

## Anti-money laundering requirements for Insolvency practitioners. What do I need to be aware of?

The following are questions were submitted to the chat during the webinar which took place on 24 March 2021 via Zoom.

Question in the chat	Response
<p>In Bankruptcy or Sequestration cases and selling their property and or receipt of IPO/IPA/DCC - how do these Regulations come into effect?</p>	<p><b>SUPPLEMENTARY ANTI MONEY LAUNDERING GUIDANCE FOR INSOLVENCY PRACTITIONERS</b>  <b>Refer to paragraph 3.15</b>            In appointments where the IP becomes vested of the assets of the debtor, (bankruptcy in England &amp; Wales and Northern Ireland and sequestration and trust deeds in Scotland), asset sales are conducted by the IP as principal. In such cases, the IP, being themselves a relevant person within the regulated sector, should apply the occasional transaction provisions and conduct CDD on the purchasers of assets for transactions amounting to 15,000 euros or more.</p>
<p>My understanding –             Geography is a factor to consider in assessing the risk level and the degree of verification (if any) to be undertaken.</p>	<p>Yes, agreed. You should consider location as part of your risk assessment procedures when performing customer due diligence.</p> <p>The money laundering regulations stipulate (Paragraph 33(1)) that a relevant person must apply enhanced customer due diligence measures and enhanced ongoing monitoring, .... if there is in any business relationship or transaction with a person established in a high-risk third country. Some firms may have a longer list of high risk countries than that set out by the UK government in the high-risk third country lists. Each business should assess the geographical risk as part of their firm-wide risk assessment and then decide what level of CDD (or EDD as required) to apply to mitigate that risk.</p> <p><a href="#">CCAB guidance AML guidance</a> explains enhanced due diligence for clients that are higher risk due to connections to a high-risk third country will include</p> <ul style="list-style-type: none"> <li>• Obtaining additional information on the customer and its ultimate beneficial owners</li> <li>• Obtaining additional information on the intended nature of the business relationship</li> <li>• obtaining information on the source of wealth and source of funds of the customer and the customer’s beneficial owner</li> <li>• where there is a transaction, obtaining information on the reasons for the transactions</li> <li>• obtaining the approval of senior management for establishing or continuing the business relationship o Increasing the monitoring of the business relationship, by increasing the number and timings of controls applied.</li> </ul>

<p>Are you saying that the fact that it is in a high risk location - it is automatic that additional verification is needed?</p>	<p>As above.</p>
<p>Is it absolutely necessary to get written consent from an individual prior to carrying out an ID check via an electronic source (like <a href="http://www.veriphy.co.uk">www.veriphy.co.uk</a>)?</p>	<p>Electronic data sources can provide a wide range of confirmatory material without involving the customer. Where such sources are used for a credit check, the customer's permission is required under the Data Protection Act. A search for identity verification for AML/CFT purposes, however, leaves a different 'footprint' on the customer's electronic file, and the customer's permission is not required, but they must be informed that this check is to take place.</p>
<p>What happens if the third party goes into a formal insolvency process and you have relied on them, eg, dodgy law firms?</p>	<p>We think in this case you are referring to the third party who performed the client due diligence on which you relied.</p> <p>We think it depends very much on what information you have obtained from the third party, in terms of reliance.</p> <p>If you already have had sight of some of their client due diligence records and have assessed them as adequate then this conclusion may not change.</p> <p>However, if you have not viewed the third party's client due diligence then you have the choice to ask for it to see if it can be made available to you. You could then assess adequacy in light of the information you have on the client and third party.</p> <p>If there is no means of accessing third part client due diligence, then further verification procedures would probably be necessary.</p>
<p>Do the ICAEW have approved/recommended providers of KYC verification services?</p>	<p>No, but ICAEW provides guidance <a href="#">here</a>.</p> <p>There is a list of questions for suppliers within this <a href="#">helpsheet</a>.</p>
<p>Has any person been prosecuted and how many since POCA came into being</p>	<p>We think this question relates to not submitting a Suspicious Activity report when a suspicion of money laundering or terrorist financing exists. The Failure to Report offence (POCA 330 and TA 21A) applies only within the regulated sector. It occurs when a regulated person fails to report knowledge or suspicion of money laundering or terrorist finance.</p>

	<p>There have only been a limited number of cases where a prosecution has been made but that law enforcement and the supervisory supervisors (who have criminal powers) are starting to take more criminal proceedings.</p> <p>The only point to make is that it remains an offence not to report and when law enforcement is in the process of an investigation and an accountant is involved they are likely to explore whether a SAR should have been made and if not, why not.</p>
<p>Where we receive monies under a proceeds of crime act recovery do we need to seek DAML? It seems daft to need to do that given the police have recovered those funds (after a conviction) and sent on to us, but are those funds still proceeds of crime and so strictly we need the defence?</p>	<p>Logically, we think that if the police have been permitted to send funds to you, it may not be unreasonable to assume you are permitted to deal with them.</p> <p>However, we are trying to obtain a definitive answer and in the meantime, it may be prudent for IPs to obtain their own DAML.</p>
<p>This is not a question but having made one or two SARs via the NCAOnline link, I think the portal needs an overhaul (in case you ever speak to the NCA about such things! - I have fed back directly to them). It has broken down on me once (where I needed to send in a postal report on a firm which required every character to be inserted into a separate box!) and it does not allow 'special characters' online. It is like filling in something from the 1980s, sadly. I think it should be simple, quick and trouble free to use to achieve its objective.</p>	<p>Your point is well made. The NCA is undertaking a reform of the SAR programme, which should result in easier reporting processes for firms.</p> <p>Engagement sessions have been held with SAR reporters, including those from the banking, legal, money service businesses, gaming, casino and accountancy sectors. These have focussed on transformation of the SAR online portal into a new system with additional features.</p>
<p>Would a tipping off risk be grounds for a DAML?</p>	<p>A DAML will only protect you from committing a principal money laundering offence. It will not protect you from committing a tipping off offence</p>