



Anti-Money Laundering and Anti-Terrorist Financing Amendments Webinar



LAW SOCIETY
of ALBERTA

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FAQ On the Amendments to the AML Model Rules

1. No Cash Rule
2. Identification and Verification of Individual and Organizational Clients
3. Identifying Beneficial Ownership
4. Source of funds
5. Representative Capacity

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NO CASH RULE

How do you refund unused cash payments for fees?

- Rule 119.22 (1) (b) – cheques may not be made payable to cash or bearer except where required to return cash to a person under rule 119.38(5)(d)
- **Recommendation:** Return funds in the same manner as they were accepted

Scenario: Refunding unused cash payments

Scenario	How to issue the refund
<ul style="list-style-type: none">• Lawyer receives a combination of cash and cheque• Lawyer requests a \$10,000 retainer for legal services• Client provides \$5,000 in cheque and \$5,000 in cash• Lawyer bills the client \$7,000• Lawyer must refund \$3,000	<p>The lawyer must refund the \$3,000 in cash.</p>



Refund the most risky method of payment first!

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IDENTIFICATION AND VERIFICATION OF INDIVIDUAL CLIENTS

What does it mean to be retained by a client?

- Legal clinics
- Duty Counsel
- Mediation and arbitration

When do I identify a client vs. verify a client?

- Criminal defense
- Wills and estates retainers
- Insurance defence
- Litigation



Can I take a driver's license when identifying a client?

- No: Unless client consent is obtained prior to collection
- PIPEDA and the Proceeds of Crime (Money Laundering) and Terrorist Financing Act

What are the exemptions to client identification and verification?

- Publicly traded companies, financial institutions, public bodies
- Paid or received as fees, EFT's
- Funds received from trust account of a lawyer
- To assess, look at all steps in the transaction (e.g., real estate transaction, acting for purchaser and vendor)

Does the money have to pass through the lawyer's trust account?

- **Rule 118.4:** Subject to Rule 118.5, Rule 118.6 applies where a lawyer, who has been retained by a client to provide legal services, engages in or gives instructions in respect of the receiving, paying or transferring of funds

What information must I obtain and retain to identify an individual?

- The client's full name,
- The client's home address and home telephone number,
- The client's occupation or occupations
- The address and telephone number of the client's place of work or employment, where applicable

Do I have to identify anyone other than my client?

- You must identify any third party who is directing or instructing your client or who has the authority to direct or instruct your client
- When your client or the third party is an organization, such as a company or a public body, you must also identify the person or persons giving instructions on behalf of the organization

What are the obligations relating to third parties?

- Principal/Agent
- Power of Attorney



I was acting for a client in a matter before Sept. 30, 2019 and the matter is continuing. Do I have to identify the client in accordance with the new Rules?

- If the matter is the same, you are not required to identify the client
- If you take on a new matter for the client, you must comply with the identification and verification requirements



Can I rely on previous verification if the verification document is expired?



- No

How do we verify the identity of individuals outside of Canada?

- **Rule 118.6(3)** If your client is not physically present in Canada, a lawyer must rely on an agent to verify the person's identity, provided the lawyer and the agent have an agreement or arrangement in writing

Can I use Skype to conduct the verification process?



- No.

What information must I obtain and retain to verify an individual?

Government-Issued Photo ID Method

- Individual must be physically present
- Review photo identification issued by government
- Name and photograph must match
- Record and keep client identification information, type of document, document number, issuing jurisdiction and country, expiry date and date

Credit File Method

- Individual does not need to be physically present
- Review Canadian credit file in existence for at least three years
- Name, address and date of birth must match
- Record and keep client identification information, source of credit file, reference number and date of verification

Dual Process Method

- Individual does not need to be physically present
- Review two original, valid and current documents or information from independent and reliable sources
- Name, address and date of birth must match
- Record and keep client identification information, the name of the two different sources used to identify your client, the type of information, account or reference number and date of verification

For the Dual Process method, does the independent, reliable source have to be Canadian?

Our guidance explains that the term reliable means, in reference to a source, that the source is:

- well known,
 - reputable, and
 - is considered one that you trust to verify the identity of the client.
- We do not require a source to be Canadian to be reliable. You must be able to satisfy yourself and demonstrate that any source used for the purpose of the dual process method is reliable.

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IDENTIFICATION AND VERIFICATION OF ORGANIZATIONAL CLIENTS

What information do I obtain and retain when I identify an organizational client?

Identification

- Rule 118.3(b) for organizations
 - i. full name, business address and telephone number,
 - ii. incorporation or business identification number and the place of issue,
 - iii. the general nature of the type of business or activity engaged in by the client, and
 - iv. the name, position and contact information for the individual authorized to instruct the lawyer.

What information do I obtain and retain when I **verify** an organizational client?

Verification

- Confirming the existence of an entity that is a corporation
- Confirming the existence of an entity other than a corporation

What information do I obtain and retain when I verify an organizational client?

118.6(6)(e) (f) if the client or third party is an organization such as a corporation or society that is created or registered pursuant to legislative authority obtain:

- the **name and address of the organization and**
- the **names of its directors**, where applicable

Refer to official documentation or records to confirm the existence of an entity that is a corporation or an entity other than a corporation

- articles of incorporation;
- annual returns;
- certificate of corporate status;
- shareholder agreements;
- partnership agreements; or
- board of director's meeting records of decisions.
- written confirmation from a government registry to confirm existence,

How to I obtain information about the beneficial owners?

To obtain beneficial ownership information, as well as the ownership, control and structure information, you can have the entity provide it, either verbally or in writing. For example:

- the entity can provide you with official documentation;
- the entity can tell you the beneficial ownership information and you can write it down for record-keeping purposes; or
- the entity can fill out a document to provide you with the information

How do you confirm accuracy of beneficial ownership information?

A. Refer to official documentation or records

- articles of incorporation;
- annual returns;
- certificate of corporate status;
- shareholder agreements;
- partnership agreements; or
- board of director's meeting records of decisions.

B. have the client sign a document to confirm the veracity of the beneficial ownership information

- Must include ownership, control and structure information obtained
- In this case, it is possible for one document to be used to satisfy the two distinct steps, namely, to obtain the information and to confirm the accuracy of it

C. Other reasonable measures, including:

- asking the client to provide supporting official documentation;
- conducting an open-source search; or
- consulting a database or public registry.

MSB Scenario: Who is the beneficial owner?

Rainbow Money Services is a money services business (MSB) in Alberta owned by Howard and Betty.

- Howard and Betty paid a lawyer to draft a partnership agreement for the business, which they both signed.
- According to the agreement, all decisions related to the partnership must be unanimous. Howard and Betty will split the income from the MSB 50/50.
- If they decide to end the partnership, Howard will get 85% of the proceeds of the sale of the business assets, while Betty will get 15%.

Who is the beneficial owner?

MSB Scenario: Record Keeping

What must you record?

- Howard and Betty's names and addresses - the beneficial owners as they both control the partnership
- The ownership structure of the entity, including the details of the partnership agreement between Howard and Betty; (the ownership and control of the MSB is shared between Howard and Betty despite an uneven split of proceeds in the case the business is sold)
- The measures you took to confirm the accuracy of this information – Referring to official documentation i.e. partnership agreement

ABC Company Scenario: Who is the beneficial owner?

Peter, Paul, Pam, Perry and Paige are registered shareholders of ABC Company.

- They each own 20% each of Corporation shares. ABC has one class of voting shares.
- Perry and Paige have an agreement to exercise their rights jointly

ABC Company Scenario: Record Keeping

What must you record?

- Perry and Paige's names and addresses – they are beneficial owners as both control the corporation
- The ownership structure of ABC Company
- The measures you took to confirm the accuracy of this information (referring to official documentation, i.e. articles of incorporation or annual returns)

There are several beneficiaries of a trust or estate who are to receive proceeds. What are we required to obtain for identification and verification purposes?

- Verify the identity of the trustee or executor
- Make “reasonable efforts” to obtain, confirm and record the names and addresses of all trustees and all known beneficiaries and settlors of the trust
- Confirm accuracy by reviewing the trust deed and record information on the ownership, control and structure of the trust

Is there a requirement to verify the instructing individuals who give instructions on behalf of a corporation and confirm their authority?

- Yes – Verify the individual authorized to provide and give instructions to the lawyer with respect to the matter for which the lawyer is retained
- Confirm authority by reviewing corporate records showing authority to bind corporation regarding transaction

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SOURCE OF FUNDS

How do we deal with doubts about the source of funds disclosed by the client?

Obtain and evaluate more detailed information from the client and verifying information obtained:

- Bank statement
- Pay stubs showing receipt of salary
- Tax return showing income earned from all sources
- Gift letter
- T5 showing investment income
- Court-ordered agreement, loan agreement, etc.

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REPRESENTATIVE CAPACITY RULE

With the changes to the existing Representative Capacity Rule, what is a “Trustee Account”?

- A Trustee account is opened at the bank pursuant to a trust agreement, power of attorney or appointment as an executor
- It could be a business operating account, savings account or an investment vehicle
- Separate bank account in the name of the name of the lawyer or firm in trust for the beneficiary or estate
- Interest-bearing trust account
- Interest earned belongs to the client

Treatment of Condominium Deposits

- Pursuant to the Condominium Property Act: New Deposit Rules Effective April 1, 2018
 - If a consumer is buying a new condominium in Alberta from a developer, the buyer's purchase deposit must be held by an Alberta lawyer while the condominium is being built.
- Funds should be held in a lawyers pooled trust account as contemplated by the Condominium Property Act.

More questions?

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**THANK
YOU!**
