THE LAW SOCIETY OF HONG KONG 香港律師會

ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST FINANCING (FINANCIAL INSTITUTIONS) ("AMLO") (AMENDMENT) BILL AND PROPOSED CONSEQUENTIAL AMENDMENTS TO THE LEGAL PRACTITIONERS ORDINANCE ("LPO")

The Law Society's Submissions

1. The Law Society is concerned about the approach taken by the Government. First, the Law Society maintains that there is no need to include solicitors and foreign lawyers in the draft legislation because they are already subject to a well-established, effective and enforceable AML regime. Secondly, if the Government insists on including solicitors in its AML regime, all that is required is a simple provision providing that solicitors and foreign lawyers should conduct customer due diligence ("CDD"), and keep all records on transactions and information obtained through CDD measures, and that the Law Society shall have the authority to make rules setting out enforceable CDD and record keeping requirements with sanctions for non-compliance. Thirdly, reiterating the Financial Action Task Force ("FATF") Recommendations in the AMLO introduces confusion and conflict into the Practice Direction P requirements, effectively creating a second regime for solicitors and foreign lawyers. Fourthly, the Government's approach fails to recognize the special requirements of the legal profession and the CDD framework already in place.

Legal Basis ("Legal Basis") of Requirements on Financial Institutions and Designated Non Financial Businesses and Professions ("DNFBPs") published by the FATF in their Recommendations

2. Paragraph 1 of the Legal Basis states:

> "All requirements for financial institutions or DNFBPs should be introduced either (a) in law (see the specific requirements in Recommendations 10, 11 and

20 in this regard), or (b) for all other cases, in law or enforceable means (the country has discretion)."

Paragraph 2 of the Legal Basis states:

"In Recommendations 10, 11 and 20, the term "law" refers to any legislation issued or approved through a Parliamentary process or other equivalent means provided for under the country's constitutional framework, which imposes mandatory requirements with sanctions for non-compliance. The sanctions for non-compliance should be effective, proportionate and dissuasive (see Recommendation 35). The notion of law also encompasses judicial decisions that impose relevant requirements, and which are binding and authoritative in all parts of the country."

Paragraph 3 of the Legal Basis explains the meaning of "enforceable means". It refers to regulations, guidelines, instructions or other documents or mechanisms that set out enforceable AML/CTF requirements in mandatory language with sanctions for non-compliance, and which are issued or approved by a competent authority. The sanctions for non-compliance should be effective, proportionate and dissuasive (see Recommendation 35).

3. The Law Society is a self-regulatory body. The LPO bestows upon the Law Society the statutory function of regulating the professional practice of solicitors in the public interest.

4. Pursuant to its powers, the Law Society issued Practice Direction P on 3 December 2007. It is a comprehensive set of AML regulations. Breach of this practice direction amounts to disciplinary misconduct.

5. With the implementation of Practice Direction P, the Law Society has established for its Members a legal AML mechanism which is binding, enforceable and authoritative. Practice Direction P satisfies the FATF Recommendations on CDD and record keeping. Practice Direction P has the effect of law and is enforceable by sanctions which are effective, proportionate and dissuasive. As a matter of substance, Practice Direction P is effective; as a matter of form, it is backed by law and is enforceable. The Courts have determined that Practice Direction P is a protocol of good practice.

Paragraph A1 of the FATF Recommendations

6. Paragraph A1 of the FATF Recommendations (i.e. the very first of the FATF Recommendations) sets out AML/CTF policies and coordination. It expressly states that:

"Countries should identify, assess, and understand the money laundering and terrorist financing risks for the country, and should take action, including designating an authority or mechanism to coordinate actions to assess risks, and apply resources, aimed at ensuring the risks are mitigated effectively. Based on that assessment, countries should apply a risk-based approach to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified. This approach should be an essential foundation to efficient allocation of resources across the anti-money laundering and countering the financing of terrorism regime and the implementation of risk-based measures throughout the FATF Recommendations. Where countries identify higher risks, they should ensure that their AML/CTF regime adequately addresses such risks. Where countries identify lower risks, they may decide to allow simplified measures for some of the FATF Recommendations under certain conditions."

7. The Government acknowledged that, as far as solicitors are concerned, there is a high level of compliance in relation to AML issues. The Government informed the Law Society that Hong Kong's AML and terrorist financing criminal statistics, on the whole, are low. The Joint Financial Intelligence Unit also acknowledged that the suspicious transaction reports submitted by solicitors are of high quality. Subjecting solicitors and foreign lawyers to the regulatory regime of the AMLO will be out of proportion to the risk engendered by solicitors and foreign lawyers in Hong Kong in relation to money laundering and terrorist financing. The Government should adopt a "risk based approach", as clearly and prominently mandated by FATF, to the regulation of solicitors and foreign lawyers in relation to AML issues – they already operate a well-established, effective and enforceable AML regime and do not present a serious AML risk to Hong Kong so there is no need to impose statutory requirements.

8. The Law Society noted that the AMLO Amendment Bill prescribes AML/CTF measures without permitting commensurate measures based on justified assessed risks in respect of relevant legal services. The prescriptive nature of the AML/CTF requirements in the AMLO Amendment Bill provides no significant or tangible benefits in the fight against money laundering and terrorist financing. However, the fact that these measures are a legal requirement elevates them to be treated as a legal compliance obligation. The lack of flexibility that would be provided under a "risk based approach" (as clearly and prominently mandated by FATF) will create a significant (and unnecessary) compliance burden for law firms and legal practitioners in Hong Kong for little if any AML/CTF benefit. When formulating requirements for the legal sector in Hong Kong, it is important to take into account the fact that the risk that legal services will be used for criminal purposes, compared to say the financial sector, is low. Therefore, a significant proportion of legal services do not warrant such levels of legal and regulatory burden.

The proposed new section 5A of the AMLO

9. Section 5A(3)(e) states that an AML/CTF requirement applies to a legal professional when, by way of business in Hong Kong, he (among other things) prepares for or carries out for a client or transaction concerning the creation, operation or management of (i) legal persons; or (ii) legal arrangements.

10. The Law Society questions the relevance of this provision in the context of anti-money laundering, i.e. the detection and prevention of money laundering and creation of legal obligations and offences under the Organised and Serious Crimes Ordinance ("OSCO"), the Drug Trafficking (Recovery of Proceeds) Ordinance ("DTRPO") and the United Nations (Anti-Terrorism Measures) Ordinance ("UNATMO").

For instance, a company may instruct its solicitor to appoint a new director, change its registered office or file an Annual Return. If the AMLO is applicable to these situations, then the statutory CDD would have to be conducted in relation to these kinds of instructions. Even if a solicitor forms a suspicion about a person after the CDD has been performed, there would be nothing to report under the OSCO, DTRPO or UNATMO because there will almost certainly be no proceeds of an indictable offence involved in the solicitor's work.

The records of these instructions also have limited investigation or prosecution value. The costs of compliance with the statutory CDD requirements borne by the solicitors or the trust or company service providers ("TCSPs") would outweigh the benefit of any investigations or prosecutions that may be triggered. At present, the cost-benefit assessment of CDD measures is adequately and reasonably provided for in Practice Direction P in that it mandates, in line with the FATF Recommendations, a risk based approach and imposes less onerous requirements for situations where there is no significant risk.

The English Law Society also confirmed the risk based approach. Chapter 2 of their recently published draft Anti-Money Laundering Guidance for the Legal Sector is attached. It will be noted that this is the first substantive chapter of the Guidance – the first chapter is introductory only.

11. The Government explained that it intended to leverage on the existing regulatory regime applicable to the legal profession under the LPO to enforce the CDD and record keeping requirements. The Government also proposed that the Law Society take on statutory responsibility for monitoring and ensuring compliance with the AML requirements. The Government admitted that the LPO already stipulates a set of appropriate disciplinary and sanction measures which provide a sufficient deterrent effect in terms of the proportionality and dissuasiveness of relevant sanctions. The Government confirmed that it has no

intention of proposing further criminal sanctions for non-compliance, having regard to the inherent AML risks. In these circumstances, the Law Society's existing regulatory regime (based on the LPO and Practice Direction P) should continue to be used to implement the AML requirements with respect to solicitors and foreign lawyers.

12. The legal profession is the only profession which already has enforceable AML regulations. They are well-established and effective. Consequently, the inclusion of the legal profession in the draft legislation with the other sectors of the DNFBPs which do not have such enforceable regulations is otiose.

13. The Law Society is concerned about the adverse implications of the proposed amendments to section 9A of the LPO. Under the amendments:

    (A) If there is an alleged breach of an AML/CTF requirement by a solicitor or foreign lawyer, the Council "must" refer the matter to the Convenor of the Solicitors Disciplinary Tribunal for inquiry or investigation;

    (B) The AMLO is applicable to all AML/CTF inquiries or investigations.

14. Under the Law Society's existing regulatory regime, complaints against solicitors are investigated by the Conduct Section. Decisions are made by the Investigation Committees or the Standing Committee on Compliance ("the SCOC"). The SCOC consists of Council members and non-Council members. Investigation Committees are ad hoc committees of the SCOC. The Council can, of its own motion, refer a complaint directly to the Convenor of the Solicitors Disciplinary Tribunal. The solicitor under investigation has the opportunity to be heard and to make written representations to the Council. The general rule of fairness applies.

15. If the proposed amendment is implemented, all AML/CTF complaints, irrespective of the severity, would have to be referred to the Convenor mandatorily. This amendment would override the Council's discretion under the existing section 9A of the LPO to determine whether the relevant complaint should be referred to the Convenor of the Solicitors Disciplinary Tribunal after taking into consideration all circumstances of the case.

16. Under the existing section 9A(2) of the LPO, where a complaint is made to the Council and the Council does not submit a matter to the Tribunal Convenor under subsection (1) within 6 months after receiving the complaint, the Chief Judge may, on application by any person or on his own initiative, submit the matter to the Tribunal Convenor if he considers that the Council ought to have done so. This provision has already provided an open and transparent mechanism to ensure worthy complaints were referred to the Tribunal Convenor even if the Council did not do so. This mechanism acts as check and balance to prevent any misuse by the Council of its discretion to shelter any

solicitor, foreign lawyer or employee of law firms from prosecution. The Law Society insists that it is unnecessary to impose a mandatory requirement on the Council to refer any alleged breach of AML/CTF requirements to the Tribunal Convenor as there is already a mechanism under section 9A(2) of the LPO to ensure any worthy complaint can be referred by the Chief Judge to the Tribunal Convenor. If the Government, however, insists that referrals to the Tribunal Convenor are to be compulsory, such referrals should be restricted to serious breaches of AML/CTF requirements.

17. With the introduction of the AMLO in 2012, financial institutions have been heavily burdened with stringent statutory AML requirements. For instance, there is a general sentiment that many of the account opening procedures and requirements adopted by the banks are unnecessarily excessive and complicated, inflexible and time consuming. Contrary to the Government's view that only two or three banks in Hong Kong are imposing such strict requirements because of their own personal circumstances, this is a widespread problem in Hong Kong and should not be dismissed as inconsequential. There is a concern that the AMLO is having a negative effect of undermining Hong Kong's status as an international financial centre. Likewise, if the Government tightens its regulatory regime on the legal profession by codification of CDD and record keeping requirements and/or introduction of criminal sanctions for non-compliance, law firms may be reluctant to open new files and take up new clients. Such draconian measures are disproportionate to the AML risks encountered by the legal profession.

18. For the above reasons, solicitors and foreign lawyers should be treated separately from the other DNFBPs and should be excluded from the proposed legislation.

19. If the Government insists on amending the LPO for the purposes of implementing its AML regulatory policy, the Law Society is of the view that all that is required is a simple enabling provision providing that solicitors and foreign lawyers should conduct CDD and keep all records on transactions and information obtained through CDD measures and that the Law Society shall have the authority to make rules setting out enforceable CDD and record keeping requirements with sanctions for non-compliance. As mentioned, there is no need to include solicitors and foreign lawyers in the AMLO and this should be avoided.

20. This is a point that has not been raised before but is very important to ensure that law firms which own TCSPs do not have to implement two distinct sets of AML regimes. Accordingly, TCSPs which are majority owned or controlled by law firms should not be subject to the AMLO's AML requirements but rather Practice Direction P as applicable to their law firm owners or controllers.

Comparisons between Practice Direction P and the AMLO

List of jurisdictions which have put the CDD requirements into law and their respective ratings in the FATF Mutual Evaluations

21. After the meeting with the Government officials and the Hon Dennis Kwok on 12 September 2017, the Law Society requested, and the Government officials agreed to provide, the following documents for the Law Society's consideration:

    (A) a comparison between Practice Direction P and the AMLO; and

    (B) a list of jurisdictions which have put the CDD requirements into law and their respective ratings in the FATF Mutual Evaluations.

However, the Law Society has not yet received these documents from the Government.

The Law Society reserves its right to make further comments upon receipt and consideration of these documents to be provided by the Government.

The Law Society of Hong Kong
20 October 2017

Chapter 2 - Risk-based approach

Note: References to client accounts and management of trusts, companies and charities in sections 2.3.2.2, 2.4.2 and 2.4.5 do not apply to barristers or advocates for the reasons set out in section 1.1.1.

2.1 General comments

The possibility of being used to assist with money laundering and terrorist financing poses many risks for the practice of an independent legal professional, including:

- criminal and disciplinary sanctions for the practice and individuals in the practice
- civil action against the practice as a whole, as well as certain individuals
- damage to reputation leading to a loss of business.

These risks must be identified, assessed and mitigated, just as you do for all business risks facing your practice. If you know the risks that you face generally and know your client well and understand your instructions thoroughly, you will be better placed to assess risks and spot suspicious activities.

Adopting a risk-based approach to preventing money laundering means that you focus your resources on the areas of greatest risk. The resulting benefits of this approach include:

- more efficient and effective use of resources proportionate to the risks faced
- minimising compliance costs and burdens on clients
- greater flexibility to respond to emerging risks as laundering and terrorist financing methods change.

The risk-based approach does not apply to reporting suspicious activity, because POCA and the Terrorism Act lay down specific legal requirements not to engage in certain activities and to make reports of suspicious activities once a suspicion is held. However, the risk-based approach still applies to ongoing monitoring of clients and retainers and this will enable you to identify suspicions.

Money laundering and terrorist financing risks vary across the legal sector and your practice's particular risk-based processes should be lead by an assessment of:

- the activities you undertake,
- the existing professional and ethical rules and regulations to which you are subject, and
- the susceptibility of the activities of your practice to money laundering and terrorist financing in the particular countries in which your practice operates.

2.2 Requirement to undertake and maintain a practice-wide risk assessment

Under Regulation 18(1) an independent legal professional's practice is required to carry out and maintain a documented practice-wide risk assessment to identify and

assess the risk of money laundering and terrorist financing to which the business is subject.

You must:

- take appropriate steps to identify, assess and understand the money laundering and terrorist financing risks your business faces;
- (subject to any specific provisions in the Regulations) apply a risk-based approach to compliance with CDD obligations; and
- have documented policies, controls and procedures that enable your business to manage, monitor and mitigate effectively the different risks that have been identified.

No matter how thorough your risk assessment or how appropriate your controls, some criminals may still succeed in exploiting your practice for criminal purposes. Nevertheless, a comprehensive practice-wide risk assessment combined with appropriate risk-based judgments on individual clients and retainers will enable you to justify your decisions and actions to law enforcement agencies, the courts and your supervisory authority.

2.3 Assessing your practice's risk profile

In carrying out your practice-wide risk assessment you must take into account:

- information on money laundering and terrorist financing risks made available to you by your supervisory authority following their own risk assessment, and
- risk factors relating to:
    - your customers
    - the countries or geographic areas in which your business operates
    - your products or services
    - your transactions, and
    - your delivery channels.

In addition, you should consider the nature of any issues raised in SARs made by your MLRO and consult the key contact in your organisation to understand any risks they may have identified.

Your risk assessment may also include consideration of:

- the UK's National Risk Assessment,
- the EU's Supra-National Risk Assessment
- the FATF Risk-based Approach Guidance for Legal Professionals
- if you provide services in any other jurisdictions, any relevant FATF mutual evaluations, national risk assessments, or publicly available materials in respect of the risks in those jurisdictions; and

- any other material which may be relevant to assess the risk level particular to your practice, for example, press articles highlighting issues that may have arisen in particular jurisdictions.

Having assessed the money laundering and terrorist financing risks your practice faces you should then consider any mitigating factors or reasonable controls that you can implement to manage these risks and reduce their significance to an acceptable level.

2.3.1 Customer risk factors

When assessing risk factors relating to your customers you should consider the demographic of your client base. Factors which may affect the level of risk associated with your client base are set out below.

2.3.1.1 High client turnover v stable client base

Although not determinative, you should take into account the length and strength of your typical client relationships.

If you have long-term and strong relationships with your clients you will be in a better position to identify any potential money laundering issues, which may mean your practice is at a lower risk of being subject to money laundering or terrorist financing (although you should always be mindful of clients that put pressure on you citing their long-standing relationship). Conversely, if you tend to have shorter relationships and a higher client turnover, you may conclude that the lack of a long and strong client relationship means your practice faces greater risk.

2.3.1.2 Clients based in high-risk jurisdictions

Country risk factors should feature prominently in your assessment of the money laundering and terrorist financing risks your practice faces. Key issues to consider are whether the jurisdictions in which your clients, or the beneficial owners of your clients, are based or operate their businesses:

- have deficient anti-money laundering legislation, systems and practice
- have high levels of acquisitive crime or higher levels of corruption
- are considered to be 'offshore financial centres' or tax havens
- permit nominee shareholders to appear on the share certificate or register of owners.

The European Commission has been empowered under the 4th Directive to publish a list of 'high risk third countries', contained in Commission Delegated Regulation (EU) 2016/1675. However, you should note that there may be other jurisdictions that present a high risk of money laundering that are not on the European Commission list of 'high risk third countries'.

FATF provides a source of valuable information on the relative risks associated with particular jurisdictions in its system of mutual evaluations, which provide an in-depth description and analysis of each country's system for preventing criminal abuse of the financial system. It also produces a list of jurisdictions with 'strategic deficiencies' in their money laundering initiatives and a list of jurisdictions with 'low capacity', the latter

being characterised as countries which have economic or sociological constraints preventing them from implementing AML/CTF measures effectively.

In addition, information is publicly available on bribery and corruption risks and about countries regarded as secrecy jurisdictions (or jurisdictions that permit the use of nominee shareholders).

Online resources you may consult include:

- FATF and HM Treasury statements on unsatisfactory money laundering controls in overseas jurisdictions.
- The International Bar Association's summary of money laundering legislation around the world.
- Transparency International's corruption perception index.

2.3.1.3 Clients in higher risk sectors

Given the wider international focus and extra territorial issues surrounding anti-bribery and corruption laws in some jurisdictions, you should take into consideration the elevated risks attached to certain sectors when carrying out your practice-wide risk assessment.

Certain sectors have been identified by credible sources as giving rise to an increased risk of corruption and, in some countries, are subject to international or UK/EU sanctions.

Sectors that may be higher risk, particularly when coupled with a high-risk jurisdiction include (but are not limited to):

- public work contracts and construction, including post-conflict reconstruction
- real estate and property development
- the oil and gas industry
- the nuclear industry
- mining (including diamond mining and trading)
- arms manufacturing/supply and the defence industry

Clearly not all work in these sectors will be higher risk but it is essential to be aware of the potential for risk so that you can implement procedures for closer scrutiny on client and matter acceptance.

2.3.1.4 Acting for politically exposed persons (PEPs)

An independent legal professional's exposure to PEPs is also a major consideration in carrying out your practice-wide risk assessment. A PEP may be a client or a beneficial owner of a client but it is important to consider the type of PEPs that you act for and whether the work to be undertaken will affect your overall risk profile.

PEPs are considered in section 4.12.2.

2.3.1.5 Acting for clients without meeting them

In an increasingly global and technologically advanced environment, it is commonly the case that you will act for clients without meeting them You should include this as a factor when you carry out your practice-wide risk assessment. In addition, you should consider the systems and procedures that you have implemented to mitigate the risks associated with acting for clients you do not meet.

When you act for clients without meeting them you must be satisfied that it makes sense in all the circumstances that you have not met the client and you must be comfortable that you can mitigate the risks of identity fraud.

2.3.1.6 Clients with high cash turnover businesses

You should consider whether your practice frequently acts for clients who operate or benefit from high cash turnover businesses as these businesses may be appealing to criminals seeking to launder money.

2.3.2 Services and areas of law and geographical location of services provided

In carrying out your practice-wide risk assessment you must consider risks associated with the services you provide, the transactions you participate in and the countries or geographic areas in which you operate.

2.3.2.1 Services and areas of law

Many studies have highlighted that independent legal professionals face the greatest potential risks in the following areas:

- misuse/abuse of client accounts
- sale/purchase of real property
- creation of trusts, companies and charities
- management of trusts and companies
- sham litigation

The involvement of your practice in the sale/purchase of real property, creation of trusts, companies and charities, and management of trusts and companies does not automatically lead to the conclusion that your business is high risk. However, you should consider these areas and consider other risk factors, such as jurisdictional or sector risk, in the context of your business so that you can put in place additional controls where necessary to minimise the risk of money laundering.

Other areas of risk focus more closely on factors which may be more prevalent when considering a particular client or mandate, including unusually complicated transactions. You should consider how you might ensure that your staff can identify the warning signs as part of your risk assessment.

Criminals are constantly developing new techniques, so no list of examples can ever be exhaustive. This section does, however, provide some further guidance on areas of money laundering risk.

2.3.2.2 Client accounts and payments

In carrying out your practice-wide risk assessment you should take into account the risk that criminals may attempt to misuse/abuse your client account. You must ensure that you only use client accounts to hold client money for legitimate transactions where this is incidental to the legal services you supply. Putting the proceeds of crime through your client account can give them the appearance of legitimacy, whether the money is sent back to the client, on to a third party, or invested in some way. Introducing cash into the banking system can be part of the placement stage of money laundering. Therefore, the use of cash may be a warning sign.

Legal professionals should not provide a banking service for their clients.

2.3.2.3 Sale/purchase of real property

Law enforcement authorities believe that the purchase of real estate is a common method for disposing of or converting criminal proceeds.

Real estate is generally an appreciating asset and the subsequent sale of the asset can provide an apparently legitimate reason for the existence of the funds.

2.3.2.4 Creation and management of trusts, companies and charities

Company and trust structures may be exploited by criminals who wish to retain control over criminally derived assets while creating impediments to law enforcement agencies in tracing the origin and ownership of assets. Criminals may ask legal professionals to create companies and trusts and/or to manage companies and trusts, to provide greater respectability and legitimacy to the entities and their activities.

Shell companies are corporate entities that do not have any business activities or recognisable assets. They may be used for legitimate purposes such as serving as transaction vehicles. However, they can also be an easy and inexpensive way to disguise beneficial ownership and the flow of illegitimate funds and so are attractive to criminals engaged in money laundering. You should be suspicious if a client engages your services only in connection with the routine aspects of forming an entity, without seeking legal advice on the appropriateness of the corporate structure and related matters. In jurisdictions where members of the public may register companies themselves with the company register the engagement of a legal professional to register the company may indicate that the client is seeking to add legitimacy to a shell company.

2.3.2.5 Sham litigation

Litigation may constitute sham litigation if the subject of the dispute is fabricated (there is no actual claim and the litigation is a merely a pretext for transferring the proceeds of crime from one entity to another, possibly through a client account) or if the subject of the litigation is a contract relating to criminal activity that a court would not enforce.

2.3.2.6 Geographical location of services

You should carefully consider the jurisdictions in which you are offering your services and whether there are any particular local issues of which you ought to be aware

which may impact on your risk assessment. Information on jurisdictional issues is set out above in section 2.3.1.2.

2.4 Mitigating factors

This section sets out mitigating factors that you may wish to incorporate into your policies and procedures in order to address the potential threats/areas of risk identified above.

2.4.1 Client demographic risks

- Conduct thorough due diligence taking a risk-based approach and avoiding tick box processes.
- Understand the risks in the jurisdictions in which your clients are based or have their operations and the sectors in which they operate.
- Introduce a means of identifying potentially higher risk issues and do internet-based research on higher risk clients or beneficial owners.
- Probe source of funds in higher risk cases, including where shareholders have no apparent online presence but the transaction value is substantial.

2.4.2 Client accounts/payments

- Ensure that you comply with the client account rules of your regulator.
- Prohibit the use of your client account without the accompanying legal services and include a process to ensure that information about all payments is cross-checked.
- Conduct thorough CDD before taking money on account, including understanding the transaction.
- Avoid disclosing your client account details as far as possible, discourage clients from passing the details on to third parties, ask them to use the account details only for previously agreed purposes and make it clear that electronic transfer of funds is expected. If you need to provide your account details, ask the client where the funds will be coming from. Will it be an account in their name, from the UK or abroad? Consider whether you are prepared to accept funds from any source that you are concerned about.
- Restrict cash payments. Large payments made in actual cash may also be a sign of money laundering. It is good practice to establish a policy of never accepting cash payments above a certain limit either at your office or into your bank account. Clients may attempt to circumvent such a policy by depositing cash directly into your client account at a bank. You may consider advising clients in such circumstances that they might encounter a delay in completion of the final transaction. If a cash deposit is received, you will need to consider whether you think there is a risk of money laundering taking place and whether it is a circumstance requiring a disclosure to the NCA.
- Accounts staff should monitor whether funds received from clients are from credible sources.

- Ensure appropriate checks are made and the rationale for and size of a transaction and any payments into your accounts by third parties is clearly understood before any third party payments are accepted into the client account. You may not have to make enquiries into every source of funding from other parties. However, you must always be alert to warning signs and in some cases you will need to get more information.
- Where money is accepted into the client account in respect of a transaction or from a client on account and the transaction is aborted, carefully consider the level of risk analysis and CDD conducted at the outset, the legitimacy of the transaction and the parties to it, and the circumstances of the aborted transaction. You should not return funds without considering the need to make a suspicious activity report. Only return funds to the original sender of those funds and not to any other designated person.

2.4.3 Sale/purchase of real property

- Perform thorough CDD checks.
- Keep up-to-date with emerging issues. It may be useful to review resources from law societies or bar associations in other countries to supplement knowledge in this area.
- Provide information and/or training, where appropriate, to staff on these updates so that they are better equipped to spot issues.
- Information overload can be a warning sign. Money launderers may attempt to inundate the legal professional with information to reduce the chances that they spot the issue or to make them convinced of the transaction's legitimacy.

2.4.4 Creation of trusts, companies and charities

- Perform thorough CDD checks. Be aware of higher risk jurisdictions where ownership may be concealed.
- If a prospective client simply requests you to undertake the mechanical aspects of setting up a trust, company or charity, without seeking legal advice on the appropriateness of the company structure and related matters, conduct further investigation.
- Seek to understand all aspects of the transaction.

2.4.5 Management of trusts and companies

- Ask whether there is a legal reason or it is it customary to have a legal professional on the board of an entity in the relevant country.
- Perform checks on the entities concerned to minimise the money laundering risk.
- Provide information and/or training, where appropriate, to staff on possible red flags.

2.4.6 Unusual transactions

- Do further due diligence, particularly on source of funds.
- Seek to understand the commercial rationale/reason for the transaction structure.
- Provide training on possible red-flags. See section 3.7 on training requirements and Chapter 12 on money laundering warning signs.

2.5 Assessing individual client and retainer risk

Under Regulation 28(12)(a)(i) and (ii), the way in which you comply with CDD requirements must reflect both your practice-wide risk assessment and your assessment of the level of risk arising in the particular case.

In assessing the level of risk arising in a particular case you must take into account:

- the purpose of the transaction or business relationship,
- the size of the transactions undertaken by the customer and
- the regularity and duration of the business relationship.

You should also consider whether:

- Your client is within a high-risk category, including whether:
    - they are based or conduct their business in high-risk jurisdictions and/or sectors
    - the retainer involves high-risk jurisdictions, or appears to fall outside of the sector in which the client ordinarily operates.
- Extra precautions should be taken when dealing with funds or clients from a particular jurisdiction. This is especially important if the client or funds come from a jurisdiction where the production of drugs, drug trafficking, terrorism or corruption is prevalent.
- In the event you are aware of negative press or information in respect of your client, which gives you cause for concern in relation to money laundering compliance, you may need to consider:
    - the nature and seriousness of any allegations
    - timing of any allegations and whether any steps might have been taken to address previous problems that have arisen and whether any proceeds of crime have been extracted by a fine
    - the level of press coverage and whether the sources of the allegations are reliable or if there is doubt as to their veracity.
- You can be easily satisfied the CDD material for your client is reliable and allows you to identify the client and verify their identity.
- You can be satisfied that you understand their ownership and control structure (particularly if the client or entities in the control structure are based in jurisdictions which permit nominee owners).

- There are concerns about the source of funds or wealth or there are payments to be made by unconnected third parties or payments in cash.
- The retainer involves an area of law or service at higher risk of laundering or terrorist financing.
- Whether the instructions might be considered to be unusual or higher risk, for example:
    - unusually complicated financial or property transactions or transactions where the commercial rationale is unclear
    - instructions on transactional work outside your area of expertise
    - transactions involving various potentially connected private individuals (as clients or as beneficial owners) in higher risk jurisdictions
    - transactions with an unexplained cross-border element

This assessment will help you to consider whether you are comfortable acting in the particular circumstances and, if so, to adjust your internal controls to the appropriate level of risk presented by the individual client or the particular retainer. Different aspects of your CDD controls will meet the different risks posed:

- If you are satisfied that you have verified the client's identity, but the retainer is high risk, you may require fee earners to monitor the transaction more closely, rather than seek further verification of identity.
- If you have concerns about verifying a client's identity, but the retainer is low risk, you may expend greater resources on verification and monitor the transaction in the normal way.

Risk assessment is an ongoing process both for the practice generally and for each client, business relationship and retainer. It is the overall information held by the legal professional gathered while acting for the client that will inform the risk assessment process, rather than sophisticated computer data analysis systems. The better you know your client and understand your instructions, the better placed you will be to assess risks and spot suspicious activities.