FATF

FATF REPORT

Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals

June 2013

FINANCIAL ACTION TASK FORCE

The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.

For more information about the FATF, please visit the website:

www.fatf-gafi.org

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ACRONYMS

AML/CFT	Anti-money laundering/counter financing of terrorism
APG	Asia/Pacific Group on Money Laundering
CDD	Customer due diligence
CFATF	Caribbean Financial Action Task Force
DNFBPs	Designated non-financial businesses and professions
ECHR	European Convention on Human Rights
FIU	Financial intelligence units
GIABA	Intergovernmental Action Group against Money Laundering in West Africa
GIFCS	Group of International Finance Centre Supervisors
MENAFATF	Middle East and North Africa Financial Action Task Force
ML	Money laundering
OECD	Organisation for Economic Co-operation and Development
PEP	Politically exposed person
SRBs	Self-regulatory bodies
STR	Suspicious transaction report
TF	Terrorist financing

EXECUTIVE SUMMARY

In June 2012, the Financial Action Task Force (FATF) Plenary met in Rome and agreed to conduct typology research into the money laundering and terrorist financing (ML/TF) vulnerabilities of the legal profession.

Since the inclusion of legal professionals in the scope of professionals in the FATF Recommendations in 2003, there has been extensive debate as to whether there is evidence that legal professionals have been involved in ML/TF and whether the application of the Recommendations is consistent with fundamental human rights and the ethical obligations of legal professionals.

The purpose of this typology is to determine the degree to which legal professionals globally are vulnerable for ML/TF risks in light of the specific legal services they provide, and to describe red flag indicators of ML/TF which may be useful to legal professionals, self-regulatory bodies (SRBs), competent authorities and law enforcement agencies.

This typology report does not offer guidance or policy recommendations, nor can it serve as a "one-size-fits-all" educational tool for individual legal professionals practicing in different settings, across countries with varying supervisory regimes and secrecy, privilege and confidentiality rules.

The report concludes that criminals seek out the involvement of legal professionals in their ML/TF activities, sometimes because a legal professional is required to complete certain transactions, and sometimes to access specialised legal and notarial skills and services which could assist the laundering of the proceeds of crime and the funding of terrorism.

The report identifies a number of ML/TF methods that commonly employ or, in some countries, require the services of a legal professional. Inherently these activities pose ML/TF risk and when clients seek to misuse the legal professional's services in these areas, even law abiding legal professionals may be vulnerable. The methods are:

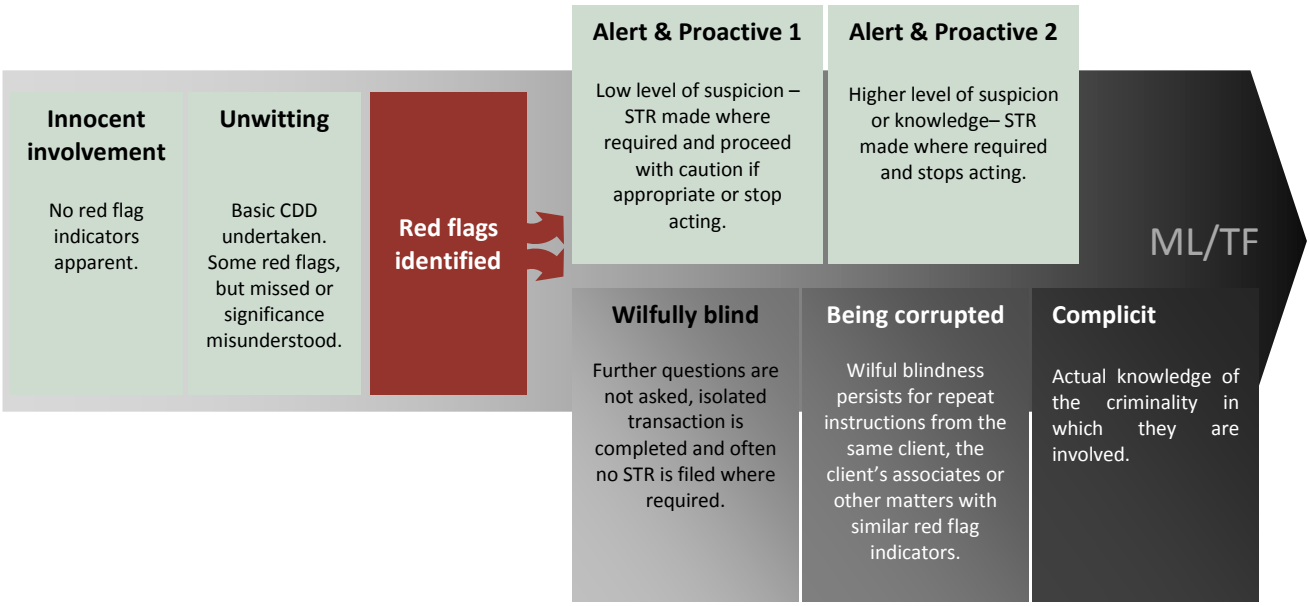
- misuse of client accounts;
- purchase of real property;
- creation of trusts and companies;
- management of trusts and companies;
- managing client affairs and making introductions;
- undertaking certain litigation; and
- setting up and managing charities.

In this report, over 100 case studies referring to these and other ML/TF methods were taken into account. While the majority of case studies in this report relate to ML activity, similar methodologies are capable of being used for TF activity.

While some cases show instances where the legal professional has made a suspicious transaction report (STR), a significant number involve a prosecution or disciplinary action, so a higher standard

of intent had to be proven, meaning those cases were more likely to involve a legal professional who was or became complicit. From reviewing the case studies and literature as a whole, the involvement of legal professionals in the money laundering of their clients is not as stark as complicit or unwitting, but can best be described as a continuum.

Involvement of Legal Professionals in money laundering and terrorist financing (ML/TF)



Red flag indicators relating to the client, the source of funds, the type of legal professional and the nature of the retainer, were developed with reference to these cases and educational material provided by SRBs and competent authorities. Whatever the involvement of the legal professional, the red flag indicators are often consistent and may be useful for legal professionals, SRBs, competent authorities and law enforcement agencies. Red flag indicators should be considered in context and prompt legal professionals to undertake risk-based client due diligence. If the legal professional remains unsatisfied with the client's explanation of the red flags, the next step taken will depend on the unique and complex ethical codes, law governing his or her professional conduct and any national AML/CFT obligations.

Combating ML/TF relies on legal professionals:

- being alert to red flags indicating that the client is seeking to involve them in criminal activity
- choosing to abide by the law, their ethical obligations and applicable professional rules; and
- discerning legitimate client wishes from transactions and structures intended to conceal or promote criminal activity or thwart law enforcement.

While some SRBs and professional bodies are quite active in educating their members on the ML/TF vulnerabilities they face and the red flag indicators which could alert them to a suspicious

transaction, this level of understanding or access to information on vulnerabilities was not consistent across all countries which replied to the questionnaire. A lack of awareness and attendant lack of education increases the vulnerability of legal professionals to clients seeking to misuse otherwise legitimate legal services to further ML/TF activities.

Case studies show that not all legal professionals are undertaking client due diligence (CDD) when required. Even where due diligence is obtained, if the legal professional lacks understanding of the ML/TF vulnerabilities and red flag indicators, they are less able to use that information to prevent the misuse of their services. Greater education on vulnerabilities and awareness of red flag indictors at a national level may assist to reduce the incidence of criminals successfully misusing the services of legal professionals for ML/TF purposes.

Finally, the report challenges the perception sometimes held by criminals, and at times supported by claims from legal professionals themselves, that legal professional privilege or professional secrecy would lawfully enable a legal professional to continue to act for a client who was engaging in criminal activity and/or prevent law enforcement from accessing information to enable the client to be prosecuted. However, it is apparent that there is significant diversity between countries in the scope of legal professional privilege or professional secrecy. Practically, this diversity and differing interpretations by legal professionals and law enforcement has at times provided a disincentive for law enforcement to take action against legal professionals suspected of being complicit in or wilfully blind to ML/TF activity.

CHAPTER 1

INTRODUCTION

BACKGROUND

As financial institutions have put anti-money laundering (AML) measures into place, the risk of detection has become greater for those seeking to use the global banking system to launder criminal proceeds. Increasingly, law enforcement see money launderers seeking the advice or services of specialised professionals to help them with their illicit financial operations.[1]

In 2004, Stephen Schneider[2] published a detailed analysis of legal sector involvement in money laundering cases investigated by the Royal Canadian Mounted Police. This is the only academic study to date which has had access to law enforcement cases and contains a section focussed solely on the legal sector, both in terms of vulnerabilities and laundering methods. His research identified a range of services provided by legal professionals which were attractive to criminals wanting to launder the proceeds of their crime. Some of the services identified include: the purchasing of real estate, the establishment of companies and trusts (whether domestically, in foreign countries or off-shore financial centres), and passing funds through the legal professional's client account.

Financial Action Task Force (FATF) typologies have confirmed that criminals in many countries are making use of mechanisms which involve services frequently provided by legal professionals, for the purpose of laundering money.[3]

A particular challenge for researching money laundering / terrorist financing methods that may involve legal professionals is that many of the services sought by criminals for the purposes of money laundering are services used every day by clients with legitimate means.[4]

There is evidence that some criminals seek to co-opt and knowingly involve legal professionals in their money laundering schemes. Often however the involvement of the legal professional is sought because the services they offer are essential to the specific transaction being undertaken and because legal professionals add respectability to the transaction.[5]

Schneider's study noted that in some cases the legal professional was innocently involved in the act of money laundering. In those cases, there were no overt signs that would alert a legal professional

1 FATF (2004)

2 Schneider, S. (2004)

3 FATF (2006) and FATF (2007)

4 Schneider, S. (2004)

5 Schneider, S. (2004)

that he/she was being used to launder the proceeds of crime. However, Schneider identified other cases where legal professionals continued with a retainer in the face of clear warning signs. He questioned whether it might be the case that legal professionals lacked awareness of the warning signs that they were dealing with a suspicious transaction or were simply wilfully blind to the suspicious circumstances. [6]

Subsequent FATF typologies research mentions the involvement of legal professionals in money laundering/terrorist financing (ML/TF). This research has generally tended to focus more on how the transactions were structured, rather than on the role of the legal professional or his/her awareness of the client's criminal intentions.

Organisations representing legal professionals and some academics have sometimes criticised claims that legal professionals are unwittingly involved in money laundering.[7] They have questioned whether it is even possible to identify key warning signs which might justify imposing anti-money laundering/counter financing of terrorism (AML/CFT) requirements on legal professionals and even whether this might be an effective addition to the fight against money laundering and terrorist financing.[8]

Further, certain sources suggest that legal professionals are required to adhere to strict ethical or professional rules and this fact should therefore be a sufficient deterrent to money laundering or terrorist financing occurring in or through the legal sector. Following this same line of thinking, these sources of existing criminal law may sufficiently deter legal professionals from wilfully engaging in money laundering[9].

Since Schneider's 2004 study, a number of countries have implemented the FATF Recommendations for legal professionals.[10] This extension of AML/CFT requirements to the legal professions has created the need for legal professionals, their supervisory bodies and financial intelligence units (FIUs) to better understand how legal services may be misused by criminals for money laundering and terrorist financing.

This typology study was undertaken to synthesise current knowledge, to systematically assess the vulnerabilities of the legal profession to involvement in money laundering and terrorist financing, and to explore whether red flag indicators can be identified so as to enable legal professionals to distinguish potentially illegal transactions from legitimate ones.

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6 Schneider, S. (2004), pp. 72

7 Middleton, D.J. and Levi, M. (2004), pp 4

8 Middleton, D.J. and Levi, M. (2004), pp 4

9 For example the CCBE Comments on the Commission Staff Working Document "The application to the legal profession of Directive 91/308/EEC on the prevention of the use of the financial system for the purpose of money laundering" www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_130207_CCBE_comme1_1194003555.pdf

10 FATF Recommendations 22(d), 23(a) and Interpretative Note to Recommendations 23 and 28 (b).

OBJECTIVES

The key objectives of this report:

1. Identify the different functions and activities within the legal profession on a world-wide basis, the different types of AML/CFT supervision for the legal profession and the key issues raised by stakeholders on why applying an AML/CFT regime to the legal profession has been challenging.

2. Identify examples where legal professionals have been complicit in money laundering, with a view to identifying red flag indicators and why their services were of assistance to criminals.

3. Identify specific types of transactions in which legal professionals may have been unknowingly involved in money laundering, with a view to identifying red flag indicators and why their services are of assistance to criminals.

4. Obtain information on the level of reporting from the legal profession and the types of matters reported, with a view to identifying red flag indicators.

5. Consider how the supervisory structure and legal professional privilege, professional secrecy, and confidentiality influences reporting approaches across the legal profession, along with the role ethical obligations did play or should have played in the case studies obtained.

6. Identify good practice in terms of awareness raising and education of the legal profession, positive interaction between law enforcement and professional bodies, and the role of effective sanctioning by either professional bodies for ethical breaches and law enforcement for criminal conduct.

There is extensive literature and litigation on the question of the appropriateness of the inclusion of legal professionals in the AML/CFT regime in the light of their ethical obligations and a client's fundamental rights.[11] There has also been extensive debate as to whether legal professionals are complying with legal obligations to undertake CDD and make suspicious transaction reports (STRs) when this requirement applies to the profession.[12]

Analysing these issues from a policy perspective is not within the scope of a typology study. This report discusses some of the ethical obligations of legal professionals and considers the remit of legal professional privilege/professional secrecy; however, it does so to describe the context in which legal professionals operate. The report also examines the context in which legal professionals covered by the FATF Recommendations undertake their activities and how those Recommendations have been applied in a range of countries. This in turn, will assist in assessing the ML/TF vulnerabilities facing the legal profession. Likewise, the report looks at suspicious transaction reporting by legal professionals with the aim of identifying areas of potential vulnerability, which legal professionals are themselves recognising.

11 Gallant, M. (2010); Levi, M. (2004); Chervier, E. (2004)

12 European Commission(2006); Deloitte (2011)

METHODOLOGY USED IN THIS STUDY

Led by the Netherlands and the United Kingdom, the project team was made up of experts from: the Asia Pacific Group on Money Laundering (APG), Australia, Austria, Canada, China, Denmark, France, the Group of International Finance Centre Supervisors (GIFCS), Italy, the MONEYVAL Committee of the Council of Europe, Switzerland, the United States and the World Bank. In addition, to government and law enforcement representatives, the project team included members from the private sector having supervisory responsibilities for AML/CFT compliance.

In preparing this report, the project team has used literature and initiatives from the sources listed below (a detailed list of these sources is included in Annex 1). The research relies on literature and studies from 2003 onwards to ensure a focus on more current case examples and determine whether vulnerabilities persisted following the inclusion of legal professionals in the FATF Recommendations.

- Typologies studies previously undertaken by FATF.
- Other studies produced by international organisations such as the World Bank and the Organisation for Economic Co-operation and Development (OECD).
- Research initiatives carried out by academics and consultants either within individual countries or on a regional basis.
- Research initiatives carried out by government authorities.
- Research initiatives undertaken by AML/CFT supervisors, non-government organisations and the private sector.

To supplement information from these sources, the project team also developed two questionnaires: one for FATF members and associate members and one for self-regulatory bodies (SRBs) and professional bodies (a list of countries who responded to the questionnaire is available in Annex 2).

The project team received 76 responses to the questionnaire were received from October 2012 to January 2013 from 38 countries. Responses were from both civil and common law countries and included members of FATF, the Caribbean Financial Action Task Force (CFATF), GIFCS, the Middle East and North Africa Financial Action Task Force (MENAFATF) and Moneyval. SRBs and professional bodies also provided responses.

A workshop on money laundering and terrorist financing in the legal sector was held during the joint FATF/GIABA (Intergovernmental Action Group against Money Laundering in West Africa) experts' meeting on typologies held in Dakar, Senegal, in November 2012. Presentations were made by participating representatives from government departments, FIUs and law enforcement agencies (Netherlands, Canada, Nigeria, the United Kingdom) as well as from AML/CFT supervisors (Spain, Gibraltar and the Netherlands) and from the International Bar Association.

The workshop considered:

- Ethical challenges for the legal profession;

- Good practice in supervision;
- The usefulness of STRs filed by legal professionals; and
- Money laundering case studies demonstrating different types of involvement by legal professionals, in order to identify vulnerabilities and red flag indicators.

Informal workshops were also held in February 2013 with the American Bar Association and the Council of European Bars to consider a number of the case studies identified from the literature review and the FATF questionnaire responses. The purpose of these workshops was to consider case studies from the perspective of the private sector to understand the professional, ethical and legal obligations of the range of legal professions in different countries, as well as identify warning signs of money laundering for either the legal professionals themselves or the SRBs representing them.

The literature review, workshops and questionnaire responses painted a consistent picture of the vulnerabilities of legal professionals, as well as a consistent view of the red flag indicators, which may be of use for legal professionals, supervisors and law enforcement.

These sources also provided an extensive collection of cases demonstrating different types of involvement of legal professionals in money laundering and a few cases involving possible terrorist financing. While the majority of case studies in this report relate to ML activity, similar methodologies are capable of being used for TF activity.

In May 2013, a consultation on the draft report took place in London with representatives from the legal sector, who had previously contributed to the typology project. This consultation aimed to ensure that nuances specific to different legal systems and countries where sufficiently recognised and that the responses provided to the questionnaire by SRBs and professional bodies where accurately reflected in the report.

CHAPTER 2

SCOPE OF THE LEGAL SECTOR

The FATF Recommendations, including in the most recent revision of 2012, apply to legal professionals only when they undertake specified financial transactional activities in the course of business. The Recommendations do not apply where a person provides legal services 'in-house' as an employee of an organisation.[13]

This section examines the context in which legal professionals covered by the FATF Recommendations undertake their activities and how those Recommendations have been applied in a range of countries[14].

TYPES OF LEGAL PROFESSIONALS AND THEIR ROLES

Legal professionals are not a homogenous group, from one country to another or even within an individual country.

There are approximately 2.5 million legal professionals practicing in the countries covered by the questionnaire responses.. The size of the sector within each country ranged from 66 legal professionals to over 1.2 million. Titles given to different legal professionals varied between countries, with the same title not always having the same meaning or area of responsibility from one country to another. While some generalisations can be made depending on whether the country has a common law or civil law tradition, even these will not always hold true in all countries. See Annex 4 for a discussion of the types of activities undertaken by legal professional identified through the questionnaire responses.

The range of activities carried out by legal professions is diverse and varies from one country to another. It is therefore important that competent authorities understand the specific roles undertaken by different legal professionals within their respective country when assessing the vulnerabilities and risks that concern their legal sector.

13 Annex 3 contains the relevant definitions for the range of legal professions considered in this report.

14 Jurisdictions that responded to the questionnaire.

APPLICATION OF AML/CFT OBLIGATIONS

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[15] 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.

As evidenced by mutual evaluation reports[16], full implementation of these specific Recommendations has not been universal. As a consequence, a major part of the legal profession is not covered.

In order to assess the current vulnerabilities, the project team felt it was important to understand in what situations legal professionals were covered by the AML/CFT obligations within their countries and how these obligations applied to them. The application of the CDD and reporting obligations are discussed below, while the approach to the supervisory obligations is covered in Chapter 3.

From the questionnaire responses, while countries have continued to transpose the requirements almost every year since 2001, the majority of countries did so between 2002 and 2004 and between 2007 and 2008.

CLIENT DUE DILIGENCE

Box 1: **Recommendation 22**

The customer due diligence and record-keeping requirements set out in Recommendations 1, 11, 12, 15, and 17, apply to designated non-financial businesses and professions (DNFBPs) in the following situations:

(d) 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.

15 CDD includes identifying and verifying the identity of the client, beneficial owners where relevant, understanding the nature and purpose of the business relationship (including the source of funds). Records of the CDD material must be maintained.

16 The third round of mutual evaluations was based on the 40+9 Recommendations. The FATF Recommendations were revised in 2012, for the fourth round of mutual evaluations, due to begin after the publication of this report.

The majority of countries that apply CDD obligations to legal professionals have done so through national law. A few countries also have SRB-issued guidance to reinforce the legal requirements or provide specific details of the requirements.

In three of the four responses to the questionnaire, where legal professionals are not currently subject to CDD provisions as set out in the FATF Recommendations[17], a number of professional bodies have applied some CDD requirements to their members.

To ensure compliance with international obligations imposed by the United Nations and the FATF regarding targeted financial sanctions, many countries require legal professionals to have regard to whether a client is on a sanctions list. In the United States this list also includes known terrorists, narcotics traffickers and organised crime figures. While this is a separate requirement, apart from the AML/CFT CDD obligations, it does require legal professionals to have some understanding of the identity of their client.

REPORTING OBLIGATIONS

Box 2: **Recommendation 23**

The requirements set out in Recommendation 18 to 21 apply to all DNFBPs, subject to the following qualifications:

a) Lawyers, notaries, other independent legal professionals and accountants should be required to report suspicious transaction when, on behalf of or for a client, they engage in a financial transaction in relation to the activities described in paragraph (d) of Recommendation 22. Countries are strongly encouraged to extend the reporting requirement to the rest of the professional activities of accountants, including auditing.

Interpretive Note to Recommendation 23

1. 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.
2. It is for each country to determine the matters that would fall under legal professional privilege or professional secrecy. This would normally cover information lawyers, notaries or other independent legal professionals receive from or obtain through one of their clients: a) in the course of ascertaining the legal position of their client, or b) in performing their task of defending or representing the client in, or concerning judicial, administrative, arbitration or mediation proceedings.
3. Countries may allow lawyers, notaries, other independent legal professionals and

[17] Australia, Canada (although notaries in British Columbia are covered in law), and the United States. In Turkey the law applying the obligations has been suspended awaiting the outcome of legal action, but no specific due diligence requirements have been applied by the relevant professional body. In Canada, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) and associated regulations provide that lawyers must undertake client identification and due diligence, record-keeping and internal compliance measures when undertaking designated financial transactions. These provisions are in force but are inoperative as a result of a court ruling and related injunctions.

accountants to send their STR to their appropriate self-regulatory organisations, provided that there are appropriate forms of cooperation between these organisations and the FIU.

4. Where lawyers, notaries, other independent legal professionals and accountants acting as independent legal professionals seek to dissuade a client from engaging in illegal activity, this does not amount to tipping-off.

The reporting obligations in the countries which responded to the questionnaire can be characterised as follows:

- Where the obligation to file an STR is applied to legal professionals the obligation is always contained in law rather than guidance.
- In the majority of countries, the STR is submitted directly to the FIU. In seven[18] of the countries, the STR is filed with the SRB. These are civil law countries in Europe.
- In the two of the four countries where AML/CFT obligations for filing an STR have not been extended to legal professionals[19], there is a requirement to comply with threshold reporting, which applies to cash payments above a certain amount. In such cases, the legal professional reports with the knowledge of the client.
- A few[20] countries combine the requirement to make an STR with threshold reporting.

UNIQUE FEATURES OF THE SECTOR

ETHICAL OBLIGATIONS

Ethical obligations apply to legal professionals and the work they undertake.

During the joint FATF/GIABA experts' meeting in November 2012 the International Bar Association (IBA) presented its *International Principles on Conduct for the Legal Profession*[21] and outlined some of the competing ethical requirements that legal professionals (other than notaries) must consider when complying with AML/CFT requirements.

The IBA principles were adopted in 2011 and are not binding for member bar associations and law societies. Each professional association and legal sector regulator or supervisor has its own ethical or professional rules or code of conduct[22]. Many – but not all -- are able to enforce compliance with those rules and have the power to remove legal professionals from practice.

18 Belgium, Czech Republic, Denmark, France, Germany, Luxembourg, and Portugal.

19 Australia and the United States.

20 Curacao requires all cash transactions over 20 000 to be reported, while in Montenegro all contracts for sale of real property must be filed in addition to STRs being made.

21 International Bar Association (2011)

22 Note – in countries which have a federal system, this can differ from state to state as well.

While differences may apply in individual countries, the relevant principles from the IBA are outlined below to give an indication of the types of professional obligations which apply to legal professionals other than notaries.

Box 3: **The IBA principles on conduct for the legal profession**

1. **Independence**

   A legal professional shall maintain independence and be afforded the protection such independence offers in giving clients unbiased advice and representation. A legal professional shall exercise independent, unbiased professional judgment in advising a client, including as to the likelihood of success of the client's case.

2. **Honesty, integrity and fairness**

   A legal professional shall at all times maintain the highest standards of honesty, integrity and fairness towards the lawyer's clients, the court, colleagues and all those with whom the lawyer comes into contact.

3. **Conflicts of interest**

   A lawyer shall not assume a position in which a client's interest conflict with those of the lawyer, another lawyer in the same firm, or another client, unless otherwise permitted by law, applicable rule of professional conduct, or, if permitted, by client's authorisation.

4. **Confidentiality/professional secrecy**

   A legal professional shall at all times maintain and be afforded protection of confidentiality regarding the affairs of present or former clients, unless otherwise allowed or required by law and/or applicable rules of professional conduct.

   Commentary on the principle: However a legal professional cannot invoke confidentiality/professional secrecy in circumstances where the legal professional acts as an accomplice to a crime.

5. **Clients' interests**

   A legal professional shall treat client interests as paramount, subject always to there being no conflict with the legal professional's duties to the court and the interests of justice, to observe the law, and to maintain ethical standards.

   Commentary on the principle: Legal professionals must not engage in, or assist their client with, conduct that is intended to mislead or adversely affect the interests of justice, or wilfully breach the law.

The role of a notary varies significantly depending on whether the professional is a civil-law notary or public law notary, and accordingly the professional and public obligations of a notary vary from country to country. However, the relevant principles from the International Union of Notaries code of ethics[23] provides an indication of the general principles:

[23] International Union of Notaries (2004)

Box 4: **International Union of Notaries Code of Ethics**

Notaries must carry out their professional duties competently and with adequate preparation, performing their essential functions of advising, interpreting and applying the law, acquiring specific knowledge of notarial matters and conforming to professional standards.

Notaries must always verify the identities of parties and the capacity in which they are acting. They must also give expression to their wishes.

Notaries must comply with their professional duty of confidentiality both in the course of their professional services and thereafter. They are also obliged to ensure that this requirement is similarly satisfied by their employees and agents.

Notaries are not bound by their professional duty of confidentiality purely as a result of their obligation to act in concert with any public authorities with which they become involved because of a specific regulation or an order of a judicial or administrative body, including in particular the authority responsible for monitoring the propriety of commercial transactions.

Notaries must conduct themselves in the course of their professional duties with impartiality and independence, avoiding all personal influence over their activities and any form of discrimination against clients.

When acting in their official capacity notaries must balance the respective interests of the parties concerned and seek a solution with the sole objective of safeguarding both parties.

Notaries must act suitably and constructively in the discharge of their duties; they must inform and advise the parties as to the possible consequences of their instructions, having regard to all aspects of normal legal procedure for which they are responsible; they must select the judicial form most appropriate to their intentions and ensure its legality and relevance; they must provide the parties with any clarification requested or necessary to ensure conformity with decisions taken and awareness of the legal force of the deed.

Many SRBs consider that these codes of conduct and professional rules prevent legal professionals from being knowingly involved in money laundering or terrorist financing. Furthermore, if a member had doubts about a transaction or client, that the member would either stop acting or refuse to act, as he or she could not, according to the code of ethics, engage in criminal activity with the client.

The case studies show that many areas of the legal professional's work are open to exploitation by criminals and may attract misuse for money laundering or terrorist financing, as criminals identify weaknesses in processes, legislation and understanding of red flag indicators.

Under professional obligations, the duties to the court (and in the case of the notaries - to the public), take precedence over duties to the client, with the result that the legal professional must not engage in criminal conduct and must not act in a way which facilitates their client engaging in criminal conduct.

Participants at the Dakar meeting acknowledged that the FATF Recommendations specifically recognise the challenges posed by legal professional privilege and professional secrecy. The

Recommendations seek to ease that conflict for legal professionals by specifying that there is no requirement to submit an STR when privilege or secrecy applies.

Further, where legal professionals fail to act with integrity by becoming involved in money laundering or terrorist financing, then professional disciplinary action can be considered. Depending on the specific involvement of the legal professional, this can be in addition to, or instead of, taking criminal action against the professional.

However, there are a number of other ethical or professional challenges highlighted in responses to questionnaires and in meetings, particularly with regard to the manner in which the AML/CFT regime applied to legal professionals other than notaries:

- Where there was a requirement in national law to obtain due diligence information and provide it to law enforcement or other competent authorities, especially without the requirement for a court order, many legal professionals considered this to impinge upon their ability to act with appropriate independence.
- Where following the filing of an STR, legal professionals were required to continue with a transaction or expected to do so to avoid tipping off, but were unable to discuss the STR with the client, then some legal professionals felt they were being required by law to continue to act in the face of a conflict of interest. Many expressed the view that if an STR was warranted, it was a sign that the trust at the heart of the client/legal professional relationship had been broken and it was no longer appropriate to act on behalf of the client.

As this is a typology project, it is not appropriate for this report to comment on the merits of these views or to recommend a policy response. However, further consideration of these challenges by others at a future date may assist in more effectively addressing the vulnerabilities identified later in this report.

CLIENT FUNDS

Most legal professionals are permitted to hold client funds.

From the questionnaire responses, the professional body holds the client funds in a few civil law countries[24]. The professional body requires an explanation of who the funds are held for and why, and will monitor the accounts for any unusual transactions which would suggest money laundering.

In almost all other countries however, legal professionals are required to hold client funds in a separate account[25] with a recognised financial institution, and use it only in accordance with their client's instructions and in relation to the provision of legal services.

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24 Belgium, France, the Netherlands , In Austria the legal professional holds the money but must notify the Bar of any payment over EUR 40 000, while all deposits with a notary in Italy must be recorded in a public register.

25 These accounts have various names, including client accounts and trust accounts.

In many countries there is a requirement to provide an annual report to the professional body that could also inspect the accounts. In a few[26] countries, rules prohibit the acceptance of cash over set limits, although these limits varied significantly. Within some countries, cash is an acceptable form of payment for legal professionals' services, but its receipt is subject to threshold reporting requirements.

These obligations are often outlined in law or professional rules and could be enforced by disciplinary sanctions.

Box 5: **Example of professional body holding client funds: CARPA (France)**

The system in France known as CARPA is outlined below[1]:

This system was introduced by an Act of 25 July 1985 and requires that all income be credited to a special account. There is one CARPA for each Bar, one account for each legal professional member of the Bar and one sub-account for each case.

Any withdrawal of money must be authorised by the CARPA. Any receipt of fees cannot be done without a written authorisation by the client. Any movement of capital from one sub-account to another is forbidden unless authorised by the President of the CARPA.

The sums of money only pass in transit through the CARPA and the CARPA immediately controls the suspicious lack of movement on a sub-account. No sub-account is allowed to be overdrawn.

The CARPA is controlled by an internal committee but also by the bankers and an independent accountant: they check the nature of the case handled by the legal professional, the origin of the money and the identity of the beneficiary of a payment.

1. Chervrier, E. (2004) pp. 194-196.

The use of client accounts has been identified previously[27] as a potential vulnerability, as it may enable criminals to either place money within the financial system and / or use the money as part of their layering activity, with fewer questions being asked by financial institutions because of the perceived respectability and legitimacy added by the involvement of the legal professional.

CONFIDENTIALITY, PRIVILEGE AND PROFESSIONAL SECRECY

The right of a client to obtain legal representation and advice, to be candid with his legal adviser and not fear later disclosure of those discussions to his prejudice, is recognised as an aspect of the fundamental right of access to justice laid down in the Universal Declaration of Human Rights.

26 Canada, Italy, the Netherlands and Spain.

27 Schneider (2004); FATF (2004).

As outlined above, the FATF Recommendations recognise this right by excluding information covered by legal professional privilege or professional secrecy from the obligation to file an STR and provides that it is a matter for each country as to what those terms cover.[28]

The terms **confidentiality**, **legal professional privilege** and **professional secrecy** are often used interchangeably to describe the protection provided for this right, but legally each term has a different application, meaning and consequence, depending on the country under consideration.

The area of legal professional privilege and professional secrecy is complex, with subtle differences in application from country to country. The summary below is taken from questionnaire responses and provides a high-level overview.

The concept of **confidentiality** seems to apply to all types of legal professionals and to all information obtained in the course of the legal professional's interaction with clients and potential clients. In most countries, it appears that confidentiality can be waived by the client or overridden by express provisions in law.

Legal **professional privilege** and **professional secrecy** appear to offer a higher level of protection to information than does confidentiality. The remit of legal professional privilege and professional secrecy is often contained in constitutional law or is recognised by common law, and is tied to fundamental rights laid down in treaty or other international obligations.

Often, the protection offered to information subject to legal professional privilege and professional secrecy is also contained in criminal law, either in a statute or a rule of evidence. In many countries, the protection will be given to information received or given either for the purpose of current or contemplated litigation, or for the seeking of advice where the legal professional is exercising their skill and judgement as a legal professional. However, some of the questionnaire responses suggested that the protection applies to all information obtained by or provided to the legal professional

In many countries:

- The client can waive his or her right to legal professional privilege or professional secrecy, but in some countries, the legal professional is obliged to ignore the client's waiver if the professional decides that a waiver is not in the client's best interests.
- Legal professional privilege or professional secrecy will be lost if the legal professional is being used for the purpose of committing a crime or a fraud. However the extent of information needed to invoke the crime/fraud exemption varies from country to country, but is usually higher than the basis on which an STR is required to be filed.
- Legal professional privilege or professional secrecy can be removed by express words contained in a statute but only for limited purposes.

The consequences of a breach of legal professional privilege and professional secrecy also vary from one country to another.

[28] FATF (2012).

In some countries, such a breach will constitute a criminal offence and the legal professional could be subject to imprisonment. In other countries a breach is sanctioned by disciplinary action and/or the client can sue the legal professional. Therefore, any uncertainty over the extent to which legal professional privilege or professional secrecy is exempt from the STR obligations within a country may expose the legal professional to significant personal liability.

In most countries, if evidence is obtained in breach of legal professional privilege or professional secrecy, that evidence cannot be used in court, and in some cases any other evidence obtained as a result of the inappropriately obtained evidence is also inadmissible. This may cause the prosecution to collapse.

A number of respondents indicated that legal professional privilege and/or professional secrecy did not apply to notaries in their country.

A number of countries also reported there were significant restrictions on their ability to obtain search warrants for a legal professional's office or other orders for the production of papers from a legal professional.

Essentially the remit of confidentiality, legal professional privilege and professional secrecy depends on the legal framework in place in the country under consideration and the specific type of legal professional involved.

There have been four completed legal challenges[29] to the application of AML/CFT obligations to legal professionals in Europe. Each of these cases related to the national implementation of the FATF Recommendations in the specific country and considered the rights of access to justice and to privacy enshrined in the European Convention on Human Rights (ECHR).

In each of those cases, the infringement of the broader rights under consideration by the application of the AML/CFT regime to legal professionals was considered proportionate and appropriate, on the basis that legal professional privilege/ professional secrecy was sufficiently protected. For two of the countries[30], this protection required that STRs be submitted via the SRB rather than directly to the FIU.

Box 6: **Summary of decision in the Michaud case**

In its final decision, given on 6 March 2013, in the case of Michaud v France (request no 12323/11), the European Court of Human Rights unanimously held that there was no violation of Article 8 (right to respect for private life) of the ECHR.

The case concerned the application of the AML/CFT requirements on legal professionals, with respect to the requirement to file STRs. The applicant claimed this obligation contradicted Article 8 of the Convention which protects the confidentiality of the exchanges between a legal professional and his client.

29 Bowman v Fels (2005) EWCA Civ 226; ECJ C-305/05, *Ordre des barreaux francophones et germanophone et al. v. Conseil des Ministres*, 2007; ECHR *André et autres v. France*, 2008 and Michaud v. France ECtHR (Application no. 12323/11).

30 Belgium and France.

The Court underlined the importance of the confidentiality of the exchanges between legal professionals and their clients, as well as the professional secrecy of legal professionals. However the Court considered that the obligation to report suspicious transactions was necessary to achieve the justifiable purpose of the defence of order and the prevention of criminal offences, since it is aimed at fighting against money laundering and associated offences. The Court decided that the implementation of the obligation to report suspicious transactions in France was not a disproportionate infringement on the professional secrecy of legal professionals for two reasons.

Firstly, because they were not required to make a report when they are defending a citizen; and secondly, because French law allows legal professionals to make the report to the president of their bar rather than directly to the authorities.

The questionnaire responses indicate that further litigation on similar issues is currently underway in Monaco and Turkey. In Canada, the Court of Appeal for British Columbia[31] has recently upheld an earlier decision that the application of CDD obligations to legal professionals was constitutionally invalid. The requirement to retain the CDD material was found to constitute an unacceptable infringement of the indepence of legal professionals because of the court's concern that law enforcement might obtain an use this material to investigate clients. The Canadian government is seeking to appeal the decision.

31 Federation of Law Societies of Canada v Canada (Attorney General) 2013 BCCA 147.

CHAPTER 3

VULNERABILITIES

VULNERABILITIES IDENTIFIED IN LITERATURE

The literature reviewed for this typology suggested that criminals would seek out the involvement of legal professionals in their money laundering schemes, sometimes because a legal professional is required to complete certain transactions, but also, to access specialised legal and notarial skills and services which could assist in laundering the proceeds of crime and in the financing of terrorism.

Key ML/TF methods that commonly employ or, in some countries, require 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

While not all legal professionals are actively involved in providing these legitimate legal services which may be abused by criminals, the use of legal professionals to provide a veneer of respectability to the client's activity, and access to the legal professional's client account, is attractive to criminals.

There is also a perception among criminals that legal professional privilege/professional secrecy will delay, obstruct or prevent investigation or prosecution by authorities if they utilise the services of a legal professional.

In terms of TF, while few case studies specifically mention the involvement of legal professionals, they do mention the use of companies, charities and the sale of property. As such it is clear that similar methods and techniques could be used to facilitate either ML or TF, although the sums in relation to the later may be smaller, and therefore the vulnerability of legal professionals to involvement in TF cannot be dismissed.[32]

[32] FATF (2008)

VULNERABILITIES IDENTIFIED THROUGH STRS AND ASSET RECOVERY

STRs and confiscated assets are two data sets that can provide information for competent authorities to assess the extent of AML/CFT risk and vulnerability within their country. The observations below are taken from responses to the FATF questionnaire.

CONFISCATION OF ASSETS

The types of assets acquired by criminals with the proceeds of their crime are evidence of the laundering methods utilised and highlight areas of potential vulnerability. Real estate accounted for up to 30% of criminal assets confiscated in the last two years, demonstrating this as a clear area of vulnerability.

REPORTS ABOUT LEGAL PROFESSIONALS

Analysis of the STRs information provided in the FATF questionnaire responses reveals that financial institutions and other designated non-financial businesses and professions (DNFBPs) were reporting suspicious transactions involving legal professionals, whether they were complicitly or unknowingly involved in their client's criminality. These STRs mentioning potential involvement of legal professionals in money laundering amounted to between .035% and 3% of all STRs reported[33].

REPORTING BY LEGAL PROFESSIONALS

The table below shows the number of reports as identified via the FATF questionnaire[34].

The wide range of activities undertaken by different types of legal professionals in different countries complicates comparisons. In certain countries, notaries and/or solicitors undertake the majority of transactional activities and advocates, barristers or legal professionals have a predominantly advocacy-based role. In these situations, there are naturally more reports originated by the former group than the latter.

The level of reporting by the legal sector is unlikely to be at the same level as that of the financial institutions. There is a significant difference in the volume of transactions undertaken by legal professionals in comparison to financial institutions. Also, the level of involvement in each transaction, which affects the basis on which a suspicion may arise and be assessed, is significantly different.

A more relevant comparison may be to other DFNBPs, especially those providing professional services. From the figures below, the reports by legal professionals averaged 10% of those of DFNBPs, ranging from less than 1% to 20%. Understanding the proportion of the legal sector to the rest of the DFNBPS in a country makes such a comparison more informative.

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33 These figures were calculated by comparing the number of STRs identified by the FIU in the questionnaire response as having a legal professional as a subject, with the total number of STRs in that jurisdiction for the relevant year.

34 Not all of the thirty-eight jurisdictions which responded to the questionnaire provided STR figures.

However, given the number of legal professionals in each of the countries responding to the FATF questionnaire and the range of transactions they are involved in, reporting levels of zero or even single figures year after year, raises the question as to the underlying reasons relevant to that country. Chapter 6 of this report considers a number of possible contributing factors to the current reporting levels.

Table 1: **Sampling of Suspicious Transaction Reports Filed in 2010 from those countries responding to the questionnaire**

	Legal professionals			DNFBPs	Total
Country	Advocate/ Barrister/ Lawyer	Notary/Other	Solicitor		
Austria	23			-	2 211
Belgium	0	163		1 179	18 673
Curacao	0	0		69	757
Denmark	4			26	2 315
Finland	7			4 040	21 454
France		881		1 303	19 208
Hong Kong/China	99			157	19 690
Ireland			19	82	13 416
Italy	12	66		223	37 047
Jordan	0			0	208
Liechtenstein [1]	5			113	324
Montenegro	0			-	68
Netherlands [2]	27	356		-	198 877
Norway	7			82	6 660
Portugal	5			-	1 459
St Vincent and Grenadines	0			1	502
Spain	39	345		580	2 991
Sweden	1			321	12 218
Switzerland	13			322	1 146
Trinidad and Tobago	0			25	111
United Kingdom	11	141	4 913	13 729	228 834

Table Notes:

1. Legal professionals in Liechtenstein only report when acting as a financial intermediary, rather than when performing activities set forth in the list contained in FATF Recommendation 22(d).

2. The Netherlands requires reports of unusual transactions rather than suspicious transactions.

Table 2: **Sampling of Suspicious Transaction Reports Filed in 2011 from those countries responding to the questionnaire**

Country	Legal Professionals			DNFBPs	Total
	Advocate/ Barrister/ Lawyer	Notary/Other	Solicitor		
Austria	10			-	2 075
Belgium	1	319		1 382	20 001
Curacao	3	7		887	10 421
Denmark	5			14	3 020
Finland	16			6 247	28 364
France		1 357		1 691	22 856
Hong Kong/China	116			161	20 287
Ireland			32	129	11 168
Italy	12	195		492	48 836
Jordan	0			0	248
Liechtenstein [1]	5			142	289
Montenegro	1			-	50
Netherlands [2]	11	359		-	167 237
Norway	11			68	4 018
Portugal	7			-	1 838
St Vincent and Grenadines	0			1	255
Spain	31	382		537	2850
Sweden	0			321	11 461
Switzerland	31			527	1 615
Trinidad and Tobago	2			90	303
United Kingdom	4	166	4 406	11 800	247 160

Table Notes:

1. Legal professionals in Liechtenstein only report when acting as a financial intermediary, rather than when performing activities set forth in the list contained in FATF Recommendation 22(d).

2. The Netherlands requires reports of unusual transactions rather than suspicious transactions.

Most countries who responded to the survey indicated that they did not separate record STRs relating to TF from those relating to ML. A handful of jurisdictions reported receiving TF specific STRs from DNFBPs and one jurisdiction reported receiving STRs in double figures for 2010 and 2011 from legal professionals which related specifically to TF.

In light of the approach to recording statistics and the similarities of the methodologies for ML and TF, while the STRs do not provide a clear picture of the vulnerabilities of the legal profession to TF, again they certainly do not provide a case for dismissing that vulnerability.

REPORTING ON CLIENTS

Respondents to the FATF questionnaire advised that almost all the STRs submitted by the legal profession are on their own clients. The FATF Recommendations state that STRs should relate to all funds, irrespective of whether they are held by the client or third parties. Only the United Kingdom and Norway identified STRs being made by legal professionals in this broader context.

VULNERABILITIES IDENTIFIED BY LEGAL PROFESSIONALS

Respondents to the FATF questionnaire identified that, among the STRs submitted by legal professionals, the top four areas reported are:

- Purchase and sale of real property,
- Formation, merger, acquisition of companies,
- Formation of trusts and
- Providing company or trust services.

A number of countries' legal professionals also identify probate (administering estates of deceased individuals), tax advice and working for charities as areas giving rise to circumstances requiring them to file an STR.

The top five predicate offences featuring in STRs from legal professionals among the respondent countries were:

- corruption and bribery
- fraud
- tax crimes
- trafficking in narcotic drugs and psychotropic substances
- unclear offences, but unexplained levels of cash or private funding

STRs from legal professionals in a few countries also identified a range of other offences such as terrorism, trafficking in human beings and migrant smuggling, insider trading, and forgery. .

USEFULNESS OF STRS BY LEGAL PROFESSIONALS

It is difficult to assess the direct usefulness of individual STRs, as the collection of feedback in many countries is sporadic. However, from the level of case studies and questionnaire responses, it appears that STRs submitted by legal professionals are often of high quality and lead to further action.

For example, Switzerland reported that 93.5% of STRs from legal professionals were passed to law enforcement, with 62% resulting in proceedings being instituted. In addition, Belgium, Italy, Liechtenstein, Ireland and the United Kingdom commented positively on the general quality of the STRs provided by legal professionals. While the United Kingdom and the Netherlands noted that STRs from legal professionals contributed to both law enforcement activity and prosecutions, as well as assisting in identifying and locating the proceeds of crime for confiscation activity.

A number of case studies contained in Chapter 4 and Annex 6 of this report demonstrate successful prosecutions, where a legal professional has filed an STR.

SUPERVISION OF LEGAL PROFESSIONALS

Box 7: **Recommendation 28**

Countries should ensure that other categories of DNFBPS are subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. This should be performed on a risk-sensitive basis. This may be performed by a) a supervisor or b) by an appropriate SRB, provided that such a body can ensure that its members comply with their obligations to combat money laundering and terrorist financing.

The supervisor or SRB should also a) take the necessary measures to prevent criminals or their associates from being professionally accredited, or holding or being the beneficial owner of a significant or controlling interest or holding a management function, e.g. through evaluating persons on the basis of a 'fit and proper' test; and (b) have effective, proportionate, and dissuasive sanctions in line with Recommendation 35 available to deal with failure to comply with AML.CFT requirements.

APPROACH TO SUPERVISION

Supervisors generally have the opportunity to monitor the conduct of all of their members, irrespective of whether there has been a complaint of potentially criminal conduct or professional misconduct. Therefore, they are a potential source of information on vulnerabilities of a sector, even where the existence or exploitation of the vulnerability has not yet come to the attention of law enforcement agencies. An absence of supervision may aggravate pre-existing vulnerabilities.

The questionnaire responses show a number of different supervisory frameworks which have been implemented for legal professionals:

- Twenty-three countries have allocated supervisory responsibility to SRBs. In many cases there is interaction with either the FIU or a relevant government ministry on the overall approach to supervision.
- Five countries have allocated supervisory responsibility to the FIU. In all cases, the professional bodies are involved in providing advice on compliance to their members.
- Three countries have allocated supervisory responsibility to other external supervisors. In each of those cases the professional bodies liaised with the external supervisor on compliance and education.
- In two countries it was unclear from responses who had supervisory responsibility, and another two countries were in the process of establishing supervisors for the legal profession.

- In three of the four countries that responded to the questionnaire where AML/CFT obligations have not been extended to legal professionals[35], the FIU, relevant government departments and/or professional bodies provide some advice on ML/TF risks. They either have a role in monitoring compliance with professional rules or in monitoring compliance with threshold reporting obligations.

The SRBs generally indicated that they had the ability to refuse membership admission to those persons who either did not meet a fit and proper test or who had relevant criminal convictions.

The SRBs also indicated they had the power to monitor compliance and take disciplinary action, although some mentioned they had very limited resources with which to undertake this role.

A few of the external supervisors/FIUs mentioned that due to constitutional requirements regarding access to the offices of legal professionals, they either undertook their supervisory functions with the consent of the legal professionals or they had delegated the onsite inspections to the professional body.

EDUCATION AND RAISING AWARENESS

Almost all countries that responded to the questionnaire provide education, advice and guidance to legal professionals on AML/CFT compliance, and a number provided links to a large range of detailed educational material.

However, debate is ongoing within some countries about the type of red flag indicators that legal professionals should be educated about:

- Twenty-two countries either did not answer the question or said that there were no specific risks or red flag indicators for legal professionals;
- Two countries have only recently applied the AML/CFT obligations to legal professionals and are in the processes of developing red flag indicator relevant to their country;
- Of the remaining respondents in some cases both the FIU and the SRB or professional body were able to articulate risks to the legal sector and red flag indicators relevant to the activities of legal professionals. In other cases it was only the FIU or the SRB which provided that information.

In one country, the two SRBs who responded, had actively co-operated with the FIU in compiling a very detailed list of red flag indicators for legal professionals, although in their responses they stated that they were not aware of specific risks to their members.

Only one SRB said that the lack of information about warning signs and lack of disciplinary action suggested to them that the potential for misuse of their members was high. On the other hand a number of SRBs who did not provide information on red flag indicators thought that the fact that they did not need to take disciplinary action against their members was an indication that the

35 Australia, Canada and the United States – although the Canadian FIU is the AML/CFT supervisor for the Notaries in British Columbia.

ML/TF risks to their members must be low or that their members were able to deal with the risks adequately.

The questionnaire specifically asked about the interaction between SRBs and professional bodies, and FIUs. Five of the private sector respondents mentioned that they did not have any interaction with the FIU in their country, and four of those were SRBs. A further three SRBs did not respond to the questions about interaction with the FIU. Generally these respondents indicated that they would have welcomed dialogue with the FIU and thought that this would assist them in helping to improve compliance by their members.

DISCIPLINARY AND CRIMINAL SANCTIONS IMPOSED ON LEGAL PROFESSIONALS

Disciplinary and criminal action taken against legal professionals helps to identify areas of vulnerability and provides case studies of both witting and unwitting involvement. The FATF questionnaire specifically looked at disciplinary and criminal action within the preceding five years.

SRBs from ten countries provided advice about disciplinary action taken, however the number of disciplinary cases reported exceeded double figures only in the Netherlands, the United Kingdom and the United States.

Criminal prosecutions were started in sixteen countries, with Austria, Spain, Italy, and Poland joining the Netherlands, the United Kingdom and the United States reaching double figures of prosecutions in the last five years.

For both disciplinary and criminal actions only a small number were substantiated to the relevant standard of proof and resulted in sanctions. The United Kingdom and the United States provided the most examples of successful disciplinary and criminal prosecutions.

The individual case studies provided have been included in both Chapter 4 and Annex 6 of this report and the red flag indicators and other lessons to be learnt from those cases are considered in more detail in those sections. Some also contain details on sanctions imposed, which range from fines to removal from practice to imprisonment.

The case studies clearly demonstrate that criminals still seeking to exploit the vulnerabilities that caused the FATF to call for extending AML/CFT obligations to legal professionals. However, the case studies also show that, at least in some instances, it is now the legal professional who becomes aware of the attempted misuse of their services and submits an STR that then prompts an investigation.

TAKING ENFORCEMENT ACTION AGAINST LEGAL PROFESSIONALS

Within the literature and other typology research, law enforcement often cites “challenges” in successfully prosecuting legal professionals for money laundering as a basis for legal professionals posing a greater risk of ML/TF.

While the actual ML/TF offences are the same for legal professionals as they are for ordinary citizens, a number of potential hurdles to prosecuting legal professionals have been identified.

EVIDENCE GATHERING

Most of the practical issues concerning the investigation of ML/TF by or through legal professionals relate to legal professional privilege or professional secrecy and the process of gathering evidence. FATF Recommendation 31 is relevant as it stipulates that the powers of law enforcement agencies and investigative authorities should include evidence-gathering methods and compulsory measures for the production of records held by DNFBPs. Whether any evidence gathered or created in the course of an investigation is subject to legal professional privilege or professional secrecy is a legal issue that cannot be predicted with certainty. Some of the practical challenges identified in investigating ML/TF by or through legal professionals include: uncertainty about the scope of privilege, the difficult and time-consuming processes for seizing legal professional's documents, and the lack of access to client account information.

DIFFERENCES IN SCOPE OF PRIVILEGE

As outlined in Chapter 2 of this report, legal professional privilege and professional secrecy are considered fundamental human rights and the legal professional is obliged to take steps to protect that privilege. However, the remit of confidentiality, legal professional privilege and professional secrecy varies from one country to another, and the practical basis on which this protection can be overridden is not always clear or easily understood. In some countries, the FIU may have greater powers to access underlying information on which an STR is based, while in other countries it is also possible for law enforcement to have access to such material.

In some countries financial and banking records may be accessed just as easily for legal professionals as for any other individual, while tax information may be accessed easily by some law enforcement agencies. But in other countries this kind of information is also subject to privilege. In some countries, both law enforcement agencies and the private sector have said that they find the lack of clarity on the extent of the reporting duty under the AML/CFT legislation challenging.

DOCUMENTS

Regulatory officials, police, and prosecutors must be careful to respect solicitor-client privilege during the course of their work. This can result in an increase in time and resources required to build a case against a legal professional when compared to other persons or professionals. A number of the questionnaire responses highlighted this point, especially in relation to the seizure of documents from a legal professional's office – whether provided by the client or created by the legal professional.

Claims of legal professional privilege or professional secrecy could impede and delay the criminal investigation. Once a claim of privilege is made over a document obtained pursuant to a search warrant, for example, the document is essentially removed from consideration in the investigation until the claim for legal professional privilege is resolved.

This delay may still occur were the claim is made correctly and in accordance with the law, or if made with the genuine but mistaken belief by the legal professional that privilege or secrecy applies. This may be particularly relevant if there is misunderstanding of the extent of privilege or secrecy in particular circumstances by either the legal professional or law enforcement, or if there is a dispute

as to whether any of the grounds for removing the privilege or secrecy (such as the crime fraud exemption) apply. However, some of the case studies do evidence extremely wide claims of privilege or secrecy being occasionally made which exceed the generally understood provisions of the protections within the relevant country, an experience which was reflected in some of the responses to the questionnaire.

Law enforcement agencies are required by law to have strong evidence from the outset to demonstrate that privilege or secrecy should be removed. In many instances this means that the claim of legal professional privilege or professional secrecy will need to be resolved by a court, which can delay the investigation process for a substantial period of time. As time is a critical factor in pursuing the proceeds of crime, this may influence the decision of investigators of whether to investigate the possible involvement of the legal professional or to seek evidence of their client's activities from alternative sources. .

CLIENT ACCOUNTS

Several countries stated that tax authorities, police and prosecutors do not have the right to investigate transactions that touch legal professionals' client accounts, as these are covered by confidentiality requirements. Sight of such accounts can of course be given voluntarily by those under investigation, but this is a practical solution only where the investigating agency is willing to reveal the fact that they are conducting the investigation.

OTHER CHALLENGES

The use of certain investigative techniques such as intercepting the telephone or electronic communications may be virtually forbidden when those communications involve legal professionals. In some countries, prior consent to the recording by a party to the communication or the subsequent removal of sections of the recorded conversations covered by legal professional privilege or professional secrecy may permit some limited use of this technique.

Some countries noted the special position of the legal professional within a legal community as presenting a challenge in being permitted to investigate legal professionals. Legal professionals and judges will often be well-known to each other and the question has been raised of whether a court is obliged to find a judge who is not known by a defendant or suspect legal professional, and who is therefore demonstrably impartial.

PROSECUTING LEGAL PROFESSIONALS

Legal professionals have professional training, and even if they do not "know" the AML laws, they will generally be sufficiently aware to avoid crossing the line between questionable behaviour and criminality, making it more difficult to prove the relevant mental element in a money laundering prosecution. More importantly, if they do cross that line knowingly and willingly, legal professionals, especially in law firms, have access to employees who can establish companies or accounts (thus, further insulating the legal professional). Legal professionals who cross the line may also have access to other professionals (in both the legal and financial sectors) who can help them layer and conceal the proceeds of crime involved in money laundering transactions. Lastly, being a member of

the bar, affords a certain standing and prestige in society. This may cause others with whom the legal professional interacts, to favour or trust him/her, merely due to his/her status, when they would otherwise look suspiciously upon certain behaviour.

Responses to the questionnaire showed that in some cases, legal professionals were not charged with the criminal offence of money laundering although it was clear to the investigating officers that they were involved in the ML/TF activity. Two main reasons were provided as to why this may be the case:

- Firstly, because of the inability to secure sufficient evidence to prove their complicit involvement in the money laundering schemes. Domestically, access to evidence may have been refused because claims to legal professional privilege or professional secrecy were upheld; or investigators decided not to pursue that evidence because of the more complicated processes involved in seeking access to such evidence and demonstrating that it is appropriate to be released. In the case of an international investigation, the evidence-gathering process can be hindered by the fact that privilege and secrecy varies across the countries that are trying to co-operate.
- Secondly, because they are likely to make useful co-operators, informants, and/or cooperating witnesses. A legal professional has every incentive to co-operate with law enforcement once his/her illegal activity is discovered to avoid reputational harm, loss of license (livelihood), and censure by the bar.

CHAPTER 4

MONEY LAUNDERING TYPOLOGIES

This section of the report looks at case studies which illustrate the ML/TF methods and techniques which involve the services of a legal professional.

FATF recognises that the vast majority of legal professionals seek to comply with the law and their ethical obligations, and will not deliberately seek to assist clients with money laundering or terrorist financing. This report has identified case studies where legal professionals have stopped acting for clients and/or made an STR; although comprehensive information about the extent to which this occurs is not available, especially in the absence of a reporting obligation being imposed at a country level. [36]

However, as identified in Chapter 3, there are a range of legal services which are of interest to criminals because they assist in laundering money and may assist in terrorist financing.

The criminal may seek out the use of a legal professional, because they need expert advice to devise complicated schemes to launder vast amounts of money, and they will either corrupt the legal professional or find one who is already willing to wilfully assist them.

However in many other cases, the criminal will use the legal professional because:

- either by virtue of a legal requirement or custom, a legal professional is used to undertake the otherwise legitimate transaction, which in that instance involves the proceeds of crime;
- the involvement of a legal professional provides an impression of respectability sought in order to dissuade questioning or suspicion from professionals and/or financial institutions; or
- the involvement of a legal professional provides a further step in the chain to frustrate investigation by law enforcement.

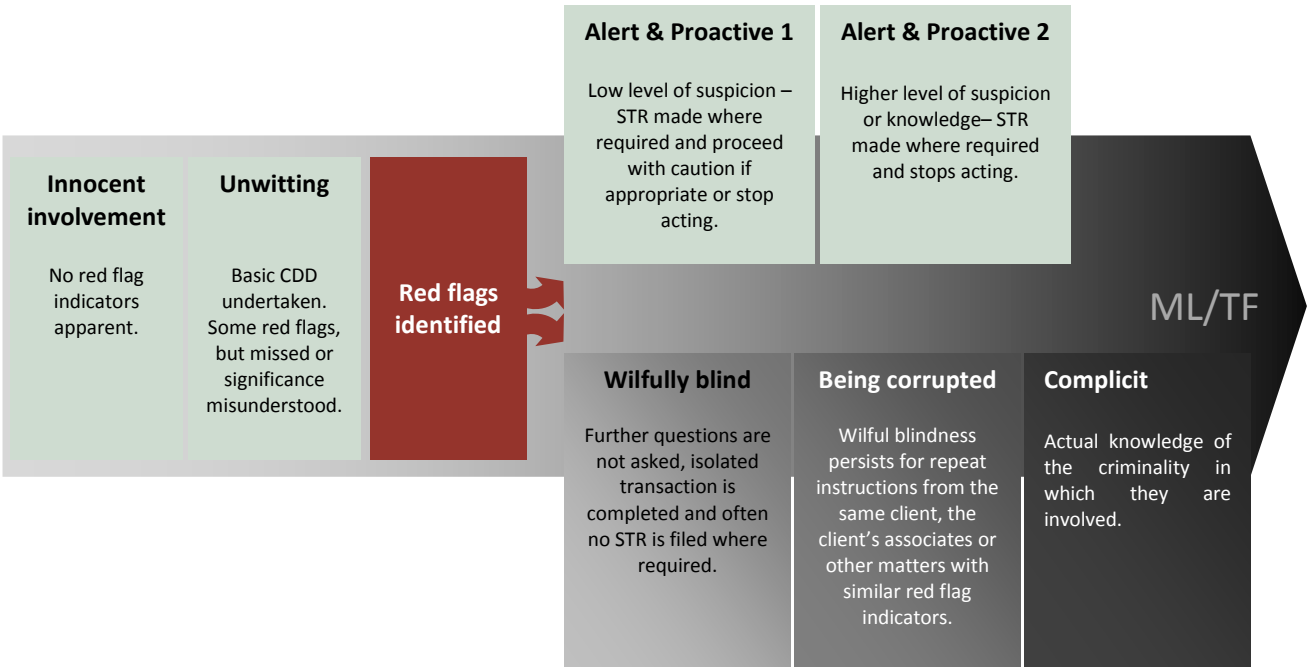
At the outset of this typology exercise, the objective was to identify examples of complicit involvement by legal professionals on the one hand and unknowing involvement on the other. A more detailed review of the case studies has indicated that such a stark distinction is not really appropriate.

The involvement of a legal professional in money laundering may more appropriately be described as a continuum:

[36] It should be noted that legal professionals may cease to act but not make an STR when legal professional privilege or professional secrecy applies.

- Depending on the extent to which the proceeds of crime have already been laundered previously, there may realistically be no red flag indicators apparent to the legal professional during the transaction or the client is able to provide convincing explanations to any generic red flag indicators identified.
- In other cases, red flag indicators may be present, but due to lack of awareness or proper systems, the legal professional genuinely does not see the red flag indicators or appreciate their significance.
- Where the red flag indicators are present and identified by the legal profession, two separate approaches may be taken.
    - In some cases the legal professional, for a variety of reasons may turn a blind eye to the red flag indicators, become more deeply involved in the criminal activity and may in a minority of cases become a future willing accomplice for one or more criminals. Law enforcement has reported that in some cases they may still receive an STR from such a legal professional after the police investigation has commenced.
    - Alternatively, the legal professional may make a STR (where required) and depending on the level of information they have causing the suspicion and their professional obligations in the given circumstances, either proceed with the transaction with caution, or cease acting for the client.

Figure 1. **Involvement of Legal Professionals in money laundering and terrorist financing (ML/TF)**



APPROACH TO CASE STUDIES IN THIS REPORT

For each method and technique identified, this report considers the attractiveness of the method for criminals and a relevant ethical or professional obligation of the legal professional.

Case studies are identified which demonstrate each technique and where possible, case studies have been sourced from both civil and common law countries and show different types of involvement from the legal professionals.

Under each case study, attention is drawn to the red flag indicators which *may* have been apparent to the legal professional and/or to the SRB or law enforcement investigating the transaction. These red flag indicators are drawn from a comprehensive list contained in Chapter 5.

Red flag indicators should always be considered in the context of the specific case. Individual red flag indicators may not be a basis on their own for having a suspicion of money laundering, but they will be a basis to ask questions of a client.[37] The answers to these questions may remove concerns about the source of funds being used in the transaction. Alternatively, the answers or lack of answers may cause a legal professional to be suspicious that his/her services are being misused, especially where there is more than one red flag indicator present.

A table of all case studies, with key methods and techniques is in Annex 5, as individual cases may demonstrate more than one method.

Additional case studies are contained in Annex 6.

[37] This is consistent with the FATF requirements to identify the client, the beneficial owners, understand the source of funds and the nature and the purpose of the business relationship.

METHOD 1: MISUSE OF CLIENT ACCOUNT

While the use of the client account is part of many legitimate transactions undertaken by legal professionals, it may be attractive to criminals as it can:

- be used as part of the first step in converting the cash proceeds of crime into other less suspicious assets;
- permit access to the financial system when the criminal may be otherwise suspicious or undesirable to a financial institution as a customer;
- serve to help hide ownership of criminally derived funds or other assets; and
- be used as an essential link between different money laundering techniques, such as purchasing real estate, setting up shell companies and transferring the proceeds of crime.[38]

[38] Australia, Canada and the United States – although the Canadian FIU is the AML/CFT supervisor for the Notaries in British Columbia.

TECHNIQUE: TRANSFERRING FUNDS WITHOUT PROVIDING LEGAL SERVICES

The majority of legal professionals are required to meet strict obligations when handling client money, including the requirement that they deal with client money only in connection with the provision of legal services and do not simply act as a bank or deposit-taking institution. Failure to comply with these obligations will generally be grounds for disciplinary action.

However, law enforcement and SRBs are still finding cases where legal professionals are simply transferring funds through their client account without providing an underlying legal service. In some cases this could raise questions as to whether a law firm had appropriate procedures or was supervising staff members or junior lawyers appropriately. In discussion with SRBs during the workshops, it was suggested that if legal services are not provided, there may not be a lawyer-client relationship and privilege or secrecy may not apply.

Case 1: **Use of client account without underlying legal services provided – common law country**

An employee working in a very small law firm in Australia 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 AUD 260 000 for the purchase of machinery in London. 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 London 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.

This specific case was brought to the attention of the Office of the Legal Services Commissioner (OLSC) in Australia, which took the view that the law firm had failed to ensure that the identity and contact details of the individual were adequately established. This was particularly important given the individual was not a previous client of the law firm. The employee – proceeding on the basis of instructions received solely via email and telephone without this further verification of identity – was criticised. The OLSC also found that the law firm failed to take reasonable steps to establish the purpose of the transaction and failed to enquire into the basis for the use of the client account. The law firm was reprimanded for their conduct in this case.

Source: Australia (2012) questionnaire response.

Case 1 **Red flag indicators:**	• The client is actively avoiding personal contact without good reason. • Client is willing to pay fees without the requirement for legal work to be undertaken. • Client asks for unexplained speed.

Case 2: **Deliberate misuse of client account without underlying legal transaction – hybrid civil and common law country**

A Quebec lawyer received approximately USD 3 million in American currency 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 USD 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 reputed Colombian drug trafficker linked to the Cali Cartel. In their attempts to gather further information about the suspicious transactions, bank officials contacted the lawyer about the funds. The lawyer refused to provide any further information, claiming solicitor-client confidentiality.

The bank subsequently informed the lawyer that it could no longer accept his business.

Source: Schneider, S. (2004)

Case 2 **Red flag indicators:**	• Use of a disproportionate amount of cash • Use of client account with no underlying legal work • Funds sent to one or more countries with high levels of secrecy • Client known to have connections with criminals

Case 3: **Disciplinary action taken for use of client account without underlying transaction – common law country**

The Kentucky Supreme Court ordered Attorney Charley Green Dixon be publicly reprimanded for misconduct relating to Dixon's attorney escrow account. Although the trial commissioner of the state bar disciplinary committee found Dixon not guilty on charges of violating two ethics rules, the court elected to review the case despite the fact that no appeal was filed by the committee.

The court found Dixon in violation of: an ethics rule relating to the safekeeping of client property; for his failure to notify corporations that he received funds in which corporations had an interest; and for distributing those funds to a third party. At the time of the misconduct, Dixon was the elected Knox County Attorney. Dixon represented his family friend, a Knox County judge, on and off for 15 years, and the judge asked him to cash cheques, leaving them on Dixon's desk each time and following up with phone calls.

In total, Dixon deposited 11 cheques payable to one of two construction companies into his attorney escrow account and subsequently wrote cheques in corresponding amounts to the judge's brother or sister-in-law. The court noted: "*An FBI investigation uncovered a money laundering scheme perpetrated by [Judge] Raymond Smith and [his brother] Matt Smith. Raymond Smith used his position as Knox County Judge–Executive to create false bids and invoices for county construction projects. He laundered the money through various accounts, including Dixon's attorney escrow account. Raymond*

and Matt Smith pled guilty to federal charges. Evidence before the trial commissioner included an affidavit from the FBI agent on the case, stating that Dixon was not charged with a crime because prosecution of Dixon required Raymond Smith's assistance, which was unlikely."

Despite the absence of a current attorney-client relationship between Dixon and the judge, the Court found that the relevant ethics rule prohibited an attorney from engaging in any conduct involving dishonesty, fraud, deceit, or misrepresentation, even outside of an attorney-client relationship. The Court ordered Dixon to be publicly reprimanded for his violation of the spirit of the ethics rules, the "global appearance of impropriety by Dixon," and his conduct which was deemed serious enough to "bring the Bar into disrepute." The Court held that even though he was not prosecuted for a money laundering offence, Dixon should have known better than to use his "escrow account for 'banking services' for individuals."

Source: United States (2012) questionnaire response Kentucky Bar Ass'n v. Dixon, 373 S.W.3d 444 (Ky. 2012)

Case 3 **Red flag indicators:**	• Use of client account without an underlying legal transaction. • Requests for payments to third parties without substantiating reason or corresponding transaction.

TECHNIQUE: STRUCTURING PAYMENTS

For countries where there are threshold reporting obligations, criminals may seek the advice and assistance of a legal practitioner to structure the payments to avoid those reporting obligations. Such involvement by a legal practitioner would be complicit. Even where threshold reporting is not required, criminals may still seek to structure payments in such a way as to avoid raising the suspicion of the financial institution.

Some of the case studies below show that advice on structuring may also include putting transactions in the names of third parties and getting involved in other financial transactions.

Under professional requirements, a legal professional would need to establish clearly who their client was, ensure they were acting in that person's best interest and that the person providing instructions had clear authority to do so. The failure to establish those factors would at least suggest a breach of professional obligations which warrant disciplinary action. It may also show that the legal professional knew or suspected that he or she was assisting with inappropriate conduct and so deliberately chose not to ask more questions.

Where the legal professional is involved in providing advice on share purchases and handling the funds to facilitate the purchase or is involved in other sorts financial transactions, consideration would need to be given as to whether the legal professional was acting as a financial advisor and/or investment broker rather than as a legal professional. Depending on the country, such conduct may be outside the scope of the legal professional's role and may require separate licensing. This may also mean that privilege/secrecy would not cover that transaction.

Case 4: **Legal professional deliberately structures transactions to avoid reporting threshold in property case – common law country**

An investigation into an individual revealed that an Australian solicitor acting on his behalf was heavily involved in money laundering through property and other transactions. The solicitor

organised conveyancing for the purchase of residential property and carried out structured transactions in an attempt to avoid detection. The solicitor established trust accounts for the individual under investigation and ensured that structured payments were used to purchase properties and pay off mortgages. Some properties were ostensibly purchased for the individual relatives, though the solicitor had no dealings with them. The solicitor also advised the individual on shares he should buy and received structured payments into his trust account for payment

Source: FATF (2007)

Case 4 **Red flag indicators:**	• Purchase of properties for family members where there is a lack of personal contact without good reason gives raises doubts as to the real nature of the transaction. • Third party funding warranting further consideration. • Significant private funding and the transfers are structured so as to avoid the threshold reporting requirements.

Case 5: **Legal professional convicted following structuring and purported stock purchases – common law country**

Criminal defence attorney Jerry Jarrett was convicted for money laundering and illegally structuring financial transactions to avoid reporting requirements. In one instance, Jarrett laundered USD 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 USD 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 USD 25 000 in drug proceeds. Both clients testified at trial that Jarrett knew that the cash was drug proceeds. See 447 F.3d 520 (7th Cir. 2006) (reversing district court's post-verdict dismissal of indictment).

Source: United States (2012) questionnaire response United States v. Jarrett, No. 03-cr-87 (N.D. Ind.)

Case 5 **Red flag indicators:**	• Significant private funding and the transfers are structured so as to avoid the threshold reporting requirements. • Client was known to have convictions for acquisitive crime.[1] • Unusual level of investment in a dormant company.

1. Acquisitive crime is any crime which produces proceeds of crime.

Case 6: **Legal professional files STR after noticing structuring and back to back sales by client – civil law country**

Person A purchases two real estate properties in 2007, for a combined price of EUR 150 000. The same properties are sold again in 2010 for a combined price of EUR 413 600 to Person B. The notary asked to see details of the payments between the vendor and the purchaser, before notarising the sale. They were provided with evidence that the funds had been deposited over the previous two months with all of the deposits under the reporting threshold amount of EUR 100 000. There was public information that Person B was associated with frauds in the automobile sector. The notary filed a STR.

Source: Spain (2012) questionnaire response

Case 6 **Red flag indicators:**	• The transaction was unusual in that the price increase was significant by comparison to the normal market changes over the same period. • One of the parties is known to be currently under investigation for acquisitive crime or to have known connections with criminals.

In this case, direct payment between the parties was not a red flag indicator, as this is quite common in Spain.

TECHNIQUE: ABORTED TRANSACTIONS

Some criminals will be aware of the restrictions on the ability of legal professionals to handle client funds without an underlying transaction. Therefore, they will appear to be conducting a legitimate transaction which, for one reason or another, collapses before completion. The client then asks for the money to be returned or paid to multiple recipients, sometimes according to the direction of a third party. [39]

During an economic downturn, the aborting of transactions is not an infrequent occurrence and legal practitioners may find it more difficult to distinguish between legitimate situations and those which were always intended to launder the proceeds of crime.

Third party funding is not unusual in aborted transactions. Under professional obligations, a legal professional must act in the best interests of the client. This means that they need to know who the client is and to understand if the funds they were using were being given to them as a gift or a loan, so that the arrangement and any subsequent ownership interests were properly documented. The failure to do so may suggest a breach of professional requirements or possibly complicity in the scheme.

Case 7: **Legal professional disciplined for sending funds to a third party after an aborted transaction – common law country**

In 2010 a solicitor was fined GBP 3 000 for their involvement in a purported company acquisition which was in fact an investment fraud. In 2005, the solicitor had accepted unsolicited funds directly from investors, but then the purchase of the company did not occur. A third party to the transaction asked for the funds to be paid into an account in Eastern Europe. The solicitor made an STR and received permission to send the funds back to the original source. For reasons which are unclear, the funds were instead transferred to another account controlled by a third party, allowing the proceeds of the fraud to be laundered. The Solicitors Disciplinary Tribunal found that the solicitor was naive rather than reckless.

Source: United Kingdom (2012) questionnaire response

Case 7 **Red flag indicators:**	• The person actually directing the operation is not one of the formal parties to the transaction or their representative • Transaction is aborted after receipt of funds and there is a request to send the funds on to a third party.

[39] This technique was specifically noted in the Australian questionnaire response to this project.

Case 8: **Legal professional removed from practice after ignoring red flag indicators on an aborted transaction – common law country**

In 2011 a solicitor was struck off the roll for acting in a number of property purchases which had all the hallmarks of money laundering. In 2008 the solicitor received instructions from an individual to purchase property on behalf of other clients, who provided funds for the purchase prior to the solicitor indicating the need for the funds to be deposited. The solicitor did not meet the clients, undertake due diligence checks or obtain instructions in writing. The funds came into the client account, the transaction was cancelled and there was a request to provide the funds to a third party – all on the same day.

Source: United Kingdom (2012) questionnaire response

Case 8 **Red flag indicators:**	• Transaction is aborted after receipt of funds and there is a request to send the funds to a third party • The client is acting through an intermediary and avoiding personal contact without good reason • Unusual speed requested.

METHOD 2: PROPERTY PURCHASES

Criminals, like those with legitimate incomes, require a place to live and premises from which to conduct their business activities. Irrespective of economic conditions, real estate investment often remains attractive for criminals and non-criminals alike. Consequently, the purchase of real estate is a common outlet for criminal proceeds. Real estate is generally an appreciating asset and the subsequent sale of the asset can provide a legitimate reason for the appearance of the funds

In many countries a legal professional is either required by law to undertake the transfer of property or their involvement is a matter of custom and practice.

However the specific role of the legal professional in real estate transactions varies significantly from country to country, or even within countries. In some countries, the legal professional will customarily hold and transfer the relevant funds for the purchase. In other countries this will be done by other parties, such as a title insurance agent.

Even if the legal professional is not handling the money, they will be aware of the financial details and in many cases will be in a position to ask further questions about the purchase or sale.

Therefore, real estate transactions are a key area of potential ML/TF vulnerability for legal professionals.

TECHNIQUE: INVESTMENT OF PROCEEDS OF CRIME IN PROPERTY

From the cases obtained, it is clear that some criminals will seek to invest the proceeds of their crime in real estate without attempting to obscure their ownership.

Despite many countries introducing reporting requirements on cash payments, and many professional bodies restricting the amount of cash which legal professionals may receive, some criminals will still seek to use the purchase of real property as a means of placing cash obtained from criminal activity. Increasingly, this is seen as part of the layering process, where the funds have been accumulated in one or more bank accounts and the property purchase is wholly or predominantly funded through private means rather than a mortgage or loan.

There has been extensive publicity about the money laundering risks posed by large amounts of cash or unexplained levels of private funding in relation to property purchases. Where legal professionals are involved and an STR is not made, it is more likely that the legal professional is either complicit in the money laundering, or is being wilfully blind by failing to ask more questions when warning signs are present.

Case 9: **Legal professional files STR after noticing red flag indicators on property transaction – civil law country**

The CTIF-CFI (the Belgium FIU) received a notification from a notary on a person from Eastern Europe, who resided in Belgium and had bought a property there.

The purchase happened by depositing the total purchase price in cash before the document authenticating the purchase was signed. The person claimed that he could not open a bank account

and so had to pay cash for the property.

After the notification of the notary, the FIU learned that the person did have an account at a Belgian bank and that the size of the transaction was not in proportion with his financial situation as he was receiving state benefits. Police sources revealed the person was known for illicit trafficking in goods and merchandise

Source: Cellule de traitement des informations Financières, (2005)

Case 9 **Red flag indicators:**	• Transaction involves a disproportionate amount of private funding/cash, which is inconsistent with the socio-economic profile of the individual • Transaction is unusual because of the manner of execution – in this case it was the depositing of the total purchase price so early in the transaction which was different to normal custom.

Case 10: **Legal professional acts as prosecution witness after failing to notice warning signs relating to a property purchase – common law country**

In 2009 a client approached a United Kingdom solicitor to purchase land for the client's family.

The client deposited GBP 35 000 with the solicitor which they said was from family members as the family were pooling the money together to buy land on which all the family could live.

Further cash amounts were deposited with the solicitor from numerous third parties to fund the rest of the purchase.

The solicitor only spoke with the client, who said they were the only literate member of the family and so was conducting business on the family's behalf.

While the solicitor did not submit an STR, the solicitor was not prosecuted but acted as a witness for the police.

Source: United Kingdom (2012) questionnaire response

Case 10 **Red flag indicators:**	• Significant levels of private funding/cash which is inconsistent with the socio-economic profile of the individual • Funding from third parties requiring further consideration • Request to act for multiple parties without meeting them

Case 11: **Legal professional convicted of money laundering through property purchase involving cash and significant funding from multiple parties – common law country**

Shadab Kahn, a solicitor, assisted in the purchase of a number of properties for a client using the proceeds of crime. The client owned a luxury car business, but was also involved in drug dealing.

The funds for the property purchases were generally provided in cash from the client or from third parties. Almost GBP 600 000 was provided by the client, which was a significant level of private funding despite the client's apparent legitimate business activities.

Mr Khan was convicted in 2009 of money laundering and failing to make an STR, jailed for four years, and struck off the roll by the Solicitors Disciplinary Tribunal in 2011. The court criticised Mr Khan for accepting explanations about the source of funds at face value and not looking behind the claimed cultural customs about the funding arrangements.

Source: United Kingdom (2012) questionnaire response

Case 11 **Red flag indicators:**	• Significant amount of private funding/cash from an individual who was running a cash intensive business. • Involvement of third parties funding without apparent connection or legitimate explanation.

TECHNIQUE: TRANSFERRING VALUE – BACK TO BACK OR ABC SALES

The frequent movement of investments in immovable assets such as property is not common. Quick successive sales of property, either with or without a mortgage, enable criminals to inflate the value of the property, thereby justifying the injection of further criminal funds into the purchase chain and enabling value to be either transferred to other parts of an organised crime group or reinvested within the group. While the frequent changes in ownership may also make it more difficult for law enforcement to follow the funds and link the assets back to the predicate offence.

Case 12: **Legal professional facilitates multiple back to back sales of properties within a group of mortgage fraudsters – civil law country**

An individual in his early 20's who worked as a gardener approached a notary to purchase several real estate properties. The client advised that he was funding the purchases from previous sales of other properties and provided a bank cheque to pay the purchase price.

The client then instructed a different set of notaries to re-sell the properties at a higher price very quickly after the first purchase. The properties were sold to other people that the client knew who were also in their early 20's and had similar low paying jobs.

The client had in fact obtained mortgages using false documents for these properties, generating the proceeds of crime. The multiple sales helped to launder those funds.

Source: France (2012) questionnaire response

Case 12 **Red flag indicators:**	• Disproportionate amount of private funding which is inconsistent with the socio-economic profile of the individual • Transactions are unusual because they are inconsistent with the age and profile of the parties • Multiple appearances of the same parties in transactions over a short period of time. • Back to back (or ABC) property transaction, with rapidly increasing value • Client changes legal advisor a number of times in a short space of time without legitimate reason. • Client provides false documentation.

TECHNIQUE: TRANSFERRING VALUE – SALES WITHIN AN ORGANISED CRIME GROUP

Case 13: **Legal professional facilitates multiple back to back property sales within an organised crime group – civil law country**

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.

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.

Source: France (2012) questionnaire response

Case 13 **Red flag indicators:**	• Disproportionate amount of private funding/cash which is inconsistent with the socio-economic profile of the individual. • Significant increases in value / sale price sometimes realised within a relatively short timescale. • Parties to the transaction are connected without an apparent business reason. • Multiple appearances of the same parties in transactions over a short period of time.

TECHNIQUE: OBSCURING OWNERSHIP – PURCHASE WITH A FALSE NAME

Criminals who seek to retain the benefit of the proceeds of their crime may seek to obscure the ownership of real property by using false identities. Legal professionals may be complicit in these transactions, but are more likely to be involved unwittingly, especially if the criminal has forged identity documentation of a high quality or if the legal professional is not required in their country to undertake CDD.

The use of false or counterfeited documents should always be a red flag to the legitimacy of the individual and the action they wish to take. While legal professionals are not expected to be forgery experts, with the increased ability of criminals to access such materials through the internet, having some familiarity with identity documents at least within their country, may help them avoid being taken in by obvious forgeries.

Case 14: **Legal Professional facilitates property purchase in a false name – common law country**

Law enforcement investigated a matter involving a drug offender actively growing a large crop of cannabis on a property. When the person of interest (POI) was arrested for this offence, it was established that the person had purchased the block of land under a false name.

Under provisions of Chapter 3 of the Criminal Proceeds Confiscation Act 2002, if the POI had effective control of the land, and used that land to produce dangerous drugs, then the property was liable for forfeiture. Initial inquiries revealed the property was registered as being owned by a different person. Further enquiries made with another government department revealed the person had the same first names as the POI, but a different surname. The date of birth recorded at this department was very similar to the POI with the year and month identical, but the day slightly different.

It was alleged the POI had purchased the property under a false name, as no identification was required by the real estate agent to sign the contract. It is further suspected the POI took the contract to a solicitor for conveyance and had the solicitor sign the transfer documents on the POI's behalf. The sale was executed in 2002, but the final payment (made via a solicitor) was not made until 2004. This payment method was written into the contract.

Source: Australia (2012) questionnaire response

Case 14 **Red flag indicators:**	• Client provides false or counterfeited documentation • There are attempts to disguise the real owner or parties to the transaction • Transaction is unusual because of the manner of execution in terms of the delay in payment well after the contact was executed.

TECHNIQUE: OBSCURING OWNERSHIP – PURCHASE THROUGH INTERMEDIARIES

The creation of convincing false identities involves time and expenditure by criminals and there is a risk that the fake identity will be discovered. Another option for obscuring ownership while retaining control is placing the property in the names of family, friends or business associates.

While the purchase of real property for family members may be quite legitimate and a regular occurrence in many cultures, such transactions will usually require detailed documentation to ensure that ownership, inheritance and taxation matters are properly dealt with.

Legal professionals also need to carefully consider who they are acting for, especially where there are a number of parties involved in a purchase. They will need to ensure that they are not in a conflict situation and that they are able to act in the best interests of their client. Failure to ask such questions may be indicative that the legal professional is either complicit or wilfully blind to the money laundering risks.

Case 15: **Family members used as a front for purchasing property – common law country**

A Canadian career criminal, with a record including drug trafficking, fraud, auto theft, and telecommunications theft, deposited cash into a bank account in his parents' name.

The accused purchased a home with the assistance of a lawyer, the title of which was registered to his parents. He financed the home through a mortgage, also registered to his parents. The CAD 320 000 mortgage was paid off in less than six months.

Source: Schneider (2004)

Case 15 **Red flag indicators:**	• Disproportionate amount of private funding/cash which is inconsistent with the known legitimate income of the individual • Client is known to have convictions for acquisitive crime • There are attempts to disguise the real owner or parties to the transaction. • Mortgages repaid significantly prior to the initial agreed maturity date with no logical explanation.

TECHNIQUE: OBSCURING OWNERSHIP – PURCHASE THROUGH A COMPANY OR TRUST

The purchasing of real estate through a company or a trust has been identified previously[40] as a technique used to both obscure ownership and frustrate law enforcement activity to pursue the proceeds of crime.

Case 16: **PEP involved in financial wrongdoing purchases expensive properties in foreign country through a corporate vehicle – civil law country**

A foreign client approached a legal professional to buy two properties, one in Alpes-Maritimes (South of France), and the other in Paris, for EUR 11 million.

The purchase price was completely funded by the purchaser (there was no mortgage) and the funds were sent through a bank in an off-shore jurisdiction.

As the contract was about to be signed, there was a change in instructions, and a property investment company was replaced as the purchaser. The two minor children of the client were the shareholders of the company.

The foreign client held an important political function in his country and there was publicly available information about his involvement in financial wrongdoing.

Source: France (2012) questionnaire response

Case 16 **Red flag indicators:**	• The legal professional was located at a distance from the client / transaction, and there was no legitimate or economic reason for using this legal professional over one who was located closer. [1] • Disproportionate amount of private funding which is inconsistent with the socio-economic profile of the individual • Client is using bank accounts from a high risk country

40 FATF (2007) and Schneider (2004).

	• Unexplained changes in instructions, especially last minute • The transaction is unusual in the manner of its execution – in France it is quite unusual for residential property to be purchased via a corporate vehicle or for minors to be shareholders. It should be noted that this approach would be considered normal and prudent estate planning in other countries. • Use of a complicated structure without legitimate reason • Shareholders of the executing party are under legal age • Client holds a public position and is engaged in unusual private business given the characteristics involved.

1. In some jurisdictions it is becoming more frequent for legal services relating to property purchases to be sourced online which may mean that the legal professional is located at a distance from the client or the transaction. However in many civil law countries, where notaries are required to be involved with the purchase, notaries are appointed to a specific location. While non-face to face transactions are no longer listed as automatically requiring enhanced due diligence under the FATF Recommendations, the desire to avoid personal contact without good reason is still an indicator of money laundering or terrorist financing risk

Case 17: **Legal professionals assist with opening bank accounts and investing in property via complex corporate structures – civil law country**

A foreigner residing in Belgium was introduced to a bank by a law firm with a view to him opening an account. This account was credited with large sums by foreign transfers ordered by an unknown counterpart. A civil-law notary wrote bank order cheques from the account, which was then invested in real estate projects in Belgium. In one of these projects the person under suspicion was assisted by other foreign investors in setting up a particularly complex scheme.

The FIU learned from questioning the civil law notary, that he had been engaged by four foreign companies to help set up two holding companies. These two companies had in their turn set up two other Belgian real estate companies. The latter two had then invested in real estate.

The people representing these companies – a lawyer and diamond merchant – acted as intermediaries for the person under suspicion. It turned out the lawyer who had introduced this person to the bank was also involved in other schemes of a similar nature. The address of the registered office of the Belgian companies was also the address of his lawyer's office.

This information showed the important role played by the lawyer in setting up a financial and corporate structure designed to enable funds from unknown foreign principals to be invested in real estate projects in Belgium. On the basis of all these elements the FIU decided to report the file for laundering of the proceeds of organised crime.

Source: Belgium (2012) questionnaire response

Case 17 **Red flag indicators:**	• Creation of complicated ownership structures where there is no legitimate or economic reason. • Client is using an agent or intermediary without good reason. • Involvement of structures with multiple countries where there is no apparent link to the client or transaction, or no other legitimate or economic reason. • The source of funds is unusual as there is third party funding with no apparent connection or legitimate explanation and the funds are received from a foreign country where there is no apparent connection between the country and the client.

Case 18: **Legal professional files STR when companies are used to purchase properties to facilitate laundering of drug proceeds and/or terrorist financing – civil law country**

A Spanish married couple of Moroccan origins, who own three properties, incorporate a limited company. They own 100% of the shares between them, the value of which is EUR 12 000 euro.

Within the first five months, the company has undertaken investments of over EUR 260 000, without apparent recourse to external financing. This includes purchasing five properties for over EUR 193 000 in cash. One of the property purchases is from an Islamic community in the south of Spain, the vice-president of which was arrested in 2009 within the context of a Civil Guard anti-drugs trafficking operation.

The couple are found to be associated with other companies which do not file accounts as required under law or receive official gazette notifications. The notary involved in some of the property purchases makes an STR.

According to subsequent information obtained by the Spanish Executive Service of the Commission for Monitoring Exchange Control Offences (SEPBLAC), the transactions could be connected with people possibly related to drug trafficking or terrorist financing.

Source: Spain (2012) questionnaire response

Case 18 **Red flag indicators:**	• The size of the client company was inconsistent with the volume or value of the investments made by the company • The professional profiles of a company's shareholders make it unlikely that the company possessed a lawful source of funds for the scope of investments made • The sum paid out in cash for the properties acquired by the company seems unusual and the company had no corresponding business or operations to justify such a cash outlay • Morocco is geographically located on a route used to introduce drugs into Europe, and this, in connection with the considerable sums of cash being moved from the country to Spain, suggests that the territory should receive particular attention. • One of the persons associated with the operation had been arrested within the context of an anti-drugs trafficking operation.

TECHNIQUE: MORTGAGE FRAUD WITH ANTECEDENT LAUNDERING

While this is a typology on money laundering and terrorist financing – not a report on the involvement of legal professionals in predicate offences – it is relevant to highlight a few cases involving mortgage fraud.

Many of the red flag indicators which would demonstrate money laundering are also present in mortgage frauds, and depending on the specific elements of the money laundering offence, possession of the mortgage funds in the legal professional's client account and subsequent transfer will amount to money laundering.

Case 19: **Legal professional disciplined for failing to notice warning signs of mortgage fraud and handling the proceeds of crime – common law country**

In 2008 a law firm employee was approached by three individuals who were accompanied by a friend to seek a quote to purchase three separate properties. They returned later that day with passports and utility bills and instructed the law firm to act for them in the purchases.

The clients asked for the purchases to be processed quickly and did not want the normal searches undertaken. They did not provide any money to the solicitors for expenses (such funds would normally be provided) but said the seller's solicitors would be covering all fees and expenses. The clients said they had paid the deposit directly to the seller. The mortgages were paid to the law firm, which retained their fees and then sent the funds to a bank account which the law firm employee thought belonged to solicitors acting for the sellers. No due diligence was undertaken.

In fact the actual owners of the property were not selling the properties and had no knowledge of the transaction or the mortgages taken out over their properties. The mortgage funds were paid away to the fraudsters, not to another solicitors firm.

In 2010, the supervising solicitor was fined GBP 10 000 for not properly supervising the employee who allowed the fraud to take place and the proceeds of the funds to be laundered. The solicitor's advanced age was taken into account as a mitigating factor in deciding the penalty.

Source: United Kingdom (2012) questionnaire response

Case 19 **Red flag indicators:**	• Transaction was unusual in terms of all three purchasers attending together with an intermediary to undertake separate transactions; failure to provide any funds for expense in accordance with normal processes; and part of the funds being sent directly between the parties. • Client showed an unusual familiarity with respect to the ordinary standards provided for by the law in the matter of satisfactory client identification. • Clients asked for short-cuts and unexplained speed in completing a transaction.

Case 20: **Legal professional removed from practice after facilitating multiple mortgage frauds for a number of property developers – common law country**

In 2006 a solicitor was approached by three developers wanting him to act in a number of property transactions. The developers were selling the properties to various companies and investment networks, who were then quickly selling the properties on at significantly inflated prices to other individuals. The solicitor was acting for these individuals, and was introduced to the clients by the other parties to the transaction with the 'deal' already completed.

In 2011 the solicitor was struck off the roll by the Solicitors Disciplinary Tribunal because they had failed to provide full information to the lender (enabling mortgage fraud), had not checked the source of funds for the original transactions or deposits (enabling money laundering) and had not taken notes of their instructions at the time of the transactions, fabricating them during the investigation.

Source: United Kingdom (2012) questionnaire response

Case 20 **Red flag indicators:**	• Back to back (or ABC) property transaction with rapidly increasing purchase price • Transaction is unusual in that there is limited legal work to be undertaken by the legal professional • Unnecessary complexity in the structures and parties involved in the transaction.

METHOD 3: CREATION OF COMPANIES AND TRUSTS

Criminals will often seek the opportunity to retain control over criminally derived assets while frustrating the ability of law enforcement to trace the origin and ownership of the assets. Companies and trusts are seen by criminals as potentially useful vehicles to achieve this outcome.

TECHNIQUE: CREATION OF TRUSTS TO OBSCURE OWNERSHIP AND RETAIN CONTROL

Disguising the real owners and parties to the transaction is a necessary requirement for money laundering to be successful and therefore, although there may be legitimate reasons for obscuring ownership it should be considered as a red flag.

Case 21: **Trust established to receive proceeds of tax crime and invest in criminal property**

Two trusts were established in an offshore centre by a law firm. The law firm requested the trustee to accept two payment orders in favour of a bank in order to buy real estate. It appeared that the trust had been used to conceal the identity of the beneficial owners.

Information obtained by the Belgian FIU revealed that the beneficiaries of the trusts were individuals A and B, who were managers of two companies, established in Belgium that were the subject of a judicial investigation regarding serious tax fraud. Part of the funds in these trusts could have originated from criminal activity of the companies.

Source: FATF (2010)

Case 21 **Red flag indicators:**	• Use of an intermediary without good reason. • Attempts to disguise the real owner or parties to the transaction. • Involvement of structures in multiple countries where there is no apparent link to the client or transaction, or no other legitimate or economic reason. • Client is known to be currently under investigation for acquisitive crimes.

Case 22: **Trust established to enable a criminal to act as a trustee and retain control of property obtained with criminal proceeds – common law country**

A criminal involved in smuggling into the United Kingdom set up a Trust in order to launder the proceeds of his crime, with the assistance of a collusive Independent Financial Adviser (IFA) and a Solicitor, who also appeared to be acting in the knowledge that the individual was a criminal. The Trust was discretionary and therefore power over the management of the fund was vested in the Trustees, namely the criminal, his wife and the IFA.

The criminal purchased a garage, which he transferred directly to his daughter (who also happened to be a beneficiary of the Trust). She in turn leased the garage to a company. The garage was eventually sold to this company, with the purchase funded by a loan provided by the Trust. The company subsequently made repayments of several thousand pounds a month, ostensibly to the Trust, but in practice to the criminal.

Thus the criminal who had originally owned the garage probably maintained control despite his

daughter's ownership. Through controlling the Trust he was able to funnel funds back to himself through loaning funds from the Trust and receive payments on that loan.

Source: FATF (2010)

Case 22 **Red flag indicators:**	• Creation of a complicated ownership structure when there is no legitimate or economic reason. • The ties between the parties of a family nature generate doubt as to the real nature or reason for the transaction. • Client is known to be currently under investigation for acquisitive crimes.

TECHNIQUE: CREATION OF SHELL COMPANIES TO PLACE OR LAYER

In some countries, a legal professional (usually a notary) must be involved in the creation of a company, so there is an increased risk of unintentional involvement in this laundering method. However, in a number of countries, members of the public are able to register a company themselves directly with the company register. In those countries, if a client simply wants a legal professional to undertake the mechanical aspects of setting up the company, without seeking legal advice on the appropriateness of the company structure and related matters, it may be an indication that the client is seeking to add respectability to the creation of a shell company.

A shell company is a business or corporate entity that does not have any business activities or recognisable assets itself. Shell companies may be used of legitimate purposes such as serving as a transaction vehicle (*e.g.*, an acquiring company sets up a shell company subsidiary that is then merged with a target company, thus making the target company the subsidiary of the acquiring company) or protecting the corporate name from being used by a third party because the incorporation of the shell company under that name blocks any other company from being incorporated with the same name. But criminals often seek to set up shell companies to help obscure beneficial ownership.

Shell companies should be distinguished from shelf companies that are often set up by legal professionals for the purpose of facilitating legitimate transactions. Such companies will be used when it becomes apparent during a transaction that there is a need for a corporate vehicle to be used and there is a legitimate need for speed in the transaction. They will usually be created with the legal professional or their employees as the directors and/or shareholders and are held "on the shelf" until they are needed in the course of a transaction. The legal firm will only have a few of these companies at any one time; in many cases they will only be in existence for a short amount of time and they are sold to the clients in full, with the legal professionals having no further involvement in the management of the company after it is taken down off the shelf. Criminals may seek to misuse shelf companies by seeking access to companies which have been 'sitting on the shelf' for a long time in an attempt to create the impression that the company is reputable and trading well because it has been in existence for many years.

In terms of professional obligations, if a client fails to provide adequate information about the purpose for which the company was set up, this may give rise to concerns as to whether the legal professional would be able to adequately provide advice in the best interests of the client. The

failure to ask such questions may be an indicator that the legal professional is complicit in the scheme.

Case 23: **Legal professional approached over internet to set up multiple companies without information on identity, source of funds or purpose – hybrid common law / civil law country**

A legal professional was approached over the internet to set up companies with limited or no details about the future uses of the company.

Over three years they were asked to set up at least 1 000 such companies in this way.

The people they were asked to list as directors included individuals known to be involved with high level organised crime in that country.

They never met the clients and did not undertake any due diligence.

The companies were used to facilitate money laundering from loan sharking.

Source: Japan (2012) questionnaire response

Case 23 **Red flag indicators:**	• Client is actively avoiding personal contact without good reason. • Transactions are unusual in terms of volume. • Client is overly secretive about the purpose of the transaction. • Parties involved in the transaction have known connections with criminals.

Case 24: **Legal professional sets up multiple international company structures for existing clients – civil law country**

A legal professional in Spain was asked to set up a series of companies for clients for the purpose of purchasing real estate.

Some companies were incorporated in Spain but they were owned by companies which the legal professional also incorporated in an American State.

The legal professional and others in the law firm would constitute the board of directors of the companies incorporated in America. They would later sell these companies to their clients.

The legal professional set up over 300 such companies for clients of the law firm, and continued to administer those companies for the clients.

Many of the clients were known to be involved in international criminal organisations.

Source: FATF (2010)

Case 24 **Red flag indicators:**	• Involvement of structures with multiple countries where there is no apparent link to the client or transaction or no other legitimate or economic reason. • Involvement of high risk countries. • Client is known to have convictions for acquisitive crime, to be currently under investigation for acquisitive crime or have known connections with criminals.

TECHNIQUE: USE OF BEARER SHARES TO OBSCURE OWNERSHIP

Bearer shares are an equity security that is wholly-owned by whoever holds the physical stock certificate. The issuing firm neither registers the owner of the stock, nor does it track transfers of ownership.

Quite a number of countries have banned the use of bearer shares by legal entities, while in other countries; these types of securities are quite common, even for companies acting legally.

Case 25: **Creation of company with bearer shares to obscure ownership in a property transaction – civil law country**

A Spanish lawyer created several companies for a client on the same day (with ownership through bearer shares, thus hiding the identity of the true owners). One of these companies acquired a property that was an area of undeveloped land. A few weeks later, the area was re-classified by the local authorities where it was located so it could be urbanised.

The lawyer came to the Property Registry and in successive operations, transferred the ownership of the property by means of the transfer of mortgage loans constituted in entities located in offshore jurisdictions. With each succeeding transfer of the property the price of the land was increased.

The participants in the individual transfers were shell companies controlled by the lawyer. Finally the mortgage was cancelled with a cheque issued by a correspondent account. The cheque was received by a company different from the one that appeared as the acquirer on the deed (cheque endorsement). Since the company used a correspondent account exclusively, it can be inferred that this company was a front set up merely for the purpose of carrying out the property transactions.

After investigation it was learned that the purchaser and seller were the same person: the leader of a criminal organisation. Money used in the transaction was of illegal origin (drug trafficking). Additionally, in the process of reclassification, administrative anomalies and bribes were detected.

Source: FATF (2007)

Case 25 **Red flag indicators:**	• There are attempts to disguise the real owner or parties to the transaction • Client is known to have convictions for acquisitive crime, known to be currently under investigation for acquisitive crime, or have known connections with criminals. • Back to back (or ABC) property transactions, with rapidly increasing value / purchase price. • Mortgages are repeatedly repaid significantly prior to the initially agreed maturity date, with no logical explanation.

Case 26: **Creation of complex company structures in multiple countries to launder proceeds of drug trafficking**

A legal professional in Country A was approached to assist in setting up companies for a client.

The legal professional approached a management company in Country B, who in turn approached a trust and company service provider in Country C to incorporate a number of bearer share companies.

Only the details of the trust and company service provider were included in the incorporation

documents as nominee directors and administrators.

The articles of incorporation and the bearer shares were forwarded to the lawyer, via the management company, who provided them to the client.

The client was involved in drug importation. Approximately USD 1.73 million was restrained in combined assets from residential property and bank accounts in relation to those companies

Source: FATF 2010

Case 26 **Red flag indicators:**	• There are attempts to disguise the real owner or parties to the transaction • Involvement of structures with multiple countries where there is no apparent link to the client or transaction, or no other legitimate or economic reason. • Disproportionate private funding which is inconsistent with the socio-economic profile of the individual.

METHOD 4: MANAGEMENT OF COMPANIES AND TRUSTS

While the creation of companies and trusts is a key area of vulnerability for legal professionals, criminals will also often seek to have legal professionals involved in the management of those companies and trusts in order to provide greater respectability and legitimacy to the entity and its activities.

In some countries professional rules preclude a legal professional from acting as a trustee or as a company director. In countries where this is permitted, there are differing rules as to whether that legal professional can also provide external legal advice or otherwise act for the company or trust. This will affect whether any funds relating to activities by the company or trust can go through the client account.

TECHNIQUE: ACTING AS TRUSTEE – RECEIVING THE PROCEEDS OF CRIME

Where a settlor creates a trust using the proceeds of crime or deposits further assets into the trust which are the proceeds of crime, a legal professional acting as trustee will be facilitating the laundering of those proceeds by managing the trust. Under common law there is an obligation on the trustee to acquaint themselves with all trust property and the FATF standards require that those providing trust services in a business capacity undertake CDD, including ascertaining the source of funds. Such enquiries would assist in minimising the risks of legal professionals who are acting as trustees inadvertently becoming involved in money laundering.

Case 27: **Legal professional uses client account to transfer proceeds of crime into a trust he managed – common law country**

Defendant Paul Monea was convicted of various money laundering counts in connection with his attempt to accept payment for the sale of a large diamond by requiring the purchasers to wire funds, which he knew to be drug proceeds, to his attorney's IOLTA (attorney trust) account and onward to his family trust account, which was managed by the same attorney. It does not appear as if the attorney was prosecuted. *See* 376 F. App'x 531 (6th Cir. 2010), *cert. denied* 131 S. Ct. 356 (2010).

Monea's Family Trust was in possession of a 43-carat flawless yellow diamond that Monea was looking to sell for a profit. Monea was introduced to an undercover federal agent who used the name "Rizzo," and Rizzo volunteered that he knew someone (a drug dealer) who would be interested in purchasing the diamond. Monea explained that he did not want to conduct the sale in cash because of apprehension that he was being "watched" by the government. The court noted that the pair discussed at a meeting: "the best way to conduct the transaction, the problem of receiving cash, Monea's conversations with his attorney about his responsibilities concerning knowledge of the money's source, and whether Monea could use the [Attorney Trust Account] of the attorney representing the Monea Family Trust." On meeting with another undercover agent posing as the buyer's representative, Monea told the man (who he believed to be the associate of the drug dealer-purchaser) that USD19.5 million should be wired into his Attorney's Trust Account. Funds were wired in the amount of USD 100 000 in three instalments when the deal was supposed to close at the attorney's office with a gemmologist present to certify the authenticity of the stone. Rizzo pretended to make a call to have the remainder of the purchase price wired into the Attorney Trust

Account, but instead, he called other law enforcement agents and the scheme was disrupted.

The court held that Monea's "intent to conceal" the nature of the drug dealer's proceeds used to buy the diamond was shown by his desire to use the Attorney Trust Account to funnel the funds to the Monea Family Trust account, which the attorney also managed. Routing the transaction through the Attorney Trust Account was an extra and unnecessary step, not integral to the sale, which should have raised red flags with the attorney.

Furthermore, according to recorded conversations, Monea discussed with the attorney that he did not want the wire transfers "looked at." The attorney allegedly stated that he represented his Attorney Trust Account and Monea's trust, so there was no problem as long as the diamond was sold for fair market value. Monea paraphrased the attorney speaking to him, in a recorded conversation: "you [Monea] don't really have the responsibility or obligation to interview people to find out how they got the money [for the diamond] . . . it's not your responsibility." Monea later stated: "I'll tell you why I want [the money] going into my [Attorney's Trust Account]. Because my attorney represents the [Monea Family Trust]. And my attorney can legitimately represent the [Monea Family Trust] . . . and we're conducting the sale on behalf of the trust. And it keeps me clean." Monea used his attorney and his trust account as intermediaries, and then further used his trust account that was managed by the attorney to conceal drug proceeds and insulate himself by virtue of the attorney-client relationship. *See* 376 F. App'x 531 (6th Cir. 2010), *cert. denied* 131 S. Ct. 356 (2010).

Source: United States (2012) questionnaire response United States v. Monea, No. 07-cr-30 (N.D. Ohio)

Case 27 **Red flag indicators:**	• There are attempts to disguise the real owner or parties to the transaction • The retainer involves using the client account were this is not required for the provision of legal services

TECHNIQUE: MANAGEMENT OF A COMPANY OR TRUST –APPEARANCE OF LEGITIMACY AND PROVISION OF LEGAL SERVICES

Case 28: **Legal practitioner incorporates companies and acts as front man to launder proceeds of embezzlement**

A money laundering operation involved a massive purchase of derivatives by companies which paid hefty fees to fake intermediaries, then surreptitiously transferred to the bank directors either in cash or on foreign banks accounts.

In this scheme the notary participated by incorporating some of the fake intermediaries, whilst the lawyer appeared as the beneficial owner of such companies and actively participated in a complex scheme of bank transactions put in place to embezzle the funds illicitly obtained. Several bank accounts at different institutions were used, with the involvement of figureheads and shell companies, so as to transfer funds from one account to another by mainly making use of cheques and cash.

Source: Italy (2012) questionnaire response

Case 28 **Red flag indicators:**	• There are attempts to disguise the real owner or parties to the transaction • Creation of complicated ownership structures when there is no legitimate or economic reason.

Case 29: **Legal professional manages trusts used to perpetrate an advanced fraud scheme and launder the proceeds – common law country**

An entity, Euro-American Money Fund Trust, was used to perpetrate an advance-fee scheme. John Voigt created a genealogy for the Trust, claiming it was a long-standing European trust associated with the Catholic Church. He then solicited investments for phony loans. Ralph Anderskow was a partner at a large Chicago firm who managed the Trust and whose credentials were publicised as legitimising the Trust. Although he may not have known that the Trust was fraudulent at first, it was apparent shortly thereafter. Anderskow provided guarantees to borrowers, maintained a client escrow account into which advance fees were deposited, and distributed the deposited fees to Voigt and his associates, which violated the terms of the contracts entered into with the loan applicants and investors. *See* 88 F.3d 245 (3d Cir. 1996) (affirming conviction and 78-month sentence).

Source: United States (2012) questionnaire response United States v. Anderskow, No. 3:93-cr-300 (D.N.J.)

Case 29 **Red flag indicators:**	• Client is using false or fraudulent identity documents for the business entity • Requests to make payments to third parties contrary to contractual obligations

TECHNIQUE: HOLDING SHARES AS AN UNDISCLOSED NOMINEE

Individuals may sometimes have legal professionals or others hold their shares as a nominee, where there is legitimate privacy, safety or commercial concerns. Criminals may also use nominee shareholders to further obscure their ownership of assets. In some countries legal professionals are not permitted to hold shares in entities for whom they provide advice, while in other countries legal

professionals regularly act as nominees. Where a legal professional is asked to act as a nominee, they should understand the reason for this request.

Case 30: **Legal professionals acting as undisclosed nominees in companies suspected as vehicles for organised crime – civil law country**

A lawyer was reported by an Italian banking institution in connection with some banking transactions performed on behalf of companies operating in the wind power sector in which he held a stake. The reporting entities suspected the stake was in fact held on behalf of some clients of his rather than for himself.

The report concerned a company owned by the lawyer who sold his minority stake (acquired two years earlier for a much lower price) to another company authorised to build a wind farm. The majority stake belonged to a firm owned by another lawyer specialising in the renewable energy sector and involved in several law enforcement investigations concerning the infiltration of organised criminal organisations in the sector.

The whole company was purchased by a major corporation operating in the energy sector. Financial flows showed that the parent firm of the company being sold received €59million from the corporation. Although most of the funds were either used in instalments to repay lines of financing previously obtained both from Italian and foreign lenders or transferred to other companies belonging to the same financial group, some funds were credited to the account held in the name of the law firm of which the reported lawyer was a partner. Transfers to other legal professional were also observed.

Source: Italy (2012) questionnaire response

Case 30 **Red flag indicators:**	• There are attempts to disguise the real owner or parties to the transaction • Client is known to have connections with criminals • There is an excessively high price attached to the securities transferred, with regards to circumstances indicating such an excess or with regard to the sum declared in another operation.

METHOD 5: MANAGING CLIENT AFFAIRS AND MAKING INTRODUCTIONS

Because of their ethical and professional obligations, the involvement of legal professionals in a transaction or their referral of a client to other professionals or businesses often provides the activities of the criminal with a veneer of legitimacy.

TECHNIQUE: OPENING BANK ACCOUNTS ON BEHALF OF CLIENTS

Financial institutions who are complying with their AML/CFT obligations may choose not to provide bank accounts to certain individuals who pose a high risk of money laundering or terrorist financing. In the questionnaire responses and literature reviewed, there were cases where legal professionals have either encouraged financial institutions to open accounts (despite being aware of the money laundering risks) or have opened accounts specifically for the use of clients, in such a way as to avoid disclosing to the financial institution the true beneficial owner of the account.

The lack of alleged access to a bank account may be a red flag indicator that the individual is subject to sanctions or a court freezing or restraint order.

Case 31: **Legal professional assisting client to obtain banking services despite warning signs of money laundering by a politically exposed person – common law country**

From 2000 to 2008, Jennifer Douglas, a U.S. citizen and the fourth wife of Atiku Abubakar, former Vice President and former candidate for President of Nigeria, helped her husband bring over USD 40 million in suspect funds into the United States through wire transfers sent by offshore corporations to U.S. bank accounts. In a 2008 civil complaint, the U.S. Securities and Exchange Commission alleged that Ms. Douglas received over USD 2 million in bribe payments in 2001 and 2002 from Siemens AG, a major German corporation.

While Ms. Douglas denies wrongdoing, Siemens has already pled guilty to U.S. criminal charges and settled civil charges related to bribery. Siemens told the Senate Permanent Subcommittee on Investigations that it sent the payments to one of Ms. Douglas' U.S. accounts. In 2007, Mr. Abubakar was the subject of corruption allegations in Nigeria related to the Petroleum Technology Development Fund.

Of the USD 40 million in suspect funds, USD 25 million was wire transferred by offshore corporations into more than 30 U.S. bank accounts opened by Ms. Douglas, primarily by Guernsey Trust Company Nigeria Ltd., LetsGo Ltd. Inc. and Sima Holding Ltd.

The U.S. banks maintaining those accounts were, at times, unaware of her Politically Exposed Person (PEP) status, and they allowed multiple, large offshore wire transfers into her accounts. As each bank began to question the offshore wire transfers, Ms. Douglas indicated that all of the funds came from her husband and professed little familiarity with the offshore corporations actually sending her money. When one bank closed her account due to the offshore wire transfers, her lawyer helped convince other banks to provide a new account.

Source: United States Senate Permanente Subcommittee on Investigations (2010)

Case 31 **Red flag indicators:**	• Client requires introduction to financial institutions to help secure banking facilities • Client has family ties to an individual who held a public position and is engaged in unusual private business given the frequency or

	characteristics involved. • Involvement of structures with multiple countries where there is no apparent link to the client or transaction or no other legitimate or economic reason. • Private expenditure is being funded by a company, business or government.

Case 32: **Legal professionals create shell companies and permit transfers through their client account without underlying transactions to help a PEP suspected of corruption to access financial services – common law country**

Teodoro Nguema Obiang Mangue is the son of the President of Equatorial Guinea and the current Minister of Agriculture of that country. He used two attorneys in the U.S. to form shell corporations and launder millions of dollars through accounts held by those corporations to fund real property, living expenses, and other purchases in the U.S.

The shell corporations hid the identity of Obiang as a PEP, and, particularly, a PEP whose family had a reputation for corruption and contributed to the dismemberment and sale of an entire U.S. financial institution, Riggs Bank. Obiang's further use of his attorney's trust accounts to receive wire transfers from Equatorial Guinea, helped to provide an apparently legitimate reason for transfers from a high-risk country

As banks became aware of Obiang's connection to the shell companies and shut down their accounts, the attorneys would open new accounts and new institutions, concealing Obiang's beneficial ownership once again.

The Department of Justice has filed civil forfeiture actions in two district courts in Los Angeles and Washington to forfeit the proceeds of foreign corruption and other domestic offenses laundered through the U.S. *See* U.S. Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, *Keeping Foreign Corruption out of the United States: Four Case Histories* (Feb. 4, 2010).

Source: United States questionnaire response 2012: United States v. One White Crystal Covered Bad Tour Glove No.11-cv-3582 (C.D. Cal.), and United States v. One Gulfstream G-V Jet Aircraft, No. 11-cv-1874 (D.D.C.)

Case 32 **Red flag indicators:**	• Client required introduction to financial institutions to help secure banking facilities. • Client is a public official and has family ties to a head of state and is engaged in unusual private business given the frequency or characteristics involved • Involvement of structures with multiple countries where there is no apparent link to the client or transaction or no other legitimate or economic reason. • Private expenditure is being funded by a company, business or government. • There is an attempt to disguise the real owner or parties to the transaction.

Case 33: **Legal professional coordinates banking activities and sets up companies to assist with laundering – civil law country**

An individual in the Netherlands set up three companies. For one of the companies he held bearer shares. To hide his involvement in the companies he used a front man and a trust and company service provider as legal representatives.

For each of the companies, the legal representatives opened bank accounts with three different banks in different countries. The individual used the three companies to set up a loan-back scheme in order to transfer, layer and integrate his criminal money. He then co-mingled the criminal funds with the funds that originated from the legal activities of one of his companies. Next the front man bought real estate. To finance that transaction he arranged for a loan between the two companies.

Source: FATF (2007)

Case 33 **Red flag indicators:**	• There is an attempt to disguise the real owner or parties to the transaction. • Client required introduction to financial institutions to help secure banking facilities. • The transactions are unusual in that there is unexplained complexity in the structures and the funding arrangements. • Finance is being provided by a lender, other than a credit institution with no logical explanation or economic justification.

TECHNIQUE: INTRODUCTION TO OTHER PROFESSIONALS FOR PARTS OF A TRANSACTION

Other professionals, including other legal professionals, may not ask detailed CDD questions, where a client is referred to them by a legal professional. While making referrals or seeking additional expertise in another field to ensure the client obtains full advice is normal, receiving payment for such referrals may or may not be legal depending on the country.

Case 34: **Legal professional provides cover story for client when providing funds to a notary for a property purchase – civil law country**

Upon executing a deed of sale of a property, a notary received a cheque from the buyer‘s lawyer, Mr. M.

The lawyer pointed out to the notary that the money originated from the sale of a property that belonged to Mr. M‘s family. The cheque was first endorsed in favour of Mr. M‘s family before being endorsed to the notary. The cheque was issued from the lawyer‘s personal account rather than his client account.

Mr M’s bank account was credited by cash deposits, and thereafter, was mainly debited by mortgage repayments. Mr. M was known to the police for organised crime and armed robbery, for which he had already been convicted.

Source: Deloitte (2011)

Case 34 **Red flag indicators:**	• Client is known to have convictions for acquisitive crime • The transaction is unusual as while there is a requirement in law for

	the notary to be involved in the transaction, there was no legitimate reason for the funds to be passed through the lawyer, and it would be against client account rules for the lawyer to put client's money into his personal account.

Case 35: **Criminal defence legal professional introduces clients to other professionals to assist with laundering the proceeds of their crime – common law country**

A prominent criminal defence attorney in Boston, Robert A. George helped a former client launder USD 200 000 in proceeds from various crimes, including wire fraud and cocaine distribution. George connected his former client to "his guy" who owned a mortgage company in Massachusetts and who accepted currency in duffel bags from the former client. George's associate then cut cheques to the former client to make the illicit funds appear to be a loan.

George was paid a fee for his part in the laundering scheme and also arranged a fee-splitting agreement with the former client to refer other criminals to him so that George could represent them in federal cases and launder their drug proceeds. Furthermore, George structured a USD 25 000 cash "retainer fee" from an undercover agent posing as a drug dealer into a bank account held in the name of his law firm, and issued a cheque to the apparent drug dealer with a memorandum note meant to conceal the purpose of the transaction. A notice of appeal has been filed in this case.

George was sentenced on October 31, 2012, to three and a half years for money laundering and related crimes following his jury trial in June 2012. George was convicted of money laundering conspiracy, aiding and abetting money laundering, money laundering, and structuring transactions to avoid reporting requirements.

Source: United States (2012) questionnaire response - United States v. George, No. 11-cr-10201-NMG (D. Mass.)

Case 35 **Red flag indicators:**	• Client is known to have convictions for acquisitive crime. • Disproportionate amounts of cash and private funding in terms of the client's known legitimate income. • Legal professional's referral to non-legal professional constitutes professional ethics rule violations

TECHNIQUE: MANAGEMENT OF A CLIENT'S GENERAL AFFAIRS

Another feature of the highlighted cases involves the legal professional undertaking a range of 'management' activities for clients. In some jurisdictions this is referred to as 'man of affairs work' which is permitted in limited circumstances by some professional rules.

Situations where a legal professional may be undertaking these activities legitimately may involve a client who has limited capacity to manage their own affairs, or in other circumstances where the client has limited other options or a clear legitimate rational for seeking the continuing assistance from his/her legal professional. The legal professional, whether acting pursuant to a court order or a power of attorney, may use his/her client account to undertake transactions, but would more typically use accounts held by the client for whom the legal professional is acting.

In reported cases where illicit proceeds were involved, clients have had full capacity to manage their affairs and there is limited justification requiring specialist skills of the legal professional or use of their client account.

From the cases considered during this typology, it is apparent that the legal professional is more likely to be either complicit or wilfully blind to the red flag indicators of money laundering when this technique is employed In order to act in the client's best interests in such situations it is imperative they fully understand the financial and business affairs they are being asked to manage.

Other management activities may raise the question as to whether the legal professional is really acting as a financial advisor and mortgage broker. Such conduct especially when provided without connection to other legal services, may not be within the scope of the activities of a legal professional; may require separate licensing depending on the country; and may not attract professional secrecy/ legal professional privilege.

Case 36: **Criminal defence legal professional introduces clients to other professionals to assist with laundering the proceeds of their crime – common law country**

A lawyer was instructed by his client, a drug trafficker, to deposit cash into the lawyer's trust account and then make routine payments to mortgages on properties beneficially owned by the drug trafficker.

The lawyer received commissions from the sale of these properties and brokering the mortgages.

While he later admitted to receiving the cash from the trafficker, depositing it into his trust account and administering payments to the trafficker's mortgages, the lawyer denied knowledge of the source of funds.

Source: FATF (2004)

Case 36 **Red flag indicators:**	• Client is known to have convictions for acquisitive crime • Disproportionate amounts of cash and private funding in terms of the client's known legitimate income. • Client is using an agent or intermediary without good reason.

Case 37: **Legal professional undertakes financial transaction unrelated to the provision of legal services to hide funds from a bankruptcy**

A trading company, operated by the client's spouse, was declared bankrupt.

Shortly afterwards the client deposited cash (from the bankrupt company) in an account opened in the name of a family member.

The money was immediately paid by cheque to the account of a legal professional.

The legal professional deposited part of the funds back into the family member's account and used the rest to purchase a life assurance policy, via a bank transfer. The policy was immediately cashed in by the family member.

Source: Belgium (2012) questionnaire response

Case 37 **Red flag indicators:**	• Private expenditure is being funded by a company • The transaction is unusual in terms of funding arrangements, who the client is, and the reason for the involvement of the legal professional. • The use of "U-turn" transactions where money is transferred to a legal professional or other entity and then sent back to the originating account in a short timeframe • Insurance policies cashed in shortly after purchase or loans and mortgages paid quickly, in full

METHOD 6: LITIGATION

Litigation is not an activity covered by the FATF Recommendations and, as outlined above, the courts to date have held that its exclusion is important for the protection of the fundamental human right of access to justice. However, in the case of Bowman v Fels[41] – the only case to specifically consider the question in the context of a real case involving clients[42] – the English Court of Appeal held that while genuine litigation should be exempt from the reporting requirements, sham litigation would not as such litigation is an abuse of the court's processes.

Litigation could constitute *sham litigation* if the subject of the dispute was fabricated (for example if there is no actual debt and the funds being transferred are simply the proceeds of crime being passed from one entity to another) or if the subject of the litigation was a contract relating to criminal activity which a court would not enforce.[43]

Case 38: **Legal professionals pursue debts relating to criminal activity – civil law country**

In 2005, two lawyers unsuccessfully defended two clients who were prosecuted for criminal offences. They then assisted those clients to recover debts of over 5 million NOK from other known criminals. Both lawyers were convicted of money laundering.

Source: Norway (2012) questionnaire response

Case 38 **Red flag indicators:**	• Client with known convictions for acquisitive crime • Debts relate to contract based on criminal activity

Case 39: **Legal professional files STR on debt recovery transaction without economic rationale – civil law country**

In 2011, a notary submitted an STR on the unusual movement of funds between companies as a purported debt recovery action. A lawyer acting for Company A created two further limited liability companies in Spain – Company B and Company C.

Within a month, four significant transactions take place on the same day which all required involvement of notary:

1. Mr X (an Italian national, whom the press reported was linked to the Mafia) acknowledges to a notary, a debt of around EUR 440 000 they owned to Company B, but it is not clear on what basis this debt exists.
2. Mr X sells a number of real estate properties to Company B for approximately EUR 460 000, which is paid through an electronic transfer, a bankers draft and a credit agreement.
3. Company A sells the shares for Company B to Company C.
4. The shares in Company C are bought by a Swiss company.

41 [2005] EWCA Civ 226.

42 All of the other cases were constitutional challenges on the legitimacy of legislation in principle.

43 Corbin A.L 1962 Corbin on Contracts West Publishing Co.

Later that year, Company B acknowledges to a notary a debt of around EUR 600 000 to the Swiss Company, who bought Company C. The agreement the notary is asked to confirm involves quarterly payments of EUR 7 500 with the Swiss company obtaining stock options for Company C. The basis of this debt was also unclear.

Source: Spain (2012) questionnaire response

Case 39 **Red flag indicators:**	• There are multiple appearances of the same parties in transactions over a short period of time. • Large financial transactions requested by recently set up companies, not justified by the activity of the client. • Creation of complicated ownership structures where there is no legitimate or economic reason There was no legitimate economic reason to create two companies, where the intention was to sell one to the other in such a short space of time, especially when control over both was passed to a company domiciled in another country at the same time. The creation of the purported debts and significant real estate purchase were designed to give the appearance of commercial business relationships to justify the transfer of value between Italy and Switzerland, via Spain. • A party to the transaction has known links to organised crime.

Case 40: **Legal practitioners receive requests for use of client account to recover debts with little or no legal services to be provided – common law country**

Australian legal practitioners have advised AUSTRAC of receiving unusual requests from prospective clients, particularly targeted at passing funds through solicitors' trust accounts. This included a foreign company requesting legal services involving debt recovery, with the legal firm receiving substantial payments into its trust account from purported debtors (both in Australia and overseas) with little debt recovery work actually being required to be undertaken by the firm.

These types of approaches to legal professionals have been noted by FIUs and SRBs in a number of countries, although no detailed case studies were provided.

Source: AUSTRAC (2011)

Case 40 **Red flag indicators:**	• Client and/or debtor are located at a distance from the legal professional • The type of debt recovery is unusual work for the legal professional • The client has written a pre-action letter to the debtor naming the legal professional and providing the legal professional's client account details • The litigation is settled very quickly, sometimes before the legal professional has actually written to the debtor • Client is unconcerned about the level of fees • There is a request for the funds received from the debtor to be paid out very quickly, sometimes to third parties.

METHOD 7: OTHER METHODS

TECHNIQUE: USE OF SPECIALISED LEGAL SKILLS

Legal professionals possess a range of specialised legal skills which may be of interest to criminals, in order to enable them to transfer value obtained from criminal activity between parties and obscure ownership.

These specialised skills include the creation of financial instruments, advice on and drafting of contractual arrangements, and the creation of powers of attorney.

In other areas of legal specialisation, such as probate (succession) and insolvency or bankruptcy work, the legal professional may simply come across information giving rise to a suspicion that the deceased or insolvent individual previously engaged in criminal activity or that parties may be hiding assets to avoid payment to legitimate creditors. Countries differ on how unexpected sums of cash are treated in relation to probate or insolvency cases, in some a threshold report will be made and the government becomes a super-creditor able to recover the money before any other beneficiary; in other countries this would give rise to a suspicion of money laundering, requiring a STR to be filed and possibly putting the executor or the legal professional at risk of money laundering.

Depending on the complexity of the arrangement, a legal professional could be unwittingly involved in the money laundering, complicit or wilfully blind through failing to ask further questions about suspicious instructions.

Case 41: **Legal professional prepares a power of attorney to dispose of all assets belonging to a client facing drug trafficking charges**

A legal professional was asked to prepare a power of attorney for a client to give control of all of his assets to his girlfriend, including power to dispose of those assets.

The legal professional then prepared a deed of conveyance under which the girlfriend transferred all of the property to the client's brother and sister.

The legal professional had just secured bail for the client in relation to a drug trafficking charge.

The legal professional was acquitted of money laundering.

Source: Trinidad & Tobago (2012) questionnaire response

Case 41 **Red flag indicators:**	• A power of attorney is sought for the disposal of assets under conditions which are unusual and where there is no logical explanation – it would have to be very exceptional circumstances for it to be in the client's best interests to allow them to make themselves impecunious. • Unexplained speed and complexity in the transaction. • Client is known to be under investigation for acquisitive crime.

Case 42: **Legal professional submits STR on commercial arrangement which has not economic rationale – civil law country**

In 2008 a Spanish citizen (Mr A) and a citizen from a Middle East country (Mr B) attended a notary office to formalise a contract which provided:

1. Mr A is the holder of a Gold Import Licence from an African Republic.
2. Mr B will fund the gold importation by making a payment of EUR 8 000, through a promissory note of EUR 6 000 maturing later that year and the remaining EUR 2 000 in cash three days after the promissory note matures.
3. Mr A will make payments of EUR 4 000 per month to Mr B, on the 22nd of each month for an indefinite period to represent the profits of the gold import activity.
4. Either party may terminate the agreement, with Mr A refunding the EUR 8 000 to Mr B and an agreement that the termination will be accepted without question.

These are new clients for the notary, Mr A refuses to provide certain identification information requested by the notary and no records supporting any business activity of any kind by either party are provided. The notary submitted an STR.

Source: Spain (2012) questionnaire response

Case 42 **Red flag indicators:**	• The client is reluctant to provide information usually required in order to enable the execution of the transaction. • There are a number of high risk countries involved in the transaction • The transaction makes no economic sense given the evident imbalance suffered by Mr A. • The transaction was unusual for this notary, given their unfamiliarity with the parties, the gold import business and the international elements of the transaction.

Case 43: **Legal professionals uncover funds tainted by criminal activity during administration of an estate – common law country**

A firm of solicitors was instructed to act in the administration of a deceased person's estate.

When attending the deceased's property a large amount of cash was found.

In addition, the individual had a savings account holding GBP 20 000.

As part of the administration of the estate the solicitor subsequently identified that the individual was receiving state benefits, to which they would not have been entitled if the hidden assets had been known, thus meaning that the entire estate of the client was now tainted by this criminality

The solicitor filed an STR.

Source: United Kingdom (2012) presentation at typologies workshop

Case 43 **Red flag indicators:**	• Disproportionate levels of private funding and cash which is inconsistent with the socio-economic profile of the individual. • Information suggesting involvement in acquisitive criminal activity.

Case 44: **Legal professional's attention drawn to unusual purchases of assets during the administration of a bankruptcy – civil law country**

In a bankruptcy case where A and B were guarantors, a notary was appointed by the court to proceed with the public sale of different goods of the parties concerned. In the context of the public sale. The attention of the notary was drawn to the fact that several of the goods were purchased by X, the daughter of A and B. Additionally, the total amount of the purchases was significant and was not commensurate with the socio-economic status of X, who was unemployed.

The purchased goods were partially funded by a cheque of a mortgage loan that a bank granted to X. The balance came from an account which was opened in the name of a third person, C.

This account had received several deposits in cash and transfers from a company of which both C and B were partners. B had been a partner in different companies that were declared bankrupt and for which he was known to the judicial authorities. Further, the daughter who had purchased the goods was not a director of this company, was not subject to VAT in Belgium and her official income consisted only of unemployment benefits.

With this information the FIU research indicated that the funds that were deposited on the accounts of C in cash may have come from funds that B had taken without permission to help his daughter to buy a part of his own real estate. C and B knew each other as they were partners in the same company.

In this case, the account of C was used as inadvertent account to conceal the illegal origin of the funds. Taking the above elements the various purchases of X can therefore be associated with a crime relating to the bankruptcy. A law enforcement investigation started.

Source: Cellule de traitement des informations Financières (2006)

Case 44 **Red flag indicators:**	• The ties between the parties are of a family nature, which generate doubts as to the real nature or reason for the transaction. • Disproportionate private funding which was inconsistent with the socio-economic profile of the individual. • Third party funding with no apparent connection or legitimate explanation

TECHNIQUE: PAYMENT OF LEGAL FEES AND ASSOCIATED EXPENSES

In some countries there are specific exemptions to enable legal practitioners to be paid with the proceeds of crime for defence purposes, provided that the defence fees are reasonable to the services rendered and that any remaining funds are not returned to the client or to third parties. In other countries this would still constitute money laundering and the fees paid would be amenable to confiscation proceedings.

Case 45: **Legal practitioner uses known criminal funds to pay for expenses of client who was in prison – common law country**

Miguel Rodriguez-Orejuela was a leader of the Cali Cartel who required and enforced a vow of silence from his associates and employees. In return for this vow of silence regarding his association

with drug trafficking, Rodriguez-Orejuela agreed to pay the defence expenses of any of his associates and to compensate their families while they were in prison.

Through his law firm, Michael Abbell facilitated the payments to family and prison commissary accounts on behalf Rodriguez-Orejuela. The funds Abbell accepted to reimburse these payments came from Rodriguez-Orejuela, who had no legitimate form of income (all his businesses were in fact funded by narco-trafficking). Abbell would make the payments, often using money orders paid for by the law firm, and then bill Rodriguez-Orejuela for reimbursement and fees. The transactions were designed to conceal the fact that Rodriguez-Orejuela was funding the payments and was associated with drug activity.

After two trials, a jury convicted Abbell of money laundering and racketeering charges. *See* 271 F.3d 1286 (11th Cir. 2001) (affirming convictions and reversing district court's grant of judgment of acquittal on racketeering-related counts). Abbell was sentenced to 97 months' incarceration.

Source: United States (2012) questionnaire response United States v. Abbell, No. 93-cr-470(17) (S.D. Fla.)

Case 45 **Red flag indicators:**	• Client is known to have convictions for acquisitive crime, known to be currently under investigation for acquisitive crime or have known connections with criminals. • Disproportionate private funding or cash (potentially from a third party) which is inconsistent with known legitimate income. • There is an attempt to disguise the real owner or parties to the transactions.

Case 46: **Legal practitioner accepted large amounts of cash from a known criminal to pay for legal fees – common law country**

Defense attorney Donald Ferguson was indicted on four counts of money laundering, and one count of conspiring to launder money. Ferguson accepted four large sums of cash totalling USD 566 400 from Salvador Magluta. Ferguson deposited the cash payments into his attorney trust accounts, supposedly as payment for the defence of an associate of Magluta. Ferguson ultimately pleaded guilty to one count of money laundering and consented to the forfeiture of the full amount of the payments. He was sentenced to five years' probation. *See* 142 F. Supp. 2d 1350 (S.D. Fla. 2000) (declining to dismiss indictment).

Source: United States (2012) questionnaire response United States v. Ferguson, No. 99-cr-116 (S.D. Fla.)

Case 46 **Red flag indicators:**	• Client is known to have convictions for acquisitive crime, known to be currently under investigation for acquisitive crime or have known connections with criminals. • Disproportionate private funding or cash (potentially from a third party) which is inconsistent with known legitimate income.

Case 47: **Legal practitioner paid 'salary' by organised criminals to be available to represent their needs, irrespective of whether legal services were provided – civil law country**

In July 1999 La Stampa reported a criminal lawyer and accountant arrested by DIA,17 (Anti-mafia Investigation Department), who were charged with facilitating funds from illicit sources on the French Riviera. The arrests were the consequence of investigations and electronic surveillance

(phone and environmental wiretapping), corroborated by the lawyer's confession. The lawyer's office was the operational base for the criminal activities of two high-profile mafia bosses. According to the indictment, the lawyer was paid a monthly salary of about EUR 6 000 to be always available for the needs of the mafia family.

Source: Di Nicola, A. and Zoffi, P. (2004)

Case 47 **Red flag indicators:**	• Client is known to have convictions for acquisitive crime, known to be currently under investigation for acquisitive crime or have known connections with criminals. • Disproportionate private funding or cash (potentially from a third party) which is inconsistent with known legitimate income. • Payment of a general retainer rather than fees for specific services, where professional rules require the provision of itemised bills.

TECHNIQUE: PROVIDING LEGAL SERVICES FOR CHARITIES

Legal professionals may be involved in setting up charities or other non-profit entities, acting as a trustee, and providing advice on legal matters pertaining to the charity, including advising on internal investigations.

Like many other businesses, charities can be victims of fraud from trustees, employees and volunteers or be set up as vehicles for fraud, which will involve the proceeds of crime and subsequent money laundering. FATF typologies have also identified a particular vulnerability for charities in the financing of terrorism. [44]

Case 48: **Legal professional sets up charity to provide funding to individuals convicted of terrorist activities – civil law country**

This case has been brought to the attention of the Dutch Bureau for Supervision. A Foundation was established by a person related to a member of an organization whose purpose is committing terrorist offences. This person was herself not designated on international sanctions. The goal for the foundation was to provide help to persons convicted of terrorist activities. A first notary refused to establish the foundation, while a second notary agreed to do so.

Providing this form of financial assistance to a person convicted of terrorist activities, given the specific circumstances of the case, did not constitute an offence of financing terrorism, so no prosecutions were brought.

Source: Netherlands (2012) questionnaire response

Case 48 **Red flag indicators:**	• Client is related to a person listed as having involvement with a known terrorist organisation • Funding is to be provided to a person convicted of terrorist activities

44 FATF (2008b); FATF typology 2002-2003.

Case 49: **Legal professional sets up charities to undertake criminal activity and deal with the proceeds of that crime – common law country**

Attorney and lobbyist Jack Abramoff pleaded guilty in 2006 to three counts including conspiracy to defraud the United States, tax evasion, and "honest services" fraud (a corruption offense), upon the filing of a criminal information in the U.S. District Court for the District of Columbia. While working for two law and lobbying firms between 1999 and 2004, Abramoff solicited and lobbied for various groups and businesses, including Native American tribal governments operating or interested in operating casinos.

Abramoff conspired with former Congressional staff member Michael Scanlon to: defraud his lobbying clients by pocketing approximately USD 50 million; misuse his charitable organization by using it to finance a lavish golf trip to Scotland for public officials and others; and to provide numerous "things of value" to public officials in exchange for benefits to his clients.

In one set of schemes, Abramoff employed a non-profit that he founded called Capital Athletic Foundation. The Foundation was intended to fundraise for a non-profit school and it was granted tax-exempt status from the Internal Revenue Service, however, Abramoff used it as a personal slush fund. One congressional staffer solicited a contribution from a Russian distilled beverage company and Abramoff client on behalf of the Foundation. Abramoff used the Russian client's donation for personal and professional benefit, namely, to finance a trip to Scotland attended by members of Congress that cost the Foundation approximately USD 166 000.

Another Abramoff client, a wireless company, was solicited to make a contribution of at least USD 50 000 to the Foundation, in exchange for Abramoff securing a license for the company without charging his firm's usual lobbying fee or even informing his firm of the arrangement. According to the criminal information, Abramoff also concealed assets and sources of income from the Internal Revenue Service through the use of nominees, some of which were tax-exempt organizations.

Although not detailed in the court filings in this case, it was widely reported at the time that a congressional staff member's spouse received USD 50 000 from another non-profit affiliated with Abramoff, which in turn, received money from Abramoff clients interested in internet gambling and postal rate issues before Congress. Further, the Capital Athletic Foundation allegedly donated USD 25 000 to Representative and House Majority Leader Tom DeLay's Foundation for Kids. These are just a few examples of Abramoff's misuse of non-profits, some of which were founded by him and some of which existed previously and accepted contributions from Abramoff, Scanlon, or their clients, often due to Abramoff's personal relationships with the heads of such charities.

Abramoff was also indicted in 2005 in the Southern District of Florida in connection with a massive fraud that he conducted involving his purchase of a casino and cruise company. Abramoff pleaded guilty to two more counts of conspiracy and wire fraud in the Florida case, which did not involve the misuse of tax-exempt entities. He was never charged with money laundering.

Source: United States (2012) questionnaire response - United States v. Abramoff, No. 06-cr-00001 (D.D.C.)

Case 49 **Red flag indicators:**	• Non-profit organisation engages in transactions not compatible with those declared and not typical for that body • There are attempts to disguise the real owner or parties to the transactions

CHAPTER 5

RED FLAG INDICATORS

As outlined in Chapter 4 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, red flag indicators should always be considered in context. The mere presence of a red flag indicator is not necessarily a basis for a suspicion of ML or TF, as a client may be able to provide a legitimate explanation.

These red flag indicators should assist legal professionals in applying a risk-based approach to their CDD 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 a number of red flag indicators, it is more likely that a legal professional should have a suspicion that ML or TF is occurring.

SRBs and law enforcement may also find these red flag indicators to be useful when monitoring the professional conduct of or investigating legal professionals or their clients. Where a legal professional has information about a red flag indicator and has failed to ask questions of the client, this may be relevant in assessing whether their conduct was complicit or unwitting.

This chapter contains a collection of red flag indicators identified through the case studies, literature reviewed, and existing advice published by FIUs and SRBs which were provided in response to the questionnaire.

RED FLAGS ABOUT THE CLIENT

- Red flag 1: 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.
- Red flag 2: 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 email address with an unusual domain part such as Hotmail, 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.

- Red flag 3: 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 actually 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.

RED FLAGS IN THE SOURCE OF FUNDS

- Red Flag 4: 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.
- Red flag 5: 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.
- Red flag 6: 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.
- Red flag 7: The client is using multiple bank accounts or foreign accounts without good reason.
- Red flag 8: Private expenditure is funded by a company, business or government.
- Red flag 9: 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.
- Red flag 10: An unusually short repayment period has been set without logical explanation.
- Red flag 11: Mortgages are repeatedly repaid significantly prior to the initially agreed maturity date, with no logical explanation.
- Red flag 12: The asset is purchased with cash and then rapidly used as collateral for a loan.

- Red flag 13: There is a request to change the payment procedures previously agreed upon without logical explanation, especially when payment instruments are suggested which are not appropriate for the common practice used for the ordered transaction.
- Red Flag 14: Finance is provided by a lender, either a natural or legal person, other than a credit institution, with no logical explanation or economic justification.
- Red Flag 15: The collateral being provided for the transaction is currently located in a high-risk country.
- Red flag 16: There has been a significant increase in capital for a recently incorporated company or successive contributions over a short period of time to the same company, with no logical explanation.
- Red flag 17: There has been an increase in capital from a foreign country, which either has no relationship to the company or is high risk.
- Red flag 18: The company receives an injection of capital or assets in kind which is notably high in comparison with the business, size or market value of the company performing, with no logical explanation.
- Red flag 19: There is an excessively high or low price attached to the securities transferred, with regard to any circumstance indicating such an excess (*e.g.* volume of revenue, trade or business, premises, size, knowledge of declaration of systematic losses or gains) or with regard to the sum declared in another operation.

- Red flag 20: Large financial transactions, especially if requested by recently created companies, where these transactions are not justified by the corporate purpose, the activity of the client or the possible group of companies to which it belongs or other justifiable reasons.

RED FLAGS IN THE CHOICE OF LAWYER

- Red flag 21: Instruction of a legal professional at a distance from the client or transaction without legitimate or economic reason.
- Red flag 22: Instruction of a legal professional without experience in a particular specialty or without experience in providing services in complicated or especially large transactions..
- Red flag 23: The client is prepared to pay substantially higher fees than usual, without legitimate reason.
- Red flag 24: The client has changed advisor a number of times in a short space of time or engaged multiple legal advisers without legitimate reason

- Red flag 25: The required service was refused by another professional or the relationship with another professional was terminated.

RED FLAGS IN THE NATURE OF THE RETAINER

- Red flag 26: The transaction is unusual, *e.g.*:
    - the type of operation being notarised is clearly inconsistent with the size, age, or activity of the legal entity or natural person acting
    - the transactions are unusual because of their size, nature, frequency, or manner of execution
    - there are remarkable and highly significant differences between the declared price and the approximate actual values in accordance with any reference which could give an approximate idea of this value or in the judgement of the legal professional
    - a non-profit organisation requests services for purposes or transactions not compatible with those declared or not typical for that body.
- Red flag 27: The client:
    - is involved in transactions which do not correspond to his normal professional or business activities
    - shows he does not have a suitable knowledge of the nature, object or the purpose of the professional performance requested
    - wishes to establish or take over a legal person or entity with a dubious description of the aim, or a description of the aim which is not related to his normal professional or commercial activities or his other activities, or with a description of the aim for which a license is required, while the customer does not have the intention to obtain such a licence
    - frequently changes legal structures and/or managers of legal persons
    - asks for short-cuts or unexplained speed in completing a transaction
    - appears very disinterested in the outcome of the retainer
    - requires introduction to financial institutions to help secure banking facilities

- Red flag 28: Creation of complicated ownership structures when there is no legitimate or economic reason.
- Red flag 29: Involvement of structures with multiple countries where there is no apparent link to the client or transaction, or no other legitimate or economic reason.
- Red flag 30: Incorporation and/or purchase of stock or securities of several companies, enterprises or legal entities within a short period of time with elements in common (one or several partners or shareholders, director, registered company office, corporate purpose etc.) with no logical explanation.
- Red flag 31: There is an absence of documentation to support the client's story, previous transactions, or company activities.
- Red flag 32: There are several elements in common between a number of transactions in a short period of time without logical explanations.
- Red flag 33: Back to back (or ABC) property transactions, with rapidly increasing value or purchase price.
- Red flag 34: Abandoned transactions with no concern for the fee level or after receipt of funds.
- Red flag 35: There are unexplained changes in instructions, especially at the last minute.
- Red flag 36: The retainer exclusively relates to keeping documents or other goods, holding large deposits of money or otherwise using the client account without the provision of legal services.
- Red flag 37 There is a lack of sensible commercial/financial/tax or legal reason for the transaction.
- Red flag 38 There is increased complexity in the transaction or the structures used for the transaction which results in higher taxes and fees than apparently necessary.
- Red flag 39: A power of attorney is sought for the administration or disposal of assets under conditions which are unusual, where there is no logical explanation.
- Red flag 40: Investment in immovable property, in the absence of any links with the place where the property is located and/ or of any financial advantage from the investment.
- Red flag 41: Litigation is settled too easily or quickly, with little/no involvement by the legal professional retained.
- Red flag 42: Requests for payments to third parties without substantiating reason or corresponding transaction.

CHAPTER 6

CONCLUSIONS

KEY FINDINGS

This typology has found evidence that criminals seek out the involvement of legal professionals in their money laundering schemes, sometimes because the involvement of a legal professional is required to carry out certain types of activities, and sometimes because access to specialised legal and notarial skills and services may assist the laundering of the proceeds of crime and the funding of terrorism.

Case studies, STRs and literature point to the following legal services being vulnerable to misuse for the purpose of ML/TF:

- client accounts (administered by the legal professional)
- purchase of real 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.

Not all legal professionals are involved in providing these types of legitimate legal services that criminals may seek to abuse, but in some cases a legal professional may need to be involved. This makes the use of legal professionals carrying out these activities uniquely exposed to criminality, irrespective of the attitude of the legal professional to the criminality.

It is accepted that the vast majority of legal professionals seek to comply with the law and their professional requirements, and they have no desire to be involved in ML/TF activity. The legal profession is highly regulated. Furthermore, ethical obligations, professional rules and guidance on ML/TF provided by SRBs and professional bodies should cause legal professionals to refuse to act for clients who seek to misuse legal services for ML/TF purposes.

To keep legal professionals from becoming involved in ML/TF however, the above factors rely on the legal professionals:

- being alert to red flags indicating that the client is seeking to involve them in criminal activity
- choosing to abide by their ethical obligations and applicable professional rules; and
- discerning legitimate client wishes from transactions and structures intended to conceal or promote criminal activity or thwart law enforcement.

Equally, the application of FATF Recommendations to legal professionals over the last decade should provide the legal sector with tools to better identify situations where criminals are seeking to misuse legal services.

Some SRBs and professional bodies are quite active in educating their members on the ML/TF vulnerabilities they face and the red flag indicators which could alert them to a suspicious transaction. STRs from legal professionals have also assisted law enforcement in detecting and prosecuting criminals engaged in ML/TF activity.

However, not all legal professionals are undertaking the CDD measures required by the FATF Recommendations, and not all SRBs and professional bodies have a clear understanding of information on ML/TF vulnerabilities specific to the legal sector to provide to their members.

A lack of awareness and/or lack of education of ML/TF vulnerabilities and red flag indicators reduces the likelihood that legal professionals would be in a position prevent the misuse of their services and avoid a breach of their professional obligations.

This typology research recognises that investigating a legal professional presents more practical challenges than investigating other professionals, due to the important protections for fundamental human rights which attach to the discharge of a legal professional's activities. However, the research has also confirmed that neither legal professional privilege nor professional secrecy would ever permit a legal professional to continue to act for a client who was engaging in criminal activity.

The scope of legal professional privilege/professional secrecy depends on the constitutional and legal framework of each country, and in some federal systems, in each state within the country. Practically, this diversity and differing interpretations by legal professionals and law enforcement on what information is actually covered by legal professional privilege / professional secrecy has, at times provided a disincentive for law enforcement to take action against legal professionals suspected of being complicit in or wilfully blind to ML/TF activity.

OPPORTUNITIES FOR FUTURE ACTION

This typology study should be used to increase awareness of the red flag indicators for potential misuse of legal professionals for ML/TF purposes and in particular for:

- **Legal professionals –** as this would assist in reducing their unwitting involvement in ML/TF activities undertaken by their clients and promote the filing of STRs where appropriate;
- **Financial institutions and other DFNBPs** – as this may alert them to situations where legal professionals are complicit in their client's ML/TF activity or are not aware of the red flag indicators to promote the filing of STRs where appropriate;
- **SRBs and professional bodies** – as this will assist in developing training programmes and guidance which focus not just on the law but the practical application of the law to everyday legal practice and assist in identifying both witting and unwitting involvement in ML/TF activities as part of their monitoring of professional conduct; and
- **Competent authorities and partner law enforcement agencies –** to assist in their investigation of ML/TF where legal services are a method used and to inform the assessment of whether it is likely that the legal professional is involved wittingly or unwittingly, so that appropriate action can be taken.

Potentially, the increased education of legal professionals on ML/TF vulnerabilities may include a discussion of AML/CFT risks and obligations in the course of the legal education or licensing of legal new professionals. Initially, this education can take place in the context of ethics and professionalism in courses and law schools, and later, through continuing education curricula.

Competent authorities, SRBs and professional bodies should review the case examples in this typology study and fit them to the specific roles and vulnerabilities of their members.

Increased interaction between competent authorities, supervisors and professional bodies in terms of sharing information on trends and vulnerabilities, as well as notifying each other of instances where legal professionals are failing to meet their ethical and legal obligations in an AML/CFT context, may also assist in reducing misuse of legal professionals. SRBs and professional bodies may find the red flag indicators in this report useful when monitoring their members' conduct against professional and client account rules.

There will be many factors taken into consideration when deciding whether to criminally prosecute a legal professional for money laundering of failing to submit an STR where required. In some instances, it will be more appropriate and effective for the SRB or professional body to take disciplinary or remedial action where the legal professional's conduct falls short of professional requirements and permits money laundering to occur, but was not intended to aid in money laundering. This shared approach to enforcement not only helps to combat ML / TF, but also helps to ensure that legal professionals uphold the rule of law and do not bring the wider profession into disrepute.

Competent authorities, SRBs and professional bodies should work to ensure that there is a clear and shared understanding of the remit of confidentiality, legal professional privilege and/or professional secrecy in their own country. A clear understanding of the remit of these principles and the procedures for investigating a legal professional will assist in reducing mistrust from both

parties during this process and may help to dispel the perception that privilege or secrecy is designed to protect criminals. It may also assist in more prompt investigation and prosecution of those who would misuse the services of legal professionals or abuse their role as a legal professional, while reducing the concern of legal professionals that they may be sanctioned for breaching privilege or secrecy when complying with their AML/CFT obligations.

Finally, this typology found that the analysis of STRs made about legal professionals and the types of assets being confiscated provided useful information on the AML/CFT risks posed by the legal sector. Member states may wish to consider using these sources of information when assessing risks for the purpose of completing the national risk assessment in line with FATF Recommendation 1. FATF can also consider this work, in consultation with the legal sector, when updating its RBA Guidance for Legal Professionals and other DNFBPs.

ANNEX 1
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ANNEX 2
RESPONDENTS TO THE QUESTIONNAIRE

RESPONSES RECEIVED FROM MEMBER STATES AND ASSOCIATE MEMBER STATES:

Australia	Austria	Belgium
Canada	Denmark	Finland
France	Japan	Ireland
Italy	Japan	Netherlands
Norway	Portugal	Spain
Sweden	Switzerland	Turkey
United Kingdom	United States	Bermuda
Curacao	St Vincent & the Grenadines	Trinidad & Tobago
Gibraltar	Jordan	Liechtenstein
Montenegro		

RESPONSES RECEIVED FROM SRBS OR PROFESSIONAL BODIES IN THE FOLLOWING COUNTRIES:

Australia	Austria	Belgium
Canada	Denmark	France
Germany	Ireland	Italy
Japan	Luxembourg	Netherlands
Norway	Portugal	South Africa
Spain	Sweden	Switzerland
United Kingdom	United States	Bermuda
Curacao	Namibia	Saint Vincent & the Grenadines
Trinidad & Tobago	Malawi	Cyprus
Czech Republic	Estonia	Hungary
Montenegro	Poland	Slovakia
Slovenia	Swaziland	

ANNEX 3
DEFINITIONS

Mechanism: An ML/TF mechanism is a system or element that carries out part of the ML/TF process. Examples of ML/TF mechanisms include financial institutions, legal professionals, legal entities and legal arrangements.

Method: In the ML/TF context, a method is a discrete procedure or process used to carry out ML/TF activities. It may combine various techniques, mechanisms and instruments, and it may or may not represent a typology in and of its self.

Scheme: An ML/TF scheme is a specific operation or case of money laundering or terrorist financing that combines various methods (techniques, mechanisms and instruments) into a single structure.

Technique: An ML/TF technique is a particular action or practice for carrying out ML/TF activity. Examples of ML/TF techniques include structuring financial transactions, co-mingling of legal and illegal funds, over and under valuing merchandise, transmission of funds by wire transfer, etc.

Typology: An ML/TF typology is a pattern or series of similar types of money laundering or terrorist financing schemes or methods.

Legal professional: Lawyers, notaries and other independent legal professionals – this refers to sole practitioners, partners, or employed professionals within professional firms. It is not meant to refer to 'internal' professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to AML/CFT measures.

Legal professionals are covered by the FATF Recommendations when 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
- management of bank, savings or securities accounts;
- organisation of contributions for the creation, operation, or management of companies
- creation, operation or management of legal persons or arrangements, and the buying and selling of business entities.

SRB: Self-regulatory body – is a body that represents a profession (*e.g.* lawyers, notaries, other independent legal professionals or accountants), and which is made up of members from the profession, has a role in regulating the persons that are qualified to enter and who practice in the profession, and also performs certain supervisory or monitoring type functions. Such bodies should enforce rules to ensure that high ethical and moral standards are maintained by those practicing in the profession.

ANNEX 4
TYPES OF LEGAL PROFESSIONALS

The Risk Based Approach Guidance for Legal Professionals, produced by FATF, in consultation with the legal sector in 2008, provided high level definitions of the legal professionals in terms of Lawyers and Notaries.[45]

In summary these definitions highlighted the regulated nature of these professions, their important role in promoting adherence to the rule of law, providing impartial and independent legal advice on complex rights and obligations, and/or authenticating documents.

For this typology research, greater focus was on the actual areas of law and specific tasks in which different types of legal professionals provided services, to obtain a clearer understanding of which vulnerabilities may be more relevant to which legal professionals.

The questionnaire sent to SRBs specifically asked for information on whether their members:

- engaged in activities covered by the FATF Recommendations;
- only provided legal and advice and representation;
- held exclusive licences for a particular legal services; and
- held client money

From the many responses received a number of trends were identifiable:

1. Lawyers

   Legal professionals who would fall within the RBA Guidance category of lawyer may actually be referred to in their home country as: Advocate, Advogardo, Attorney, Barrister, Lawyer, Legal Practitioner, Rechtsanwalt, Solicitor, Trial Attorney, etc.[46]

   Between countries however, the exact legal services provided by legal practitioners with the same title and restrictions on their activities also differed.

   In some countries legal professionals within this category were predominantly listed as providing legal advice and representing their clients, often in court, sometimes in negotiations. While in other countries they provided legal advice and assisted their

45 www.fatf-gafi.org/media/fatf/documents/reports/RBA%20Legal%20professions.pdf

46 For example the European Directive to facilitate practice of the profession of a lawyer on a permanent basis in a member state other than that in which the qualification was obtained provides a useful overview of lawyers in the European union. See the CCBE website for more information www.ccbe.eu/index.php?id=94&id_comite=8&L=0

clients with the preparation of documents and carrying out of transactions, as well as representing those clients in court and negotiations.

In many countries legal professionals in this category held an exclusive licence for representation in court, but generally they did not hold an exclusive licence for legal services covered by the FATF Recommendations.[47]

In most countries all legal professionals in this category were able to receive clients directly[48] and were able to hold client money, either in specified accounts or accounts held by their professional body.

Both confidentiality and either legal professional privilege or professional secrecy reportedly applied to many or all of the activities of legal professionals within this category.

2. Notaries[49]

There is a distinction between civil law notaries and common law 'notaries public', with the latter certifying signatures and documents and the former having the status of a qualified legal professional and of public office holders in terms of establishing authentic instruments in the area of preventative justice.[50]

Civil law notaries often have an exclusive licence in relation to their role in the following areas:

1. the law relating to real property, such as the preparation and registering of contracts and/or deeds transferring real property from one party to another.

2. the law relating to legal persons, such as incorporating companies, issuing shares and registering their transfer.

3. the law relating to persons and families, such as the preparation of prenuptial agreements, property agreements following a divorce and drafting wills.

In some countries the notary is appointed to a specific geographical area and it would be atypical of them to undertake notarial work for transactions relating to other geographic areas.

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47 There are exceptions to this, for example in Bermuda barristers have an exclusive licence in relation to legal work involving the transfer of real property and in Hungary attorneys are the only legal professionals able to undertake legal work relating to real property and the formation of companies

48 An exception to this was found in some common law countries, where a barrister will usually only act for a client who has been referred to them by a solicitor. The barrister is also precluded from holding client funds.

49 In Japan the category of notary is not known, although similar activities are undertaken by Judicial Scriveners and Certified Administrative Procedures Specialists.

50 In addition to the information about the role of civil and common law notaries in the FATF RBA guidance, the Council of Notariats of the European Union provide information on the role of notaries on their website: www.notaries-of-europe.eu/notary-s-role/overview

These legal professionals would occasionally hold client money or facilitate the transfer of a monetary instrument such as a cheque between parties, always in a traceable and recorded way. They would deal with the clients (or an authorised representative) directly, but sometimes on referral from another legal professional.

Confidentiality generally applied to these legal professionals. Some SRBS advised that legal professional privilege or professional secrecy also applied to these legal professionals, but others said that it would not.

ANNEX 5
SCHEDULE OF CASES

Case.	Country / Source	Method	Technique	Source of Illicit Proceeds	Economic Sector(s)	Action by or against legal professional	Red Flags
1	**Australia**	Misuse of Client Account	Transferring funds without providing legal services	Unspecified	Financial Institution	Disciplinary sanction imposed	2, 23, 27
2	**Canada**	Misuse of Client Account	Transferring funds without providing legal services	Illicit Drug Trafficking	Financial Institution	No information	2, 3, 4, 36
3	**United States**	Misuse of Client Account	Transferring funds without providing legal services	Corruption	Financial Institution	Disciplinary sanction imposed	36, 42
4	**Australia**	Misuse of Client Account	Structuring payments	Unspecified	Financial Institution, Real Estate	No information	2, 4, 5
5	**United States**	Misuse of Client Account	Structuring payments	Illicit Drug Trafficking	Financial Institution	Criminal conviction	2, 4, 18
6	**Spain**	Misuse of Client Account	Structuring payments	Fraud	Real Estate	STR filed by legal professional	2, 26
7	**United Kingdom**	Misuse of Client Account	Aborted transactions	Fraud	Company	Disciplinary sanction imposed	3, 34
8	**United Kingdom**	Misuse of Client Account	Aborted transactions	Unspecified	Real Estate	Removed from practice	2, 27, 34
9	**Belgium**	Property Purchases	Investment of proceeds of crime in property	Illicit trafficking in goods and merchandise	Real Estate	STR filed by legal professional	4, 26
10	**United Kingdom**	Property Purchases	Investment of proceeds of crime in property	Unspecified	Real Estate	Legal professional acted as prosecution witness	2, 4, 5

Case.	Country / Source	Method	Technique	Source of Illicit Proceeds	Economic Sector(s)	Action by or against legal professional	Red Flags
11	**United Kingdom**	Property Purchases	Investment of proceeds of crime in property	Illicit Drug Trafficking	Real Estate	Criminal conviction	4, 5
12	**France**	Property Purchases	Transferring value - back to back or ABC sales	Unspecified	Financial Institution, Real Estate	No information	2, 3, 4, 24, 33
13	**France**	Property Purchases	Transferring value - sales within an organised crime group	Organised Crime	Real Estate	No information	3, 4, 26
14	**Australia**	Property Purchases	Obscuring ownership - purchase with false name / counterfeit documents	Illicit Drug Trafficking	Real Estate	No information	2, 26
15	**Canada**	Property Purchases	Obscuring ownership - purchasing [purchase] through intermediaries	Illicit Drug Trafficking, Fraud or Theft	Financial Institution, Real Estate	No information	2, 4, 11
16	**France**	Property Purchases	Obscuring ownership - purchase through a company or trust	Corruption (?)	Company, Financial Institution, Real Estate	No information	2, 3, 4, 21, 26, 28, 35
17	**Belgium**	Property Purchases	Obscuring ownership - purchase through a company or trust	Organised Crime (?)	Company, Financial Institution, Real Estate	Investigation commenced	2, 6, 28, 29
18	**Spain**	Property Purchases	Obscuring ownership - purchase through a company or trust	Illicit Drug Trafficking	Company, Real Estate	STR filed by legal professional	2, 3, 4, 19,20
19	**United Kingdom**	Property Purchases	Mortgage fraud with antecedent laundering	Fraud	Financial Institution, Real Estate	Disciplinary sanction imposed	2, 26, 27
20	**United Kingdom**	Property Purchases	Mortgage fraud with antecedent laundering	Unspecified	Financial Institution, Real Estate	Removed from practice	26, 28, 33

Case.	Country / Source	Method	Technique	Source of Illicit Proceeds	Economic Sector(s)	Action by or against legal professional	Red Flags
21	**Belgium**	Creation of Companies and Trusts	Creation of trusts to obscure ownership and retain control	Tax Fraud (?)	Company, Financial Institution, Real Estate, Trust	No information	2, 29
22	**FATF**	Creation of Companies and Trusts, Misuse of Client Account	Creation of trusts to obscure ownership and retain control	Smuggling	Company, Financial Institution, Trust, Real Estate	No information	2, 3, 28
23	**Japan**	Creation of Companies and Trusts	Creation of shell companies to place or layer	Loan Sharking	Company	No information	1, 2, 26
24	**Spain**	Creation of Companies and Trusts	Creation of shell companies to place or layer, Management of a company or trust - creation of legitimacy and provision of legal services	Organised Crime	Company	No information	2, 3, 29
25	**Spain**	Creation of Companies and Trusts, Management of Companies and Trusts	Use of bearer shares to obscure ownership, Creation of shell companies to place or layer	Unspecified	Company, Financial Institution, Real Estate	No information	2, 11, 33
26	**Jersey**	Creation of Companies and Trusts	Use of bearer shares to obscure ownership	Illicit Drug Trafficking	Company, Financial Institution	No information	2, 4, 29
27	**United States**	Management of Companies and Trusts	Acting as trustee - receiving the proceeds of crime	Illicit Drug Trafficking	Trust	Decision not to prosecute legal practitioner	3, 36
28	**Italy**	Management of Companies and Trusts	Management of a company or trust - appearance of legitimacy and provision of legal services	Money laundering operation	Company, Financial Institution	No information	2, 19
29	**United States**	Management of Companies and Trusts	Management of a company or trust - appearance of legitimacy and provision of legal services	Advance-fee scheme	Company, Financial Institution	Criminal conviction	2, 42

Case.	Country / Source	Method	Technique	Source of Illicit Proceeds	Economic Sector(s)	Action by or against legal professional	Red Flags
30	**Italy**	Management of Companies and Trusts	Holding shares as an undisclosed nominee	Organised Crime (?)	Company, Financial Institution	No information	2, 19
31	**United States**	Management of Client Affairs and Making Introductions	Opening bank accounts on behalf of clients	Corruption	Company, Financial Institution	No information	2, 8, 27, 29
32	**United States**	Managing Client Affairs and Making Introductions	Opening bank accounts on behalf of clients	Corruption	Company, Financial Institution Real Estate	No information	2, 8, 27
33	**Netherlands**	Managing Client Affairs and Making Introductions	Opening bank accounts on behalf of clients	Unspecified	Company, Financial Institution	No information	2, 14, 26, 27
34	**Egmont**	Managing Client Affairs and Making Introductions	Introduction of other professionals for parts of a transaction	Organised Crime	Financial Institution, Real Estate	No information	2, 26
35	**United States**	Managing Client Affairs and Making Introductions	Introduction of other professionals for parts of a transaction	Illicit Drug Trafficking	Company, Financial Institution	Criminal conviction	2, 4, 26
36	**FATF**	Managing Client Affairs and Making Introductions, Misuse of Client Account	Management of a client's general affairs	Illicit Drug Trafficking	Financial Institution, Real Estate	No information	2, 4
37	**Belgium**	Managing Client Affairs and Making Introductions	Management of a client's general affairs	Fraud	Financial Institution, Insurance	No information	8, 11, 26
38	**Norway**	Litigation	Sham litigation	Unspecified	Unspecified	Criminal conviction	2, 41
39	**Spain**	Litigation	Sham litigation	Organised Crime (?)	Company, Financial Institution, Real Estate	STR filed by legal professional	2, 3, 20
40	**Australia**	Litigation	Sham litigation	Unspecified	Company	STR filed by legal professional	21, 22, 27, 38, 41

Case.	Country / Source	Method	Technique	Source of Illicit Proceeds	Economic Sector(s)	Action by or against legal professional	Red Flags
41	**Trinidad & Tobago**	Other Methods	Use of specialised legal skills	Illicit Drug Trafficking	Real Estate	Legal professional acquitted	2, 27, 39
42	**Spain**	Other Methods	Use of specialised legal skills	Unspecified	Unspecified	STR filed by legal professional	2, 3, 22, 37
43	**United Kingdom**	Other Methods	Use of specialised legal skills	Fraud	Unspecified	STR filed by legal professional	2, 4
44	**Belgium**	Other Methods	Use of specialised legal skills	Fraud	Company, Financial Institution	Investigation commenced	3, 4, 5
45	**United States**	Other Methods	Payment of legal fees and associated expenses	Illicit Drug Trafficking	Financial Institution / Money or value transfer service	Criminal conviction	2, 4
46	**United States**	Other Methods	Payment of legal fees and associated expenses	Illicit Drug Trafficking	Unspecified	Criminal conviction	2, 4
47	**Italy**	Other Methods	Payment of legal fees and associated expenses	Organised Crime	Unspecified	Legal professional charged	2, 4, 26
48	**Netherlands**	Other Methods	Providing legal services for charities	Terrorism	Company (Foundation)	Decision not to prosecute legal practitioner	2, 25
49	**United States**	Other Methods	Providing legal services for charities	Fraud	Company (Foundation)	Criminal conviction (for predicate offences)	2, 26
50	**Australia**	Misuse of Client Account	Transferring funds without providing legal services	Unspecified	Company, Financial Institution	No information	7, 26, 28
51	**Australia**	Misuse of Client Account	Transferring funds without providing legal services	Fraud	Financial Institution	No information	4, 8, 36
52	**Belgium**	Misuse of Client Account	Transferring funds without providing legal services	Tax Evasion	Company, Financial Institution	No information	29, 36

Case.	Country / Source	Method	Technique	Source of Illicit Proceeds	Economic Sector(s)	Action by or against legal professional	Red Flags
53	**Belgium**	Misuse of Client Account	Transferring funds without providing legal services	Fraud	Company, Financial Institution	Investigation commenced	2, 29, 36
54	**Canada**	Misuse of Client Account	Transferring funds without providing legal services	Illicit Drug Trafficking	Financial Institution	No information	2, 4, 26, 36
55	**South Africa**	Misuse of Client Account	Transferring funds without providing legal services	Unspecified	Company, Financial Institution	No information	3, 4, 36
56	**United Kingdom**	Misuse of Client Account	Transferring funds without providing legal services	Tax Fraud	Unspecified	Criminal conviction	3, 36
57	**United States**	Misuse of Client Account	Transferring funds without providing legal services	Sale of Stolen Goods	Unspecified	Criminal conviction, new trial granted on appeal which is currently being appealed	3, 36
58	**United States**	Misuse of Client Account	Transferring funds without providing legal services	Fraud	Company, Financial Institution	Criminal conviction	36
59	**United States**	Misuse of Client Account	Transferring funds without providing legal services	Unspecified	Company, Financial Institution	Criminal conviction	29, 36
60	**United States**	Misuse of Client Account	Structuring payments	Illicit Drug Trafficking	Company	Criminal conviction	3, 4, 26
61	**United States**	Misuse of Client Account	Structuring payments	Fraud	Financial Institution, Real Estate	Criminal conviction	4, 26
62	**United States**	Misuse of Client Account	Structuring payments	Illicit Drug Trafficking (Undercover Operation)	Real Estate (Undercover Operation)	Criminal conviction	2, 3, 26, 28
63	**United Kingdom**	Misuse of Client Account	Aborted transactions	Fraud (?)	Real Estate	Removed from practice	26, 34, 36
64	**FATF**	Purchase of Real Property	Investment of proceeds of crime in property	Illicit Drug Trafficking	Company, Financial Institution, Real Estate, Trust	No information	4, 26, 28, 29

Case.	Country / Source	Method	Technique	Source of Illicit Proceeds	Economic Sector(s)	Action by or against legal professional	Red Flags
65	**Belgium**	Purchase of Real Property	Investment of proceeds of crime in property	Unspecified	Financial Institution, Real Estate	No information	4, 5
66	**Belgium**	Purchase of Real Property	Investment of proceeds of crime in property	Illicit Drug Trafficking	Company, Financial Institution, Real Estate	STR filed by legal professional	2, 4
67	**Canada**	Purchase of Real Property	Investment of proceeds of crime in property	Illicit Drug Trafficking	Real Estate	No information	4, 26
68	**Canada**	Purchase of Real Property	Investment of proceeds of crime in property	Illicit Drug Trafficking	Financial Institution, Real Estate	No information	2, 4, 7, 26
69	**United Kingdom**	Purchase of Real Property	Investment of proceeds of crime in property	Illicit Drug Trafficking	Financial Institution, Real Estate	Criminal conviction	2, 4
70	**United Kingdom**	Purchase of Real Property	Investment of proceeds of crime in property	Illicit Drug Trafficking	Financial Institution, Real Estate	Legal professional acted as prosecution witness	4
71	**United Kingdom**	Purchase of Real Property	Investment of proceeds of crime in property	Fraud	Real Estate	One legal professional removed from practice and two received disciplinary sanctions	2, 3, 26, 36
72	**France**	Purchase of Real Property	Obscuring ownership - purchasing through intermediaries	Illicit Drug Trafficking	Financial Institution, Real Estate	Criminal conviction	2, 4, 7
73	**United States**	Purchase of Real Property	Obscuring ownership - purchasing through intermediaries	Illicit Drug Trafficking	Real Estate	Criminal conviction	2, 4
74	**FATF**	Purchase of Real Property	Obscuring ownership - purchasing through a company or trust	Embezzlement	Company, Financial Institution, Real Estate	No information	28, 29

Case.	Country / Source	Method	Technique	Source of Illicit Proceeds	Economic Sector(s)	Action by or against legal professional	Red Flags
75	**Belgium**	Purchase of Real Property	Obscuring ownership - purchasing through a company or trust	Fraud	Company, Financial Institution, Real Estate	STR filed by legal professional	2, 4, 29
76	**Belgium**	Purchase of Real Property	Obscuring ownership - purchasing through a company or trust	Fraud	Company, Financial Institution, Real Estate	Investigation commenced	2, 4, 28, 29
77	**Belgium**	Purchase of Real Property	Obscuring ownership - purchasing through a company or trust	Unspecified	Company, Financial Institution, Real Estate	Investigation commenced	28, 29
78	**Belgium**	Purchase of Real Property	Obscuring ownership - purchasing through a company or trust	Organised Crime	Company, Financial Institution, Real Estate	No information	4, 28, 29
79	**Belgium**	Purchase of Real Property	Obscuring ownership - purchasing through a company or trust	Organised crime	Company, Financial Institution, Real Estate	No information	17, 26, 37
80	**Belgium**	Purchase of Real Property	Obscuring ownership - purchasing through a company or trust	Fraud	Company, Financial Institution, Real Estate	STR filed by legal professional	2, 5, 26
81	**Belgium**	Purchase of Real Property	Obscuring ownership - purchasing through a company or trust	Illicit Drug Trafficking	Company, Financial Institution, Real Estate	STR filed by legal professional	2, 4, 26
82	**Belgium**	Purchase of Real Property	Obscuring ownership - purchasing through a company or trust	Illicit Drug Trafficking	Company, Financial Institution, Real Estate	No information	2, 3, 26, 36

Case.	Country / Source	Method	Technique	Source of Illicit Proceeds	Economic Sector(s)	Action by or against legal professional	Red Flags
83	**Spain**	Purchase of Real Property	Obscuring ownership - purchasing through a company or trust	Unspecified	Company, Financial Institution, Real Estate	No information	2, 8, 20, 26, 37
84	**Switzerland**	Purchase of Real Property	Obscuring ownership - purchasing through a company or trust	Corruption (?)	Company ["yet to be established"], Financial Institution, Real Estate	No information	2, 4, 26
85	**United Kingdom**	Purchase of Real Property	Obscuring ownership - purchasing through a company or trust	Unspecified	Real Estate	Decision not to prosecute legal practitioner	26
86	**United Kingdom**	Purchase of Real Property	Obscuring ownership - purchasing through a company or trust	Housing illegal immigrants	Company, Real Estate	Criminal conviction	29
87	**France**	Purchase of Real Property	Mortgage fraud with antecedent laundering	Fraud	Financial Institution, Real Estate	Prosecution commenced	3, 8, 26
88	**United Kingdom**	Purchase of Real Property	Mortgage fraud with antecedent laundering	Fraud, Organised Crime	Real Estate	Criminal conviction	2
89	**United Kingdom**	Purchase of Real Property	Mortgage fraud with antecedent laundering	Fraud	Real Estate	Disciplinary sanction imposed	2, 26, 35
90	**FATF**	Creation of Companies and Trusts, Misuse of Client Account	Creation of shell companies to place or layer	Illicit Drug Trafficking	Company, Financial Institution	Decision not to prosecute legal practitioner	2, 29, 36
91	**Belgium**	Creation of Companies and Trusts, Misuse of Client Account	Creation of shell companies to place or layer	Tax Fraud (?)	Company, Financial Institution	Investigation commenced	17, 28, 29, 30
92	**Belgium**	Creation of Companies and Trusts, Misuse of Client Account	Creation of shell companies to place or layer	Organised Crime	Company	Investigation commenced	29, 30

Case.	Country / Source	Method	Technique	Source of Illicit Proceeds	Economic Sector(s)	Action by or against legal professional	Red Flags
93	**Belgium**	Creation of Companies and Trusts, Misuse of Client Account	Creation of shell companies to place or layer	Unspecified	Company	No information	26, 30
94	**Canada**	Creation of Companies and Trusts, Misuse of Client Account	Creation of shell companies to place or layer	Illicit Drug Trafficking	Company, Financial Institution	No information	2, 29, 30
95	**Canada**	Creation of Companies and Trusts, Misuse of Client Account	Creation of shell companies to place or layer	Illicit Drug Trafficking	Company, Financial Institution, Real Estate	No information	4, 24
96	**Canada**	Creation of Companies and Trusts, Misuse of Client Account	Creation of shell companies to place or layer	Illicit Drug Trafficking	Company	No information	2, 30
97	**Spain**	Creation of Companies and Trusts, Misuse of Client Account	Creation of shell companies to place or layer	Unspecified	Company	No information	3, 19, 27
98	**Spain**	Creation of Companies and Trusts, Misuse of Client Account	Creation of shell companies to place or layer	Unspecified	Company	No information	18, 29, 30
99	**Netherlands**	Creation of Companies and Trusts, Misuse of Client Account	Creation of shell companies to place or layer	Fraud	Company, Financial Institution	No information	2, 4, 26, 29
100	**Netherlands**	Creation of Companies and Trusts, Misuse of Client Account	Creation of shell companies to place or layer	Fraud	Company	No information	24, 28
101	**United Kingdom**	Creation of Companies and Trusts, Misuse of Client Account	Creation of shell companies to place or layer	Fraud, Tax Fraud	Company, Financial Institution	Criminal conviction	2, 4, 29, 36
102	**United Kingdom**	Creation of Companies and Trusts, Misuse of Client Account	Creation of shell companies to place or layer	Corruption	Company, Financial Institution, Real Estate	STR filed by legal professional	2, 3, 8

Case.	Country / Source	Method	Technique	Source of Illicit Proceeds	Economic Sector(s)	Action by or against legal professional	Red Flags
103	**United Kingdom**	Creation of Companies and Trusts, Misuse of Client Account	Creation of shell companies to place or layer	Corruption, Fraud	Company, Financial Institution, Real Estate	Criminal conviction (currently under appeal)	2, 3, 4, 8
104	**United States**	Creation of Companies and Trusts, Misuse of Client Account	Creation of shell companies to place or layer	Illicit Drug Trafficking	Company, Financial Institution	Prosecution commenced	2, 7, 29, 36
105	**United States**	Creation of Companies and Trusts, Misuse of Client Account	Creation of shell companies to place or layer	Illicit Drug Trafficking (Undercover Operation)	Company, Financial Institution	Criminal conviction	27, 29, 36
106	**United States**	Creation of Companies and Trusts, Misuse of Client Account	Creation of shell companies to place or layer	Corruption	Company	Criminal conviction	2, 4, 26
107	**Austria**	Management of Companies and Trusts	Management of a company or trust - appearance of legitimacy and provision of legal services	Fraud, Breach of Trust	Company, Financial Institution	Criminal conviction	7, 26, 29
108	**Canada**	Management of Companies and Trusts	Management of a company or trust - creation of legitimacy and provision of legal services	Smuggling	Company, Financial Institution	No information	2, 4, 24, 30, 36
109	**Belgium**	Managing Client Affairs and Making Introductions	Opening bank accounts on behalf of clients	Organised Crime	Financial Institution	No information	27
110	**Belgium**	Managing Client Affairs and Making Introductions	Opening bank accounts on behalf of clients	Corruption	Company / Trust, Financial Institution	No information	2, 8, 27
111	**Belgium**	Managing Client Affairs and Making Introductions	Opening bank accounts on behalf of clients	Fraud	Company, Financial Institution	No information	2, 27, 29
112	**United States**	Managing Client Affairs and Making Introductions, Misuse of Client Account	Opening bank accounts on behalf of clients	Fraud	Company, Financial Institution	Criminal conviction	26, 29

Case.	Country / Source	Method	Technique	Source of Illicit Proceeds	Economic Sector(s)	Action by or against legal professional	Red Flags
113	**United States**	Managing Client Affairs and Making Introductions	Opening bank accounts on behalf of clients	Unspecified	Company, Financial Institution	Criminal conviction	7, 26, 27, 30
114	**Australia**	Managing Client Affairs and Making Introductions	Management of client's general affairs through client account	Unspecified	Financial Institution, Insurance	No information	5, 26, 36
115	**Belgium**	Managing Client Affairs and Making Introductions	Management of client's general affairs through client account	Illicit Drug Trafficking, Organised Crime	Company, Financial Institution	No information	5, 14, 21, 40
116	**Canada**	Managing Client Affairs and Making Introductions, Misuse of Client Account	Management of client's general affairs through client account	Illicit Drug Trafficking	Company, Financial Institution	No information	4, 24, 30, 36
117	**United States**	Managing Client Affairs and Making Introductions, Misuse of Client Account	Management of client's general affairs through client account	Fraud	Company, Financial Institution	Removed from practice	2, 26, 27, 36
118	**United States**	Managing Client Affairs and Making Introductions, Misuse of Client Account	Management of client's general affairs through client account	Illicit Drug Trafficking	Financial Institution	Criminal conviction	2, 4, 5, 36
119	**United States**	Managing Client Affairs and Making Introductions, Misuse of Client Account	Management of client's general affairs through client account	Illicit Drug Trafficking	Financial Institution	Criminal conviction	2, 4, 26, 36
120	**Netherlands**	Use of Specialised Legal Skills		Illicit Drug Trafficking	Financial Institution	Legal professional arrested	2, 7, 39
121	**Trinidad & Tobago**	Use of Specialised Legal Skills, Misuse of Client Account		Fraud	Company, Financial Institution	Prosecution commenced	7, 27, 30
122	**United Kingdom**	Use of Specialised Legal Skills		Fraud	(Art)	Criminal conviction	2, 4, 36
123	**United States**	Use of Specialised Legal Skills		Illicit Drug Trafficking	Company, Financial Institution	Criminal conviction	2, 4, 26, 27

ANNEX 6
ADDITIONAL CASE STUDIES

METHOD: MISUSE OF CLIENT ACCOUNT

TECHNIQUE: TRANSFERRING FUNDS WITHOUT PROVIDING LEGAL SERVICES

Case 50: **Legal professional acts as cash courier and makes international transfers without underlying legal transaction – common law country**

An Australian-based solicitor structured funds to an offshore account in Hong Kong. At times it was believed he actually carried cash to Hong Kong. His colleague, a Hong Kong-based solicitor, arranged for the creation of offshore companies in the British Virgin Islands and bank accounts in Hong Kong to receive structured funds from Australia. These funds were then transferred to other countries by the Hong Kong-based solicitor to hide from authorities or returned to Australia in order to appear legitimate.

Source: Australia (2012) questionnaire response

Case 50 **Red flag indicators:**	• Creation of complicated ownership structures without legitimate or economic reason • U-turn transactions • Use of multiple foreign accounts without good reason

Case 51: **Legal professional participates in u-turn payments to cover up fraud – common law country**

A person in control of a corporation's financial affairs abused this position of trust by defrauding the company. The person authorised and instructed staff to make electronic funds transfers from the company to his bookmakers' accounts. He then instructed the bookmakers to direct excess funds and winnings from their accounts to his account or third party accounts, and instructed bank officers to transfer funds from his accounts internationally.

In order to layer and disguise the fraud, he instructed his lawyer to contact the beneficiary of the original international transfers to return the payments via wire transfers into the lawyer's trust account. Approximately AUD 450 000 was returned in one international transfer to the lawyer's trust account. The lawyer then transferred AUD 350 000 to a church fund in an attempt to further hide the assets. To access these funds the person made structured withdrawals of AUD 9 000 each within a nine day period.

The suspect was charged with fraud-related offences for stealing more than AUD 22 million from the

company. He was sentenced to 14 years imprisonment, with a nine-and-a-half-year non-parole period.

Source: Australia (2012) questionnaire response

Case 51 **Red flag indicators:**	• Use of corporate funds for private expenditure • Use of the client account without an underlying transaction • Structuring of payments

Case 52: **Legal professional processes transfers between companies through client account without provision of legal services – civil law jurisdiction**

A bank disclosed suspicious international transfers to the Belgian FIU. Substantial sums from investment companies from Country A were credited on the third party account of a Belgian law firm to the benefit of the Belgian company X. The third party account was subsequently debited by means of money transfers to a company established in Country B. The total sum of these transactions amounted to several million euros.

The FIU's analysis revealed that the third party account clearly served as a transit account to make the construction less transparent. There was no justification to pass these funds through this third party account given that the Belgian company X already owned several accounts with Belgian banks. Furthermore, the majority of the managing directors of company X resided in Asia and were in no way connected to Belgium, whereas the shares of the company were owned by the investment company in Country A. Company X acted as a front company to cover up the relation between the origin and the destination of the funds.

Tax intelligence obtained by the FIU showed that, because of the intervention of company X, the investment companies from Country A (the clients of the international transfers) could relieve the tax burden for important investments in Country B.

Source: Belgium (2012) questionnaire response

Case 52 **Red flag indicators:**	• Involvement of structures with multiple countries where there is no apparent link to the client or transaction, or no other legitimate or economic reason • Use of the client account without an underlying transaction

Case 53: **Legal professional transfers the proceeds of a fraud through client account and attempts to purchase foreign currency to further disguise the origin of the funds – civil law country**

An exchange office disclosed the purchase of a considerable amount of GBP by a foreigner for the account of company X established in Belgium. The funds for this purchase had been transferred to the exchange office's account at the request of a lawyer with a Belgian bank account. The Unit questioned the bank where the lawyer/client held his account. This revealed that the funds on the account of the exchange office had been transferred to the lawyer's account in order of company Y established abroad. The funds that had been transferred by company Y were used to issue a cheque

to the order of company X.

The Unit was informed by the bank that the transfer order was false. Based on this information the bank countermanded the cheque issued by the lawyer, and further investigation by the Unit showed that company X was managed by a foreign national who had performed the exchange transaction. This transaction for company X's account did not have any known economic justification. Information by the tax administration indicated the company had not made its tax returns for quite some time.

Police intelligence revealed that company X, its managing director and its lawyer were on record for fraud. Part of the proceeds of this fraud was used to finance the purchase of GBP by a foreign national on behalf of company X. The Unit reported this file for financial fraud related money laundering.

Source: Belgium (2012) questionnaire response

Case 53 **Red flag indicators:**	• Involvement of structures with multiple countries where there is no apparent link to the client or transaction, or no other legitimate or economic reason • Use of the client account with no underlying transaction • Use of false documents • The client is known to have convictions for acquisitive crime

Case 54: **Legal professional accepts transfers into client account and acts as cash courier – common law country**

An Ontario-based drug trafficker admitted to police that he purposely used legal trust accounts to help block access to information about the true ownership of the funds in the account. He confessed that he would provide cash to his lawyer, who would then deposit the funds into the law firm's trust account. Every few days, the lawyer would withdraw the money from the trust account and deposit the funds into the various bank accounts controlled by the drug trafficker. This was often done by issuing cheques against the trust account, which would be payable to a company associated with the trafficker. Most cheques were in the amount of CAD 2 000 to avoid suspicion.

The small deposits and withdrawals, combined with the use of cheques issued from his lawyer's trust account, helped to circumvent cash or suspicious transaction declarations at financial institutions.

Source: Schneider, S. (2004)

Case 54 **Red flag indicators:**	• Cash payments not consistent with the client's known legitimate income • Use of the client account with no underlying transaction • Structuring of payments • The client is known to have convictions for acquisitive crime or to be currently under investigation for acquisitive crime

Case 55: **Legal professional uses client account as a banking facility for clients and applies their funds to his personal credit card – common law country**

The South African FIU received several STRs about an attorney who appeared to be abusing his attorney trust facility. The suspicious transactions in the reports pointed out the following:

i) Multiple large sums of money were being deposited into the trust account by different people and companies over a period exceeding two years

ii) These funds were used to make payments to other depositors in South Africa and abroad

iii) Funds from this account were being remitted to foreign countries deemed to be tax havens

iv) Money was transferred to the attorney's personal credit card; his practice expenses were also paid directly from the trust account.

Source: Deloitte (2011)

Case 55 **Red flag indicators:**	• Use of the client account without an underlying transaction • Payment of funds to a high risk country • Possibly disproportionate private funding and/or payments from third parties

Case 56: **Legal professional convicted after transferring funds to a criminal client's mistress – common law country**

In 2008, Mr Krestin, a solicitor was convicted of entering into an arrangement to facilitate money laundering after making a payment of EUR 14 000 euro to his client's mistress. There was no underlying transaction supporting the payment. The solicitor had received a production order relating to the client which outlined allegations of Tax (MTIC) fraud against the client. The first jury had not been able to reach a verdict, and the judge concluded that the second jury must have convicted the solicitor on the basis that he suspected that the funds were the proceeds of crime, rather than that he knew they were. The solicitor was fined GBP 5 000. When his conduct was considered by the Solicitors Disciplinary Tribunal, in light of the sentencing judge's comments he was reprimanded, but allowed to keep practicing as a lawyer, subject to restrictions.

Source: United Kingdom (2012) questionnaire response

Case 56 **Red flag indicators:**	• No underlying transaction for use of the client account • The is known to be currently under investigation of acquisitive crime

Case 57: **Legal professional disperses funds to criminal client's family members and keeps fee – common law country**

Attorney Jamie Harmon accepted the proceeds of the sale of stolen goods from her client, Christian Pantages. Harmon deposited the funds into her attorney trust account and then dispersed the funds

to Pantages and his wife, keeping a fee for herself.

Pantages pleaded guilty to all counts against him and testified against Harmon at trial. Following a guilty verdict on five counts of money laundering, the district court granted Harmon a new trial based on an improper jury instruction. In so doing, the judge expressed concern regarding the difficulties defence counsel face when accepting fees from clients that may be criminal proceeds.

See 2011 WL 7937876, at *5 n.12 (N.D. Cal. Aug. 18, 2011) (denying motion for judgment of acquittal but granting motion for a new trial based on improper jury instruction). The government's appeal of the grant of a new trial is pending.

Source: United States (2012) questionnaire response – United States v Harmon, No. 08-cr-938 (ND Cal)

Case 57 **Red flag indicators:**	• Use of client account without an underlying transaction

Case 58: **Legal professional convicted for creating secret client accounts to transfer the proceeds of fraud – common law country**

Attorney Jonathan Bristol pleaded guilty to conspiracy to commit money laundering for his role in laundering more than $18m in fraud proceeds through two attorney escrow accounts on behalf of Kenneth Starr and his fraudulent investment enterprises. At the time, Bristol was an attorney at a large, international law firm in New York.

Bristol created two attorney escrow accounts, without informing his law firm, into which Starr's investment advisory clients deposited their investment funds. Bristol then transferred the funds to Starr, members of his family, and his entities. Bristol also used the clandestine attorney escrow accounts to pay his law firm on behalf of Starr.

Bristol is currently awaiting sentencing. Following disciplinary action, the Court accepted his resignation for reasons of judicial economy and ordered Bristol's name be immediately struck from the roll of attorneys.

Source: United States (2012) questionnaire response United States v. Bristol, No. 10-cr-1239 (S.D.N.Y.)

Case 58 **Red flag indicators:**	• Use of client account without an underlying transaction • Payment of funds intended for corporate purposes to private accounts • Payments to third parties with no legitimate explanation

Case 59: **Legal professional creates complicated foreign structures and transfers funds through client account while claiming privilege would prevent discovery – common law country**

Attorney David Foster was indicted on charges of money laundering and ultimately pleaded guilty to one count of causing a financial institution to fail to file a currency transaction report. Foster assured undercover agents that their money laundering transactions through his client trust account would be protected by attorney-client privilege. After the funds were deposited in the trust

account, he transferred the money to a corporation and bank accounts in Liechtenstein that he had established. See 868 F. Supp. 213 (E.D. Mich. 1994) (holding that Foster's sentence calculation should be increased because of an enhancement for use of "special skills").

Source: United States (2012) questionnaire response United States v Foster No 93-cr-80141 (Ed Mich)

Case 59 **Red flag indicators:**	• Use of client account without an underlying transaction • Involvement of structures and countries where there is no legitimate reason

TECHNIQUE: STRUCTURING PAYMENTS

Case 60: **Legal professional creates companies, false legal documentation and advises on structuring payments to avoid reporting requirements – common law country**

Attorney George Rorrer was convicted by a jury of conspiracy to commit money laundering. Rorrer helped to invest the drug proceeds of client John Caporale by forming a corporation in the name of the client's wife and arranging a loan from the corporation to another (non-criminal) client, Robin Hawkins. Rorrer then drafted a phony construction-work contract, making the repayment of the loan appear to be payment for construction work performed by the Caporales. Rorrer instructed Hawkins to give the construction receipts to the Caporales to legitimise the payment.

Rorrer also drew up a promissory note, which the wife signed, but did not provide copies of the note to either party. Rorrer advised Hawkins how to deposit the cash loan without triggering reporting requirements. The appeals court upheld Rorrer's conviction but remanded him for resentencing after finding that the district court abused its discretion by not applying a sentencing enhancement based on Rorrer's use of "special skills" (legal skills) in committing the offenses of conviction. See United States v. Robertson, 67 F. App'x 257 (6th Cir. 2003).

Source: United States (2012) questionnaire response United States v. Rorrer, No. 99-cr-139(7) (W.D. Ky.)

Case 60 **Red flag indicators:**	• Significant private funding and the transfers are structured so as to avoid the threshold requirements • The ties between the parties are of a family, employment, corporate or other nature such as to generate doubts as to the real nature or reason for the transaction • Structuring of payments

Case 61: **Legal professional structures payments for property to avoid threshold reporting requirements – common law country**

Attorney Michael Sinko was convicted of conspiracy to commit money laundering and aiding and abetting money laundering. Sinko owned a condominium project that was financed by NOVA Bank, of which Sinko was the outside counsel. John Palmer, who had fraudulently obtained funds from his employer, wished to launder money by buying a condominium from Sinko. Sinko structured the purchase agreement in a way that avoided disclosure of cash payments. See 394 F. App'x 843 (3d

Cir. 2010) (affirming sentence).

Source: United States (2012) questionnaire response United States v. Sinko, No. 07-cr-703 (E.D. Pa.)

Case 61 **Red flag indicators:**	• Structuring of payments • Significant private funding / cash payments disproportionate to known legitimate income

Case 62: **Legal professional structures payments on property purchase and creates false documentation to launder proceeds of crime – common law country**

Defence attorney Victor Arditti advised an undercover agent posing as a cocaine dealer on how to structure cash in order to purchase real estate. Later, Arditti told the agent he would draft documents memorialising a sham loan to legitimise cash drug proceeds and then establish an escrow account to receive the proceeds and then invest it in an Oklahoma oil deal. When the escrow account idea failed to work, Arditti set up a trust account to funnel the drug proceeds to the oil deal, keeping the undercover agent's alias off all bank records.

No trust agreement was prepared, and Arditti had sole signature authority on the account. Subsequent deposits were made to the trust account using cashier's cheques from a Mexican money exchanger. A grand jury indicted Arditti on charges of conspiracy to launder money and to avoid currency reporting requirements. A jury found Arditti guilty on all counts, and the district court denied judgment of acquittal.

Source: United States (2012) questionnaire response United States v. Arditti, 955 F.2d 331 (5th Cir.), cert. denied, 506 U.S. 998 (1992)

Case 62 **Red flag indicators:**	• Structuring of payments • Client with purported convictions for acquisitive crime • Use of complicated structures for no legitimate reasons • Funds received from high risk countries

TECHNIQUE: ABORTED TRANSACTIONS

Case 63: **Legal professional facilitates laundering of the proceeds of mortgage fraud following aborted property transactions – common law country**

In 2010 a solicitor was stuck off after having allowed a large property company to use the client account as a banking facility, when the transactions were suddenly aborted They had also dissipated the funds received from a number of properties, rather than paying out the mortgage on the property.

Source: United Kingdom (2012) questionnaire response

Case 63 **Red flag indicators:**	• Large payments to the client account without an underlying legal transaction • Transaction unexpectedly aborted after funds had been received

	• Transaction were large for the particular practice

METHOD: PURCHASE OF REAL PROPERTY

TECHNIQUE: INVESTMENT OF PROCEEDS OF CRIME IN PROPERTY

Case 64: **Legal professional creates complex structures to purchase property with drug proceeds - common law country**

Suspicious flows of more than USD 2 million were identified being sent in small amounts by different individuals who ordered wire transfers and bank drafts on behalf of a drug trafficking syndicate who were importing 24kg of heroin into Country Z. Bank drafts purchased from different financial institutions in country Y (the drug source country) were then used to purchase real estate in Country Z. A firm of solicitors was also used by the syndicate to purchase the property using the bank drafts that had been purchased overseas after they had first been processed through the solicitor's trust account. Family trusts and companies were also set up by the solicitors.

Source: FATF (2004)

Case 64 **Red flag indicators:**	• Possible structuring of payments • Significant funding disproportionate to the known legitimate income of the client • Involvement of structures and accounts in multiple countries with no legitimate reasons • Use of complicated ownership structures for no legitimate reason

Case 65: **Legal professional instructed in property purchase by a foreign national with multiple third parties contributing to funding – civil law country**

A bank's suspicions were raised after a bank cheque was issued to the order of a notary upon request of an Asian national for purchasing real estate. Analysis of the account transactions showed that the account received several transfers from Asians residing abroad and was known through an investigation regarding a network of Asian immigrants. The analysis showed that the account had been used as a transit account by other Asian nationals for the purchase of real estate.

Source: FATF (2007)

Case 65 **Red flag indicators:**	• Third party funding with no legitimate explanation • Significant levels of private funding which may have been disproportionate to the socio-economic profile of the client

Case 66: **Legal professional makes STR after client attempts to purchase property with cash – civil law country**

A notary did a notification to the FIU on a company, represented by the Managing Director, who had

purchased a property in Belgium. The notary got suspicious when the buyer wished to pay the total price in cash. When the notary refused the Managing Director asked where the nearest bank Agency was. He came back to the Office of the notary with a cheque from the bank after he had run a deposit in cash. The suspicions of the notary were further enhanced when the company which he represented was the subject of a criminal investigation. Research by the FIU revealed that the person was already the subject of a dossier that was been sent by the FIU in connection with illicit drug trafficking. After the notification from the FIU a law enforcement investigation commenced.

Source: Cellule de traitement des information Financieres (2006)

Case 66 **Red flag indicators:**	• Significant amounts of cash not consistent with known legitimate income • The client is currently under investigation for acquisitive crimes

Case 67: **Legal professional acts as a depository institution and then purchases property for client with no known legitimate income – common law country**

A BC man used the proceeds from the sale of cocaine, marijuana and steroids to purchase several homes throughout British Columbia. The trafficker would regularly provide cash to his lawyer who would deposit the funds into his law firm's bank account in amounts averaging CAD 4 000 to CAD 5 000. When the balance of the amount reached a certain level the funds would be applied to the purchase of property (mostly homes used as marijuana grow-ups).

Source: Schneider, S. (2004)

Case 67 **Red flag indicators:**	• Significant private funding and cash not consistent with known legitimate income • Structuring of payments • Transactions not consistent with legitimate socio-economic profile of the client

Case 68: **Legal professional accepts over 130 transactions in 8 months to purchase property for drug trafficker – common law country**

Between January and August 1994, more than 130 transactions were conducted through a trust account of a law firm that represented a drug trafficker in the purchase of a $650,000 home in Toronto. The accused was convicted of drug trafficking and police were also able to prove that the funds used to purchase the property were derived from his illegal activities. During a two week period preceding his purchase of the real estate, the accused provided the law firm with numerous bank drafts obtained from a number of different financial institutions. The vast majority of these bank drafts were between CAD 3 000 and CAD 5 000 in value. The highest amount was CAD 9 000. Between March 17 and March 25, 1994, 76 bank drafts were deposited on behalf of the accused in the law firm's trust account. On March 17 alone, 18 different bank drafts were deposited into the account. The bank drafts were purchased from eight different deposit institutions.

Source: Schneider, S. (2004)

Case 68 **Red flag indicators:**	• Client known to have convictions for acquisitive crime • Structuring of payments • Significant private funding not consistent with known legitimate income • Use of multiple bank accounts and financial institutions for no legitimate reason

Case 69: **Legal professionals co-opted into laundering activity by his brother – common law country**

In 2009, Mr Farid a solicitor was convicted of failing to make a suspicious transaction report after acting in a number of property transactions on behalf of a drug dealer. Mr Farid was introduced to the client by the Mr Farid's brother and a mortgage broker. The mortgage broker had assisted in identity theft to facilitate fraudulent mortgage applications, with the transactions being processed by the solicitor, after large cash deposits were made. Mr Farid was sentenced to 9 months jail and in 2011 the Solicitors Disciplinary Tribunal ordered that he should not be re-employed within a law firm without permission from the regulator.

Source: United Kingdom (2012) questionnaire response

Case 69 **Red flag indicators:**	• Disproportionate amounts of cash • Use of false identities

Case 70: **Legal professional acts as prosecution witness after wrongly assuming funds were clean because they have come from a bank account – common law country**

In 2008/09 an international drug trafficker laundered over GBP 300 000 through bank accounts. This was then paid from the bank via cheque to a solicitor who acted as legal professional in a house purchase, where the house was bought for approximately GBP 450 000 with no mortgage. The solicitor had assumed because the money was transferred from a bank account, the funds had already been checked. The solicitor was not charged and acted as a witness for the police.

Source: United Kingdom (2012) questionnaire response

Case 70 **Red flag indicators:**	• Disproportionate level of private funding not consistent with the known legitimate income

Case 71: **Three legal professionals engage in money laundering through a property transaction for convicted fraudster husband of senior partner – common law jurisdiction**

In March 2006, a law firm acted for a small company in the purchase of a property for GBP 123 000. The director of the company was Mr A, the husband of one of the solicitors and a convicted fraudster. In September 2006, the law firm acted for Mr A who purchased the same property from the company for GBP 195 000. In February 2007, the firm then acted for Mr A's step son who

purchased the same property for GBP 230 000. In December 2006, the small company provided the firm with a payment of GBP 25 000 and GBP 20 000. The amount of GBP 25 000 was noted as covering a shortfall for the property, but there was no shortfall. The amount of £20,000 was said to be a loan to another client, but there were not documents to support the loan. The Solicitors Disciplinary Tribunal considered the conduct of three solicitors in relation to the matter. One was struck off, one was given an indefinite suspension from practice and the other was fined GBP 10 000.

Source: United Kingdom (2012) questionnaire response

Case 71 **Red flag indicators:**	• Director of client was known to have criminal convictions • Rapidly increasing value on the property that was not consistent with the market • Connection between the parties giving rise to questions about the underlying nature of the transaction • Use of client account without underlying transaction

TECHNIQUE: OBSCURING OWNERSHIP – PURCHASING THROUGH INTERMEDIARIES

Case 72: **Legal professional turns a blind eye to false documents when helping partner of drug trafficker buy property with criminal proceeds – civil law country**

In 1995 a notary was found guilty of money laundering as he helped the sexual partner of a drug trafficker, who had been arrested to buy a property and advise her to pay the price with international wire transfers. The court decided that the notary could not have been ignorant of the fact that some documents had been falsified.

Source: Chevrier, E. (2005)

Case 72 **Red flag indicators:**	• Use of false documents • Client known to have close connections with a person under investigation for acquisitive crimes • Use of foreign accounts with no legitimate reason • Significant private funding possibly not consistent with known legitimate income

Case 73: **Legal professional convicted for creating property portfolio for drug trafficking friend – common law country**

Attorney James Nesser was convicted of conspiracy to distribute drugs, conspiracy to launder money, money laundering, and engaging in illegal monetary transactions. Nesser handled property transactions for a client and sometimes social acquaintance Ronald Whethers. Nesser laundered Whethers' drug proceeds through the purchase of a farm, the sham sale of a house, and the masked purchase of another real property. Nesser's conviction on drug conspiracy charges was upheld because the laundering promoted the drug conspiracy and prevented its discovery by concealing the

origin of the proceeds. See 939 F. Supp. 417 (W.D. Penn. 1996) (affirming conviction).

Source: United States (2012) questionnaire response - United States v. Nesser, No. 95-cr-36 (W.D. Penn.)

Case 73 **Red flag indicators:**	• Client known to be involved in criminal activity • There are attempts to disguise the real owner or parties to a transaction • Significant private funding not consistent with known legitimate income

TECHNIQUE: OBSCURING OWNERSHIP – PURCHASE THROUGH A COMPANY OR TRUST

Case 74: **Legal professional assists in creating property investment countries to hide millions derived from fraud**

A director of several industrial companies embezzled several million dollars using the bank accounts of offshore companies. Part of the embezzled funds were then invested in Country Y by means of non-trading real estate investment companies managed by associates of the person who committed the principal offence. The investigations conducted in Country Y, following a report from the FIU established that the creation and implementation of this money laundering channel had been facilitated by accounting and legal professionals – gatekeepers. The gatekeepers had helped organise a number of loans and helped set up the different legal arrangements made, in particular by creating the non-trading real estate investment companies used to purchase the real estate. The professionals also took part in managing the structures set up in Country Y.

Source: FATF (2004)

Case 74 **Red flag indicators:**	• Creation of complicated ownership structures with no legitimate reason • Involvement of structures with multiple countries with no legitimate reason

Case 75: **Legal professionals help obscure beneficial ownership through complicated international corporate structures – civil law country**

A notary disclosed a real estate purchase by the company RICH, established in an off-shore centre. For this purchase the company was represented by a Belgian lawyer. The payment for the property took place in two stages. Prior to drafting the deed a substantial advance was paid in cash. The balance was paid by means of an international transfer on the notary‘s account.

Analysis revealed the following.

The balance was paid on the notary‘s account with an international transfer from an account opened in name of a lawyer‘s office established in Asia. The principal of this transfer was not the company RICH but a Mr. Wall. Ms. Wall, ex-wife of Mr.Wall resided at the address of the property in question. Police sources revealed that Mr. Wall was known for fraud abroad.

These elements seemed to indicate that Mr. Wall wanted to remain in the background of the

transaction. That is why he used an off-shore company, represented by a lawyer in Belgium and channelled the money through a lawyer's office abroad to launder money from fraud by investing in real estate.

Source: Deloitte (2011)

Case 75 **Red flag indicators:**	• Use of multiple countries, including higher risk countries, without legitimate reason • There are attempts to disguise the real owner or parties to the transaction • Significant amounts of cash and private funding possibly not consistent with the known legitimate income of the client

Case 76: **Legal professional involved in unusual transfers of property without apparent economic or other legitimate justification – civil law country**

A bank reported a person whose account has remained inactive for a long time, but who suddenly was filled with several deposits in cash and international transfers. These funds were then used for the issuance of a cheque to order of a notary for the purchase of a property. Research by the FIU revealed that the ultimate purchaser of the property not was the person involved, but an offshore company. The person concerned had first bought the property in his own name and then left to the listed company by a command statement for the notary. Examination of the dossier revealed that the person who was connected to a bankrupt company, acted as hand to buy property with disadvantage of his creditors. The person concerned also practiced no known professional activity and received state benefits. On these grounds and police intelligence the FIU reported the dossier for money laundering in connection with fraudulent bankruptcy. A judicial inquiry is currently underway.

Source: Cellule de traitement des information Financieres (2006)

Case 76 **Red flag indicators:**	• Involvement of a complicated ownership structure without legitimate reason • Funding not consistent with known legitimate income • There are attempts to disguise the real owner or parties to the transaction • Involvement of foreign countries with no legitimate reason

Case 77: **Legal professional involved in creating complex foreign corporate structure to purchase properties to facilitate laundering – civil law country**

The bank account of a person was credited by substantial transfers from abroad. These funds were used as banking cheques to order of a notary to purchase real estate. The investigation of the FIU revealed that the person had set up a highly complex corporate structure for this investment. Interrogation of the notary and the Constitutive Act of the companies showed that the two holdings companies in Belgium were founded at this notary in Belgium by four foreign companies. Then

those two companies founded two other companies in the real estate sector. Then the intermediary of these two last companies made investments in real estate. This dossier is currently subject of a judicial inquiry.

Source: Cellule de traitement des information Financieres (2006)

Case 77 **Red flag indicators:**	• Use of a complicated ownership structure without legitimate reason • Involvement of multiple countries without legitimate reason

Case 78: **Legal professionals makes STR after unusually high money transfers received from foreign country with no connection to the parties or the transaction – civil law country**

A Russian couple, living in Belgium, controlled the company OIL that was located in Singapore and that was active in the oil and gas sector. A company in the British Virgin Islands was the only shareholder of OIL. On their accounts significant transfers were made regarding OIL. The money was then transferred to accounts on their name in Singapore or withdrawn in cash. The use of foreign accounts and the intervention of off shore companies attracted the attention of the banks. In addition, the couple invested several million euros in immovable property in Belgium. The notary found such substantial investments and that they were paid through transfers from Singapore suspicious. Police source revealed that these stakeholders were heads of a Russian crime syndicate. They practiced no commercial activities in Belgium that could justify the transactions on their accounts. The Belgian financial system was apparently only used for the purpose of money laundering.

Source: Cellule de traitement des information Financieres (2009)

Case 78 **Red flag indicators:**	• Involvement of multiple countries without legitimate reason, including high risk countries • Significant private funding not consistent with the company's economic profile • Complicated ownership structure without legitimate reason

Case 79: **Legal professional used in U-turn property transaction designed to legitimise funds from organised crime – civil law country**

An East European was acting under an alias as the director of a company for which he opened an account with a Belgian bank. Transfers were made to this account from abroad, including some on the instructions of "one of our clients".

The funds were then used to issue a cheque to a notary for the purchase of a property. The attention of the notary was drawn to the fact that some time after the purchase, the company went into voluntary liquidation, and the person concerned bought the property back from his company for an amount considerably above the original price. In this way the individual was able to insert money into the financial system for an amount corresponding to the initial sale price plus the capital gain. He was thus able to use a business account, front company customer, purchase of real estate, cross border transaction and wire transfers to launder money that, according to police sources, came

from activities related to organised crime.

It appeared that the company acted as a front set up merely for the purpose of carrying out the property transaction.

Source: FATF (2007)

Case 79 **Red flag indicators:**	• Sale of property in a non-arm's length transaction (i.e. a director selling to his company) • Resale back to the original seller at a reduced price • There has been an increase in capital from a foreign country, where there is no clear connection

Case 80: **Legal professional makes STR after unusual third party funding of a property purchase**

The FIU received a suspicious transaction report from notary A on one of his clients, person B, a foreigner without an address in Belgium, who in his office had set up a company for letting real estate. The sole manager and shareholder of this company was a family member of B, who also resided abroad. Shortly after its creation the company bought a property in Belgium. The formal property transfer was carried out at notary A's office. The property was paid for through the account of notary A by means of several transfers, not from company X, but from another foreign company about which individual B did not provide any details. The establishment of a company managed by a family member with the aim of offering real estate for let and paid by a foreign company disguised the link between the origin and the destination of the money. Police intelligence revealed that the individual was known for financial fraud. The investment in the property was apparently financed by the fraud.

Source: FATF (2007)

Case 80 **Red flag indicators:**	• Funds received from third parties, in a foreign country, with no legitimate reason • The client is evasive about the source of funds • The transaction is unusual – there is limited connection between the client and the country in which the transaction takes place and the client does not have ownership or formal control over the entity on whose behalf he is conducting the transaction. • The client has convictions for acquisitive crimes

Case 81: **Legal professional makes STR after unusual cash payments made in relation to a property purchase – civil law country**

The company ANDI, managed by Mr. Oxo, sold a property to the company BARA, managed by Mr. Rya, for a significant amount for which the deposit was paid in cash. A large part of the price was also paid in cash. When the notary who had executed the act noticed these transactions he sent a disclosure to the FIU based on article 10bis of the Law of 11 January 1993.

Analysis revealed the following elements:

• The notary deed showed that money for the cheque to the notary was put on the account of the company ANDI by a cash deposit two days before the cheque was issued.

• Information from the bank showed that the company ANDI and Mr. Oxo's personal account were credited by substantial cash deposits. This money was used for, among other things, reimbursing a mortgage loan, and was withdrawn in cash.

• Police sources revealed that Mr. Oxo and Mr. Rya were the subject of a judicial inquiry into money laundering with regard to trafficking in narcotics. They were suspected of having invested their money for purchasing several properties in Belgium through their companies.

All of these elements showed that the cash used for purchasing property probably originated from trafficking in narcotics for which they were on record.

Source: Deloitte (2011)

Case 81 **Red flag indicators:**	• Significant cash deposits • Sale of property in a non-arm's length transaction • Clients currently under investigation for acquisitive crimes

Case 82: **Legal professional receives multiple deposits from various sources for property transaction – civil law jurisdiction**

A company purchased property by using a notary's client account. Apart from a considerable number of cheques that were regularly cashed or issued, which were at first sight linked to the notary's professional activities, there were also various transfers from the company to his account. By using the company and the notary's client account, money was laundered by investing in real estate in Belgium, and the links between the individual and the company were concealed in order to avoid suspicions. Police sources revealed that the sole shareholder of this company was a known drug trafficker.

Source: FATF (2007)

Case 82 **Red flag indicators:**	• The funding appears unusual in terms of multiple deposits being made towards the property purchase over a period • Use of the client account without an underlying transaction • The company only has one shareholder • A beneficial owner has convictions for acquisitive crime

Case 83: **Legal professional assists PEPs to purchase expensive foreign property though a company with a later transfer to a family member without genuine payment – civil law country**

A company is incorporated with a capital stock of EUR 3 050 by a Spanish lawyer, who then creates a general power of attorney over the company for a relative of the Head of State of an African country. Half the stock in the company is then transferred to another national of the same African country, who claims to be a businessman.

The company purchases of a plot of land within an urban development in Spain on which a detached house has been built. The property is valued at EUR 5 700 000, the price being paid through transfers between accounts at the same Spanish credit institution.

The company transfers the recently purchased property, in the following deed, to the relative of the Head of State, specifying the same price as set for the first purchase, while deferring payment of the entire sum.

Source: Spain (2012) questionnaire response

Case 83 **Red flag indicators:**	• The client and beneficial owner have family and personal ties to an individual who holds a public position in a high risk country. • The company makes a significant purchase which is disproportionate to the initial capital in the company and its economic profile • Company funds are used to make a private purchase • The transaction does not make economic sense in that the company divests itself of its largest asset without making a profit and with payment being deferred, • The transfer of the property is a non-arm's length transaction (i.e. company sells to its director)

Case 84: **Legal professional accepts tens of millions of euros from a PEP as a gift to his children to purchase property despite warnings of the corruption risks – civil law country**

Following the payment of a sum of money to the account of a notary's office, a bank sent a STR to the FIU. The STR referred to the payment of several tens of millions credited to the account of the notary. As the transaction appeared unusual, in particular because of the amount, the financial intermediary requested its client to clarify matters. The notary explained that the payment was a gift from a high-ranking government official or president of a country on the African continent to his children residing in Switzerland. The funds were destined for the purchase, via the intermediary of a public limited company yet to be established, of an apartment in the town in question.

As the funds originated from a politically exposed person (PEP), the degree of corruption in the African country in question was assessed as high and the Swiss Federal Banking Commission (SFBC) had issued warnings regarding this country, the financial intermediary reported the case.

Following investigations carried out by the FIU, it became apparent that the extremely high price of the property in question was in no proportion to the normal price for this type of object. Furthermore, open sources revealed that a third country was already carrying out investigations

into corruption and money laundering by the government official in question and members of his family.

Source: Deloitte (2011)

Case 84 **Red flag indicators:**	• Disproportionate private funding given known legitimate income • There are attempts to disguise the real owner or parties to the transaction • The client holds a public position in a high risk country • There is a remarkable high and significant difference between the purchase price and the known value of properties in the area • The client is currently under investigation for acquisitive crimes

Case 85: **Legal professional unaware that funds used to purchase property through a trust were proceeds of crime – common law country**

Between 2004 and 2008 a legal professional who conducted property transactions, assisted the subject by drafting a Deed of Trust and the purchase of a property. The property was bought at a discounted rate by the client and then transferred to third party. No action was taken against the legal professional as the law enforcement agency was unable to prove that legal professional had known or suspected that they were dealing with the proceeds of crime.

Source: United Kingdom (2012) questionnaire response

Case 85 **Red flag indicators:**	• Unusual transaction involving transfer of property at significant undervalue. • Complex property transactions

Case 86: **Legal professional convicted after transferring hotels at undervalue to offshore company – common law country**

In 2010, Mr Wilcock, a solicitor was convicted of failing to make a suspicious transaction report and fined GBP 2 515. He was acting for a client who ran a chain of properties in Southport, England which housed illegal immigrants. He was asked to transfer the ownership of the hotels to an offshore company at a significant undervalue. It was not clear if Mr Wilcock knew his client was being investigated by police at the time of the transaction, but in pleading guilty he acknowledged that he should have been suspicious as to the source of the funds used to purchase the hotels in the first place.

Source: United Kingdom (2012) questionnaire response

Case 86 **Red flag indicators:**	• Significant undervalue • Involvement of complex ownership in a country with which there was limited connection

TECHNIQUE: MORTGAGE FRAUD WITH ANTECEDENT LAUNDERING

Case 87: **Legal professional investigated for acting in unusual property transactions - including selling maid's rooms for 8 times their original value – civil law country**

Judicial investigations are in progress into the facts surrounding credit frauds to the detriment of a bank: 6 fraudulent real estate files of financing were presented to the agency on the basis of the production of false pay slips and false bank statements, for a loss at first estimated esteemed at EUR 505 000.

The first investigations led by the police confirmed that the loan files were presented to the bank systematically by the same client adviser and systematically by the same real estate agent for six different borrowers. They confirmed also that the loss finally amounted to about EUR 5 million as more loans which had deceitfully been obtained by those 6 borrowers were uncovered.

Searches of the offenders' residences led to the discovery of numerous documents, and a lifestyle out of proportion to their legitimate income.

However, the destination of the lent funds could only be partially determined because 5 of the 6 involved borrowers had acquired real property in Luxembourg.

The investigation also identified the complicity of two agents of the defrauded bank and the assistant director of this bank who indicated they let pass at least 9 files which they knew were based on false documents and that the borrowers were involved in the fraud.

The lent funds stemming from frauds allowed the purchase of properties in France and in Luxembourg. All of the purchases involved a single solicitor and his clerk, who were complicit of the organised fraud.

Searches of the office of the notary revealed approximately sixty notarial acts drafted on the basis of falsified documents. The notary recognized that he had failed to make in-depth searches on the buyers. He explained that some requests of his customers were not clear, in particular when he was reselling four maid's rooms in Paris of less than 10 m^2 for EUR 250 000 each while they had been initially bought for EUR 30 000 euro each..

He admitted making two transfers on bank accounts in Luxembourg belonging to two of presumed fraudsters by knowing perfectly that these are French resident and are not supposed to hold of bank accounts in Luxembourg.

He finally confirmed having realised all the notarial acts by having knowledge that the properties were bought on the basis of loans obtained thanks to forgery documents and internal complicities of the bank.

Without the intervention of this notary, this vast swindle would not have been so extensive

The notary is at present being prosecuted for complicity of money laundering and complicity of organised fraud.

Source: France (2012) questionnaire response

Case 87 **Red flag indicators:**	• Use of false documents • There are multiple appearances of the same parties in transactions over a short period of time • There are remarkable and highly significant differences between he

	declared price and the approximate actual values in accordance with any reference which could give an approximate idea of this value or in the judgement of the legal professional • The client holds bank accounts in a foreign country when this is prohibited by law

Case 88: **Legal professional provides a wide range of legal services to three organised crime groups – common law country**

In 2008, Ms Shah a legal executive working within a law firm provided services to three separate Organised Crime Groups (OCGs) by:

facilitating false immigration applications using false or improperly obtained identity documents

securing criminal assets by creating and falsely dating a Deed of Trust on behalf of a subject (who had been sentenced to 14 years imprisonment for drug trafficking) to hide assets from confiscation proceedings

facilitating mortgage fraud and the subsequent disbursement of funds to multiple individuals and companies on behalf of the OCG.

Within a short timeframe, approximately GBP 1 million was paid into the client account from five different mortgage companies, which was then paid out to numerous third parties.

In 2011 Ms Shah was sentenced to five years imprisonment (four years for six counts of fraud and 11 counts of money laundering in relation to the mortgage frauds and subsequent disbursements of funds; and one year for one count of perverting the course of justice in relation to immigration applications).

Source: United Kingdom (2012) questionnaire response

Case 88 **Red flag indicators:**	• Client seeks false or counterfeited documentation • Client is known to have convictions for acquisitive crime

Case 89: **Legal professional facilitates significant property fraud and laundering of the proceeds by ignoring multiple warning signs of fraud and money laundering – common law country**

Between 2009 and 2010 a solicitor acted for sellers in the purchase of a number of properties. Sellers were all introduced to solicitor by a company – these people where engaging in fraud by attempting to sell properties they did not own. Some purchases aborted and funds where then sent to third parties, in other cases the purchaser changed part way through the transaction and the purchase price reduced for no reason. The solicitor did not meet the clients and the dates of birth on the due diligence material provided showed that the person could not have been the same person who owned the property (i.e. they would have been too young to have legally purchased the property). The solicitor received a fine of GBP 5 000 from the Solicitors Disciplinary Tribunal, who noted the fact that solicitor was seriously ill at the time of his failings and did not make a finding of dishonesty.

Source: United Kingdom (2012) questionnaire response

Case 89 **Red flag indicators:**	• Changes in instructions • False identification documents • Unusual reductions in the purchase price.

METHOD: CREATION OF COMPANIES AND TRUSTS

TECHNIQUE: CREATION OF SHELL COMPANIES TO PLACE OR LAYER

Case 90: **Legal professional creates complex multijurisdictional corporate structures to launder funds**

Mr S headed an organisation importing narcotics into country A, from country B. A lawyer was employed by Mr S to launder the proceeds of this operation.

To launder the proceeds of the narcotics importing operation, the lawyer established a web of offshore corporate entities. These entities were incorporated in Country C, where scrutiny of ownership, records and finances was not strong. A local management company in Country D administered these companies. These entities were used to camouflage movement of illicit funds, acquisition of assets and financing criminal activities. Mr S was the holder of 100% of the bearer share capital of these offshore entities. Several other lawyers and their trust accounts were used to receive cash and transfer funds, ostensibly for the benefit of commercial clients in Country A.

When they were approached by law enforcement during the investigation, many of these lawyers cited privilege in their refusal to cooperate. Concurrently, the lawyer established a separate similar network (which included other lawyers' trust accounts) to purchase assets and place funds in vehicles and instruments designed to mask the beneficial owner's identity. The lawyer has not been convicted of any crime in Country A.

Source: FATF (2007)

Case 90 **Red flag indicators:**	• There are attempts to disguise the real owner or parties to the transaction • Use of a complicated ownership structure and multiple countries, including high risk countries, without legitimate reasons • There is only one shareholder of a company • Use of the client account without an underlying transaction

Case 91: **Legal professional creates, dissolves and re-creates corporate entities to assist in laundering the proceeds of large-scale tax evasion – civil law country**

The FIU received a disclosure from a bank on one of its clients, an investment company. This company was initially established in an offshore centre and had moved its registered office to become a limited company under Belgian law. It had consulted a lawyer for this transition.

Shortly afterwards the company was dissolved and several other companies were established taking

over the first company's activities. The whole operation was executed with the assistance of accounting and tax advisors.

The first investment company had opened an account in Belgium that received an important flow of funds from foreign companies. The funds were later transferred to accounts opened with the same bank for new companies. These accounts also directly received funds from the same foreign companies. Part of it was invested on a long-term basis and the remainder was transferred to various individuals abroad, including the former shareholders of the investment company.

The FIU's analysis revealed that the investment company's account and those of its various spin-offs, were used as transit accounts for considerable transfers abroad. The transformation of the investment company into a limited company under Belgian law, shortly followed by the split into several new companies, obscured the financial construction.

The scale of the suspicious transactions, the international character of the construction only partly situated in Belgium, the use of company structures from offshore centres, consulting judicial, financial and fiscal experts, and the fact that there was no economic justification for the transactions all pointed to money laundering related to serious and organised tax fraud, using complex mechanisms or procedures with an international dimension.

Additionally, the managing directors of the investment company had featured in another file that the FIU had forwarded on serious and organised tax fraud. The FIU forwarded this file for money laundering related to serious and organised tax fraud using complex mechanisms or procedures with an international dimension.

Source: Belgium (2012) questionnaire response

Case 91 **Red flag indicators:**	• Creation of complicated ownership structures where there is no legitimate or economic reason, including in high risk countries. • Incorporation and/or purchase of stock or securities of several companies within a short period of time with elements in common and with no logical explanation • There is an increase in capital from foreign countries with limited information as to the connection or basis for the payments.

Case 92: **Legal professional establishes 20 companies for one client on the same day – which are then used to launder the proceeds of organised crime – civil law country**

In a dossier on organised crime, the person concerned was a company director of some twenty companies. Ten of these companies had gone bankrupt. These companies were founded by the same notary. Several suspicious elements led to a notification to the FIU: all companies were founded on the same day, by the same persons and with a very broad social purpose. In addition, these companies had the same address but their company directors live in different countries. This dossier is subject of a judicial inquiry

Source: Cellule de traitement des informations financières (2006)

Case 92 **Red flag indicators:**	• Incorporations of multiple companies in a short period of time with elements in common with no logical explanation • Involvement of individuals from multiple countries as directors of a

	company, without legitimate reason

Case 93: **Legal professionals set up companies which promptly recycled the start up capital to establish new companies to help obscure ownership and layer criminal funds – civil law country**

Several notaries were involved in the setting up of a large number of companies over a number of years. Only the legal minimum of capital was paid up, it was then almost entirely withdrawn in cash and used again to establish new companies. The seat of some companies was also located at the address of an accounting firm and they were led by front men. Several cases showed that the head of the accounting firm himself had raised money for the capital. The established companies were then sold to third parties and used in the context of illegal activities.

Source: Cellule de traitement des informations financières (2009)

Case 93 **Red flag indicators:**	• Incorporation of several companies within a short period of time with elements in common, with no logical explanation • The transaction is unusual in that a company divests itself almost entirely of capital in order to set up other companies.

Case 94: **Junior legal professional involves law firm in laundering proceeds of drug crime – common law country**

A junior lawyer with a Calgary law firm incorporated numerous shell companies in Canada and off-shore on behalf of a client who was involved in a large scale drug importation conspiracy. One shell company incorporated by the lawyer was used to channel more than CAD 6m of funds provided by members of the criminal organisation to other assets. On one occasion the lawyer issued a CAD 7 000 cheque from this shell company to a Vancouver brokerage firm to purchase stock.

Source: Schneider, S. (2004)

Case 94 **Red flag indicators:**	• Incorporation of several companies within a short period of time with elements in common, with no logical explanation, including incorporation in high risk countries • Client is known to have involvement in criminal activity

Case 95: **Three lawyers investigated for establishing companies and purchasing properties on behalf of drug traffickers – common law country**

During one proceeds of crime investigation into three Alberta-based cocaine and marijuana traffickers – Mark Steyne, Pitt Crawley, and George Obsorne – police identified three lawyers who helped the accused establish and operates companies, which were eventually proven to be nothing more than money laundering vehicles.

Documents seized by the RCMP indicated that Becky Sharp acted as legal counsel on behalf of Steyne in the incorporation and preparation of annual returns for Vanity Fair Investments Inc., a public

company in which Steyne and Crawley each held 50 percent voting shares. The corporate address listed for this company was Sharp's law office.

Documents seized by police from the law office of Sharp also showed that she represented Steyne in the purchase of real estate, the title of which was registered in the name of Vanity Fair Investments Inc. Among the documents seized by police were letters from Sharp, addressed to the Vanity Fair Investments, which included certificates of incorporation, bank statements for commercial accounts, and documents showing that Steyne and Crawley were directors and shareholders of the company.

Another lawyer acted on behalf of Steyne and companies he controlled, providing such services as incorporating numbered companies, conducting real estate transactions, purchasing a car wash, and preparing lease agreements between Steyne and the tenants of a home that was used for a marijuana grow operation. Finally, documents seized by police indicated that Majah Dobbin, a partner in a local law firm, acted on behalf of Crawley and Osborne in the incorporation of three other Alberta companies.

Source: Schneider, S. (2004)

Case 95 **Red flag indicators:**	• Use of multiple legal advisors for different businesses without good reasons • Significant funding for companies not consistent with known legitimate income

Case 96: **Legal professional provides office address and acts as director for 17 companies they set up for drug traffickers – common law country**

Public documents seized as part of a police investigation into an international drug trafficking group based in Ontario showed that a Toronto lawyer incorporated 17 different businesses that were eventually traced to members of the crime group. Upon further investigation, police discovered that the office of the law firm was listed as the corporate address for many of the companies. The lawyer was also a director of two of the businesses he helped establish. During their investigation, police learned that two members of this crime group were to go to their lawyer's office —to sign for the new companies. Records obtained from the Ontario Ministry of Consumers and Corporate Relations show that a week later, two limited companies were incorporated listing both as directors.

Source: Schneider, S. (2004)

Case 96 **Red flag indicators:**	• Incorporation of several companies within a short period of time with elements in common, with no logical explanation, including incorporation in high risk countries • Client is known to have involvement in criminal activity

Case 97: **Legal professional creates companies to provide cover story for international travel and movement of funds – civil law country**

A number of Iranian citizens were involved in the incorporation or subsequent purchase of stock in companies. On occasion they attended in person, having travelled from Tehran, while on other occasions they are represented by a German citizen or, more typically, a fellow Iranian citizen resident in Spain.

In 2007 and 2008 Company A was incorporated by an Iranian citizen and the German citizen or by other Iranians citizens acting under their guidance, and the shares of the company were sold to various Iranian citizens, in each transaction for low prices (*e.g.* EUR 25).

In 2009 and 2010 Company B was incorporated directly by Iranian citizens, with the representative or director of the company incorporated either one of the Iranian citizens or the German, appearing in all cases as interpreter.

In both the purchase of stock and the incorporation of companies, the Iranian citizens travel to Spain on occasion, while on other occasions they provide a power of attorney for this purpose executed before a notary in Tehran.

There was no information about the intended business of the companies and the creation of two companies in the same regional area made it unlikely that the companies would be implementing a normal business or economic project. The FIU were of the view that the creation of the companies and involvement of such a wide range of Iranian nationals was to enable them to obtain visas for entry into Spain and therefore to travel through the European Union, for which they receive substantial sums of money, thereby constituting a criminal activity generating funds to be laundered.

Source: Spain (2012) questionnaire response

Case 97 **Red flag indicators:**	• The parties or their representatives are native to and resident in a high risk country and there is no clear connection with the country in which the transaction is happening • A large number of securities are issued at a low price which is not consistent with genuine capital raising purposes • The objects of the company are vague and there appears to be limited commercial viability for both companies

Case 98: **Legal professional assists in creating multijurisdictional web of companies with no legitimate reason for the complexity – civil law jurisdiction**

A Spanish citizen is listed as the director of numerous Spanish limited liability companies with a wide range of corporate purposes (from renewable energies to aquaculture to information technology), although it is not clear whether these companies are genuinely operational.

Within a short space of time these Spanish companies are transferred to recently incorporated Luxembourg-registered companies, for a purchase price of several million euros. Following the transfer of stock, rights issues, involving very considerable sums are performed.

The Luxembourg-registered companies which purchased the stock in the Spanish companies

invested by means of the subscription of corporate stakes in the stock issues of Spanish companies. The foreign purchaser companies were based in Uruguay, Gibraltar, Seychelles, Panama, British Virgin Islands and Portugal. Several of the directors of the purchasing companies are also listed as representatives or directors of some of the transferred companies.

The representatives of the foreign purchaser companies declare that there is no beneficial owner (a natural person with a controlling stake above 25%).

Spanish notaries are required to be involved in all company incorporations and share sales.

Source: Spain (2012) questionnaire response

Case 98 **Red flag indicators:**	• Creation of complicated ownership structures, including multiple countries some of which are high risk, without legitimate reason • Incorporation and/or purchase of stock or securities of several companies within a short period of time with elements in common with no logical explanation. • The company receives an injection of capital which is notably high in comparison with the business size and market value of the company, with no logical explanation.

Case 99: **Legal professional secures banking services for yet to be created companies with significant funds deposited into the accounts and to be transferred between the companies without any apparent underlying economic activity – civil law country**

A lawyer opens bank accounts in the Netherlands in the name of various foreign companies yet to be established. In one of those accounts is deposited an amount of almost 20 million guilders. The intention was that between the accounts of the companies transactions would seem to take place. Per transaction would be a (fictitious) profit of approximately half a million guilders. The bank examines these arrangements and concludes that the lawyer is organising a money laundering scam. The bank refuses further cooperation and sends the money back. The money comes from a large-scale international fraudster.

Source: Netherlands (1996)

Case 99 **Red flag indicators:**	• Involvement of multiple countries without legitimate reason • Significant private funding not consistent with known legitimate income • The transaction is unusual given the amount of profit likely to be generated • Client has been convicted of acquisitive crimes

Case 100: **Legal professional continues to establish corporate entities and conduct share transactions which launder funds despite concerns – civil law country**

Notary Klaas regularly establishes legal entities at the request of client Joep and also conducts share

transactions. Client Joep trades fraudulently in companies. At one point, given the dubious circumstances surrounding the transactions, Klaas consults with a colleague notary who has previously rendered services to Joep. Although they are not able to discover anything suspicious, notary Klaas is left with a 'gut-feeling' that his services are being abused. Klaas does not conduct any deeper investigation into the background of his client and allows himself to be misled on the basis of the documents. He continues to render services without further question. During the police interrogation, Joep states that he used the services of Klaas because the notary worked fast and did not ask tricky questions.

Source: Lankhorst, F. and Nelen, H. (2005

Case 100 **Red flag indicators:**	• Incorporation of multiple companies for a single client, without clear economic justification • Use of multiple legal advisors

Case 101: **Legal professional convicted for allowing client account and personal account to be used by a client engaged in tax fraud – common law country**

In 2002, Mr Hyde, a solicitor assisted a client who had engaged in tax (MTIC) fraud and property development fraud to set up shell companies with off shore accounts, and wittingly allowed his client account and a personal account in the Isle of Man to be used to transfer funds. Over GBP 2m in criminal proceeds were laundered in this way. The solicitor was convicted in 2007 of concealing or disguising criminal property. He was jailed for three and a half years and in 2008 was stuck off.

Source: United Kingdom (2012) questionnaire response

Case 101 **Red flag indicators:**	• Disproportionate amounts of private funding • Complex companies with unnecessary foreign element • Use of client account without underlying transaction • Client known to be involved in criminal activity

Case 102: **Legal professional launders millions through companies for a corrupt PEP due to the mistaken belief that money laundering only involved cash – common law country**

A United Kingdom solicitor who assisted with laundering funds removed from Zambia by a former President. Funds allegedly for defence purposes were transferred through companies which the solicitor had set up, but were then used to fund property purchases, tuition fees and other luxury goods purchases. The solicitor ultimately made a STR and was not prosecuted. The solicitor was also found not to be liable in a civil claim for knowing assistance as dishonesty was not proven. This was on the basis that the claimant did not sufficiently controvert the solicitor's evidence that he had genuinely believed that money laundering only occurred when cash was used and not when money came through a bank. The case related to conduct between 1999 and 2001.

Source: United Kingdom (2012) questionnaire response

Case 102 **Red flag indicators:**	• Client holds a public position in a high risk country • Use of company and government funds to pay for private purchases • There are attempts to obscure the real owners or parties to the transaction

Case 103: **Legal professional convicted for assisting a corrupt PEP to purchase property, vehicles and private jets – common law country**

In 2006, Bhadresh Gohil, a solicitor acted for an African governor. He helped to set up shell companies, transferred funds to foreign accounts, opened bank accounts, purchased property, cars and a private jet for the client. The transactions involved amounts far in excess of the client's income as a governor or other legitimate income. Mr Gohil was convicted in 2010 of entering into arrangements to facilitate money laundering and concealing criminal property and was sentenced to 7 years jail. He was subsequently struck off in 2012. The criminal conviction is currently the subject of an appeal. The governor was convicted of fraud in 2012.

Source: United Kingdom (2012) questionnaire response

Case 103 **Red flag indicators:**	• Client holds a public position in a high risk country • Disproportionate private funding in light of known legitimate income • Use of company and government funds to pay for private purchases

Case 104: **Legal professional prosecuted for allegedly creating companies and otherwise assisting the laundering of the proceeds of drug trafficking – common law jurisdiction**

On November 5, 2012, an indictment was unsealed in the Western District of Texas charging an El Paso attorney, Marco Antonio Delgado, with conspiracy to launder the proceeds of a foreign drug trafficking organization, Cartel de los Valencia (AKA the Milenio Cartel), based in Jalisco, Mexico. Delgado was a principal in his own international law firm, Delgado and Associates, and is alleged to have laundered around USD 2 million, although he reportedly was asked to launder an amount exceeding $600 million.

Between July 2007 and September 2008, Delgado is accused of, among other things: establishing shell companies in the Turks and Caicos for the purpose of laundering drug proceeds; employing couriers to deliver shipments of currency and drawing up fraudulent court documents to provide the couriers with a back story should they be stopped by authorities; arranging a bulk cash smuggling operation unknown to law enforcement while simultaneously "cooperating" with the Government; and attempting to utilize his girlfriend's bank account to launder drug proceeds, although, ultimately, Delgado deposited the funds into his attorney trust account at a U.S. bank.

On February 27, 2013, a second indictment was handed down in the Western District of Texas charging Delgado with wire fraud and money laundering. This prosecution involves a scheme separate and distinct from the drug money laundering above. Here, Delgado defrauded a Nevada company and a Mexican state-owned utility (the *Comision Federal de Electricidad*), in connection a USD 121 million contract to provide heavy equipment and maintenance services for such equipment to a power plant located in Agua Prieta, Sonora, Mexico. FGG Enterprises, LLC ("FGG") is owned and

solely managed by "F.J.G," an unnamed third party. FGG won the contract described above, and payments on the contract were supposed to be directed, by the Mexican utility, through Banco Nacional de Comercio Exterior, to an account owned by FGG at Wells Fargo Bank in El Paso, Texas. Delgado sent a letter to the legal representative of the Mexican utility, instructing the representative to make the payments meant for FGG to a bank account in the Turks and Caicos Islands controlled by Delgado. This letter was sent without the knowledge and consent of F.J.G., the owner of FGG. In total, USD 32 million was wired into the Turks and Caicos account for Delgado's personal enrichment. These funds were subsequently laundered back into the United States to accounts controlled by Delgado.

Furthermore, in a related civil forfeiture action, prosecutors have frozen the proceeds of Delgado's fraud that were sent to the benefit of "Delgado & Associates LLC" from the Mexican utility. The account holding the funds is actually a client account belonging to a local law firm in the Turks & Caicos. The funds belonging to Delgado have been segregated and restrained, as the law firm filed a petition the Turks and Caicos court to modify the initial restraint. Evidently, the legal representatives of Delgado & Associates LLC were unaware that their client account was being used for criminal purposes, as they were informed that the purpose of the Delgado & Associates legal structure was to assist in receiving and disbursing funds related to a client's subcontract to sell turbines to Mexico.

Source: United States (2012) questionnaire response: United States v. Delgado, *No. 3:12-cr-02106-DB (W.D. Tex.) (drug money laundering);* United States v. Delgado, *No. 3:13-cr-00370-DB (W.D. Tex.) (Mexican utility scheme); and* United States v. Any and All Contents of FirstCaribbean International Bank Account Number 10286872, *No. EP 12-cv-0479 (W.D. Tex.).*

Case 104 **Red flag indicators:**	• Clients are known to be under investigation for acquisitive crimes • Involvement of multiple foreign bank accounts and foreign companies without legitimate reasons • Use of the client account without underlying transactions

Case 105: **Legal professional convicted for setting up a sham company and helping to create a cover story to launder the proceeds of crime – common law country**

In a government sting operation, an undercover agent approached attorney Angela Nolan-Cooper, who was suspected of helping launder criminal proceeds for clients, seeking help in laundering supposed drug proceeds. Nolan-Cooper agreed to help, and did so by establishing a sham entity, a purported production company, and hiding the proceeds in Bahamian bank accounts. Nolan-Cooper told the undercover agent that funnelling his money through a corporation would make it appear legitimate because it would establish a source of income and facilitate filing false tax returns that would legitimise the money.

Nolan-Cooper later arranged for an accountant to help draw up false corporation papers and corporate tax returns, although it appears the conspiracy was intercepted before this could occur. Nolan-Cooper also facilitated the deposit of large sums of cash into a Cayman Island account at the direction of the undercover agent, who told her that he needed the money in that account to complete a drug transaction. Nolan-Cooper entered a conditional plea to multiple counts of money laundering. Upon resentencing on remand, Nolan-Cooper was sentenced to 72 months incarceration and three years' supervised release. See 155 F.3d 221 (3rd Cir. 1998) (affirming denial of motion to dismiss and vacating sentence); see also United States v. Carter, 966 F. Supp. 336 (E.D. Pa. 1997)

(reversing the district court's grant of judgment of acquittal).

Source: United States (2012) questionnaire response: United States v. Nolan-Cooper, *No. 95-cr-435-1 (E.D. Pa.)*

Case 105 **Red flag indicators:**	• Involvement of structures and bank accounts in multiple high risk countries with no legitimate reason • Creation of a company whose main purpose is to engage in activities within an industry with which neither the shareholders or the managers have experience or connection • Use of client account without an underlying transaction

Case 106: **Legal professional convicted of setting up companies to launder proceeds of corruption – common law country**

Attorney Jerome Jay Allen pleaded guilty to conspiring to commit money laundering in connection with his assistance in laundering the proceeds of a fraudulent kickback scheme. The scheme involved two employees of a steel processing company who caused their company to overpay commission on certain contracts. A portion of the inflated commission was then funnelled back to the employees through shell companies created by Allen. See United States v. Graham, 484 F.3d 413 (6th Cir. 2007).

Source: United States questionnaire response 2012: United States v. Allen, *No. 5:03-cr-90014 (E.D. Mich.)*

Case 106 **Red flag indicators:**	• Source of funds not consistent with known legitimate income • There are attempts to disguise the real owners or parties to the transactions • U-turn transactions

METHOD: MANAGEMENT OF COMPANIES AND TRUSTS

TECHNIQUE: MANAGEMENT OF A COMPANY OR TRUST – CREATION OF LEGITIMACY AND PROVISION OF LEGAL SERVICES

Case 107: **Legal professional involved in managing an offshore company which was laundering the proceeds of a pyramid scheme – civil law country**

In 2004 the A-FIU received several STRs. The reporting entities have mentioned that some suspects were using several bank accounts (personal bank accounts, company bank accounts and bank accounts from offshore companies). After the analysis the A-FIU assumed that the origin of the money is from fraud and pyramid schemes. The A-FIU disseminated the case to a national law enforcement authority and coordinated the case on international level. The A-FIU requested information from abroad (using Interpol channel, Egmont channel and L/O). The results proved that the Austrian lawyer was a co-perpetrator because he was managing an involved offshore company and the bank account of the company. These results were also disseminated to the national law enforcement agency. The investigation revealed approximately 4000 victims with a total damage of app. EUR 20 mil. The public prosecutor's office issued two international arrest warrants. In 2008

four suspects were convicted for breach of trust. Also the lawyer was convicted for breach of trust with a penalty of 3 years.

Source: Austria (2012) questionnaire response

Case 107 **Red flag indicators:**	• Use of foreign bank accounts and companies without a legitimate reason • Payments made were not consistent with contractual terms

Case 108: **Legal professionals set up companies and accept multiple deposits to launder proceeds of liquor smuggling – hybrid common / civil law country**

A police investigation into Joseph Yossarian, a Quebec liquor smuggler, revealed that he invested money into and eventually purchased a company for which lawyer Pierre Clevingier was the founder, president, director, and sole shareholder. Clevingier was also the comptroller for the company and was listed as a shareholder of three other numbered companies, which police traced to Yossarian. Yet another company, registered in the name of Yossarian's sister, was used as a front for Joseph's investment into a housing development. This company was incorporated by lawyer Robert Heller, who had established other shell companies registered in the name of the sister and used by her brother to launder money. Heller was also involved in transactions relating to companies that he set up for the benefit of Yossarian, including issuing and transferring shares in these companies and lending money between the different companies. Yossarian invested CAD 18 000 in another housing development in Montreal through a company established by Quebec real estate lawyer Albert Tappman. Records seized by police during a search of Tappman's law office established that he had received cash and cheques from Yossarian, including a deposit of CAD 95 000 (CAD 35 000 of which was cash), which he deposited for Yossarian in trust. Police also found copies of two cheques, in the amount of CAD 110 000 and CAD 40 000, drawn on Tappman's bank account, and made payable to the order of a company he created on behalf of Yossarian. Tappman used a numbered company, for which another lawyer was the director and founder, as the intermediary through which Yossarian and others invested in housing developments.

Source: Schneider, S. (2004)

Case 108 **Red flag indicators:**	• Incorporation of several companies in a short period of time with elements in common with no logical reason • Use of multiple legal advisors without legitimate reasons • Significant cash deposits • There are attempts to disguise the real owners of or parties to the transactions • Potential use of a client account without underlying transactions

METHOD: MANAGING CLIENT AFFAIRS AND MAKING INTRODUCTIONS

TECHNIQUE: OPENING BANK ACCOUNTS ON BEHALF OF CLIENTS

Case 109: **Legal professional assists organised criminal to open bank account – civil law country**

A foreigner residing in Belgium was introduced to a bank by a Belgian lawyer's office in order to open an account. This account was then credited by substantial transfers from abroad that were used for purchasing immovable goods. The FIU's analysis revealed that the funds originated from organised crime.

Source: Belgium (2012) questionnaire response

Case 109 **Red flag indicators:**	• Client requires introduction to financial institutions to help secure banking facilities

Case 110: **Legal professional assists foreign PEP to open bank accounts – civil law country**

In a file regarding corruption, a politically exposed person (PEP) was the main beneficial owner of companies and trusts abroad. Accounts in Belgium of these companies received considerable amounts from the government of an African country. The FIU's analysis revealed that the individual had been introduced to the financial institution by a lawyer. It turned out that the lawyer was also involved in other schemes of a similar nature in other judicial investigations.

Source: Belgium (2012) questionnaire response

Case 110 **Red flag indicators:**	• Client holds a public position and is the beneficial owner of multiple companies and trusts in foreign countries • Government funds being used to pay for private or commercial expenses • Client requires introduction to financial institutions to help secure banking facilities

Case 111: **Legal professional assists front company to open bank account – civil law country**

One file regarded a company established in an offshore centre, which was quoted on the stock exchange. Information obtained by the Unit revealed that the stock exchange supervisor had published an official notice stating that the stock of this company had been suspended due to an investigation into fraudulent accounting by this company.

A network of offshore companies was used to intentionally circulate false information regarding this stock in order to manipulate the price. In the meantime a procedure had been initiated by the American stock exchange supervisor to cancel this stock. Information obtained by the Unit revealed that the main stockholder of this company had laundered money from this stock exchange offence by transferring money to an account that he held in a tax haven. In addition, it also became clear that he had called upon a lawyer in Belgium to request opening a bank account in name of a front

company, and to also represent this company in order to facilitate money laundering.

Source: Belgium (2012) questionnaire response

Case 111 **Red flag indicators:**	• Client currently under investigation for acquisitive crime • Involvement of structures with multiple countries, some of which were high risk, without legitimate reason • Client requires introduction to financial institutions to help secure banking facilities

Case 112: **Legal professional convicted for providing laundering services to a criminal group undertaking a Ponzi scheme – common law country**

Six defendants were indicted on 89 counts related to a Treasury bill-leasing Ponzi scheme perpetrated through the corporation K-7. Subsequently, the group's attorney, Louis Oberhauser, was added as a defendant in a superseding indictment. Oberhauser had held some of the invested funds in an attorney trust account designated for K-7 pursuant to an escrow agreement he had drafted. He also had helped to incorporate K-7 and arrange lines of credit on K-7's behalf, as well as entered into contracts with investors on behalf of his law firm that authorized Oberhauser to act on behalf of the investors in entering into a trading program. All defendants excepting Oberhauser and one other co-conspirator pleaded guilty. In a joint trial, the co-conspirator was convicted of 68 counts, and Oberhauser acquitted on 62 of 66 counts and convicted on two counts of money laundering. The district court granted judgment of acquittal, but the appeals court reversed that decision. Oberhauser was sentenced to 15 months' incarceration, two years' supervised release, community service, and restitution in an amount of USD 160 000. *See* 284 F.3d 827 (8th Cir. 2002).

Source: United States (2012) questionnaire response United States v. Oberhauser, No. 99-cr-20(7) (D. Minn.)

Case 112 **Red flag indicators:**	• Legal professional acting in a potential conflict of interest situation • Client requires introduction to financial institutions to help secure banking facilities

Case 113: **Legal professional convicted after setting up companies, structuring deposits and maintaining the company accounts to launder funds – common law country**

Attorney Luis Flores was convicted of one count of conspiracy to commit money laundering, three counts of money laundering, and one count of structuring currency transactions to avoid reporting requirements. A client approached Flores representing himself to be an Ecuadoran food importer/exporter. Flores opened several corporations for the client and established several business accounts. Flores maintained the accounts for a USD 2,000 weekly salary. Flores held himself out as the president of the corporations and was the only authorized signatory on the corporation accounts. Cash deposits into the accounts always totalled less than USD 10 000. As banks closed accounts due to suspicious activity, Flores would open new accounts. He also laundered cash through brokerages on the black market peso exchange. See 454 F.3d 149 (3rd Cir. 2006) (affirming conviction and 32-month sentence).

Source: United States (2012) questionnaire response United States v. Flores, No. 3:04-cr-21 (D.N.J.)

Case 113 **Red flag indicators:**	• Incorporation of multiple corporations and use of multiple bank accounts within a short space of time where there are elements in common with no logical explanation. • Attorney fees disproportionate to the income of the companies. • Structuring of payments • Client requires introduction to financial institutions to help secure banking facilities

TECHNIQUE: MANAGEMENT OF CLIENT'S GENERAL AFFAIRS THROUGH CLIENT ACCOUNT

Case 114: **Legal professional helps to hide cash from a bankruptcy through a life insurance policy – common law country**

A bankrupt individual used the name of a family member to pay cash into an account and to draw a cheque to the value of the cash. He provided the cheque to a lawyer. The lawyer provided a cheque to the family member for part of the sum and then deposited the remainder of the funds into the person's premium life policy which was immediately surrendered. The surrender value was paid into the family member's account.

Source: Australia (2012) questionnaire response

Case 114 **Red flag indicators:**	• Legal professional involved in a U turn transaction • Provision of financial services not in connection with an underlying transaction • Provision of funds from a third party without legitimate reason • Use of client account without an underlying transaction

Case 115: **Legal professional creates web of fake loans and contracts between companies of which he was a director to launder the proceeds of crime – civil law country**

Company A established abroad, with very vague corporate goals and directors residing abroad, had opened an account with a bank in Belgium. This company had been granted a very large investment loan for purchasing a real estate company in Belgium. This loan was regularly repaid by international transfers from the account of Z, one of company A's directors, who was a lawyer. The money did not originate from company A's activities in Belgium. Furthermore, the loan was covered by a bank guarantee by a private bank in North America. This bank guarantee was taken over by a bank established in a tax haven shortly afterwards. Consequently, the financial structure involved a large number of countries, including offshore jurisdictions. The aim was probably to complicate any future investigations on the origin of the money. Furthermore, company A's account was credited by an international transfer with an unknown principal. Shortly afterwards the money was withdrawn in cash by lawyer Z, without an official address in Belgium. Information from the FIU's foreign counterparts revealed that the lawyer's office of which Z was an associate, was suspected of being involved in the financial management of obscure funds. One of the other directors of company A was known for trafficking in narcotics and money laundering. All of these elements indicated that

company A and its directors were part of an international financial structure that was set up to launder money from criminal origin linked to trafficking in narcotics and organised crime.

Source: Belgium (2012) questionnaire response

Case 115 **Red flag indicators:**	• Investment in immovable property, in the absence of links with the place where the property is located • Funding from a private bank in a country not connected with either the location of the company or the location of the property being purchased • Instruction of a legal professional at a distance from the transaction • Third party funding without apparent legitimate connection and withdrawal of that funding in cash shortly after deposit

Case 116: **Lawyer accepts cash, creates companies and purchases property for drug trafficker – common law country**

While an Alberta-based drug trafficker used numerous law firms to facilitate his money laundering activity, he appeared to have preferred one firm over all the others. On numerous occasions, a partner in this preferred law firm accepted cash from the drug trafficker, which was then deposited by the lawyer for his client, in trust. According to deposit slips seized by police, between August 19, 1999 and October 1, 2000 a total of USD 265 500 in cash was deposited by the lawyer in trust for this client. The funds would then be withdrawn to purchase assets, including real estate and cars. The drug trafficker often used shell and active companies to facilitate his money laundering activities. Documents seized by the RCMP showed that on November 9, 1999, the lawyer witnessed the incorporation a company, of which the drug trafficker was a director. Along with the brother of the lawyer, the drug trafficker was also listed as a director of another company and police later identified cash deposits of USD 118 000 into the legal trust account on behalf of this company. The deposit slips were signed by the lawyer. Funds were also transferred between the various trust account files the lawyer established for this client and his companies. In one transaction under the lawyer‘s signature, USD 83 000 was transferred from this client‘s trust account file to the latter company he incorporated on behalf of this client.

Source: Schneider, S. (2004)

Case 116 **Red flag indicators:**	• Use of multiple legal advisors without legitimate reason • Significant deposits of cash not consistent with known legitimate income • Incorporation of multiple companies without legitimate business purposes • Use of client account without an underlying transaction

Case 117: **Legal professional convicted and removed from practice for laundering the proceeds of fraud through his client account and personal account – common law jurisdiction**

The Louisiana Office of Disciplinary Counsel (ODC) filed a petition to permanently disbar attorney Derrick D.T. Shepherd. In April 2008, a federal grand jury indicted Shepherd, who was then serving as a Louisiana state senator, on charges of mail fraud, conspiracy to commit mail and wire fraud, and conspiracy to commit money laundering. The indictment alleged that Shepherd helped a convicted bond broker launder nearly USD 141 000 in fraudulently generated bond fees, and in October 2008, Shepherd pleaded guilty to the money laundering charge. Shepherd admitted to helping broker Gwendolyn Moyo launder construction bond premiums paid to AA Communications, Inc., long after the company was banned from engaging in the insurance business and its accounts were seized by state regulators. Specifically, in December 2006, Shepherd deposited into his client trust account USD 140 686 in checks related to bond premiums and made payable to AA Communications. He then wrote checks totalling USD 75 000 payable to the broker and her associates. Of the remaining funds, Shepherd transferred USD 55 000 to his law firm's operating account and deposited USD 15 000 into his personal checking account. He then moved USD 8 000 from the operating account back into his client trust account. On December 21, 2006, respondent paid off USD 20 000 in campaign debt from his operating account, writing "AA Communications" on the memo line of the check. To conceal this activity, respondent created false invoices and time sheets reflecting work purportedly done by his law firm on behalf of the Ms. Moyo.

Upon investigating Shepherd for multiple ethical violations, the ODC obtained copies of Shepherd's client trust account statements and determined that he had converted client funds on numerous occasions, frequently to mask negative balances in the account. He also commingled client and personal funds and failed to account for disbursements made to clients.

Shepherd submitted untimely evidence to the Court documenting his "substantial assistance to the government in criminal investigations," but the Court found Shepherd's money laundering, which promoted his co-conspirators' unlawful activity and benefitted him personally, to be reprehensible and deserving of the harshest sanction. Despite Shepherd's contention that his federal conviction was not "final" and his denial of any misconduct, the Court permanently disbarred Shepherd from the practice of law.

Source: United States (2012) questionnaire response In re Shepherd, 91 So.3d 283 (La. 2012)

Case 117 **Red flag indicators:**	• Client is known to have convictions for acquisitive crime • Client company is engaging in businesses without a relevant licence / having been banned from engaging in that business • Client is unable to access financial services • Use of client account without underlying transactions, contrary to client account rules • Legal professional acting in potential conflict of interest situation – by making payments into personal accounts

Case 118: **Legal professional convicted for helping ex-police officer launder drug money by accepting cash through his client account for the purchase of stocks – common law jurisdiction**

Defence attorney Scott Crawford was convicted of laundering drug proceeds through his escrow account. Patrick Maxwell, an ex-police officer turned drug dealer, wanted to invest his drug proceeds in the stock market, but wanted to avoid suspicion that would arise if he deposited two large amounts of cash in a bank account. A third party would give Maxwell's cash to Crawford, who would then deposit it in his legal practice's escrow account. From that account, Crawford drew cashier's checks payable to Prudential Securities. The checks were then deposited in a brokerage account controlled by Maxwell. See 281 F. App'x 444 (6th Cir. 2008) (affirming 71-month sentence).

Source: United States (2012) questionnaire response United States v. Crawford, No. 2:04-cr-20150 (W.D. Tenn.)

Case 118 **Red flag indicators:**	• Significant level of cash deposits not consistent with known legitimate income • Payments via a third party in an attempt to disguise the true parties to the transaction • Use of the client account without an underlying legal transaction

Case 119: **Legal professional convicted of money laundering after safe keeping cash obtained from clients he represented in relation to drug charges – common law country**

Attorney Juan Carlos Elso was convicted of money laundering and conspiracy to launder money by engaging in a transaction designed to conceal the origin of drug proceeds and by conspiring to engage in a financial transaction involving drug proceeds so as to avoid reporting requirements. With respect to the money laundering offense, Elso agreed to launder the proceeds of a former client, who he had represented in a drug case and who had paid attorney and investigator fees in cash. Elso retrieved USD 266 800 in cash from the client's house for safekeeping (in case of search by law enforcement). On the way back to his office with the cash, Elso was stopped and arrested. The conspiracy count was based upon a wire transfer Elso made on behalf of the wife of another former drug client. The wife, who was given USD 200 000 to launder, brought Elso USD 10 000, which he deposited into his law firm's trust account and then wired USD 9 800 to an account affiliated with Colombian drug suppliers. Elso did not file federally required reports in conjunction with this transaction. See 422 F.3d 1305 (11th Cir. 2005) (affirming Elso's conviction and 121-month sentence).

Source: United States questionnaire response 2012: United States v. Elso, No. 03-cr-20272 (S.D. Fla.)

Case 119 **Red flag indicators:**	• Client is known to be under investigation / prosecution for acquisitive crimes • Disproportionate amounts of cash not consistent with known legitimate income • Use of the client account without an underlying legal transaction • Structuring of payments

METHOD: USE OF SPECIALISED LEGAL SKILLS

Case 120: **Legal professional arrested after attempting to clear a drug dealers accounts subject to a power of attorney – civil law jurisdiction**

A drug dealer is in detention. He fears that the Prosecutor/judge will confiscate his bank accounts in Luxembourg. The lawyer also approaches a colleague in Luxembourg and asks him how the relationship between the dealer and the money can be broken. The lawyer obtains a power of attorney over the account and attends the bank to withdraw all of the assets from the bank. The lawyer was arrested in his efforts to retrieve the money from the bank.

Source: The Netherlands (1996)

Case 120 **Red flag indicators:**	• Client is known to be under investigation / have convictions for acquisitive crime • Use of foreign bank accounts without legitimate reasons • A power of attorney is sought for the administration or disposal of assets under conditions which are unusual.

Case 121: **Legal professional prosecuted for allegedly creating a range of entities and accounts to launder proceeds of fraud – common law country**

The predicate offence was fraud involving several persons, one of whom was an attorney-at-law and several companies. The offence was committed during the period 1997 to 2000 and the subjects were arrested and charged in 2002.

The attorney-at-law was instrumental in creating different types of financial vehicles such as loans, bonds, shares, trusteeships and a myriad of personal, business and client accounts to facilitate the illicit activity which started with the loan-back method being used to purchase bonds.

It was alleged that the attorney designed documents and transactions to facilitate the laundering of proceeds of the offence, namely obtaining money by false pretences contrary to section 46 of the Proceeds of Crime Act 2000. This matter is before the Courts of Trinidad and Tobago.

Source: Trinidad & Tobago (2012) questionnaire response

Case 121 **Red flag indicators:**	• Involvement of multiple entities, arrangements and bank accounts with elements in common with no legitimate explanation • Client requires introduction to a financial institution to secure banking facilities

Case 122: **Legal professional accepts large amounts of cash for safekeeping and paying bail from criminals he is defending – common law country**

Between 1993 and 2006 a solicitor, Anthony Blok, acted for a number of clients facilitating money laundering. In one case he entered into negotiations to sell a painting he knew clients had stolen and to have it removed from the arts theft register. In another case he received and paid

GBP 75 000 in cash for bail where he was acting for a client whose only source of income had been fraud and money laundering, and lied as to where the money had come from when asked by investigators. Finally, he had large amounts of unexplained cash in envelopes in the office with the names of clients on them – who he was defending in criminal matters. The Court accepted that if the funds had been for the payment of fees, they should have been banked, and absent any explanation as to the reason for holding those funds, the jury conclude that Mr Blok must have been concealing the proceeds of crime on behalf of the clients. In 2009 Mr Blok was convicted of transferring criminal property, possessing criminal property, entering into an arrangement to facilitate money laundering and failure to disclose, 4 years jail. In 2011 he was stuck off the roll.

Source: United Kingdom (2012) survey response

Case 122 **Red flag indicators:**	• Client is known to be under investigation for acquisitive crimes • The holding of large deposits of money without the provision of legal services • Significant amounts of cash not consistent with known legitimate income levels

Case 123: **Legal professional convicted for assisting in laundering the proceeds of a drug deal found in a safe through a real estate investment company – common law country**

Walter Blair was convicted of laundering drug proceeds obtained from a client. His client had possession of a safe containing the drug proceeds of a Jamaican drug organization. After the head of the organization (who owned the safe) was murdered, Blair helped his client to launder the money by inventing an investment scheme based on the Jamaican tradition of cash-based "partners money," setting up a real estate corporation in the name of the client's son, opening an account in the corporation's name, and obtaining loans on behalf of the corporation to make real estate investments. Blair misrepresented the amount of currency in the safe to his client and retained some of the funds in addition to withholding fees for his legal services. See 661 F.3d 755 (4th Cir. 2011), cert. denied 132 S. Ct. 2740 (2012) (affirming conviction and sentence).

Source: United States questionnaire response 2012: United States v. Blair, No. 8:08-cr-505 (D. Md.)

Case 123 **Red flag indicators:**	• Client is known to have connections with criminals • There are attempts to disguise the real owners or parties to the transaction • Source of funds is not consistent with known legitimate income • Client requires introduction to financial institutions to help secure banking facilities • Legal professional is acting in a conflict of interest situation