



Law Council
OF AUSTRALIA

National Legal Profession Anti-Money Laundering & Counter-Terrorism Financing Guidance

Guidance Note No 9 – How Do I Ascertain Source of Funds?

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How Do I Ascertain Source of Funds?

The suggestions and recommendations in this Guidance Note do not reflect or express legally binding obligations. Their adoption is voluntary and they are to be applied at the discretion of the individual legal practice.

Why Should I Seek to Ascertain a Client's Source of Funds?

The overall objective of ascertaining the source of a client's funds is not to make the risk zero. Instead, it is an important tool that allows you to give informed consideration to the broader context, and establish the best ways that you can minimise and mitigate your risk.

Overview

The risk mitigation strategies endorsed by global anti-money laundering and counter-terrorism financing watchdog, the Financial Action Task Force (**FATF**), are focused on **transactions**. The FATF encourages legal practitioners to adopt risk mitigation measures to prevent unwitting involvement in money laundering and terrorism financing where legal practices prepare for or carry out transactions for clients in relation to **specified activities**. The activities are listed in Recommendation 22 of the FATF Standards and reproduced in *Guidance Note No 6 – How Do I Identify and Assess My Risk?* (p 5).

If your client's proposed instructions would constitute a transaction in relation to one of these activities, or transactions, it is prudent to undertake client due diligence as set out in *Guidance Note No 8 – How Do I Undertake Client Due Diligence?*. This may include satisfying yourself as to the **source of the client's funds** for the proposed transaction in relation to an activity. The purpose of determining the source of the client's funds is to help you to achieve satisfaction that the instructions relate to a transaction or activity which is for a lawful purpose.





Circumstances in which you may determine that you should seek an explanation, and potentially proof, of the source of funds, include where you have detected 'red flags' in connection with the matter or the client, or where the matter or client falls into a higher risk category in your assessment of the risk posed if you were to proceed with the instructions.

An example of a red flag that would merit an enquiry as to the source of the funds is where a real estate purchase is contemplated using funds from an overseas jurisdiction where all or a significant proportion of the funds are privately provided (rather than through a lender) and the circumstances are unusual. This is only one example and, of course, a red flag does not always signify that the transaction is intended to be for money laundering or terrorism financing purposes.

However, the red flag *can* signify criminal activity and the detection of a red flag usually means that further enquiries are warranted before you proceed. In this example, a reasonable explanation may be readily forthcoming and satisfactory proof may be supplied. Your aim in making further enquiries is to achieve satisfaction that the explanation provided is consistent and logical and the client's purpose is lawful, assuaging your original concern. It may be that your original client due diligence (see *Guidance Note No 8 – How Do I Undertake Client Due Diligence?*) has already captured the information that you need. If the funds are provided by a high net worth individual or generated by your client's operation of a successful business, you may already have recorded those details. If you have not yet undertaken your client intake when the proposed instructions are conveyed, you could incorporate your request for the information that would assist you to understand the source of the funds in your initial client due diligence.

Potentially Higher Risk Situations

FATF has identified examples of situations that may indicate a higher money laundering or terrorism financing risk to your practice. Where these exist, you should carefully consider whether you should obtain information about the source of funds and source of wealth of the client. Some of the examples given by FATF are:

- companies, trusts, partnerships and similar types of legal persons or arrangements that are personal asset-holding vehicles;
- companies with nominee shareholders; and
- where the ownership structure of the company appears unusual or excessively complex given the nature of the company's business.¹

Factors to be taken into account when assessing risk are set out in *Guidance Note No 6 – How Do I Identify and Assess My Risk?*

Politically Exposed Persons

If your due diligence has identified that the transaction is associated with a politically exposed person (PEP), then you should consider undertaking an increased level of client due diligence and ongoing monitoring of the engagement if you decide to proceed. Before accepting the engagement it may be prudent to take reasonable measures to establish the source of funds for the proposed transaction and satisfy yourself that these are consistent with the source of the wealth of the PEP. See *Guidance Note 10 – How Do I Check Whether Someone is a PEP?*



What Information Could Verify Source of Funds and Source of Wealth?

The source of funds for a proposed transaction may be linked with the way the client's wealth has been generated (that is, their source of wealth). Most clients can inform you quite easily and quickly how they made or acquired their wealth.

This may be verified by making contact with the client's accountant in the first instance and/or obtaining and reviewing references from the client's customers, suppliers or other businesses associated with the client, or reviewing income taxation returns.

Clearly, these investigations are only possible to the extent that the client provides the information or consents to you obtaining it. If the client withholds consent, it may be prudent to reassess the risk and consult the risk appetite of your practice to determine whether you will proceed.

You can also conduct internet research. While you should apply the usual cautious approach to the accuracy of online search results, internet searches can nevertheless yield useful information and you may decide to make further enquiries based on these results.

The Role of Financial Institutions

When assessing the risk of a transaction for a client using client funds, it can greatly assist you to understand the financial institution where funds are held. For example, if the client funds are held by an Australian financial institution, anti-money laundering and counter-terrorism financing checks will have been undertaken by the financial institution, and the institution will be monitoring the transaction and account, and reporting to the Australian Transaction Reports and Analysis Centre (**AUSTRAC**), in accordance with Australian law. Depending on the existence of any other red flags and the particular facts of the situation, this may give you enough comfort to proceed.

It is important to appreciate that understanding the source of the client's funds does not equate to simply knowing the client's account number and payee details (although, as just mentioned, the nature of the financial institution can significantly affect your level of comfort). To understand the source of the client's funds is to understand how the funds have been generated.

If the funds are coming from overseas, you should be alert to any connection with high-risk countries (see below) and adjust your due diligence and client enquiries accordingly. In addition to understanding the nature of that jurisdiction, it may also be prudent to identify the overseas financial institution from which the funds are being transmitted. If it is a reputable financial institution and has similar reporting obligations to those to which Australian financial institutions are subject, then this should provide a good level of comfort.

High-Risk Countries

Where it is apparent that a client or person or entity controlling the client is from a high-risk country, you should be more alert to the risk of unwitting involvement in financial crime. This includes a country which FATF has determined has weak measures to combat money laundering and terrorist financing. The association with a high-risk country is a good reason to ask still further questions of that client to gain satisfaction as to the legitimacy of the source of funds of the client. FATF highlights these jurisdictions



by publishing black and grey lists of countries which can be consulted at <https://www.fatf-gafi.org/en/countries/black-and-grey-lists.html>.

High-risk countries might also include:

- those that are subject to sanctions, embargoes, or other measures imposed by bodies that include, for example the United Nations;
- those identified as having significant levels of corruption or other criminal activity; or
- locations from which funds or support are provided to terrorist organisations.

Cash Funds

Some clients may wish to pay professional fees or amounts toward a transaction in cash. Extreme caution should be exercised when dealing with clients who wish to pay for legal services or fund transactions in cash, especially if the client wishes to deposit a substantial amount of cash with a law practice.

Section 15A of the *Financial Transaction Reports Act 1988* (Cth) requires you to report all transactions involving the transfer of cash currency equivalent to \$10,000 or more by way of a Solicitor Significant Cash Transaction Report (**SCTR**) to AUSTRAC. An SCTR is to be provided by completing AUSTRAC Form 15A which can be submitted electronically (see <https://www.austrac.gov.au/business/industry-specific-guidance/solicitors>). SCTRs involving domestic currency must be made within 15 days after the end of the day on which the transaction took place. However, cash sums received in foreign currency must be reported by SCTRs by the end of the day after the transaction took place.

Subject to access to justice considerations, it is good practice to receive as little cash as possible.

However, it is important to remember that there are legitimate reasons for clients to hold cash and wish to make payment in cash. This could include a survivor of domestic violence holding funds outside of the banking system to evade control by a perpetrator. It is important to make appropriate, risk-based assessments and enquiries if cash payment is proposed.

Subject to being satisfied that there are legitimate reasons for the client wishing to make payment in cash, clients may be directed to deposit funds into the legal practice trust account themselves through the banking system. It may be prudent to request a copy of the deposit slip/receipt following the deposit.

Making File Notes

You should document your decisions and the steps you take to ascertain clients' source of funds, and source of wealth, as applicable. This is consistent with keeping good records of your client due diligence and your overall record-keeping and management of the matter.

Reference

1. FATF (2012-2023), *International Standards on Combatting Money Laundering and the Financing of Terrorism & Proliferation*, Interpretive Note to Recommendation 10 at [15]

This Guidance Note was produced on 28 June 2024 and is current at the time of publication.