

About the author

Gill Steel is the owner and director of LawSkills Ltd, a company providing learning and development and consultancy for private client practitioners. She is a member of the Association of Tax Technicians and the Society of Trust and Estate Practitioners (STEP). Gill also has an MBA in Legal Practice from Nottingham Law. She is the author of the *Trust Practitioner's Handbook* (4th edn, Law Society Publishing, 2018) and the consultant editor of the *Wills and Inheritance Quality Scheme Toolkit* (Law Society Publishing, 2013).

<http://www.pbookshop.com>

4 Taking on a new trust client

4.1 Overview

New trust clients can be taken on for a number of reasons, including:

- the death of the testator/settlor, following the administration of the deceased's estate;
- the creation of the trust during the settlor's lifetime;
- a transfer from another organisation:
 - on a change of trustee
 - by choice of the trustees.

Whatever the reason for taking on the new trust as a client, due diligence is required. This includes, for all cases:

- following the firm's risk assessment policy;
- carrying out money laundering procedures on, at least, the trustees and, in some cases, the settlor, any protectors and some beneficiaries; and
- possibly submitting a suspicious activity report (SAR) in cases where a trust is taken on but money laundering suspicions are aroused.

4.2 Risk assessment

Risk management is a key principle in the SRA Code of Conduct 2011. Principle 8 states that solicitors are required to:

carry out [their] role in the business effectively and in accordance with proper governance and sound financial and *risk management principles* [emphasis added].

A thorough and analytical approach to risk management is essential for several reasons. For one – increasingly, professional indemnity insurance can only be secured if a firm can demonstrate risk awareness and that robust risk management procedures are in place. But also, the reputation of an organisation depends on the quality of the service given – and that relies both on the quality of the advice and on the risk management and quality assurance systems that it operates.

The compilation of a risk register is necessary for effective contingency planning. A risk register is a tool that enables firms to:

- make effective decisions for engagement with clients;
- increase awareness of risk among staff; and
- develop policies and procedures designed to mitigate the inevitable risks involved in running a law practice offering (among other things) trust administration services.

Annex 4A sets out the steps firms should follow to develop their own risk registers, along with tables for assessing each area of risk.

4.3 Money laundering procedures

The usual objective of money launderers is to frustrate or complicate the efforts of the authorities trying to trace the proceeds of crime, and so the varieties of money laundering methods are infinite. It is possible and maybe even inevitable that trust practitioners will become unwittingly involved in this process, particularly as it is usual for them to hold money for clients. The basic anti-money laundering actions required are set out at Annex 2B.

In relation to trusts, there are also particular suspicious circumstances that practitioners should watch out for. A checklist of these circumstances is provided at Annex 4B.

Criminals may attempt to use solicitors' services for money laundering activities because they mistakenly believe that solicitors have an absolute obligation to keep the client's affairs confidential in all circumstances. However, this is not the case. See Annex 4C for a checklist of situations in which information may be disclosed.

4.4 Changes to existing trusts

The process of risk assessment should be ongoing and involves, for example, ensuring that checks are made regarding the source of any new funds that are added to the trust after it is taken on.

Any changes in the way in which the settlor requests the trust to be administered should be carefully considered, as should any planned changes to the trust structure. A copy of the legal advice or tax advice relating to such a proposal should be obtained.

For existing trusts which the firm is taking on (perhaps transferred from another organisation by choice of the trustees), additional due diligence is required; make sure the documents mentioned in Annex 4D are requested and thoroughly studied.

4.5 Trusts created before 22 March 2006

Some older trusts may well have been created before the significant changes to the IHT treatment on 22 March 2006. It is therefore important, for trusts in existence at that date, that the trust administrator conducts a thorough review of decisions and actions taken around that time. A suggested checklist for such reviews is provided at Annex 4E. Once completed, this will hopefully ensure the nature of the trust is clear and therefore its correct tax treatment will follow.

4.5 Fees and

Once the firm has agreed its terms of work with the client, the firm will need to set out the fee for taking on the trust. This fee should be expressed as a percentage of the trust's assets or as a budget for relevant information required.

The fee for taking on the trust should be expressed as a percentage of the trust's assets or as a budget for relevant information required.

4.7 Legal expenses

Firms must also be aware of the fact that this is a framework for the London market. The provisions for exchange investment.

The regulations require firms to trade on the market and to pay an annual fee.

From 3 January 2006, firms supplied to the public, such as a public register, presumably is met.

The problem for trust practitioners is that the local authoritative examination of the trust deed was appointed and not available for the trust deed.

Trusts have been created and will be obliged to disclose trust details. However, in all other cases, the trust deed.

Trustees need to be aware of the fact that the transfer of LSE quoted securities requires sufficient documentation to ensure the trust deed.

4.6 Fees and terms of business

Once the firm has decided to take on a new client, the trustees will be given the terms of business and retainer letter – these documents should set out the work the firm will and will not do, as well as the costs (usually quoted as an annual fee).

The fee for taking on a new client to cover the due diligence and set-up work may be expressed as a one-off fee with a lower annual fee thereafter. Do not forget to budget for relevant expenses, such as entering the trust on the TRS. A list of information required to register a trust on the TRS is provided at Annex 4F.

4.7 Legal entity identifiers

Firms must also budget for the expense of obtaining a legal entity identifier (LEI). This is a framework established by the Financial Conduct Authority (FCA); LEIs enable the London Stock Exchange (LSE) to verify the source of funds entering the market. The problem seems to be that this system does not anticipate stock exchange investments being held by non-corporate entities such as trusts.

The regulations require the LSE to issue an LEI to an entity before permitting that entity to trade on the Exchange. This requires a set-up fee of £115 (plus VAT) and then an annual renewal fee of £70 (plus VAT).

From 3 January 2018 trusts must apply for an LEI and it is a requirement that the data supplied to the LSE is able to be validated against a 'local authoritative source', such as a public register of official documentation. In the case of a company this requirement is met by reference to Companies House.

The problem for trusts is that there is no publicly accessible trust register or other 'local authoritative source'. Validation would therefore presumably require an examination of the trust deed to see who is entitled to the beneficial interests and who was appointed as trustee. The trust deed is a confidential private document and not available for wider distribution.

Some trusts have been excluded from the requirement to obtain an LEI but all other trusts will be obliged to obtain one. Apparently, discretionary trusts that cannot disclose trust details must self-certify and not supply a copy of the trust deed; however, in all other cases the LSE has said it will accept the first few pages of the trust deed.

Trustees need to be aware that without an LEI the trust will not be able to buy, sell or transfer LSE quoted stock, so they will be asked to authorise disclosure of trust documents sufficient to obtain an LEI.

Annex 4A

Risk assessment and preventative steps

Each firm will approach the development of a risk register in a way which makes sense for its size, range and type of services and clients. However, the nuts and bolts involve the following steps (see also Chapter 5 of the *Trust Practitioner's Handbook* (4th edn)).

1. Identify the possible risks that might arise when dealing with the task, e.g. taking on a new client might result in receiving the proceeds of crime.
2. For each identified risk consider the likelihood of it happening and allocate a value to that likelihood (see Table 1 below).
3. For each identified risk evaluate the impact the occurrence would have on the reputation of the firm and on its financial viability. Again, a value needs to be allocated to each impact (see Table 2 below).
4. Arrange the register in order of priority, from high risk to low risk – the higher risk items are the ones with a high likelihood of occurring *and* a high impact if they did occur (see Tables 3 and 4 below).
5. Prioritising the register items enables a firm to design suitable processes and procedures to manage the nature of the risk identified (see Table 5 below).
6. It will help the manager, COLP and compliance officer for finance and administration (COFA) if the register also includes for each risk the relevant provisions of the SRA Code of Conduct 2011 that would be compromised if a breach occurred (see Table 6 below).
7. The register should identify the preventative steps designed to manage the risk (see Table 6).
8. List the evidence of compliance that could be relied on by the COLP and COFA when making reports to the SRA (see Table 6).

Table 1 Assessing likelihood and allocating scores

Likelihood	How likely is risk to happen?
High – score 3	Definite/Probable
Medium – score 2	Possible
Low – score 1	Unlikely

Table 2 Evaluating impact and allocating scores

Impact	What would the impact be?
High – score 3	Impact in financial terms of greater than 3% on either income or expenditure
	Likely to create adverse local publicity
	Likely to have significant effect on staff motivation and staff relations
	Impact on health & safety

Impact	What would the impact be?
Medium – score 2	Financial impact greater than 1% but less than 3%
	Limited local publicity based on hearsay
	Impact applies to only a small group of staff
Low – score 1	Financial impact less than 1%
	No adverse publicity
	Limited to individuals

Table 3 Grouping risks according to score

Risk scores	
Significant – score 12+	High impact and high probability: immediate consideration of controls to manage them
Contingency – scored 9–11	These risks have high impact but likelihood of occurrence is relatively low
Housekeeping – scored 6–8	These risks are likely to occur but have relatively low impact
Low – score less than 6	These risks have low impact and are less likely to occur

Table 4 Identifying priorities regarding procedural steps

Procedural step	Risk	Impact (financial)	Impact (image)	Likelihood	Score	Priority
Initial contact with client	Money laundering	3	3	2	$(3 + 3) \times 2 = 12$	Significant
Complying with Chapter 1 of the Code of Conduct 2011	No costs quote given	1	2	1	$(1 + 2) \times 1 = 3$	Low

Table 5 Identifying priorities regarding specified events

Event	Risk	Likelihood	x	Impact	= Combined effect
Drafting trust – choice of beneficiaries	Drafting wrongly excludes or includes beneficiaries whom settlor wants to include or exclude	Possible	2	Finance + reputation Cost of claim: high + limited (3 + 2)	10

Table 6 Identifying the steps taken to manage the risk

Event	Provision in SRA Code of Conduct 2011	Preventative steps	Evidence
Drafting trust – choice of beneficiaries	Principle 5 Outcomes 1.4, 1.5, 1.16	Check understanding of definitions used in drafting Take clear and specific instructions Employ file supervision techniques Train staff in use of precedents, processes and procedures	Instructions taken; file review Trust drafting checklist; sign-off letter from client; file review File review CPD training records

With trusts, p
circumstances

1. Formation of
2. Appointment or involvement
3. Use of funds for trust fund.
4. Use of the pro
5. Use of an offs
6. Obscuring of

<http://www.pbookshop.com>