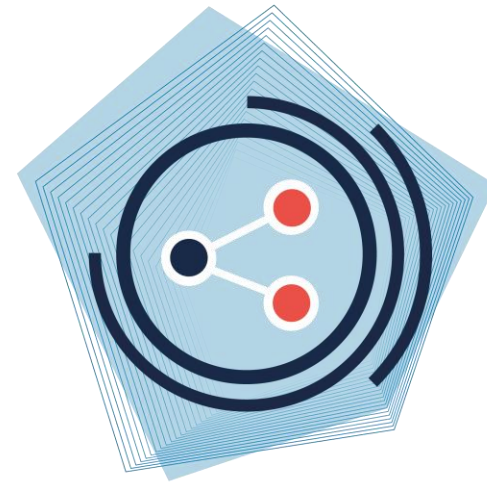


MONEY LAUNDERING AND TERRORIST FINANCE UPDATE.

What you need to know.



SOLICITORS
GROWTH NETWORK



Notary Update on AML and Terrorist Finance

WHO IS MARTIN LAWLOR ?

- I am a Partner and the MLRO in a small firm in New Ross
- Co-founder of Solicitors Growth Network
- Law Society Council Member since 2007
- Notary Public since 2011
- Currently Senior Vice President of the Law Society
- Former Chair of the Law Society's Money Laundering Reporting Committee
- Regular Presenter on matters relating to AML and how it impacts us Solicitors
- Holds Diplomas in AML and Terrorist Financing and Directors Skills and Duties



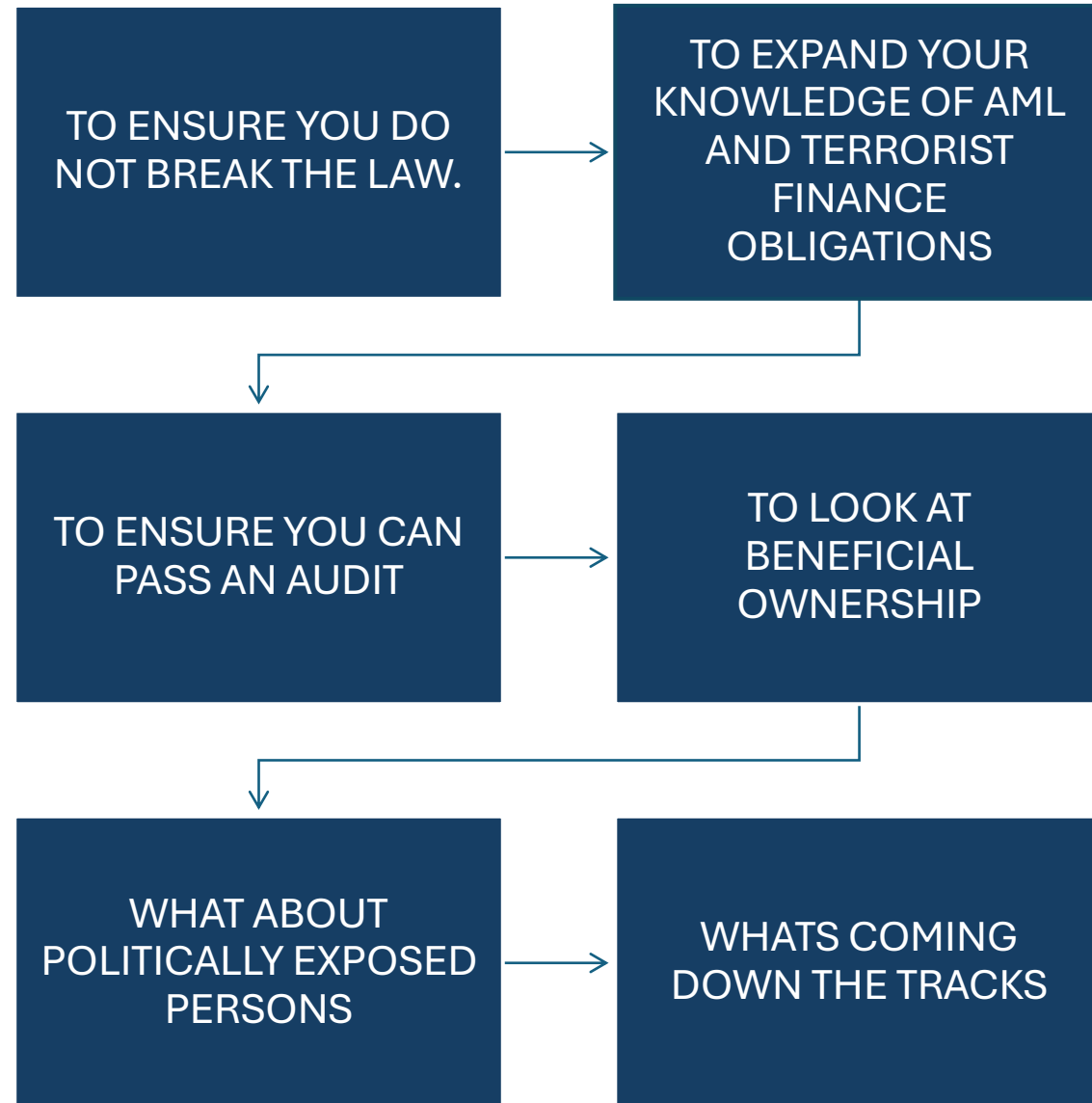
***“Money Laundering** is the engine that drives the criminal world. It enables corruption, funds terrorism, and perpetuates organised crime. It is the evil that hides behind the facade of legitimate transactions, corroding the foundations of society.”*

- Antonio Maria Costa.

Former Under Secretary of the United Nations.
Executive Director of the United Nations Office on
Drugs and Crime



THE AIM OF THIS SESSION



MORE THAN AML COMPLIANCE FAILURE AT STAKE..



CONSEQUENCES!!

32 YEAR OLD GETS 3.5 YEARS

Psychic gets 7.7 years

BOI fined 3.5 million

Capital one fined \$100 million

UK solicitor Struck off

Company Director Accused of
Money Laundering

Mother told custodial sentence
likely outcome

DEFINITION OF MONEY LAUNDERING

The statutory definition of the offence of ML is “doing any of the following (as set out) in circumstances where the person knows or believes (or is reckless as to whether) the property is the proceeds of criminal conduct.

Section 7 of the 2018 Act

Its an obligation on all citizens regardless of whether you are a legal and or financial advisor .

A person commits an offence if—		
		(a) the person engages in any of the following acts in relation to property that is the proceeds of criminal conduct:
		(i) concealing or disguising the true nature, source, location, disposition, movement or ownership of the property, or any rights relating to the property;
		(ii) converting, transferring, handling, acquiring, possessing or using the property;
		(iii) removing the property from, or bringing the property into, the State,
		and
		(b) the person knows or believes (or is reckless as to whether or not) the property is the proceeds of criminal conduct.

- The statutory definition of the offence of ML is “doing any of the following (as set out) in circumstances where the person knows or believes (or is reckless as to whether) the property is the proceeds of criminal conduct.

- Section 7 of the 2018 Act

The process involves in the first instance “placement” whereby the illegal funds or assets are first brought into the financial system followed by “layering” involving the use of multiple accounts, banks, intermediaries, corporations, trusts, countries to disguise the origin of the funds and finally “integration” whereby the laundered funds are made available as apparently legitimate funds.

DESIGNATED PERSON

Credit and or Financial Institution

Auditor

Relevant legal professional i.e. Solicitor Barrister and Notary Public!!Thats us

Trust or company service provider

Casino or person who directs a private members club where gambling takes place

Person trading in goods or cash above 15 k in a single transaction in reality Car dealers, Jewellers, Antique Dealers

Any other person of a prescribed class



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SOLICITORS AND LAWYERS HEADING TO PRISON

William Osmond
Solicitor (69) gets nine
months suspended
sentence for Tipping
Off

US Lawyer Mark Scott
gets 10 years for
Money Laundering

Three Scottish
Solicitors jailed for
money laundering

This is not just a
matter of regulation or
the Law Society

CHECK LIST

- Have you reviewed your BRA
- What about your PCPs
- Are you using Client Risk Assessments (CRA)
- Are you registered with Go AML and ROS
- Have you received training or given staff training on AML
- What effect are the Sanctions regime having on your practice
- Are you ready for an AUDIT
- Do you act for a PEP
- What are your controls on beneficial ownership



IS YOUR FIRM LOW, MEDIUM OR HIGH RISK

- Do you act for foreign based clients.
- Are those clients situate in non-EU countries.
- Do you meet them fact to face or via a third party.
- Do you act for other designated persons in AML regulated transactions such as Banks and Credit Unions.
- Does your clients business involve them in cash transactions in excess of 15,000.00 Euro.
- Is your client a PEP.

WILL YOU PROVIDE THE NOTARY/LLEGAL SERVICE?

DOCUMENT your analysis

Red flags assist Notaries and Solicitors in applying a risk-based approach to their CDD requirements of knowing their client, understanding the nature and the purpose of the business relationship, and understanding the source of funds

Mere presence of a red flag not necessarily basis for suspicion

[Is there a legitimate explanation?]

A number of red flags

[More likely a notary/solicitor should have a suspicion of ML]

6. ARE YOU DOCUMENTING YOUR CUSTOMER/MATTER RISK ASSESSMENTS?

CRA – Sample ‘Document Your Thought Process’ Adaptable Forms

FORM 1

INITIAL ASSESSMENT OF RISK:	LOW (Standard CDD)	MEDIUM (Standard CDD)	HIGH (Do not proceed or Enhanced CDD)
Please note below reasons for your initial ML/TF risk assessment:			
Please document the CDD measures to be applied, have been applied and any compliance decisions taken:			
NB If there is a risk client is involved in ML/TF, ascertain whether they have PEP status and, if they are a PEP, apply section 37 enhanced CDD.			
SIGNED BY:	DATE:		

FORM 2

INTERIM/ONGOING RISK ASSESSMENT –IF ANY RISK FACTORS CHANGED?	LOW (Standard CDD)	MEDIUM (Standard CDD)	HIGH (Do not proceed or Enhanced CDD)
Please note below reasons for your assessment:			
<i>(If no change, quick note stating such, signed and dated – this evidences that a review has been undertaken and consideration given)</i>			
Please document the CDD measures to be applied, have been applied and any compliance decisions taken:			
SIGNED BY:	DATE:		

FORM 3

FINAL RISK ASSESSMENT – HAVE THERE BEEN ANY LAST MINUTE CHANGES THAT GIVE CAUSE FOR CONCERN?	LOW (Standard CDD)	MEDIUM (Standard CDD)	HIGH (Do not proceed or Enhanced CDD)
<i>(Ideally, should be undertaken before monies are transacted/enter the client A/C)</i>			
Please note below reasons for your assessment:			
<i>(If no change, quick note stating such, signed and dated – this evidences that a review has been undertaken and consideration given)</i>			
Please document the CDD measures to be applied, have been applied and any compliance decisions taken:			
SIGNED BY:	DATE:		

SCENARIO 1

- As a Solicitor you have acted for 20 years for a very reputable client.
- He informs you that he has a contact in Australia who wants to buy property in Ireland and wants to use your services.
- Your long-standing client acts as the go between and gives you all the instructions.
- You exchange e-mail correspondence with the Australian client who is extremely busy and cannot come to Ireland to meet you.
- You ask for “know your client” documentation and a copy of the passport and proof of address is scanned and emailed to you.
- What is your assessment of the risk from the point of view of a client's risk assessment IE low, medium, high? How did you conclude that?

Scenario 2

- You are asked to do a Power of Attorney for the purchase of a property in Spain
- You do not know the grantor from Adam
- She tells you she is buying the property with funds inherited from an Uncle. are in her PTSB account. She is sending them directly to the Abogados in Spain.
- What enquiries do you perform ?
- Do you need to look at source of funds e.g. the PTSB account
- What are the red flags



Scenario 2 continued

Do you ask if she or a family member is a PEP ?

What do you do if her surname is similar to that of a well know west Dublin drug gang ?

What is your thought process e.g. she has produced KYC documents , proof of funds ,no red flags?

The transaction will be completed outside the Jurisdiction based on your Notarising her authority to two Spanish Lawyers to carry it out.Is that a risk?

REMEMBER PLEASE

- “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.”
- This means you
- Do not go out on a limb for a client/friend /relation.
- Be aware of your general responsibilities as a citizen
- Be aware of your special responsibilities as a designated person

CHANGES TO POLITICALLY EXPOSED PERSONS

- A designated person is required to take steps which are reasonably warranted by the risk of a client being involved in money laundering to determine if that client is an international or domestic PEP.
- Section 37 of the 2010 Act as amended by section 16 of the 2018 Act
- Prominent Public Functions is an officer whose pay is equivalent of the position of Deputy Secretary General Civil Service e.g. Dublin City manager
- The definition of a PEP includes an immediate family member or close associate.
- Perhaps, the most significant change and impact is that the definition of PEP includes a member of the governing body of a political party (“PP”) as per guidelines issued in January 2023
- How many of you know members or family members of the Governing Body of a Political party?
- There are 26 Registered political parties in the State.
- There is a regular turnover usually on a two year cycle of members of the Governing Bodies of the main political parties



POLITICALLY EXPOSED PERSONS

- Enhanced Due Diligence is necessary
- For example, obtaining additional information about the client , about the intended nature of the business relationship ,the funding source and increasing the number and timing of controls
- Identifying transaction patterns that require additional review should also be used and demonstrated as having been used



WHISTLEBLOWING

- The 2019 Regulations amend the 2010 Act to include a new section 54(6A) which requires each person who is a “designated person” for the purposes of that Act, to have in place appropriate procedures for their employees, or persons in a comparable position, to report a contravention of the 2010 Act internally through a specific, independent and anonymous channel, proportionate to the nature and size of the designated person concerned. The new section transposes Article 61(3) of MLD4.
- The 2019 Regulations also contain a number of other amendments relating to:
- The fitness and probity of persons performing a management function in or being a beneficial owner of an auditor, external accountant, tax advisor, independent legal professional or property service provider; and
- Cooperation between Member State competent authorities and supervision by competent authorities

WHAT IF YOU HAVE A SUSPICION

- Ensure you do not commit the offence of tipping off
- The suspicious transaction report must be reported to both Revenue and goAML
- Revenue reporting is done via ROS
- FIU reporting is done via goAML
- When you complete the report to Revenue simply save the file and upload it to the goAML system

REGISTERING WITH ROS

- Most of us are already registered with ROS
- You need to go to the specific section in ROS relating to registering for AML purposes
- Complete your registration in that section
- Again, screenshot your registration and put on the file



REGISTER WITH GO AML

- You need to go the GO AML website which is part of the FIU
- [GoAML Home \(fiu-ireland.ie\)](http://fiu-ireland.ie)
- It can be a bit tricky e.g. no spaces
- Retain your passwords etc., in a safe place
- Keep proof of registration for example a screenshot in your file



SANCTIONS AND RUSSIA

- If any client approaches about a matter involving Russia and Belarus check the guidance on the Law Society website
- There is a sanctions list which is updated regularly, and you will need to check that
- Make sure that you are not unwittingly involved in acting in a transaction for a relation of a sanctioned person
- Make sure everyone in the firm is aware of the obligations
- Breach of sanctions carry criminal consequences



BENEFICIAL OWNERSHIP

Fourth AML directive obliges the gathering of information on the beneficial ownership of corporate and legal entities
It must be held on a national central register
Practitioners need to register an account with the RBO

You also need to further register as a designated person: FORMBEN3A1
When conducting AML due diligence for a Company client an RBO search should be done as a matter of course
Keep the results under file to satisfy any subsequent inspection

PS charge for this

FURTHER OBLIGATIONS ON BENEFICIAL OWNERSHIP

Client must have own internal register of beneficial ownership.

That information must be notified to central registers.

Solicitor should ask who are the beneficial owners.

Document the answer. Take all necessary and reasonable steps to verify e.g. check the CRO and RBO.

Take into account the risks and not just rely on the registers.

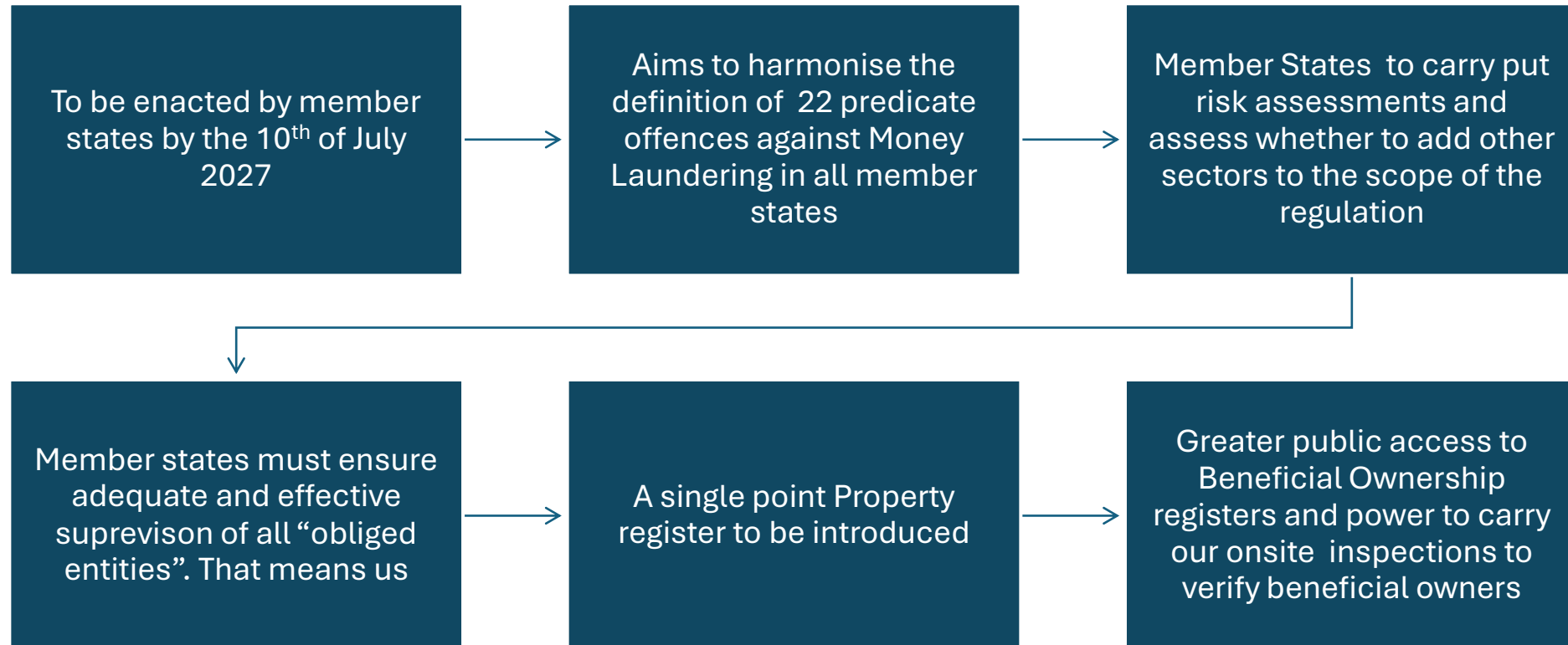
Report any discrepancies to the Relevant Registration Authority.



CAUTION ON USE OF REGISTERS

- “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]

6TH ANTI MONEY LAUNDERING DIRECTIVE



CONTINUES

Change in €15,000.00 threshold for cash to €10,000.00

Enhances CDD requirements e.g. to satisfy whether the customer or beneficial owner is subject to targeted financial sanctions

If a beneficial owner owns more than 50% of an entity then there are further certain documentary requirements

Cybercrime money laundering is also to be a predicate offence

Anyone helping money launderers will themselves be committing the crime of money laundering



Scenario 3 post 6th Directive implementation

Notarial client selling a property in France using Power of Attorney to a French Notary?

Property was bought in the name of a company as there were three partners/shareholders originally but the other two have sold out ?

Do you check the French register of beneficial ownership of the company?

Do you check the French Land Registry ?

If not can you say you applied an appropriate client risk assessment ?

Scenario 3 continued



Can you rely on the French Notarys checks if you contact her/him?



What if the French Notary contacts you to say that actually one of the former partners is still a shareholder and you need to do a POA for her/him



Is that a red flag?



Do you need to make an STR?



What if it turns out your clients husband is a member of the executive council of the Kerry Independent Alliance ?



What way do you document your thought process and set out the checks

SOME QUICK WINS

1

Review your Business Risk Assessment (BRA)
Do a sample check on files for Client Risk Assessments
Register with go AML and ROS
Register with the RBO and CRBOT

2

Undertake in firm training and document it

3

Keep a record of everything