

GUIDE TO FILE OPENING RISK ASSESSMENTS (COR)



THE REQUIREMENT

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

This Guide provides an overview of what your File Opening Risk Assessment (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 as part of a case management system.
- A paper form to be completed and placed on the file.

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

- 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/ 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:

- Client Risk (See Guide to FORA & Departmental Risks).
- AML Risk.
- Fee earner Risk (See Guide to FORA & Departmental Risks)
- Time Limit/Key Date Risk.
- Value of Matter 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 risk areas identified above.

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

Considering 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-wide risk assessment as well as the level of risk arising in relation to each matter.

As well as the requirements of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, 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 want 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 in 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 intensive business and if so, does it have a high turnover?
- g. How will the matter be funded?
- h. Where are the funds coming from; are they, for example, coming from a foreign jurisdiction?
- i. 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/Key Date Risk

Fee earners will need to be reasonably confident that they can meet required deadlines and timescales which are set either by the client, by a third party or necessary to satisfy rules and regulations (such as court filing requirements) or court orders.

This will help avoid complaints, ensure that clients are provided with a high level of service 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, a third party, by rules and regulations or by court order.

- 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.

If you are unable at the outset to identify what time limits or key dates may be applicable to the matter, then you should consider classifying the matter as High Risk.

3. Value of Client Matter

Fee earners will need to consider the overall likely value of a transaction.

- They should be aware of or informed of any limits on the firm's primary lawyer of professional indemnity insurance e.g. where only matters with a value up to £15 million are covered under the firm's PI cover limit and whether work on matters with a value or likely value in excess of the limit can be undertaken and, if so, the process of seeking approval.
- 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. 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. This will also minimise the risk, as far as reasonably possible, of cost overruns.

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 commercially viable?
- c. You should undertake a cost-benefit analysis to enable you to properly consider the commercial viability of your client's instructions and advise the client accordingly.

If the fee earner cannot reasonably estimate all costs at the start of a matter, you should consider classifying the matter as High Risk.

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



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 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, particularly 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 on the nature of the matter and upon its risk rating.



Departmental Risk Assessment Policy

KEY FACTS

This section provides a brief overview of the main points of this Policy. It is not intended to be a substitute for reading its entire content, which all staff members should do.

Main objectives

Risk management forms a key part of the Firm's strategic planning and review processes. We manage risk at the Firm by putting in place robust risk and quality management processes and procedures which together make up our risk management system.

This policy sets out to address the departmental risks that arise at the Firm and how the Firm deals with these risks.

Regulatory Obligations

Paragraph 2.5 of the SRA Code of Conduct for Firms (COCF) requires that:

You identify, monitor and manage all material risks to your business ...

This policy helps us to identify and deal with, or at least mitigate, departmental risks.

Departmental Risks

We consider the following areas to be the key areas of departmental risk at the Firm:

- Acceptable/non-acceptable client types: which clients we are happy to act for.
- Permitted works types for each department: the work types that each department can or cannot undertake.
- Resources/fee earner information: who has the capacity, expertise and experience to carry out different types of work.
- The top referrers of work in each department: this enables departments to identify how reliant they are on particular referrers.

Responsibilities

The Firm has appointed [insert details] to be responsible for risk management at the Firm and manage the Firm's risk profile. You will find full details of their role in the Firm's [Risk Management Policy - please amend as appropriate.

However, all staff have their own role to play in identifying, helping to control and to report risks they may come across. We encourage staff to share their concerns on any matter (either at the outset, during or after), particularly if they believe it may lead to a complaint or a claim.

Training

Staff will be provided with appropriate training on this policy. This will initially take place when staff join the Firm and regular update training will also be provided.



1. Purpose

Risk management forms a key part of the [Insert name of firm]'s (the "Firm") strategic planning and review processes and underpins all of the Firm's practice management procedures. We carry out risk management by adopting robust risk and quality management processes and procedures (the Firm's "risk management system"), including those set out in this document which focus specifically on departmental risks.

Our risk management system helps the Firm to avoid, reduce or mitigate risk and bring it to within acceptable levels. Our ability to do so demonstrates the Firm's ability to respond and react to change.

2. Scope and Applicability

This policy applies to all fee earners and support staff.

3. Regulatory Obligations

Paragraph 2.5 of the COCF requires that: You identify, monitor and manage all material risks to your business ...

This policy forms part of the Firm's risk management system and helps enable the Firm to comply with its regulatory obligations.

4. Departmental Risks

4.1 This policy is concerned solely with departmental risks which generally fall into the category of operational risks i.e. risks connected with the Firm's internal resources, systems, processes, and members of staff within each department.

4.2 Key areas of departmental risk

The Firm considers the following areas to be the key areas of departmental risk:

- Acceptable/non-acceptable client types.
- Permitted works types for each department.
- Resources/ Fee earner information.
- Top referrers of work in each department.

4.3 Acceptable/non-acceptable client types [Please delete if not relevant to your firm]

The Firm has certain criteria which clients must meet before the Firm accepts them as clients. The Firm's [Risk and Compliance function - please amend as appropriate] maintains this list and all staff should refer to it before accepting client instructions.

4.4 Permitted work types for each department

Staff must only undertake work that the Firm permits them to carry out.

The Firm's [Risk & Compliance function - please amend as appropriate] shall hold and maintain a list of permitted work. The list shall include the following information:

- The types of work that each of the Firm's department may undertake.
- The types of work that each department cannot do.
- Details of the fee earners in each department who may undertake the work types listed, and whether the work can be done unsupervised or whether supervision is needed.

This list will be updated in the event of any changes and all changes will be communicated to relevant staff.

Staff should refer to this list when completing a File Opening Risk Assessment.

4.5 Resources/fee earner information

The Firm's [Risk & Compliance function - please amend as appropriate] shall also hold and maintain a list of fee earners in each department, which shall include the following information:

- area(s) of practice and specialism.
- their position.
- years qualified/level of experience.

This information shall be used by departments when considering the Fee Earner Risk on the FORA.

4.6 Top referrers of work in each department

Each of the Firm's departments shall keep a record of its top referrers of work.

The purpose of this is to assist each department to identify how reliant it is on any referrer.

This record shall be compiled by [the Risk and Compliance function/the relevant Head of Department - please amend as appropriate] and a copy kept by each department and the Firm's [Risk and Compliance function - please amend as appropriate].

4.7 Firmwide or Departmental Risk Plan

The Firm shall ensure that all departmental risks identified are built into the department/firm business plan.

5. Responsibilities

5.1 Whilst all staff have a role to play in identifying, controlling and reporting risk, ultimate responsibility lies with the [COLP/ Risk Manager - please amend as appropriate] who manages the Firm's risk profile. The responsibilities of this person are set out in the Firm's [Risk Management Policy - please amend as appropriate].

5.2 If any member of staff has a concern relating to risk before, during or after any matter, we encourage them to share it with their colleagues and make sure that it is reported, particularly if it could lead to a complaint or a claim.

6. Training

The Firm will provide appropriate training to staff on this policy when they join the Firm. Regular update training will also be provided.

7. Non-compliance with this Policy

Failure to comply with this policy may lead to the Firm breaching its obligations under the COCF. Staff may be subject to disciplinary action in the event of serious or repeated failures to comply with this policy.

8. Review [Please amend as appropriate for your firm]

This policy will be reviewed and updated [at least annually by the COLP], including as and when there are changes that need to be made as a result of business operations, relevant legislation, regulatory obligations or contractual commitments.

9. Policy Owner [Please amend as appropriate for your firm]

This policy is owned by the [COLP] who [are the designated risk managers for the Firm] and responsible for implementing and maintaining this Policy. The [COLP] will ensure that all relevant staff receive training on risk management in the Firm.

10. Document Control

[As per existing Lockton precedent]

FORA – Departmental Risks Checklist

Recommended Actions	Satisfied / Completed?	Reference / Details
1 Firm to put firmwide FORA policy in place requiring FORA to be completed before the start of each client matter.		
2 Firm to ensure firmwide FORA policy includes the following information: <ul style="list-style-type: none"> • Details of the person responsible for completing the FORA for each client matter. • Details of the person responsible for reviewing the FORA on an annual basis and updating compliance risks where necessary. • Types of work undertaken. • Procedure for approval and sign-off, including details of to whom medium and high-risk matters should be referred. • Process to be followed if the instructions cannot be accepted. • Details of steps needed before a high-risk matter is accepted. 		
3 Firm to ensure FORA includes assessment of the following compliance risks: <ul style="list-style-type: none"> • Permitted work types for each department. • Resources/fee earner information. • Top referrers of work. • Acceptable/non-acceptable client types 		
4 Permitted work types for each department <ul style="list-style-type: none"> • Firm has and maintains list for each department of work they can and cannot undertake. • Person appointed to be responsible to maintain and update list and communicate list to all relevant staff. • List identifies fee earners in department who can undertake each type of work permitted, and whether they can work unsupervised or need supervision. 		

Recommended Actions	Satisfied / Completed?	Reference / Details
<p>5 Resources/fee earner information</p> <p>List produced for each department of all fee earners detailing the following information:</p> <ul style="list-style-type: none"> a. their position. b. years qualified/level of experience. c. area(s) of practice and specialism. <p>Person to be appointed to be responsible for maintaining and updating each list.</p>		
<p>6 Top Referrers of work</p> <p>Each department to create a record of top [3] referrers of work.</p> <p>Person to be appointed to be responsible for maintaining and updating record as necessary.</p>		
<p>7 Acceptable/non-acceptable clients</p> <p>Each department to keep list of any criteria for clients it deems acceptable or not acceptable.</p> <p>Person to be appointed to be responsible for maintaining this list and circulating to fee earners in each department.</p>		
<p>8 All departmental risks to be included in each departmental business plan (or firm business plan/risk register if not departmental specific).</p>		