



**CRIMINAL JUSTICE (MONEY LAUNDERING AND
TERRORIST FINANCING) (AMENDMENT)
ACT 2021**

SOLICITOR AML UPDATE

AML SECTION

POLICY & PUBLIC AFFAIRS DEPARTMENT

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Contents

Introduction	3
Six key changes to Solicitor AML	4
1. A new duty to ascertain that a client's beneficial owners are registered prior to establishing a relationship.....	4
2. Changes to low and high statutory risk factors.....	6
3. Triggers for enhanced CDD expanded.....	7
4. Changes to PEP obligations	8
5. Specific enhanced CDD to be applied to clients established or resident in high-risk third countries.....	8
6. Clients with Senior Managing Official ('SMO') as the beneficial owner.....	8
Conclusion	9

Introduction

The Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021 (the '2021 Act') strengthens the risk-based approach to AML compliance. It does not represent a radical departure from current solicitor AML.¹ Many solicitor firms may find their current policies will deliver the required compliance outcomes with relatively few modifications being required. For some firms, depending on their client base and the type of legal services they provide, additional steps may be required. This Update details the six key changes to solicitor AML which include:

- 1. A new duty to ascertain that a client's beneficial owners are registered prior to establishing a relationship** – for clients who are either a company, a certain financial vehicle or a relevant trust, solicitors should confirm their beneficial owners are on the relevant register prior to establishing a relationship.
- 2. Changes to low and high statutory risk factors** - this is relevant to most statutory duties e.g. customer risk assessment to determine CDD, business risk assessment etc. and non-face-to-face verification of customer identity.
- 3. Triggers for Enhanced CDD expanded** - a duty to examine the background and purpose of transactions which are complex, unusually large, have unusual patterns, have no apparent economic or lawful purpose as far as possible in accordance with a firm's AML PCPs. Previously Enhanced CDD was only necessary if a combination of these elements was present. Now it can arise if any of the elements are present individually.
- 4. Changes to PEP obligations** – a requirement to continue to apply PEP measures "for as long as is reasonably required" and an expanded definition of PEP to include individuals performing a prescribed function.
- 5. Specific enhanced CDD to be applied to clients established or resident in high-risk third countries** - previously specific measures were not prescribed.
- 6. Clients with Senior Managing Official ('SMO') as the beneficial owner** - existing duty to identify beneficial owners and take measures reasonably warranted by the ML/TF risk to verify their identity is expanded to include SMOs.

To ensure a smooth transition to compliance with the 2021 Act, this document builds upon existing core [2018 AML Guidance](#) (which supplements [2010 Guidance Notes](#)). Therefore, if you are new to solicitor AML compliance, it is important to note that this Update is designed to be read in tandem with existing guidance and key AML resources. Visit www.lawsociety.ie/aml for the latest updates and to access the full suite of AML resources and training.

¹ AML obligations only arise where a solicitor participates in certain types of legal work. This work is specified in the definition of the term "relevant independent legal professional" contained in section 24(1) as a solicitor who carries out any of the following services:

- (a) the provision of assistance in the planning or execution of transactions for clients concerning any of the following:
 - (i) buying or selling land or business entities;
 - (ii) managing the money, securities or other assets of clients;
 - (iii) opening or managing bank, savings or securities accounts;
 - (iv) organising contributions necessary for the creation, operation or management of companies;
 - (v) creating, operating or managing trusts, companies or similar structures or arrangements;
- (b) acting for or on behalf of clients in financial transactions or transactions relating to land;

Accordingly, legal activities falling outside these categories are exempt from AML CDD. Irrespective of whether an AML regulated legal service is being provided, a solicitor must always remain alert to the risk of unwittingly committing the substantive offence of money laundering or terrorist financing. See further Chapters 2 and 9 of the 2010 Guidance Notes.

Six key changes to Solicitor AML

1. *A new duty to ascertain that a client's beneficial owners are registered prior to establishing a relationship*
 - 1.1. The most significant change to solicitor AML is the new requirement to ascertain, prior to establishing a relationship, that a client who is either a company, a certain financial vehicle or a relevant trust has registered their beneficial owners on the relevant register.
 - 1.2. Clients who are entities subject to beneficial ownership registration requirements have a duty to (1) maintain their own internal registers of beneficial owners and (2) ensure those beneficial owners are also notified to central registers. Ultimately, the requirement to gather and register beneficial ownership information rests with the entity (the trust or the company) to whom a solicitor provides legal services. By late 2021, registers will have been established for companies, certain financial vehicles and relevant trusts.
 - 1.3. The statutory duty, set out in sections 35(3A) and 35(3C) of the 2021 Act, requires solicitors, "prior to the establishment of a business relationship with a customer", to "ascertain that information concerning the beneficial ownership of the customer is entered" on the relevant central register. The Central Bank of Ireland's updated AML Guidance for the Financial Sector describes the requirement as being to "confirm that information concerning the beneficial ownership of a customer is entered" in the relevant registers.
 - 1.4. The new duty is in addition to the long standing duty, mentioned earlier, on solicitors to identify beneficial owners and take measures reasonably warranted by the ML/TF risk to verify their identity (see further paragraphs 2.5.53 to 2.5.66, core [2018 AML Guidance](#)). The existing duty to identify beneficial owners and take measures reasonably warranted by the ML/TF risk to verify their identity could become more simplified in the future as client entities increasingly comply with their own duties to maintain internal registers of beneficial owners. These internal registers will also be of assistance with ongoing monitoring requirements.
 - 1.5. The following extract from EBA Guidance Risk Factors, March 2021, designed for the financial sector, may be of assistance when considering, in the round, the duty to identify/verify beneficial owners and the duty to confirm beneficial ownership information is registered on the central register. When understanding the customer's ownership and control structure: *"firms should take at least the followings steps:*
 - a) *Firms should ask the customer who their beneficial owners are;*
 - b) *Firms should document the information obtained.*
 - c) *Firms should then take all necessary and reasonable measures to verify the information: to achieve this, firms should consider using beneficial ownership registers where available.*
 - d) *Steps b) and c) should be applied on a risk-sensitive basis."* [Paragraph 4.12, EBA Guidance Risk Factors]
 - 1.6. Some designated bodies may wish to try to satisfy the existing statutory duty to identify beneficial owners (and in some circumstances verify identity) coincidental to satisfying the duty to ascertain beneficial owners are registered. In this regard, the [EBA Guidance Risk Factors March 2021](#), notes:

“Firms should be mindful that using information contained in beneficial ownership registers does not, in itself, fulfil their duty to take adequate and risk-sensitive measures to identify the beneficial owner and verify their identity. Firms may have to take additional steps to identify and verify the beneficial owner, in particular where the risk associated with the business relationship is increased or where the firm has doubts that the person listed in the register is the ultimate beneficial owner.” [Paragraph 4.13, EBA Guidance Risk Factors]

1.7. In addition, the relevant statutory instruments impose duties on designated persons to report any non-compliance or discrepancy they find between information in the relevant central register and information that comes to their knowledge from other sources when carrying out customer due diligence on an entity, or otherwise. The duty is to report discrepancies to the relevant Registrar.

1.8. Each of the three beneficial ownership registers’ websites provide detailed information about how to access their registers, who needs to register, detailed FAQs and contact details. The Registers can be accessed by visiting:

Register of Beneficial Owners of Companies

- visit www.rbo.gov.ie

Register of Beneficial Owners of Certain Financial Vehicles

- visit www.centralbank.ie/regulation/anti-money-laundering-and-countering-the-financing-of-terrorism/beneficial-ownership-register

Register of Beneficial Owners of Relevant Trusts

- visit <https://www.revenue.ie/en/crbot>

1.9. As the Registrar’s websites are consistently being updated with new information and FAQs they are the best place to source the most up-to-date information. The relevant Registrar will be able to confirm whether a client is a type which has to register their beneficial owners. Beneficial ownership of trusts may encompass some pension clients.

1.10. Throughout the transposition of Ireland’s requirements as a member state to establish registers of beneficial owners of companies, certain financial vehicles and relevant trusts, the Society’s AML Task Force, Business Law Committee and Probate, Administration and Trusts Committee have engaged consistently and made many law reform submissions to the Department of Finance, the Department of Justice and other stakeholders. In September 2019, the Law Society also published an interactive one-page infographic which visualised the incremental processes which would be required to establish these registers of beneficial ownership in Ireland.

1.11. In October 2021 [Update from the Probate, Administration and Trusts Committee](#) outlines how a Registrar of the Beneficial Owners of Trusts has been appointed and has established a Working Group on which the Probate, Administration and Trusts Committee is represented. The PAT Committee is seeking clarification with regard to will trusts contained in a will that never come into effect on the death of a testator. The PAT Committee will post further updates as they arise - please visit

www.lawsociety.ie/Solicitors/Representation/Committees/Probate-Administration-and-Trusts. For the latest updates from the Business Law Committee please visit www.lawsociety.ie/Solicitors/Representation/Committees/Business-Law.

- 1.12. Fees are payable when accessing the companies and trusts registers when in the process of ascertaining whether a client's beneficial owners are registered. The process of getting access to registers may not always be straight forward and applications or account creations may initially be required.
- 1.13. The Society's Business Law Committee and Probate, Administration and Trusts Committee are comprised of practitioners who are at the forefront of this change. Their committee members will be responding to these changes (1) when they advise and assist client entities navigate their own duties with regard to their own beneficial ownership and (2) when completing due diligence on these entities including accessing relevant registers. The Committees will continue to engage with the relevant Registrars. If you have an enquiry for a colleague practitioner who is similarly responding to these changes, please contact the relevant Law Society Committee Secretary. For enquiries for the Business Law Committee, please email Joanne Cox at j.cox@lawsociety.ie. The Probate, Administration and Trusts Committee can be contacted by emailing Padraic Courtney at p.courtney@lawsociety.ie.

2. *Changes to low and high statutory risk factors*

- 2.1. The 2021 Act amends the statutory low and high risk factors in Schedules 3 and 4. Revised versions of [Schedule 3](#) and [Schedule 4](#) have been published by the Law Reform Commission.
- 2.2. These changes are relevant to most statutory duties e.g. customer risk assessment to determine CDD, business risk assessment etc. and non-face-to-face verification of customer identity. For clarity, the amendments are indicated in blue text below:
- 2.3. In Schedule 3, "*registration, establishment, residence in*" has been included to contextualise geographic risk factors which can suggest potentially lower risk.
- 2.4. In Schedule 4, the non-exhaustive list of factors suggesting potentially higher risk is expanded to include:

(1)Customer Risk Factors:

(h) the customer is a third country national who applies for residence rights or citizenship in the State in exchange for capital transfers, purchase of property or government bonds or investment in corporate entities in the State.

(2)Product, service, transaction or delivery channel risk factors:

(c) non-face-to-face business relationships or transactions without certain safeguards, such as electronic identification means, relevant trust services as defined in the Electronic Identification Regulation or any other secure, remote or electronic, identification process regulated, recognised, approved or accepted by the relevant national authorities.

(f) transactions related to oil, arms, precious metals, tobacco products, cultural artefacts and other items of archaeological, historical, cultural and religious importance, or of rare or scientific value, as well as ivory and protected species.

- 2.5. The 2018 Act now lists, in Schedule 4, non-face-to-face business relationships or transactions as potentially higher risk. However, the 2021 Act clarifies that non-face-to-face is a high risk factor in circumstances where it is “without certain safeguards, such as electronic identification means, relevant trust services as defined in the Electronic Identification Regulation or any other secure, remote or electronic, identification process regulated, recognised, approved or accepted by the relevant national authorities.” Solicitors are encouraged to continue to follow, on a risk basis, the Society’s supplemental [AML Guidance and Solutions for solicitor AML during Covid-19](#) when verifying client identity remotely during the Covid-19 crisis.

3. *Triggers for enhanced CDD expanded*

- 3.1. The 2021 Act modifies the duty to examine the background and purpose of transactions which are complex, unusually large, have unusual patterns, have no apparent economic or lawful purpose, as far as possible in accordance with a firm’s AML Policies, Controls and Procedures (PCPs). Previously a transaction had to be complex or unusually large **and** have unusual patterns with no apparent economic lawful purpose. Now, any one of the criteria requires a designated person to increase the degree and nature of monitoring to determine whether these indicators appear suspicious. The amendment also gives effect to a technical amendment to the wording of the Directive by the inclusion of “as far as possible”.

- 3.2. For clarity, the substituted provision provides:

*“A designated person shall, **as far as possible**, in accordance with policies and procedures adopted in accordance with section 54, examine the background and purpose of **all transactions** that -*

- (a) are complex,*
- (b) are unusually large,*
- (c) are **conducted in an unusual pattern**, or*
- (d) do not have an apparent economic or lawful purpose.”*

- 3.3. If the outcome of complying with section 36A is that increased risk (or suspicion) is identified, section 39 may be triggered which contains specific enhanced CDD measures. Solicitors are reminded of paragraphs 2.5.78 to 2.5.84 of the core [2018 AML Guidance](#) which emphasise the importance of being cognisant of the potential to unwittingly become involved in money laundering and the extent to which the potential application of any additional enhanced measures may never negate the potential money laundering risk. Sometimes the best next step may be to not proceed and consider reporting obligations.

4. *Changes to PEP obligations*

- 4.1. The definition of Politically Exposed Persons (PEPs) is broadened to include any individuals performing a prescribed function. It is anticipated that the Department of Justice will issue guidance about the functions qualifying as “prominent public functions”.
- 4.2. In addition, the 2021 Act inserts a new section 37(4A) which introduces a requirement to continue to apply PEP measures to a PEP “for as long as is reasonably required to take into account the continuing risk posed by that person and until such time as that person is deemed to pose no further risk specific to politically exposed persons.”

5. *Specific enhanced CDD to be applied to clients established or resident in high-risk third countries*

- 5.1. The 2021 Act introduces specific additional measures to manage and mitigate the risk of money laundering and terrorist financing where a customer is established or resides in a high-risk third country. Previously specific measures were not prescribed when this form of enhanced CDD was triggered.
- 5.2. The current list of high-risk third countries was prescribed on 7 May 2020 by the European Commission in a [delegated regulation in relation to third countries which have strategic deficiencies in their AML/CFT regimes](#) that pose significant threats to the financial system of the Union (‘high-risk third countries’). The list can also be accessed [here](#).
- 5.3. Section 38A(1) requires that the following measures² be applied:
 - a) obtaining additional information on the customer and on the beneficial owner;
 - b) obtaining additional information on the intended nature of the business relationship;
 - c) obtaining information on the source of funds and source of wealth of the customer and of the beneficial owner;
 - d) obtaining information on the reasons for the intended or performed transactions;
 - e) obtaining the approval of senior management for establishing or continuing the business relationship;
 - f) conducting enhanced monitoring of the business relationship by increasing the number and timing of controls applied and selecting patterns of transaction that need further examination.

6. *Clients with Senior Managing Official (‘SMO’) as the beneficial owner*

- 6.1. If a client identifies a Senior Managing Official (‘SMO’) as the beneficial owner of an entity, a new duty may require that the SMO’s identity be verified.. This arises in the context of the existing duty to identify beneficial owners and take measures reasonably warranted by the

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ML/TF risk to verify their identity. For clarity, the effect of this amendment on paragraph 2.5.53 of the core [2018 AML Guidance](#) is indicated in blue text below:

*“2.5.53 This requires: (1) Identifying the beneficial owners, as defined by the Act, connected with the customer or service concerned and (2), **taking measures reasonably warranted by the risk of ML/ TF to:***

- (i) **verify their identity** so that the firm is satisfied that it knows who the beneficial owner is,*
- (ii) in the case of a legal entity or legal arrangement defined by sections 26 to 30 **understands the ownership and control structure of the client and***
- (iii) **where the beneficial owner is the senior managing official (referred to in Article 3(6)(a)(ii) of the 4th Directive) take measures to verify the person’s identity including any difficulties encountered in the verification process.”***

6.2. The [Central Bank of Ireland’s AML Guidance for the Financial Sector](#) provides the following relevant information:

“Entities should not list the natural person(s) who hold the position of senior managing official(s) as their beneficial owner(s) (either in their internal beneficial ownership register, or in the information that they submit to the Registrar of their relevant central Beneficial Ownership Register), unless:

- they have first exhausted all possible means to identify a natural person(s) who is a beneficial owner(s) as defined in Article 3(6) of 4AMLD; or*
- there is any doubt that the natural person(s) identified are in fact the beneficial owner(s) as defined in Article 3(6) of 4AMLD.” [paragraph 5.2.3, CBI Guidance]*

“In complying with their obligations to identify and verify the identity of a customer’s beneficial owner(s), and in circumstances where a senior managing official(s) has been listed as a customer’s beneficial owner(s), Firms should establish whether their customer has in fact exhausted all possible means to identify their beneficial owner(s).” [paragraph 5.2.2, CBI Guidance]

Conclusion

When transitioning to full compliance with the primary Act, as amended by the 2021 Act, as a general rule of thumb:

- for current clients for whom the solicitor is in the course of providing an AML-regulated legal service, if CDD was completed prior to the commencement of the 2021 Act and there are no ML/TF red flags, a solicitor can proceed to provide the current legal service, on a risk sensitive basis, without any additional CDD being required. A reminder also that all AML-regulated legal services are subject to ongoing monitoring in section 35 on a risk sensitive basis (see further paragraph 2.1.15, 2018 AML Guidance). For example, if refreshing of CDD is triggered or there is a concern with regard to the risk of money laundering, relevant registers for current clients may need to be checked.

- for new and existing/historical clients for whom there is no live/current legal service/instruction being provided, solicitors should ensure that the CDD applied is in full compliance with the [primary Act as amended](#) by the 2021 Act.³

In order to provide the most up-to-date guidance to best meet the needs of solicitors, this Guidance is a ‘living document’ which may be updated as needed. While care has been taken to ensure that this document is accurate, up-to-date and useful, the Law Society accepts no legal liability.

Solicitors can email the AML Helpline aml@lawsociety.ie for support with AML guidance. While the AML Helpline cannot confirm the adequacy of AML documentation or approach in specific circumstances and legal advice cannot be provided, the Helpline assists solicitors in navigating best practice guidance.

³ This approach replicates the approach to transitioning for the 2018 Act which is set out in paragraph 2.1.8 to 2.1.16, 2018 AML Guidance.