



MODEL RULE ON CLIENT IDENTIFICATION AND VERIFICATION

ADDITIONAL FAQs

1. I have been retained by an insurance company to act for it in relation to a subrogated litigation claim. Do I have to verify the identity of the insurance company's client, the insured, as well as the insurer?

At the outset of the retainer, only the identification requirements would apply. Assuming that the insurer has, by operation of law or contract, succeeded to the rights of its insured in relation to the claim, the rules require you to identify the insurance company only. If, however, the insured also has a claim which you are bringing concurrently with the subrogated claim, you must also identify the insured. In the absence of an applicable exemption, verification would be required in the event of a settlement payment made prior to the filing of a statement of claim or other formal commencement of legal proceedings (such as an arbitration).

2. I have been retained by an insurance company to defend a liability claim. What are my obligations, when defending an insured on the instructions of an insurer pursuant to a liability policy?

Whether you are in-house with an insurer or outside counsel, case law states that you act for both the insurer and insured when you are defending a claim against an insured under a liability policy. The client identification and verification rules will normally apply with respect to the insurer and the individuals instructing you on behalf of the insurer. Special considerations may apply with regard to your obligations to identify or verify the identity of the insured.

If you are in-house counsel for the insurance company, you need not identify or verify the identity of the insurance company that employs you. If you are outside counsel, you have an obligation to identify the insurer and the individual instructing you (e.g. a claims examiner). In the event the verification rules are triggered, you have an obligation to take reasonable steps to verify the identity of the insurer and instructing individuals, unless certain exemptions apply.

If and when settlement funds may become payable, you should consult the rules with regard to whether verification is necessary or whether an exemption might apply. If the matter is settled or a judgment is rendered after the claim has been filed, you may not be required to verify the client's identity. If settled prior to filing

a claim, however, the rules may require you to verify their identity. The status of the insurance company (i.e., if it is a “financial institution”, “public authority” or a “reporting issuer”) may also determine if the insurer (and consequently its instructing individual) is exempt from the verification process.

Different issues arise when considering the identification and verification of the insured that affects outside defence counsel. In the event the insured has a right under the policy to guide and instruct counsel, and is doing so, identification and verification of the insured is required. There are many occasions in which the insured may be difficult or impossible to locate during the course of the retainer. In such cases, defence counsel is not obliged to decline the retainer simply because the insured cannot be located for the purpose of completing the identification process, nor will verification of the insured be required in the event funds are transferred. If counsel is able to make contact with the insured, identification and verification information will, however, be required.

3. I am acting for a client with respect to the completion of a commercial transaction. I have prepared the necessary documentation to complete the transaction, but the closing funds will not be flowing through my trust account as my client will be paying these directly to the other side in accordance with the agreement and closing documentation. Is this a situation in which I have to verify my client’s identity?

Yes. The verification obligations apply whenever you engage in or give instructions in respect of the transfer of funds. Although funds are not passing through your trust account in this transaction, you are instructing with respect to the transfer of funds when you instruct on how the funds will flow to complete the transaction, which may include the preparation of documents containing such instructions.

4. I represent debtors in lending transactions which often include as security for a loan the pledge of shares by the borrower or guarantor. The pledge involves a transfer of physical possession of the share certificates to the lender (or its custodian or agent) but no transfer of beneficial ownership, unless there is an event of default that entitles the lender to foreclose on the shares and become the owner or exercise a power of sale and sell them to a third party. The situation is similar where public company shares are certificated and registered directly in the name of the borrower. When those shares are pledged, the pledgor is actually dealing with the rights to its securities account and the security entitlement in respect of those shares which the securities account gives to it. Pending default, the pledgor retains the ownership rights in the shares including entitlement to dividends and voting.

I note that the definition of “funds” includes shares. Does the pledge of shares as security mean that "funds" have been transferred, requiring the verification of the borrower’s identity?

A share pledge will almost inevitably be part of a transaction involving a transfer of funds from lender to borrower. Unless exempt (e.g. because the lender is a financial institution, or because the funds are transferred by EFT), that aspect of the transaction would require verification. However a pledge of shares as security for the loan would not be a transfer of shares that requires verification of identity. No beneficial ownership is transferred by the pledge, and the event that would transfer full rights in the shares to the lender - a default - is a future event and may not occur. When a default occurs and a lawyer is involved in advising on default (whereby the lender takes beneficial title to the pledged shares as a result of default by the borrower), the verification obligations would apply unless otherwise exempt.

5. I am acting for a corporation that is listed on a designated stock exchange as described in the rule. The corporation’s headquarters are in a country that is not a member of the Financial Action Task Force (the “FATF”), but it also operates in several countries that are members of the FATF. Is the corporation covered by the “reporting issuer” exemption?

Yes. A corporation that operates in at least one country that is a member of FATF, and which otherwise meets the definition of reporting issuer is covered by the exemption even if it also operates or is headquartered in countries that do not belong to FATF.

6. I am representing the plaintiffs in a class action. Do I have to identify all of the plaintiffs?

No. You need only identify the representative plaintiff.

7. The rule requires identification of shareholders who own 25 per cent or more of the shares of an organization when a lawyer is engaged in or gives instructions in relation to a financial transaction. Does this apply to ownership of all shares or just voting shares?

The provision requires a lawyer to identify all owners of 25 per cent or more of all voting shares.

- 8. Lawyers retain me to provide mediation services to their clients. I do not give legal advice; I merely act as a neutral mediator. I do not prepare documents for use in a proceeding; however, when there is a settlement, I often prepare minutes of settlement. The lawyers and their clients sign a mediation agreement with me. I bill the lawyers for my work as a mediator. Am I required to identify the lawyers? Am I required to identify their clients?**

The rule requires lawyers to identify clients who retain them to provide legal services. You do not provide legal advice and you do not draw documents for use in a proceeding. Non-lawyers can act as mediators in this context. You are not required to identify your client. If, however, you provide legal advice or other legal services you are required to identify the lawyers and their clients.

- 9. I am acting for an organization that operates in Kuwait. Although not a member of the FATF, Kuwait is a member of the Gulf Cooperation Council, an organization that is a member of the FATF. My client otherwise meets the definition of “reporting issuer” in the rule. Does the “reporting issuer” exemption apply?**

No. Although the Gulf Cooperation Council is a full member of the FATF, its individual member countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates) are not subject to evaluation by the FATF of implementation of the anti-money laundering and counter terrorist financing measures agreed to by members of the FATF. To be covered by the exemption an organization must operate in at least one of the 34 jurisdictions that is a full member of the FATF and is thus subject to the mutual evaluation process.

- 10. I am a Canadian lawyer licensed by the Law Society of _____, but I am practising in another country. Do I have to comply with the rules on identification and verification of clients?**

Generally an active member of a law society is subject to regulation by the law society wherever the lawyer is practising so you must comply with the client identification and verification rules.*

*Please note: this answer may not be applicable in all jurisdictions. If you do not otherwise require your members to comply with law society regulations when they are practising outside of your jurisdiction you will need to amend this answer to reflect your practice.

- 11. You are acting on behalf of a Condominium Corporation and you receive instructions from the property manager to collect arrears of common expenses and to register a Notice of Lien. You subsequently receive payment from the owner of the unit. You determine that no**

You must verify the identity of your client, the Condominium Corporation and the property manager, who is the individual giving you instructions on behalf of the Condominium Corporation.

In order to verify the existence of the Condominium Corporation, you could conduct a sub-search of title to the unit within the Condominium Plan to ascertain that no Order of Termination has been registered against the unit within the Plan. In addition, you could obtain the G.S.T. number for the Condominium Corporation, if available, to verify its identity.

To verify the identity of the property manager, you may obtain, review and keep a copy of that person's driver's licence or an original identifying document from an independent source.

We have received a number of questions about identifying condo corps. The question and answer below, specifically applicable to Ontario, provide an example of to respond. You may need to adapt it to the particular regime in your jurisdiction.

12. How do I verify the identity of a Condominium Corporation?

There are no off-title or public record searches that you can conduct to confirm the status/existence of a Condominium Corporation. In order to verify the existence of the Condominium Corporation, you conduct a sub-search of title to any unit within the Condominium Plan to ascertain if an Order of Termination has been registered against any unit within the Plan. If no Order has been registered on title, then the Condominium Corporation is in existence.

To identify the Condominium Corporation and its Board of Directors, you order a Status Certificate which sets out the names, addresses and telephone numbers of the Condominium Board of Directors and Officers. Similarly to identify and verify the identity of the Property Manager, you obtain a Certificate of Status and Corporate Profile for the Property Manager and the name, position and contact information for the individual at the Property Manager giving instructions. If you have identified and verified the identity of the organization including the individuals authorized to give instructions on behalf of the organization with respect to the matter, you do not have to repeat this identification procedure each time you act on behalf of the same Condominium Corporation and Property Manager