(e) of the *2017 Regulations*. This means anyone who, in the course of business in the UK, acts as:

- An *auditor* (Regulation 11(a));
- An *external accountant* (Regulation 11(c));

1 On 31 December 2020, The Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 replaced part 1 of the Terrorist Asset-Freezing etc. Act (2010).

- An *insolvency practitioner* (Regulation 11(b));
- A *tax adviser* (Regulation 11(d)).
- A trust or company service provider (Regulation 12(2)).

For the purposes of this *guidance* the services listed above are collectively referred to as *defined services*. The scope of what would be considered carrying on business in the UK is broad and would include certain cross border business models where day to day management takes place from a UK registered office or a UK head office.

1.2.2 Regulation 11(c) of the *2017 Regulations* defines an *external accountant* as someone who provides *accountancy services* to other persons by way of business. There is no definition given for the term *accountancy services*, however for the purposes of this *guidance* it includes any service which involves the recording, review, analysis, calculation or reporting of financial information, and which is provided under arrangements other than a contract of employment. If in doubt, *businesses* should confirm with their *AML supervisory authority* whether their activities require supervision under the *2017 Regulations.*

1.2.3 Regulation 11(d) of the *2017* Regulations defines *tax adviser* to include both direct and indirect provision of material aid, assistance or advice on someone's tax affairs. This includes any specific tax advice given to *clients*, including completing and/or submitting tax returns, advice on whether something is liable to tax, or advice on the amount of tax due.

1.2.4 Where a *business* is providing tax services through virtual or automated services the *business* is providing *defined services. Businesses* offering software or hardware solutions for accountancy, bookkeeping, payroll or tax are not providing a *defined service* provided they do not prepare or analyse any financial information themselves for their *clients*.

1.2.5 When considering a service or product involving software or hardware, a *business* should consider the quantity and nature of the human input that it may be required to supply as part of the service. For example, a business develops software that identifies a contractor's IR35 status and calculates tax due.

- Situation 1: Business A licences the software to new and existing clients without any support services. Although the output of the software is tax related, business A is not providing a *defined service.*
- Situation 2: Business A licences the software to new and existing clients. The client has a right to call on Business A for advice on interpreting the output from the software. Business A is providing a *defined service.*

- Situation 3: In Situation 1, the client asks Business A for advice on the output under a separate engagement. This additional service provided by Business A is a *defined service.*

Similar considerations arise as in Situations 1, 2 and 3 where payroll services are provided.

1.2.6 A *business* may determine that not all the services it offers meet the definition of a *defined service* under the *2017 Regulations*. For example, some accountancy firms, in addition to accountancy and tax services, provide certain management consultancy services that do not meet the *defined service* definition. In such cases, a *business* may decide that *Customer Due Diligence* (*CDD*) measures do not need to be applied to *clients* seeking services that are not *defined services*. However, if a *business* decides not to apply *CDD* measures, it should document the rationale for its decision. Notwithstanding the fact that certain services may not meet the definition of a *defined service*, a business may choose to still apply *CDD* measures in such cases.

1.2.7 This *guidance* does not cover services other than those in 1.2.1. Guidance for other services may be available from other sources. *Businesses* supervised by HMRC that provide both *accountancy services* and trust or company services should generally follow this *guidance*, but should also have regard to the HMRC guidance 'Anti-money laundering supervision: trust or company services providers'. *Businesses* solely providing trust or company services, and who are supervised by HMRC, should follow the HMRC guidance.

1.2.8 Guidance related to secondees and subcontractors can be found in APPENDIX A.

1.3 What is the legal status of this guidance?

1.3.1 This *guidance* has been approved by HM Treasury, and the UK courts must take account of its contents when deciding whether a *business* subject to it has contravened a relevant requirement under the *2017 Regulations* or committed an offence under Sections 330–331 of *POCA*.

1.3.2 If an *AML supervisory authority* is called upon to judge whether a *business* has complied with its general, ethical or regulatory requirements, it will take into account whether or not the *business* has applied the provisions of this *guidance*.

1.3.3 This *guidance* is not intended to be exhaustive. It cannot foresee every situation in which a *business* may find itself. If in doubt, seek appropriate advice or consult your *AML supervisory authority*.

2 MONEY LAUNDERING AND TERRORIST FINANCING

- What are the fundamentals?
- What *are criminal property* and terrorist property?
- What are the Primary Offences?
- What is the Failure to Report offence?
- What is the *Tipping Off* offence?
- What is the *Prejudicing an Investigation* offence?

2.1 What are the fundamentals?

2.1.1 *Businesses* need to assess and be alert to the risks posed by:

- *Clients*;
- Suppliers;
- Employees; and
- The customers, suppliers, employees and associates of *clients.*

2.1.2 *Businesses* must be aware of their reporting obligations. Neither the *business* nor its *client* needs to have been party to money laundering or terrorist financing for a reporting obligation to arise (see Chapter Six of this *guidance*).

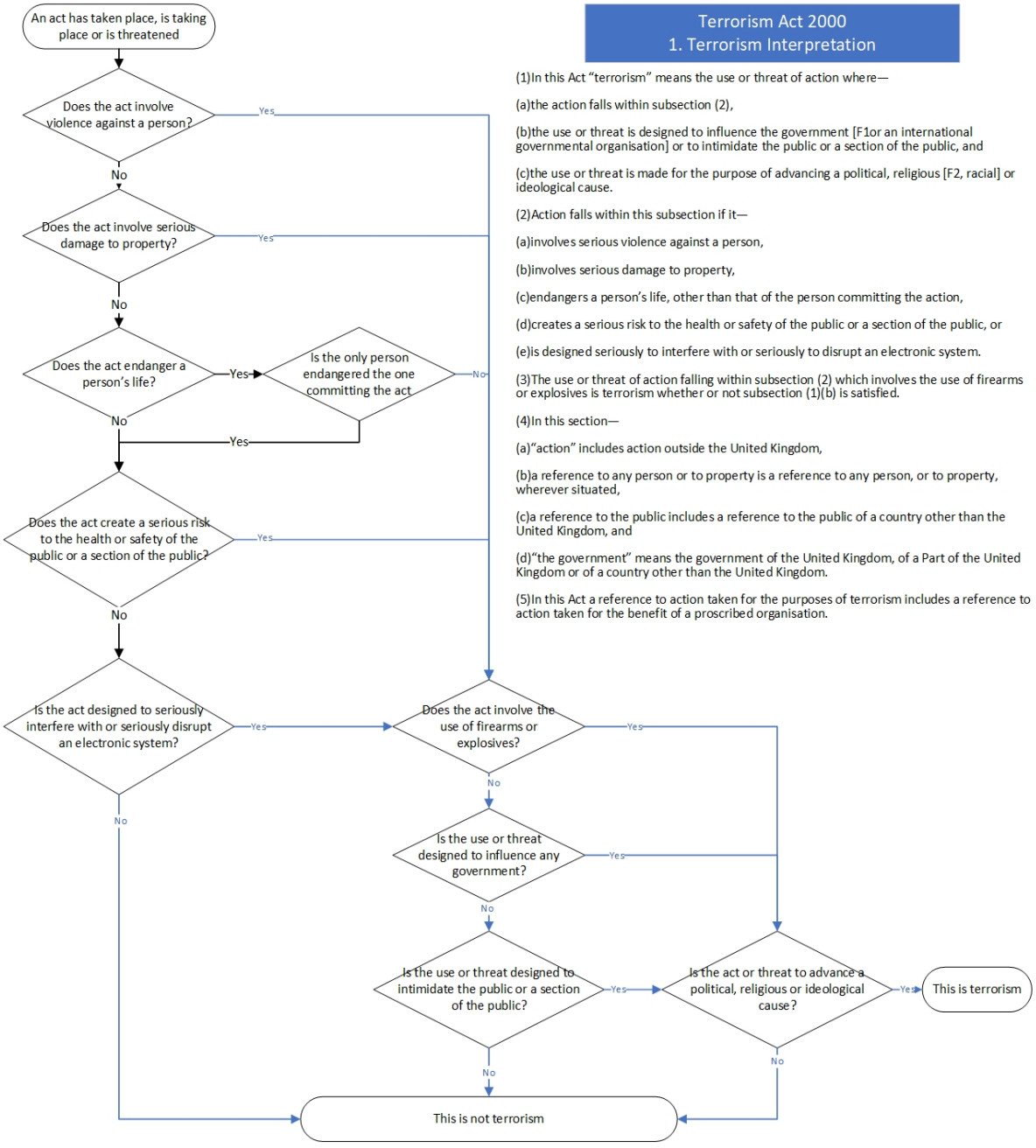
2.1.3 The UK's *MLTF* regime covers two distinct areas: money laundering and terrorist financing. Each defines the meaning of 'property' for the purposes of the regime (*criminal property* and terrorist property) and sets out prohibited conduct involving the property.

2.1.4 This chapter talks about anti-money laundering (AML) and counter-terrorist finance separately. In the rest of the *guidance* 'money laundering' should be taken to include terrorist finance unless the wording specifically excludes it.

2.1.5 Crime is an action or inaction prohibited by law and punishable by the state. It is not civil wrongdoing for which restitution is owed to another person. Where a representative of the state (such as HMRC) can decide whether to treat conduct as a criminal or a civil matter, for the MLTF regime *businesses* should consider the conduct as criminal, even where the state's decision is, frequently or even invariably, to treat it as civil.

2.1.6 *POCA* relates to property which arises from any criminal activity whether carried out by the person in possession of the property or a third party.

2.1.7 The following diagram explains when conduct (inside or outside the UK) is terrorism, for the *MLTF* regime:



2.1.8 As set out above, the key elements of terrorism are a use or threat of action (which could include a cyber-attack) designed to influence a state (or international body) or to intimidate or terrorise the public for the purpose of advancing a cause.

2.2 What are criminal property and terrorist property?

2.2.1 The property may take any form, including:

- Money or money's worth;
- Securities;
- A reduction in a liability; or
- Tangible or intangible assets.

2.2.2 There is no need for the property to be in the UK or pass through the UK. There are no materiality or *de minimis* exceptions.

2.2.3 The UK takes an 'all crimes' approach – including tax evasion and administrative offences. *Criminal property* is any property that results from:

- Conduct in the UK that is criminal in the UK; or
- Conduct overseas that would have been criminal had it taken place in any part of the UK (see also paragraph 2.3.8).

2.2.4 Terrorist property is any property that is:

- Likely to be used for terrorism;
- The proceeds of acts of terrorism; or
- The proceeds of acts carried out for terrorism.

2.2.5 Note that all of the resources of organisations proscribed by *TA 2000* are terrorist property.

2.2.6 It should be noted that, because terrorism and funding terrorism are illegal, terrorist property will also be *criminal property*. The fact that the property involved may be both *criminal property* and terrorist property does not create a dual reporting obligation. For example, the following are criminal acts that will normally also be terrorist offences if they relate to persons or organisations engaged in terrorism:

- Failure to comply with a prohibition imposed by a freezing order or enabling any other person to contravene the freezing order; and
- Dealing with, or making available, funds or economic resources which are owned, controlled by or benefit a designated person (under the Office of Financial Sanctions Implementation (OFSI) list).

2.3 What are the Primary Offences?

2.3.1 The Primary Offences may be committed by any person, both those within the *regulated sector* and those outside.

2.3.2 The conduct that can amount to a Primary Offence may include:

- Taking an action (for example stealing a car);
- Refraining from taking an action (for example not conducting a mandatory environmental impact assessment);
- A single act (for example, possessing the proceeds of one's own crime);
- Complex and sophisticated schemes involving multiple parties; or
- Multiple methods of handling and transferring property.

2.3.3 An individual or entity commits a money laundering offence if they;

- Conceal, disguise, convert or transfer *criminal property* (*POCA 327*);
- Acquire, use or possess *criminal property* (*POCA 329*);
- Are involved in an arrangement that allows another to acquire, retain, use or control *criminal property* (*POCA 328*); or
- Remove *criminal property* from a UK jurisdiction (*POCA 327*). Note that the UK comprises three jurisdictions: England and Wales, Scotland and Northern Ireland. It is an offence to move *criminal property* from one of these to another.

2.3.4 An individual or entity commits a *terrorist financing offence* if they;

- Raise, receive or provide *terrorist property* (*TA 2000* 15);
- Use or possess terrorist property (*TA 2000* 16);
- Are involved in an *arrangement* that:
  - makes *terrorist property* available (*TA 2000* 17);
  - conceals *terrorist property* or transfers it to nominees (*TA 2000* 18); or
  - removes *terrorist property* from a UK jurisdiction (*TA 2000* 18). Note that the UK comprises three Jurisdictions: England and Wales, Scotland and Northern Ireland. It is an offence to move *terrorist property* from one of these to another.
- Pay an insurance claim to reimburse property that has become terrorist property (*TA 2000* 17A).

2.3.5 A defence is available to charges of money laundering if the persons involved did not know or suspect that they were dealing with *criminal property* and in the case of terrorist property if they

did not intend or have reasonable grounds to suspect the property was to be or may be used for the purposes of terrorism.

2.3.6 It is possible to obtain a defence (*POCA* 338 and *TA 2000* 21ZA) to charges of money laundering and terrorist financing. This defence is available where a disclosure is made of the conduct which would otherwise fall within *POCA* or *TA 2000* and *consent* (either a *Defence Against Money Laundering* (*DAML*) or Defence Against Terrorist Financing (DATF)) is obtained to continue. In both Acts, the consent must be obtained before engaging in the conduct concerned (see 6.6).

2.3.7 The conditions for this defence differ between *POCA* and *TA 2000*. In the case of *TA 2000* the DATF must come from the National Crime Agency (*NCA*). In the case of *POCA,* if the person seeking a *DAML* is not the *money laundering reporting officer* (*MLRO*), the *DAML* can be provided by the *MLRO* (who should have first obtained a *DAML* directly from the *NCA*) under the provisions of Section 338 of *POCA*.

2.3.8 It is not a money laundering offence (*POCA* 327, 328 and 329) if the conduct that gave rise to the *criminal property*:

- Is reasonably believed to have happened in a location outside the UK where it was legal; and

- It would have carried a maximum sentence of less than 12 months had it occurred in the UK. The requirements of this overseas conduct exception are complex, onerous and stringent and as there are potential exceptions to the 12-month limit; specialist legal advice may be needed.

Note that this exception does not apply to *terrorist financing offences.*

For further detail please see 6.1.10.

2.3.9 The maximum penalties for committing a Primary Offence are 14 years imprisonment or an unlimited fine, or both (*POCA* 334 and *TA 2000* 22).

2.4 What is the Failure to Report offence?

2.4.1 The Failure to Report offence (*POCA* 330 and *TA 2000* 21A) applies only within the *regulated sector*. It occurs when a regulated person fails to report knowledge or suspicion of money laundering or terrorist financing as soon as practicable.

2.4.2 Remember:

- There is no *de minimis* threshold value; and

- The *MLTF* regime includes an overseas reporting exemption (see 6.1.10) but the counter-terrorism finance regime does not.

2.4.3 There are defences available for charges of failing to report both money laundering and terrorist financing if there is a reasonable excuse for not reporting promptly. A reasonable excuse may include the following:

- All the information that the person could provide to the *NCA* is already known to law enforcement because it is in the public domain or because it has already been reported by another person; or
- There is another reasonable excuse (this is likely to be defined fairly narrowly, in terms of personal safety or security).

2.4.4 For further information on this offence and the defences see Chapter Six of this *guidance.*

2.4.5 The maximum penalties for committing the Failure to Report offence are 5 years imprisonment or an unlimited fine, or both (*POCA* 334 and *TA 2000* 21A).

2.5 What is the Tipping Off offence?

2.5.1 The *Tipping Off* offence (*POCA* 333A and S331 and *TA 2000* 21D) applies only within the *regulated sector*. This offence is committed when:

- A person in the *regulated sector* discloses that a Suspicious Activity Report (*SAR*) or *DAML* has been made;
- An investigation into allegations of *MLTF* is underway (or being contemplated); and
- The disclosure is likely to prejudice that investigation.

2.5.2 For further information, including defences to this offence, see Chapter Six of this *guidance.*

2.5.3 The maximum penalties for committing the Failure to Report offence are 2 years imprisonment or an unlimited fine, or both (*POCA* 333A and *TA 2000* 21D).

2.6 What is the Prejudicing an Investigation offence?

2.6.1 The *Prejudicing an Investigation* offence (*POCA* 342 and *TA 2000* 39) applies to both those within the *regulated sector* and those outside. Interference with material relevant to an investigation (including falsification, concealment or destruction of documents) can amount to an offence of *prejudicing an investigation*. For those outside the *regulated sector*, revealing the existence of a law enforcement investigation can amount to an offence (for those within the *regulated sector* such conduct is likely to result in a *Tipping Off* offence, see 2.5 above).

2.6.2 There is a defence if:

- There was no suspicion that an investigation would be prejudiced;
- It was not known or suspected that the documents were relevant; and
- There was no intention to conceal facts.

2.6.3 The maximum penalties for committing the *Prejudicing an Investigation* offence are 5 years imprisonment or an unlimited fine, or both (*POCA* 342 and *TA 2000* 39).

3 RESPONSIBILITY AND OVERSIGHT

- What are the responsibilities of a *business*?
- What does Regulation 26 require of *beneficial owners*, officers and managers (BOOMs)?
- What are the differences in requirements for *sole practitioners*?
- What are the responsibilities of *senior management/MLRO*?
- How might the *MLRO* role be split?
- What policies, procedures and controls are required?

3.1 What are the responsibilities of a business?

3.1.1 For *businesses* providing *defined services*, the *2017 Regulations* require *AML* systems and controls that meet the requirements of the UK *MLTF* regime. The *2017 Regulations* impose a duty to ensure that *relevant employees* and *agents* are kept aware of these systems and controls and are trained to apply them properly (see Chapter Eight of this *guidance*). *Businesses* are explicitly required to:

- Monitor and manage their own compliance with the *2017 Regulations*; and
- Make sure they are always familiar with the requirements of the *2017 Regulations* to ensure continuing compliance.

3.1.2 If a *business* fails to meet its obligations under the *2017 Regulations*, civil penalties or criminal sanctions can be imposed on the *business* and any individuals deemed responsible. This could include anyone in a senior position who neglected their own responsibilities or agreed to something that resulted in the compliance failure.

3.1.3 The *Primary Money Laundering Offences* defined under *POCA* (see 2.2 of this *guidance*) can be committed by anyone inside or outside the *regulated sector* but *POCA* imposes specific provisions on the *regulated sector*.

3.1.4 *Businesses* must have systems and controls capable of:

- Assessing and managing the risk associated with a *client;*
- Performing *CDD*;
- Ongoing monitoring of existing *clients*;
- Keeping appropriate records;
- Enabling staff to make an internal *SAR* to their *MLRO*; and

- Monitoring compliance with the above policies, controls and procedures, and their communication to staff

3.1.5 *Relevant employees* and *agents* must have a level of training that is appropriate to their role, so that they understand their *AML* obligations.

3.1.6 The *AML* skills, knowledge, expertise, conduct and integrity of *relevant employees* must be assessed. This requirement does not extend to *agents*.

3.1.7 Effective internal risk management systems and controls must be established, and the relevant *senior management* responsibilities clearly defined.

HMRC Trust and Company Service Register

3.1.8 *Businesses* that are not on the trust and company service register are not permitted, under Regulation 56, to perform trust and company service work. Any *business* that performs trust and company service work when not on the register may be subject to disciplinary action or civil or criminal sanctions imposed by HMRC.

3.1.9 HMRC must maintain a register of all relevant persons who are trust or company service providers (TCSPs) that are not already registered with the Financial Conduct Authority (FCA).

3.1.10 *Businesses* that are a member of a professional body will be registered by that body on the trust and company service register because HMRC has asked the professional body supervisors to notify them of all the firms they supervise that perform trust and company service work (including firms where the work is incidental to the *accountancy services*). The professional body supervisor will send HMRC the name and address of each *business* and confirm they are 'fit and proper'. HMRC will then review this information and may carry out further checks before confirming approval, including looking further into the fit and proper status of a BOOM.

3.1.11 *Businesses* do not need to separately apply to HMRC but should contact their supervisory body if they are unsure whether they are on the register.

3.2 What does Regulation 26 require of beneficial owners, officers and managers (BOOMs)?

3.2.1 Regulation 26 requires each *beneficial owner*, officer and manager in a *business* to be approved by the supervisory authority of that *business*.

3.2.2 A *business* must take reasonable care to ensure that only persons approved by its supervisory body act as officers and managers of the *business*. This includes only appointing persons who are

approved and when a person's approval is withdrawn ensuring that the person ceases to act in any relevant role.

3.2.3 In order to obtain approval, each *beneficial owner*, officer or manager must apply to the supervisory authority. *Businesses* may wish to coordinate these applications. Each supervisory authority will have different application processes and the person making the application should familiarise themselves with the requirements. The *beneficial owner*, officer or manager should expect to submit evidence of their criminal record (e.g. a basic DBS certificate).

3.2.4 An approved *beneficial owner*, officer or manager who is subsequently convicted of a relevant offence (refer to Schedule 3 of the 2017 Regulations) must inform the supervisory authority within 30 days of the conviction date. The *business* must also inform the supervisory authority within 30 days of the date on which it became aware of the approved person's conviction. Please note that the *businesses*' supervisory authority may require notification in a shorter period, so the *business* should familiarise itself with the requirements. The *beneficial owner*, officer or manager would cease to be approved upon receiving a conviction for a relevant offence.

Definitions – beneficial owner, officer and manager

3.2.5 The following definitions apply to the terms '*beneficial owner*', 'officer' and 'manager' for the purposes of Regulation 26.

Beneficial owner:

- A *sole practitioner*;
- A partner, or limited liability partnership (LLP) member, in a firm who:
  - Holds (directly or indirectly) more than 25% of the capital, or profits or voting rights; or
  - Exercises ultimate control; and
- A shareholder in a limited company who:
  - Holds (directly or indirectly) more than 25% of the shares or voting rights; or
  - Ultimately owns or exercises ultimate control.

Officer:

- A *sole practitioner*;
- A partner in a partnership (including a Scottish Limited Partnership);
- A member in an LLP;
- A director or company secretary in a limited company; and
- A member of the firm's management board or equivalent.

Manager:

- The nominated officer (the *MLRO*);
- The member of the board of directors (or if there is no board, of its equivalent management body) or of its *senior management* as the officer responsible for the firm's compliance with *2017 Regulations*; and
- any other principal, senior manager, or member of a management committee who is responsible for setting, approving or ensuring the firm's compliance with the firm's *AML* policies and procedures, in relation to the following areas:
  - *Client* acceptance procedures;
  - The firm's risk management practices;
  - Internal controls, including employee screening and training for AML purposes;
  - Internal audit or the annual AML compliance review process;
  - *CDD*, including policies for reliance; and
  - AML record keeping.

3.3 What are the differences in requirements for sole practitioners?

3.3.1 Because it would not be appropriate to the size and nature of the *business*, a *sole practitioner* who has no *relevant employees* need not:

- Appoint a board member or member of *senior management* to be responsible for the *business's* compliance with the UK *MLTF* regime, as the *sole practitioner* will be held responsible as referred to in 3.4.4;
- Appoint a *nominated officer* because the *sole practitioner* will be responsible for submitting external reports to the *NCA* as referred to in 3.4.5; or
- Establish an independent audit function for *AML* policies, controls and procedures as referred to in 3.6.25.

3.4 What are the responsibilities of senior management/MLRO?

3.4.1 The *2017 Regulations* define *senior management* as: an officer or employee of the business with sufficient knowledge of the *business's MLTF* risk exposure, and with sufficient authority to take decisions affecting its risk exposure.

3.4.2 The *2017 Regulations* require that the approval of *senior management* must be obtained:

- For the policies, controls and procedures adopted by the *business*. (Regulation 19(2)(b));

- Before entering into or continuing a *business relationship* with a Politically Exposed Person (*PEP*), a *family member* of a *PEP* or a *known close associate* of a *PEP* (Regulation 35(5)(a)); and
- Before establishing or continuing a business relationship with, or carrying out an *occasional transaction* for, a person established in a high risk third country (Regulation 33(1)(b) and 33(3A)(e)).

3.4.3 Members of *senior management* undertaking such responsibilities should receive Continuing Professional Development (CPD) appropriate to their role.

3.4.4 Regulation 21(1)(a) of the *2017 Regulations* requires that, where appropriate to the size and nature of the *business*, the *business* appoints a board member or member of *senior management* who must be responsible for the *business's* compliance with the UK *MLTF* regime. This individual should have:

- An understanding of the *business*, its service lines and its *clients*;
- Sufficient seniority to direct the activities of all members of staff (including senior members of staff);
- The authority to ensure the *business's* compliance with the regime; and
- The time, capacity and resources to fulfil the role.

3.4.5 Regulation 21(3) of the *2017 Regulations* requires a *business* to appoint a *nominated officer*. This individual is responsible for receiving internal *SARs* and making external *SARs* to the *NCA* (as the UK's FIU). This person should have:

- Sufficient seniority to enforce their decisions;
- The authority to make external reports to the *NCA* without reference to another person; and
- The time, capacity and resources to review internal *SARs* and make external *SARs* in a timely manner.

3.4.6 Within 14 days of the appointment of either the responsible board member/*senior management* and/or the *nominated officer*, the *business's AML supervisory authority* must be informed of the identity of the individual(s).

3.4.7 Depending on the size, complexity and structure of a *business*, these two roles may be combined in a single individual, provided that person has sufficient seniority, authority, governance responsibility, time, capacity and resources to do both roles properly. This *guidance* primarily

describes the situation in which one individual fulfils the combined role, referred to in this *guidance* as the *MLRO*, with alternative arrangements covered in 3.5 of this *guidance*. The role of the *MLRO* is not defined in legislation but has traditionally included responsibility for internal controls and risk management around *MLTF*, in accordance with sectoral guidance. *Businesses* with an *MLRO* should periodically review the *MLRO*'s brief to ensure that:

- It reflects current law, regulation, guidance, best practice and the experience of the *business* in relation to the effective management of *MLTF* risk; and
- The *MLRO* has the seniority, authority, governance responsibility, time, capacity and resources to fulfil the brief.

3.4.8 The *business* should ensure that there are sufficient resources to undertake the work associated with the *MLRO*'s role. This should cover normal working, planned and unplanned absences, and seasonal or other peaks in work. Arrangements may include appointing deputies and delegates. When deciding upon the number and location of deputies and delegates, the *business* should have regard to the size and complexity of the *business's* service lines and locations. Particular service lines or locations may benefit from a deputy or delegate with specialised knowledge or proximity. Where there are deputies, delegates or both (or when elements of the *business's AML* policies, controls and procedures are outsourced), the *MLRO* retains ultimate responsibility for the *business's* compliance with the UK *MLTF* regime.

3.4.9 All *MLROs,* deputies and delegates should undertake CPD appropriate to their roles.

3.4.10 The *MLRO* should:

- Have oversight of, and be involved in, *MLTF* risk assessments;
- Take reasonable steps to access any relevant information about the *business*;
- Obtain and use national and international findings to inform their performance of their role;
- Have access to and remain up to date with relevant guidance;
- Create and maintain the business's risk-based approach to preventing *MLTF*;
- Support and coordinate management's focus on *MLTF* risks in each individual business area. This involves developing and implementing systems, controls, policies and procedures that are appropriate to each business area;
- Take reasonable steps to ensure the creation and maintenance of *MLTF* documentation;
- Develop *CDD* policies and procedures;

- Ensure the creation of the systems and controls needed to enable staff to make internal *SARs* in compliance with *POCA*;
- Receive internal *SARs* and make external *SARs* to the *NCA*;
- Take remedial action where controls are ineffective;
- Draw attention to the areas in which systems and controls are effective and where improvements could be made;
- Take reasonable steps to establish and maintain adequate arrangements for awareness and training;
- Receive the findings of relevant audits and compliance reviews (both internal and external) and communicate these to the board (or equivalent managing body); and
- Report to the board (or equivalent managing body) at least annually, providing an assessment of the operations and effectiveness of the business's *MLTF* systems and controls. This should take the form of a written report. These written reports should be supplemented with regular ad hoc meetings or comprehensive management information to keep senior management engaged with *MLTF* compliance and up to date with relevant national and international developments in *MLTF*, including new areas of risk and regulatory practice.

  The board (or equivalent managing body) should be able to demonstrate that it has given proper consideration to the reports and ad hoc briefings provided by the *MLRO* and then taken appropriate action to remedy any *MLTF* deficiencies highlighted.

3.5 How might the MLRO role be split?

3.5.1 Where the *MLRO* role as described above is split between two or more individuals, the allocation of the duties should be clear to the individuals assigned the duties, all *relevant employees* and the *business's AML supervisory authority.*

3.5.2 *Businesses* may use their discretion as to how to assign duties between two or more individuals, depending on the size, complexity and structure of their *business* (subject to the basic legal requirements described in this *guidance*).

3.5.3 The matters listed in 3.4.10 of this *guidance* should be allocated to these individuals or others with the appropriate skills, knowledge and expertise. Regardless of the allocation of these duties, the individual identified in 3.4.4 of this *guidance* is ultimately responsible for the *business's* compliance with the UK *MLTF* regime, including the actions of the *nominated officer*.

3.6 What policies, procedures and controls are required?

3.6.1 The *2017 Regulations* place certain requirements on *businesses* regarding *CDD* (Part 3 of the *2017 Regulations*) and 'record keeping, procedures and training' (Part 2 Chapter 2 of the *2017 Regulations*). The following topics, all of which form part of the *MLTF* framework, need to be considered:

- Risk-based approach, risk assessment and management;
- *CDD* (including Enhanced Due Diligence (EDD) and Simplified Due Diligence (SDD));
- Record keeping;
- Internal control;
- Ongoing monitoring;
- Reporting procedures;
- Compliance management; and
- Communication.

3.6.2 The *2017 Regulations* provide different amounts of detail about the policies and procedures required in each area. *Businesses* must implement and document policies, controls and procedures that are proportionate to the size and nature of the *business*. These must be subject to regular review and updated, and a written record of this exercise maintained.

3.6.3 *Businesses* with overseas subsidiaries or branches that are carrying out any of the activities listed in 1.2.1 of this *guidance* must establish group-wide policies and procedures equivalent to those in the UK. If the law of the overseas territory does not permit this, then the *business* must inform its *AML supervisory authority* and implement additional risk-based procedures. Steps taken to communicate policies, controls and procedures to the group must also be recorded.

3.6.4 When determining policies, controls and procedures, consideration must be given to data protection requirements and the safeguarding of client confidentiality. Under the *2017 Regulations*, a *business* must make data subjects aware of the data that will be collected about them and why the data is being collected. *Businesses* must not use the data that they have gathered for *MLTF* purposes for any other purpose unless they have obtained consent from the data subject to do so, or the use of the data is permitted under legislation. Note that the requirement is for permission by legislation not contract.

The data collected during *CDD* may include details of those who exercise day-to-day control, beneficial ownership and, in the case of transactions, the nature, purpose and the parties involved. Where there is a need to share client data on a group-wide basis, *businesses* may wish to obtain appropriate internal or external advice on the data protection implications.

Risk assessment and management

3.6.5 Every *business* must have appropriate policies and procedures for assessing and managing *MLTF* risks. To focus resources on the areas of greatest risk, a risk-based approach must be adopted. It is the ultimate responsibility of the board member or member of *senior management* responsible for compliance to identify the risks and then develop risk-based procedures for taking on new *client*s. A risk assessment should be conducted at least annually, but with new and changing risks considered as and when they are identified. Information from the *business's AML supervisory authority* must be considered. Further information on the risk-based approach, types and categories of risk can be found in Chapter Four of this *guidance*.

Risks from client activity

3.6.6 *Businesses* are required to have in place policies and procedures to identify and scrutinise the activity in which the client is involved and in respect of which the *business* is providing *defined services*, in order to detect potential *MLTF* activity. Activity that is complex, unusually large or lacks commercial rationale may be the foundation of suspicions of *MLTF.*

Risks from new services, products, business practices or technologies

3.6.7 As part of their policies, controls and procedures, *businesses* must take into account the *MLTF* risk arising from the introduction of new services, products, business practices or new technologies.

3.6.8 If a *business* separates *defined services* from other services (see 1.2.6), it should initially consider whether the new offering is a *defined service*. Some services will not be *defined services* and would therefore fall outside the scope of the *2017 Regulations,* e.g. the sale of a publication or a generic software application.

3.6.9 Where the new service or product is a *defined service*, *businesses* must have procedures that require it to be assessed for *MLTF* vulnerability and included within the firm-wide risk assessment. In assessing vulnerabilities and risks, its characteristics (such as whether it enables anonymity of beneficial ownership or is accessible through non-face-to-face delivery channels) must be considered.

3.6.10 *Businesses* should also consider how introducing new business practices (including new technology) could increase the *MLTF* risk. Criminals will often try to expose and exploit system weaknesses to aid criminal activity. Such weaknesses may allow activities to be undertaken anonymously or may enable threshold detection levels to be circumvented, so that a high volume of transactions can be undertaken over a short period of time. Before introducing new ways of working, consideration

must be given to whether new controls, policies or procedures are required to mitigate the *MLTF* risk, e.g. the introduction of additional monitoring or review controls.

3.6.11 When a *business* introduces a new service or product, it will not have an understanding of how it will be used by the *business's* clients. Therefore, for an initial period of use of the new product or service, the *business* should apply greater monitoring to the *engagements* so that it can detect any unidentified risks and amend its procedures as appropriate.

Customer Due Diligence

3.6.12 Responsibility for developing *CDD* policies and procedures rests with the *MLRO*. These procedures should ensure that *relevant employees* are able to make informed decisions about whether or not to establish a *business relationship* or undertake an *occasional transaction*, in the light of the *MLTF* risks associated with the *client* and transaction. To ensure that the correct procedures are being followed, *relevant employees* must be made aware of their obligations under the *2017 Regulations* and regularly be given appropriate training.

3.6.13 Many *businesses* already have procedures to help them avoid conflicts of interest and ensure they comply with professional requirements for independence. The requirements of the *2017 Regulations* can either be integrated into these procedures, to form a consolidated approach to taking on a new *client*, or addressed separately. For more on *CDD* see Chapter Five of this *guidance*.

Outsourcing of CDD

3.6.14 Where a *business* chooses to outsource aspects of the *CDD* process (e.g. collecting documentary evidence of *client* identity) to a third party, it should give consideration as to whether the risk of *MLTF* is increased as a result of the outsourcing. Where the potential risk of *MLTF* is increased, a *business* should ensure that appropriate systems and controls are put in place to mitigate the increased risk.

3.6.15 Regardless of any outsourcing arrangements, a *business* will remain responsible for ensuring that *CDD* is performed to a UK standard, including maintaining appropriate records even in cases where documents are collated by the third-party outsourcer.

3.6.16 There is no legal obligation for a third-party outsourcer to report knowledge or suspicion of *MLTF* to the *business* or for the *business* to put in place for reporting of knowledge or suspicion by the third-party outsourcer. If a *relevant employee* within the *business* acquires knowledge or suspicion based on information supplied by the third-party outsourcer, this must be reported in the normal way.

Reporting

3.6.17 Under *POCA,* the reporting of knowledge or suspicion of money laundering is a legal requirement. It is the responsibility of the *MLRO* to develop and implement internal policies, procedures and systems that are able to satisfy the *POCA* reporting requirements. Those policies must set out clearly, (a) what is expected of an individual who becomes aware of, or suspects, money laundering, and (b) how they report their concerns to the *MLRO.* All *relevant employees* must be trained in these procedures.

More information on reporting suspicious activity can be found in Chapter Six of this *guidance.*

Record keeping

3.6.18 All records created as part of the *CDD* process, including any non-engagement documents relating to the *client* relationship and ongoing monitoring of it, must be retained for five years after the relationship ends. All records related to an *occasional transaction* must be retained for five years after the transaction is completed. A disengagement letter could provide documentary evidence that a *business relationship* has terminated, as could other forms of communication such as an unambiguous email making it clear that the *business* does not wish to engage or is ceasing to act.

3.6.19 *Senior management* must ensure that the *relevant employees* are made aware of these retention policies and that they remain alert to the importance of following them. There is more information on record keeping in Chapter Seven of this *guidance*.

Training and awareness

3.6.20 The *2017 Regulations* require that all *relevant employees* and *agents* (such as contractors) are aware of the law relating to *MLTF*, and the requirements of data protection, and undertake regular training in how to recognise and deal with suspicious activity which may be related to *MLTF*. See Chapter Eight of this *guidance* for further details.

3.6.21 A *business* that fails to provide training for *relevant employees* (and *agents* where appropriate) could be in breach of the regulations and at risk of prosecution. It would also risk failing to comply with Sections 330–331 of *POCA*, which require *businesses* in the *regulated sector* to disclose any suspicions of money laundering. Although Section 330 of *POCA* could provide a 'reasonable excuse' defence against a failure to disclose for the individual, the *2017 Regulations* are still likely to have been breached by the *business* because adequate training was not provided. For further information on training and awareness refer to Chapter Eight of this *guidance.*

Employee screening

3.6.22 *Businesses* must consider the skills, knowledge, expertise, conduct and integrity of all *relevant employees* both before and during their appointment. This consideration should be proportionate to the employee's role in the *business* and the *MLTF* risks they are likely to encounter. An employee

is relevant if his or her work is relevant to compliance with the *2017 Regulations* or is otherwise capable of contributing to the *business's* identification, mitigation, prevention or detection of *MLTF*. Most *businesses* may already undertake such an assessment as part of their recruitment, appraisal, training, independence, fit and proper, and compliance procedures. However, it is important that *businesses* have a mechanism for evidencing *MLTF* knowledge within such procedures: for example, a test for which the results are recorded can evidence knowledge and expertise. Similarly, regular recorded ethics training can be useful in assessing integrity.

Monitoring policies and procedures

3.6.23 The *MLRO* and appropriate *senior management* should together monitor the effectiveness of policies, procedures and processes so that improvements can be made when inefficiencies are found. Risks should be monitored, and any changes must be reflected in changes to policies and procedures, keeping them up to date, in line with the risk assessment of the *business.* For more information, see Chapter Four of this *guidance*.

3.6.24 In their efforts to improve *MLTF* policies, controls and procedures, and better understand where problems can arise, *senior management* should encourage *relevant employees* to provide feedback. When changes are made to policies, procedures or processes these should be properly communicated to *relevant employees* and supported by appropriate training where necessary.

3.6.25 Businesses must introduce a system of regular, independent reviews to understand the adequacy and effectiveness of the *MLTF* systems and any weaknesses identified. Independent does not necessarily mean external, as some *businesses* will have internal functions (typically audit, compliance or quality functions) that can carry out the reviews. Any recommendations for improvement should be monitored. Existing monitoring programmes and their frequency can be extended to include *MLTF*. The reviews should be proportionate to the size and nature of the *business.* A *sole practitioner* with no *relevant employees* need not implement regular, independent reviews unless required by their *AML supervisory authority*.

3.6.26 As part of their improvement efforts, the senior manager responsible for compliance and the *MLRO* should monitor publicly available information on best practice in dealing with *MLTF* risks. For example, thematic reviews by regulators can be useful ways to improve understanding of good and poor practice, while reports on particular enforcement actions can illuminate common areas of weakness in *MLTF* policies, controls and procedures.

4 RISK-BASED APPROACH

- What is the role of the risk-based approach?
- What is the role of *senior management*?
- How should the risk assessment be designed?
- What is the risk profile of the *business*?
- How should procedures take account of the risk-based approach?
- What are the different types of risk?
- Why is documentation important?

4.1 What is the role of the risk-based approach?

4.1.1 The risk-based approach is fundamental to satisfying the Financial Action Task Force (*FATF*) recommendations, the *EU Directive* where applicable, and the overall UK *MLTF* regime. It requires governments, supervisors and *businesses* alike to analyse the *MLTF* risks they face and make proportionate responses to them. It is the foundation of any of the *business's MLTF* policies, controls and procedures, particularly its *CDD* and staff training procedures.

4.1.2 The risk-based approach recognises that the risks posed by *MLTF* activity will not be the same in every case and so it allows the *business* to tailor its response in proportion to its perceptions of risk. The risk-based approach requires evidence-based decision-making to better target risks. No procedure will ever detect and prevent all *MLTF*, but a realistic analysis of actual risks enables a *business* to concentrate the greatest resources on the greatest threats.

4.1.3 The risk-based approach does not exempt low risk *client*s, services and situations from *CDD* or other risk mitigation procedures, however the appropriate level of *CDD* is likely to be less onerous than for those thought to present a higher level of risk.

4.1.4 This section provides guidance on the analysis the *business* will need to perform to properly underpin a risk-based approach. Guidance on applying the risk-based approach to particular *MLTF* procedures and controls can be found in the relevant chapter of this *guidance* dedicated to those procedures.

4.2 What is the role of senior management?

4.2.1 *Senior management* is responsible for managing all the risks faced by the *business*, including *MLTF* risks. Senior managers should ensure that *MLTF* risks are analysed, and their nature and severity identified and assessed, in order to produce a risk profile for the *business*. *Senior management* should then act to mitigate those risks in proportion to the severity of the threats they pose.

4.2.2 Where a risk is identified, the *business* must design and implement appropriate procedures to manage it. The reasons for believing these procedures to be appropriate should be supported by evidence, documented and systems created to monitor effectiveness. A *business's* risk-based approach should evolve in response to the findings of the systems monitoring the effectiveness of the *MLTF* policies, controls and procedures.

4.2.3 The risk analysis can be conducted by the *MLRO* but must be approved by *senior management* including the senior manager responsible for compliance (if a different person to the *MLRO*). This is likely to include formal ratification of the outcomes, including the resulting policies and procedures, but may also include close *senior management* involvement in some or all of the analysis itself.

4.2.4 The risk profile and operating environment of any *business* changes over time. The risk assessment must be refreshed regularly by periodic reviews, the frequency of which should reflect the *MLTF* risks faced and the stability or otherwise of the business environment. In addition, whenever *senior management* sees that events have affected *MLTF* risks, the risk assessment should also be refreshed by an event-driven review. A fresh assessment may require *MLTF* policies, controls and procedures to be amended, with consequential impacts upon, for example, the training programmes for *relevant employees* and *agents*.

4.3 How should the risk assessment be designed?

4.3.1 The *2017 Regulations* require the *business* to consider a*ll MLTF* risks to which it is exposed, including at least the risks presented by:

- Its *clients*;
- The countries or geographic areas in which it operates;
- Its products or services;
- Its transactions (referred to here as engagements); and
- Its delivery channels.

4.3.2 One possible first step is to consider the *MLTF* risks faced by each different part of the *business*. The *business* may already have general risk assessment processes, and these could form the basis of its *MLTF* risk analysis.

4.3.3 When designing an assessment process the *business* should look not only at itself but at its *client*s and markets as well. Consider factors that lower risks as well as those that increase them; a *client* subject to an effective *MLTF* regime poses a lower risk than one not subject to such a regime.

Businesses should take into account the findings of the most recent UK National Risk Assessment, together with any relevant information issued by the relevant *AML supervisory authority.*

4.3.4 Total *MLTF* risks include the possibility that the *business* might:

- Be used to launder money (e.g. by holding criminal proceeds in a *client* money account or by becoming involved in an arrangement that disguises the beneficial ownership of criminal proceeds);
- Be used to facilitate *MLTF* by another person (e.g. by creating a corporate vehicle to be used for money laundering or by introducing a money launderer to another regulated entity); or
- Suffer consequential legal, regulatory or reputational damage because a *client* (or one or more of its associates) is involved in money laundering.

4.3.5 Risks should be grouped into categories, such as '*client*', 'service' and 'geography'. Some risks will not easily fit under any one heading but that should not prevent them from being considered properly. Nor should a business judge overall risk simply by looking at individual risks in isolation. When two threats are combined, they can produce a total risk greater than the sum of the parts. A particular industry and a particular country may each be thought to pose only a moderate risk. But when they are brought together, perhaps by a particular *client* or transaction, then the combined risk could possibly be high. *Businesses* must not take a 'tick-box' approach to assessing *MLTF* risk in relation to any individual *client* but must, instead, take reasonable steps to assess all information relevant to its consideration of the risk.

4.4 What is the risk profile of the business?

4.4.1 A *business* with a relatively simple *client* base and a limited portfolio of services may have a simple risk profile. In which case, a single set of *MLTF* policies, controls and procedures may suffice right across its operations. On the other hand, many *businesses* will find that their risk assessment reveals quite different *MLTF* risks in different aspects of the *business*. *Accountancy services*, for example, may face significantly different risks to insolvency, bankruptcy and recovery services. A risk assessment allows resources to be targeted, and procedures tailored, to address those differences properly.

4.4.2 When a *business* decides to have different procedures in different parts of its operations, it should consider how to deal with *client*s whose needs straddle departments or functions, such as:

- A new *client* who is to be served by two or more parts of the *business* with different *MLTF* policies, controls and procedures; or

- An existing *client* who is to receive new services from a part of the *business* with its own distinct *MLTF* policies, controls and procedures.

4.4.3 The risk-based approach can also take into account the *business's* experience and knowledge of different commercial environments. If, for example, the business has no experience of a particular country, it could treat it as a normal or high risk even though other *businesses* might consider it low risk. Similarly, if the business expects to deal with only UK individuals and entities, it may treat as high risk any *client* associated with a non-UK country.

4.5 How should procedures take account of the risk-based approach?

4.5.1 Before establishing a *client* relationship or accepting an *engagement*, a *business* must have controls in place to address the risks arising from it. The risk profile of the *business* should show where particular risks are likely to arise, and so where certain procedures will be needed to tackle them.

4.5.2 Risk-based approach procedures should be easy to understand and easy to use for all *relevant employees* who will need them. Sufficient flexibility should be built in to allow the procedures to identify, and adapt to, unusual situations.

4.5.3 The nature and extent of *MLTF* policies, controls and procedures depend on:

- The nature, scale, complexity and diversity of the *business*;
- The geographical spread of *client* operations, including any local *MLTF* regimes that apply; and
- The extent to which operations are linked to other organisations (such as networking businesses or agencies).

4.5.4 *Businesses* should have different *client* risk categories such as: low, normal, and high. The procedures used for each category should be suitable for the risks typically found in that category. For example, if it is normal for a *business* to deal with *client*s from a particular country, the *business's* procedures for what they regard as normal *client*s must be designed to address the risks associated with that country. Some low and high-risk indicators can be found in APPENDIX D.

4.5.5 Regardless of the risk categorisation, *businesses* must undertake monitoring of the *client* relationship. Such monitoring must be done on a risk-based approach, with levels of monitoring varying depending on the *MLTF* risk associated with individual *client*s.

4.5.6 Taking into account key risk categories, a *business* may be able to draw up a simple matrix in order to determine a *client's* risk profile. Such risk categories may include a *client's* legal form, the country in which the *client* is established or incorporated, and the industry sector in which the

client operates. In addition, *businesses* should also consider the nature of the service being offered to a *client* and the channels through which the services/transactions are being delivered.

4.5.7 Elevated risks could be mitigated by:

- Conducting enhanced levels of due diligence – i.e. increasing the level of *CDD* that is gathered;
- Carrying out periodic *CDD* reviews on a more frequent basis; and/or
- Putting additional controls around particular service offerings or *clients.*

4.6 What are the different types of risk?

What is client risk?

4.6.1 A *business* should consider the following question: 'Do our *clients* or their *beneficial owners* (*BOs*) have attributes known to be frequently used by money launderers or terrorist financiers?'

4.6.2 *Client* risk is the overall *MLTF* risk posed by a *client* based on the key risk categories, as determined by a *business.*

4.6.3 The *client's* risk profile may also inform the extent of the checks that need to be performed on other associated parties, such as the *client's BOs*.

4.6.4 Undue *client* secrecy and unnecessarily complex ownership structures can both point to heightened risk, because company structures that disguise ownership and control are particularly attractive to people involved in *MLTF*.

4.6.5 In cases where a *client* (an individual) or *BO* of a *client* is identified as a *PEP*, an enhanced level of due diligence must be performed on the *PEP*. Further details on the approach to be taken in such circumstances are set out in sections 5.3.11–5.3.25 of this *guidance*.

4.6.6 A *business* should consider the following question: 'Do our *clients* have substantial operations in sectors that are favoured by money launderers or terrorist financiers?'

4.6.7 Certain business sectors are more likely to be exposed to increased levels of *MLTF.* For example, the cryptocurrency sector has been subject to misuse by money launderers.

4.6.8 *Businesses* should consider the sectors in which their *client* has significant operations and take this into account when determining a *client's* risk profile. When considering what constitutes a high-risk sector, *businesses* should take into account the findings of the most recent UK National Risk Assessment, together with any guidance issued by the relevant *AML supervisory authority*.

What is service risk?

4.6.9 A *business* should consider the following questions: 'Do any of our products or services have attributes known to be used by money launderers or terrorist financiers?' and 'Does the nature and type of the *engagements* the *business* provides advice on have an inherently higher risk of *MLTF*?'

4.6.10 Service risk is the perceived risk that certain products or services present an increased level of vulnerability to being used for *MLTF* purposes.

4.6.11 *Businesses* should consider carrying out additional checks when providing a product or service that has an increased level of *MLTF* vulnerability.

4.6.12 Services and products in which there is a serious risk that the *business* itself could commit a money laundering offence should also be treated as higher risk. For example, wherever the *business* may commit an offence under Sections 327–329 of *POCA*. (See Chapter Two of this *guidance*.)

4.6.13 Before a *business* begins to offer a service significantly different from its existing range of products or services, or when a *client* selects a new service from the *business*, it must assess the associated *MLTF* risks and respond appropriately to any new or increased risks.

What is geographic risk?

4.6.14 A *business* should consider the following question: 'Are our *client*s *established in* countries that are known to be used by money launderers or terrorist financiers?'

4.6.15 Geographic risk is the increased level of risk that a country poses in respect of *MLTF*.

4.6.16 When determining geographic risk, factors to consider may include the perceived level of corruption, criminal activity and the effectiveness of *MLTF* controls within the country.

4.6.17 *Businesses* should make use of publicly available information when assessing the levels of *MLTF* of a particular country, e.g. information published by civil society organisations such as Transparency International and public assessments of the *MLTF* framework of individual countries (such as *FATF* mutual evaluations). *Businesses* should refer to the list of high-risk third countries as per the *MLTF* (Amendment) (No. 2) (High-Risk Countries) Regulations 2021 and the HM Treasury Advisory Notice 'MLTF controls in higher-risk jurisdictions'.

4.6.18 Although some countries may carry a higher level of *MLTF* risk, those *businesses* that have extensive experience within a given country may reach a geographical risk classification that differs to those that only have a limited exposure.

What is delivery channel risk?

4.6.19 A *business* should consider the following question: 'Does the fact that I am not dealing with the *client* face to face pose a greater *MLTF* risk?'

4.6.20 Certain delivery channels can increase the *MLTF* risk, because they can make it more difficult to determine the identity and credibility of a *client,* both at the start of a *business relationship* and during its course.

4.6.21 For example, delivery channel risk could be increased where services/products are provided to *clients* who have not been met face to face, or where a *business relationship* with a *client* is conducted through an intermediary.

4.6.22 *Businesses* should consider the risks posed by a given delivery channel when determining the risk profile of a *client,* and whether an increased level of *CDD* needs to be performed.

4.7 Why is documentation important?

4.7.1 *Businesses* must be able to demonstrate to their *AML supervisory authority* how they assess and seek to mitigate *MLTF* risks. This assessment must be documented and made available to the *AML supervisory authority* on request. The documentation should demonstrate how the risk assessment informs their policies and procedures.

5 CUSTOMER DUE DILIGENCE

- What is the purpose of *CDD?*
- When should *CDD* be carried out?
- How should *CDD* be applied?
- Can reliance be placed on other parties?
- What happens if *CDD* cannot be completed?
- What are the obligations to report discrepancies in the *People with Significant Control* (*PSC*) register and Trust Registration Service?

5.1 What is the purpose of *CDD*?

5.1.1 Criminals often seek to mask their true identity by using complex and opaque ownership structures. The purpose of *CDD* is to know and understand a *client's* identity and business activities, so that any *MLTF* risks can be properly managed. Effective *CDD* is, therefore, a key part of *MLTF* defences. By knowing the identity of a *client*, including who owns and controls it, a *business* not only fulfils its legal and regulatory requirements, but it equips itself to make informed decisions about the *client's* standing and acceptability.

5.1.2 *CDD* also helps a *business* to construct a better understanding of the *client's* typical business activities. By understanding what normal practice is, it is easier to detect abnormal events, which in turn, may point to *MLTF* activity.

CDD principles

5.1.3 *Businesses* must apply *CDD* procedures:

- At the start of a new business relationship (including when a business is asked to form a company for its client);
- At appropriate points during the lifetime of the relationship;
- When an occasional transaction is to be undertaken;
- When there is either knowledge or a suspicion of *MLTF* (where there is such knowledge or suspicion of *MLTF* the business must also consider whether an external *SAR* should be made to the *NCA*);
- When there is any doubt about the reliability of the identity information or documents obtained previously for verification purposes;

- When the business has a legal duty to contact a client and the duty includes a requirement to review information related to the ownership or control structure of the client or any *BO*s; and
- When the business has a duty to exchange information under the Common Reporting Standard. It would be unusual for an accountancy business to have this reporting obligation as it applies more generally to asset managers and financial institutions who hold accounts on behalf of a client.

5.1.4 The *2017 Regulations* outline the required components of good *CDD*. These components are:

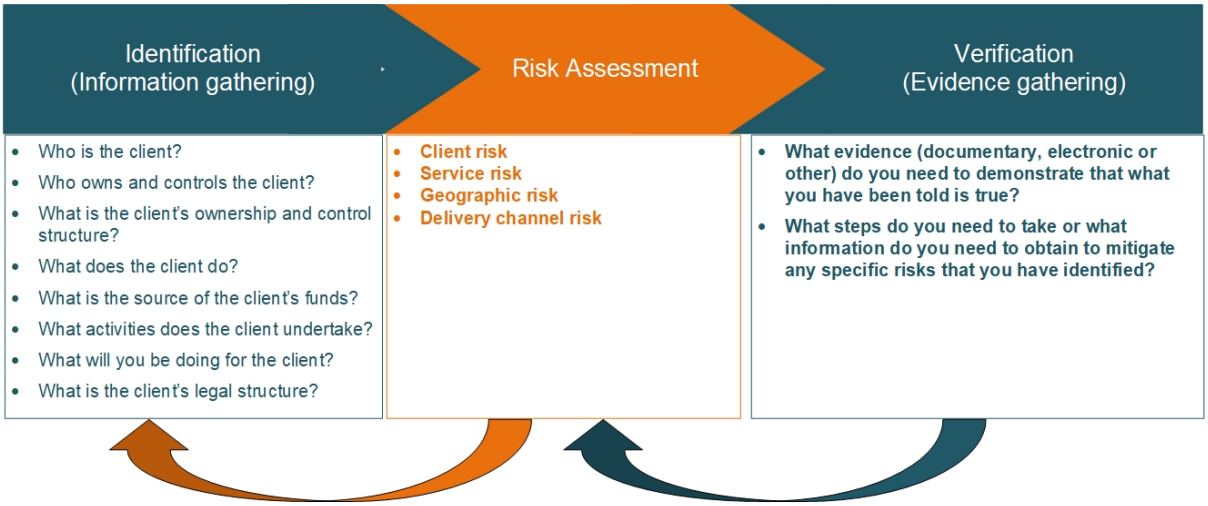
- Identifying the *client* (i.e. knowing who the *client* is);
- Verifying the identity of the *client* (i.e. demonstrating that they are who they claim to be) by obtaining documents or other information from independent and reliable sources;
- Identifying the *BO(s)* so that the ownership and control structure can be understood and the identities of any individuals who are the owners or controllers can be known;
- On a risk-sensitive basis, taking reasonable measures to verify the identity of the *BO(s)*; and
- Gathering information on the intended purpose and nature of the *business relationship.*

5.1.5 When determining the degree of *CDD* to apply, the *business* must adopt a risk-based approach, taking into account the type of *client*, *business relationship*, product or transaction, and ensuring that the appropriate emphasis is given to those areas that pose a higher level of risk (see Chapter Four of this *guidance*). For this reason, it is important that risks are assessed at the outset of a *business relationship* so that a proportionate degree of *CDD* can be brought to bear.

5.1.6 Where the work to be performed falls within the scope of *defined services*, the *business* must ensure that *CDD* is applied to new and existing *clients* alike. For existing *clients*, *CDD* information gathered previously should be reviewed and updated where it is necessary, timely and risk-appropriate to do so.

5.1.7 While the *2017 Regulations* prescribe the level of *CDD* that should be applied in certain situations (i.e. simplified or enhanced – for more on this see 5.3 of this *guidance*), they do not describe how to do this on a risk-sensitive basis. Nonetheless, a *business* is expected to be able to demonstrate to its *AML supervisory authority* that the measures it applied were appropriate in accordance with its own risk assessment. Chapter Four of this *guidance* outlines broadly the key areas to be considered when developing a risk-based approach including (among other factors) the purpose, regularity and duration of the *business relationship*.

Stages of CDD



5.1.8 The arrows in the diagram above represent feedback loops by which an initial risk assessment or verification may highlight a need for more information to be gathered or a fresh risk assessment performed.

5.1.9 The identification phase requires the gathering of information about a *client's* identity and the purpose of the intended *business relationship*. Appropriate identification information for an individual would include full name, date of birth and residential address. This can be collected from a range of sources, including the *client*. In the case of corporates and other organisations, identification also extends to establishing the identity of anyone who ultimately owns or controls the *client*. These people are the *BOs*, and further detail on how to deal with them can be found in 5.1.16 of this *guidance.* Where an individual is believed to be acting on behalf of another person, that person must also be identified.

5.1.10 The next stage of *CDD* is risk assessment. This should be performed in accordance with the risk-based approach guidance contained in Chapter Four of this *guidance*, and must reflect the purpose, regularity and duration of the *business relationship,* as well as the size of transactions to be undertaken by the *client* and the *business's* own risk assessment. An initial risk assessment is based on the information gathered during stage one (identification), but this may prompt the gathering of additional information as indicated by the left-hand feedback loop. The right-hand feedback loop shows that additional risk assessment may be required in light of stage three (verification).

5.1.11 During identification and risk assessment, the *business* might consider the following questions:

- Are you clear why the *client* has selected you to carry out the service? E.g. has the *client* asked you to assist in a service which is outside your normal area of specialism? While it is

relevant to consider whether the *client* approached you or you sought out the work, the *client's* reason for awarding you the work must still be considered.

- Has the *client* asked to engage with you in an unusual manner? E.g. in a way that could obscure the true business activity or the true beneficiaries or controllers of the activity.
- Does the transaction align to the *client's* normal business activities or planned strategy? E.g. the *client* is involved in a transaction for which they have little or no expertise.
- Does the transaction make commercial sense to all parties? E.g. there is no clear economic or legal purpose for the transaction.
- Is the identity of the other parties to the transaction clear? E.g.:
  - The *client* is unclear as to the identity of the other parties to the transaction; or
  - Intermediaries may be being used to obscure beneficial ownership.
- Are the other parties to the transactions based in jurisdictions known to have weak corporate governance?
- Have you been deliberately asked to work on both sides of a client transaction, giving rise to an ethical wall which could act as a barrier for information sharing?
- Is there a lack of documentation in support of the transaction?
- Does the client transaction involve an unusual payment method which could be used to facilitate anonymity? E.g. large cash payments or electronic currency.
- Are any of the funds in the client transaction coming from a jurisdiction known to have links to *MLTF?*
- Could the client transaction be linked to a series of transactions, each of which has a value less than €15,000? E.g. payments are deliberately made under the *occasional transaction* threshold in order to avoid scrutiny.
- Does this client transaction make sense in the context of the other work the business has done with the client?

5.1.12 *Businesses* should remain vigilant throughout the duration of their involvement in the service in order to identify circumstances that require a report of suspicion of *MLTF* activity.

5.1.13 Once an initial risk assessment has been carried out, evidence is required to verify the identity information gathered during the first stage. This is called client verification. Verification involves validating (with an independent, authoritative source), that the identity is genuine and belongs to the claimed individual or entity. For an individual, verification may require sight of a passport (with

a photocopy taken). For corporates and others, in addition to the *client* itself, reasonable verification measures for any individual *BOs* must also be considered on a risk-sensitive basis.

5.1.14 Further guidance on the type of information that should be gathered and the documents that can be used to verify it, can be found in APPENDIX B of this *guidance*.

Beneficial ownership

Definition

5.1.15 A *BO* can only be a natural person, i.e. a human being, as distinct from a legal person, e.g. a company.

5.1.16 Regulations 5 and 6 of the *2017 Regulations* define the meaning of '*beneficial owner*' for a range of different *client* types. The table below gives a summary of how beneficial ownership could be established for a variety of entities. In many cases, judgements will have to be made (for example, over effective control of an entity). Some of these judgements will be finely balanced. For this reason, *businesses* should document all decisions and the basis on which they are formed. Please see APPENDIX E for illustrative case studies for each of these *client* types.

Client					
Companies whose securities are listed on an EEA regulated investment market or equivalent					
Regulation	**Owns or controls (directly or indirectly)**				**Case Study**
	Voting rights	**Shares**	**Capital**	**Profits**	
28(5)	N/A	N/A	N/A	N/A	N/A
Other beneficial owners					
No requirement to establish beneficial ownership					

Client					
Bodies corporate - Company					
Regulation	**Owns or controls (directly or indirectly) more than**				**Case Studies**
	Voting rights	**Shares**	**Capital**	**Profits**	
5(1)	25%	25%	N/A	N/A	1, 2, 3 & 4
Other beneficial owners					
Any individual who: • Exercises ultimate control over the management of the body corporate; or • Who controls the body corporate					

Client					
Bodies corporate – LLP					
Regulation	**Owns or controls (directly or indirectly) more than**				**Case Study**
	Voting rights	**Shares**	**Capital**	**Profits**	
5(1)	25%	25%	N/A	N/A	5
Other beneficial owners					
Any individual who: • Exercises ultimate control over the management of the body corporate; or • Who controls the body corporate					

Client					
Partnerships other than LLPs (including LPs)					
Regulation	**Entitled to or controls (directly or indirectly) more than**				**Case Study**
	Voting rights	**Shares**	**Capital**	**Profits**	
5(3)	25%	N/A	25%	25%	6, 7
Other beneficial owners					
Any individual who: • Otherwise exercises ultimate control over the management of the partnership (in the case of a Limited Partnership (LP) this will be the General Partner); or • In the case of a Scottish partnership, exercises significant influence. (See Part 1 of Schedule 1 to the Scottish Partnerships (Register of People with Significant Control) Regulations 2017.)					

Client					
Trusts					
Regulation	**Owns or controls directly or indirectly)**				**Case Study**
	Voting rights	**Shares**	**Capital**	**Profits**	
6(1)	N/A	N/A	N/A	N/A	8
Other beneficial owners					
All the following: • The settlor(s); • The trustee(s); • The beneficiaries, including anyone who is a member of a class who has had a benefit from the trust allocated to them (or where some/all have not yet been determined, the class of persons in whose main interest the trust is set up or operates); and • Any individual who has control over the trust (for example, protectors).					

Client					
Estates of deceased individuals					
Regulation	**Owns or controls (directly or indirectly)**				**Case Study**
	Voting rights	**Shares**	**Capital**	**Profits**	
6(6)	N/A	N/A	N/A	N/A	9
Other beneficial owners					
In England, Wales and Northern Ireland: the executor, original or by representation, or administrator for the time being of the deceased. In Scotland: the executor of the estate (or for the purposes of the Executors (Scotland) Act 1900)					

Client					
Other legal entities					
Regulation	**Owns or controls (directly or indirectly)**				**Case Study**
	Voting rights	**Shares**	**Capital**	**Profits**	
6(7) & 6(8)	N/A	N/A	N/A	N/A	10
Other beneficial owners					
The following: • Any individual who benefits from the property of the entity or *arrangement*. Where no individual beneficiaries are identified, the class of persons in whose main interest the entity or *arrangement* was set up or operates. • Any individual who exercises control over the entity or *arrangement*. Where an individual is the *BO* of a body corporate which benefits from or exercises control over the property of the entity or *arrangement*, the individual is to be regarded as benefiting from or exercising control over the property of the entity or *arrangement*.					

Client					
All other cases					
Regulation	**Owns or controls (directly or indirectly)**				**Case Study**
	Voting rights	**Shares**	**Capital**	**Profits**	
6(9)	N/A	N/A	N/A	N/A	11
Other beneficial owners					
The individual who: • Ultimately owns or controls the entity or *arrangement* or • On whose behalf a transaction is being conducted.					

<table>
<tr><th colspan="6">Client</th></tr>
<tr><td colspan="6">Where all possible means of identifying the beneficial owner of a body corporate have been exhausted (see 5.5) and either the business:
Has not succeeded in identifying the Bos; or
It is not satisfied that the individuals identified as BOs are in fact BOs.</td></tr>
<tr><th rowspan="2">Regulation</th><th colspan="4">Owns or controls (directly or indirectly)</th><th rowspan="2">Case Study</th></tr>
<tr><th>Voting rights</th><th>Shares</th><th>Capital</th><th>Profits</th></tr>
<tr><td>28(6), 28(7) & 28(8)</td><td>N/A</td><td>N/A</td><td>N/A</td><td>N/A</td><td>12</td></tr>
<tr><th colspan="6">Other beneficial owners</th></tr>
<tr><td colspan="6">The business must keep written records of all the actions it has taken to identify the BOs
The business should consider whether it is appropriate to:
a. Decline or cease to act (see 5.4.8);
b. File a SAR (see Chapter Six); or
c. Both.
If the business is satisfied that it can continue to act, the business must:
Take reasonable steps to verify the identity of the senior person in the body corporate responsible for managing it, and keep written records of:
All the actions the business has taken to verify the identity of the senior person; and
Any difficulties that the business has encountered in verifying the identity of the senior person.</td></tr>
</table>

5.1.17 *Businesses*, in accordance with their legal obligations, need to be diligent in their enquiries about beneficial ownership, taking into account that the information they need may not always be readily available from public sources. A flexible approach to information gathering will be needed as it will often involve direct enquiries with *clients* and their advisers, as well as searches of public records in the UK and overseas. There may be situations in which someone is considered to be the *BO* by virtue of control even though their ownership share is less than 25%.

Determining BOs in respect of complex structures

5.1.18 In many situations determining beneficial ownership is a straightforward matter. Cases in which the *client* is part of a complex structure will need to be looked at more closely. The diagrams in APPENDIX E illustrate types of structures, including indirect ownership and aggregation, which should be taken into account when determining beneficial ownership.

5.2 When should CDD be carried out?

When establishing a business relationship

5.2.1 *CDD* should normally be completed before entering into a *business relationship* or undertaking an *occasional transaction*. For guidance on the situation when *CDD* cannot be performed before the commencement of a *business relationship*, see 5.5 of this *guidance.*

5.2.2 A *business relationship* is defined by the *2017 Regulations* (Regulation 4) as:

'A business, professional or commercial relationship between a relevant (i.e. regulated) person and a customer, which arises out of the business of the relevant person and is expected by the relevant person, at the time when contact is established, to have an element of duration.'

Thus, generic advice, provided with no expectation of any *client* follow-up or continuing relationship (such as generic reports provided free of charge or available for purchase by anyone), is unlikely to constitute a *business relationship*, although may potentially be an *occasional transaction*.

5.2.3 An *occasional transaction* is one not carried out as part of a *business relationship.* Under Regulation 27(2) of the *2017 Regulations, CDD* must be applied to an *occasional transaction* with a value of €15,000 or more (accumulating the value of linked transactions). *Occasional transactions* are not common in *accountancy services*, but should it occur then the *business* must carry out *CDD* in addition to (a) understanding why the *client* requires the service, (b) considering any other parties involved, and (c) establishing whether or not there is any potential for *MLTF*. If the *client* returns for another transaction the *business* should consider whether this establishes an ongoing relationship.

5.2.4 *CDD* procedures must also be carried out at certain other times (see 5.1.3), such as when there is a suspicion of *MLTF*, or where there are doubts about the available identity information, perhaps following a change in ownership/control or through the participation of a *PEP* (see 5.3.11 of this *guidance*).

Ongoing monitoring of the client relationship

5.2.5 Established *business relationships* should be subject to *CDD* procedures throughout their duration. This ongoing monitoring involves the scrutiny of *client* activities (including enquiries into sources of funds, if necessary) to make sure they are consistent with the *business's* knowledge and understanding of the *client* and its operations, and the associated risks.

Event-driven reviews

5.2.6 *Businesses* need to make sure that documentation, data and information obtained for *CDD* purposes is kept up to date. Events prompting a *CDD* information update must include:

- a change in the *client's* identity;
- a change in beneficial ownership of the *client*;
- a change in the service provided to the *client*;
- information that is inconsistent with the *business's* knowledge of the *client*; and
- If there is knowledge, suspicion or cause for concern (for example, where you doubt the veracity of information provided). If a *SAR* has been made, care must also be taken to avoid making any disclosures which could constitute *tipping off*.

An event-driven review may also be triggered by:

- The start of a new *engagement*;
- Planning for recurring *engagements*;
- A previously stalled *engagement* restarting;
- A significant change to key office holders;
- The participation of a *PEP* (see 5.3.11 of this *guidance*); and
- A significant change in the *client's* business activity (this would include new operations in new countries).

Periodic reviews

5.2.7 *Businesses* should use routine periodic reviews to update their *CDD*. The frequency of updating should be risk-based, making use of the *business's* risk assessment covered in Chapter Four of this *guidance*, and reflecting the *business's* knowledge of the *client* and any changes in its circumstances or the services it requires.

Ongoing procedures

5.2.8 The *CDD* procedures required for either event-driven or periodic reviews may not be the same as when first establishing a new *business relationship*. Given how much existing information could already be held, ongoing *CDD* may require the collection of less new information than was required at the very outset.

5.3 How should CDD be applied?

Applying *CDD* by taking a risk-based approach

5.3.1 Regulation 28(12) of the *2017 Regulations* requires adequate *CDD* measures to reflect the *business's* risk assessment (Chapter Four of this *guidance*). This is important not only to ensure that there is good depth of knowledge in higher-risk cases but also to avoid disproportionate effort in lower- or normal-risk cases and to minimise inconvenience for a potential *client*. No system of checks will ever detect and prevent all *MLTF*, but a risk-sensitive approach of this kind will provide a realistic assessment of the risks. A non-exhaustive list of risk factors can be found in APPENDIX D.

5.3.2 Extensive information on how to apply *CDD* in this way is contained in the guidance on risk-sensitive client verification provided by the *JMLSG*, which considers a wide range of entity types. For information on the more frequently encountered entity types see APPENDIX E.

Simplified Due Diligence (SDD)

5.3.3 SDD can be applied when a *client* is low risk, in accordance with the *businesses*' risk assessment criteria.

5.3.4 *CDD* measures are still required, but the extent and timing may be adjusted to reflect the assessment of low risk, for example in determining what constitutes reasonable verification measures. Ongoing monitoring for unusual or suspicious transactions is still required.

5.3.5 The *business's* internal procedures should set out clearly what constitutes reasonable grounds for a *client* to qualify for SDD and must take into account at least the risk factors in APPENDIX D and relevant information made available by its *AML supervisory authority.*

5.3.6 In any case, when a *client* or potential *client* has been subjected to SDD, and one or more of the following occurs:

- The *business* doubts the veracity or accuracy of documents or information previously provided;
- The *business* no longer considers there is a low risk of *MLTF*;
- A suspicion of *MLTF* arises; or
- Any of the conditions for conducting Enhanced Due Diligence arise (see below)

The SDD provisions must be set aside and the appropriate due diligence procedures applied instead (with due regard given to any risk of *tipping off*).

Enhanced Due Diligence (EDD)

5.3.7 A risk-based approach to *CDD* will identify situations in which there is a higher risk of *MLTF*. The regulations specify that 'enhanced' due diligence (Regulation 33 of the *2017 Regulations*) must be applied in the following situations:

- Where there is a high risk of *MLTF;*
- In relation to an *occasional transaction* where either the *client* or another of the parties to the transaction are *established in* a high-risk third country. This would predominantly apply to services other than accountancy apart from where the *business* is handling *client* money or *client* assets;
- In relation to a *business relationship* with a *client established in* a high-risk third country;
- If a *business* has determined that a *client* or potential *client* is a *PEP*, or a *family member* or *known close associate* of a *PEP;*
- In any case where a *client* has provided false or stolen identification documentation or information*;*
- In any case where a transaction is complex or unusually large, or there is an unusual pattern of transactions which have no apparent economic or legal purpose; and
- In any other case which by its nature can present a higher risk of *MLTF.*

5.3.8 The *business's* internal procedures should set out clearly what constitutes reasonable grounds for a *client* to qualify for EDD and must take into account at least the high risk factors in APPENDIX D.

5.3.9 EDD procedures must include:

- As far as reasonably possible, examining the background and purpose of the *engagement*;
- Increasing the degree and nature of monitoring of the *business relationship* in which the transaction is made, to determine whether that transaction or that relationship appear to be suspicious; and
- For *clients* that are higher risk due to connections to a high-risk third country:
  - Obtaining additional information on the customer and its ultimate *BOs*;
  - Obtaining additional information on the intended nature of the *business relationship*;
  - Obtaining information on the *source of wealth* and *source of funds* of the customer and the customer's *BO*;
  - Where there is a transaction, obtaining information on the reasons for the transaction;

- Obtaining the approval of *senior management* for establishing or continuing the *business relationship*; and
- Increasing the monitoring of the *business relationship*, by increasing the number and timings of controls applied.

5.3.10 EDD measures (as detailed in Regulation 33 (5) of the *2017 Regulations*) may also include one or more of the following measures:

- Seeking additional independent, reliable sources to verify information, including identity information, provided to the *business;*
- Taking additional measures to understand better the background, ownership and financial situation of the *client,* and other parties relevant to the *engagement;*
- Taking further steps to be satisfied that the transaction is consistent with the purpose and intended nature of the *business relationship;*
- Increasing the monitoring of the *business relationship,* including greater scrutiny of transactions.

Politically Exposed Person

5.3.11 As set out above, the *2017 Regulations* specify that *PEPs* (as well as certain *family members* and *known close associates*) must undergo EDD. Those who are entrusted with public functions often have power over public funds and the awarding of public contracts. They should not, because of their high profile, be held to a lower level of scrutiny than other individuals. The nature, and extent of, such EDD measures must vary depending on the extent of any heightened *MLTF* risk associated with individual *PEPs*. *Businesses* must treat *PEPs* on a case-by-case basis and apply EDD on the basis of their assessment of the *MLTF* risk associated with any individual *PEPs.*

5.3.12 Appropriate risk management systems and procedures must be put in place to determine whether potential *clients* (or their *BOs*) are *PEPs*, or *family members*/*known close associates* of a *PEP*. *Businesses* should consider the risk factors of the country in which the *PEP* has a prominent public function. *PEPs* from countries with low levels of corruption; strong state institutions; and credible *MLTF* defences are likely to pose less of an *MLTF* risk than *PEPs* from higher-risk countries.

5.3.13 An individual identified as a *PEP* solely because of their public function in the UK must still be treated as a *PEP*. However, if the *business* is not aware of any factors that would place the individual in a higher-risk category, the individual may be categorised as a low-risk *PEP*. Regulation 18 of the *2017 Regulations* and the risk factors guidance produced by the European Supervisory

Authorities set out factors that might point to potential higher risk. Such factors might also include, for example:

- Known involvement in publicised scandals e.g., regarding expenses;
- Undeclared business interests;
- The acceptance of inducements to influence policy.

5.3.14 In lower-risk situations a *business* should apply less onerous EDD requirements (such as, for example, making fewer enquiries of a *PEP's family members* or *known close associates;* and taking less intrusive and less exhaustive steps to establish the *sources of wealth/funds* of *PEPs*). Conversely, and in higher-risk situations, *businesses* should apply more stringent EDD measures. This represents part of the risk-based approach that *businesses* should take to *MLTF* compliance, as described more fully elsewhere in this *guidance.*

5.3.15 *Businesses* must treat individuals as *PEPs* for at least 12 months after they cease to hold a prominent public function. This requirement does not apply to *family members* or *known close associates. Family members* and *known close associates* of *PEPs* may be treated as ordinary *clients* (and subject only to *CDD* obligations) from the point that the *PEP* ceases to discharge a prominent public function. *Businesses* should only apply EDD measures to *PEPs* for more than 12 months after they have ceased to hold a prominent public function when the *business* has determined that they present a higher risk of *MLTF*.

5.3.16 To establish whether someone is a *family member* or a *known close associate* of a *PEP*, *businesses* are expected to refer only to information that is either in the public domain or already in their possession.

5.3.17 The *2017 Regulations* provide that the definition of a *family member* must include the spouses/civil partners of *PEPs*, the children of *PEPs* (and their spouse or civil partner) and the parents of *PEPs*. This is not an exhaustive list – in determining whether other *family members* should be subject to EDD, *businesses* should consider the levels of *MLTF* risk associated with the relevant *PEP*. In lower-risk situations, a *business* need not apply EDD to *family members* other than those within the definition in the *2017 Regulations.*

5.3.18 Exclusion of a *family member* from the EDD process because of remoteness will not exclude them from consideration as a *known close associate*.

5.3.19 The *2017 Regulations* state that only directors, deputy directors and board members (or equivalent) of international organisations should be treated as *PEPs*. Middle-ranking and junior officials do not fall within the definition of a *PEP*.

5.3.20 Since January 2020, all EU jurisdictions are required to publish a list of positions that would make someone a *PEP* in their country. The UK, whilst no longer being a member of the EU, has listed these functions in Regulation 35(14) of the amended *2017 Regulations.*

5.3.21 Since the term 'international organisation' is not defined by the *2017 Regulations*, careful consideration should be given to the type, reputation and constitution of a body before excluding its representatives from EDD. Bodies such as the United Nations and NATO can confidently be considered to fall within the definition. The context of the *engagement* and role of the *PEP* in respect of it should also be considered.

5.3.22 *Businesses* are required to use risk-sensitive measures to help them recognise *PEPs*. This can be as simple as asking the *client* themselves or searching the internet for public information relating to the *PEP*. *Businesses* likely to provide services regularly to *PEPs* should consider subscribing to a specialist database. *Businesses* that use such databases must understand how they are populated and will need to ensure that those flagged by the database fall within the definition of a *PEP*, *family member* or *known close associate* as set out by the *2017 Regulations*. During the life of a relationship, and to the extent that it is practical, attempts should be made to keep abreast of developments that could transform an existing *client* into a *PEP*.

5.3.23 *Businesses* wanting to enter into, or continue, a *business relationship* with a *PEP* must carry out EDD, which includes:

- *Senior management* approval for the relationship;
- Adequate measures to establish *sources of wealth* and *funds*; and
- Enhanced monitoring of the ongoing relationship.

As set out above, the nature and extent of EDD measures must vary depending on the levels of *MLTF* risk associated with individual *PEPs*.

5.3.24 The FCA has published detailed guidance on how *businesses* that it supervises for *MLTF* purposes should identify and treat *PEPs*. *Businesses* may find this guidance useful in determining the approach that they should take to identifying and applying EDD to *PEPs*.

5.3.25 Recital 33 of the *EU Directive* (which the *2017 Regulations* bring into UK law) makes it clear that refusing a *business relationship* with a person solely on the basis that they are a *PEP* is contrary to the spirit and letter of the *EU Directive* and of the *FATF* standards. *Businesses* must instead mitigate and manage any identified *MLTF* risks and should refuse *business relationships* only when such risk assessments indicate that they cannot effectively mitigate and manage these risks.

Financial sanctions and other prohibited relationships

5.3.26 *Businesses* must comply with any sanctions, embargoes or restrictions in respect of any person or state to which the United Nations or the UK has decided to apply such measures (a list is published by HM Treasury). *Businesses* may be directed to not enter into *business relationships*, carry out *occasional transactions* or proceed with any *arrangements* already in progress, and have an obligation to report sanctions breaches to HM Treasury's *OFSI* (separately to the making of an external *SAR* to the *NCA*, where appropriate). Depending on the circumstances, sanctions imposed by overseas countries may also apply to UK *businesses.*

5.3.27 Financial sanctions can be a complex and changeable area. Detailed discussion of it is beyond the scope of this *guidance*. *Businesses* should make use of the guidance published by *OFSI*. *OFSI* also offers a free e-alerts service to help *businesses* stay up to date with developments in financial sanctions. *Businesses* should note that the *2017 Regulations* set out specific reporting obligations for certain b*usinesses*, including *external accountants*, *auditors* and *tax advisers*. A *business* that fails to comply with its reporting obligations will be committing an offence, which may result in a criminal prosecution or a monetary penalty. For further information on the reporting obligations refer to the *OFSI* guide to financial sanctions. *Businesses* unsure of their legal obligations should seek legal advice.

5.4 Can reliance be placed on other parties?

5.4.1 *Businesses* are permitted to rely on certain other parties (subject to their agreement) to complete all or part of *CDD.*

5.4.2 This is permitted only if the other party is a member of the *regulated sector* in the UK, or subject, in a third country, to an equivalent regulatory regime which includes compliance supervision requirements equivalent to the *EU Directive.*

5.4.3 *Businesses* should note that where one party places reliance on another they must enter into an agreement (that should be in writing) to ensure that the other party will provide the *CDD* documentation immediately on request. An arrangement of this kind can be useful and efficient when the two parties are able to build a relationship of trust, but it should not be entered into lightly. Liability for inadequate *CDD* remains with the relying party. *Businesses* placing reliance on another should satisfy themselves with the level of *CDD* being undertaken.

Parties seeking reliance

5.4.4 A *business* relying on a third party in this way is not required to apply standard *CDD*, but it must still carry out a risk assessment and perform ongoing monitoring. That means it should still obtain a sufficient quantity and quality of *CDD* information to enable it to meet its monitoring obligations.

5.4.5 In addition, the *business* seeking to rely on a third party remains liable for any *CDD* failings irrespective of the terms of the *CDD* agreement.

5.4.6 If relying on a third party, *businesses* must immediately obtain copies of all relevant information to satisfy *CDD* requirements. They should also enter into a written arrangement that confirms that the party being relied on will provide copies of identification and verification documentation immediately on request.

Parties granting reliance

5.4.7 A *business* should consider whether it wishes to be relied upon to perform *CDD* for another party. Before granting consent, a *business* that is relied upon must ensure that its *client* (and any other third party whose information would be disclosed) is aware that the disclosure may be made to the other party and has no objection to the disclosure. It should make sure that:

- It has adequate systems for keeping proper *CDD* records;
- It can make available immediately on request:
  - Any information about the *client*/BO gathered during *CDD*; and/or
  - Copies of any information provided during client/BO identity/verification or documentation obtained during *CDD*; and
- It can keep those *CDD* records securely for five years after the end of the *business relationship.*

Group engagements

5.4.8 When a relevant *business* contracts with a group of companies that are under the control of a parent undertaking, all of which could be considered *clients*, it may wish to consider applying *CDD* in a proportionate, risk-sensitive way by treating the group as a single entity.

Subcontracting

5.4.9 Where a relevant *business*, A, is engaged by another *business*, B, to help with work for one of its *clients* or some other underlying party, C, then A should consider whether its *client* is in fact B, not C. For example, where there is no *business relationship* formed, nor is there an *engagement* letter between A and C, it may be that *CDD* on C is not required but should instead be completed for B.

5.4.10 On the other hand, where there is significant contact with the underlying party, or where a *business relationship* with it is believed to have been established, then C may also be deemed a *client* and *CDD* may be required for both C and B. In this situation, A may wish to take into account information provided by B and the relationship it has with C when determining what *CDD* is

required under its risk-based approach. It should be noted that the same considerations are relevant in networked arrangements, where work is referred between member firms.

Evidence gathering

5.4.11 The *2017 Regulations* do not prescribe what information sources a *business* should consult to perform *CDD* effectively. There are many possibilities, including direct discussions with the *client* and collecting information from its websites, brochures and reports, as well as public domain sources. It is particularly important to make sure that the *client* is who they say they are. Since the purpose of client verification is to check the *client* identity information already gathered, it is important that the information used at this stage is drawn from independent sources and any identity evidence used should be from an authoritative source.

5.4.12 In higher-risk cases *businesses* must consider whether they need to take extra steps to increase the depth of their *CDD* knowledge. These might include more extensive internet and media searches covering the *client*, key counterparties, the business sectors and countries, and requests for additional identity evidence. Subscription databases can be a quick way to access this kind of public domain information, and they will often reveal links to known associates (companies and individuals) as well.

5.4.13 *Client* verification means to verify on the basis of documents or information obtained from a reliable source which is independent of the person whose identity is being verified. Documents issued or made available by an official body can be regarded as being independent.

5.4.14 It is important that verification procedures are undertaken on a risk-sensitive basis. Refer to APPENDIX B for a non-exhaustive list of documents that can be used for verification purposes. Further help can be found in the *JMLSG* guidance.

Copies of documents

Certification

5.4.15 *Businesses* should consider how they will demonstrate the provenance of document copies. When the original was seen by a *relevant employee* it should be sufficient for that person to endorse the copy to that effect, including the date on which it was seen. When the copy originates from outside the *business*, the standing of the person who certified it should be considered and *relevant employees* should be aware of the risks associated with certified copies (for example, that such documents may be falsified). It may be necessary to stipulate acceptable sources for certified copies; for example, *businesses* may decide to restrict acceptance to those persons in the permitted categories for reliance (see 5.4.2 of this *guidance*).

Annotation

5.4.16 Where a document is not an original but could be mistaken for one, it should be annotated to that effect. This is particularly true for documents sourced from the internet, such as downloads from Companies House, from the website of a regulator, stock exchange or government department, or from any other suitable source. Documents of this kind should carry an indication of the source and when the download took place – sometimes in the automatic page footers/headers – and these would satisfy this requirement. Where necessary and taking a risk-based approach, such documents (whether downloaded or otherwise) should be validated with an authoritative source, such as a government agency.

Use of electronic data

5.4.17 Businesses may choose to use electronic identification processes either on their own or in conjunction with other paper-based evidence, on a risk-based approach. A number of subscription services, many of them online, give access to identity-related information. A broad variety of electronic verification systems exist, including those drawing on multiple sources, those relying on the self-capture of documentation using an interactive application and those that provide credentials which confirm a third party has validated the ID. Companies House registers of *PSC* may be used but may not be solely relied upon in the absence of other supporting evidence.

5.4.18 Before using any electronic service, firms should ensure they understand the basis of the systems they use and question whether the information is reliable, comprehensive and accurate. The process should be secure from fraud and misuse and capable of providing an appropriate level of assurance that the person claiming a particular identity is in fact the person with that identity, to a degree that is necessary for effectively managing and mitigating any risks of money laundering and terrorist financing. Consider the following:

- **Does the system draw on multiple sources?** A single source (e.g. the electoral register) is not usually sufficient unless there are additional controls to validate the information. A system that combines negative and positive data sources is generally more robust.
- **Are the sources checked and reviewed regularly?** Systems that do not update their data regularly are generally more prone to inaccuracy.
- **Are there control mechanisms to ensure data quality and reliability?** Systems should have built-in data integrity checks which, ideally, are sufficiently transparent to prove their effectiveness.
- **Is the information accessible?** It should be possible to either download and store search results in electronic form or print a hard copy that contains all the details required (name of provider, original source, date, etc.).

- **Does the system provide adequate evidence that the *client* is who they claim to be?** Consideration should be given as to whether the evidence provided by the system has been obtained from an official source, e.g. the certificate of incorporation from the official company registry or a passport.

5.5 What happens if CDD cannot be completed?

When delays occur

5.5.1 The *business* must still gather enough information to form a general understanding of the *client's* identity so that it remains possible to assess the risk of *MLTF.*

5.5.2 The *2017 Regulations* do recognise that *CDD* will sometimes need to be completed while the *business relationship* is established, rather than before. But delays of this kind are only permissible when there is little risk of *MLTF* and it is necessary to avoid interrupting the normal conduct of business. Such exceptions will be rare (see the *CCAB* guidance on completion of *CDD* during urgent work).

5.5.3 When most of the information needed has been collected before the *business relationship* has begun, it may be acceptable to have a short extension (to allow for information collection to be completed) provided the cause of the delay is administrative or logistical, not the *client's* reluctance to cooperate. To ensure the reasons are valid, and should not give rise to suspicions of *MLTF*, it is recommended that each extension be considered individually and agreed by the *MLRO.*

5.5.4 Extensions to the *CDD* schedule should be specific, well-defined and time-limited. There should be no granting of general extensions (such as for particular *client* types).

5.5.5 No *client engagement* (including transfers of *client* money or assets) should be completed until *CDD* has been completed in accordance with the *business's* own procedures.

5.5.6 Provided that *CDD* is completed as soon as practicable, verification procedures may be completed during the establishment of a *business relationship* if it is necessary not to interrupt the normal course of business and there is little risk of *MLTF*. In some situations, it may be necessary to carry out *CDD* while commencing work because it is urgent. Such situations could include:

- Some insolvency appointments;
- Appointments that involve ascertaining the *client's* legal position or defending them in legal proceedings;
- Response to an urgent cyber incident; or
- When it is critically important to preserve or extract data or other assets without delay.

5.5.7 It is recommended that these categories are considered carefully and defined by the *MLRO* to ensure that the reasons for any extension are appropriate.

5.5.8 The principles underlying the examples above are that there must be a pressing or urgent need for the services which is caused by external factors not within the *client's* control.

5.5.9 Further examples may include a request for an urgent review of cash flows and business funding to determine whether a bank will continue to fund a *client*; an urgent requirement to negotiate a 'time to pay' arrangement with HMRC; or circumstances where there could be an adverse impact on the *client* business which could lead to job losses or an adverse impact on vulnerable individuals.

5.5.10 Commercial deadlines alone would not meet the test, nor would an audit deadline or normal deadline to prepare and file accounts, unless there were very unusual circumstances.

5.5.11 The *business* must still gather enough information to form a general understanding of the *client's* identity so that it remains possible to assess the risk of *MLTF*. Any electronic checks available to the firm should be completed as should open-source checks (e.g. a search of Companies House).

5.5.12 Since the *CDD* is to be performed while establishing a *business relationship*, it should be complete by the time the final work is provided to the *client*.

5.5.13 Where a firm decides to extend the circumstances in which it will apply Regulation 30(3), each request should be considered and approved by the *MLRO*, or an appropriate deputy.

Cessation of work and suspicious activity reporting

5.5.14 If a prospective or existing *client* refuses to provide *CDD* information, the work must not proceed and any existing relationship with the *client* must be terminated. This can be a particular problem where an *insolvency practitioner* cannot resign. It should be noted that as per Regulation 31(5) these requirements do not apply where an *insolvency practitioner* has been appointed by the court as administrator or liquidator, provided that all reasonable steps have been taken to satisfy the requirements of Regulation 28(2) and 28(10), and the resignation would be prejudicial to the interests of the creditors of the company. *Insolvency practitioners* should refer to the appendix to this *guidance* that deals with the requirements for insolvency work. Consideration must also be given to whether or not a *SAR* should be submitted to the *NCA* under *POCA* or *TA 2000* (see Chapter Six of this *guidance*).

5.6 What are the obligations to report discrepancies in the People with Significant Control register?

5.6.1 Before establishing a *business relationship*, with a UK company, unregistered company, LLP or Scottish Limited Partnership, a *business* must obtain proof of their *client's* registration on the *PSC* register, or an excerpt of the register.

5.6.2 From 11 April 2022 a *business* establishing a *business relationship* with a trust must obtain proof of the trust's registration on the Trust Registration Service ('TRS') if the trust is required to be registered.

5.6.3 If a *business* identifies a discrepancy between the information that they gather while carrying out their duties under the *2017 Regulations* (during *client* take-on processes) and the information that is on the *PSC* register or TRS, the *business* must report that discrepancy to Companies House or HMRC as applicable.

5.6.4 *Businesses* are permitted to rely on certain other parties (subject to their agreement) to complete all or part of *CDD,* which includes reporting any discrepancy identified to Companies House.

5.6.5 A person named on the *PSC* register may not be the person the *business* identifies as a *BO* under *CDD* procedures, due to different definitions for a *PSC* and a *BO*.

What constitutes a discrepancy?

5.6.6 The purpose behind *PSC* discrepancy reporting is to ensure that the information on the *PSC* register is adequate, accurate and current. 'Discrepancy' is not defined in the *2017 Regulations*, but HM Government's interpretation of the intention is for material differences to be reported. For further information (including what constitutes a material discrepancy) see the Companies House guidance

When should a discrepancy be reported?

5.6.7 A discrepancy should be reported as soon as reasonably practicable after the discrepancy is discovered, which would normally be within 15 working days of establishing that a material discrepancy exists. This means that a *business* has the opportunity to discuss the potential discrepancy with the *client* to establish whether an inadvertent error has been made and will be corrected without delay. The outcome of any such discussion with the *client* will allow the *business* to conclude whether a material discrepancy exists and is reportable. *Businesses* are not obliged to discuss the identified discrepancy with the *client* before making a report. Bulk reporting on a periodic basis is not permitted.

5.6.8 *Businesses* do not have to wait for a response from Companies House or HMRC before taking on their *clients*. The decision as to whether to establish a *business relationship* with that entity is up to the *business*, based on their usual risk-based approach. *Businesses* should assess the relevance of any discrepancies within their *CDD* process. In particular, if it appears the discrepancy is intentional, the *business* should consider the veracity of other information received from the *client.*

5.6.9 Discrepancies only have to be reported when establishing a new *business relationship*. *Businesses* do not have to review the records of existing *clients* or report during *CDD* refreshes.

5.6.10 A discrepancy report is not a substitute for a *SAR* but finding a discrepancy does not in itself require a regulated firm to submit a *SAR*. The normal tests for when a *SAR* is required still apply – see Chapter Six for more details.

Time lags in updating the registers

5.6.11 Companies House will investigate the discrepancy report and, in most cases, contact the company. If the information on the register is incorrect, Companies House can use a new power which allows them to remove incorrect information. They will expect the company to update the register and will undertake compliance action if this does not happen.

5.6.12 If a *business* identifies a discrepancy on the *PSC* register or TRS and the *client* corrects the discrepancy within a reasonable period, the *business* does not need to make a report to Companies House or HMRC if they are satisfied that the *PSC* register or TRS is now correct. This is on the basis that no material error would exist. Similarly, if there is a change in ownership of a *client*, a discrepancy between the *PSC* register and the information the *business* has collected is only reportable if the *client* does not update the *PSC* details within the permitted time period for doing so.

How do you report a discrepancy?

5.6.13 The Companies House guidance details how to report a discrepancy.

5.6.14 *Businesses* should keep records of any reports that are made to Companies House or HMRC for a period of five years.

6 SUSPICIOUS ACTIVITY REPORTING

- What must be reported?
- What is the Failure to Report offence?
- What is the *Tipping Off* offence?
- What is the *Prejudicing an Investigation* offence?
- When and how should an external *SAR* be made to the *NCA?*
- What is a *DAML* and why is it important?
- What should happen after an external *SAR* has been made?

6.1 What must be reported?

The reporting regime

6.1.1 *Businesses* must have internal reporting procedures that enable *relevant employees* and *agents* to disclose their knowledge or suspicions of *MLTF*. A *nominated officer* must be appointed to receive these disclosures (this *guidance* assumes that this role will be filled by the *MLRO*). In the *regulated sector* it is an offence for someone who knows or suspects that *MLTF* has taken place (or has reasonable grounds) not to report their concerns to their *MLRO* (or, in exceptional circumstances, straight to the *NCA*).

6.1.2 The *MLRO* has a duty to consider all such internal *SARs*. If the *MLRO* also suspects *MLTF*, then an external *SAR* must be made to the *NCA.* Typically, the *MLRO's* knowledge or suspicions will arise (directly or indirectly) out of the internal *SARs* they receive.

6.1.3 Similar 'failure to disclose' provisions are found in *TA 2000*.

6.1.4 *Businesses* should be aware that a SAR may be about persons other than *clients*. The key elements required for a SAR (suspicion, crime, proceeds) are set out below.

Suspicion

6.1.5 There is very little guidance on what constitutes 'suspicion', so the concept remains subjective. Suspicion does not require document-based evidence, it may be a particular fact pattern, a series of red flags or general observations that cause concern. Some pointers can be found in case law, where the following observations have been made.

Suspicion is:

- A state of mind more definite than speculation but falling short of evidence-based knowledge;
- A positive feeling of actual apprehension or mistrust; or
- An opinion with some foundation.

Suspicion is not:

- A mere idle wondering; or
- A vague feeling of unease.

6.1.6 A *SAR* must be made where there is knowledge or suspicion of money laundering, but businesses must not make *SARs* based on speculation. For example:

- A suspicion is formed that someone has failed to declare all their income for the last tax year. To assume that they had done the same thing in previous years would be speculation in the absence of specific supporting information; however, *businesses* should take appropriate risk management procedures if these suspicions elevate the risk of the *client.*
- The purchase of a brand-new Ferrari by a *client's* financial controller is not, in itself, suspicious activity. However, inconsistencies in accounts for which the financial controller is responsible could raise speculation to the level of suspicion.

6.1.7 A *SAR* is also required when there are 'reasonable grounds' to know or suspect *MLTF.* This is an objective test, i.e. the standard of behaviour expected of a reasonable person in the same position. Claims of ignorance or naivety are no defence.

6.1.8 It is important for individuals to make enquiries that would reasonably be expected of someone with their qualifications, experience and expertise, provided the enquiries fall within the normal scope of the *engagement* or *business relationship*. In other words, they should exercise a healthy level of professional scepticism and judgement and, if unsure about what to do, consult their *MLRO* (or similar) in accordance with the *business*'s own procedures. If in doubt, err on the side of caution and report to the *MLRO*.

The information or knowledge that gave rise to the suspicions should have come to the individual in the course of providing *defined services.*

Crime

6.1.9 Criminal conduct is behaviour which constitutes a criminal offence in the UK or, if it happened overseas, would have been an offence had it taken place in any part of the UK.

6.1.10 There is an overseas conduct exception, set out in Section 330 (7A) of *POCA*. This provides a defence against a charge of failure to report where:

- The conduct is reasonably believed to have taken place overseas;
- It was lawful where it took place; and
- The maximum sentence had it happened in the UK would be less than 12 months.

Because these tests are complex and burdensome, and there are potential exceptions to the tests, accordingly, *MLROs* may wish to seek legal advice to resolve any doubts.

6.1.11 There is no similar overseas conduct exemption for reporting suspicions of terrorist financing.

6.1.12 In most cases of suspicious activity, the reporter will have a particular type of criminal conduct in mind, but this is not always the case. Some transactions or activities so lack a commercial rationale or business purpose that they give rise to a suspicion of *MLTF*. UK law defines money laundering widely; any criminal conduct that results in *criminal property* is classified as money laundering, as detailed in Chapter Two of this *guidance*. Individuals are not required to become experts in the wide range of criminal offences that lead to money laundering, but they are expected to recognise any that fall within the scope of their work and exercise professional scepticism and judgement at all times.

6.1.13 An innocent error or mistake would not normally give rise to criminal proceeds (unless a strict liability offence). If a *client* is known or believed to have acted in error, they should have the situation explained to them. They must then promptly bring their conduct within the law to avoid committing a money laundering offence. Where there is uncertainty because certain legal issues lie outside the competence of the practitioner, the *client* should be referred to an appropriate specialist or legal professional.

Proceeds/ criminal property

6.1.14 Criminal proceeds can take many forms. Cost savings (as a result of tax evasion or ignoring legal requirements) and other less obvious benefits can be proceeds of crime. Where *criminal property* is used to acquire more assets, these too become *criminal property*. It is important to note that there is no question of a *de minimis* value.

6.1.15 If someone knowingly engages in criminal activity with no benefit, then they may have committed some offence other than money laundering (it will often be fraud) and there is no obligation to make a *SAR*. *Businesses* should nonetheless consider whether they are under some other professional reporting obligations.

A checklist for the *SAR* reporting process can be found in APPENDIX C.

6.2 What is the Failure to Report offence?

6.2.1 Individuals should make sure that any information in their possession which is part of the *required disclosure* is passed to the *MLRO* as soon as practicably possible.

6.2.2. Where, as a result of an internal *SAR*, the *MLRO* obtains knowledge or forms a suspicion of *MLTF*, they must as soon as practicable make an external *SAR* to the *NCA*. The *MLRO* may commit a *POCA* Section 331 offence if they fail to do so.

Failure to disclose: defences and exemptions

6.2.3 There are some defences against failure to disclose:

- Overseas conduct (see 6.1.10);
- Privilege reporting exemption (see 6.5.22 to 6.5.33); and
- The *relevant employee* or *agent* concerned did not know about or suspect *MLTF* and had not received the training required by Regulation 24 of the *2017 Regulations*. As no training was provided, the *relevant employee* or *agent* is not bound by the objective test – i.e. to always report when there are 'reasonable grounds' for knowledge or suspicion – but the *business* has committed an offence by failing to provide training.

Reasonable excuse defence

6.2.4 Reasonable excuse has not been defined by the courts and is not likely to apply in most cases. Circumstances which may provide a reasonable excuse for not reporting suspicions of money laundering include, for example:

- If the reporter is under duress or there is a threat to their safety; or
- If it is clear that a law enforcement authority (in the UK) is already aware of all the relevant information that the business holds, or all the relevant information is entirely in the public domain.

This is not intended to be an exhaustive list. Moreover, reporters should be aware that it will ultimately be for a court to decide if a reporters' excuse for not making an authorised disclosure report under Section 330 of *POCA* was a reasonable excuse. Reporters should clearly document their reasons for concluding that they have a reasonable excuse in any given case and, if in doubt, may wish to seek independent legal advice.

6.3 What is the Tipping Off offence?

6.3.1 This offence is committed when:

- A person in the *regulated sector* discloses that a *SAR* or *DAML* has been made;
- An investigation into allegations of *MLTF* is underway (or being contemplated); and
- The disclosure is likely to prejudice that investigation.

6.3.2 Considerable care must be taken when communicating with *client*s or third parties after any form of *SAR* has been made. Before disclosing any of the matters reported, it is important to consider carefully whether to do so is likely to constitute an offence of *tipping off* or *prejudicing an investigation* (see 6.4 of this *guidance*). It is suggested that *businesses* keep records of these deliberations and the conclusions reached (see Chapter Seven of this *guidance*).

6.3.3 No *Tipping Off* offence is committed under Section 333A of *POCA*, if the relevant person did not know or suspect that their disclosure was likely to prejudice any subsequent investigation.

6.3.4 There are a number of exceptions to this prohibition on disclosing the existence of a *SAR* or a current or subsequent investigation. A person does not commit an offence if they make a disclosure:

- To a fellow *relevant employee* of the same undertaking;
- To a *relevant professional adviser* in a different undertaking if both people are located in either an *EEA* state or a state with equivalent *MLTF* requirements, and both undertakings share common ownership, management or control;
- To an *AML supervisory authority,* as defined by the *2017 Regulations*;
- For the purposes of the prevention, investigation or prosecution of a criminal offence in the UK or elsewhere, or an investigation under *POCA*, or the enforcement of any court order under *POCA*; or
- Following notification that the *moratorium period* for a *consent SAR* has been extended beyond 31 days, to the subject of the report (provided the content of the *SAR* is not disclosed). *Businesses* may wish to seek legal advice.

6.3.5 An offence is not committed if a *relevant professional adviser* makes a disclosure to another within the same profession (e.g. accountancy) but from a different *business*, who is of the same professional standing (including with respect to their duties of professional confidentiality and protection of personal data), when that disclosure:

- Relates to a single *client* or former *client* of both advisers;
- Involves *client* activity or the provision of a service that involves both of them;

- Is made only for the purpose of preventing a money laundering offence; and
- Is made to a person in an EU member state or a state imposing equivalent *MLTF* requirements.

Despite these exceptions, the existence of a *SAR* or *DAML* should not be disclosed without good reason.

6.3.6 No *Tipping Off* offence is committed if a person attempts to dissuade their *client* from conduct amounting to an offence. No *Tipping Off* offence is committed when enquiries are made of a *client* regarding something that properly falls within the normal scope of the *engagement* or *business relationship*. For example, if a *business* discovers an invoice that has not been included on a *client's* tax return, then the *client* should be asked about it.

6.3.7 Although normal commercial enquiries (perhaps to understand a particular transaction) would not generally lead to *tipping off*, care is required, nonetheless. Continuing work may require that matters relating to the suspicions be discussed with the *client's senior management*. This may be of particular importance in audit relationships. Enquiries should be confined to what is required by the ordinary course of business. No attempt should be made to investigate matters unless to do so is within the scope of the professional work commissioned. It is important to avoid making accusations or suggesting that anyone is guilty of an offence.

6.3.8 Persons concerned about *tipping off* may wish to consult their *MLRO*. In particular, it is important that documents containing references to the subject matter of any *SAR* are not released to third parties without first consulting the *MLRO* and, in extreme cases, law enforcement. Examples of such documents include:

- Public audit or other attestation reports;
- Public reports to regulators;
- Confidential reports to regulators (e.g., to the FCA under certain auditing standards);
- Provision of information to sponsors or other statements in connection with rule 2.12 of the UK's stock exchange listing rules;
- Reports under the Company Directors Disqualification Act 1986;
- Reports under Section 218 of the Insolvency Act 1986;
- Companies Act 2006 statements on *auditor* resignations;
- Professional clearance/etiquette letters; and
- Communications to *clients* of an intention to resign.

6.3.9 *MLROs* sometimes need advice when formulating instructions to the wider business. Recourse can be made to the helplines and support services provided by the professional bodies. Legal advice can be sought from a suitably skilled and knowledgeable professional legal adviser. Discussion with the *NCA* and law enforcement may also be valuable, but bear in mind that they cannot provide advice and they are not entitled to dictate the conduct of a professional relationship.

6.3.10 *Businesses* are reminded of the requirement to revisit *CDD* when a suspicion of *MLTF* arises (see Chapter Five of this *guidance*).

6.4 What is the Prejudicing an Investigation offence?

6.4.1 Revealing the existence of a law enforcement investigation, even if the *business* has not submitted a *SAR*, can lead to an offence of *prejudicing an investigation*. Under Section 342 of *POCA*, there is a defence if the person who made the disclosure did not know or suspect that it would be prejudicial, or did not know or suspect the documents to be relevant, or did not intend to conceal any facts from the person carrying out the investigation.

6.4.2 Falsification, concealment or destruction of documents relevant to an investigation (or causing the same) can also fall within this offence. Again, there is a defence if it was not known or suspected that the documents were relevant, or there was no intention to conceal facts.

6.5 When and how should an external SAR be made to the NCA?

Is a report required?

6.5.1 The following paragraphs refer to *relevant employees*. While not specifically mentioned in the *2017 Regulations*, *businesses* may wish to apply these provisions to their *agents*. The *business* should have policies and procedures that specify their expectations of *agents*, particularly where the *agents* do not have their own reporting procedures.

6.5.2 There are no hard and fast rules for recognising *MLTF*. It is important for everyone to remain alert to the risks and to apply their professional judgement, experience and scepticism.

6.5.3 *Relevant employees* must ask themselves whether something they have observed in the course of business has the characteristics of *MLTF* and, therefore, warrants a *SAR*. Most *businesses* include in their standard *AML* systems and controls enabling *relevant employees* to discuss, with suitable people, whether their concerns amount to reportable knowledge or suspicion. *Relevant employees* should take advantage of these arrangements.

6.5.4 Once there is the requisite knowledge or suspicion, or reasonable grounds for either, then the *relevant employee* must submit an internal *SAR* to their *MLRO* promptly (or, in exceptional circumstances, straight to the *NCA*).

6.5.5 Deciding whether or not something is suspicious may require further enquiries to be made with the *client* or their records (all within the normal scope of the assignment or *business relationship*). The UK *MLTF* regime does not prohibit normal commercial enquiries to fulfil *client* duties, and these may help establish whether or not something is properly a cause for suspicion.

6.5.6 Investigations into suspected *MLTF* should not be conducted unless to do so would be within the scope of the *engagement*. Any information sought should be in keeping with the normal conduct of business. Normal business activities should continue (subject to the *business's* consideration of the risks involved), with any information, or other matters that flow from the information, included in a *SAR*. To perform additional investigations is not only unnecessary, it is undesirable, since it would risk *tipping off* a money launderer.

6.5.7 *Relevant employees* may wish to consider the following questions to assist their decision.

Should I submit a report to the MLRO?

Step	Question
1	• Do I have knowledge or suspicion of criminal activity? Or, • Am I aware of an activity so unusual or lacking in normal commercial rationale that it causes a suspicion of *MLTF*?
2	• Do I know or suspect that a benefit arose from the activity in step 1?
3	• Do I think that someone involved in the activity, or in possession of the proceeds of that activity, knew or suspected that it was criminal?
4	• Can I identify the person (or persons) in possession of the benefit? Or, • Do I know the location of the benefit? Or, • Do I have information that will help identify the person (or persons)? Or, • Do I have information that will help locate the benefits?

6.5.8 If in doubt, always report concerns to the *MLRO.*

Some examples

Example 1 – Shoplifting	
The *business* acts for a retail *client* and you are aware of some instances of shoplifting.	
Report	If you: • Know or suspect the identity of the shoplifter; • Know or suspect the location of the shoplifted goods; • Have information that may assist in the identification of the identity of the shoplifter; or • Have information that may assist in locating the shoplifted goods.
Do not report	If you have none of the information listed above.
No further work is required to find out any of the listed details.	

Example 2 – Overpaid invoices	
Some customers of your *client* have overpaid their invoices. The *client* retains overpayments and credits them to the profit and loss account.	

Report	If you:
	• Know or suspect that the *client* intends to dishonestly retain the overpayments. Reasons for such a belief may include:
	  ○ The *client* omits overpayments from statements of account; or
	  ○ The *client* credits the profit and loss account without making any attempt to contact the overpaying party.

Do not report	If you:
	• Believe that the *client* has no dishonest intent to permanently deprive the overpaying party. Reasons for such a belief may include:
	  ○ Systems operated by the *client* to notify the customer of overpayments;
	  ○ Evidence that requested repayments are processed promptly;
	  ○ Evidence that the client has attempted to contact the overpaying party; or
	  ○ The *client* has sought and is following professional advice in respect of the overpayments.

Example 3 – Illegal dividends	
Your *client* has paid a dividend based on draft accounts. Subsequent adjustments reduce distributable reserves to the extent that the dividend is now illegal.	
Report	If there is suspicion of fraud.
Do not report	If there is no such suspicion. The payment of an illegal dividend is not a criminal offence under the Companies Act 2006.

Example 4 – Invoices lacking commercial rationale	
Your *client* plans to expand its operations into a new country of operation. It has engaged a consultancy firm to oversee the implementation, although it is not clear what the firm's role is. Payments made to the consultancy firm are large in comparison to the services provided and some of the expenses claimed are for significant sums to meet government officials' expenses. The country is one where corruption and facilitation payments are known to be widespread. You ask the finance director about the matter and he thought that such payments were acceptable in the country in question.	
Report	If you suspect that bribes have been paid.
Do not report	If you do not suspect illegal payments.
Money laundering offences include conduct occurring overseas which would constitute an offence if it had occurred in the UK.	

Example 5 – Concerted price rises	
Your *client's* overseas subsidiary is one of three key suppliers of goods to a particular market in Europe. The subsidiary has recently significantly increased its prices and margins and its principal competitors have done the same. There has been press speculation that the suppliers acted in concert, but publicly they have cited increased costs of production as driving the increase. While this explains part of the reason for the increase, it is not the only reason because of the increase in margins. On reviewing the accounting records, you see significant payments for consultancy services and seek an explanation. Apparently, they relate to an assessment of the impact of the price increase on the market as well as some compensation for any losses the competitors suffered on their business outside of Europe. Participating in a price fixing cartel is a criminal offence under UK law.	
Report	If you suspect a price fixing cartel.
Do not report	If you do not suspect criminal activity.

Example 6 – Breaches of overseas laws	
You suspect that one of your *client's* overseas subsidiaries has been in breach of a number of local laws. In particular, dividends have been paid to the parent company in breach of local exchange control requirements.	
Report	Even though there are no exchange control requirements in the UK, if you suspect that in order for the payment to have been made an act (such as fraud) that would have been a criminal offence had it occurred in the UK, has taken place.
Do not report if	If you decide that no act that would have been a criminal offence had it taken place in any part of the UK, has occurred.
Money laundering offences include conduct occurring overseas which would constitute an offence if it had occurred in the UK (carrying a custodial sentence of 12 months or more). It does not include matters which are in breach of overseas law if there is no equivalent UK offence. Any criminal offence would however be relevant to the risk assessment of the *client*.	

Internal reports to the MLRO

6.5.9 Section 330 of *POCA* requires all *relevant employees* to make an internal *SAR* to their *MLRO* – reporting to a line manager or colleague is not enough to comply with the legislation. Someone seeking reassurance that their conclusions are reasonable can discuss their suspicions with managers or other colleagues, in line with the *business's* procedures.

6.5.10 When more than one *relevant employee* is aware of the same reportable matter a single *SAR* can be submitted to the *MLRO*, but it should contain the names of all those making the *SAR*. No internal *SAR* should be made in the name of a *relevant employee* who is unaware of the existence of the internal *SAR*. There is no prescribed format for internal *SARs* to be made to an *MLRO.*

External reports to the NCA

6.5.11 It is the *MLRO's* responsibility to decide whether the information reported internally needs to be reported to the *NCA*. The *MLRO* is also responsible for deciding:

- Whether a *DAML* is required from law enforcement for the *engagement* or any aspect of it to continue (see 6.6); and
- How business with the *client* should be conducted while a *DAML* decision is awaited.

6.5.12 When deciding what to do, *MLROs* should consider the following questions:

- Do I know or suspect (or have reasonable grounds for either) that someone is engaged in *MLTF*?

- Do I think that someone involved in the activity, or in possession of the proceeds of that activity, knew or suspected that it was criminal?
- From the contents of the internal *SAR*, can I identify the suspect or the whereabouts of any laundered property?
- Is an application for a *DAML* required (see 6.6 of this *guidance*)?
- Do I believe, or is it reasonable for me to believe, that the contents of the internal *SAR* will, or may, help identify the suspect or the whereabouts of any laundered property?
- Do the reasonable excuse exemption or overseas reporting exemption apply?
- In making a *SAR* would I be disclosing information acquired in privileged circumstances? (see 6.5.22 below. The privilege reporting exemption is limited to *relevant professional advisers* and is available only to members of professional bodies, such as those listed in Schedule 1 of the *2017 Regulations*, who also meet the requirements set out in Section 330(14) of *POCA*. Further guidance on the privilege reporting exemption can be found in 6.5.22 of this *guidance.*

6.5.13 The *MLRO* may want to make reasonable enquiries of other people and systems within the *business*. These may confirm the suspicion, but they may also eliminate it, enabling the matter to be closed without the need for a *SAR.*

6.5.14 There is no prescribed format for an external *SAR* to the *NCA*. Various submission methods are available. The *NCA SAR* Online System is the *NCA's* preferred submission mechanism. It is available through the *NCA* website and allows *businesses* to make *SARs* in a secure online environment. The *NCA* accepts hard copy *SARs* but will not provide a reference number in response to these.

What information should be included in an external SAR?

6.5.15 Guidance can be found on the NCA Website. The following should be regarded as essential information:

- The name of reporter.
- The date of report.
- The name of the suspect or information that may help identify them. This may simply be details of the victim if their identity is known. As many details as possible should be provided to the *NCA* to assist with the identification of the suspect.
- Details of who else is involved, associated, and how.
- The facts regarding what is suspected and why. The 'why' should be explained clearly so that it can be understood without professional or specialist knowledge.

- The relevant *NCA glossary* code (if applicable). This helps the *NCA* to identify high-risk priority cases and to analyse emerging trends.
- The whereabouts of any *criminal property*, or information that may help locate it, such as details of the victim.
- The actions that the *business* is taking which require a *DAML* (see 6.6 of this *guidance*).

6.5.16 All external *SARs* should be free of jargon and written in plain English.

6.5.17 It is recommended that reporters:

- Do not include confidential information not required by *POCA;*
- Show the name of the *business*, individual or *MLRO* submitting the report only once, in the source ID field and nowhere else;
- Include only the names of those involved in the suspicion and not those who made the internal *SAR* to the *MLRO;*
- Include other parties as 'subjects' only when the information is necessary for an understanding of the external *SAR* or to meet *required disclosure* standards; and
- Highlight clearly any particular concerns the reporter might have about safety (whether physical, reputational or other) - this information should be included in the 'reasons for suspicion/disclosure' field.

Confidentiality

6.5.18 A correctly made external *SAR* provides full immunity from action for any form of breach of confidentiality, whether it arises out of professional, ethical requirements or a legal duty created by contract (e.g. a non-disclosure agreement).

6.5.19 There will be no such immunity if the external *SAR* is not based on knowledge or suspicion, or if it is intended to be 'defensive', i.e. for the purposes of regulatory compliance rather than because of a genuine suspicion.

Documenting reporting decisions

6.5.20 In order to control legal risks, it is important that adequate records of internal *SARs* are kept. This is usually done by the *MLRO* and would normally include details of:

- All internal *SARs* made;
- How the *MLRO* handled matters, including any requests for further information;

- Assessments of the information provided, along with any subsequent decisions about whether or not to await developments or seek extra information;
- The rationale for deciding whether or not to make an external *SAR;*
- Any advice given to *engagement* teams about continued working and any *DAML* requests made.

These records can be simple or sophisticated, depending on the size of the *business* and the volume of reporting, but they always need to contain broadly the same information and be supported by the relevant working papers. They are important because they may be needed later if the *MLRO* or some other person is required to justify and defend their actions.

6.5.21 For the *MLRO's* efficiency and ease of reference, a reporting index may be kept, and each internal *SAR* given a unique reference number.

Reporting and the privilege reporting exemption

6.5.22 Section 330(10) of *POCA* contains a privilege reporting exemption. Members of relevant professional bodies (which are referred to as '*relevant professional advisers*'), who know about or suspect *MLTF* (or have reasonable grounds for either), are not required to submit a *SAR* if the information came to them in privileged circumstances (i.e. during the provision of legal advice and acting in respect of litigation). In these circumstances, and as long as the information was not provided with the intention of advancing a crime, then the information must not be reported. The privilege reporting exemption only covers *SARs* and should not be confused with legal professional privilege, which also extends to other documentation and advice.

6.5.23 The exemption provides a defence against failure to report a *SAR* but does not provide any defence against the Primary Money Laundering Offences. If the proposed work of the *business* is such that a *DAML* would be required, and the *client* does not waive privilege, the only option would be for the *business* to resign from the *client engagement* to avoid committing a money laundering offence. *Businesses* in this situation should consider seeking legal advice.

6.5.24 In Section 330 (14) of *POCA, relevant professional adviser* is defined as an *accountant*, *auditor* or *tax adviser:*

- Who is a member of a relevant professional body; and
- That body makes provision for:
  - Testing professional competence as a condition of admission; and

- Imposing and maintaining professional and ethical standards for members along with sanctions for failures to comply.

However, there is no list of the professional bodies that meet these criteria. If *businesses* are in any doubt about whether these provisions apply to them, they should consult their own professional body or seek legal advice.

6.5.25 Whether or not the privilege reporting exemption applies to a given situation is a matter for careful consideration. The *business* may have been providing the *client* with a variety of services, not all of which would create the circumstances required for the exemption. Consequently, it is strongly recommended that careful records are kept about the provenance of the information under consideration when decisions of this kind are being made. Legal advice may be needed.

6.5.26 Set out below are some examples of work which may fall within privileged circumstances:

- Advice on tax law to assist a *client* in understanding their tax position;
- Advice on the legal aspects of a take-over bid;
- Advice on duties of directors under the Companies Act;
- Advice to directors on legal issues relating to the Insolvency Act 1986;
- Advice on employment law;
- Assisting a *client* by taking witness statements from them or from third parties in respect of litigation;
- Representing a *client*, as permitted, at a tax tribunal;
- When instructed as an expert witness by a solicitor on behalf of a *client* in respect of litigation.

For further guidance on when privileged circumstances may apply to tax work please see the appendix for tax practitioners.

6.5.27 Audit work, bookkeeping, preparation of accounts or tax compliance assignments are unlikely to take place in privileged circumstances.

Discussion with the MLRO

6.5.28 Given the complexity of these matters – as well as the need for a considered and consistent approach to all decisions, supported by adequate documentation – it is recommended that they are always discussed with the *MLRO.*

6.5.29 Where the purpose of these discussions is to obtain advice on making a disclosure under Section 330 of *POCA*, they do not affect the applicability of the privilege reporting exemption.

6.5.30 Anyone making an internal *SAR* is entitled to seek advice from an appropriate specialist (either a person within the *business* who falls within requirements of Section 330(7B) of *POCA* or an external adviser who is similarly entitled to apply the privilege reporting exemption) without affecting the applicability of the privilege reporting exemption.

The crime/fraud exception

6.5.31 Communications that would otherwise qualify for the privilege reporting exemption are excluded from it when they are intended to facilitate or guide someone in committing or advancing some crime or fraud. This is usually the *client* but could be a third party. An example of such a situation could be where a person seeks tax advice ostensibly to regularise their tax affairs, but in reality to help them evade tax by improving their understanding of the issues.

6.5.32 Someone worried that they may be guilty of tax evasion can still seek legal advice from a *tax adviser* without fear of the exception being invoked. This remains true even when, having received the advice, the person declines a *business relationship* and the *business* never knows if the irregularities were rectified. However, if that person's behaviour leads the *business* to suspect the advice has been used to further evasion, then a *SAR* could be required.

6.5.33 Whether privileged circumstances apply in a given situation is a difficult question with a fundamentally legal answer. *Businesses* are strongly recommended to seek the advice of a professional legal adviser experienced in these matters.

6.6 What is a DAML and why is it important?

6.6.1 When preparing to make a *SAR* the *MLRO* must consider carefully whether the *business* would commit a money laundering offence if it continued to act as it intends (usually as instructed by the *client*). In such cases the *NCA* may, in certain circumstances, provide a *DAML* for the activity in question.

Matters requiring a DAML

6.6.2 Before applying for a *DAML*, it is important to consider whether the *NCA* is in fact able to grant one for the activity in question. The *NCA's* powers in this regard are strictly limited to activities that

would otherwise be offences under Sections 327, 328 or 329 of *POCA* (see Chapter Two of this *guidance*). A *DAML* cannot be given for other *POCA* offences, such as *tipping off* (Section 333A of *POCA*) or *prejudicing an investigation* (Section 342 of *POCA*), or for any offence under any other law.

6.6.3 When in doubt, *MLROs* should seek advice from the helpline provided by their supervisory body, or else seek legal advice. The *NCA* will say if something falls outside its powers, but it is not in a position to provide advice about whether or not a *DAML* is required in any given situation.

6.6.4 Common situations in which a *DAML* may be required include:

- Acting as an insolvency office holder when there is knowledge or a suspicion that either:
  - All or some assets in the insolvency are *criminal property*; or
  - The insolvent entity may enter into, or become concerned in, an *arrangement* under Section 328 of *POCA;*
- Designing and implementing trust or company structures (including acting as trustee or company officer) when a suspicion arises that the *client* is, or will be, using them to launder money;
- Acting on behalf of a *client* in the negotiation or implementation of a transaction (such as a corporate acquisition) in which there is an element of *criminal property* being bought or sold by the *client;*
- Handling, through *client* accounts, money that is suspected of being criminal in origin; and
- Providing outsourced business processing services to *clients*, when the money is suspected of having criminal origins.

Applying for and receiving a DAML

6.6.5 A *DAML* may only be sought on the basis of a *SAR* made under the provisions of Section 338 of *POCA* (authorised disclosures). The 'consent required' option should be selected to alert the *NCA* and enable it to prioritise the request.

6.6.6 The request should clearly state the reasons underlying the knowledge or suspicion that has given rise to the *SAR*, as well as the activity in question and the nature of the *DAML* required. Great care is needed to make sure the *DAML* will cover the nature and extent of the intended activity. It should make clear to the *NCA* exactly what is being requested. Too narrow a *DAML* request could mean repeated subsequent requests are needed, adding cost, creating inefficiency and possibly harming service quality. Too broad or poorly-defined a *DAML* request, on the other hand, could

result in the request being refused by the *NCA* or deemed invalid for not showing clearly which activities would otherwise be offences under Section 327–329 of *POCA*.

6.6.7 If no refusal has been received within the seven working days following the day of submission (this is the *notice period*), a *DAML* is deemed to have been given and the activity in question can proceed.

6.6.8 For the best chance of a quick response, any critical timings should be explained clearly, and a complex report should always begin with a summary covering the key facts and the nature of the request.

When a DAML is refused

6.6.9 If a *DAML* is refused during the *notice period*, a further 31 days must pass (starting with the day of refusal) before the activity can continue. This is called the *moratorium period*. This period can be extended by court order in 31 day increments up to a maximum of 186 days.

6.6.10 It is possible that during either the notice or *moratorium periods* some law enforcement action (e.g. confiscation) will be taken.

6.6.11 If law enforcement takes no restraining action during the *moratorium period*, the activity can proceed as originally planned at the end of the *moratorium period*, however *businesses* may wish to seek legal advice.

When a DAML is neither granted nor refused

6.6.12 There have been concerns on the part of law enforcement about granting a *DAML*, in that it could be considered to condone actions which would otherwise be criminal. A refusal to grant a defence would ordinarily be followed by action to freeze and seize the assets. However, not all criminal activities are the subject of current investigations, or the time required to gather evidence to seize the assets may be insufficient even with the extension to the time period made by the Criminal Finances Act 2017. Additionally, certain areas of law may currently be under review.

6.6.13 The *NCA* therefore introduced a third category of response in addition to the grant or refusal of the defence. In certain cases, the response will be that the *NCA* neither grants nor refuses the request for a *DAML*. Where a response to this effect is received, the deemed *DAML* provisions (see below) in *POCA* will apply after the expiry of eight working days from submission of a valid request. However, *businesses* should consider carefully whether they wish to proceed with an activity which is thereby flagged to them as being of concern. *Businesses* may wish to consider their ethical obligations and consult with their supervisor or legal advisers before proceeding.

Continuation of work while awaiting a DAML decision

6.6.14 Once a *DAML* request has been made, the activity in question must cease unless and until:

- A *DAML* has been granted;
- The *notice period* has expired; or
- The *DAML* having been refused during the *notice period*, the *moratorium period* has now expired.

To do otherwise is to risk prosecution for a money laundering offence.

6.6.15 If no deliverables are provided until after a *DAML* has been obtained, it may be acceptable to continue working. Care is needed to make sure the work does not constitute a money laundering offence, particularly involvement in an *arrangement* under Section 328 of *POCA* or some other breach of legal or ethical requirements.

6.6.16 In some situations, it can be extremely difficult to explain why activity has had to be halted unexpectedly. Conversations with the *client* should be kept to a minimum. When informing *clients* or anyone else about such delays the *business* must consider the risk of *tipping off* or *prejudicing an investigation* and may wish to seek legal advice.

6.7 What should happen after an external SAR has been made?

Client relationships

6.7.1 After a *SAR* has been submitted, the *business* need not stop working unless a *DAML* has been requested (see 6.6 of this *guidance*). The activity in question must not go ahead when a *DAML* has been sought but refused.

6.7.2 Even when a *DAML* is not required, if a *SAR* involves a *client* or their close associate, the *business* may wish to consider whether the suspicion is such that for professional or commercial reasons it no longer wishes to act for them.

6.7.3 Particular challenges may arise out of the requirement for *auditors* to file resignation statements at Companies House. *Businesses* should consider these carefully to make sure that statutory and professional duties are met without including information that could constitute *tipping off*. There is no legal mechanism for obtaining *NCA* clearance for these statements or any other documents that might relate to a resignation. In complex cases a *business* may want to discuss the matter with the *NCA* or other law enforcement agency (to understand the law enforcement perspective).

Document these discussions carefully. At times, *MLROs* may also need this kind of advice to help them formulate instructions for the wider *business*.

Data protection including subject access requests

6.7.4 Under the Data Protection Act 2018, *businesses* need not comply with data subject access requests that are likely to prejudice the prevention or detection of crime or the capture or conviction of offenders. Similarly, personal data that relates to knowledge or suspicion of *MLTF* (i.e. data that has been processed to help prevent or detect crime) need not be disclosed under a subject access request if to do so could constitute *tipping off*. Both of these exceptions apply to the personal data likely to be contained in records relating to internal *MLTF* reports and *SARs*.

6.7.5 Data exempt from one subject access request may no longer be exempt at the time of a subsequent request (perhaps because the original suspicion has by then been proved false). When a *business* receives a data subject access request covering personal data in its possession, it should always consider whether the exception applies to that specific request, regardless of any history of previous requests relating to the same data. These deliberations will usually involve the *MLRO* and the data protection officer. The thinking behind any decision to disclose the existence of a *SAR* should be documented.

Production orders, further information orders and other requests for information

6.7.6 The *NCA* or other law enforcement authority may seek further information about a *SAR* (usually via the *MLRO*). *Businesses* should have in place systems to enable a full and rapid response to such enquiries and any enquiries from law enforcement regarding a *business relationship*. It is recommended that the enquirer's identity is formally verified before a response is provided. This can most easily be done by noting the caller's name and agency/force and then calling them back through their main switchboard. The *NCA* have a contact centre for such purposes.

6.7.7 To the extent that the request is simply to clarify the contents of a *SAR,* a response can be given without further formalities.

6.7.8 If a request is received from the *NCA* other than in relation to a *SAR*, or from a source other than the *NCA*, then it is recommended that any further disclosure should normally be made only in response to the exercise of a statutory power to obtain information (as contained in the relevant legislation) or in line with professional guidance on confidentiality and disclosures in the public interest. This approach is not intended to be uncooperative or obstructive. However, insisting on compulsion will protect the *business* against accusations of breach of confidentiality. When the *business* is compelled in this way, *client* or other third-party consent is not required, but nor should it be sought because of the risk of *tipping off.*

6.7.9 Before responding to an order to produce information, *businesses* should make sure that they understand:

- The authority under which the request is being made;
- The extent of the information requested;
- The timetable and mechanism for providing the information; and
- What parts of the information should be excluded (i.e. because they are subject to legal privilege).

6.7.10 If in any doubt seek legal advice and keep records of how the issues were judged.

Section 7 of the Crime and Courts Act 2013 – disclosure of information to NCA

6.7.11 In addition to production orders, Section 7 of the Crime and Courts Act 2013 creates 'information gateways'. The provision permits (but does not necessarily compel or require) a disclosure to be made to the *NCA* if the purpose of the disclosure is for the exercise of any *NCA* function. You may seek clarification from the *NCA* officer as to which function the request relates. If disclosure is permitted under the section, the person disclosing the information (subject to certain exclusions for those who work for the Security Services or similar) does not breach confidentiality obligations or any other restriction on the disclosure of information however imposed.

6.7.12 There may be instances where a *business* is asked to make a disclosure under this provision. Typically, this may be as a follow-up to a *SAR*. Circumstances for each *business* differ and it is recognised that the absence of a requirement to disclose the information can cause concerns. If there are such concerns, the *business* may either seek appropriate legal advice or request a production order.

Requests arising from a change of professional adviser (professional enquiries)

Requests regarding CDD information

6.7.13 In this situation, the disclosure request can be made under Regulation 39 of the 2017 Regulations (which covers reliance), or else the new adviser may simply want copies of identification evidence to help in its own identification procedures.

6.7.14 Businesses should not release confidential information without the client's consent. If reliance is being placed on another business (see 5.4 of this guidance), then Chapter Seven of this guidance (on record keeping) should be consulted.

Requests for information regarding suspicious activity

6.7.15 It is recommended that these requests are declined. The risk of tipping off greatly restricts the ability to make disclosures of this type.

6.7.16 Accountants who are relevant professional advisers are reminded that they do not commit a Tipping Off offence if they share information with another accountant of similar standing, provided the information satisfies all of the following:

- It relates to the same *client* or former *client* of both advisers;
- It covers a transaction or provision of services that involved both of them;
- It was disclosed only for the purpose of preventing a money laundering offence; and
- It was disclosed to a person in an EU member state or another state which imposes equivalent *AML* requirements.

Reporting to other bodies

6.7.17 *Businesses* should have regard to their other obligations, such as their reporting responsibilities under the International Standards on Auditing, statutory regulatory returns, or the reporting of misconduct by fellow members of a professional body. In all these cases the risk of tipping off must be considered and the offence avoided. Accountants may wish to contact their professional body for advice, or else seek legal advice.

6.7.18 A *Tipping Off* offence is not committed under Section 333A of *POCA* if the person did not know or suspect that they were likely to prejudice any subsequent investigation. Situations in which this defence can apply include:

- Reporting to your own professional body if it is an *AML supervisory authority* (Section 333D of *POCA);* and
- Reporting a matter of material significance to the UK charity regulators: the Charity Commission for England and Wales, the Scottish Charity Regulator and the Charity Commission for Northern Ireland.

7 RECORD KEEPING

- Why may existing document retention policies need to be changed?
- What should be considered regarding retention policies?
- What considerations apply to *SARs* and *DAML* requests?
- What considerations apply to training records?
- Where should reporting records be located?
- What do *businesses* need to do regarding third-party *arrangements*?
- What are the requirements regarding the deletion of personal data?

7.1 Why may existing document retention policies need to be changed?

7.1.1 Records relating to *CDD* and the *business relationship* must be kept for five years from the end of the *client* relationship.

7.1.2 All records related to an *occasional transaction* must be retained for five years after the date of the transaction.

7.1.3 Unless there is a basis for retaining records beyond this period they must be destroyed.

7.1.4 The *2017 Regulations* do not specify the medium in which records should be kept, but they must be readily retrievable.

7.2 What should be considered regarding retention policies?

7.2.1 *Businesses* must be aware of the interaction of *MLTF* laws and regulations with the requirements of the Data Protection Regime. The Data Protection Regime requires that personal information be subject to appropriate security measures and retained for no longer than necessary for the purpose for which it was originally acquired. See 6.7.4 of this *guidance*.

7.3 What considerations apply to SARs and DAML requests?

7.3.1 No retention period is officially specified for records relating to:

- Internal reports;
- The *MLRO's* consideration of internal reports;
- Any subsequent reporting decisions;
- Issues connected to *DAMLs,* production of documents and similar matters; or

- *SARs* and *DAML* requests sent to the *NCA*, or its responses.

7.3.2 These records can form the basis of a defence against accusations of failing to carry out duties under *POCA* and the *2017 Regulations*. *Businesses* should consider their retention policies, taking into account both data protection and the potential for law enforcement contact.

7.4 What considerations apply to training records?

7.4.1 *Businesses* must demonstrate their compliance with regulations that place a legal obligation on them to make sure that their *relevant employees* and *agents* are, (a) aware of the law relating to *MLTF* and (b) trained regularly in how to recognise and deal with transactions and other events which may be related to *MLTF.*

7.4.2 These records should show the training that was given, the dates on which it was given, which individuals received the training and the results from any assessments.

7.5 Where should reporting records be located?

7.5.1 Records related to internal and external *SARs* of suspicious activity are not part of the working papers relating to *client assignments*. They should be stored separately and securely as a safeguard against *tipping off* and inadvertent disclosure to someone making routine use of *client* working papers.

7.6 What do businesses need to do regarding third-party arrangements?

7.6.1 A *business* may arrange for another organisation to perform some of its *AML* related activities – *CDD* or training, for example. The *business* must ensure it can obtain immediately on request copies of all relevant information from the third party. The *business* must therefore ensure that the other party's record keeping procedures are good enough to demonstrate compliance with the *MLTF* obligations, or else it must obtain and store copies of the records for itself. It must also consider how it would obtain its records from the other party should they be needed, as well as what would happen to them if the other party ceased trading.

7.7 What are the requirements regarding the deletion of personal data?

7.7.1 Under Regulation 40 of the 2017 Regulations, once the periods specified in 7.1 of this *guidance* have expired, the *business* must delete any personal data unless:

- The *business* is required to retain it under statutory obligation;
- The *business* is required to retain it for legal proceedings; or

- The data subject has consented to the retention and the consent has been given in accordance with the GDPR.

8 TRAINING AND AWARENESS

- Who should be trained and who is responsible for it?
- Who is an *agent*?
- What should be included in the training?
- When should training be completed?

8.1 Who should be trained and who is responsible for it?

8.1.1 The *2017 Regulations* require that all *relevant employees* and *agents* involved in the provision of *defined services* be made aware of *MLTF* law and be trained regularly to recognise and deal with transactions, and other activities and situations, which may be related to *MLTF*, as well as to identify and report anything that gives grounds for suspicion (see Chapter Six of this *guidance*).

8.1.2 Training must be provided to *relevant employees* and *agents*. The nature and extent of the training will depend on the nature of the relationship with that person and the work that the person is carrying out. In some cases, the *agent* may already have undertaken relevant training. *Businesses* may rely on evidence of this training provided by the *agent.*

8.1.3 Thought should be given to who else might need *AML* training. While comprehensive training is needed for *relevant employees* and *agents*, it may be sufficient to ensure that others (such as non-*client* facing personnel) have some understanding and awareness of these *MLTF* aspects.

8.1.4 A designated person should be made responsible for the detail of *AML* training. This could be the *MLRO* or a member of *senior management*. There should be a mechanism to ensure that *relevant employees* and *agents* have completed their *AML* training.

8.1.5 Someone accused of a Failure to Report offence has a defence if:

- They did not know or suspect that someone was engaged in money laundering even though they should have; but
- Their employer had failed to provide them with the appropriate training.

8.1.6 This defence – that the *relevant employee* or *agent* did not receive the required *AML* training – is likely to put the *business* at risk of prosecution for a regulatory breach.

8.2 Who is an agent?

8.2.1 *Agents* include any person who, while not an employee of the *business*, is engaged to carry out work or provide services on its behalf. In general, an *agent* is likely to carry out such work or

services under the supervision of the *business*. The work or services will be closely integrated with those carried out by the *business* itself. The *agent* will frequently be working closely with employees of the *business*.

8.2.2 *Agents* for this purpose do not include a person of independent standing who acts for or on behalf of a *business* to provide a *defined service*. This may include an independent legal adviser or a professional services firm overseas. Typically, the *business* will not supervise the provision of such services and the third party will work independently to deliver the agreed services. Such services may form part of the output to be delivered by the *business* to its *client.*

8.3 What should be included in the training?

8.3.1 Training can be delivered in several different ways: face-to-face, self-study, e-learning, video presentations, or a combination of all of them.

8.3.2 The programme itself should include:

- An explanation of the law within the context of the *business's* own commercial activities;
- The requirement to carry out *CDD* and conduct ongoing monitoring, including how to carry out *CDD*, the purpose of *CDD* and how to use the information gathered in providing *defined services*;
- When it is appropriate to make an *internal report* to the *business*'s *MLRO* and how to do so;
- So-called 'red flags' of which *relevant employees* and *agents* should be aware when conducting business, which would cover all aspects of the *MLTF* procedures,
- How to deal with client activity and other situations that might be related to *MLTF* (including how to use internal reporting systems), the *business's* expectations of confidentiality, and how to avoid *tipping off* (see Chapter Six of this *guidance*); and
- The relevant data protection requirements.

8.3.3 Where appropriate, training programmes should be tailored to each business area and cover the *business's* procedures so that *relevant employees* and *agents* understand the *MLTF* risks posed by the specific services they provide and types of *client* with which they deal. *Relevant employees* and *agents* should be able to understand, on a case-by-case basis, the approach they should be taking. Furthermore, *businesses* should aim to create an *MLTF* culture in which *relevant employees* and *agents* are always alert to the risks of *MLTF* and habitually adopt a risk-based approach to *CDD.*

8.3.4 Records must be kept of the training given to *relevant employees* and *agents* that should show who has received training, the training received and when training took place (see 7.4 of this *guidance*).

These records should be retained in line with the *business's* data retention policy and be used to assist in the recognition of when additional training is needed – e.g. when the *MLTF* risk of a specific business area changes, or when the role of a *relevant employee* or *agent* changes.

8.3.5 A system of tests, or some other way of confirming the effectiveness of the training, should be considered.

8.3.6 The overall objective of training is not for *relevant employees* or *agents* to develop a specialist knowledge of criminal law. However, they should be able to apply a level of knowledge that would reasonably be expected of someone in their role and with their experience, particularly when deciding whether to make an internal *SAR* to the *MLRO.*

8.4 When should training be completed?

8.4.1 *Businesses* need to make sure that new *relevant employees* and *agents* are trained promptly.

8.4.2 The frequency of training events can be influenced by changes in legislation, regulation, professional guidance, case law and judicial findings (both domestic and international), the *business's* risk profile, procedures, and service lines.

8.4.3 It may not be necessary to repeat a complete training programme regularly, but it may be appropriate to provide *relevant employees* and *agents* with concise updates to help refresh and expand their knowledge and to remind them how important effective *MLTF* work is.

8.4.4 In addition to training, *businesses* are encouraged to mount periodic *MLTF* awareness campaigns to keep *relevant employees* and *agents* alert to individual and firm-wide responsibilities.

9 GLOSSARY AND APPENDICES

9.1 GLOSSARY

2017 Regulations: The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, SI 2017/692, as amended (in particular by The Money Laundering and Terrorist Financing (Amendment) Regulations 2019, SI 2019/1511).

Accountancy services: For the purpose of this *guidance* this includes any service provided under a contract for services (i.e. not under a contract of employment), which requires the recording, review, analysis, calculation or reporting of financial information.

Agent: includes any person who, while not an employee of the *business*, is engaged to carry out work or provide services on its behalf. In general, an *agent* is likely to carry out such work or services under the supervision of the *business*. The work or services will be closely integrated with those carried out by the *business* itself. The *agent* will frequently be working closely with employees of the *business*.

Anti-money laundering (or AML) supervisory authority: A body identified by Regulation 7 of the *2017 Regulations* as being empowered to supervise the compliance of *businesses* with the *2017 Regulations*. The professional bodies designated as *anti-money laundering supervisory authorities* are listed in Schedule 1 of the *2017 Regulations.*

Arrangement: Any activity that facilitates money laundering, including planning and preparation.

Auditor: Any *business* or *individual* who is:

- A statutory *auditor* within the meaning of Part 42 of the Companies Act 2006 ('Statutory Auditors'), when carrying out statutory audit work within the meaning of Section 1210 of that Act ('Meaning of "statutory auditor" etc'); or
- A local *auditor* within the meaning of Section 4(1) of the Local Audit and Accountability Act 2014 ('General requirements for audit'), when carrying out an audit required by that Act.

Beneficial owner or BO: The individual or individuals who fall within the definitions in the *2017 Regulations* and illustrated in Appendix E.

Business/ Businesses: A company, partnership, individual or other organisation which undertakes *defined services*. This includes accountancy practices, whether structured as partnerships, *sole practitioners* or corporates.

Business relationship: A *business*, professional or commercial relationship between a relevant person and a customer, which:

- Arises out of the *business* of the relevant person; and

- Is expected by the relevant person, at the time when contact is established, to have an element of duration.

CCAB: The Consultative Committee of Accountancy Bodies represents the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland, Chartered Accountants Ireland, the Association of Chartered Certified Accountants and the Chartered Institute of Public and Finance and Accountancy.

Client: Someone in a *business relationship*, or carrying out an *occasional transaction*, with a *business*.

Client activity: The *business* or other dealings of the *client* organisation.

Consent: now referred to as *Defence Against Money Laundering (DAML)* – see below.

Criminal property: the benefit of criminal conduct where the alleged offender knows or suspects that the asset or abatement (avoidance or reduction in liability) in question represents such a benefit (Section 340 of *POCA*).

Customer Due Diligence (CDD): The process by which the identity of a *client* is established and verified, for both new and existing *clients*.

Defence Against Money Laundering or DAML (Previously referred to as 'consent'): A defence to carrying out an activity which you know, or suspect, would otherwise constitute a Primary Money Laundering Offence. Generally granted by the *NCA*. The definition of, and governing legislation for, *DAML*s can be found in Section 335 of *POCA*, which also deals with the passing of *a DAML* from the *MLRO* to the individual concerned in Section 336 of *POCA*.

Defined services: Activities performed in the course of business by organisations or individuals as *auditor*s, *external accountants*, *insolvency practitioners* or *tax advisers* (Regulation 8(c), *2017 Regulations*), or as trust and company service providers (Regulation 8(e), *2017 Regulations*). It also includes services under the designated professional body provisions of Part XX, Section 326 of *FSMA 2000*, or otherwise providing financial services under the oversight of the appropriate professional body.

De minimis: A trivial, minor or inconsequential event or figure.

EEA: European Economic Area. Countries which form the combined membership of the European Union (EU) and the European Free Trade Association (EFTA).

Engagement: Agreement concerning the delivery of a specific service within a *business relationship*.

Established in: For the purposes of Enhanced Due Diligence, any one or more of the below:

- For natural persons, their place of residence. Note that citizenship and place of birth may be relevant but are not determinant.
- For legal persons:

- Their place of incorporation;
- Their principal place of business; or
- In relation to their *BO*, the factors mentioned above for natural persons may be relevant.

- For financial institutions:
  - Their place of incorporation;
  - Their principal place of business; or
  - The location of their principal regulator.

EU Directive: Refers in this document to the Fifth Money Laundering Directive or Fourth Money Laundering Directive as appropriate.

External accountant: A firm or *sole practitioner* who by way of business provides *accountancy services* to other persons when providing such services (Regulation 11(C), *2017 Regulations*).

Family member: Of a Politically Exposed Person includes that individual's:

- Spouse or civil partner;
- Parents;
- Children; and
- The children's spouses and civil partners.

FATF: Financial Action Task Force. Created by G7 nations to fight money laundering.

FSMA 2000: Financial Services and Markets Act 2000.

Guidance: Advice which is: (a) issued by a supervisory authority or any other appropriate body; (b) approved by HM Treasury; and (c) published in a manner approved by HM Treasury as suitable for bringing it to the attention of persons likely to be affected by it. In this document the term also includes *guidance* for which HM Treasury approval has been sought and is expected to be granted. Any use of the term 'guidance' which falls outside of this definition will not have been italicised in this document. *POCA* and the *2017 Regulations* both set out the circumstances in which the courts (and others) are required to take account of *guidance* when determining whether an offence has been committed.

Independent legal professional: Provider of legal or notarial services as defined in Regulation 12(1), in the *2017 Regulations.*

Insolvency practitioner: Any business who acts as an *insolvency practitioner* within the meaning of Section 388, Insolvency Act 1986, or Article 3, The Insolvency (Northern Ireland) Order 1989 (Regulation 11(2), *2017 Regulations*).

Internal report: A report made to the *MLRO* of a *business.*

JMLSG: The Joint Money Laundering Steering Group is the body representing UK trade associations in the financial services industry which aims to promote good practice in anti-money laundering and to provide relevant practical guidance.

Known close associate: of a Politically Exposed Person means an individual known to have:

- A joint beneficial ownership of a legal entity/arrangement with the *PEP* or any other close business relations with the *PEP*; or
- The sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit of the *PEP*.

(Regulation 35(12) of the *2017 Regulations*).

MLRO: Money laundering reporting officer – the individual who is responsible for the compliance of the *business* with the *2017 Regulations* in relation to policies, controls and procedures. The individual is also responsible for receiving *internal reports* of suspicious activity and dealing with external *SARs* to the Financial Intelligence Unit where relevant. Further details can be found in paragraph 3.4 of this *guidance*.

MLTF (money laundering and terrorist financing): Defined for the purposes of this document to include those offences relating to terrorist finance which are required to be reported under *TA 2000* as well as the money laundering offences defined by *POCA.*

Money laundering reporting officer: See *MLRO*, above.

Moratorium period: The 31 days following refusal of a *DAML* request during which time the activity for which a *DAML* was sought must cease. Law enforcement may take action during this period. The period may be extended up to a total period of 186 days by the court.

NCA: National Crime Agency or equivalent successor body (UK Financial Intelligence Unit).

NCA Glossary: Glossary of key terms used by the *NCA* to categorise individual *SARs* and so increase the effectiveness of data mining by the *NCA* and law enforcement. The use of these terms is not mandatory but is good practice.

Nominated officer: The person who is nominated to receive disclosures under Part 7 of *POCA* or Part 3 of *TA 2000.*

Notice period: The eight working days from the submission of a *DAML* request within which the *NCA* will consider the request. During this period the act for which a *DAML* is sought must not take place unless or until a *DAML* is granted.

Occasional transaction: A transaction which is not carried out as part of a *business relationship* and which on its own, or together with related transactions, has a value of €15,000 or more.

OFSI: The Office of Financial Sanctions Implementation helps to ensure that financial sanctions are properly understood, implemented and enforced in the UK. *OFSI* is part of HM Treasury.

People with Significant Control (PSC): All companies are required to keep a register of the people who can influence or control a company, that is, the *PSC* of the company. The register is held by the company and at Companies House.

PEPs: Politically Exposed Persons. As defined in Regulation 35(12) of the *2017 Regulations*. An individual who is entrusted with prominent public functions, other than as a middle-ranking or more junior official. Prominent public functions include head of state, head of government, minister and deputy or assistant ministers; members of parliament or of similar legislative bodies; members of the governing bodies of political parties; members of supreme courts, members of constitutional courts or of any judicial body, the decisions of which are not subject to further appeal except in exceptional circumstances; members of courts of *auditors* or of boards of central banks; ambassadors, charges d'affaires and high ranking officers in the armed forces; members of the administrative, management or supervisory bodies of state-owned enterprises; directors, deputy directors and members of the board or equivalent function of an international organisation.

POCA: The Proceeds of Crime Act 2002 as amended (in particular by the Serious Organised Crime and Police Act 2005 (*SOCPA*)).

Prejudicing an investigation: An offence related to money laundering, defined under Section 342 of *POCA*. In summary, it captures the following: disclosure of information likely to prejudice an investigation; falsifying, concealing or destroying documents relevant to a money laundering investigation; or being complicit in behaviour of that sort.

Primary Money Laundering Offence: An offence under Section 327 of *POCA* (concealing, disguising, converting, transferring and removing), *POCA* 328 ('Arrangements') or *POCA* 329 ('Acquisition, use and possession').

Regulated market: Within the *EEA* this has the meaning given by Article 4(1)(21) of the Markets in Financial Instruments Directive. Outside the *EEA* it means a regulated financial market which subjects companies whose securities are admitted to disclosure obligations which are equivalent to the specified disclosure obligations.

Regulated sector: As defined in Schedule 9, Part 1 of *POCA* (includes those who provide *defined services*).

Relevant employee: An employee (including partner) whose work is relevant to compliance with the *2017 Regulations*, or is otherwise capable of contributing to the identification and mitigation of the risks of *MLTF* to which the *business* is subject, or to the prevention or detection of *MLTF* in relation to the *business*.

Relevant professional adviser: An accountant, *auditor* or *tax adviser* who is a member of a professional body which: (a) tests competence as a condition of admission to membership; and (b) imposes and maintains professional and ethical standards for its members, with sanctions for non-compliance.

Required disclosures: The identity of a suspect (if known); the information or other material on which the knowledge or suspicion of money laundering (or reasonable grounds for it) is based; and the whereabouts of the laundered property (if known).

SAR: Suspicious Activity Report - this is the report that the *MLRO* makes to the Financial Intelligence Unit detailing knowledge or suspicions of money laundering and/or terrorist financing activity. For further details please see Chapter Six of this *guidance*.

Senior management: Means an officer or employee with sufficient knowledge of the firm's *MLTF* risk exposure, and of sufficient authority to take decisions regarding its risk exposure (for example, having a role in determining whether high-risk *clients* are taken on).

SOCPA: Serious Organised Crime and Police Act 2005.

Sole Practitioner: For the purpose of this *guidance*, a *sole practitioner* is a *business* with no *relevant employees*, i.e. any employees, including part-time staff and contractors, engaged in the provision of *defined services* on behalf of the *business*. A single principal in business who has *relevant employees* will be expected to have similar policies, controls and procedures as a partnership or multi-partner firm.

Source of funds: The origin of the funds that are the subject of the *business relationship*.

Source of wealth: The origin of the subject's total assets.

Suspicious Activity Report: Otherwise known as a *SAR* (see above).

TA 2000: The Terrorism Act 2000 as amended (in particular by the Anti-Terrorism, Crime and Security Act 2001 and the *Terrorism Act 2006*).

Tax adviser: A firm or *sole practitioner* who by way of business provides material aid or assistance or advice in connection with the tax affairs of other persons, whether provided directly or through a third party, when providing such services (Regulation 11(d) of the *2017 Regulations*). Tax compliance services – e.g. assisting in the completion and submission of tax returns – is for the purpose of this document included within the term 'advice about the tax affairs of others'.

Terrorist financing offences: These offences relate to:

- Fundraising (Section 15 of TA 2000) - inviting others to provide money or other property with the intention that it will be used for the purposes of terrorism, or with the reasonable suspicion that it will;
- Using or possessing terrorist funds (Section 16 of *TA 2000*) – receiving or possessing money or other property with the intention, or the reasonable suspicion, that it will be used for the purposes of terrorism;
- Entering into funding *arrangements* (Section 17 of *TA 2000*) – making *arrangements* as a result of which money or other property is, or may be, made available for the purposes of terrorism, including where there is reasonable cause for suspicion;
- Money laundering (Section 18 of *TA 2000*);
- Disclosing information related to the commission of an offence (Section 19 of *TA 2000*); and
- Failing to make a disclosure in the regulated sector (Sections 19 and 21A of *TA 2000*, as amended).

Tipping off: A money laundering-related offence for the *regulated sector*, defined under Sections 333A–D of *POCA*.

UK MLTF Regime: UK anti-money laundering and terrorist financing regime

9.2 APPENDIX A: SUBCONTRACTING AND SECONDMENTS

A.1 Secondee arrangements

A.1.1 A secondee is an individual employed by one organisation (the seconding *business*) but acting as an employee of another (the receiving *business*), i.e. they are operating under the supervision and direction of the receiving *business* and the seconding *business* has no responsibility for the work or activities that the secondee undertakes during the course of their secondment.

A.1.2 The formal terms of a secondment should make clear to all concerned how the obligations imposed by the UK *MLTF* regime will be applied. For example, if the secondee is seconded to a *business* that is not subject to the requirements of the *2017 Regulations*, then it will be unlikely that the secondee will be subject to any *AML* obligations unless the receiving *business* has decided to implement an *AML* policy voluntarily. However, if the receiving *business* is subject to the requirements of the *2017 Regulations*, then the secondee will need to adhere to the *AML* obligations as set out by the receiving *business*. Such obligations would include the reporting of any knowledge or suspicion of *MLTF* identified during the course of the secondment, but a report should only be made to the receiving *business's MLRO*. Upon rejoining the seconding *business*, there is no requirement for the secondee to submit a *SAR* to the seconding *business's MLRO* about any knowledge or suspicion of *MLTF* that came to their attention during the course of their secondment.

Reporting obligation when temporarily or permanently working outside the UK for a *business*

A.1.3 There will be situations where a *relevant employee (*or *agent)* is providing *defined services* and as a result of providing those services they are required to work temporarily outside of the UK. In such cases, where knowledge or suspicion of *MLTF* comes to such a *relevant employee*, they must still report their suspicion to their UK *MLRO*. For example, a *business* provides *accountancy services* to a UK private company. As part of the *engagement* the *relevant employee* is required to spend time at the company's subsidiary in Rotterdam. While working in Rotterdam the *relevant employee* is informed about a fraud committed by a supplier. As the information leads the *relevant employee* to form a suspicion of *MLTF* they must submit an internal *SAR* to their *MLRO*, who must then decide whether an external *SAR* is required to be submitted.

A.1.4 There may be other situations where a *relevant employee* works permanently outside the UK for a UK *business*. In such cases, a *business* should consider whether the *relevant employee* is working at a separate *business* or at a branch office of a UK *business*. Concluding on such matters can be difficult and therefore a *business* may wish to take legal advice in relation to the need for their

relevant employee to comply with the UK's money laundering reporting regime as well as any local legal requirements.

9.3 APPENDIX B: CLIENT VERIFICATION

Documentation purporting to offer evidence of identity may emanate from a number of sources. These documents differ in their integrity, reliability and independence. Some are issued after due diligence on an individual's identity has been undertaken; others are issued on request, without any such checks being carried out. There is a broad hierarchy of documents:

- Certain documents issued by government departments and agencies, or by a court; then
- Certain documents issued by other public sector bodies or local authorities; then
- Certain documents issued by regulated firms in the financial services sector; then
- Those issued by other firms subject to the 2017 Regulations, or to equivalent legislation; then
- Those issued by other organisations, including providers of electronic identification services.

B.1 Individuals

Client identification:

B.1.1 The full name, date of birth and residential address should be obtained.

Client Verification:

B.1.2 A document issued by an official (e.g. government) body is deemed to be an independent and reliable source even if provided by the client. The original, or an acceptably certified copy, of a document must be seen, and a copy retained. The document should be valid and recent. Documents, including documents sourced online, should not be accepted if there is any suspicion regarding their provenance.

B.1.3 For information obtained from an electronic identification process to be regarded as reliable, the process must be secure from fraud and misuse and capable of providing an appropriate level of assurance that the person claiming a particular identity is in fact the person with that identity.

B.1.4 The following is a suggested non-exhaustive list of sources of evidence for individuals:

- Valid passport;
- Valid photo card driving licence;
- National Identity card (non-UK nationals);
- Identity card issued by the Electoral Office for Northern Ireland;

- A check provided via an electronic identification process that meets the criteria to be relied upon.

B.1.5 Where there is an increased risk specifically relating to the identity of the individual, it may be appropriate to request additional, supplementary documents, for example:

- Recent evidence of entitlement to a state- or local authority-funded benefit (including housing benefit, council tax benefit, tax credits, state pension, educational or other grant);
- Instrument of a court appointment (such as a grant of probate);
- Current council tax demand letter or statement;
- HMRC-issued tax notification (NB: employer-issued documents such as P60s are not acceptable);
- End of year tax deduction certificates/tax year overview issued by HMRC;
- Current bank statements or credit/debit card statements;
- Current utility bills;
- A check provided via an electronic identification process that meets the criteria to be relied upon.

Source of wealth and source of funds

B.1.6 Where appropriate, evidence can be obtained from searching public information sources like the internet, company registers and land registers.

B.1.7 If the *client*'s funds/wealth have been derived from, say, employment, property sales, investment sales, inheritance or divorce settlements, then it may be appropriate to obtain documentary proof.

B.2 Private companies/LLPs

B.2.1 The following information must be obtained and verified:

- Full name of company/LLP;
- Registered number; and
- Registered office address and, if different, principal place of business.

B.2.2 The *business* must take reasonable measures to determine and verify the following:

- The law to which the company/LLP is subject;
- Its constitution (for example via governing documents);
- Any shareholders/members who ultimately own or control more than 25% of the shares or voting rights (directly or indirectly including bearer shares), or any individual who otherwise exercises control over management. These individuals are the *beneficial owners* (*BOs*);

- The identity of any *agent* or intermediary purporting to act on behalf of the entity and their authorisation to act, e.g. where a lawyer engages on behalf of an underlying *client*; and
- The full names of all directors (or equivalent) and senior persons responsible for the operations of the company.

B.2.3 *BOs* should be verified on a risk-based approach, so for higher-risk *clients*, more verification work should be performed. If the *business* has exhausted all possible means of identifying the *BO* of the company/LLP, the *business* must take reasonable measures to verify the identity of the senior person in the company/LLP who is responsible for managing it, and keep records in writing of all the actions the *business* has taken and difficulties it has encountered.

B.2.4 The names of directors should be verified on a risk-based approach, so more verification work should be performed for higher-risk *clients*. The *business* should assess which directors require identity verification (see below). The subsequent work should include verifying both the director's name and their identity – i.e. that they are who they say they are.

B.2.5 When applying a risk-based approach to verification of directors, the business should assess the overall *client* risk (see Chapter Four of this *guidance*) by considering the following:

- The type of *client*;
- The country or geographic areas in which it operates;
- The product or service being provided; and
- The delivery channel being used.

For a normal risk *client,* the *business* should verify the identity of the director who is the key *client* contact. Verification of additional directors should be considered for high-risk clients.

When undertaking verification of director identity, *businesses* should consider the risk of identity theft and the use of false documents. *Businesses* must be able to explain how they have applied a risk-based approach to the verification of directors and ensure that the rationale is documented.

B 2.6 *Businesses* should take care when using information relating to directors held on company registers – these are populated by the company and could contain unintentional or deliberate errors. For this reason, company registers of *People with Significant Control* may be used as a source of information and verification, but not solely relied upon. Since the purpose of client verification is to check the *client* identity information already gathered, it is important that the information used at this stage is drawn from independent sources (such as government-issued identity documents) and any identity evidence used should be from an authoritative source. *Businesses* may wish to use electronic verification methods (see Chapter Five of this *guidance*).

B.3 Listed or regulated entity

Client identification

B.3.1 The following information must be obtained and a copy retained:

- Full name;
- Membership or registration number; and
- Address.

Client verification

B.3.2 One of the following documents should be seen and a copy retained:

- A printout from the website of the relevant regulator or exchange (which should be annotated); or
- Written confirmation of the entity's regulatory or listing status from the regulator or exchange.

B.4 Government or similar bodies

Client identification

B.4.1 The following information must be obtained and a copy retained:

- Full name of the body;
- Main place of operation; and
- The government or supra-national agency which controls it.

Client verification

B.4.2 One of the following documents should be seen and a copy retained:

- A printout from the website of the relevant body (which should be annotated).

Additionally, for housing associations:

- The printout must contain its registered number, registered company number (where appropriate) and registered address.

9.4 APPENDIX C: SHOULD I MAKE A SAR?

Should I report to the MLRO?

- Do I have knowledge or suspicion of criminal activity resulting in someone benefitting?
- Did the information come to me while providing *defined services*?
- Am I aware of an activity so unusual or lacking in normal commercial rationale that it causes a suspicion of money laundering or terrorist financing?
- Do I know or suspect a person or persons of being involved in crime, or does another person who I can name have information that might assist in identifying them?
- Do I know who might have received the benefit of the criminal activity, or where the criminal property might be located, or have I got any information which might allow the property to be located?
- Do I think that the person(s) involved in the activity knew or suspected that the activity was criminal?
- Can I explain my suspicions coherently?

As the MLRO, should I report externally?

- Do I know, suspect or have reasonable grounds to know or suspect that another person is engaged in money laundering or terrorist financing; **and**
- did the information or other matter giving rise to the knowledge or suspicion come to me in a disclosure made under s 330, POCA; **and**
- do I know the name of the other person or the whereabouts of any laundered property from the s 330 disclosure; or
- can I identify the other person or the whereabouts of any laundered property from information or other matter contained in the s 330 disclosure; or
- do I believe, or is it reasonable for me to believe, that the information or other matter contained in the s 330 disclosure will or may assist in identifying the other person or the whereabouts of any laundered property?
- Am I comfortable that the reasonable excuse or overseas reporting exemptions are not applicable?
- Does the privileged circumstances exemption apply?
- Is a DAML required?

CHECKLIST: Essential elements of a SAR

- Name of reporter.
- Date of report.
- Who is suspected or information that may assist in ascertaining the identity of the suspect (which may simply be details of the victim and the fact that the victim knows the identity but this is not information to which the business is privy in the ordinary course of its work). The reporter should provide as many details as possible to allow NCA to identify the main subject.
- Who is otherwise involved in or associated with the matter and in what way.
- The facts.
- What is suspected and why
- Information regarding the whereabouts of any criminal property or information that may assist in ascertaining it (which may simply be the details of the victim who has further information but this is not information to which the business is privy in the ordinary course of its work).
- What involvement does the business have with the issue.
- The relevant NCA glossary code.
- Reports should generally be jargon free and written in plain English.

In addition for a DAML:

A clear explanation of the actions for which you seek a Defence Against Money Laundering. This should include a reference to which section, or sections of POCA 327, 328 or 329 these actions would breach.

9.5 APPENDIX D: RISK FACTORS – PER REGULATIONS 33(6) AND 37(3) OF THE 2017 REGULATIONS

D.1 High risk factors

Customer risk factors, including whether:

i. The *business relationship* is conducted in unusual circumstances;

ii. The customer is resident in a geographical area of high risk (see geographical risk factors below);

iii. The customer is a legal person or legal arrangement that is a vehicle for holding personal assets;

iv. The customer is a company that has nominee shareholders or shares in bearer form;

v. The customer is a business that is cash intensive;

vi. The corporate structure of the customer is unusual or excessively complex given the nature of the company's business;

vii. The customer is the beneficiary of a life insurance policy (note: that the *business* has provided); and

viii. The customer is a third country national who is applying for residence rights or citizenship of an *EEA* state in exchange for transfers of capital, purchase of a property, government bonds or investment in corporate entities in that *EEA* state.

Product, service, transaction or delivery channel risk factors, including whether:

i. The product involves private banking;

ii. The product or transaction is one which might favour anonymity;

iii. The situation involves non-face-to-face *business relationships* or transactions (without certain safeguards, such as electronic identification processes which meet the safeguards as outlined in 5.4.18);

iv. Payments will be received from unknown or unassociated third parties;

v. New products and new business practices are involved, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products;

vi. The service involves the provision of nominee directors, nominee shareholders or shadow directors, or the formation of companies in a third country; and

vii. There is a transaction related to oil, arms, precious metals, tobacco products, cultural artefacts, ivory and other items related to protected species, and other items of archaeological, historical, cultural and religious significance or of a rare scientific value.

Geographical risk factors, including:

i. Countries identified by credible sources, such as mutual evaluations, detailed assessment reports or published follow-up reports, as not having effective systems to counter money laundering or terrorist financing;

ii. Countries identified by credible sources as having significant levels of corruption or other criminal activity, such as terrorism (within the meaning of Section 1 of the Terrorism Act 2000(a)), money laundering, and the production and supply of illicit drugs;

iii. Countries subject to sanctions, embargoes or similar measures issued by, for example, the European Union or the United Nations;

iv. Countries providing funding or support for terrorism;

v. Countries that have organisations operating within their territory which have been designated:

(aa) by the government of the UK as proscribed organisations under Schedule 2 to the Terrorism Act 2000(b); or

(bb) by other countries, international organisations or the European Union as terrorist organisations; and

vi. Countries identified by credible sources, such as evaluations, detailed assessment reports or published follow-up reports published by the Financial Action Task Force, the International Monetary Fund, the World Bank, the Organisation for Economic Co-operation and Development, or other international bodies or non-governmental organisations, as not implementing requirements to counter *money laundering and terrorist financing* that are consistent with the recommendations published by the Financial Action Task Force in February 2012 and updated in October 2016 and October 2020.

D.2 Low risk factors

Customer risk factors, including whether the customer:

i. Is a public administration, or a publicly owned enterprise;

ii. Is an individual resident in a geographical area of lower risk (see geographical risk factors, below);

iii. Is a credit institution or a financial institution which is:

(aa) Subject to the requirements in national legislation implementing the equivalent to the Fourth Money Laundering Directive as an obliged entity (within the meaning of that Directive); and

(bb) Supervised for compliance with those requirements in accordance with Chapter VI of the Fourth Money Laundering Directive; and;

iv. Is a company whose securities are listed on a *regulated market*, and the location of the *regulated market*;

Product, service, transaction or delivery channel risk factors, including whether the product or service is:

i. A life insurance policy for which the premium is low;

ii. An insurance policy for a pension scheme which does not provide for an early surrender option, and cannot be used as collateral;

iii. A pension, superannuation or similar scheme which satisfies the following conditions:

(aa) The scheme provides retirement benefits to employees;

(bb) Contributions to the scheme are made by way of deductions from wages; and

(cc) The scheme rules do not permit the assignment of a member's interest under the scheme;

iv. A financial product or service that provides appropriately defined and limited services to certain types of customers to increase access for financial inclusion purposes in the UK;

v. A product where the risks of *money laundering and terrorist financing* are managed by other factors such as purse limits or transparency of ownership;

vi. A child trust fund within the meaning given by Section 1(2) of the Child Trust Funds Act 2004(a); and

vii. A junior ISA within the meaning given by Regulation 2B of the Individual Savings Account Regulations 1998(b).

Geographical risk factors, including whether the country where the customer is resident, established or registered or in which it operates is:

i. The UK;

ii. A third country which has effective systems to counter *money laundering and terrorist financing*;

iii. A third country identified by credible sources as having a low level of corruption or other criminal activity, such as terrorism (within the meaning of Section 1 of the Terrorism Act 2000(c)), money laundering, and the production and supply of illicit drugs; and

iv. A third country which, on the basis of credible sources, such as evaluations, detailed assessment reports or published follow-up reports published by the Financial Action Task Force, the International Monetary Fund, the World Bank, the Organisation for Economic Co-operation and Development, or other international bodies or non-governmental organisations:

(aa) Has requirements to counter *money laundering and terrorist financing* that are consistent with the revised recommendations published by the Financial Action Task Force in February 2012 and updated in October 2016, October 2020 and October 2021; and

(bb) Effectively implements those recommendations.

9.6 APPENDIX E: CASE STUDIES ON IDENTIFYING BENEFICIAL OWNERS DURING CUSTOMER DUE DILIGENCE

The following case studies are illustrative. Each *Customer Due Diligence* (*CDD*) situation should be analysed on its own merit.

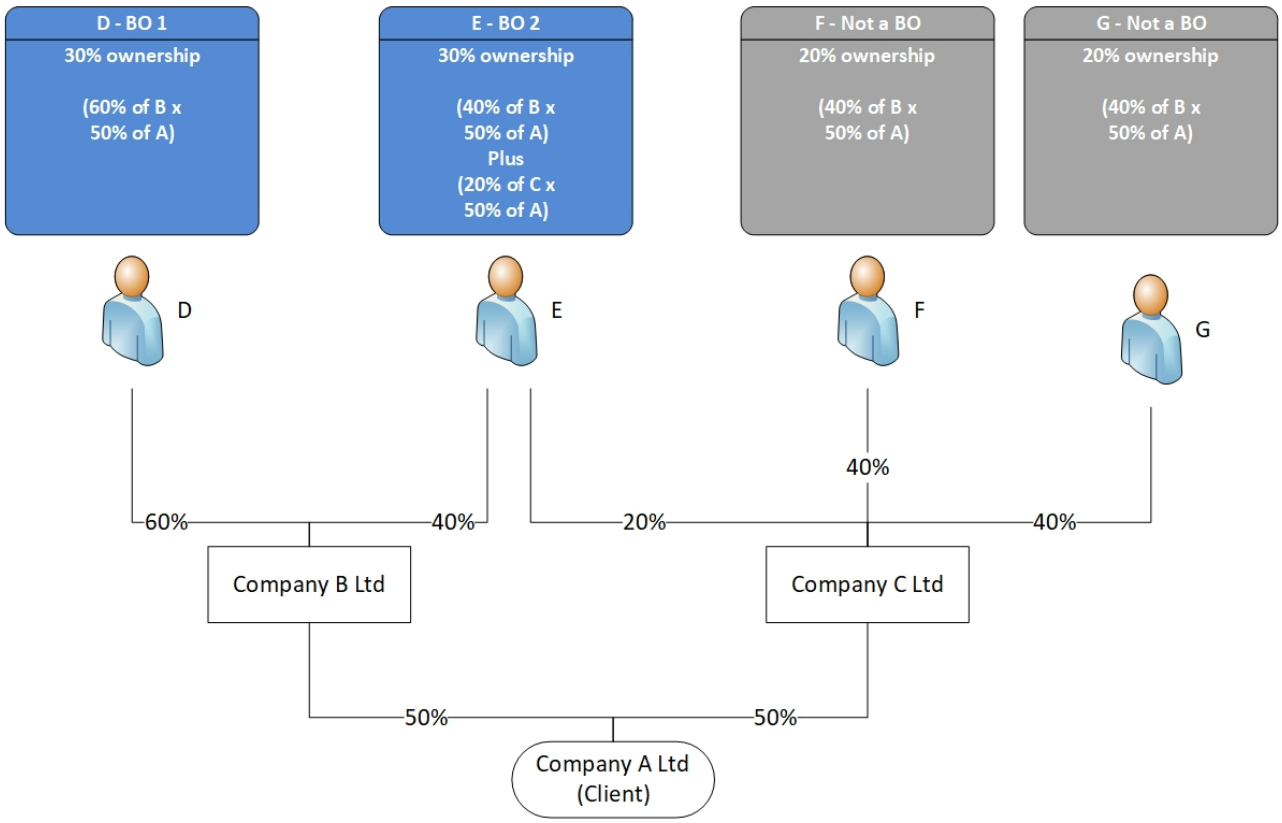
If a situation changes, for example, if you have already conducted *CDD* on a *client* and then another individual or entity in its ownership structure becomes a *client*, you should conduct *CDD* from scratch for the new *client*, although you may use the evidence that you have already collected. For example, if a *client* is a company that is owned by a trust, Regulation 5(1) of the *2017 Regulations* must be used to identify the *beneficial owners* (*BOs*) of the company. If subsequently the trust becomes a *client*, Regulation 6(1) of the *2017 Regulations* must be used to identify the *BOs* of the trust.

Bodies Corporate

Regulation 5(1)
In these Regulations, "beneficial owner", in relation to a body corporate which is not a company whose securities are listed on a regulated market, means—
(a) any individual who exercises ultimate control over the management of the body corporate;
(b) any individual who ultimately owns or controls (in each case whether directly or indirectly), including through bearer share holdings or by other means, more than 25% of the shares or voting rights in the body corporate; or
(c) an individual who controls the body corporate.

Regulation 5(2)
For the purposes of paragraph (1)(c), an individual controls a body corporate if—
(a) the body corporate is a company or a limited liability partnership and that individual satisfies one or more of the conditions set out in Part 1 of Schedule 1A to the Companies Act 2006 (people with significant control over a company)(31); or
(b) the body corporate would be a subsidiary undertaking of the individual (if the individual was an undertaking) under section 1162 (parent and subsidiary undertakings) of the Companies Act 2006 read with Schedule 7 to that Act.

Case study 1 – Body Corporate - Company



The *client* is Company A Ltd, a private company. Unless persons F or G exercise the relevant control through other means (such as through 25% voting rights or other means of control) and based on a 25% ownership threshold, the *BOs* are the individuals D and E.

In determining the *BO* position, we would need to understand the structure of Companies B and C (also private companies), but they do not meet the definition of a *BO* as they are not natural persons.

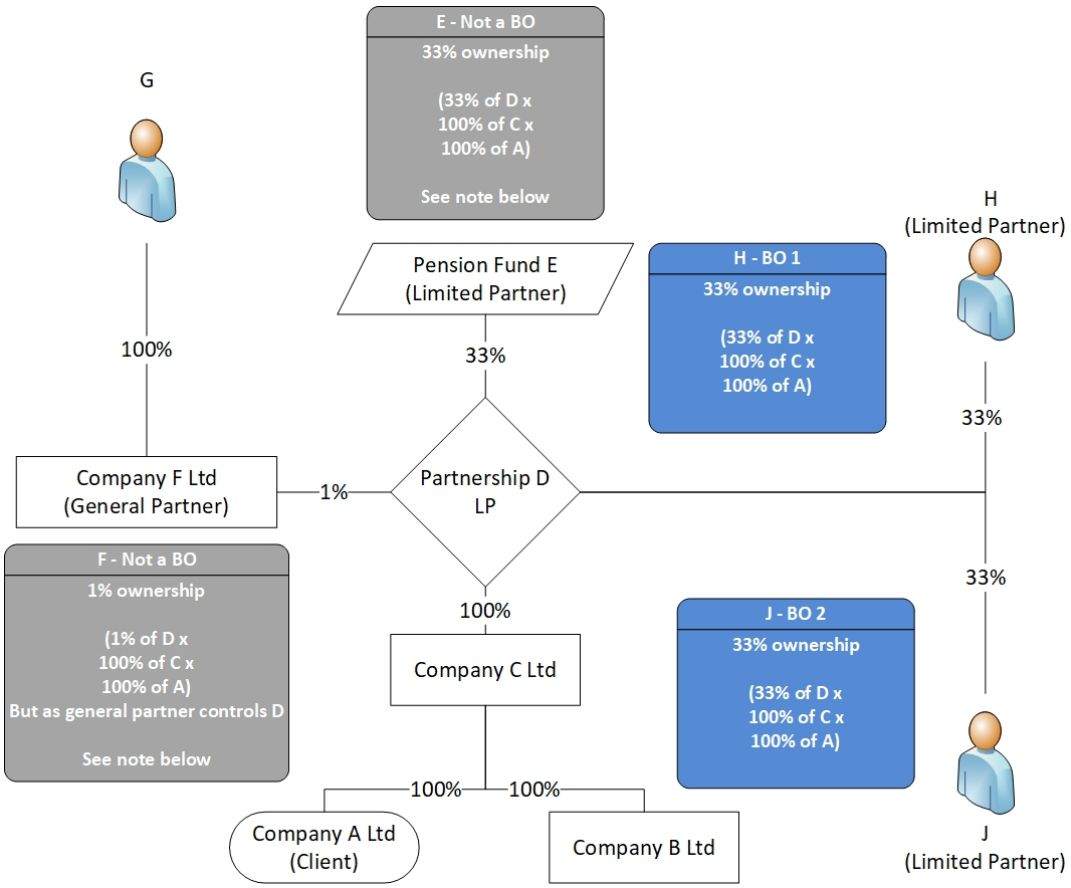
Individual D is a BO due to an indirect shareholding of 30% through Company B.

Individual E is a BO due to an indirect shareholding of 30% through Companies B and C.

Individuals F and G are not BOs as they only own 20% each through Company C.

Both individuals D and E would therefore need to be considered for CDD purposes as BOs of Company A Ltd.

Case Study 2 - Body Corporate - Company



The client is Company A Ltd, a private company. Based on a 25% threshold, the BOs are the individuals G, H and J.

In determining the BO position, we would need to understand the structure of Company C, Partnership D, Pension Fund E and Company F but they do not meet the definition of a BO as they are not natural persons.

Individuals H and J are BOs based on a 25% threshold due to their indirect shareholding of 33% each via Partnership D.

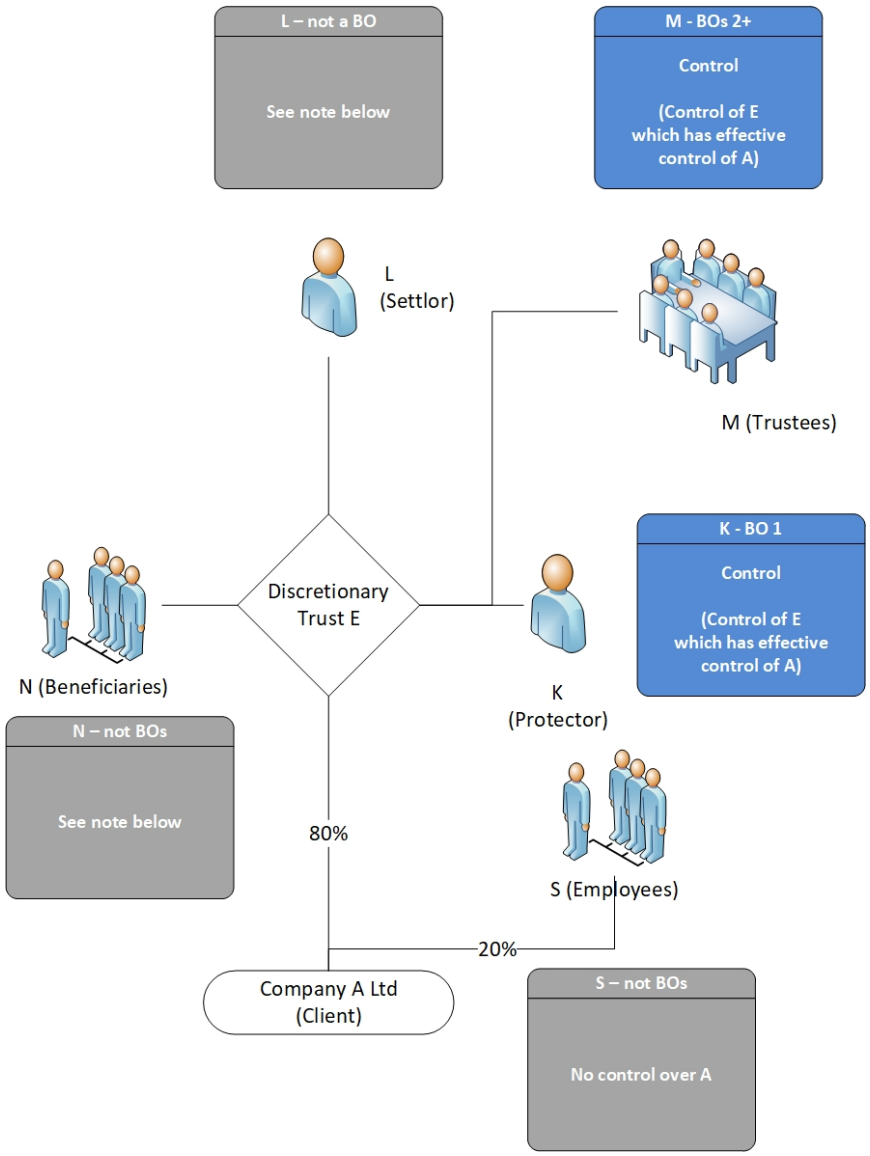
Individual G is a BO because, although they own only 1% of Partnership D (and thus 1% of Company A) they control Company A through their control of Partnership D.

While not *BOs* in their own right, Pension Fund E and Company F present avenues of ownership and control that should be considered further. Pension Fund E has a 33% ownership interest in Company A. Company F, as General Partner, controls the operations of Partnership D (which owns 100% of Company A). In some situations, pension schemes and banks may qualify for Simplified Due Diligence (SDD), in which case consideration will stop at the point that we can confirm they are eligible for such treatment. Depending on the risk assessment we may need to further investigate the ownership and control structure to ensure there are no further *BOs*

Case Study 3 - Body Corporate – Company

The *client* (Company A Ltd) is a body corporate, therefore there is no need to use the *BO* rules related to other types of *client*, such as trusts.

In our case, all of the shares in Company A have equal voting rights. Of these shares, 80% are owned by Discretionary



Trust E, which allows Discretionary Trust E to control the activities of Company A. The remaining shares are owned by employees of Company A, none of whom have any connection to anyone else in the ownership and control structure.

Discretionary Trust E is not a natural person, so it cannot be a *BO*.

The activities of Discretionary Trust E are controlled by its trustees (M). Thus, each trustee is a *BO* of Company A.

In our case, the trust's protector (K) is capable of exercising veto power over the trustees and is responsible for appointing new trustees. They are therefore regarded as having control of Discretionary Trust E and, therefore, of Company A. Protector K is a *BO* of Company A.

In our case the settlor (L) has no involvement following the settlement of assets into the trust, nor do they exercise control over the trustees or the protector. L has no other connection to A. L is not a *BO* of Company A, since they will not be exercising control over E.

The employee shareholders do not have enough votes, acting either individually or together, to control Company A. None of them is a *BO* of Company A.

Although the trustees and the protector must act in the interest of the beneficiaries, they (N) have no authority over the trustees or protector. They have no specified interest in Trust E and, therefore, in the capital of Company A, the beneficiaries (N) cannot be *BOs*, unless they have control over A in some other way.

Notes:

Although there is no requirement to:

- identify or verify the settlor, there may be situations where, on a risk-sensitive basis, it may be appropriate to know the identity of person L, for example where there is concern that the trust's interest may have been acquired with the proceeds of crime.
- identify the class of beneficiaries of Trust E or even individuals receiving distributions from the trust, there may be situations where, on a risk-sensitive basis, it may be appropriate to identify the class or distribution-receiving beneficiaries, for example where distributions from Company A appear excessive. The reasons for large distributions may be unexceptional, for example where a beneficiary is paying for a wedding or large medical bill.

Case Study 4 – Body Corporate - Dilute Ownership

We are approached by a potential new *client*, A & Daughter Ltd. The company was *established in* 1864 by Josiah A. The ownership of the company has passed down through the family. Now on the sixth and seventh generations, the share ownership is widely dispersed among remote descendants of Josiah.

There is only one class of shares and all have equal entitlement to profits, capital and votes. Our initial procedures indicate that no one owns more than 5% of the shares.

Our starting point is that there are no *BOs* – no one controls the company.

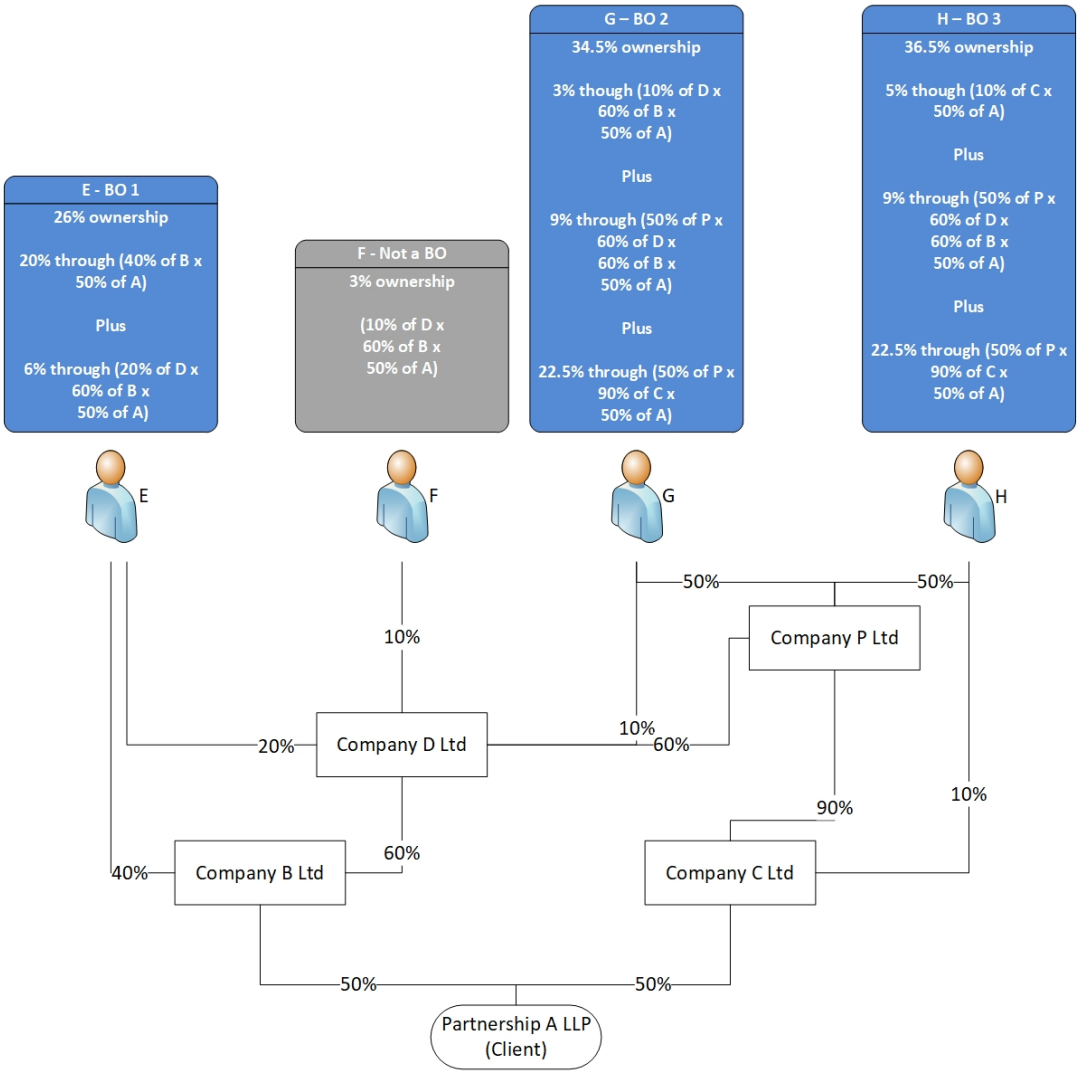
This will only change if we have reason to believe otherwise. If we have reason to believe that there may be one or more *BO*, it may be appropriate to consider arrangements made by the articles of association of the company, by contract, by informal family agreement or by some other means. We would then consider:

- Does anyone have the right, directly or indirectly, to appoint a majority of the board, whether or not they exercise it?
- Does anyone have the right to exercise a dominant or significant influence over the company, whether or not they exercise it?
- Is anyone acting as a nominee or proxy for someone else? For example, an uncle may hold proxies for one or more infant nephews and nieces, or shareholders may have secretly sold their interests to a third party (possibly to evade restrictions that require owners to be *family members*)?
- Does anyone otherwise exercise control over the company, even if this is not based on a right? This may be because of a strong personality or family position.

There are three possible outcomes from these considerations:

1. There are no *BOs*.
2. There are one or more individuals who we identify as *BOs*, because they have the right to control or effectively control the company.
3. We cannot rule out that there are not *BOs* and, therefore, we must apply Regulation 28(6), (7) and (8) of the *2017 Regulations*, as illustrated in Case Study 11.

Case Study 5 – Body Corporate - LLP



The *client* is Partnership A LLP, a Limited Liability Partnership of two private companies B Ltd and C Ltd.

Unless individual F exercises the relevant control through other means (such as through more than 25% voting rights or other means of control) and based on a 25% ownership threshold, the *BOs* are persons E, G and H.

In determining the *BO* position, we would need to understand the structure of Companies B, C, D and P (all private companies), but they do not meet the definition of a *BO* as they are not natural persons.

Individual E is a *BO* due to an indirect shareholding of 26% through Companies B and D.

Individual F is not a *BO* due to their indirect shareholding only being 3%.

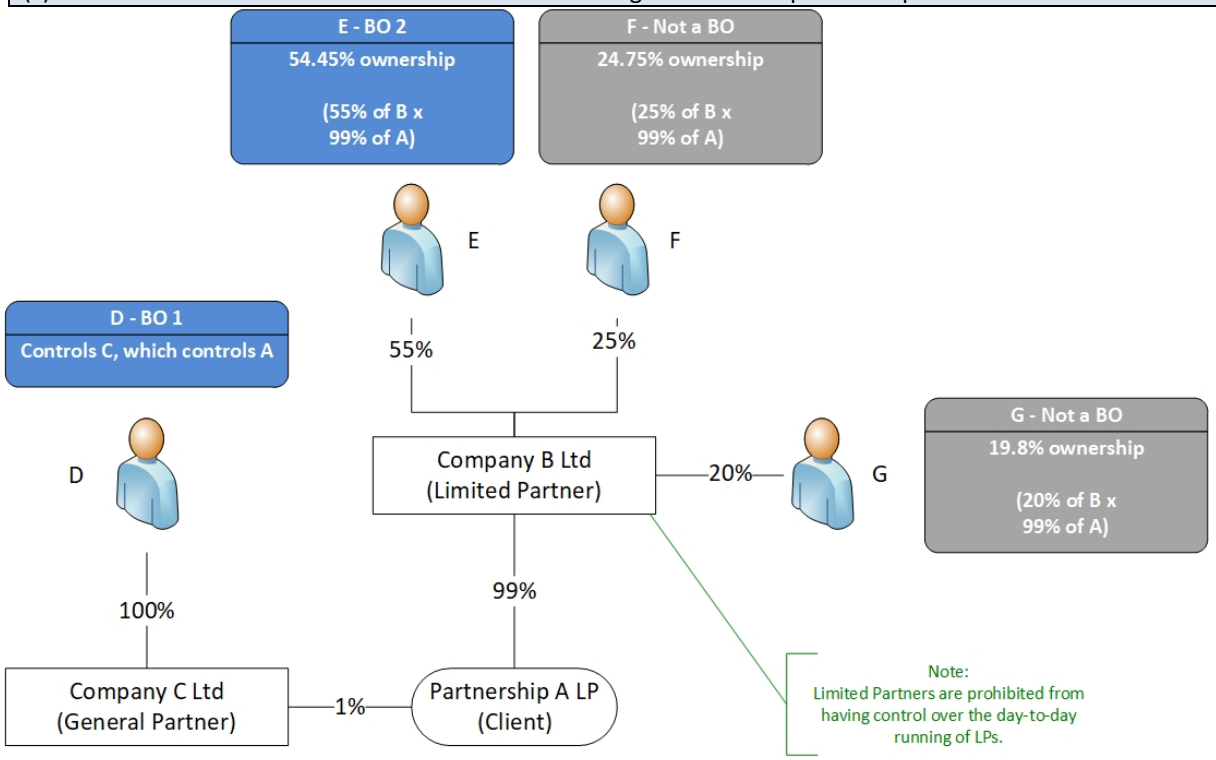
Individual G is a *BO* due to an indirect shareholding of 34.5% through Companies B, C, D and P.

Individual H is a *BO* due to an indirect shareholding of 36.5% through Companies B, C, D and P.

Partnerships

Case Study 6 – Partnership - Limited Partnership (LP)

Regulation 5(3)
In these Regulations, "beneficial owner", in relation to a partnership (other than a limited liability partnership), means any individual who—
(a) ultimately is entitled to or controls (in each case whether directly or indirectly) more than 25% share of the capital or profits of the partnership or more than 25% of the voting rights in the partnership;
(b) satisfies one or more the conditions set out in Part 1 of Schedule 1 to the Scottish Partnerships (Register of People with Significant Control) Regulations 2017 (references to people with significant control over an eligible Scottish partnership) (32); or
(c) otherwise exercises ultimate control over the management of the partnership.



The *client* is Partnership A LP, a Limited Partnership of two private companies, B Ltd and C Ltd.

In determining the *BO* position, we would need to understand the structure of Companies B and C (private companies), but they do not meet the definition of a *BO* as they are not natural persons.

Company C Ltd is the General Partner. It has day-to-day responsibility for the operations of Partnership A LP.

Company B Ltd is a limited partner. It may not take part in the day-to-day management of A LP.

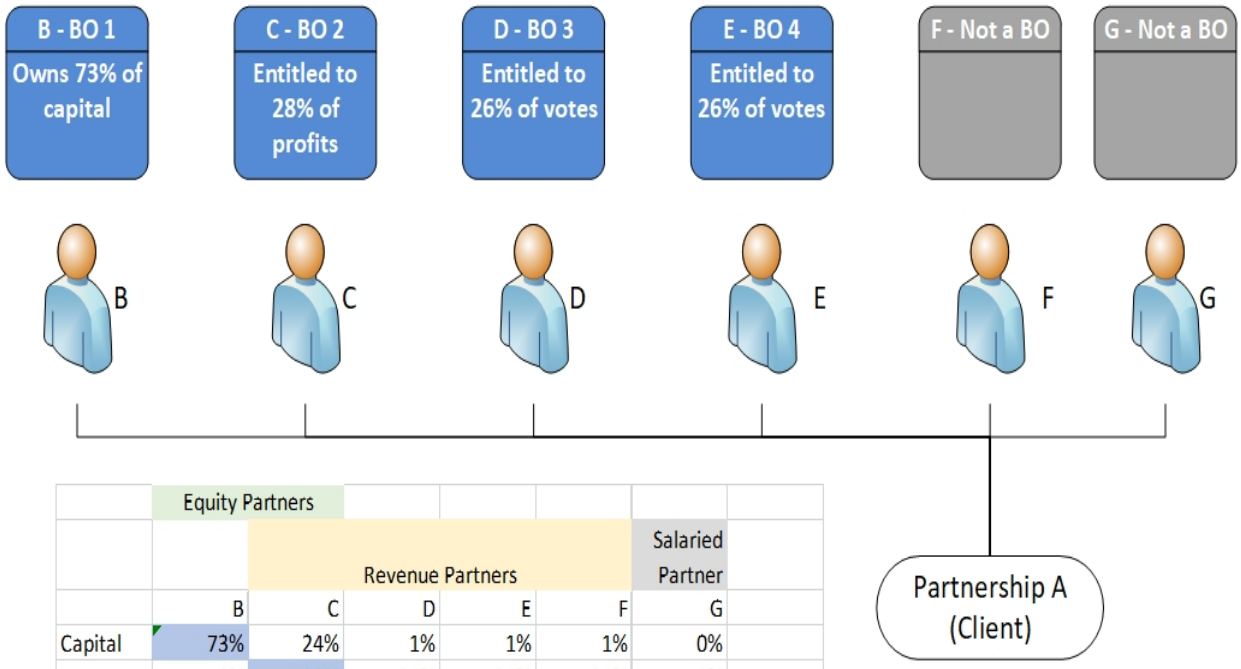
Individual D is a *BO*. Although they only benefit from 1% of A LP, they have control of C Ltd, which controls A LP.

Individual E is a *BO* due to an indirect shareholding of 54.45% through Company B.

Individual F is not a *BO* due to their indirect interest in capital and profits being only 24.75%.

Individual G is not a *BO* due to their indirect interest in capital and profits being only 19.8%.

Case Study 7 – Partnership - Partnerships other than LLPs and LPs



	Equity Partners					
	Revenue Partners					Salaried Partner
	B	C	D	E	F	G
Capital	73%	24%	1%	1%	1%	0%
Revenue	0%	28%	24%	24%	24%	0%
Votes	10%	25%	26%	26%	13%	0%

The *client* is Partnership A. It has equity partners, revenue partners and salaried partners.

Individual B is a *BO* because of an interest in the capital of more than 25%.

Individual C is a *BO* because of an interest in the profits of more than 25%.

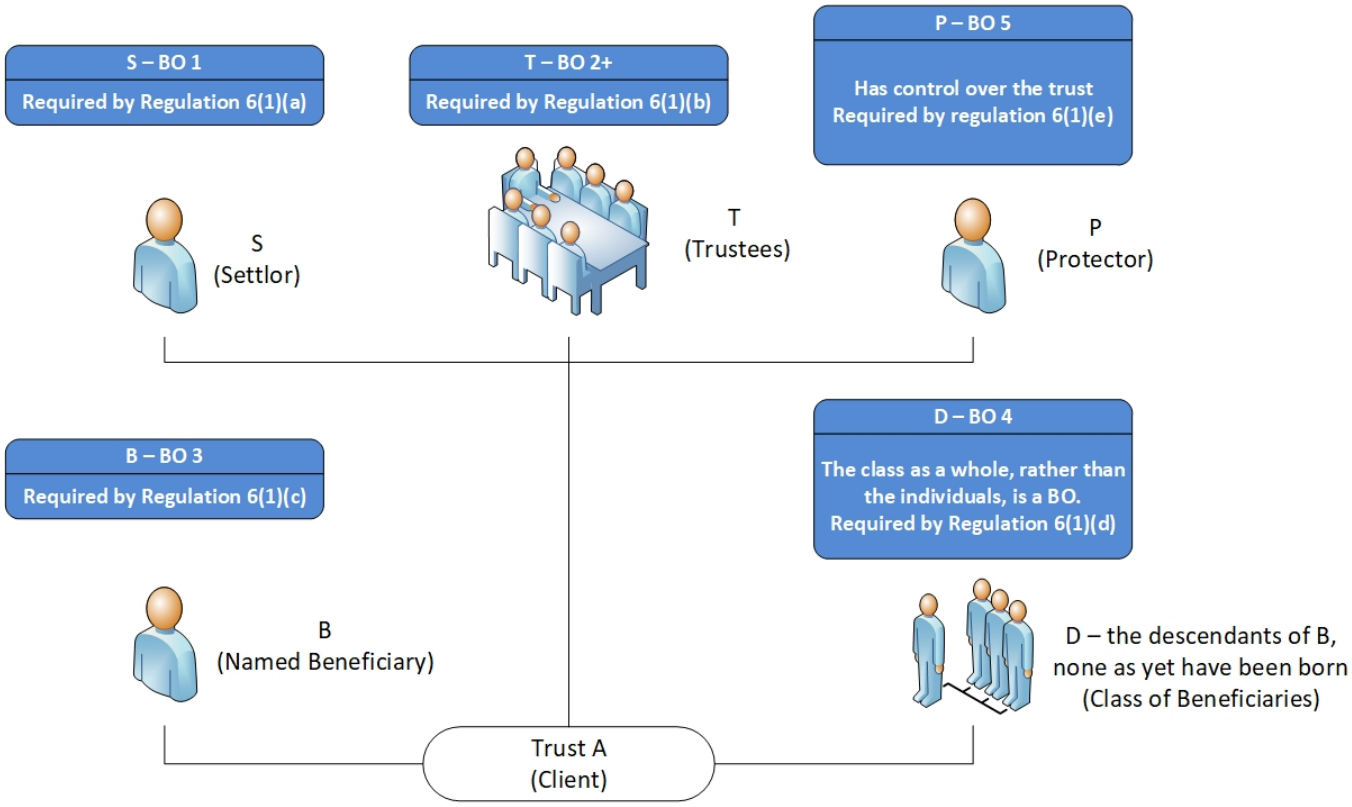
Individuals D and E are *BOs* because of voting interests of more than 25%.

Individuals F and G are not *BOs* – their interests do not exceed the 25% threshold.

Trusts

Case Study 8 – Trusts

Regulation 6(1)
In these Regulations, "beneficial owner", in relation to a trust, means each of the following—
(a) the settlor;
(b) the trustees;
(c) the beneficiaries;
(d) where the individuals (or some of the individuals) benefiting from the trust have not been determined, the class of persons in whose main interest the trust is set up, or operates;
(e) any individual who has control over the trust.



The *client* is Trust A. It was created by individual S for the benefit of his 12-year-old daughter B and her children, grandchildren and great-grandchildren. S appointed some friends as trustees and his wife as a protector (with power to replace trustees and veto their decisions).

Individual B is a *BO* as a beneficiary.

Individuals D do not exist. The class of beneficiaries is a *BO*, they must be identified as a class: 'The children, grandchildren and great-grandchildren of B'.

Individual S is a *BO* as the settlor.

The individuals T are *BOs* as trustees.

Individual P is a *BO* because she has control over the trust.

Note:

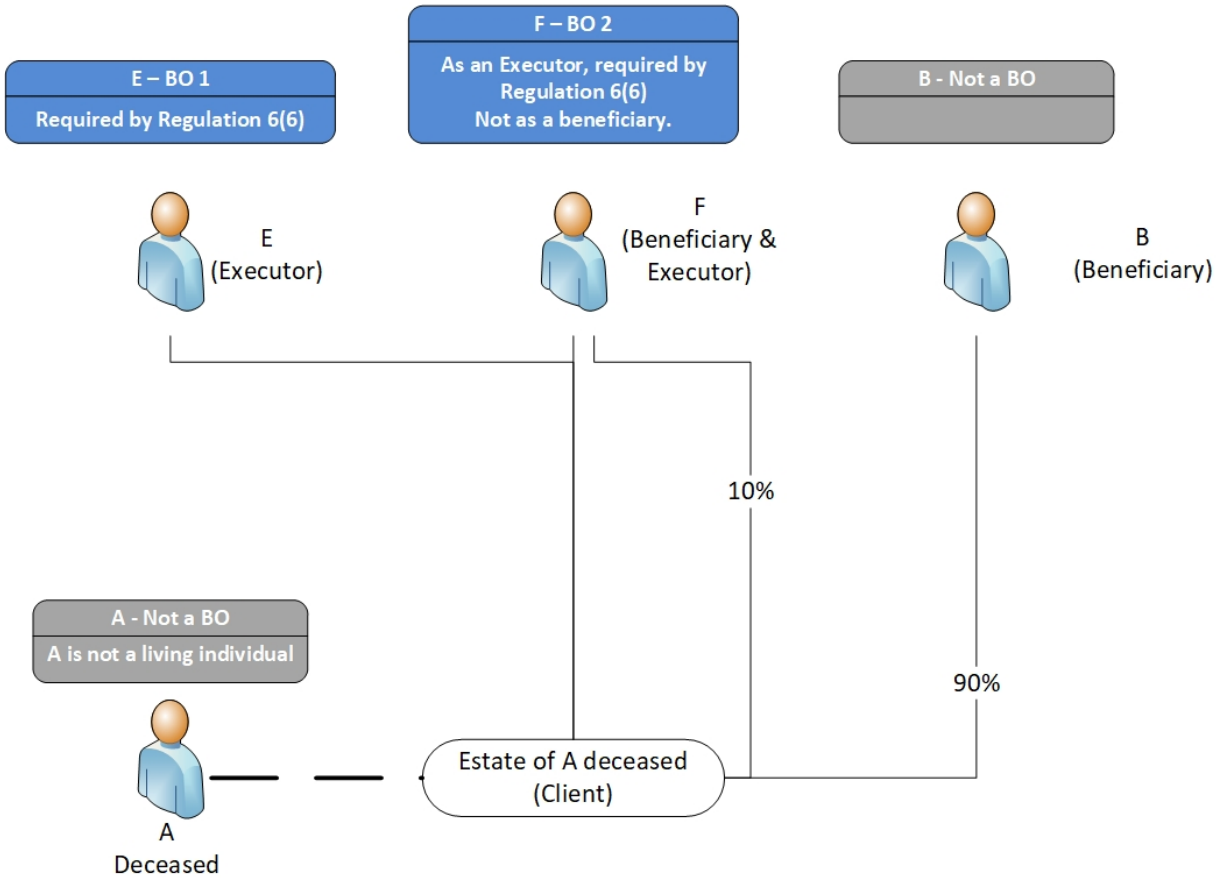
As children, grandchildren and great-grandchildren are born and receive distributions, they must be identified.

In the case of corporate trustees, settlors and beneficiaries, consideration should be given to the beneficial ownership of the trustee, settlor or beneficiary, as appropriate, to establish if there are individuals who are *BOs*.

Estates of deceased individuals

Case Study 9 – Estates of Deceased Individuals

Regulation 6(6)
In these Regulations, "beneficial owner", in relation to an estate of a deceased person in the course of administration, means—
(a) in England and Wales and Northern Ireland, the executor, original or by representation, or administrator for the time being of a deceased person;
(b) in Scotland, the executor for the purposes of the Executors (Scotland) Act 1900(37).



The *client* is the estate of A (deceased).

Individual B is not a *BO* despite being the major beneficiary.

Individual E is a *BO* as an executor.

Individual F is a *BO* as an executor. The fact that F is also a beneficiary does not affect their status as a *BO*.

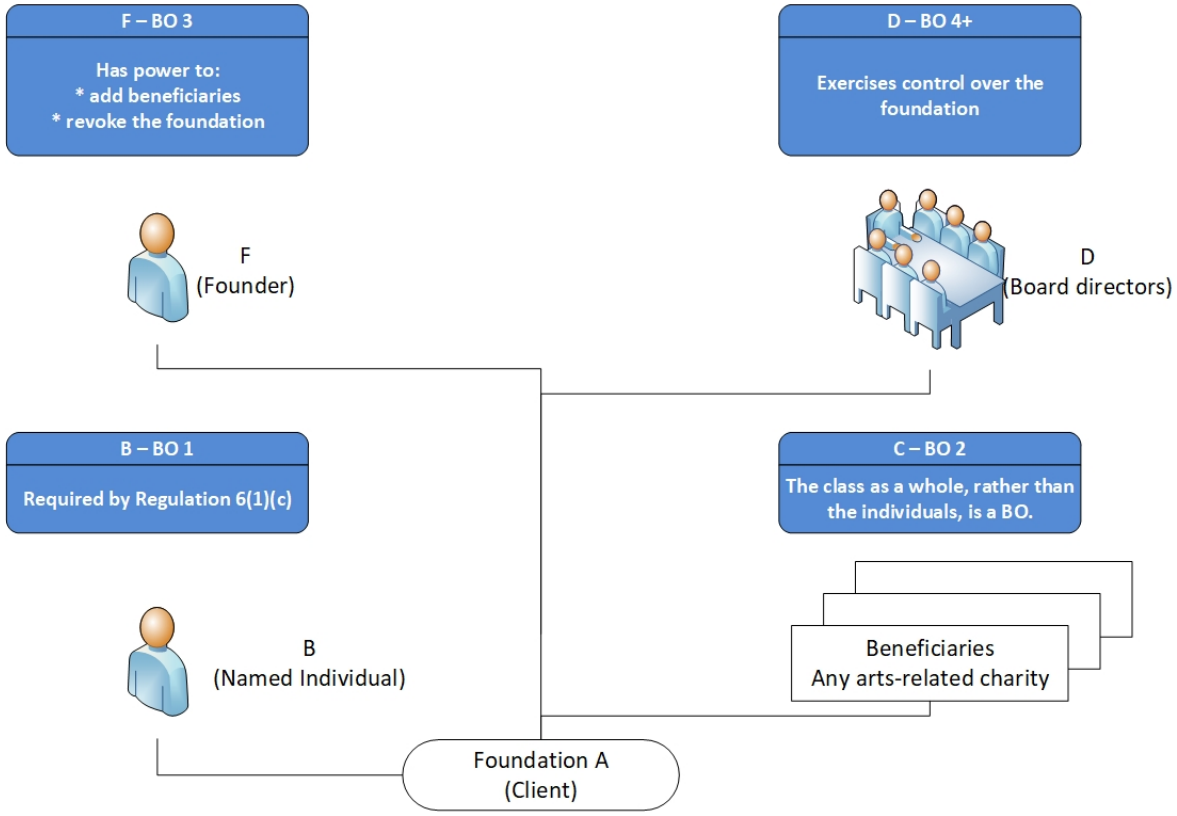
In the case of corporate executors, consideration should be given to the beneficial ownership of the executor, as appropriate, to establish if there are individuals who are *BOs*.

Other Legal Entities

Case Study 10 – Other Legal entities

Regulation 6(7)
In these Regulations, "beneficial owner", in relation to a legal entity or legal arrangement which does not fall within regulation 5 or paragraphs (1), (3) or (6) of this regulation, means—
(a) any individual who benefits from the property of the entity or arrangement;
(b) where the individuals who benefit from the entity or arrangement have yet to be determined, the class of persons in whose main interest the entity or arrangement is set up or operates;
(c) any individual who exercises control over the property of the entity or arrangement.

Regulation 6(8)
For the purposes of paragraph (7), where an individual is the beneficial owner of a body corporate which benefits from or exercises control over the property of the entity or arrangement, the individual is to be regarded as benefiting from or exercising control over the property of the entity or arrangement.



The *client* is an Austrian foundation. Austrian foundations are legal entities that have no owners and no shares. A founder creates it by issuing a charter and making a gift to the new body. Founders who are individuals, rather than legal entities, can reserve the right to revoke the foundation's existence. A board of directors consisting of at least three individuals runs the foundation.

Cases of this type depend very much on the facts. Care must be taken that decisions make sense in all the circumstances of the case.

In this case, F has created a foundation to benefit his grandson (B) and art-related charities (C). He has appointed two prominent artists and his solicitor as directors of the foundation.

In this case, the suggested approach is to:

1. Treat the Founder (F) as a *BO* because of the power to revoke the foundation's existence and hence control over its property.

2. Treat the Directors (D) as *BOs* because of their control over the foundation's property.

3. Treat the named beneficiary (B) as a *BO* because he benefits from the property of the foundation.

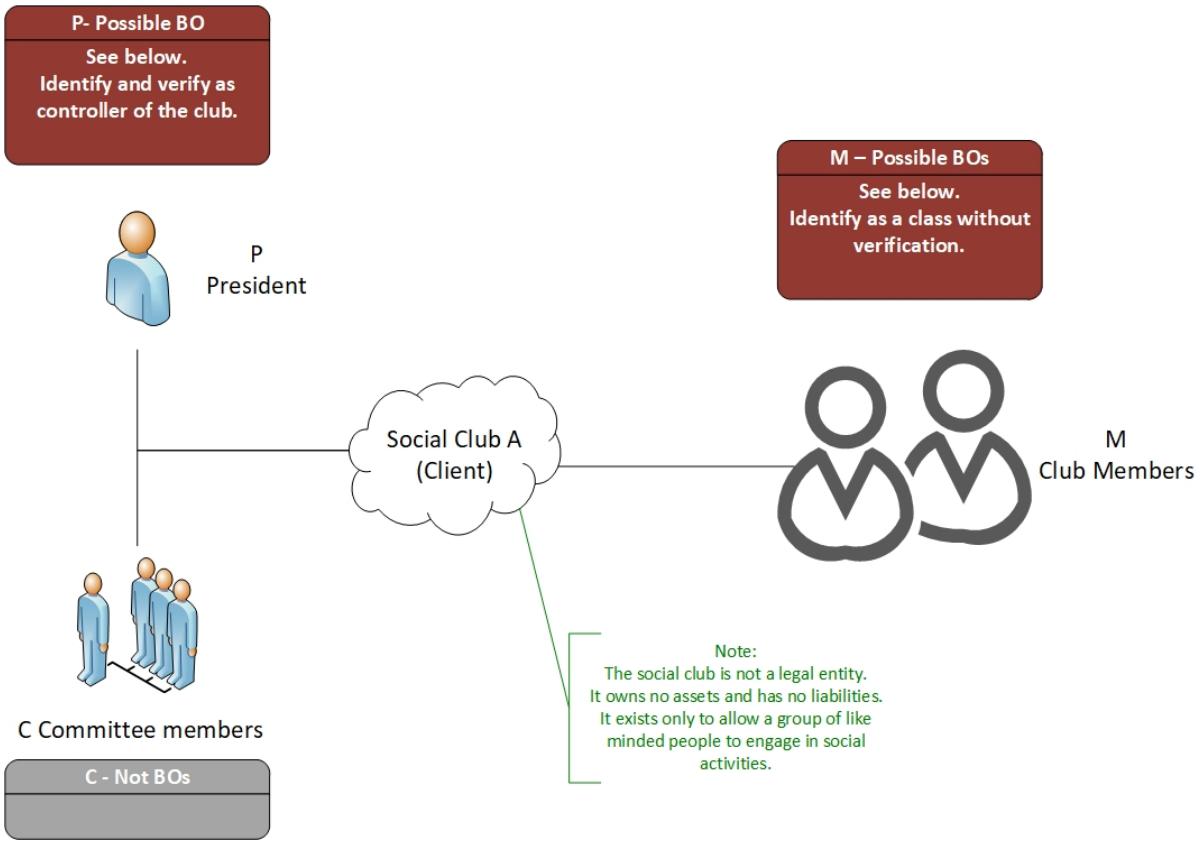
4. Do not treat the charities (C) as *BOs* because there is a named beneficiary.

All Other Cases

Case Study 11 – All Other Cases

Regulation 6(9)

In these Regulations, "beneficial owner", in any other case, means the individual who ultimately owns or controls the entity or arrangement or on whose behalf a transaction is being conducted.



The *client* is Tennis Club A. It is an unincorporated entity (not a company, partnership, trust or estate). It has 100 to 200 members, who own two tennis courts in a local park and a changing room. The club's activities are funded by subscriptions from the members.

The members own the club, and each has an equal interest. The members (M) elect a president (P) and a committee (C). The committee oversees the president's actions as she runs the club on a day-to-day basis. She has been president for 10 years.

In determining *BOs* in cases of this type, much depends on the specific facts of the case and care must be taken to look at the situation in the round, rather than concentrate on individual facets.

In this case, the suggested approach is to:

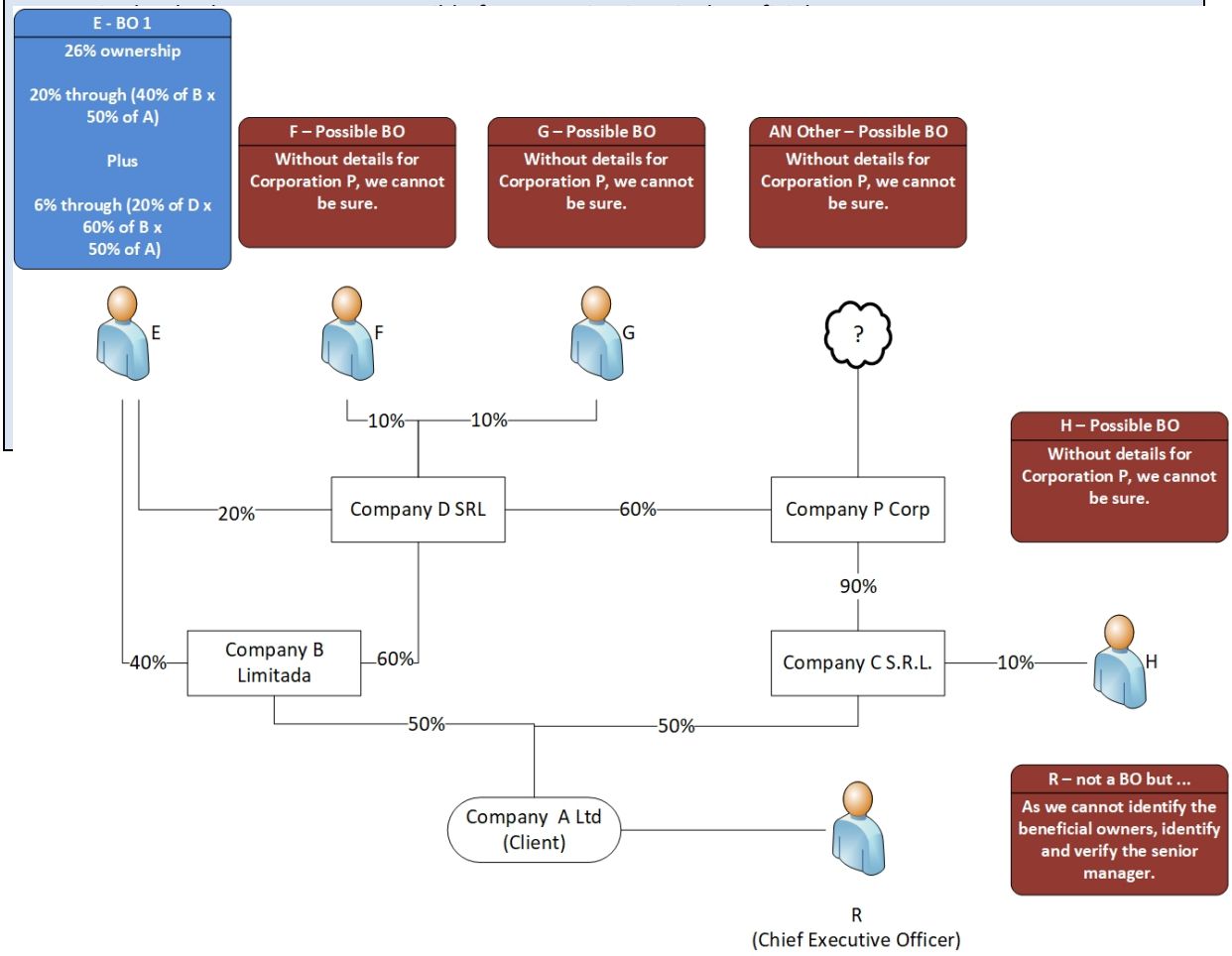
1. Treat the members (M) as *BOs* but as a class (as we would for an indeterminate class of beneficiaries of a trust) rather than as individuals.

2. President (P) will not be a *BO* unless she has effective control of the club, because she can make executive decisions with little or no challenge from the committee.

Case Study 12 – Where:

All possible means of identifying the ultimate BO of a body corporate are exhausted; or the *Business* is not satisfied that the individuals identified as *BOs* are in fact *BOs* of the client.

Regulation 28(6)
If the customer is a body corporate, and paragraph (7) applies, the relevant person may treat the senior



The *client* is Company A Ltd, a private company.

In determining the *BO* position, we would need to understand the structure of Companies B, C, D and P. They do not meet the definition of a *BO* as they are not natural persons.

Company B is a Brazilian company. We believe that its shareholders are E and D.

Company C is a Costa Rican company, we believe that its shareholders are H and P.

Company D is a company in the Dominican Republic. We believe its shareholders are F, G, E and P.

Company P is a Panamanian corporation. After exhausting (and documenting) all possible means of identifying the *BOs*, we cannot establish its ownership.

We go through the following stages.

1. Decide whether it is appropriate to file a *SAR*; and
2. Decide whether it is appropriate to decline or cease to act**.** If it is appropriate to continue to act:

    (a) Take reasonable steps to verify the identity of the senior person in the body corporate responsible for managing it (in this case R); and

    (b) Record in writing:

        i. All the actions we have taken to identify the ultimate *BO(s)*;

        ii. All the actions we have taken to verify the identity of the senior person; and

        iii. Any difficulties that we encountered in verifying the identity of the senior person.

In this case, it would be appropriate to identify and verify individual E, who is a *BO*, irrespective of the ownership of Company P.
