



Financial
Intelligence Centre

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**ASSESSMENT OF THE
INHERENT MONEY LAUNDERING
AND TERRORIST FINANCING RISKS
LEGAL PRACTITIONERS**

March 2024

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1. INTRODUCTION

Money laundering can be described as the process whereby criminals attempt to conceal the proceeds of their criminal activities from the actual crime thereby giving the funds derived from criminal activities an appearance of legitimacy.

Terrorist financing is the process by which individual terrorist and terrorist organisations obtain funds to commit acts of terrorism.

The legal profession is one of the non-financial sectors identified by the international anti-money laundering community as potentially highly vulnerable for money laundering and terrorist financing (ML and TF).

The Financial Intelligence Centre (FIC) conducted a risk assessment of the inherent ML and TF risks facing legal practitioners in South Africa. The risk assessment included a survey that was sent prior to the amendments of item 1 of Schedule 1 to the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act) which took effect on 19 December 2022. The survey was sent to attorneys registered under item 1 of Schedule 1, to ascertain their views on the sector's vulnerability ML and TF.

It must be noted that, when the questionnaire was sent, only attorneys were accountable institutions. However, this report refers to legal practitioners which includes the wider range of legal practitioners – being attorneys and advocates with a trust account – that have been included as accountable institutions with effect from 19 December 2022.

This report provides feedback on the risk assessment for the legal practitioners' sector, including responses received in 2019 from the attorneys who received the risk questionnaire, and also contains open-source information on the inherent national and international ML and TF risks facing legal practitioners. In addition, the FIC's regulatory knowledge of the sector and the analysis of the regulatory reports submitted by legal practitioners to the FIC are also considered.

This report offers important insights to legal practitioners, the Legal Practice Council (LPC), which is the primary supervisor for legal practitioners and the FIC, which is the anti-money laundering and combating the financing of terrorism (AML and CFT) supervisor for legal practitioners. While it is understood that the ML and TF environment may change over time, the ML and TF risks drawn from this survey and incorporated into this sector risk assessment report are nonetheless important for the sector, the LPC and the FIC.

2. SCOPE, LIMITATIONS AND METHODOLOGY OF THE RISK ASSESSMENT

This sector risk assessment report addresses principally the inherent ML and TF risk factors facing legal practitioners, and particularly attorneys and trust account advocates, pertaining to products, services, clients, transactions, delivery channels and geographical areas, and the potential for mitigation of these risks by complying with the FIC Act.

Details of mitigation factors related to compliance with the FIC Act are not included in this report. The report focuses on inherent risks.

3. OVERVIEW OF THE SECTOR AND LEGISLATIVE FRAMEWORK PERTAINING TO THE FIC ACT

3.1. Nature and regulation of the sector

3.1.1. Schedule 1, item 1 of the FIC Act was amended with effect from 19 December 2022 and now defines a legal practitioner as:

(a) A person who is admitted and enrolled to practise as a legal practitioner as contemplated in section 24(1) of the Legal Practice Act, 2014 (Act 28 of 2014) and who is—

(i) an attorney (including a conveyancer or notary) practising for his or her own account as contemplated in section 34(5)(a) of that Act; or

(ii) an advocate contemplated in section 34(2)(a)(ii) of that Act.

(b) A commercial juristic entity, as contemplated in section 34(7) of the Legal Practice Act, 2014.

To address the legislative changes introduced by the Legal Practice Act, 2014 (Act 28 of 2014) the FIC issued public compliance communication (PCC) 47 which confirms that the definition as set out in Schedule 1 of the FIC Act, includes the historical attorneys, notaries, and conveyancers.

- 3.1.2. As part of the amendments to the FIC Act Schedules that were implemented on 19 December 2022, item 8 of Schedule 2 of the FIC Act which listed the law societies as the supervisory bodies for legal practitioners was removed and the FIC has assumed the AML and CFT supervisory functions of designated non-financial business and professions (DNFBPs).
- 3.1.3. The total number of legal practitioners that were registered with the FIC at the end of February 2024 was 17 632, consisting of 17 303 attorneys and 329 advocates with a trust account. Each branch of firms of attorneys and advocates with trust accounts are required to register with the FIC. Thus, where applicable, a different registration number is issued for each individual branch of a law firm.
- 3.1.4. It must also be noted that accountable institutions are required to register with the FIC in terms of the activity or business performed, which may result in some institutions having to register under more than one item number as listed in Schedule 1 to the FIC Act. It is, for example, likely that attorneys are also conducting the business of a trust or company service provider as listed in item 2 of Schedule 1 and may therefore also be required to register under that item number.

To improve its understanding of ML and TF risks in the different sectors, the FIC implemented a self-assessment tool in the form of the “risk and compliance return” (RCR), which is a questionnaire that is compulsory for all for all DNFBP accountable institutions to complete. The number of institutions registered with the FIC at 29 February 2024 was 16 465. As at 29 February 2024, the number of registered legal practitioners under item 1 of Schedule 1 that have submitted RCRs, stood at 9 332, of which the number of institutions in the categories of “medium”, “medium high” and “high” risk totalled 865 institutions. This means that approximately 57 percent of registered legal practitioners have submitted RCRs as at 29 February 2024.

3.1.5. The FIC is still in the process of evaluating the RCR responses relating to different clients and legal services, but it is noted and accepted that some areas of legal services such as conveyancing can be regarded as being at higher risk of being abused for ML and TF purposes. The FIC has already embarked on a process to identify attorney firms that are providing conveyancing services in those regions in South Africa where property prices are higher and where there is a greater possibility of the acquisition of properties being linked to the laundering of illicit funds.

4. INTERNATIONAL MONEY LAUNDERING RISKS, AND TERRORIST AND PROLIFERATION FINANCING RISKS ASSOCIATED WITH LEGAL PRATITIONERS

4.1 The legal profession is internationally recognised as potentially vulnerable to being abused by criminals for laundering their proceeds of crimes. The services provided by the legal profession such as advising on and creating legal entities, including shell companies and trusts, property conveyancing services and the provision of client accounts, make them potentially vulnerable to ML abuse. Additionally, internationally recognised, high-risk services including managing of client affairs, establishing and managing charities, property conveyancing and the use of crowd funding can make it extremely difficult to establish source of funds.

The use of legal practitioners to recover fictitious debts has also been identified as a method to possibly move funds from one entity or person to another, thereby giving criminal proceeds an appearance of legitimacy. Furthermore, using pre-existing entities, as opposed to newly formed ones, may be used in attempts to make transactions seem more legitimate through legal services.

5. REPORTING BY LEGAL PRACTITIONERS UNDER THE FIC ACT

5.1. The volume of regulatory reports received from legal practitioners

During the seven years from April 2016 to March 2023, legal practitioners filed a total of 16 278 cash threshold reports (CTRs) at an average of 2 325 per year. During the same period, the sector filed a total of 1 971 suspicious and unusual transaction reports (STRs) at an average of 281 per year. Only one terrorist property report (TPR) was submitted during this time.

The number of regulatory reports filed by legal practitioners with the FIC in each financial year from 2016 to 2023 is depicted below.

Table 1: Regulatory reports filed by legal practitioners

Reports filed	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	Average number of reports
CTRs	2 229	2 396	2 504	2 549	2 288	2 516	1 796	2 325
STRs	133	123	430	205	269	306	505	281
TPRs	0	0	0	0	0	1	0	1

With an annual average of 2 325 CTRs and 281 STRs received from legal practitioners over the period 2016/17 to 2022/23, the volume of reporting can be regarded as very low considering that at 31 March 2023 there were 16 480 legal practitioners, including branches, registered with the FIC.

5.2. Types of reports filed

Legal practitioners registered with the FIC are obliged to file regulatory reports in terms of section 28 (CTRs), section 28A (TPRs) and section 29 (STRs) of the FIC Act. The vast majority of regulatory reports submitted by legal practitioners are CTRs. It can be assumed, therefore, that cash is still being used and appears prevalent in the legal practitioners' sector. The use of cash (sent and received by a legal practitioner) makes legal practitioners, and specifically attorneys and trust account advocates, even more vulnerable to money laundering abuse.

6. RISKS BASED ON THE RESULTS OF THE QUESTIONNAIRE SENT AS PART OF THE ORIGINAL RISK ASSESSMENT AND SUBSEQUENT RESEARCH

The risk factors used in this report align with those used in the FIC's Guidance Note 7A which also includes a reference to the risk of terrorist financing. Guidance Note 7A is available on www.fic.gov.za.

Legal practitioners must consider these factors when conducting their daily business.

6.1. Products and services risks

6.1.1. Certain products and services are regarded as posing a higher risk for money laundering purposes.

6.1.2. The products and services legal practitioners provide that are internationally recognised as more likely to be abused by criminals in the money laundering process include:

- Conveyancing: Legal practitioners who are conveyancers may knowingly or unwittingly assist criminals by falsifying documents, drafting documents with overstated or under-stated values 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 an investment that never takes place or where the funds eventually end 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 aimed at and/or result in the true ownership of assets being hidden through various layers or legal structures.

6.1.3. The method of payment for services provided by legal practitioners could, in some instances, also be a channel for money laundering, with the use of cash pointing to a higher likelihood of funds being derived from criminal activities.

6.1.4. Legal practitioners who perform the role of trustees or directors of companies are also required to obtain the necessary information about the nature of the transactions of trusts or companies, the natural persons or legal persons that are parties to such transactions with the trusts or companies, whether the transactions make economic or commercial sense, as well as the origin of the funds received by the trusts or companies, in order to make an informed decision about the ML and TF risks associated with such transactions.

6.2. Client risks

6.2.1. Listed as accountable institutions in the FIC Act, legal practitioners are required to assess, identify, understand and then risk rate the inherent ML and TF risks associated with their clients. Some clients, such as foreign politically exposed persons (FPEPs), domestic politically exposed persons (DPEPs), complex legal structures or foreigners potentially pose a higher risk for ML, depending on the identified circumstances. The establishment of complex structures, involving legal persons (companies) and legal

arrangements such as trusts and partnerships – including where such structures are named as beneficiaries for a trust – could possibly be aimed at concealing the ultimate beneficial owners of such legal persons and arrangements.

6.2.2. When dealing with their clients, legal practitioners should be aware of, *inter alia*, the following possible scenarios pertaining to the nature and behaviour of the clients that could point to possible money laundering:

- Clients trying to conceal their identities
- Transactions inconsistent with their stated income or occupation
- Clients using an unusual source of funds to transact
- Transactions do not have a legitimate or economic reason
- Clients cease their business relationships upon a request for customer due diligence information.

6.3. Transaction risk

6.3.1. International research and literature indicate that criminals can potentially use legal service providers to enter into transactions on their behalf, thereby creating an impression of legitimacy to transactions involving the proceeds of crime. Monitoring the nature and purpose of these transactions, their monetary worth and the means of payments involved, will contribute to understanding and monitoring the ML and TF risks associated with such transactions.

6.3.2. Examples of transactions that are potentially high risk for ML include the use of cash or crypto currencies in transactions, the reversing of transactions with a request to repay funds already paid and transactions that do not make economic sense. Legal practitioners should be aware of the potential ML risks associated with such transactions and take the necessary steps to mitigate such risks.

6.3.3. In addition to considering whether transactions make economic and business sense and whether the prices of assets obtained or disposed of are market related, a legal practitioner must also consider the use of cash in the buying, selling and renting of properties or other assets by their clients, where applicable.

In South Africa, cash is still used extensively, and there are indications that cash transactions occur in the legal practitioners' environment as is evident by the number of cash threshold reports filed with the FIC (see paragraph 5.1 above). In addition to the receipt of cash in their trust accounts, legal practitioners should also be aware of instances where cash is paid into their accounts or the accounts of their clients.

6.4. Delivery channel risks

- 6.4.1. Legal practitioners must be aware of the delivery channels they use to attract and deal with clients. Delivery channels that may obscure or conceal the true identity of the client, or that result in clients not being on-boarded face-to-face, may increase the risk of the legal practitioner being abused by criminals to launder the proceeds of crime. Where an intermediary is used to on-board clients, a legal practitioner must do thorough due diligence on the intermediary and its business and must be familiar with the risk mitigation processes and procedures the intermediary may have in place.
- 6.4.2. Various forms of technology are used to advertise services and to conduct business. Where social media platforms and third-party service providers are used to share information on products or services or to on-board clients, a legal practitioner must ensure that such clients are properly identified and verified, and that all relevant information pertaining to the risks posed by such clients are obtained.
- 6.4.3. A South African example of potential ML risks associated with delivery channels is where a legal practitioner is introduced to a client through an estate agent, to provide a property transfer service. In such an instance the legal practitioner can mitigate the risks associated with the use of an "intermediary" by verifying that the estate agent is registered with the Property Practitioners Regulatory Authority and that it complies with relevant legislation.

6.5. Geographic risk

- 6.5.1 Some foreign jurisdictions pose a higher risk for ML. It is important that legal practitioners be aware of the risks posed by clients from these jurisdictions and that they have the necessary risk mitigation processes in place. This risk is exacerbated by the fact that transactions can take place electronically across regions, and national or

international jurisdictions, and that such transactions often require the services of legal practitioners.

6.5.2 In addition, some areas within South Africa may pose a higher risk in respect of high-priced properties being traded, which also increase the ML risks to attorneys that provide conveyancing services in these areas. During 2023, property prices in Clifton on the Atlantic Seaboard averaged R50 million, while properties of R43 million were also sold in Camps Bay and Bantry Bay. Other Cape Town suburbs where prices reached R20 million or more included Bishopscourt, Constantia and Sea Point. Conveyancing attorneys in areas where high-value properties are marketed and sold must always ensure that extra measures are taken to ensure that the higher risks associated with such areas are being addressed.

6.5.3 Legal practitioners must be aware of the potential higher geographic risks posed by clients from the following types of countries:

- That are subject to a travel ban
- Which the Financial Action Task Force regards as a high ML risk
- That are regarded as high-secrecy jurisdictions
- Which are regarded as “tax havens”
- Jurisdictions that are subject to travel bans and trade embargoes by the United Nations Security Council (UNSC)
- Jurisdictions that are known to have high levels of organised crime, corruption or from which terrorist organisations are known to operate

6.6 Terrorist financing and proliferation financing risks

6.6.1 Where legal practitioners provide services to non-profit and non-governmental organisations, they should ensure that the funds collected are in accordance with the stated objectives of these organisations.

6.6.2 Where legal practitioners provide services to foreign clients and/or clients that are part of a complex legal structures, the origin of the client as well as the beneficial owner of such clients must be determined and must be scrutinised against the UNSC sanction lists to minimise the risks associated with TF and the financing of proliferation of weapons of mass destruction.

6.6.3 Legal practitioners should also be aware of the appropriate compliance obligations referred to in sections 26A, 26B, 26C, and 28A of the FIC Act which relate to the screening of clients to ensure that clients are not included on UNSC lists.

Legal practitioners must know how to access the referenced targeted financial sanctions list and determine whether they are conducting business with individuals and institutions on such lists.

7. INDICATORS OF MONEY LAUNDERING AND TERRORIST FINANCING ACTIVITY FOR THE SECTOR

The following could be regarded as ML and/or TF vulnerabilities and risks associated with legal practitioners:

- The use of cash for payment of services or payment into trust accounts
- Anonymity of clients and transactions that are complex in nature for which legal advice is provided by legal practitioners
- New payment technologies, such as crypto currencies
- Lack of ML or TF awareness of the legal practitioners
- Trusts, shell companies and other legal arrangements with a potential to conceal the true identity of the ultimate beneficial owners of the clients
- International payments received from clients
- High-risk customers and jurisdictions, such as clients linked to institutions or jurisdictions on the sanctions lists
- FPPOs, DPIPs, and high net worth individuals, which are internationally regarded as high-risk clients
- Organised crime can use legal practitioners to conceal proceeds of crime, obscure ultimate ownership through complex layers and legal entity structures, avoid paying tax, work around financial regulatory controls, create a veneer of legitimacy to criminal activity, create distance between criminal entities and their illicit income or wealth, avoid detection and confiscation of assets, and hinder law enforcement investigations
- Clients who offer to or do pay extraordinary fees for services that would not warrant such fees

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- Payments from non-associated or unknown third parties and payments for fees in cash where this practice is not typical
 - Where legal practitioners, including those acting as financial intermediaries, physically handle the receipt and transmission of funds through accounts they control, they may be requested to transfer real estate between parties in an unusually short period, thereby hindering the know-your-client process and potentially contribute to concealing the beneficial ownership of the client or other parties to the transaction from law enforcement and other competent authorities
 - Funds are received from or sent to a foreign country when there is no apparent connection between the country and the client
 - The client is using multiple bank accounts or foreign accounts without good reason
 - Possible involvement of FPPOs and DPIP's in instances where the entity, structure or relationships of the client make it difficult to identify its beneficial owner or controlling interests (e.g. the unexplained use of legal persons or legal arrangements)
 - Instances where clients, for no apparent reasons change the way in which transactions are concluded or change their instructions to the legal practitioners on short notice or in a manner that does not make economic sense.

8. CONCLUSIONS

- 8.1. Based on the international environment, the risk factors described above and the range of services they offer, it is evident that legal practitioners are potentially at high risk of being exposed to the inherent risk of ML and TF. They should therefore take all the necessary precautionary steps to reduce the risk of them being exposed to abuse by criminals who want to launder the proceeds of crime through the sector or use them as channels for TF.
- 8.2. The use of cash is evident and appears prevalent in the legal practitioner sector which increases the ML and TF risk profile of legal practitioners. The number of regulatory reports the FIC has received from legal practitioners is very low. This is of concern, as it points to a possible lack of compliance awareness among legal practitioner firms and their staff.

Overall, the inherent risk of ML for the legal practitioner sector in South Africa, based on national and international experience, is classified as high and the inherent TF risk is regarded as low.