



GUIDANCE ON THE PRESCRIBED ACTIVITIES FOR INDIVIDUAL LAW PRACTITIONERS

February 2022

Disclaimer:

The information contained in this document has been produced by the Financial Intelligence Unit (Mauritius) for educational purposes only.

Recipients must only use this resource to enhance their understanding of their obligations and to assist with their compliance under the AML/CFT regulatory framework.

The use of this information for any other purpose is not permitted, except with the consent of the FIU.

This resource does not represent legal advice. Any reporting person who is unsure about his obligations under the AML/CFT regulatory framework should seek independent legal advice.

Acronyms:

AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation
FATF	Financial Action Task Force
FIAMLA	Financial Intelligence Anti Money Laundering Act 2002
FIU	Financial Intelligence Unit
LP	Law Practitioners or Legal Professionals
ML	Money Laundering
MLRO	Money Laundering Reporting Officer
TF	Terrorism Financing

Table of Contents

Introduction	4
Vulnerabilities of the Legal Profession	5
When does a LP become a reporting person?	6
Expectations of the FIU	7
Registration with the FIU	7
Prescribed Activities for the Legal Profession	8
1. Acting for a Client.....	10
2. Prepares for or Carries out Transactions	10
Applied to the Prescribed Activities	10
Conclusion	16

Introduction

The legal profession is traditionally one which is guided by its own set of rules, conduct and ethics. Its members are trained to uphold any relevant code of ethics, to act with integrity and to uphold the law. This includes complying with Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation ('AML/CFT') laws. In the AML/CFT ecosystem, law practitioners ('LPs') are considered gatekeepers to the financial system by virtue of their expertise and the services they provide. They, thus play a critical role in the fight against Money Laundering ('ML') and Terrorism Financing ('TF'). In the same vein, if they do not take the required measures to protect their practice, they may easily be exploited by criminals, who view LPs as providing respectability to their transactions.

The Financial Intelligence Unit ('FIU') is the AML/CFT supervisor for independent legal practitioners, and in this capacity, it has been engaging with those, who fall within its supervisory purview for the past year. Engagement has been in the form of outreach, inspections and in some cases enforcement. As a supervisor, the FIU is committed to improve compliance with AML/CFT obligations in the legal profession, and in order to achieve this, it endeavours to build on the observations and facts that it has collected during its engagement with its supervised sectors.

One of the observations noted was that not all law practitioners grasped the scope of the AML/CFT framework. As such, the purpose of this guidance note is to provide direction and assistance in understanding the scope of AML/CFT obligations for Independent Law Practitioners (ILPs). Furthermore, this note aims at providing clarity on the prescribed activities for the legal profession.

This guidance note should be read in conjunction with the FIU's main AML/CFT Guidelines for individual law practitioner¹ (hereinafter referred to as 'the **Main Guidelines**').

¹ [FIU Guidelines](#)

Vulnerabilities of the Legal Profession

The Financial Action Task Force ('FATF') has explained in its report² of June 2013 on ML & TF Vulnerabilities of LPs that criminals in many countries are making use of mechanisms, which involve services frequently provided by LP, for the purpose of ML.

There is evidence that some criminals seek to choose and knowingly involve LPs in their ML schemes. Often, the involvement of the LP is sought because the services they offer are essential to the specific transaction being undertaken and because LP add respectability to the transactions.

The key ML/TF methods, according to the FATF, that commonly employ or, in some countries, require the services of LPs were identified as follows:

- use of client accounts;
- purchase of real estate;
- creation of trusts and companies;
- management of trusts and companies; and
- setting up and managing charities

In Mauritius, the above-mentioned services are termed as '**prescribed activities**' in Part II of the First Schedule of Financial Intelligence Anti Money Laundering Act 2002 (FIAMLA).³

² [FATF Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals](#)

³ [FIAMLA](#)

When does a LP become a reporting person?

As the FIU has stated in its existing outreach materials and in its Main Guidelines for ILPs, not all LPs conduct prescribed activities and, as such, not all LPs are reporting persons. Only those LPs, who do so, are captured by the AML/CFT framework and are thus obliged as reporting persons under the FIAMLA, United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019 (UN Sanctions Act) and any regulations or guidelines issued thereunder.

Additionally, when a LP provides a mix of services, some which are considered as prescribed activities, they immediately become reporting persons with AML/ CFT obligations. The proportion of the work, which is considered to fall within the remit of a prescribed activity, but is not relevant in determining whether it is subject to the AML/CFT obligations, should also be complied with.

To note that the AML/CFT obligations would need to be adhered to only in respect of the prescribed activities. In the same vein, any response to information requests made by the FIU, should only take into account activities, clients and relevant statistics, which are connected to the prescribed activities.

It is, therefore, important to understand that services, which fall outside the definition of the prescribed activities do not trigger AML/CFT obligations. For the avoidance of doubt, LPs, employed by a public authority, working in-house, and who do not provide legal services in their personal capacity beyond their employment, are also not captured by the AML/CFT regulatory framework.

Additionally, where the LP is the employee of a sole practitioner or firm or partnership, these requirements are the responsibility of the LP's employer but as an employee, the LP will have to adhere to the compliance programme put in place by the employer.

Expectations of the FIU

When LPs carry out or intend to carry out any or all of the prescribed activities, they are, however, expected to have all AML/CFT policies and procedures in place prior to accepting briefs or engagements of this nature from clients.

This is intended to ensure that LPs, once take onboard their first client to provide services falling within the definition of a prescribed activity, are immediately subjected to meet their AML/CFT obligations. This would ensure, among other matters, having an understanding of the risks and red flags associated with the service to be provided. This will also that LPs carry out customer risk assessments, and all necessary customer due diligence measures.

Without procedures and relevant knowledge of obligations, it will be challenging for a LP to conduct a sound risk assessment or carry out customer due diligence. In the absence of an efficient AML/CFT program in place, it is, thus, unlikely that a LP will be able to detect ML/TF suspicions or file suspicious transaction reports. The risk of the LP being potentially involved in criminal activities would thus be enhanced.

The FIU, as part of its inspections, whether offsite or onsite, expects to see clearly documented and up to date policies and procedures which enable the LP to comply with his obligations. Such policies and procedures should be in proportion to the risks faced by the LP, and to the nature and size of its business. Policies and procedures need not be overly complex, so long as they reflect clearly the steps, which the LP or any relevant staff must follow in any given circumstance to meet their AML/CFT obligations.

Registration with the FIU

Once a LP becomes a reporting person, he/she must also register with the FIU on the goAML platform to enable him/her to file STRs electronically and to access all the resources produced by the FIU to assist reporting persons.

It is the Money Laundering Reporting Officer ('MLRO') of the reporting entity, who should apply for registration. Where the LP is a sole practitioner and is not able to appoint a MLRO, he should act as the MLRO himself, and register himself on goAML. It is highlighted that the outsourcing of MLROs is not permitted by our laws.

Prescribed Activities for the Legal Profession

Part II of the First Schedule of the FIAMLA lists the prescribed activities for all the professions and occupations, which the FATF considers should be subject to supervision for the purposes of AML/CFT.

For ILPs, the activities listed below, as per Part II of the First Schedule of the FIAMLA, are the triggering activities, which when performed, bring the LP within the FIU's supervisory ambit as a reporting person:

“A barrister, an attorney, a notary, a law firm, a foreign law firm, a joint law venture, a foreign lawyer under the Law Practitioners Act, a professional accountant, a public accountant and a member firm licensed under the Financial Reporting Act, who prepares for, or carries out, transactions for his client concerning the following activities –

- (i) buying, selling or rental of real estate;
- (ii) managing of client money, securities or other assets;
- (iii) managing of bank, savings or securities accounts;
- (iv) organisation of contributions for the creation, operation or management of legal persons such as a company, a foundation, a limited liability partnership or such other entity as may be prescribed;
- (v) creating, operating or management of legal persons such as a company, a foundation, an association, a limited liability partnership or such other entity as may be prescribed, or legal arrangements, and buying and selling of business entities;
- (va) the business activities of virtual asset service providers and issuers of initial token offerings under the Virtual Asset and Initial Token Offering Services Act 2021; or
- (vi) involving in any activity specified in item (f).

Section (1) (f): a company service provider who prepares, or carries out, transactions for a client concerning the following activities –

- (i) acting as a formation agent of a legal person with a view to assisting another person to incorporate, register or set up, as the case may be, a company, a

- foundation, a limited liability partnership or such other entity as may be prescribed;
- (ii) acting, or causing another person to act, as a director, as a secretary, as a partner or in any other similar position, as the case may be, of a legal person such as a company, foundation, a limited liability partnership or such other entity as may be prescribed;
 - (iii) providing a registered office, a business address or an accommodation, a correspondence or an administrative address for a legal person such as a company, a foundation, a limited liability partnership or such other entity as may be prescribed; or
 - (iv) acting, or causing for another person to act, as a nominee shareholder for another person.”

While the FIU is concerned with only those LPs who conduct the prescribed activities, it is important to highlight that often, some LPs may provide an initial service which are not prescribed activities, but at a later state, get evolved and include services constituting a prescribed activity.

Because of the dynamic nature of the LP-client relationship, it is not practical to list services and determine whether they represent prescribed activities or not. Ultimately, it is for the LP to take a professional view to determine whether any of the services he is providing to a client constitutes a prescribed activity.

This guidance, therefore, serves as a basis for defining the prescribed activities to assist LPs and ensure consistent adherence to AML/CFT obligations across their professions.

In relation to all the prescribed activities set out under the FIAMLA, AML/CFT obligations are triggered for LPs under two circumstances:

1. Acting for a Client; and
2. Preparing for or carrying out transactions for their client in any of the activities listed under paragraphs (i) to (vi) above.

1. Acting for a Client

It is a common feature for LPs to act on behalf of and for their client and not in their own name. As such, the term 'on behalf of or for their client' is also intended to cover specific scenarios, when the LP acts under a specific mandate from the client, and not simply under normal client instructions.

Thus, the LP would be acting 'for and on behalf of a client' when acting under a mandate or a form of power of attorney, and when the client is not the person to appear on the contract or the deed of transfer, but it is the LP or the LP's representative under some form of sub-delegation clause.

The LP should exercise caution when undertaking such activities, and gather relevant information on the client and the instructions given to them.

Some examples of the above would include situations where:

- (i) the lawyer (or the lawyer's representative as sub-delegate of the lawyer) acts as the mandatary of the client pursuant to a general or specific mandate or power of attorney;
- (ii) the lawyer acts as a nominee or a front for an undisclosed principal; and
- (iii) the lawyer receives funds in escrow or disburses funds to complete or facilitate the completion of a transaction.

2. Prepares for or Carries out Transactions

The terms 'prepares for' constitutes all the services and actions, which are required for a transaction to be carried out. The provision of advice in relation to the structuring of transactions would be included, as well as, the drafting of any relevant documents such as but not limited to contracts.

Applied to the Prescribed Activities

The above two elements are now explored for each of the prescribed activities.

➤ **When a LP prepares for or carries out transactions for his client concerning the Buying, Selling and Rental of Real Estate.**

The preparation and carrying out of transactions concerning the buying and selling of real estate is not limited to the mere advisory role on any legal rights or obligations.

In fact, it encompasses:

- (i) Assistance in the preparation, arrangement or design of the transaction; and
- (ii) The implementation, performance, execution and completion of any steps required for the transaction to be concluded.

By way of example, the preparation or carrying out of transactions includes:

- (i) the design and planning of a transaction to bring about specific commercial and economic outcomes;
- (ii) the drafting of contracts or agreements that give effect to the design and planning of those outcomes;
- (iii) the reviewing and re-drafting of such agreements and contracts;
- (iv) assisting in the negotiations on behalf of a client on the commercial terms of a transaction; and
- (v) Assisting the client in the implementation and execution of a transaction (e.g., by facilitating the transfer of funds).

The prescribed activity also covers a number of real estate-related transactions, such as leasing transactions, the preparation of documentation for building or complex of buildings amongst others, and transactions that involve the disposal or acquisition of immovable property as well as an exchange of immovable property.

A LP who prepares for and carries out such activities relating to the sale of real estate would, therefore, need to perform the basic CDD and record-keeping requirements.

➤ **When a LP prepares for or carries out transactions for his client concerning managing of client money, securities or other assets.**

As part of their activities, LP would, in some cases, handle the client's funds. The FATF is particularly focused on the potential risk, where the LP is actually handling the funds. In any situation where the LP controls the use, application, or disposition of funds or has signatory authority over the client's financial account, the risk must be assessed and properly managed by the LP.

It is, however, underlined that receiving funds on account of legal, professional, judicial or other fees, does not constitute the management of client monies and is not a prescribed activity.

LPs, who receive funds following judgments handed down by a court of law for payment to any party in the case, would not be conducting a prescribed activity as there is no handling of the funds as such. This is common for attorneys in Mauritius, and such scenarios do not fall within the prescribed activity.

The management of client money, securities or other assets/services goes beyond the mere holding of funds received for the eventual execution of a transaction on which a LP may be advising. It covers situations, where the LP invests or otherwise applies the client's assets, with a view to increasing or safeguarding their value, or the application of client funds or assets to the purchase or disposal of other assets. This may also include the passive holding of investments for a client without any underlying legal service attached to the funds held in a client account.

Best practices for ensuring the legitimate use of client accounts:

- (i) To prevent misuse of their client accounts, (a known money laundering typology) LPs should limit the use of such an account when they are not providing any legal services. This will avoid situations where the LP is essentially providing banking services for their clients as opposed to merely holding client's money for a legitimate transaction.

For example, in a real estate sale, if an LP is asked to make/receive payments to/from persons not party to the transaction but to uninterested persons whose identities are difficult to verify, caution should be exercised and/or treat this as a higher risk situation.

- (ii) Funds received in client accounts should be related to a legal service being provided. Additionally, the LP should satisfy himself on the source of funds, and ensure that the value is in proportion to the purpose for which they are intended.

- (iii) Caution should be exercised in relation to cash being deposited into the client account. LPs may prefer to only accept electronic transfers to ensure that there is a trail for the funds.
- (iv) Funds should not be accepted if they are being transferred from an account located in a high-risk country or in a jurisdiction which does not have adequate AML/CFT regulations.
- (v) LPs should be satisfied the funds received through their client account are for the purposes that they have agreed to. Client instructions should be carefully analyzed, and the LP should ensure that they make logical and economic sense. Transfers of funds out of the client account should only be effected in the manner and to beneficiaries that have been agreed to.
- (vi) LPs should avoid transferring any unused client funds from the client account to any third parties identified by the client since such requests are typically indicative of money laundering.
- (vii) Where any transaction does not go ahead and where there is no ML/TF suspicion, the funds should be remitted back to the client using the same means that it they were transferred to the LP initially. Should this not be feasible, and once again, in the absence of any ML/TF suspicion, the LP may transfer the funds to another account held by the client by a bank or financial institution which is duly regulated for AML/CFT purposes.

➤ **When a LP assists in the planning or carrying out of transactions for a client concerning the opening or management of bank, savings or securities accounts**

This constitutes in any form of assistance provided by the LP to a client to open or manage bank accounts or securities accounts, such as assisting the client to open bank accounts or using their contacts within these institutions to facilitate the opening of an account.

This also includes advice given to clients in connection with where and how to open bank accounts and providing advice on the management of these accounts, without necessarily operating those bank accounts.

If the LP acts as a signatory on any of the above accounts, then this is also within the definition of the prescribed activity. Whether the LP can actually move funds with

their sole signature or whether additional signatures are necessary is not a relevant consideration here.

- **Where a LP assists in the preparation or carrying out of transactions for a client concerning the organization of contributions for the creation, operation, or management of legal persons such as a company, a foundation, a limited liability partnership or such other entity as may be prescribed or legal arrangements, and buying and selling of business entities (Activities specified at paragraphs (1 (e)iv and v of Part II of the First Schedule)**

And

- **Where the LP acts as a company service provider pursuant to paragraphs 1(e)(vi) and 1(f) of Part II of the First Schedule**

The above activities form part of corporate support services, provided as services in their own right or as part of a larger transaction. In either case, they represent prescribed activities.

- i. **Preparing for or carrying out transactions for a client concerning the organization of contributions necessary for the creation, operation and management of legal persons such as a company, a foundation, a limited liability partnership ('LLP') or such other entity as may be prescribed**

Organization of contributions

This would include the provision of assistance by a LP to the promoters of any legal person, foundation, LLP in making the necessary contributions for establishing the legal person, foundation, LLP as the case may be.

Contribution can be in the form of share capital, debt capital, hybrid capital or in kind. In such cases, the client account of the LP may be used for the receipt of contributions. This falls significantly within the prescribed activity and LPs are strongly urged to take into consideration the best practices recommended above for the use of their client accounts.

Vigilance should be exercised in relation to the contributions at the company formation stage. Any indications of money laundering would be flagged at this stage, as well, if contributions appear to be in disproportion to the objectives of the company at that time.

Operation and management

LPs' attention is drawn to the fact that the operation and management of legal persons, commitments of LLPs also include their liquidation. As such, LPs acting as liquidators or providing assistance to liquidators in insolvency or winding up proceedings are considered as reporting persons conducting the prescribed activity. This will also be the case where the LP has been appointed by a court or tribunal.

ii. Creating, operating or management of legal persons such as a company, a foundation, an association, a limited liability partnership or such other entity as may be prescribed, or legal arrangements, and buying and selling of business entities

Creating, operating or managing legal persons, legal arrangements or other entities.

When it comes to the setting up of companies, trusts or any other entities, the LP would typically be involved in the following:

- Assessing and choosing the most appropriate type of entity which would best suit the client's requirements;
- Drafting constitutional documents for the entity being created; and
- Submitting any documents to relevant authorities to formalize the creation of the entity.

As such, it is clear that all of the above fall within the scope of the prescribed activity, and LPs, who offer these services, would be reporting persons under the AML/CFT framework.

Buying and selling of business entities

The purchase and sale of business entities includes the transfer of registered companies or partnerships, or of parts thereof or shares therein, as well as the transfer of goodwill and business concerns. Where the services provided by the LP concerns aspects that are beyond the planning, design, structuring, financing or execution of such a transaction, this would not constitute a prescribed activity. For example, the following would not be deemed to be prescribed activities:

- Review of agreements that have no relation to the transaction or funding methods, such as warranties which may impact the client;
- Advice or clarifications on liability;
- Advice or the drafting of documents to ensure compliance with local laws and regulations.

Conclusion

The guidance aims at assisting LPs with the practical application of the defined prescribed activities for their profession. LPs, by virtue of the role that they play as gatekeepers, must remain vigilant when offering any of the prescribed activities. It is of utmost importance for them to have all the right controls and policies in place as a line of defence against criminals. If doubt still persists over a particular situation, LPs should seek independent legal advice.