THE LAW SOCIETY
OF SINGAPORE

PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

PRACTICE DIRECTION (Paragraph 1 of 2015)

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DEFINITIONS AND GLOSSARY OF TERMS USED IN THIS PRACTICE DIRECTION

Definitions

Definition in the Legal Profession Act	
Relevant matter	Means any of the following matters - (*a*) acquisition, divestment or any other dealing of any interest in real estate; (*b*) management of client's moneys, securities or other assets, or of bank, savings or securities accounts; (*c*) creation, operation or management of any company, corporation, partnership, society, trust or other legal entity or legal arrangement; (*d*) acquisition, merger, sale or disposal of any company, corporation, partnership, sole proprietorship, business trust or other business entity; (*e*) any matter, in which a legal practitioner or law practice acts for a client, that is unusual in the ordinary course of business, having regard to — (i) the complexity of the matter; (ii) the quantum involved; (iii) any apparent economic or lawful purpose of the matter; and (iv) the business and risk profile of the client.
Definitions in the Legal Profession (Prevention of Money Laundering And Financing of Terrorism) Rules	
Beneficial owner	In relation to an entity or a legal arrangement — (*a*) means — (i) an individual who ultimately owns or controls the entity or legal arrangement; or (ii) an individual on whose behalf the entity or legal arrangement conducts a transaction concerning a relevant matter (being a transaction for which a legal practitioner or law practice is engaged); and (*b*) includes an individual who exercises ultimate effective control over the entity or legal arrangement.
Client	Includes — (*a*)in relation to contentious business, any person who, as a principal or on behalf of another person, retains or employs, or is about to retain or employ, a legal practitioner or law practice; and (*b*)in relation to non-contentious business, any person who, as a principal or on behalf of another person, or as a trustee, an executor or an administrator, or in any other capacity, has power, express or implied, to retain or employ, and retains or employs or is about to retain or employ, a legal practitioner or law practice.
Close associate	In relation to a politically-exposed individual, means an individual who is known to be closely connected to the politically-exposed individual, either socially or professionally, such as, but not limited to — (*a*)a partner of the politically-exposed individual; (*b*)an employee or employer of the politically-exposed individual;

	(*c*)a person accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the politically-exposed individual; or (*d*)a person whose directions, instructions or wishes the politically-exposed individual is accustomed or under an obligation, whether formal or informal, to act in accordance with.
Commercial Affairs Officer	A Commercial Affairs Officer appointed under section 64 of the Police Force Act (Cap. 235).
Countermeasure	A measure to prevent, or to facilitate the prevention, of money laundering or the financing of terrorism in a country or jurisdiction other than Singapore.
Domestic politically-exposed individual	An individual who is or has been entrusted with a prominent public function in Singapore.
Entity	A sole proprietorship, a partnership, a limited partnership, a limited liability partnership, a corporation sole, a company or any other association or body of persons corporate or unincorporate.
Family member	In relation to a politically-exposed individual, means a spouse, child (including an adopted child or a stepchild), sibling or parent of the politically-exposed individual.
Foreign politically-exposed individual	An individual who is or has been entrusted with a prominent public function in a country or jurisdiction other than Singapore.
Legal arrangement	Any express trust or other similar legal arrangement.
Politically-exposed individual	Means — (*a*)a foreign politically-exposed individual; (*b*)a domestic politically-exposed individual; or (*c*)an individual who has been entrusted with a prominent function in an international organisation.
Prominent function	In relation to an international organisation, means the role held by a member of the senior management of the international organisation (including a director, deputy director or member of a board of the international organisation, or an equivalent appointment in the international organisation).
Prominent public function	Includes the role held by a head of state, a head of government, a senior politician, a senior government, judicial or military official, a senior executive of a state-owned corporation or a senior political party official.
Relevant Singapore financial institution	Means — (*a*) a bank in Singapore licensed under section 7 of the Banking Act (Cap. 19); (*b*) a merchant bank approved under section 28 of the Monetary Authority of Singapore Act (Cap. 186); (*c*) a finance company licensed under section 6 of the Finance Companies Act (Cap. 108); (*d*) a financial adviser licensed under section 13 of the Financial

	Advisers Act (Cap. 110), except one which is licensed only in respect of the financial advisory service specified in item 2 of the Second Schedule to that Act (namely, advising others by issuing or promulgating research analyses or research reports, whether in electronic, print or other form, concerning any investment product); (*e*) a holder of a capital markets services licence granted under section 86 of the Securities and Futures Act (Cap. 289); (*f*) a fund management company registered under paragraph 5(7) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations (Cap. 289, Rg 10); (*g*) a person who is exempt from holding a financial adviser's licence under section 23(1)(*f*) of the Financial Advisers Act read with regulation 27(1)(*d*) of the Financial Advisers Regulations (Cap. 110, Rg 2), except one who is exempt only in respect of the financial advisory service specified in item 2 of the Second Schedule to that Act (namely, advising others by issuing or promulgating research analyses or research reports, whether in electronic, print or other form, concerning any investment product); (*h*) a person who is exempt from holding a capital markets services licence under section 99(1)(*h*) of the Securities and Futures Act read with paragraph 7(1)(*b*) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations; (*i*) a trustee approved under section 289 of the Securities and Futures Act for a collective investment scheme authorised under section 286 of that Act; (*j*) a trust company licensed under section 5 of the Trust Companies Act (Cap. 336); or (*k*) a direct insurer licensed under section 8 of the Insurance Act (Cap. 142) to carry on life business.
Suspicious transaction report	A report by which a person — (*a*)discloses, under section 39(1) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A), any knowledge or suspicion referred to in that provision, or the information or other matter on which that knowledge or suspicion is based, to a Suspicious Transaction Reporting Officer; or (*b*)informs, under section 8(1) of the Terrorism (Suppression of Financing) Act (Cap. 325), a police officer or Commercial Affairs Officer, of any fact or information referred to in that provision.
Suspicious Transaction Reporting Officer	Has the same meaning as in section 2(1) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act.

Glossary

FATF	Intergovernmental body known as the Financial Action Task Force created in 1989
CDD	Customer Due Diligence
CDSA	Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act
TSOFA	Terrorism (Suppression of Financing) Act

Part 1 - Introduction

This Practice Direction of the Council of the Law Society of Singapore ("Council") takes effect from 23 July 2015 and supersedes Practice Direction 1 of 2008.

1.1 Scope of Practice Direction

Part VA of the Legal Profession Act ("Part VA") on the "Prevention of Money Laundering And Financing of Terrorism" and the Legal Profession (Prevention of Money Laundering And Financing of Terrorism) Rules 2015 ("Rules") apply to a legal practitioner (*meaning any advocate and solicitor or foreign lawyer to whom Part VA applies*), and a law practice (*meaning a Singapore law practice, a Qualifying Foreign Law Practice, a licensed foreign law practice, the constituent foreign law practice of a Joint Law Venture, or a foreign law practice which is a member of a Formal Law Alliance, and includes a Joint Law Venture, a Formal Law Alliance and any branch or office outside Singapore of a Singapore law practice*.)

The Rules are made in accordance with section 70H of the Legal Profession Act.

Legal practitioners and law practices must familiarise themselves with Part VA and the Rules and comply with them.

This Practice Direction sets out directions and guidance on Part VA and the Rules, and must be read together with Part VA and the Rules.

1.2 Summary of the obligations under Part VA and the Rules

In essence, Part VA and the Rules require a legal practitioner and law practice to undertake the following:

- **Perform CDD measures (section 70C Part VA and Part 2 of the Rules)** - a legal practitioner and law practice are required to conduct CDD not only on the client and any individual purporting to act on behalf of a client, but on all the beneficial owners of the client if it is an entity or legal arrangement and to pay particular attention if any persons involved are politically-exposed individuals.

- **File a suspicious transaction report (section 70D Part VA, Parts 2 and 5 of the Rules)** - if the legal practitioner and law practice have suspicions that their client is engaged in money laundering or the financing of terrorism. Failure to file a suspicious transaction report is an offence. The legal practitioner and law practice should note two aspects of this obligation to report in particular:
  - The legal practitioner and law practice cannot tell anyone that they have reported, including their client, as doing so may amount to "tipping-off".
  - Failure to disclose any information or other matter which is an item subject to legal privilege is not an offence (CDSA).

- **Maintain all documents and records (section 70E Part VA and Part 3 of the Rules)** relating to each relevant matter, and all documents and records obtained through CDD measures.

1.3 Terminology used in this Practice Direction

Terms in the Legal Profession Act and the Rules have the same meaning in this Practice Direction, unless the context requires otherwise.

You – refers to a legal practitioner or law practice.

Must – refers to a specific requirement in legislation. You must comply unless there are statutory exemptions or defences.

Should – it is good practice in most situations and these may not be the only means of complying with legislative requirements.

May – a non-exhaustive list of options to choose from to meet your obligations.

1.4 Money laundering and financing of terrorism

Part VA and the Rules set out the measures which a legal practitioner and law practice must take, when preparing for or carrying out any transaction concerning a relevant matter with a view to preventing the transaction from being used to facilitate either or both money laundering and the financing of terrorism.

Definition of money laundering and financing of terrorism

Money laundering is a process by which criminals attempt to conceal the true origin and ownership of money and other benefits derived from criminal conduct so that the money and other benefits appear to have a legitimate source.

Generally, money laundering involves three 3 stages, in the following order:

Placement
This is the physical movement of the benefits (usually cash) from criminal conduct.

Layering
This is the process of separating the benefits of criminal conduct from the illegitimate source through layers of financial transactions to disguise the audit trail.

Integration
If the layering process is successful, the integration stage will place the laundered money and other benefits back into the economy so that they appear to be legitimate.

Legislation applicable to all persons

Legislation that applies to all persons in relation to money laundering is the CDSA; and legislation in relation to terrorism financing that applies to all persons is the TSOFA.

It is an offence under section 43 CDSA to assist another to retain benefits of drug dealing, and an offence under section 44 CDSA to assist another to retain benefits from criminal conduct.

Legal practitioners should refer to the TSOFA to understand what constitutes a terrorist financing offence under the TSOFA, what the prohibitions are and what the duty to disclose entails in relation to terrorist financing. Unlike money laundering, the source of terrorist financing may be legitimate or illegitimate.

Under TSOFA, a terrorist is defined as anyone who commits, or attempts to commit, any terrorist act or participates in or facilitates the commission of any terrorist act. It also includes any person set out in the First Schedule to TSOFA. The First Schedule refers to specific individuals, all individuals and entities belonging to or associated with the Taliban in the Taliban List, and all individuals and entities belonging to or associated with the Al-Qaida organization in the Al-Qaida List. (The latest updates to the Lists can be found at the relevant

weblinks on the Law Society's website on Measures on Anti-Money Laundering and Counter-Terrorism Financing.) Sections 3 to 6 of the TSOFA expressly prohibit the following:

- provision and collection of property for terrorist acts
- provision of property or services for terrorist purposes
- use or possession of property for terrorist purposes
- dealing with property of terrorists or terrorist entity

Legal practitioners and law practices must familiarise themselves with the CDSA and TSOFA and comply with the same.

1.5 Relevant matter

Part VA and the Rules apply to a legal practitioner and law practice preparing for or carrying out any transaction concerning a relevant matter.

The definition of "relevant matter" in the Legal Profession Act includes the "management of client's moneys, securities or other assets, or of bank, savings or securities accounts". This involves doing more than merely opening a client account, and will likely cover a legal practitioner acting as a trustee, attorney or a receiver.

If a transaction does not concern a relevant matter, then the obligations under Part VA and the Rules do not need to be observed although, clearly, good due diligence on one's client is always good practice. CDSA and TSOFA may apply even where a matter is not a relevant matter.

If you are uncertain whether Part VA and the Rules apply to your work generally or in a specific case, simply take the broadest of the possible approaches to comply with the statutory requirements. You can seek guidance from the Law Society.

Unless it is a matter that is unusual in the ordinary course of business, having regard to the complexity of the matter, the quantum involved, any apparent economic or lawful purpose of the matter, and the business and risk profile of the client, the following are some examples of transactions and matters which Part VA and the Rules would not apply to:

- General Singapore law advice with no specific or substantial association with any transaction or matter
- Transactions and matters pertaining to intellectual property rights
- Acting for a client to apply for a grant of probate or letters of administration as a personal representative of an estate
- Acting for a client in a family law matter to obtain a decree of nullity or divorce or custody/access of children
- Appearing or pleading in any court of justice in Singapore, representing a client in any proceedings instituted in such a court or giving advice, the main purpose of which is to advise the client on the conduct of such proceedings
- Appearing in any hearing before a quasi-judicial or regulatory body, authority or tribunal, including an arbitral tribunal, in Singapore

Part 2 – Risk assessment, Internal Policies, Procedures and Controls

2.1 Assessing your law practice's risk profile

A law practice must take appropriate steps to identify, assess and understand, its money laundering and terrorism financing risks, taking into account the law practice's size, type of clients, countries or jurisdictions its clients are from and the practice areas it engages in.

The appropriate steps must include:
(a) documenting the law practice's risk assessments;
(b) considering all the relevant risk factors before determining the level of overall risk and the appropriate type and extent of mitigation to be applied;
(c) keeping these risk assessments up to date; and
(d) having appropriate mechanisms to provide risk assessment information to the Council.

2.1.1 Programmes for the prevention of money laundering and the financing of terrorism

Taking into account the risks that have been identified and the size of a law practice, a law practice must develop programmes for the prevention of money laundering and the financing of terrorism.

Rule 18(1) of the Rules requires a law practice to implement programmes for the prevention of money laundering and the financing of terrorism which have regard to:

- the risks of money laundering and the financing of terrorism; and
- the size of the law practice.

2.1.2 Group–wide programmes for a Singapore law practice with any branch or subsidiary

If a Singapore law practice has any branch or subsidiary (whether in Singapore or elsewhere), the Singapore law practice must implement group-wide programmes for the prevention of money laundering and the financing of terrorism that apply to, and are appropriate for (Rule 18(2) of the Rules) —

a) every such branch; and
b) every such subsidiary more than 50% of the shares or other equity interests of which are owned by the Singapore law practice.

If a Singapore law practice has any foreign branch or foreign subsidiary, the Singapore law practice must, as far as possible, ensure that every such foreign branch and foreign subsidiary apply measures for the prevention of money laundering and the financing of terrorism that are consistent with the measures that are applicable in Singapore (Rule 18(4) of the Rules).

A "Singapore law practice" does not include a Qualifying Foreign Law Practice, a licensed foreign law practice, the constituent foreign law practice of a Joint Law Venture, or a foreign law practice which is a member of a Formal Law Alliance.

In the case of a subsidiary that is not a law practice and which is required to apply measures for the prevention of money laundering and terrorism financing that are applicable in Singapore to the local subsidiary (such as those in the Accounting and Corporate Regulatory Authority (Filing Agents and Qualified Individuals) Regulations) it will suffice for the law practice to ensure that the subsidiary applies those measures.

2.1.3 Internal policies, procedures and controls

The programmes that a law practice must implement, and the group-wide programmes a Singapore law practice (with any branch or subsidiary) must implement must include the following (Rule 18(3) of the Rules):

- the development and implementation of internal policies, procedures and controls for the prevention of money laundering and the financing of terrorism, including
  - appropriate compliance management arrangements; and
  - adequate screening procedures when hiring employees

- the confirmation of the implementation, and the review, by an independent party of the internal policies, procedures and controls.

These programmes must include training and a law practice must ensure that its partners, directors and employees are regularly and appropriately trained on (Rule 18(5) of the Rules) –

- the laws and regulations relating to the prevention of money laundering and the financing of terrorism; and
- the law practice's internal policies, procedures and controls for the prevention of money laundering and the financing of terrorism.

The issues which may be covered in the internal policies, procedures and controls include:

- the CDD measures to be met for low risk clients
- the enhanced CDD measure to be met for higher risk clients
- the CDD measures to determine if a client is a politically –exposed individual or a family member or close associate of such an individual
- the ongoing CDD measures and enhanced ongoing monitoring (if any) that have to be met
- the conditions to be met for reliance on CDD measures performed by third parties
- the circumstances in which deferral of the completion of CDD measures is permitted

Compliance management arrangements

Compliance management arrangements (referred to in Rule 18(3) of the Rules) means carrying out regular review, assessment and updates of the internal policies, procedures and controls to ensure that they are adequate and they manage the money laundering and financing of terrorism risks effectively.

Screening procedures

The screening of new employees (referred to in Rule 18(3) of the Rules) can be done by including relevant questions in the law practice's employment application form, for example, whether the person has been convicted of any offence of dishonesty or fraud, whether the person has been sentenced to a term of imprisonment, and whether the person is an undischarged bankrupt.

Confirmation and review by an independent party

The requirement of the confirmation and review by an independent party (referred to in Rule 18(3) of the Rules) may be satisfied through (but not limited to):

- the appointment of an external auditor to carry out the confirmation and review; or
- the appointment of a legal practitioner within the same law practice to carry out the confirmation and review.

2.1.4 Training

Training may cover the following areas:

- money laundering and financing of terrorism vulnerabilities of a law practice
- the impact that money laundering and financing of terrorism may have on a law practice, its business, clients and employees
- effective ways of determining whether clients are politically-exposed individuals
- client and business relationship risk factors
- the different CDD measures that have to be performed
- how to deal with suspicious activities and transactions
- suspicious transaction reporting

- the internal policies, procedures and controls that have been put in place to reduce and manage money laundering and financing of terrorism risks

The training frequency should be sufficient to maintain the knowledge and competence of partners, directors and employees to apply CDD measures appropriately.

Training can take many forms and may include:

- attendance at conferences, seminars, or training courses organised by the Law Society or other organisations
- completion of online training sessions
- law practice or practice group meetings for discussion on prevention of money laundering and financing of terrorism issues and risk factors
- review of publications on current prevention of money laundering and financing of terrorism issues

2.2 Assessing individual risks

You must assess the risks posed by a specific client or retainer. Determining the risks posed by a specific client or retainer will then assist in applying the internal procedures and controls in a proportionate and effective manner.

Part 3 - Customer due diligence ("CDD") in relation to a client

3.1 CDD in general

CDD refers to due diligence measures performed by a legal practitioner or law practice in relation to a client. The term 'client' and 'customer' are synonymous and interchangeable.

In preparing for or carrying out any transaction concerning a relevant matter, you must perform the CDD measures prescribed in the Rules. CDD is required because you can better identify suspicious transactions if you know your clients and understand the reasoning behind the instructions given by your clients.

CDD measures may be performed by a third party in circumstances set out in Rule 17 of the Rules.

You can start working for a client before the CDD is completed. However, you must complete the CDD as soon as is reasonably practicable. If you are unable to complete it, then you must not commence a new business relationship, must terminate any existing business relationship with the client and must not undertake any transaction for the client. (see paragraph 3.15)

A business relationship refers to the client relationship.

3.2 Principal components of CDD

The principal components of CDD are:

- identification and verification of the identity of the client
- identification and verification of the beneficial owners (if the client is an entity or legal arrangement)
- understanding the nature of the client's business, and the ownership and control structure of the client (if the client is an entity or legal arrangement)

- reasonable measures to determine whether the client and beneficial owner (if any) is a politically-exposed individual, or a family member or close associate of any such individual
- obtaining information on the purpose and intended nature of the business relationship
- ongoing CDD
- enhanced CDD, where required:
  - establish the source of wealth and the source of funds
  - obtain the approval of senior management
  - enhanced ongoing monitoring

3.3 Risk based approach

You must perform, in relation to a client, CDD measures that are commensurate with the level of risk of money laundering and financing of terrorism (Rule 12(1) of the Rules).

You must —

- perform, in relation to each client, an adequate analysis of the risks of money laundering and the financing of terrorism;
- document the analysis and the conclusions reached; and
- keep the analysis up to date.

(Rule 12 (2) of the Rules)

For an adequate analysis of the risks of money laundering and the financing of terrorism, you should take the following steps:

(a) Identify and assess the money laundering and the financing of terrorism risks based on the following factors:

(i) The type of client-

- whether the client is a new client or an existing client
- whether the client is an individual or entity or legal arrangement
- whether the client is a politically-exposed individual or close associate or family member of a politically-exposed individual
- whether the client is from a country where there is a higher risk of money laundering or financing of terrorism

(ii) The business relationship with the client.

(b) Determine if the client is a higher risk client.

(c) Determine if the business relationship is a higher risk business relationship.

(d) Determine if there are reasonable grounds to suspect the client is engaged in money laundering or the financing of terrorism.

3.4 Lower risks

The risks of money laundering and the financing of terrorism are lowered if the client is any of the following (Rule 12(3) of the Rules):

(a) a Ministry or department of the Government, an organ of State or a statutory board;
(b) a ministry or department of the government of a foreign country or territory;
(c) an entity listed on a securities exchange as defined in section 2(1) of the Securities and Futures Act (Cap. 289), or a subsidiary of such an entity more than 50% of the shares or other equity interests of which are owned by the entity;

(d) an entity listed on a stock exchange outside Singapore that is subject to regulatory disclosure requirements;
(e) a relevant Singapore financial institution;
(f) a financial institution incorporated or established outside Singapore that is subject to and supervised for compliance with requirements for the prevention of money laundering and the financing of terrorism consistent with the standards set by the FATF;
(g) an investment vehicle every manager of which is a financial institution referred to in sub-paragraph (e) or (f);
(h) any of the following universities in Singapore:
    (i) Nanyang Technological University;
    (ii) National University of Singapore;
    (iii) Singapore Institute of Technology;
    (iv) Singapore Management University;
    (v) Singapore University of Technology and Design;
(i) a Government school as defined in section 2 of the Education Act (Cap. 87);
(j) the Society;
(k) an entity that is made up of regulated professionals who are subject to and supervised for compliance with requirements for the prevention of money laundering and the financing of terrorism consistent with the standards set by the FATF.

With regard to paragraph (d) above, a stock exchange outside Singapore includes but is not limited to any stock exchange which has been declared by the Monetary Authority of Singapore, by order published in the Gazette, to be a recognised securities exchange.

3.5 High risk factors

Examples of high risk factors may include but are not limited to the following:

Type of client (Client risk factors)

- non-resident client and client who has no address or multiple addresses
- client or beneficial owner who is a politically-exposed individual or a family member or close associate of any such individual (see paragraph 3.14)
- legal persons or arrangements that are personal asset holding vehicles
- companies with nominee shareholders or bearer shares
- businesses that are cash-intensive
- client with criminal convictions involving fraud or dishonesty
- client shows an unusual familiarity with respect to the ordinary standards provided for by the law in the matter of satisfactory client identification
- client who asks for short-cuts and unexplained speed in completing the transaction
- client is overly secretive or evasive (e.g. of who the beneficial owner is, or the source of funds)
- client is actively avoiding personal contact without good reason
- client is willing to pay fees without requirement for legal work to be undertaken (other than deposits as requested by you in advance of the work to be undertaken)

Type of client (Country/territory risk factors)

- client is from or in any country or jurisdiction in relation to which the FATF has called for countermeasures or enhanced client due diligence measures (see paragraph 3.14)
- client is from or in any country or jurisdiction known to have inadequate measures to prevent money laundering and the financing of terrorism (see paragraph 3.14)

The business relationship with the client

- instructions to a legal practitioner or law practice at a distance from the client or transaction without legitimate or economic reason

- instructions to a legal practitioner or law practice without experience in a particular specialty or without experience in providing services in complicated or especially large transactions
- use of client account without underlying legal services provided
- payments are made by the client in actual cash (in the form of notes and coins)
- the transaction relates to, any country or jurisdiction in relation to which the FATF has called for countermeasures or enhanced client due diligence measures (see paragraph 3.14)
- disproportionate amount of private funding for the purchase of real estate/property which is inconsistent with the socio-economic profile of the client
- large cash payments made for purchase of interest in land whose value is far less, or the method of funding is unusual such as funding from a third party who is not a relative or known to the buyer, or there is an absence of any logical explanation from the parties why the property is owned by multiple owners or by nominee companies
- unusually high levels of assets or unusually large transactions in relation to what might reasonably be expected of clients with a similar profile
- transfer of real estate between parties in an unusually short time period
- requests by the client for payments to third parties without substantiating reason or corresponding transaction
- instructions by the client for the creation of complicated ownership structures where there is no legitimate or economic reason
- disputes which are settled too easily, with little involvement by the legal practitioner or law practice (may indicate sham litigation)
- abandoned transactions with no concern for the fee level
- loss making transactions where the loss is avoidable
- an absence of documentation to support the client's story, previous transactions or company activities
- unexplained use of express trusts
- unexplained delegation of authority by the client through the use of powers of attorney, mixed boards and representative offices
- in the case of express trusts, an unexplained relationship between a settlor and beneficiaries with a vested right, other beneficiaries and persons who are the object of a power
- in the case of an express trust, an unexplained (where explanation is warranted) nature of classes of beneficiaries and classes within an expression of wishes

The mere presence of risk factors is not necessarily a basis for suspecting money laundering or the financing of terrorism, as a client may be able to provide a legitimate explanation. Risk factors should assist you in applying a risk-based approach to your CDD requirements of knowing who your client and the beneficial owners are, understanding the nature and the purpose of the business relationship between you and the client, and understanding the source of wealth and the source of funds of the client.

If a client is unable to provide an adequate, satisfactory and credible explanation in response to an enquiry, that inability by itself does not necessarily constitute a sufficient basis to impute criminal activity on the part of the client. It simply means that further enquiry is required, and where responses are not credible, or your suspicions are not adequately allayed by the responses, you should not accept any further instructions from the client, and you must terminate the existing business relationship and consider whether to file a suspicious transaction report.

The following are some examples of specific situations:

- You must not open or maintain any account for or hold and receive money from an anonymous source, or a client with an obviously fictitious name (Section 70 B Part VA).

- If there are reasonable grounds to suspect that a client may be engaged in money laundering or the financing of terrorism, you must not establish any new business relationship with, or undertake any new matter for, the client; and must file a suspicious transaction report (Rule 5 of the Rules).

Example:
Once funds are received in client account, the transaction is aborted. The client asks you to transfer the funds to a third party instead of being returned to him. You make attempts to contact the client to make further enquiries but the client avoids contact without any good reason.

- If there are reasonable grounds for suspecting that the business relationship with the client involves engagement in money laundering or the financing of terrorism but if you consider it appropriate to retain the client- you must substantiate the reasons for retaining the client, and document those reasons; and the business relationship must be subjected to risk mitigation measures, including enhanced ongoing monitoring (Rule 9(3) of the Rules). You should also consider whether to file a suspicious transaction report.

Example:
You represent the vendor in the sale of a private residential property. The transaction is nearing completion. You have reason to suspect that the monies from the sale of the property may be used for terrorism financing but you decide to complete the matter on the basis that you do not wish for the buyer to be adversely affected if the transaction is not completed.

3.6 Basic CDD

You must perform the following CDD measures:

3.6.1 Identification and verification of the identity of the client

If the client is an individual
If your client is an individual, you must first ascertain the identity of the client. You must also verify your client's identity using objectively reliable and independent source documents, data or information (Rules 6(1)(a) & (b) of the Rules).

You are encouraged to use a wide range of sources when verifying the identity of the client including "google searches" and conversations with reliable individuals.

To ascertain the identity of a client, you must at least obtain and record the following information:

- full name, including any alias
- date of birth
- nationality
- residential address

If it is necessary you should also obtain information on the client's occupation and address of the employer; or if self-employed, the name and place of the client's business.

You must verify the client's identity using objectively reliable and independent source documents, data or information to ensure that the information obtained and recorded is authentic. Examples of objectively reliable and independent source documents include the following original documents:

- identity cards
- passports
- birth certificates
- driving licences
- work permits

If your client is unable to produce original documents, you may consider accepting documents that are certified to be true copies by other professionals (for example lawyers or notaries).

If you are unable to meet the client face to face, you may rely on a certified true copy of the identity document(s). You should take appropriate precautions to ensure that the client's identity document(s) are adequately and independently certified. You should look out for obvious forgeries, but you are not required to be experts in forged documents.

If the client is an entity or legal arrangement

If your client is an entity or legal arrangement, you must ascertain the identity the client, and verify the client's identity, respectively, through the following information (Rule 6(2) of the Rules) –

a) The name of the client;
b) The legal form of the client;
c) The documents that prove the existence of the client;
d) The documents that regulate and bind the client;
e) The individuals in the senior management of the client;
f) The address of the registered office of the client;
g) The address of the principal place of business of the client, if the registered office of the client is not a principal place of business of the client.

You must obtain and record the following information –

- full name
- incorporation number or registration number
- address of place of business or registered office address and telephone number
- the date of incorporation or registration
- the place of incorporation or registration

Singapore sole proprietorship, partnership, limited partnership, limited liability partnership, or a company -

If your client is a Singapore sole proprietorship, partnership, limited partnership, limited liability partnership, or a company, a profile of the entity obtained from the Accounting and Corporate Regulatory Authority's ("ACRA") database is generally sufficient to establish the existence of the client and that it is incorporated/registered in Singapore, the name and legal form of the client, the identities of its directors/partners (including individuals in the senior management), the address of the registered office and the address of the principal place of business.

You should obtain from your client the documents that regulate and bind the client (such as the constitution, or the memorandum and articles of association, of a company, if the client is a company, or the trust deed of an express trust, if the client is an express trust).

Foreign entity -
For an overseas sole proprietorship, partnership, limited partnership, limited liability partnership, or a company, the same particulars as required for a Singapore entity must be obtained. If the necessary documents cannot be obtained from a body in a foreign country equivalent to ACRA, the entity's identity could be verified independently by a person/body responsible in that foreign country for the regulation of companies or by another professional or by other reasonable means.

(As a guide, a non-exhaustive list of foreign regulators of companies can be found at the following link – http://www.ecrforum.org/worldwide-registers/.)

If you are satisfied that there is little or no risk of money laundering or terrorist financing or such risk is low and you have no suspicions of the same, you may obtain information on the identity of the client from (i) a structure chart (of the entity) provided by the client directly or (ii) information available on the client's website or (iii) information available from the client's annual reports or (iv) information from any publicly known source that is reliable.

Trusts-
Before acting for a trust, you must, ascertain the identity and particulars of each trustee (trustees must be identified in accordance with their categorisation, natural person or company etc) and the nature of the trust.

(For legal practitioners who act as trustees, please refer to paragraph 3.11.)

Attorneys -
If you are acting for an attorney, you must identify both the principal and the attorney.

You must cease or refuse to act for a client who gives a power of attorney in favour of any person without any apparent reason and refuses to explain why a power of attorney is given and/or is reluctant to provide the identity documents of the attorney.

Singapore charities, clubs and societies -
If you are acting for a charity or a society, you must check that the registration number for the charity or society or club is correct. For charities, you should check with the Commissioner for Charity and for societies, the Registrar of Societies.

You must obtain the names of all trustees and officers of the charity, club or society before accepting the retainer.

Foreign charities, clubs and societies -
For an overseas charity, club and society, the same particulars as required for a Singapore charity, club and society must be obtained. If the necessary information cannot be obtained from a body in a foreign country equivalent to the Commissioner for Charity or the Registrar of Societies, the entity's identity could be verified independently by a person/body responsible in that foreign country for the regulation of charities, clubs and societies or by another professional or by other reasonable means.

Singapore co-operatives -
If you are instructed to act for a co-operative society, you must check the registration particulars of the co-operative or check the same with the Registrar of Co-operative Societies. You must obtain the names of the members of the committee of management and officers of the co-operative before accepting the retainer.

Management corporations -
If you are acting for a management corporation ("MCST"), you must obtain the names of all officers of the Management Council of the MCST before accepting the retainer.

Estates -
If you are instructed to act for an estate, you must have sight of the death certificate and if applicable, the original will or a certified true copy of the will of the deceased. You must also obtain the relevant identity documents to establish the identities of the executors or administrators of the deceased estate and where applicable, the original or certified true copy of the letters of administration or probate.

3.6.2 Identification and verification of the beneficial owners (if the client is an entity or legal arrangement)

If the client is an entity or legal arrangement, you must (Rule 8 of the Rules):
i) ascertain whether the client has any beneficial owner;
ii) ascertain the identity of each beneficial owner (if any);
iii) take reasonable measures to verify the identity of each beneficial owner (if any) using objectively reliable and independent source documents, data or information;
iv) understand the nature of the client's business;
v) understand the ownership and control structure of the client.

Beneficial owner
The client due diligence measures you must perform under paragraphs (ii) and (iii) above include identifying, and taking reasonable measures to verify the identity of, each beneficial owner of the client, through the following information:

- the identity of each individual (if any) who has a controlling ownership interest in the client;
- if there is any doubt as to whether an individual who has a controlling ownership interest in the client is a beneficial owner of the client, or if there is no individual who has a controlling ownership interest in the client, the identity of each individual (if any) who has control of the client through other means;
- if there is no individual who has a controlling ownership interest in the client or who has control of the client through other means, the identity of each individual in the senior management of the client.

Controlling ownership interest refers to the ownership of more than 25% of the shares or voting rights of the client.

If there is any doubt as to whether an individual who has a controlling ownership interest in the client is a beneficial owner of the client, or if there is no individual who has a controlling ownership interest in the client, you must ascertain and take reasonable measures to verify the identity of each individual (if any) who has control of the client through other means.

If there is no individual who has a controlling ownership interest in the client or who has control of the client through other means, you must ascertain and take reasonable measures to verify the identity of each individual in the senior management of the client, such as a chief executive officer (CEO), chief financial officer (CFO), managing or executive director, or president.

If the client is a legal arrangement, the client due diligence measures that you must perform under paragraphs (ii) and (iii) above include identifying, and taking reasonable measures to verify the identity of, each beneficial owner of the client, through the following information:

- if the client is an express trust, the identities of the settlor, each trustee, the protector (if any) and each beneficiary or class of beneficiaries of the trust, and any other

individual exercising effective control over the client (including through a chain of control or ownership);

- if the client is any other legal arrangement, the identity of each person in an equivalent or a similar position to a settlor, trustee, protector or beneficiary of a trust, or any other individual exercising effective control over the client (including through a chain of control or ownership).

Reasonable measures to verify identity of beneficial owner

To ascertain whether the client has any beneficial owner, you may rely on information provided by the client (for example, a declaration by the client about its beneficial owner(s)), or information that is publicly known.

The reasonable measures to verify the identity of the beneficial owner will depend on a risk assessment, and it may include the following:

- using objectively reliable and independent source information or documents such as the business profile obtained from ACRA, or from a body in a foreign country equivalent to ACRA;
- using information, documents or data provided by the client, and arranging a face-to-face meeting with the beneficial owner (where necessary) to corroborate the information given by the client; or
- researching publicly available information on the beneficial owner.

Company, foreign company, limited liability partnership -

The beneficial owner of a company, foreign company and limited liability partnership, is any individual who:

- ultimately owns or controls (whether through direct or indirect ownership or control) more than 25% of the shares or voting rights of the client; or
- otherwise exercises effective control over the management of the client.

Partnership -

The beneficial owner of a partnership, is any individual who:

- is ultimately entitled to or controls (whether the entitlement or control is direct or indirect) more than 25% of the share of the capital or profits or more than 25% of the voting rights of the partnership; or
- otherwise exercises effective control over the management of the partnership.

Trust -

The beneficial owner:

- of a trust includes any individual who is entitled to a vested interest in at least 25% of the capital of the trust property. "Vested interest" is defined as an interest that a person is currently entitled to, without any pre-conditions needing to be fulfilled;
- of a trust includes any individual who has control over the trust. "Control" is defined as a power whether exercisable alone, jointly with another person or with the consent of another person under the trust instrument or by law: to dispose of, advance, lend, invest, pay or apply trust property; vary the trust; add or remove a person as a beneficiary to or from a class of beneficiaries; appoint or remove trustees; or direct, withhold consent to or veto the exercise of any of the above powers; or
- of a trust other than one which is set up or which operates entirely for the benefit of individuals entitled to a vested interest in at least 25% of the capital of the trust property, includes the class of persons in whose main interest the trust is set up or operates, and the class must be described.

Other legal arrangements-

The beneficial owners of other legal arrangements are:

- where the individuals who benefit from the legal arrangement have been determined, any individual who benefits from at least 25% of the property of the legal arrangement;
- where the individuals who benefit from the legal arrangement have yet to be determined, the class of persons in whose main interests the legal arrangement is set up or operates; or
- an individual who controls at least 25% of the property of the legal arrangement.

Understanding the nature of business, ownership and control

To understand the nature of the client's business, and to understand the ownership and control structure of the client, you may rely on the following:

- information provided by the client
- information available on the client's website
- information available from the client's annual reports
- information from any publicly known source that is reliable.

To better understand the ownership and control structure, it would be prudent to monitor changes (if any) in instructions, or transactions which suggest that someone is trying to undertake or manipulate a retainer for criminal ends.

3.6.3 Reasonable measures to determine whether a client and beneficial owner is a politically-exposed individual, or a family member or close associate of any such individual

You must take reasonable measures to determine if the client is a politically-exposed individual, or a family member or close associate of any such individual (Rule 6(1)(c) of the Rules).

If the client is an entity or legal arrangement, you must take reasonable measures to determine whether each beneficial owner (if any) is a politically-exposed individual, or a family member or close associate of any such individual (Rule 8(1)(d) of the Rules).

A close associate in relation to a politically-exposed individual is an individual who is known to you or is publicly known to be, closely connected to the politically-exposed individual, either socially or professionally. Based on the FATF Guidance on Politically-Exposed Persons, this includes partners outside the family unit (*e.g.* girlfriends, boyfriends, mistresses); business partners or associates.

The reasonable measures referred to in rule 6(1)(c) and rule 8(1)(d) of the Rules include putting in place risk management systems to determine whether a client or beneficial owner is a politically-exposed individual or a family member or close associate of such an individual. Such reasonable measures may take into consideration the following:

- You are not required to conduct extensive investigations to establish whether a client is a politically-exposed individual or a family member or close associate of any such individual. Just have regard to information that is in your possession or publicly known. With regard to information that is in your possession, this may be information provided to you by the client.
- If you have reason to suspect that a client is a politically-exposed individual or a family member or close associate of any such individual, you should conduct some form of electronic verification. An Internet based search engine (including social media) may be sufficient for these purposes. Alternatively, an electronic search may be conducted through a reputable international electronic identify verification provider.

A foreign politically-exposed individual and a domestic politically–exposed individual are defined in the Rules to mean an individual who is or has been entrusted with a prominent public function. According to FATF, the handling of a client who is no longer entrusted with a prominent public function should be based on an assessment of risk and not on prescribed time limits. Possible risk factors are:

- the level of (informal) influence that the individual could still exercise; the seniority of the position that the individual held as a politically-exposed individual; or
- whether the individual's previous and current function are linked in any way (e.g., formally by appointment of the politically-exposed individual's successor, or informally by the fact that the politically-exposed individual continues to deal with the same substantive matters).

If the client is:

- a foreign politically-exposed individual or a family member or close associate of any such individual; or
- a domestic politically-exposed individual/individual entrusted with a prominent function in an international organisation or a family member or close associate of any such individual (and where there is a higher risk business relationship) –

you can still act on behalf of the client, but you should undertake enhanced due diligence and monitor the client (see paragraph 3.14).

3.6.4 Obtaining information on the purpose and intended nature of the business relationship

You must identify and if appropriate, obtain information on the purpose and intended nature of the business relationship with the client (Rule 9 of the Rules).

For the purposes of rule 9 of the Rules, you must identity and if appropriate, obtain information concerning the retainer, and transaction and/or advice that you are proposing to act for the client on.

3.7 Situations where specific CDD measures are not required

CDD measures in relation to client

You need not ascertain and verify the identity of the client through the information listed at Rule 6(2) of the Rules if the client is a Ministry or department of the Singapore Government, an organ of the Singapore State or a statutory board in Singapore; or a ministry or department of the government of a foreign country or territory (Rule 6 (3) of the Rules) unless you suspect that the client may be engaged in, or the business relationship with the client or the matter undertaken for the client may involve engagement in, money laundering or the financing of terrorism.

You are not required to obtain identity documents of an individual if you are satisfied on reasonable grounds that the individual is nationally or internationally known. However, you must still obtain and record the client's full name, date of birth, nationality and residential address. You must document the reasons for not obtaining the identity documents.

CDD measures in relation to entity or legal arrangement

You need not perform the CDD measures referred to in paragraphs (1), (2) and (3) of Rule 8 of the Rules if the client is (Rule 8(4) of the Rules) –

(*a*) a Ministry or department of the Government, an organ of State or a statutory board;
(*b*) a ministry or department of the government of a foreign country or territory;
(*c*) an entity listed on a securities exchange as defined in section 2(1) of the Securities and Futures Act (Cap. 289), or a subsidiary of such an entity more than 50% of the shares or other equity interests of which are owned by the entity;

(*d*) an entity listed on a stock exchange outside Singapore that is subject to regulatory disclosure requirements;
(*e*) a relevant Singapore financial institution;
(*f*) a financial institution incorporated or established outside Singapore that is subject to and supervised for compliance with requirements for the prevention of money laundering and the financing of terrorism consistent with the standards set by the FATF;
(*g*) an investment vehicle every manager of which is a financial institution referred to in sub-paragraph (*e*) or (*f*);
(*h*) any of the following universities in Singapore:
  (i) Nanyang Technological University;
  (ii) National University of Singapore;
  (iii) Singapore Institute of Technology;
  (iv) Singapore Management University;
  (v) Singapore University of Technology and Design;
(*i*) a Government school as defined in section 2 of the Education Act (Cap. 87);
(*j*) the Society; or
(*k*) an entity that is made up of regulated professionals who are subject to and supervised for compliance with requirements for the prevention of money laundering and the financing of terrorism consistent with the standards set by the FATF,

unless you suspect that the client may be engaged in, or the business relationship with the client or matter undertaken for the client may involve engagement in. money laundering or the financing of terrorism.

With regard to paragraph (d) above, a stock exchange outside Singapore includes but is not limited to any stock exchange which has been declared by the Monetary Authority of Singapore, by order published in the Gazette, to be a recognised securities exchange.

3.8 Existing clients

You need not repeatedly identify and verify the identity of a client or beneficial owner. You may rely on the identification and verification measures that have already been performed unless you have doubts about the veracity of the information obtained.

If it is an existing client, you must perform the CDD measures based on your assessment of the materiality and risks of money laundering and the financing of terrorism, taking into account –

- any previous CDD measures performed in relation to the client;
- the time when any CDD measures were last performed in relation to the client; and
- the adequacy of the data, documents or information obtained from any previous CDD measures performed in relation to the client (Rule 14(1) of the Rules).

Generally, you may waive the full client identity checks if the client is an existing client who has been in contact with the law practice for the last 5 years.

You may consider waiving the full client identity checks for the following categories of existing clients:

a) Existing clients who have been in contact with the law practice for the last 5 years and who provided some formal identification on first contact;
b) Existing clients who have been in regular contact with the law practice for the last 5 years and who have not on those occasions provided formal identification on first contact.

For category (a) clients, you may waive ascertaining the identity and verifying identity of the client provided that there are no suspicions of money laundering and financing of terrorism, and you are satisfied that the original identification documents were adequate. A note

confirming this must be signed by the proprietor or partner or director of the law practice and attached to the file.

For category (b) clients, you may waive ascertaining the identity and verifying identity of the client provided that there are no suspicions of money laundering and financing of terrorism, and you are satisfied that you know the client. A note confirming this must be signed by the proprietor or partner or director of the law practice and attached to the file. The note should include details of the length of time you have known the client and the nature of the referral to the law practice (for example, through a friend, business acquaintance or client).

3.9 Instructions from individual purporting to act on behalf of a client

If you receive instructions from an individual purporting to act on behalf of a client, you must perform the following CDD measures in relation to that individual (Rule 7 of the Rules):

a) verify whether the individual is authorised to act on behalf of the client;
b) ascertain and verify the identity of the individual.

To verify whether the individual is authorised, you may:

- confirm this with the client
- rely on any documents or information provided by that individual or the client

To ascertain and verify the identity of the individual, you should consider the extent and nature of the documents (if any) or information required to ascertain and verify the identity of the individual. You may:

- obtain his/her business card
- refer to his/her email address or email signature
- refer to the website of the client (if the client is an entity) for a profile of the individual

If your client is an entity and you receive instructions from an individual, you need not perform the CDD measures in Rule 7 of the Rules if you know the individual to be a member of the senior management or in-house counsel of the entity.

3.10 Performance of CDD measures by third parties

You may rely on a third party such as another law practice or bank (that is appropriately qualified – see below) to perform the CDD measures (apart from ongoing CDD on the business relationship with the client during the course of the business relationship) (Rule 17 of the Rules). However, you remain ultimately responsible for the performance of those measures.

If you rely on a third party to perform any CDD measures, you must obtain from the third party all information required as part of those CDD measures.

Before you rely on a third party to perform any CDD measures, you must be satisfied that —

a) where necessary, you will be able to obtain from the third party, upon request and without delay, all source documents, data or information required to verify the information required as part of the CDD measures; and
b) the third party —
    (i) is subject to and supervised for compliance with requirements for the prevention of money laundering and the financing of terrorism consistent with the standards set by the FATF; and
    (ii) has measures in place for compliance with those requirements.

With regard to paragraph (b) above, you may refer to any publicly available reports or material on the quality of the prevention of money laundering and the financing of terrorism supervision

in the jurisdiction where the third party operates and any publicly available reports or material on the quality of that third party's compliance with those requirements.

3.11 CDD measures for legal practitioners who act as trustees

If a legal practitioner acts as a trustee of an express trust governed by Singapore law, he/she must perform the following CDD measures (Rule 10(2)-(6) of the Rules)-

- obtain and maintain adequate, accurate and current information on the identities of the settlor, each trustee, the protector (if any) and each beneficiary or class of beneficiaries of the trust, and of any other individual exercising effective control over the trust
- obtain and maintain basic information on every other regulated agent of, or service provider to, the trust, including any investment adviser or manager, accountant or tax adviser
- maintain the above information for at least 5 years after the legal practitioner's involvement with the trust ceases
- ensure that the information is kept accurate and as up-to-date as possible, and is updated on a timely basis
- subject to any rule of law relating to a trustee's duty of confidentiality, a legal practitioner must, when forming a business relationship with any person referred to in the following sub-paragraphs in the legal practitioner's capacity as a trustee, disclose to that person the legal practitioner's status as such trustee:

(*a*) a financial institution as defined in section 27A(6) of the Monetary Authority of Singapore Act (Cap. 186), read with section 27A(7) of that Act;
(*b*) a casino operator as defined in section 2(1) of the Casino Control Act (Cap. 33A);
(*c*) a licensed estate agent as defined in section 3(1) of the Estate Agents Act (Cap. 95A);
(*d*) a dealer in precious stones or precious metals as defined in regulation 2 of the Corruption, Drug Trafficking and Other Serious Crimes (Cash Transaction Reports) Regulations 2014 (G.N. No. S 692/2014);
(*e*) a legal practitioner;
(*f*) a foreign lawyer registered under section 36P of the Act;
(*g*) a notary public as defined in section 2 of the Notaries Public Act (Cap. 208);
(*h*) a public accountant as defined in section 2 of the Accountants Act (Cap. 2);
(*i*) a person (not being a legal practitioner or a public accountant) who provides one or more of the following services:
(i) acting as an agent for the formation of entities;
(ii)acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a person holding a similar position in any other entity;
(iii) providing a registered office, any business address or any accommodation, correspondence or administrative address for a company, a partnership or any other entity or legal arrangement;
(iv)acting as (or arranging for another person to act as) a trustee of an express trust, or performing (or arranging for another person to perform) a function equivalent to the function of a trustee in any other legal arrangement;
(v)acting as (or arranging for another person to act as) a nominee shareholder for another person

3.12 Timing of CDD

The following CDD measures must be performed before the start, or during the course of establishing a business relationship with the client:

- ascertaining the identity of the client (Rule 6(1)(a) of the Rules)
- where the client is an entity or legal arrangement, ascertaining the client's identity through specific information (Rule 6(2) of the Rules)

- ascertaining whether the client has any beneficial owner (Rule 8(1)(a) of the Rules)

The following CDD measures need not be completed before the start, or during the course, of establishing a business relationship with the client provided that a deferral of the completion of the measures is necessary in order not to interrupt the normal conduct of business operations and the risks of money laundering and the financing of terrorism can be effectively managed (Rule 11(2) of the Rules):

- verifying the client's identity using objectively reliable and independent source documents, data or information (Rule 6(1)(b) of the Rules)
- where the client is an entity or legal arrangement, verifying the client's identity through specific information (Rule 6(2) of the Rules)
- taking reasonable measures to determine whether the client is a politically –exposed individual, or a family member or close associate of any such individual (Rule 6(1)(c) of the Rules)
- verifying whether an individual purporting to act on behalf of a client is authorised, and ascertaining and verifying the identity of the individual (Rule 7 of the Rules)
- ascertaining the identity of each beneficial owner (if any) (Rule 8(1)(b) of the Rules)
- taking reasonable measures to verify the identity of each beneficial owner (if any) using objectively reliable and independent source documents, data or information (Rule 8(1)(c) of the Rules)
- taking reasonable measures to determine whether each beneficial owner (if any) is a politically-exposed individual, or a family member or close associate of any such individual (Rule 8(1)(d) of the Rules)
- understanding the nature of the client's business (Rule 8(1)(e) of the Rules)
- understanding the ownership and control structure of the client (Rule 8(1)(f) of the Rules)
- identifying and taking reasonable measures to verify the identity of, each beneficial owner of the client, where the client is an entity (Rule 8(2) of the Rules)
- identifying and taking reasonable measures to verify the identity of, each beneficial owner of the client, where the client is a legal arrangement (Rule 8(3) of the Rules)
- identifying and if appropriate, obtaining information on the purpose and intended nature of the business relationship with the client (Rule 9(2) of the Rules)
- a legal practitioner who is a trustee of an express trust governed by Singapore law, obtaining and maintaining adequate, accurate and current information on the identities of the settlor, each trustee, the protector (if any) and each beneficiary or class of beneficiaries of the trust, and of any other individual exercising effective control over the trust (Rule 10(2) of the Rules)
- a legal practitioner who is a trustee of any trust governed by Singapore law, obtaining and maintaining basic information on every other regulated agent of, or service provider to, the trust, including any investment adviser or manager, accountant or tax adviser (Rule 10 (3) of the Rules)

If the completion of the measures is deferred, the law practice must adopt internal risk management policies and procedures under which a business relationship may be established before the completion of the relevant CDD measures; and you must complete the relevant client due diligence measures as soon as is reasonably practicable (Rule 11(3),(4) of the Rules).

3.13 Ongoing CDD on business relationship

You must conduct the following ongoing CDD measures on the business relationship with the client during the course of the business relationship (Rule 9(3) of the Rules):

- scrutinise transactions undertaken throughout the course of the business relationship, to ensure that those transactions are consistent with your knowledge of the client, the

client's business, the client's risk profile and, where appropriate, the source of funds for those transactions

- ensure that the CDD data, documents and information obtained in respect of the client, each individual appointed to act on behalf of the client, and each beneficial owner of the client, are relevant and kept up-to-date, by undertaking reviews of existing client due diligence data, documents and information, particularly if the client is a higher risk client (see paragraph 3.5)
- if you have reasonable grounds for suspecting that the business relationship involves engagement in money laundering or the financing of terrorism, but you consider it appropriate to retain the client
  - you must substantiate the reasons for retaining the client, and document those reasons; and
  - the business relationship must be subjected to commensurate risk mitigation measures, including enhanced ongoing monitoring (see paragraph 3.14)
- if you assess the client to be a higher risk client, or the business relationship with the client to be a higher risk business relationship (see paragraph 3.5), you must perform enhanced CDD measures (see paragraph 3.14); and obtain approval of your senior management to retain the client (see paragraph 3.14)

Ongoing CDD does not require you to do the following:

- suspend or terminate a business relationship until you have updated CDD data, documents and information so long as you are satisfied that you know who your client is
- perform the whole CDD process again every few years
- conduct random checks of files

If you have reasonable grounds, based on the ongoing CDD, or otherwise, for suspecting that the business relationship with the client involves engagement in money laundering or the financing of terrorism, you should file a suspicious transaction report with either or both of the following:

a) a Suspicious Transaction Reporting Officer, if the client may be engaged in money laundering;
b) a police officer or Commercial Affairs Officer, if the client may be engaged in financing of terrorism.

If you suspect that a client may be engaged in money laundering or the financing of terrorism, and you have reasonable grounds to believe that the performance of any CDD measures will tip-off the client, you (Rule 16 of the Rules)—

- need not perform those CDD measures; but
- must instead file a suspicious transaction report with either or both of the following (as the case may be):
  a) a Suspicious Transaction Reporting Officer, if the client may be engaged in money laundering;
  b) a police officer or Commercial Affairs Officer, if the client may be engaged in the financing of terrorism.

3.14 Enhanced CDD measures

You must, in addition to performing the basic CDD measures, perform enhanced CDD measures in the following situations (Rule 13(1) of the Rules):

(a) Where the risks of money laundering and the financing of terrorism are raised (Rule 12(4) and Rule 13(1)(a) of the Rules)

This applies in the following situations:

i. If the client is from or in, or the transaction relates to, any country or jurisdiction in relation to which the FATF has called for countermeasures or enhanced client due diligence measures. These countries will be notified to legal practitioners and law practices by the Law Society on its website which should be regularly checked.

ii. If the client is from or in any country or jurisdiction known to have inadequate measures to prevent money laundering and the financing of terrorism, as determined by the legal practitioner or law practice, or as notified to legal practitioners and law practices by the Law Society on its website which should be regularly checked.

iii. If the legal practitioner or law practice suspects that the client is engaged in, or the transaction involves, money laundering or the financing of terrorism.

In considering whether the risks of money laundering and the financing of terrorism are raised (under Rule 12(4) and Rule 13(1)(a) of the Rules), including determining whether the client is from or in any country or jurisdiction known to have inadequate measures to prevent money laundering and the financing of terrorism, you should refer to the following links:

- FATF's website link of high risk and non-cooperative countries
  http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/

- The List established and maintained by the Committee pursuant to resolutions 1267 (1999) and 1989 (2011) with respect to individuals, groups, undertakings and other entities associated with Al-Qaida
  http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml

- The List established and maintained by the Committee established pursuant to resolution 1988 (2011) with respect to individuals, entities, groups, or undertakings
  http://www.un.org/sc/committees/1988/list.shtml

- Link to MAS' website on targeted financial sanctions
  http://www.mas.gov.sg/regulations-and-financial-stability/anti-money-laundering-countering-the-financing-of-terrorism-and-targeted-financial-sanctions/targeted-financial-sanctions/lists-of-designated-individuals-and-entities.aspx

- Law Society's webpage which provides links to all the above
  http://www.lawsociety.org.sg/forMembers/ResourceCentre/RunningYourPractice/MeasuresonAntiMoneyLaunderingandCounterTerr/AntiMoneyLaunderingMeasures.aspx

More information may be obtained from the Inter-Ministry Committee on Terrorist Designation's (IMC-TD) website. IMC-TD was formed in 2012 to act as Singapore's authority relating to the designation of terrorists.

(b) Where the client, or the beneficial owner of the client (being an entity or legal arrangement), is a foreign politically-exposed individual or a family member or close associate of any such individual (Rule 13(1)(b) of the Rules).

(c) Where you have assessed the business relationship with the client to be a higher risk business relationship, and the client or the beneficial owner of the client (being an entity or a legal arrangement) is a domestic politically-exposed individual, individual entrusted with a prominent function in an international organisation, or a family member or close associate of any such individual (Rule 13(1)(c) of the Rules).

The business relationship, based on information (on the purpose and intended nature of the business relationship) you have obtained, should be commensurate with what one could reasonably expect from the client, given his/her particular circumstances. Where the level or type of activity in the business relationship diverges from what can be reasonably explained, the business relationship may be a higher risk business relationship (see paragraph 3.5).

When the risk assessment establishes that the business relationship with a domestic politically-exposed individual/individual entrusted with a prominent function in an international organisation (or a family member or close associate) does not present a higher risk, the individual in question can be treated like any other normal client.

Enhanced CDD measures (where required) are as follows (Rule 13(2) of the Rules):

(a) obtain the approval of your senior management before —
    (i) in the case of a new client, establishing a business relationship with the client; or
    (ii) in the case of an existing client, continuing a business relationship with the client;
(b) take reasonable measures to establish the source of wealth, and the source of funds, of the client and, if the client is an entity or a legal arrangement, of the beneficial owner of the client;
(c) conduct enhanced ongoing monitoring of the business relationship with the client.

Senior management

What constitutes senior management will depend on the size, structure, and nature of the law practice and it is for the law practice to determine their senior management. Senior management may be:

- the head of a practice group
- the partner or director supervising the file
- another partner or director who is not involved with the particular file
- the managing partner or director

If enhanced CDD measures have to be performed by the foreign branch or foreign subsidiary of a Singapore law practice (see paragraph 2.1.2), and senior management approval is required, the Singapore law practice may determine whether the approval should be given by the senior management of that foreign branch or subsidiary.

Source of wealth and source of funds

The source of wealth refers to the origin of the client's entire body of wealth (*i.e.*, total assets). The source of funds refers to the origin of the particular funds or other assets which are the subject of the business relationship with the client. Possible sources of wealth or funds include a politically-exposed individual's current income, sources of wealth or funds obtained from his current and previous positions, business undertakings and family assets. It may be possible to gather general information on the source of wealth or funds from publicly disclosed assets, any other publicly available sources, from commercial databases or other open sources. An internet search (including of social media) may also reveal useful information about the client's wealth and lifestyle and about their official income. You may also rely on self-declarations of the client. If you rely on the client's declaration of the source of wealth or funds, any inability to verify the information should be taken into account in establishing its value. Discrepancies between client declarations and reliable information from other sources may be suspicious if such discrepancies cannot be satisfactorily explained.

Enhanced ongoing monitoring

To conduct enhanced ongoing monitoring of the business relationship, you may consider increasing the number and timing of controls applied, and selecting transactions that need further examination.

3.15 Inability to complete CDD measures

If you are unable to complete any CDD measures, you (Rule 15 of the Rules)–

- must not commence any new business relationship, and must terminate any existing business relationship, with the client;
- must not undertake any transaction for the client; and
- must consider whether to file a suspicious transaction report in relation to the client.

You are unable to complete the CDD measures if you:

- are unable to obtain or to verify any information required as part of those CDD measures; or
- do not receive a satisfactory response to any inquiry in relation to any information required as part of those CDD measures.

If you have started work for a client in relation to a transaction but completion of CDD was deferred in accordance with Rule 11 of the Rules, you must not commence any new business relationship and must terminate any existing business relationship, if you are unable to complete the CDD measures. If you are unable to complete any ongoing CDD or enhanced CDD, you must terminate any existing business relationship with the client.

3.16 Where there are grounds to suspect money laundering or financing of terrorism

If you have reasonable grounds to suspect that a client may be engaged in money laundering or the financing of terrorism, you (Rule 5 of the Rules):

a) must not establish any new business relationship with, or undertake any new matter for the client; and
b) must file a suspicious transaction report with either or both of the following-
   i. a Suspicious Transaction Reporting Officer, if the client may be engaged in money laundering;
   ii. a police officer or Commercial Affairs Officer, if the client may be engaged in the financing of terrorism.

If you suspect that a client may be engaged in money laundering or the financing of terrorism and have reasonable grounds to believe that the performance of any CDD will tip-off the client, you need not perform those CDD measures but must instead file a suspicious transaction report with either or both of the following (Rule 16 of the Rules)-

i. a Suspicious Transaction Reporting Officer, if the client may be engaged in money laundering;
ii. a police officer or Commercial Affairs Officer, if the client may be engaged in the financing of terrorism.

Part 4 - Suspicious transaction report

4.1 Duty to disclose under the CDSA

In accordance with section 70D in Part VA, where a legal practitioner or law practice knows or has reasonable grounds to suspect any matter referred to in section 39(1) of the CDSA, the legal practitioner or law practice must disclose the matter to a Suspicious Transaction Reporting Officer under the CDSA by way of a suspicious transaction report; or an authorised officer under the CDSA.

It is important for you to understand the implications of not making a suspicious transaction report under the CDSA, and the possible implications in acting for a client where there are

reasonable grounds to suspect that a client may be engaged in money laundering or the financing of terrorism.

The CDSA requires a suspicious transaction report to be made as soon as is reasonably practicable. The failure to make a suspicious transaction report is an offence.

If a suspicious transaction report is made in good faith, the disclosure will not be a breach of any restriction upon the disclosure imposed by law, contract or the rules of professional conduct.

In proceedings under the CDSA against a person for an offence (under section 43 or section 44 CDSA), it may be a defence that a suspicious transaction report was made by that person.

4.2 Duty to disclose under the TSOFA

There is a duty under section 8(1) TSOFA for every person in Singapore and every citizen of Singapore outside Singapore who has (inter alia) information about any transaction or proposed transaction in respect of any property belonging to any terrorist or terrorist entity, to file a suspicious transaction report. Failure to do so is an offence.

4.3 Not to prejudice investigation

If you know or have reasonable grounds to suspect that a suspicious transaction report has been made; it would be an offence (section 48 CDSA, section 10B TSOFA) to disclose to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.

4.4 Legal professional privilege

It is not an offence under the CDSA to fail to disclose any information or other matter which are items subject to legal privilege, as set out in section 2A CDSA.

Legal professional privilege should be construed in accordance with the laws and ethical obligations of the legal practitioner under the jurisdiction in which he/she is fully admitted to practise generally.

If you do form some suspicions of money laundering or terrorist financing, you need to carefully consider how to handle the situation to avoid disclosing any information which is likely to prejudice any investigation, and whether or not you need to make a report in light of the legal privilege exception. In cases of doubt, you can seek guidance from the Law Society.

Part 5 - Keeping Of Records

5.1 General comments

In accordance with section 70E in Part VA, a legal practitioner and law practice are required to maintain all documents and records relating to each relevant matter, and all documents and records obtained through CDD measures.

Rule 19 of the Rules requires keeping of records in respect of the relevant matter, i.e. the business relationship itself, not the materials obtained through CDD measures. Rule 20 of the Rules, on the other hand, refers to keeping of records of the CDD materials and supporting evidence.

A law practice has the discretion to keep the records:

- by way of original documents;
- by way of photocopies of original documents; or
- in computerised or electronic form including a scanned form.

5.2 Documents and records in relation to a relevant matter

You must maintain a document or record relating to a relevant matter for at least 5 years after the completion of the relevant matter (Rule 19 of the Rules). It would suffice for one set of documents or records to be maintained between the legal practitioner and the law practice.

The obligations to continue maintaining the documents and records may change in the circumstances as described in Rule 19 of the Rules.

5.3 Document and records in relation to CDD measures

You must maintain a document or record obtained through CDD measures for at least 5 years after termination of the business relationship with the client, or after the date of a transaction (which is in relation to an occasional transaction). An occasional transaction refers to a transaction carried out in a single transaction or several operations which appear to be linked.

It would suffice for one set of documents or records to be maintained between the legal practitioner and the law practice.

The obligations to continue maintaining the documents and records may change in the circumstances as described in Rule 20 of the Rules.

Examples of records to be kept, include the following:

- a copy each of the information and evidence of the client's, beneficiary owner's (if any) identity, and identity of individual purporting to act on behalf of a client. These include:
  - copies of all documents used in establishing and verifying the client's, beneficial owner's and the individual's (purporting to act on behalf of a client) identity
  - the individual's authority to act on behalf of a client
- information on the purpose and intended nature of the business relationship
- written records that CDD measures are performed by a third party and the basis for relying on a third party to perform CDD
- written records of the analysis of the risks of money laundering and the financing of terrorism
- written records of the basis for determining that a client falls into the categories for which an inquiry into the existence of beneficial owner is not required
- written records of the reasons for retaining a client where there are reasonable grounds for suspecting that the business relationship with the client involves engagement in money laundering or the financing of terrorism
- written records of ongoing CDD measures
- the legal practitioner or law practice's assessment where it performs enhanced CDD measures and the nature of the enhanced CDD measures
- written records of a determination whether to file a suspicious transaction report

5.4 Application

By referencing the completion of the relevant matter and the termination of the business relationship respectively, Rules 19 and 20 of the Rules make clear the records obtained through CDD may need to be kept longer than the records obtained on the relevant transaction itself. In other words, records of a particular transaction, either as an occasional transaction or within the

business relationship, must be kept for 5 years after the date the transaction is completed. All other documents obtained through CDD must be kept for 5 years after the termination of the business relationship with the client.

The requirement on a legal practitioner to maintain records and documents is on the legal practitioner who acted on the matter. It is possible that more than one legal practitioner was involved in the matter. However, not all the legal practitioners may have acted in preparing for or carrying out any transaction concerning a relevant matter. The obligations to perform CDD measures and to keep records would apply only to the legal practitioner(s) who acted in preparing for or carrying out any transaction concerning a relevant matter.

In the situation of a law practice dissolving or the license being revoked, and the legal practitioner ceasing to practise (Rule 19(3)(b) and Rule 20(3)(b) of the Rules), the proprietor or partner or director responsible for the file (subject to any agreement or understanding with the other legal practitioners (if any)), should continue to maintain the document or record.

5.5 Sufficiency of document and records

You must take reasonable steps to ensure that the documents and records kept in relation to a relevant matter are sufficient to substantially permit a reconstruction of the relevant matter and if required, to provide evidence for the prosecution of an offence relating to the relevant matter (Rule 21 of the Rules).

Rule 21 of the Rules does not impose any additional obligations on legal practitioners or law practices over and above those set out in Rule 19 and Rule 20 of the Rules.

5.6 Documents and records to be made available to Council of the Law Society

Council may, on its own motion or upon receiving a complaint, carry out an inspection in accordance with section 70F of Part VA in order to ascertain whether Part VA is being complied with.

You must ensure that any documents and records required by the Council for purposes of an inspection are produced to the Council or to any person appointed by the Council (Rule 22 of the Rules).

Part 6 - New Technologies, Services and Business Practices

You must identify and assess the risks of money laundering and the financing of terrorism that may arise in relation to (Rule 23 of the Rules) —

(*a*) the development of any new service or new business practice (including any new delivery mechanism for any new or existing service); and

(*b*) the use of any new or developing technology for any new or existing service.

Before offering any new service or starting any new business practice, or using any new or developing technology, you must:

- undertake an assessment of the risks of money laundering and the financing of terrorism that may arise in relation to the offering of that service, the starting of that business practice or the use of that technology; and
- take appropriate measures to manage and mitigate those risks.

Other Information

If you wish to read further guidance in connection with the Rules, please refer to the Law Society's website.

There are other materials available which may be useful. This is primarily as a result of the Rules closely following the FATF Recommendations which set out a comprehensive framework of international standards obligating all member states to have effective systems to prevent and combat money laundering, terrorist financing and the financing of proliferation. As a FATF member, Singapore is obliged to implement the FATF Recommendations, which have been adopted by many countries around the world. In understanding and implementing your obligations under Part VA, the Rules and this Practice Direction, we would draw your attention to the following additional materials issued by FATF (which may be updated from time to time):

1. The FATF Recommendations and the FATF Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems
   - http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/fatf_recommendations.pdf
   - http://www.fatf-gafi.org/media/fatf/documents/methodology/fatf%20methodology%2022%20feb%202013.pdf
2. The FATF Risk Based Approach Guidance for Legal Professionals, October 2008
   - http://www.fatf-gafi.org/media/fatf/documents/reports/RBA%20Legal%20professions.pdf
3. FATF - Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals, June 2013
   - http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20vulnerabilities%20legal%20professionals.pdf
4. FATF Guidance – Politically Exposed Persons (Recommendations 12 and 22), June 2013
   - http://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf