

Money Laundering and Law Firms

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What Role Can Lawyers and Law Firms Play in ML/TF: 2013 FATF Vulnerabilities of Legal Professionals

- Key ML/TF methods that commonly employ the services of a legal professional were identified in the literature as follows:
 - ■ use of client accounts
 - purchase of real property
 - creation of trusts and companies
 - management of trusts and companies
- ■ setting up and managing charities

Use of Client Accounts

- Lawyers and law firms normally handle client funds which can be used to hide the origin or ownership of payments
- Example: Five leading US firms were mentioned by the Department of Justice in the 2016 1MDB scandal because their “interest on lawyer trust accounts” (IOLTA), typically used to hold small sums, were used to launder \$1.3 billion in stolen Malaysian government funds.

Purchase of Real Property

- Real property can be used to integrate laundered funds into the economy
- Real property can be used to launder funds:
 - purchase property actually worth X and sell to a related buyer for $2X$
 - purchase property worth $2X$ for X from a related party, and sell for $2X$

In each case, claim a gain of X on the same of the property

Create or Manage Legal Persons

- In each case, real owner and controller is hidden
- Panama and Paradise Papers good examples
- In the case of management, the legal person can claim income that income from prime is actually legitimate
- Al Capone's use of laundries to hide income from his organized crime activities may have given us the term money "laundering."

Lawyers and Firms as designated non-financial businesses and professions (DNFBPs)

- In 2003, FATF issued updated Recommendations, which for the first time specifically included legal professionals.
- The FATF Recommendations have explicitly required legal professionals to undertake CDD and to submit STRs since the revision of the Recommendations in 2003. From that time, competent authorities have also been required to ensure that legal professionals are supervised for AML/CFT purposes.

FATF Recommendation 22

- CDD and STR Filings are required for lawyers, notaries, other independent legal professionals and accountants – where they prepare for or carry out transactions for their client concerning the following activities:
 - buying and selling of real estate;
 - managing of client money, securities or other assets;
 - organisation of contributions for the creation, operation or management of companies;
 - creation, operation or management of legal persons or arrangements, and buying and selling of business entities.

Not if Acting under Privilege

- Lawyers, notaries, other independent legal professionals and accountants acting as independent legal professionals, are not required to report suspicious transactions if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege.

What about Enforcement

- Unlike banks, for example, lawyers are not subject to supervision
- Problem of criminal lawyers, as in, lawyers who are criminals
- Can there be a “risk-based” system for ensuring compliance?
- What about confidentiality in transaction testing?

Solo Practitioners and Small Firms

- Setting up CDD and STR Reporting may be difficult and expensive for solo practitioners
- Exceptions for such lawyers could mean that they are targeted by criminals
- The greater the number of solo practitioners and small firms, the greater the task (and the cost) of ensuring compliance

Lawyers as Consultants

- Like other providers of consulting services, lawyers can be used to launder illegal proceeds, especially in the contest of contract kickbacks
- Lawyers provide bogus or non-existent legal services for which they are paid a great price. This amount is 'kicked back' to the person receiving the bribe
- Because legal services are difficult to value, it is hard for investigators to identify or prove that they were of little value

Case Study 1

- Employee working in a very small law firm in Country A received an email from a web-based account referring to a previous telephone conversation confirming that the law firm would act on the person's behalf.
- The 'client' asked the employee to accept a deposit of \$ 260 000 for the purchase of machinery in Country B. The 'client' requested details of the firm's account, provided the surname of two customers of a bank in London, and confirmed the costs could be deducted from the deposit amount.
- The details were provided, the funds arrived and the 'client' asked that the money be transferred as soon as possible to the Country B bank account (details provided) after costs and transfer fees were deducted. The funds were transferred, but no actual legal work was undertaken in relation to the purchase of the machinery. The transfer of the funds to the law firm was an unauthorised withdrawal from a third party's account.

Red Flags

- Client is actively avoiding personal contact for no good reason
- Client is willing to pay fees without the requirement for legal work to be undertaken.
- Client asks for unexplained speed.

Case Study 2

- A lawyer from Quebec received approximately \$ 3 million from a Montreal businessman, which he deposited into the bank account of his law practice.
- The lawyer then had the bank transfer the funds to accounts in Switzerland, the United States, and Panama.
- In Switzerland, another lawyer, who was used as part of the laundering process, transferred on one occasion \$ 1 760 000 to an account in Panama on the same day he received it from the Canadian lawyer.
- When depositing the funds in Canada, the Quebec lawyer completed the large transaction reports as required by the bank, fraudulently indicating that that the funds came from the sale of real estate.
- A police investigation into the Quebec lawyer established that these funds were transferred to a narcotics trafficker

Red Flag Indicators

- Use of a disproportionate amount of cash
- Use of a client account with no underlying legal work
- Funds sent to one or more countries with high degrees of secrecy
- Clients with known connection to criminals

Case Study 3

- Criminal defence attorney Jerry Jarrett was convicted for money laundering and illegally structuring financial transactions to avoid reporting requirements.
- In one instance, Jarrett laundered \$ 67 000 in drug proceeds by depositing money through small transactions into the bank account of a dormant business he controlled. He then prepared a backdated stock purchase agreement representing that the drug dealer had invested \$ 15 000 in the company.
- He then wrote a series of cheques to the client for “return on investment.” Jarrett organised a series of similar transactions with another drug dealer to launder \$ 25 000 in drug proceeds. Jarrett knew that the cash was drug proceeds.

Red Flag Indicators

- Significant private funding and the transfers are structured to avoid reporting requirements
- Client was known to have been convicted for a for-profit crime
- Unusual level of activity for a dormant company

Case Study 4

- The attention of Tracfin was drawn to atypical financial flows relating to real estate purchases undertaken in the regions of Midi-Pyrénées, Languedoc-Roussillon and Provence-Alpes-Côte d'Azur.
- The analysis brought to light a possible network of organised criminality involving people who were either current or former members of the Foreign Legion. The individuals were mostly of the same foreign nationality and involved a real estate civil society (property investment scheme).
- Between April 2009 and March 2011 the office of a notary public registered 28 deeds of real estate transfer for this group. All the sales, bar one, were officialised by the same notary in the office.
- Twelve individuals and six different real estate civil societies (non-trading companies) were listed as the purchaser, while seven individuals and five societies were sellers of the properties.
- Of these 28 deeds, 16 were paid in full for EUR 1.925 million; six were financed through loans of EUR 841 149 in total, and the source of financing was not able to be determined for five properties which had a value of EUR 308 200.

4 Continued

- Nine of the transactions were paid in full by individuals in the amount of EUR 1.152 million, which was a significant amount given the profession of the clients.
- The properties were also resold within relatively short timeframes. For example, one of the properties in Castres was resold every year since 2009 with occasionally significant increases in the sale price. All these sales were registered by the same notary. The real estate civil society thereby multiplied by six the purchase price of this property.
- In some instances the sellers claimed the property had increased in value because they had done work on those properties (they hadn't).
- The notary registered two further transactions in 2011 which were paid for in cash and were at a significant distance from the notary's office.

Red Flag Indicators

- Disproportionate amount of cash inconsistent with the profile of the individual
- Significant increase in sales price in short period of time
- Parties to the transaction appear to be related
- Multiple appearance of the same parties over a short period of time