

Legal professionals: Fighting against money laundering without compromising clients' interests



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How do we know whether we are winning the counter-money laundering war? Since the inclusion of legal professionals in the scope of professionals in the FATF¹ Recommendations in 2003, there has been a wide-ranging debate as to whether the application of the FATF Recommendations is consistent with fundamental human rights of clients and the ethical obligations of legal professionals.

Legal professionals' involvement in anti-money laundering

In many cases, criminals use legal professionals to provide an impression of respectability to dissuade suspicion from financial institutions and to create an added step in the chain of any possible investigations. For this reason, legal professionals have always been subject to strict ethical obligations and professional rules. The following point must be made clear: legal professionals have duties to the Court with take precedence over duties to the client, meaning that they must not act in a way which facilitates the engaging in criminal conduct by their clients. Lawyers should, therefore, be naturally deterred from willfully engaging in money laundering or terrorist financing (ML/TF). However, legal professionals remain globally vulnerable to ML/TF risks considering the specific legal services they provide.

The Anti-Money Laundering and Counter Terrorist Financing Ordinance (AMLO) has been extended to legal professionals from 1st March 2008 to ensure that legal professionals comply with due diligence and record keeping obligations regarding their clients. The Law Society of Hong Kong has further published Practice Direction P to guide legal professionals by enacting clear compliance rules for them under the AMLO. Most importantly, red flag indicators assist legal professionals to comply efficiently with their customer due diligence

requirements. Understanding the nature and the purpose of the client's business relationship is essential. Lawyers must always pay great attention to all reasonably available information regarding the matters that are entrusted to them by their clients.

The fight against money laundering by legal professionals must not, however, under any circumstances, be done by sacrificing their clients' legitimate interests.

Protecting client's interests

Legal professional privilege is considered to be a fundamental human right and legal professionals are required to protect it. The right of a client to obtain legal representation and advice, to be transparent with his/her legal adviser and not to be afraid of disclosure of those discussions, is recognized as a fundamental right of access to justice. However, the following limitations to this fundamental right should be noted: legal professional privilege applies only in relation to events (e.g. crimes, wrongdoings) to which the lawyer is a total outsider and cannot concern crimes to which lawyers have contributed by providing legal assistance and advice.

In a situation where a legal professional is an accomplice to a crime, there is indeed no place for legal professional privilege. Legal professionals must not assist any potential clients intending to affect the interests of justice, or willfully breach the law.

It is, therefore, essential that legal professionals are able to distinguish between clients with legitimate interests from those intending to complete transactions with the purpose of concealing criminal activity. Lawyers must interact in a prudent but sensitive manner at an early stage of the relationship with their new clients or their existing clients entrusting them with new matters. Sometimes detecting these criminal activities can be a challenge for legal professionals as methods and techniques used by criminals to launder money may also be used by clients with legitimate means for legitimate purposes (ex: setting-up companies, completing standards international transactions, purchasing real estate).

Entrepreneurs and companies seeking privacy in their legitimate business affairs and finances should be aware that, in today's world, their best allies to achieve these goals are experienced legal professionals who comply with their anti-money laundering obligations: they offer a safe, legitimate haven with the protection of legal professional privilege as well as the protection of law offices where their files and documents are stored, and which cannot be easily accessible, even by civil servants of the various government bodies created under the AMLO.



HKMA fined Guotai Junan Securities \$25m for breaching anti money-laundering rules

¹Formed in 1989, the Financial Action Task Force (FATF) is an inter-governmental body comprising the Group of Seven industrialized nations to set standards and foster international action against money laundering.