



EXPANDING AML/CFT MEASURES BEYOND FINANCIAL INSTITUTIONS-FOCUS ON THE LEGAL PROFESSION

CFATF RESEARCH DESK
SEPTEMBER 1, 2022



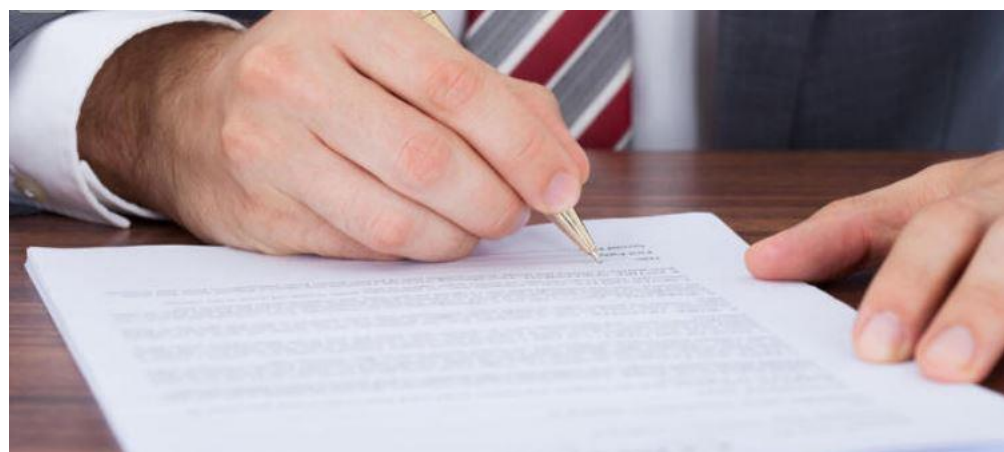
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Introduction



The FATF Recommendations define a lawyer as a type of Designated Non-Financial Business and Profession (DNFBP).

FATF guidance defines the term “Legal professional” as referring to lawyers, civil law notaries, common law notaries, and other independent legal professionals.

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.



LEGAL PROFESSIONAL SERVICES



A FATF report entitled, “Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals”^{*} dated June 2013 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.

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;
- setting up and managing charities.

Footnote: ^{*}FATF Report on Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals” June 2013 <https://www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20vulnerabilities%20legal%20professionals.pdf> Accessed on August 29, 2022 p.6



Effective AML/CFT framework

An Effective AML/CFT Framework is critical to the fight against organised crime and responsibilities extend beyond financial institutions.

The burden of meeting regulatory requirements however has traditionally fallen on financial institutions and not other types of businesses. Money laundering has evolved outside of the usual financial sector and business owners including legal professionals, accountants, and realtors also have AML compliance requirements, according to the FATF requirements.

The focus of AML/CFT Measures is not solely for Financial Institutions but also for DNFBPs, and a legal professional is one category of this broad group.



Duties of Legal Professional (1)



Footnote: [*Report of the Task Force on the Role of Lawyers and International Commercial Structures May 2019.](#)
Accessed on August 29, 2022 p. 3-4

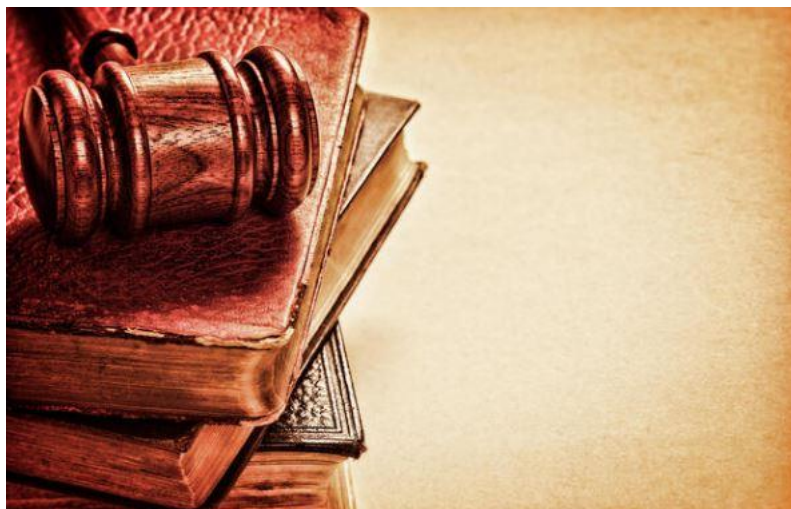
Criminals, and legal professionals may contend that professional secrecy would lawfully continue to act for a client who was engaging in criminal activity and/or prevent law enforcement from accessing information to enable the client to be prosecuted.

However, Principle 2 of the Report of the Task Force on the Role of Lawyers and International Commercial Structures dated May 2019 states that,

“a lawyer should not use the confidential nature of the lawyer-client relationship or the principles of legal professional privilege to shield wrongdoers.” *



Duties of Legal Professional (2)



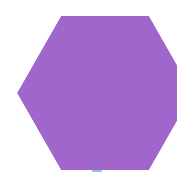
“A lawyer should give due and proper consideration to refraining from acting for a client if the lawyer is aware of, or has reasonable grounds to believe, that the main purpose of the retainer is to allow the client to be able to rely on the confidential nature of the lawyer-client relationship (or privileged communication) so as to permit or encourage the client to engage in illegal conduct.

Moreover, lawyers should not place themselves in a position where they might be said to be aiding or abetting the commission of a criminal offence.” *

Footnote: *Report of the Task Force on the Role of Lawyers and International Commercial Structures May 2019. Accessed on August 29, 2022 pp. 3-4



Risks faced by Legal Professionals



Legal professionals may assess ML/TF risks by applying various categories. This provides a strategy for managing potential risks by enabling legal professionals, where required, to subject each client to reasonable and proportionate risk assessment.*

The most commonly-used risk categories are:

1. Country/Geographic risk
2. Client risk
3. Transaction/Service risk

Footnote: *FATF Guidance for a Risk-Based Approach for Legal Professional dated June 2019 and accessed on August 23, 2022 (“FATF Guidance”) page 28: <https://www.fatf-gafi.org/media/fatf/documents/reports/Risk-Based-Approach-Legal-Professionals.pdf>



Requirements of Rec 22- DNFBPs: Customer Due Diligence-Duties of Legal Professional (1)

Lawyers,
notaries, other
independent
legal
professionals
and accountants

When they prepare for or carry out transactions for their client concerning:

- management of bank, savings or securities accounts;

When they prepare for or carry out transactions for their client concerning:

- buying and selling of real estate;
- managing of client money, securities or other assets;

When they prepare for or carry out transactions for their client concerning:

- 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.



Requirements of Rec 22- DNFBPs: Customer Due Diligence-Duties of Legal Professional (2)

In the situations set out in Recommendation 22.1 (d), as outlined in the diagram above, as a DNFBP, a legal professional should be required to comply with the requirements related to the following:

- Record-keeping as set out in Recommendation 11.
- Politically Exposed Persons as set out in Recommendation 12.
- New technologies as set out in Recommendation 15.
- Reliance on third-parties as set out in Recommendation 17.



Requirements of Rec 28- Regulation and Supervision of DNFBPs (1)



Countries should ensure that the other categories of DNFBPs (including legal professionals) 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 self-regulatory body (SRB), provided that such a body can ensure that its members comply with their obligations to combat money laundering and terrorist financing.



Requirements of Rec 28- Regulation and Supervision of DNFBPs (2)

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.



Immediate Outcome 4- Characteristics of an effective system

- FIs, DNFBPs and VASPs understand the nature and level of their ML/TF risks;
- Develop and apply AML/CFT policies (including group wide policies) internal controls, and programmes to adequately mitigate those risks;
- Apply appropriate CDD measures to identify and verify the identity of their customers (including beneficial owners);
- Conduct ongoing monitoring;
- Adequately detect and report suspicious transaction;
- Comply with other AML/CFT requirements.



Challenges of the Fourth Round of Mutual Evaluations regarding R.22 and R.28- CFATF Members (1)

Country	IO4	Rating on Rec 22 at MER	Updated Rating on Rec 22 achieved after Re-Rating in the FUR	Rating on Rec 28 at MER	Updated Rating on Rec 28 achieved after Re-Rating in the FUR
Antigua and Barbuda	ME	PC (JUL 2018)	LC (NOV 2021)	PC	C (NOV 2021)
Aruba	SE	LC (JUL 2022)	No Re-rating	PC	No Re-rating
The Bahamas	ME	PC (AUG 2017)	C (DEC 2021)	PC (AUG 2017)	C (DEC 2021)
Barbados	ME	LC (FEB 2018)	LC (FEB 2021)	LC	LC (FEB 2021)
Bermuda	ME	C (JAN 2020)	No Re-rating	C	No Re-rating
Cayman Islands	LE	PC (MAR 2019)	C (FEB 2021)	PC	C (FEB 2021)
Grenada	LE	PC (JUL 2022)	No Re-rating	PC	No Re-rating
Haiti	LE	NC (JUL 2019)	No Re-rating	NC	No Re-rating
Jamaica	LE	PC (JAN 2017)	PC (JAN 2021)	PC	PC (JAN 2021)
Saint Kitts and Nevis	LE	LC (FEB 2022)	No Re-rating	PC	No Re-rating
Saint Lucia	LE	PC (JAN 2021)	No Re-rating	PC	No Re-rating
Trinidad and Tobago	ME	LC (JUN 2016)	C (JUN 2019)	PC	PC (JUN 2019)
Turks and Caicos	LE	PC (JAN 2020)	No Re-rating	PC	No Re-rating



Challenges of the Fourth Round of Mutual Evaluations regarding R.22 and R.28- CFATF Members (3)

As seen at [Table 1](#), out of the 13 CFATF Members, assessed to date, one member achieved a Substantial level of effectiveness, 5 members achieved a Moderate level of effectiveness and 7 jurisdictions achieved a Low level of effectiveness on Immediate Outcome (IO) 4. IO4 relates to the application of AML/CFT preventive measures by Financial institutions, DNFBPs and VASPs commensurate with their risks and reporting of suspicious transactions.

With respect to R.22, 1 jurisdiction achieved Compliant, 4 attained a Largely Compliant, 7 jurisdictions received a rating of Partially Compliant and 1 was rated Non-Compliant.

During the follow-up process:

2 jurisdictions were re-rated from PC to C and
1 jurisdiction was re-rated from PC to LC

With respect to R.28, 1 jurisdiction achieved Compliant, 1 attained a Largely Compliant, 10 jurisdictions received a rating of Partially Compliant and 1 was rated Non-Compliant. 3 jurisdictions were re-rated from PC to C during their follow-up process.



General actions taken by Members to obtain an upgrade in re- ratings

All DNFBPs are obligated to:

- apply CDD measures established in law according to R.10.
- to understand and obtain appropriate information on the purpose and intended nature of the business relationship.
- ✓ Codes of Practice are enforceable and include the requirements to identify and assess the ML/TF risks that may arise in relation to, for the development of new products and new business practices. It also sets out the measures for conducting transactions with third parties.
- ✓ Coverage of lawyers, was limited to only when they conducted financial activity as a business; existing obligations did not address all scenarios of requests for information including requests for CDD information.
- ✓ Amended legislation to include lawyers when they prepare for, or carry out, transactions for their client concerning the specified activities described in R. 22.1(d).



The Way Forward- Legal Professionals (1)

Footnote: *FATF Guidance for a Risk-Based Approach for Legal Professional dated June 2019 and accessed on August 23, 2022 (“FATF Guidance”) page 27: <https://www.fatf-gafi.org/media/fatf/documents/reports/Risk-Based-Approach-Legal-Professionals.pdf> pp.80-81

Understand ML/TF vulnerabilities and red flag indicators within the jurisdiction.

According to the FATF Guidance,* “Red Flags” are any fact or set of facts or circumstances that, when viewed on their own or in combination with other facts and circumstances, indicate a higher risk of illicit activity.”

A “red flag” may be used as an indicator of risk to prompt further checks or other appropriate safeguarding actions.

The mere presence of a red flag indicator is not solely a basis for a suspicion of ML or TF, as a client may be able to provide a legitimate explanation.

Red flag indicators should assist in the application of a RBA to CDD requirements.

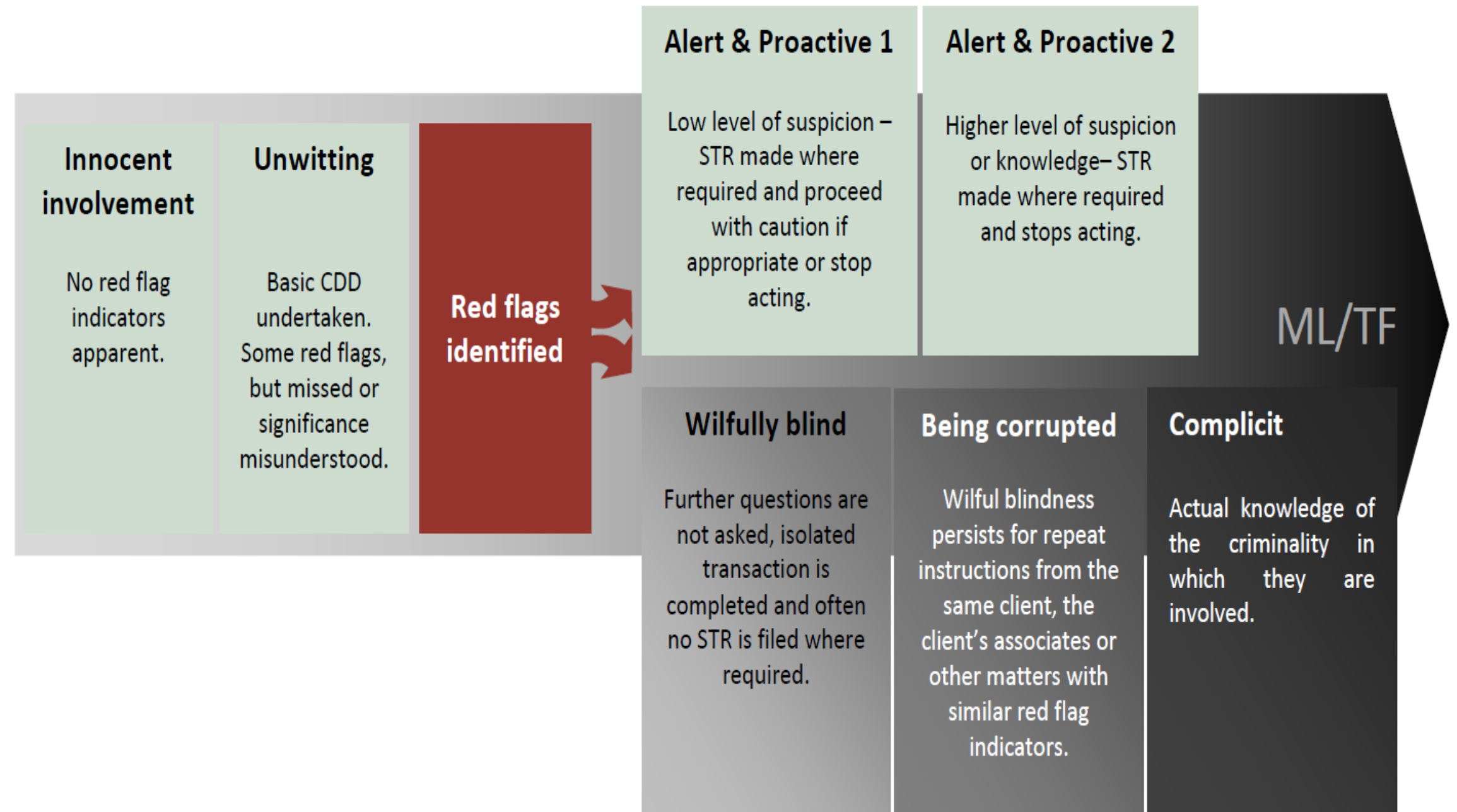
Multiple red flag indicators, would raise a suspicion that ML or TF is occurring.



The Way Forward- Legal Professionals (2)

Footnote: *FATF Report on Money Laundering a Terrorist Financing Vulnerabilities of Legal Professionals” June 2013 <https://www.fatf.org/media/fatf/documents/reports/ML%20and%20TF%20vulnerabilities%20legal%20professionals.pdf> Accessed on August 29, 2022 p.5

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





The Way Forward - Legal Professionals (3)



1. Improved Understanding of AML Efforts

Financial institutions follow AML regulations daily whereas legal professional may not need to utilize AML standards daily. Little details can be missed and add up over time. Better training and resources, can empower legal professionals and their teams with the knowledge they need to prevent money laundering.

2. Proper Implementation of AML Measures

Legal professionals may understand AML standards, but may fail to implement measures appropriately and effectively leaving loopholes that can be identified and taken advantage of by money launderers, thereby impeding their money laundering efforts.



The Way Forward - Legal Professionals (4)

Footnote: *Basel Institute on Governance: Money laundering risks: are we paying enough attention to lawyers, accountants and others beyond the financial sector? 27 September 2021 <https://baselgovernance.org/blog/money-laundering-risks-are-we-paying-enough-attention-lawyers-accountants-and-others-beyond> Accessed on August 29, 2022

Even if businesses track money launderers effectively, gaps in documentation may mean that money launderers won't be caught or prosecuted. If more businesses implement and enforce AML strategies, it benefits everyone.

3. Consistent Monitoring and Supervision

Regulators must persist in their role to ensure that AML measures are taken seriously by legal professionals.

According to a Basel governance blog, “When regulators continue to pressure legal professionals (as a DNFBP) to do better - pressure that indeed needs to be maintained - it needs to be matched with significantly more efforts to supervise these institutions. Or else, it is highly likely that the pressure will fall short of delivering real results.”*



Guidance for supervisors (1)

The FATF Guidance* states that Although a country may have a legal framework that does not fully accommodate the supervision of legal professionals in the manner described in Section IV, the supervision of legal professionals in that country should nonetheless include as a minimum:

- a) A requirement that legal professionals perform risk assessment at firm, client and transactional level.
- b) A requirement that legal professionals perform appropriate risk-based CDD.
- c) Procedures that ensure the system for licensing legal professionals prevents criminals from becoming legal professionals.

Footnote: FATF Guidance for a Risk-Based Approach for Legal Professional dated June 2019 and accessed on August 23, 2022 (“FATF Guidance”) page 27:
<https://www.fatf-gafi.org/media/fatf/documents/reports/Risk-Based-Approach-Legal-Professionals.pdf> p.54



Guidance for supervisors (2)

d) Procedures determined to ensure prompt investigation of legal professional misuse of client/trust funds or alleged involvement in ML/TF schemes.

e) A requirement that legal professionals complete periodic continuing legal education in CDD and AML/CFT topics.

f) A requirement that legal professionals report suspicious transactions, comply with tipping-off and confidentiality requirements, internal controls requirements and higher-risk countries requirements.

g) A requirement that legal professionals adequately document risk assessment, CDD and other AML related decisions and processes undertaken.



Thank you!



**CFATF
GAFIC**



Phone Number
1868-623-9667



Email Address
cfatf@cfatf.org



Website
www.cfatf-gafic.org