



**Anti-Money Laundering and Terrorist Financing  
Working Group**

**Guidance on Monitoring  
Obligations**

**Client Identification and Verification**

**July 6, 2020**

## Monitoring

The Client Identification and Verification rule requires legal professionals who are retained in respect of a financial transaction<sup>1</sup> to periodically monitor their professional business relationship with their client. This requirement applies to all clients in such circumstances, including long-standing clients.

### What is required?

While retained in respect of a financial transaction, you must periodically assess:

- (1) Whether the information you have obtained about (i) your client's activities, (ii) the source of funds used in the transaction, and (iii) your client's instructions are consistent with the purpose of the retainer and the information you have about the client; and
- (2) Whether there is a risk that you may be assisting in or encouraging fraud or other illegal conduct.

You must also keep a record of the measures you have taken to comply with the monitoring requirements, including the applicable date and the client information that you have obtained. The record must be kept for at least six years following completion of the work for which you were retained.

### What steps should you take?

The nature, degree and frequency of periodic monitoring and what information should be recorded will depend on what is reasonable in each case considering the client, the nature of the work, the anticipated duration of the retainer and the services provided. The measures taken should be commensurate with the risk associated with these or other relevant factors. More thorough or frequent monitoring may be required when the circumstances indicate an elevated risk.

Although risk must be assessed on a case by case basis, some examples of factors indicating an elevated risk include: unusual or inconsistent client behaviour, activities, or instructions; a transaction of relatively high value is undertaken without financing; the financing arrangements or source of funds are unclear or unexplained; the client has modest income relative to the transaction without a reasonable explanation; the client is an elected official or other politically exposed person<sup>2</sup> as defined by legislation; the transaction involves a country identified by competent authorities as having weak anti-money laundering laws and measures.

You are required to apply your professional judgment to assess risks in any given circumstance.<sup>3</sup>

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<sup>1</sup> This means "to engage in, or give instructions in respect of receiving, paying or transferring of funds". Common examples include providing legal services in relation to the purchase or sell of business entities, arranging financing for the purchase or sale of business entities or assets, and purchasing or selling real estate.

<sup>2</sup> For information on politically exposed persons (PEPs) see <https://www.fintrac-canafe.gc.ca/guidance-directives/client-clientele/Guide12/12-eng>.

<sup>3</sup> For more detail on identifying and assessing risk see the Federation of Law Societies of Canada's Risk Assessment Case Studies for the Legal Profession.

## Duty to withdraw representation

If while retained, including in the course of obtaining the required information and taking the steps under the monitoring requirements, you know or ought to know that you are or would be assisting a client in fraud or other illegal conduct, you must withdraw from representation of the client.<sup>4</sup>

The Client Identification and Verification rule is designed to mitigate risks of involvement in or facilitation of money laundering or terrorist financing. The *Model Code of Professional Conduct* rules for the legal profession also require legal professionals to be diligent against potential client dishonesty, fraud or other illegal activities.<sup>5</sup>

You are encouraged to contact a practice advisor or the equivalent at your Law Society for further guidance on what may be required in a particular matter.

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<sup>4</sup> See Client Identification and Verification rule ss. 9(1) and 11.

<sup>5</sup> See the Federation of Law Societies of Canada's *Model Code of Professional Conduct* rules 3.2-7 (dishonesty, fraud by client or others) and 3.2-8 (dishonesty, fraud when client an organization), in particular, regarding the duty to withdraw.