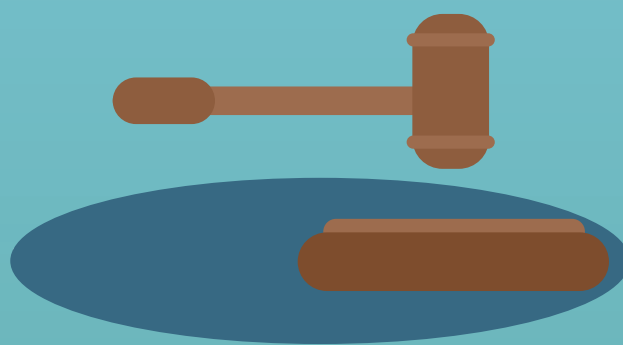




Financial
Intelligence Centre



TOOLKIT FOR COMBATING **MONEY LAUNDERING** AND **TERRORIST FINANCING**

INTRODUCTION

Legal practitioners play a significant role in driving South Africa's economy and are equally important in ensuring the integrity of the financial system.

The legal profession, which deals with, inter alia, immovable property transactions, the creation and management of trusts, companies and investments, is vulnerable to money laundering. The broad spectrum of services they provide converge with common methods financial criminals use to launder money and hide the proceeds of crime.

Criminals seek out legal professionals to assist them with completing certain transactions and to provide specialised legal and notarial services, to help in laundering the proceeds of crime and in the financing of terrorism.

While not all legal professionals are actively involved in providing these legal services which may be abused for criminal gain, criminals may exploit legal practitioners to provide a veneer of respectability to the client's activity. There is also a perception among criminals that legal professional privilege or secrecy will delay, obstruct or prevent investigation or prosecution by authorities if they use the services of a legal practitioner.

The Financial Action Task Force (FATF), the global money laundering and terrorist financing watchdog and standard-setting body, has emphasised the need to involve the support of so-called "gatekeepers" such as legal practitioners in the fight against economic crime.

Crime syndicates or individual criminals seek out the legitimate functions and services of gatekeepers for nefarious purposes. Gatekeepers can be described as those who provide gateways to the financial system, through which potential users of the system, including launderers, are able to do business with financial institutions without revealing their own identities. They play varied and significant roles in facilitating the creation of companies, trusts and other corporate vehicles.

The products and services most vulnerable to money laundering include:

Conveyancing: Legal practitioners may knowingly or unwittingly assist criminals by transferring immovable property purchased with the proceeds of crime, falsifying documents, drafting documents with overstated or understated value of the properties, facilitating the transfer of properties to third parties and establishing complex loans and financial arrangements.

Business in a customer account: Legal practitioners may be requested to assist with the transfer of proceeds of crime in the guise of an "investment" that either never takes place or where the funds eventually ends up in a third-party account.

Formation and management of legal entities: Legal practitioners may be requested to create and assist in managing fictitious entities, complex legal structures or shell companies that are designed to obfuscate the ultimate beneficial owner and/or the true nature and ownership of assets.

It is therefore important for legal practitioners to be aware of how financial criminals may use their services to launder the proceeds of crime and safeguard themselves against the risks of facilitating such criminal activity.

CASE STUDY: Abuse of attorney's trust account

The FIC received several suspicious and unusual transaction reports about an attorney who appeared to be abusing his attorney trust facility. The suspicious and unusual transactions in the reports pointed out the following:

- Multiple large sums of money were being deposited into the trust account by different persons and companies over a period of two years.
- These funds were used to make payments to other depositors in South Africa and abroad
- Funds from this account were being remitted to foreign jurisdictions deemed to be tax havens.
- Funds were also transferred to the attorney's personal credit card; his practice expenses were also paid directly from the trust account.

The FIC's legal mandate is to assist in identifying the proceeds of crime, in combating money laundering, and countering the financing of terrorism. As South Africa's financial intelligence unit, the FIC plays a key role in safeguarding the integrity of the country's financial system and its institutions, while making the financial system intolerant to financial abuse. It is the national centre for the collection of transaction and other financial information and through its work fosters collaboration in the criminal justice system, in business and among other role players.

The Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act) established the FIC and places compliance obligations on businesses and sectors – such as legal practitioners – deemed vulnerable to money laundering, the financing of terrorist and related activities.

The FIC Act defines legal practitioners as “practitioners who practice as defined in section 1 of the Attorneys Act, 1979 (Act 53 of 1979) (Attorneys Act)”. The Attorneys Act has since been repealed and replaced by the Legal Practice Act (Act 28 of 2014), which was fully promulgated in November 2018.

To address the legislative amendment in respect of legal service providers, the FIC issued public compliance communication (PCC) 47 which confirms that the definition as set out in Schedule 1 of the FIC Act, includes attorneys, notaries and conveyancers.

Before the implementation of the FIC Amendment Act, 2017 (Act 1 of 2017), on 2 October 2017, legal practitioners were exempted from applying the obligations of the FIC Act to certain products and services. The services that fell under the FIC Act compliance obligations included assistance with the buying and selling of properties, the creation and operation of business undertakings, bank investment and securities accounts, as well as assistance with the formation and managing of close corporations, companies and trusts (other than testamentary trusts and trusts established in terms of a court order).

Legal matters relating to, for example, family issues, labour, immigration, civil litigation, insurance and medical claims were excluded from the realm of the FIC Act, with the exception of the reporting of suspicious and unusual transactions under section 29 of the FIC Act. With the removal of the exemptions, all services performed by legal practitioners are included in the definition and all providers of legal services must comply with all the obligations as set out in the FIC Act.

Money laundering

Money laundering occurs when criminals disguise the true nature of how they have sourced their money. They then want to transform their proceeds into 'clean' or legitimate money in the financial system. To achieve this, criminals need to move their money to a place or many places where they can pay cash and exchange their dirty money for clean i.e. where they can legitimise their proceeds.

Criminals may source their proceeds from any range of criminal activities, such as illicit trading and smuggling of weapons, poaching endangered flora and fauna, human or drug trafficking, gratification of bribery and corruption, fraud, theft, pyramid and Ponzi schemes, involvement in syndicated or organised crime, racketeering, and other crimes.

When they acquire proceeds of crime, criminals need to find avenues to spend the money in ways that will not draw attention to them directly, to how they have acquired their proceeds and to those who have assisted them in acquiring their proceeds, as this would link them to the criminal activities.

Criminals can, for example, buy a property for cash, sell it and make a profit from on-selling the property. They could then invest their profit further in other ventures in a seemingly legitimate way. These further transactions can make it difficult for authorities to retrace the steps to the origin of the dirty money.

Stages in money laundering

Often not distinct or sequential, there are generally three phases in money laundering.

Phase one: Placement – in this initial phase criminals begin introducing proceeds or assets into the domestic and/or international financial system. They may do this via financial and non-financial institutions, businesses and gambling. Criminals could opt to enter the financial system via cash purchases for high-end goods such as yachts, artwork, luxury motor vehicles, property purchases, jewellery and other sought-after items which can also be resold and where payment can be made in cash, by cheque or via electronic fund transfers.

Phase two: Layering – the primary objective in this phase is to create distance between the criminal proceeds and themselves, thereby creating anonymity and those involved in the source of the proceeds. This is done using various instruments to create complex layers of anonymity or disguise using various financial transactions. These are intended to blur audit trails, the source of proceeds and who owns them. Some methods include transferring money across jurisdictions, purchasing of shares, bonds and life insurance and reselling of high-end goods.

Phase three: Integration – in this final stage of money laundering, proceeds are fully part of the financial system. Criminals are now free to buy even more luxury items and deepen the spread of proceeds into the financial system through the purchase of property and businesses. Criminals may also look to grow proceeds even further seeking legitimate or illegal investment opportunities.

Terrorist financing

In some instances, funds are accumulated for use in the financing of terrorists, acts of terror and/or related activities. Those involved in terrorism may also launder money to accumulate further wealth for funding of their activities. The key difference between money laundering and terrorist financing is that those involved in terrorism are keen to accumulate funds for immediate or future use in financing of terrorists, acts of terrorism and/or related terrorist activities. In these instances, whether the source of funds is legitimate or appears to be legitimate, the destination and use of the funds is disguised and hidden.

WHAT CAN LEGAL PRACTITIONERS DO?

Legal practitioners are not only duty bound to act with integrity but must meet certain anti-money laundering and terrorist financing obligations in terms of the FIC Act. These compliance obligations are geared to assist in identifying the proceeds of crime, combating money laundering and terrorist financing. The FIC Act obliges all legal practitioners to:

- Register with the FIC via the FIC's electronic registration and reporting system
- Apply a risk-based approach to identifying and verifying customers
- Develop a risk management and compliance programme in managing money laundering and terrorist financing
- Keep records of transactions
- Submit regulatory reports to the FIC
- Provide ongoing training to employees on FIC Act requirements
- Appoint a compliance officer.

Registering with the FIC via the FIC's electronic registration and reporting system

As a pre-requisite for legal practitioners to begin reporting to the FIC and to contribute in the fight against crime, they first need to register with the FIC. This can be done via the FIC's website, using the registration and reporting portal – goAML.

Applying a risk-based approach to identifying and verifying customers

Legal practitioners must have a good understanding of their clients i.e. their source of funds for transactions, changes in client conduct in relation to transaction or client instructions and identification and verification information.

This is done through the client due diligence process of establishing and verifying clients (natural person or legal entity) whether it is a new or existing business relationship.

Adopting a risk-based approach to onboarding of customers allows legal practitioners the flexibility to determine the extent of customer identity verification as well as assessing and managing the money laundering and terrorist financing risk.

Institutions can vary their approach to customer identification and verification, depending on factors such as the type of customer, business relationship, product or service offering, and location. This allows legal practitioners to work smarter and not harder in meeting their FIC Act obligations.

Developing a risk management and compliance programme in managing money laundering and terrorist financing

Every legal practitioner must develop, document, maintain and implement a risk management and compliance programme (RMCP). The programme refers to a whole organisation approach in the identification and managing the risk posed by money laundering and terrorist financing activities. The programme identifies the roles and responsibilities of key individuals who will be responsible for ensuring that the institution fulfils its FIC Act compliance obligations.

The programme needs to be agreed upon by top management and filtered through the entire institutions business activities.

Keeping records of transactions

Legal practitioners must keep records of both the client identification and verification information and all transactional information. These records must be kept for five years from date of transaction and/or business relationship being concluded.

Submitting regulatory reports to the FIC

Importantly, it is a requirement that legal practitioners first register with the FIC, in order to submit reports to the FIC. As accountable institutions, legal practitioners are required to file the following reports with the FIC:

- Cash threshold (section 28) – reports on cash transactions exceeding R24 999.99
- Terrorist property (section 28A) – reports where it is suspected that the client or the accountable institution may be holding property related to the an individual or organisation involved in terrorism.
- Suspicious and unusual transaction (section 29) – reports on transactions that raise suspicions of which seem out of the ordinary

Provide ongoing training to employees on FIC Act requirements

The legal practitioner must ensure that all employees undergo the appropriate level of training on the FIC Act and the institution's RMCP.

Appoint a compliance officer

A legal practitioner that is a legal entity must have a compliance functionary to assist the senior management team. They must appoint a designated individual with appropriate and sufficient competencies and seniority to assist in the discharging of the legal practitioner's FIC Act obligations

By fulfilling these FIC Act compliance obligations, legal practitioners assist in the fight against crime, helping to create a safer and more stable business, economic and social environment, encouraging and improving domestic and foreign investor confidence and growing the economy. For more information on FIC Act obligations of all accountable institutions, visit www.fic.gov.za or call the FIC's compliance contact centre on +2712 641 6000.



CASE STUDY: Illegal trade in precious metals

The FIC and the South African Police Service conducted an investigation into illegal gold smuggling. The suspected role players were linked to several legal entities and were all involved in the gold business. The FIC identified and traced the bank accounts of the subjects, including all their financial transactions, assets and foreign accounts.

The FIC's analysis uncovered suspicious deposits and withdrawals of large sums, including transfers from business to personal accounts belonging to syndicate members.

Analysis of financial statements identified funds being transferred to attorneys, who in turn purchased high-end properties and vehicles on behalf of syndicate members.

With the help of its international counterparts, the FIC determined that some of the syndicate members held offshore bank accounts and owned properties in other jurisdictions. The FIC's financial intelligence report resulted in the arrest of syndicate members and the confiscation of assets worth about R6.8 million.

--- IMPORTANCE OF FILING REPORTS ---

The FIC uses the transactional and other data reports submitted by accountable institutions to conduct analysis and create financial intelligence reports. As the national centre for the production of financial intelligence, the FIC is the only authority empowered to produce these reports and, where necessary, shares them with competent authorities. Law enforcement, investigative and prosecutorial authorities use the financial intelligence reports of the FIC for investigations and applications for asset forfeiture.

CHECKLIST FOR LEGAL PRACTITIONERS

Methods associated with laundering illicit proceeds in the attorney's sector.

Listed below are some of the methods used by criminals in trying to channel their proceeds through legal practitioners. The list is intended to assist legal practitioners and is by no means exhaustive or complete, as criminals may adapt and review how they conduct money laundering activities.

Key money laundering and terrorist financing methods that are commonly employed or require the services of a legal professional include:

- Client accounts (administered by the legal professional)
- Purchase of property using large cash amounts
- Purchase of property
- Creation of trusts and companies

- Management of trusts and companies
- Setting up and managing charities
- Administration of deceased estates
- Providing insolvency services
- Providing tax advice
- Preparing powers of attorney
- Engaging in litigation – where the underlying dispute is a sham or the debt involves the proceeds of crime

Risk indicators:

The methods and techniques used by criminals to launder money may also be used by clients with legitimate means for legitimate purposes. Because of this, indicators should always be considered in context. The mere presence of an indicator is not necessarily a basis for a suspicion of money laundering or terrorist financing, as a client may be able to provide a legitimate explanation.

These indicators should assist legal professionals in applying a risk-based approach to their customer due diligence requirements of knowing who their client and the beneficial owners are, understanding the nature and the purpose of the business relationship, and understanding the source of funds being used in a retainer. Where there are several indicators, it is more likely that a legal professional should have a suspicion that money laundering or terrorist financing is occurring.

Risk indicators about the client:

The client is overly secret or evasive about:

- Who the client is
- Who the beneficial owner is
- Where the money is coming from
- Why they are doing this transaction this way
- What the big picture is.

The client:

- Is using an agent or intermediary without good reason
- Is actively avoiding personal contact without good reason
- Is reluctant to provide or refuses to provide information, data and documents usually required in order to enable the transaction's execution
- Holds or has previously held a public position (political or high-level professional appointment) or has professional or family ties to such an individual and is engaged in unusual private business given the frequency or characteristics involved.
- Provides false or counterfeited documentation
- Is a business entity which cannot be found on the internet and/or uses an e-mail address with an unusual domain part such as Gmail, Yahoo etc., especially if the client is otherwise secretive or avoids direct contact.
- Is known to have convictions for acquisitive crime, known to be currently under investigation for acquisitive crime or have known connections with criminals
- Is or is related to or is a known associate of a person listed as being involved or suspected of involvement with terrorist or terrorist financing related activities.

- Shows an unusual familiarity with respect to the ordinary standards provided for by the law in the matter of satisfactory customer identification, data entries and suspicious transaction reports – that is – asks repeated questions on the procedures for applying the ordinary standards.

The parties:

- The parties or their representatives (and, where applicable, the real owners or intermediary companies in the chain of ownership of legal entities), are native to, resident in or incorporated in a high-risk country
- The parties to the transaction are connected without an apparent business reason.
- The ties between the parties of a family, employment, corporate or any other nature generate doubts as to the real nature or reason for the transaction.
- There are multiple appearances of the same parties in transactions over a short period of time.
- The age of the executing parties is unusual for the transaction, especially if they are under legal age, or the executing parties are incapacitated, and there is no logical explanation for their involvement.
- There are attempts to disguise the real owner or parties to the transaction.
- The person directing the operation is not one of the formal parties to the transaction or their representative.
- The natural person acting as a director or representative does not appear a suitable representative

The source of funds:

- The transaction involves a disproportional amount of private funding, bearer cheques or cash, especially if it is inconsistent with the socio-economic profile of the individual or the company's economic profile.
- The client or third party is contributing a significant sum in cash as collateral provided by the borrower/debtor rather than simply using those funds directly, without logical explanation.
- The source of funds is unusual:
- Third-party funding either for the transaction or for fees/taxes involved with no apparent connection or legitimate explanation
- Funds received from or sent to a foreign country when there is no apparent connection between the country and the client
- Funds received from or sent to high-risk countries
- The client is using multiple bank accounts or foreign accounts without good reason.
- Private expenditure is funded by a company, business or government.
- Selecting the method of payment has been deferred to a date very close to the time of notarisation, in a jurisdiction where the method of payment is usually included in the contract, particularly if no guarantee securing the payment is established, without a logical explanation.
- An unusually short repayment period has been set without logical explanation.
- Mortgages are repeatedly repaid significantly prior to the initially agreed maturity date, with no logical explanation.
- The asset is purchased with cash and then rapidly used as collateral for a loan

To keep legal professionals from becoming involved in money laundering and terrorist financing, the above factors rely on the legal professionals:

- Being alert to risk indicating that the client is seeking to involve them in criminal activity
- Choosing to abide by their ethical obligations and applicable professional rules
- Discerning legitimate client wishes from transactions and structures intended to conceal or promote criminal activity or thwart law enforcement.

Information sourced from:

<http://www.fintrac-canafe.gc.ca/>

<http://www.fatf-gafi.org/>

<http://www.acams.org/>

<http://www.fic.gov.za/>

<http://www.austrac.gov.au/>



www.fic.gov.za | 012 641 6000

Find out how criminals target the property sector and how you can help break the cycle of abuse by visiting the Financial Intelligence Centre (FIC) campaign website page (www.fic.gov.za/campaign).