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Guide to File Opening Risk Assessments (FORA)

The Requirement

There are various types of risk assessment that firms are required to produce.

This Guide provides an overview of what your FORA should cover and focuses on the **compliance risks** that should be considered. We cover departmental risks in a separate guide.

Firm's Policy for a FORA

Firms should have a policy in place that requires a FORA to be completed **before** the start of each client matter. The FORA should be in one of the following formats:

- An electronic form to be completed on-line used as part of a case management system
- A paper form to be completed and placed on the file

The Firm's policy should document, for each department, the following information:

a. the person responsible for completing the FORA for each client matter.

b. the procedure for approval and sign-off, including details of to whom medium and high risk matters should be referred.

c. the process that needs to be followed if the instructions cannot be accepted.

d. details of the steps needed when a high risk matter is accepted, e.g. additional supervision and reporting requirements, document checking processes and increased file reviews.

What should the FORA cover?

The FORA should include consideration and a review of the following areas of risk – i.e. compliance risks and departmental risks:

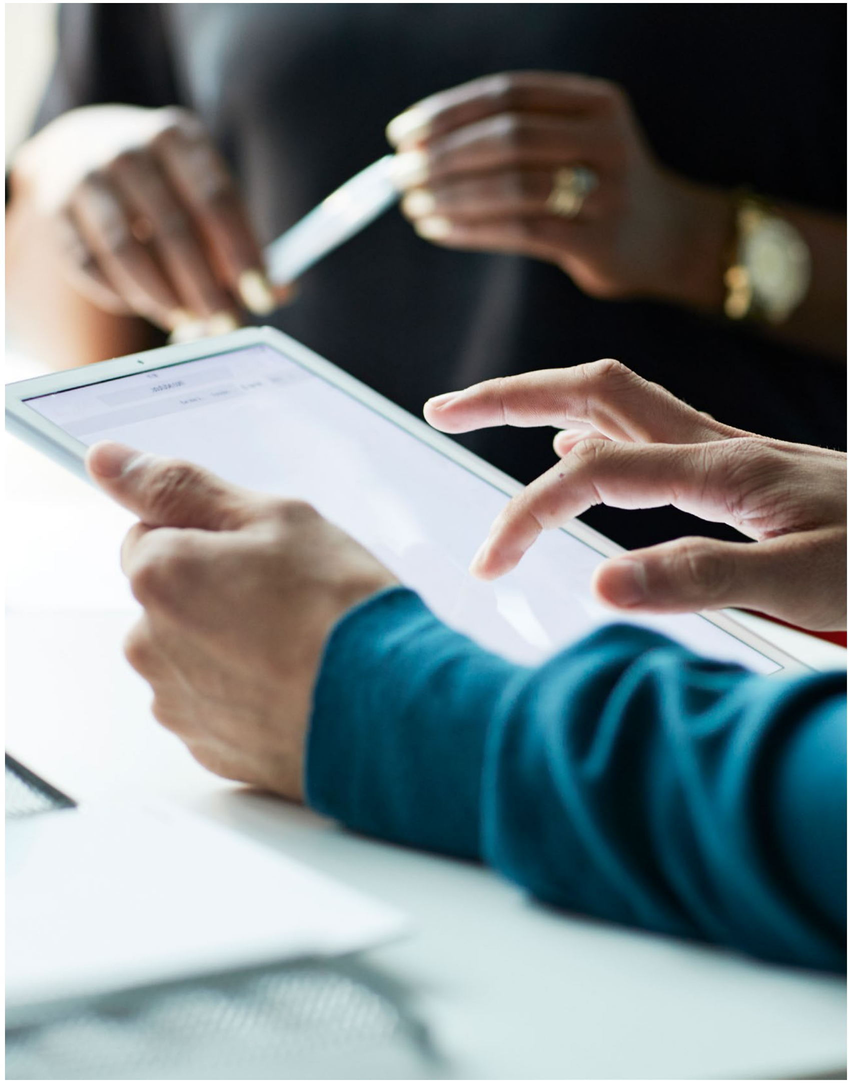
- Client Risk (See Guide to FORA & Departmental Risks)
- AML Risk
- Fee earner Risk (See Guide to FORA & Departmental Risks)
- Time Limit Risk
- Value of Matter Risk
- Key Date Risk
- Costs Risk
- Resources Risk (See Guide to FORA & Departmental Risks)

Mechanisms to Identify Matter Risks

Firms should have a mechanism within the FORA to enable fee earners to identify the risk of a matter following a review of the above identified risk areas. The risk can be rated as follows:

a. Using a traffic light system i.e. Red for High, Amber for Medium & Green for Low Risk.

b. An automated point scoring system which identifies High, Medium & Low Risk matters.



Compliance Risks

Looking at each of the compliance risks in turn:

1. Money Laundering Risk

When considering money laundering risks, you will need to assess (i) the individual client risk, and (ii) the work type and matter risk, taking into account the categories and types of work that it has been agreed the department/firm will undertake. You should also take into account the firm's practice risk assessment as well as the level of risk arising in relation to each matter. Consideration should also be given to the firm's Fraud policy, Criminal Finances Act 2017 and the firm's/department risk policy.

When assessing risk, you should consider the following matters (this list is non-exhaustive and there may be other issues that you will need to consider when making your assessment):

a. Will you be meeting the client in person?

b. The identity of the person and whether they are a PEP.

c. The purpose of the transaction, together with its nature and size.

d. Is the work is in a high risk jurisdiction?

e. Is the work in a high risk sector, e.g. aviation, commercial property, construction, residential conveyancing, or real estate?

f. Is the business a cash business and if so, does it have a high turnover?

g. How will the matter be funded? Where are the funds coming from; are they, for example, coming from a foreign jurisdiction?

h. Who will be paying the firm's legal costs?

If your client is classified as a PEP, or is a high turnover cash business, is in a high risk sector or jurisdiction or if the funds are coming from a high risk sector or jurisdiction, then it is very likely that the matter will need to be classified as **High Risk.**

2. Time Limit Risk

Fee earners will need to be reasonably confident that they can meet required deadlines and timescales, which are set either by the client or by a third party or necessary to satisfy rules and regulations (such as court filing requirements). This will help avoid complaints, ensure that clients are provided with a high service level and that work is delivered in accordance with SRA rules and regulations.

The following is a non-exhaustive list of things to consider when assessing this risk:

a. Any time constraints set by the client or a third party, or by rules and regulations.

b. The ability of the relevant fee earner to achieve time deadlines or limits – taking into account current workloads, known holidays, and anything else that may impact capacity to undertake the work.

c. The availability of any third party resources that may be required on a matter, for example, external counsel, expert witnesses.

3. Value Of Client Matter

Fee earners will also need to consider the overall likely value of a transaction. They should be informed of any limits on the firm's primary lawyer of professional indemnity insurance, for example, where only matters with a value up to £15 million are covered under the firm's PI cover (**the Firm's PI Limit**) and the fact that approval is required to undertake work on matters with a value or likely value in excess of the limit. The process for obtaining approval for matters in excess of the firm's limit should be set out clearly in the firm's FORA policy, including the person(s) responsible for approving such matters.

You should consider classifying any client matter which has or is likely to have a value exceeding your Firm's PI Limit as **High Risk** and require approval from the person identified in the firm's FORA policy (who may, for example, be a Head of Department or COLP).

4. Key Date Risk

Key dates, if overlooked, may give rise to a claim against a firm, and the fee earner will need to be reasonably confident that they can adhere to any key dates relevant to a client matter. These may be imposed by the Court or another statutory body, such as UK Companies House or HM Land Registry. This will enable fee earners to provide a high level of service to clients and deliver work in accordance with SRA rules and regulations.

The following is a non-exhaustive list of things to consider when assessing the key date risk:

a. Can you identify what (if any) key dates will be applicable to the matter?

b. Are there any constraints likely to prevent a fee earner from meeting time limits or deadlines, such as current workload, planned holidays or other absences from the office such as external training, etc.

c. The availability of third party resource that might be required, e.g. expert witness, counsel.

d. If you are unable at the outset to identify what Key Dates may be applicable to the matter then you should consider classifying the matter as **High Risk.**

5. Costs Risk

In order to provide an accurate estimate of costs for dealing with any matter, fee earners will need to ensure that they fully understand their client's instructions, so that cost overruns are avoided as far as reasonably possible.

The following is a non-exhaustive list of things to consider when assessing the costs risk:

a. Are your client's instructions clear? Are you confident you understand the client's objectives?

b. Do you consider that your client's expectations are realistic or commercial viable?

c. You should undertake a cost-benefit analysis to enable you to properly consider any concerns over benefit/viability.

d. If you cannot quantify all costs at the start of a matter that you believe will or may be applicable to that matter, then you should consider classifying the matter as **High Risk.**

If the fee earner considers that the client has an unrealistic view of what you are able to achieve, or because of the level of the client's expectations, there is a real risk that costs will exceed the benefit, then you should consider classifying the matter as **High Risk.**

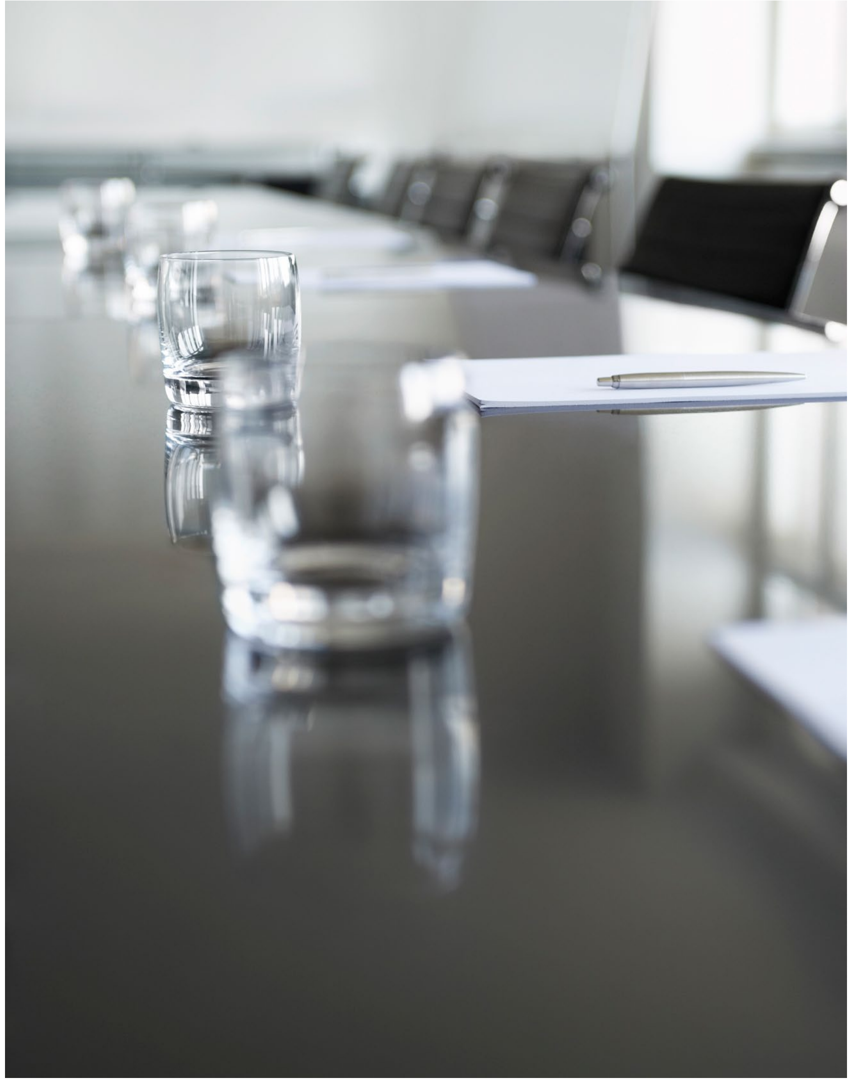
Staff Training

Firms should provide all fee earners with regular training on how to complete the FORA and how the risk scoring criteria works. Training should also include:

- Ensuring staff are familiar with and aware of the compliance risks that need to be considered when completing the FORA
- The generic risks and causes of claims linked to these risks and work undertaken by each department.

Ongoing Review

Firms should review a FORA throughout the life of a matter in all High and Medium risk matters. Firms should be able to evidence that these further reviews have happened and be able to demonstrate the original risk rating of the matter and the risk rating that applies following the matter being subject to further review. The number of times the matter is reviewed during its life will depend upon its risk rating.



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