



# G20

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2022

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Compendium of Good Practices on Regulatory  
Framework and Supervisory Measures for  
Legal Professionals to Mitigate  
Corruption-Related Money Laundering Risks

G20 Anti-Corruption Working Group



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## Acronyms and Abbreviations

ABA	: American Bar Association
AFP	: Australian Federal Police
AML	: Anti-Money Laundering
AML/CFT	: Anti-Money Laundering/ Countering Financing of Terrorism
AMLSC	: Anti-Money Laundering Sub-Committee in Law Society of Scotland
APEC	: Asia Pacific Economic Cooperation
APG	: Asia/Pacific Group on Money Laundering
APIs	: Application Programming Interface
APTCP	: Act on Prevention of Transfer of Criminal Proceeds, Japan
ARIN-AP	: Asset Recovery Interagency Network - Asia Pacific
AUSTRAC	: Australian Transaction Reports and Analysis Center
BFT	: Bureau Financieel Toezicht (Financial Supervision Office), Netherlands
BO	: Beneficial Ownership
BOSS	: Beneficial Ownership Secure System
BPN	: Badan Pertahanan Nasional (National Land Agency), Indonesia
BRICS	: Brazil, Rusia, India, China, and South Africa
BSA	: Bank Secrecy Act
CARIN	: Camden Asset Recovery Inter-agency Network
CARPA	: Caisses Autonomes des Règlements Pécuniaires des Avocats (Autonomous Fund for Lawyers' Financial Settlements), France
CDD	: Customer Due Diligence
CFT	: Countering Financing of Terrorism
CNAJMJ	: Conseil National des Administrateurs Judiciaires et Mandataires Judiciaires (National Council of Judicial Administrators and Legal Representatives), France
CNB	: Conseil National des Barreaux (National Bar Council), France
CNCJ	: Chambre Nationale des Commissaires de Justice (National Chamber of Commissioners of Justice), France
COAF	: Conselho de Controle de Atividades Financeiras (Council for Financial Activities Control), Brazil
CPBCIM	: Prevención del Blanqueo de Capitales e Infracciones Monetarias (Commission for the Prevention of Money Laundering and Monetary Offences), Spain
CPIB	: Corrupt Practices Investigation Bureau, Singapore

CSN	: Conseil Superieur du Notariat (Council of Notaries), France
CTA	: Corporate Transparency Act
DG AHU	: Direktorat Jenderal Administrasi Hukum Umum (Directorate General of General Law Administration), Indonesia
DHS	: Department of Homeland Security, United States
DLT	: Distributed Ledger Technology
DNFBPs	: Designated Non-Financial Businesses and Professions
EU	: European Union
Eurojust	: European Union Agency for Criminal Justice Cooperation
FATF	: Financial Action Task Force
FCA	: Financial Conduct Authority, United Kingdom
FIC Act	: Financial Intelligent Center Act in South Africa
FinCEN	: Financial Crimes Enforcement Network, United States
FIU	: Financial Intelligence Unit
FTR Act	: Financial Transaction Reports Act in Australia
G20 ACWG	: G20 Anti-Corruption Working Group
IAAF	: International Association Athletics Federation
IACCC	: International Anti-Corruption Coordination Centre
ICT	: Information and Communication Technology
IGIS	: Inspector-General of Intelligence and Security, Australia
INTRAC	: Indonesian Financial Transaction Reports and Analysis Center
JAFIC	: Japan Financial Intelligence Centre (Japan's Financial Intelligence Unit)
JFBA	: Japan Federation of Bar Associations
KNB	: Koninklijke Notariële Beroepsorganisatie (The Royal Dutch Association of Civil-law Notaries)
KYC	: Know Your Client
MASAK	: Mali Suçları Araştırma Kurulu (Financial Crimes Investigation Board), Türkiye
MER	: Mutual Evaluation Review
MLA	: Mutual Legal Assistance
MLO	: Money Laundering Organization
MLRs	: Money Laundering Regulations
ML/TF	: Money Laundering/ Terrorist Financing
MOJ	: Ministry of Justice

NMLRA	: National Money Laundering Risk Assessment
NOvA	: Nederlandse Orde van Advocaten (Bar Association of Netherlands)
NRA	: National Risk Assessment
NRA-FUR	: National Risk Assessment-Follow-up-Report
OAB	: Ordem dos Advogados do Brasil (Brazilian Bar Association)
OCP	: Órgano Centralizado de Prevención (Centralized Organization for the Prevention of Money Laundering), Spain
OECD	: Organization of Economic Co-operation and Development
PAHA	: Protection Against Harassment Act in United Kingdom
PBSs	: Professional Body AML Supervisors, United Kingdom
PEPs	: Politically Exposed Persons
PID Act	: Public Interest Disclosure Act in Australia
RBA	: Risk Based Approach
SAFIU	: Saudi Arabia's Financial Intelligence Unit
SAR	: Suspicious Activity Report
SCTRs	: Significant Cash Transaction Reports
SFO	: Serious Fraud Office, United Kingdom
SHCP	: Secretaría de Hacienda y Crédito Público (Ministry of Finance and Public Credit), Mexico
SNRA	: Supranational Risk Assessment
SRA	: Sectoral Risk Assessment
SRB	: Self-Regulatory Bodies
SSDT	: Scottish Solicitors Discipline Tribunal
StAR	: Stollen Asset Recovery
StGB	: Strafgesetzbuch (German Criminal Code)
STR	: Suspicious Transaction Reporting
TSOC	: Transnational Serious & Organised Crime
UAE	: United Arab Emirates
UIF	: Unidad de Información Financiera (Financial Information Unit), Argentina
UK	: United Kingdom
UNODC	: United Nations Office on Drugs and Crime
US	: United States

## Executive Summary

Corruption and money laundering are closely linked. Research shows that failure to implement effective anti-money laundering (AML) measures provides corrupt actors with opportunities and access to the global financial system to extend their illegal activities. The prevalence of one of these illegal activities in a country may signify the prevalence of the other violations of law.<sup>1</sup> Thus, robust regulation and effective anti-money laundering measures contribute greatly to corruption eradication efforts.

In accordance with the G20 Anti-Corruption Working Group Plan 2022-2024, the G20 members have committed to focus on priority areas where the G20 can continue to lead by example and bring added value to global action, including in the area of money laundering. In particular, the G20 members will conduct a stocktake of existing regulatory and supervisory standards for gatekeeping industries and professional enablers. In line with previous commitments<sup>2</sup> and international standards, including the FATF Recommendations, the G20 countries are also encouraged to share good practices for addressing the misuse of the international financial system to engage in corruption facilitated by professional gatekeepers/enablers, with due regard for professional secrecy and legal professional privilege.<sup>3</sup>

Recent reporting on the widespread use of offshore entities to hide assets from the authorities has brought into sharp focus the role of gatekeepers in money laundering. Whether knowingly or unknowingly, legal professionals may play a significant role in creating complex structures, including by involving other professionals, so as to facilitate corrupt actors to conceal the proceeds of corruption.<sup>4</sup> Hence, the money laundering vulnerabilities of legal professionals and the misuse of the services they provide is a significant area of focus for G20 countries.

This Compendium of Good Practices on Regulatory Frameworks and Supervisory Measures for Legal Professionals to Mitigate Corruption-Related Money Laundering Risks is aimed to highlight the positive practices of G20 members in regulating and implementing supervisory measures for legal professionals to prevent corruption-related money laundering, including practices that address the misuse of legal professions, while taking into account existing professional ethical obligations and ongoing work on this subject.

The compendium consists of three chapters. Chapter 1 provides an overview of the regulatory frameworks for legal professionals. Chapter 2 covers how countries implement supervisory measures for legal professionals, including their obligations under domestic AML frameworks, awareness raising, and information and communication technology (ICT) usage to enhance compliance levels, whistleblowing systems, and assessment of legal professionals' compliance. Chapter 3 provides a number of case studies on how countries have handled incidences of corruption-related money laundering that involves legal professionals.

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<sup>1</sup> Yepes, C.V. (July 2011). *Compliance with the AML/CFT International Standard: Lessons from a Cross-Country Analysis*, Washington DC: IMF Working Paper, pp.9.

<sup>2</sup> G20. (2014). *High-Level Principles on Beneficial Ownership Transparency*. G20. (2015). *High-Level Principles on Private Sector Transparency and Integrity*. G20. (2017). *High-Level Principles on Organizing Against Corruption*.

<sup>3</sup> G20 Anti-Corruption Working Group. *Anti-Corruption Action Plan 2022-2024*.

[https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Action-Plans-and-Implementation-Plans/2021\\_G20\\_Anti-Corruption\\_Action\\_Plan\\_2022-2024.pdf](https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Action-Plans-and-Implementation-Plans/2021_G20_Anti-Corruption_Action_Plan_2022-2024.pdf). Accessed on 24 October 2022, pp.5-7.

<sup>4</sup> *Ibid.*

Some key findings that may be drawn from the compendium include:

#### Regulatory Frameworks for Legal Professionals to Mitigate Corruption-Related Money Laundering Risks

- Most G20 members have well established regulatory frameworks and supervisory mechanisms for legal professionals.
- Most countries have mechanisms and tools in place, in order to prevent the involvement of legal professionals in money laundering.

#### Supervisory Measures for Legal Professionals to Mitigate Corruption-Related Money Laundering Risks

- Legal professionals in G20 countries are generally subject to supervisory measures as reporting parties under AML frameworks.
- The majority of G20 countries apply various sanctions or other appropriate measures to legal professionals who fail to comply with AML obligations, including disciplinary, administrative/civil, and criminal sanctions.
- Whistleblowing systems and Suspicious Transaction Reports (STRs) are crucial components of G20 members' AML frameworks.
- Some countries use ICT for reporting, monitoring, and coordination, and for analytical tools to enhance money laundering risk detection.
- Mechanisms to assess legal professionals' compliance with AML supervisory measures have been established by many G20 members -- these are generally conducted by a supervisory body or on a self-assessment basis.

#### Case Studies on Corruption-Related Money Laundering Cases Involving Legal Professionals

- Several G20 countries have dealt with money laundering cases involving legal professionals. However, only a small number of G20 members have experience of dealing with corruption-related money laundering cases that involve legal professionals.
- G20 members have also encountered a variety of challenges relating to legal professional privilege and secrecy, cross-jurisdictional information-sharing, lack of resources and capacity, and time-consuming international cooperation processes.
- The good practices and lessons-learned that may be drawn from the case studies highlight that money-laundering involving legal professionals poses a mutual challenge that is shared by all G20 countries.

# Chapter 1: Regulatory Frameworks for Legal Professionals to Mitigate Corruption-Related Money Laundering Risks

Legal professionals offer a wide range of activities across sectors, businesses and jurisdictions. Given the diversity in scale and activities, some services may be more susceptible to exploitation for money laundering than others. In 2003, the FATF Recommendations were extended to cover Designated Non-Financial Businesses and Professions (DNFBPs) that could facilitate money laundering either unwittingly or wittingly by being complicit in crimes. These professions include legal professionals.

In 2008, the FATF developed guidance and recommendations to combat money laundering that involves legal professionals.<sup>5</sup> The World Economic Forum's Partnering Against Corruption Initiative, and the Global Future Council on Transparency and Anti-Corruption, supported by UNODC, and the Stolen Asset Recovery (StAR) Initiative have convened the Gatekeeper Taskforce, a cross-sectoral taskforce of industry leaders from finance, investment, corporate law, real estate, and the art and antiquities markets.<sup>6</sup> The Taskforce has developed the Unifying Framework, a framework for all gatekeeping industries worldwide which advocates self-regulation and collective action as strategies that can supplement and complement government regulation in the fight against illicit financial flows. Furthermore, the OECD has listed a series of counterstrategies that countries may adopt in their fight against professional enablers, including legal professionals,<sup>7</sup> to align with the FATF Guidance.

The development and implementation of strong regulatory frameworks are crucial to counter the risk of legal professional services being abused to launder illicit funds. Accordingly, it is necessary to discuss the scope of services provided or activities undertaken by legal professionals, and the money laundering risks that stem from legal professionals' activities, prior to discussing the regulatory frameworks used to supervise legal professionals.

## 1.1. Scope of Legal Professionals

The definition of 'legal professional' varies among countries. Although there may be similarities between them, national regulations may differ quite substantially from one country to another.

Generally, there are three different approaches to defining legal professionals in G20 countries, which are based on (i) qualifications, as governed by national regulations; (ii) range of legal services provided; (iii) and a combination of both of these.

### Qualifications, as governed by national regulations

Some G20 members identify legal professionals based on the qualifications described by their national regulations. The qualifications or titles given to these legal professionals may vary

<sup>5</sup> FATF. *FATF Guidance for A Risk Based Approach Legal Professionals*, <https://www.fatf-gafi.org/media/fatf/documents/reports/Risk-Based-Approach-Legal-Professionals.pdf>, Accessed on 24 October 2022

<sup>6</sup> The World Economic Forum and StAR Initiative, *The Role and Responsibilities of Gatekeepers in the Fight against Illicit Financial Flows: A Unifying Framework*, <https://star.worldbank.org/resources/role-and-responsibilities-gatekeepers-fight-against-illicit-financial-flows-unifying>. Accessed on 27 August 2022.

<sup>7</sup> OECD. *Ending the Shell Game: Cracking down on professionals who enable tax and white collar crimes*. <https://www.oecd.org/tax/crime/ending-the-shell-game-cracking-down-on-the-professionals-who-enable-tax-and-white-collar-crimes.htm>. Accessed on 12 April 2022.

among countries and legal systems, with the same title not always having the same meaning or area of responsibility.<sup>8</sup> Argentina, Australia, France, Indonesia, Japan and Türkiye all define professions that are considered to be legal professions according to specific qualifications.

According to the French Monetary and Financial Code, legal professionals include lawyers, notaries, bailiffs, judicial auctioneers and judicial administrators-judicial agents (“mandataires de justice”). Meanwhile, for the purposes of Australia’s FTR Act, solicitors, solicitor corporations and partnerships of solicitors fall within the scope of Australia’s AML regulatory framework.<sup>9</sup> Under Indonesia’s national regulations, lawyers, notaries and licensed conveyancers should all be defined as legal professionals. While Argentina and Türkiye recognize notaries as legal professionals. Legal advisors in Germany, whether members of the respective professional organization or not, are subject to the provisions of the Money Laundering Act, along with lawyers, patent agents and notaries.

Even though the titles given to different legal professionals vary among countries, the FATF Recommendations require countries to regulate the provision of those sectors for AML purposes when providing legal services.

### **Scope of legal services or activities**

A number of G20 members define legal professionals according to the scope of the services they provide or activities they undertake, having regard to their respective national regulations. For instance, Brazil’s Law on Crimes Related to Laundering or Concealment of Assets, Rights and Valuables describes legal professionals as individuals or entities that provide services related to corporate-vehicle creation and management, and residential and commercial properties.

On the other hand, Mexico’s AML legislation considers three different sections in which legal professionals are classified, the first category encompasses legal professionals that provide accounting services, lawyers and outsourcing as an independent service to a business, the second category includes notaries and public brokers, and the last one contemplates custom agents.

### **Hybrid definitions**

In some G20 countries, legal professionals are defined both by their specific titles and the services they provide or activities they undertake. Russia includes specialist advocates, notaries and any individual undertaking entrepreneurial activities in the area of legal services as legal professionals. Meanwhile, Saudi Arabia recognizes that apart from attorneys, any person providing legal services involving the establishment, operation, or management of a legal person or a legal arrangement is susceptible to AML risks.

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<sup>8</sup> FATF. *FATF Guidance for A Risk Based Approach Legal Professionals*, <https://www.fatf-gafi.org/media/fatf/documents/reports/Risk-Based-Approach-Legal-Professionals.pdf>. Accessed on 24 October 2022. pp. 8.

<sup>9</sup> Australian Government, *Solicitors*, <https://www.austrac.gov.au/business/industry-specific-guidance/solicitors>. Accessed on 26 October 2022.

## 1.2. Money Laundering Risks Stemming from Activities of Legal Professionals

Legal professionals are vulnerable to money laundering risks related to the legal services they provide. To successfully disguise and conceal the proceeds of corruption, corrupt actors may seek the involvement of professional gatekeepers, including legal professionals. Legal professionals can facilitate money laundering activities by creating complex corporate structures or providing legal and notarial services, which enable corrupt actors to obscure proceeds of crime within financial transactions.

The FATF Recommendations, supplemented by the Risk Based Approach (RBA) Guidance for Legal Professionals, require countries to establish a regulatory framework that contains anti-money laundering/ countering financing of terrorism (AML/ CFT) obligations to address the money laundering risks associated with legal professionals.<sup>10</sup> Furthermore, the FATF Report on Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals acknowledges that even law abiding legal professionals are vulnerable to money laundering risks due to the nature of the services they provide.<sup>11</sup> Some of the services mentioned in that FATF report have also been identified by G20 members. Drawing from the questionnaire responses, this compendium will focus on four high risk activities that appear to be particularly prone to money laundering. These are (i) corporate vehicle creation and management, (ii) fund/asset management, (iii) utilization of legal professionals' trust accounts, and (iv) residential and commercial property transactions.

### 1.2.1. Corporate Vehicle Creation and Management

The creation of corporate vehicles (legal persons and legal arrangements) has been commonly misused by criminals to disguise their proceeds of corruption to appear to be legitimate financial gains. According to the OECD, corporate vehicles are legal entities through which a wide variety of commercial activities are conducted and assets are held.<sup>12</sup> These vehicles include a range of organizational forms, and often have limited liability features, including shell companies.<sup>13</sup> Creation of shell companies could be primarily for licit purposes and they only become criminal when they are used for criminal purposes. However, legal professionals may wittingly or unwittingly be involved in the misuse of such companies since transactions processed through the corporate account of a "shell company" can become effectively untraceable and thus very useful for those looking to hide criminal profits, pay or receive bribes, finance terrorists, or escape tax obligations.<sup>14</sup> Similarly, shelf companies that conducted previous business activities are particularly useful for corrupt actors to hide their

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<sup>10</sup> FATF. *FATF Guidance for A Risk Based Approach Legal Professionals*, <https://www.fatf-gafi.org/media/fatf/documents/reports/Risk-Based-Approach-Legal-Professionals.pdf>. Accessed on 24 October 2022, pp. 9.

<sup>11</sup> FATF Report. (2013). *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals*, pp. 4

<sup>12</sup> OECD, *Behind the Corporate Veil. Using Corporate Entities for Illicit Purposes*. <https://www.oecd.org/corporate/ca/43703185.pdf>. Accessed on 24 October 2022, pp.13

<sup>13</sup> Lord, N.; Wingerde, K.V.; Campbell, L. *Organising the Monies of Corporate Financial Crimes via Organizational Structures: Ostensible Legitimacy, Effective Anonymity, and Third-Party Facilitation*. *Adm. Sci.* 8, 17. <https://doi.org/10.3390/admsci8020017>. Accessed on 24 October 2022, pp.10

<sup>14</sup> Nelen, Hans. (2008). *Real estate and serious forms of crime*. *International Journal of Social Economics*, 35, 10.1108/03068290810898963, pp.751-762.

illicit funds as a history of clean business records and legitimate transactions provide an appearance of legitimacy so as to help avoid detection by law enforcement. Indeed, the FATF Recommendations include the requirement that legal professionals obtain information on the beneficial ownership of corporate vehicles.

The possibility of controlling illicit funds with little risk and disguising the illegitimate funds as corporate business transactions explains why corporate vehicles are so frequently misused for illegitimate purposes. They provide an opportunity for criminals to conceal, convert and control the proceeds of crime by making it appear that other entities or individuals are the legitimate beneficial owners.<sup>15</sup> Besides assisting in or facilitating the creation of corporate vehicles, the involvement of legal professionals may also extend to acting in the capacity of company directors or nominees.<sup>16</sup>

Some legal professionals may willfully turn a blind eye to the risks posed by particular clients or prospective clients, and consequently conduct inadequate due diligence. For instance, they may not require clients to provide sufficient identification data, information on beneficial ownership or other necessary information. This may be because the legal professional views the financial rewards of providing services to a particular client as outweighing the risks. Where legal professionals are aware that transactions involve money laundering and nevertheless agree to facilitate them, they may often do so by exploiting regulatory differences and gaps between countries where such differences and gaps facilitate the use of corporate vehicles and legal arrangements to obscure the proceeds of crime.<sup>17</sup>

The Australian authorities recognize that multi-layered legal entity structures may be utilized by criminals to launder illegitimate gains.<sup>18</sup> Legal professionals may be involved, knowingly or unknowingly, in setting up legal structures, such as companies, partnerships and trusts, in order to:

- support criminal enterprises
- hide ultimate ownership behind layers of companies or trusts in multiple overseas jurisdictions
- move and obscure the ultimate destination of funds
- avoid tax
- conceal wealth, and
- avoid detection and confiscation.

In France, lawyers are also used to facilitate the creation of multi-layered companies or other complex arrangements, including shell companies that are used to open bank accounts in

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<sup>15</sup>Lord, N., Campbell, L., & van Wingerde, K. *Corporate Vehicles and Illicit Finance: Policy Recommendations*, [https://www.research.manchester.ac.uk/portal/files/87092055/CVs\\_and\\_Illicit\\_Finance\\_Policy\\_Brief.pdf](https://www.research.manchester.ac.uk/portal/files/87092055/CVs_and_Illicit_Finance_Policy_Brief.pdf). Accessed on 24 October 2022, pp. 1.

<sup>16</sup> FATF. *FATF Guidance for A Risk Based Approach Legal Professionals*, <https://www.fatf-gafi.org/media/fatf/documents/reports/Risk-Based-Approach-Legal-Professionals.pdf>. Accessed on 24 October 2022, pp. 15.

<sup>17</sup> Lord, N., Campbell, L., & van Wingerde, K. *Organising the Monies of Corporate Financial Crimes via Organizational Structures: Ostensible Legitimacy, Effective Anonymity, and Third-Party Facilitation*. Adm. Sci, 8, 17. <https://doi.org/10.3390/admsci8020017>. Accessed on 24 October 2022. pp.13

<sup>18</sup> Austrac, *Business how comply guidance and resources*. <https://www.austrac.gov.au/business/how-comply-guidance-and-resources/guidance-resources/money-laundering-australia-2011>. Accessed on 24 October 2022.

various countries. This concern has also been noted by Russia, where considerable risks potentially arise when specialist advocates provide services to establish legal persons, particularly shell companies.

Similarly, in South Africa, legal professionals may be requested to create and assist in managing fictitious entities, complex legal structures or shell companies that are designed to obfuscate the ultimate beneficial owner and/or the true nature and ownership of assets. The services provided by legal professionals, such as advising on and creating legal entities, make them potentially vulnerable to money laundering abuse.

In Japan's National Risk Assessment (NRA), it is recognized that the establishment or merging of companies presents a potential money laundering risk. Legal professionals may use a money laundering scheme involving companies and other legal persons, and cooperatives and trusts in which offenders can distance themselves from their assets. Then, large amounts of property can be transferred in the name of a business, and the offenders can conceal the beneficial ownership or source of the financial gain.

### 1.2.2. Fund Management

In several countries, legal professionals provide services that include opening accounts (savings and securities accounts) and managing client funds. In some jurisdictions, legal professionals may also offer detailed financial advice. The extent of the financial advice that may be offered varies from country to country. However, legal professionals are often permitted to offer such advice where it relates to the legal services that they provide. For instance, legal professionals who manage inheritance matters are frequently permitted to provide generic advice on investment planning for testamentary beneficiaries.

Where a legal professional plays a role in fund management, this provides them with authority to conduct transactions with third parties, such as banks and brokers, on behalf of their clients, thus allowing them to move large sums of money, which could include proceeds of crime, from one jurisdiction to another, with the money being transferred or recorded in the name of the legal professional acting as a nominee. The FATF recognizes the money laundering risks associated with specific activities involving the management of savings or client securities accounts, which can lead to legal professionals being exploited by criminals for money laundering purposes.<sup>19</sup> The risk varies depending on a wide range of factors, such as the activities undertaken, the characteristics and identity of the client, and the nature and origin of the client relationship.<sup>20</sup>

There are a number of factors that may increase money laundering risks when legal professionals engage in fund management activities, including the conducting of cross-border transactions, the use of offshore or shell companies, large transaction volumes, unusual or

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<sup>19</sup> FATF. *FATF Guidance for A Risk Based Approach Legal Professionals*, <https://www.fatf-gafi.org/media/fatf/documents/reports/Risk-Based-Approach-Legal-Professionals.pdf>. Accessed on 24 October 2022, pp. 27.

<sup>20</sup> FATF. *FATF Guidance for A Risk Based Approach Legal Professionals*, <https://www.fatf-gafi.org/media/fatf/documents/reports/Risk-Based-Approach-Legal-Professionals.pdf>. Accessed on 24 October 2022, pp. 27.

unexpected transactions, and high-risk clients.<sup>21</sup> Some clients may ask legal professionals to transfer funds to offshore trusts or shell companies that serve to distance the funds from their legal or beneficial owners. This risk may be heightened where clients instruct legal professionals to manage large amounts of funds on behalf of beneficiaries or when they wish to conduct complex or unusual transactions. Legal professionals also need to be risk aware when managing funds on behalf of clients from, or with links to, countries that are considered high risk from a money laundering and/or corruption perspective. In view of the money laundering risks posed by the fund and asset management services provided by legal professionals, some G20 countries have adopted specific legislation to ensure supervision of legal professionals' activities in this regard.

France has acknowledged that legal professionals may be used for the purposes of misusing corporate assets, particularly in restructuring and insolvency matters. Japan's NRA, moreover, recognizes that transactions conducted on behalf of clients relating to the management or disposal of cash, deposits, securities and other assets may pose money laundering risks. As legal professionals have valuable expertise and social credibility that helps clients sell assets and use those assets to purchase other assets, the services legal professional provide can facilitate clients to more easily transfer proceeds of crime from one account to another.

### 1.2.3. Utilization of Legal Professionals' Trust Accounts

Legal professionals may hold client funds in trust accounts (also known as client accounts in some G20 countries).<sup>22</sup> Trust accounts are used to accommodate funds that enable legal professionals to undertake transactions on behalf of their clients. According to an FATF Report on Money Laundering Vulnerabilities of Legal Professionals, law enforcement and prosecutorial authorities in many countries are unable to monitor transactions that involve legal professionals' trust accounts as these are protected by confidentiality requirements.<sup>23</sup>

While the use of legal professionals' trust accounts is entirely legitimate, some aspects of the practice are vulnerable to misuse. These include:<sup>24</sup>

- where a legal professional, effectively acting as a financial intermediary, handles the receipt and transmission of funds through an account they control as part of facilitating a business transaction;
- where a client deposits or transfers funds through the legal professional's trust account that are not linked to a transaction that the legal professional is performing on behalf of the client, or where the activities specified in FATF Recommendation 22 are being undertaken; and

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<sup>21</sup> Financial Conduct Authority, *Anti-Money Laundering and Anti-Bribery and Corruption Systems and Controls: Asset Management and Platform Firms*, <https://www.fca.org.uk/publication/thematic-reviews/tr13-09.pdf>. Accessed on 11 September 2022.

<sup>22</sup> A trust account is a legal arrangement through which funds or assets are held by a third party (the trustee) for the benefit of another party (the beneficiary). The beneficiary may be an individual or a group.

<sup>23</sup> FATF. *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals*. <https://www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20vulnerabilities%20legal%20professionals.pdf>. Accessed on 25 October 2022, pp. 32.

<sup>24</sup>FATF. *FATF Guidance for A Risk Based Approach Legal Professionals*, <https://www.fatf-gafi.org/media/fatf/documents/reports/Risk-Based-Approach-Legal-Professionals.pdf>. Accessed on 24 October 2022, pp. 35.

- where a client requests that a financial transaction be carried out without using the legal professional's trust account, for instance, that it be conducted through the firm's general account and/or the personal or private business account of the legal professional.

The potential for abuse that is inherent in the above practices have also been recognized by some G20 countries. Further, the questionnaire responses indicate that a number of G20 countries now require legal professionals to identify the ownership of funds in their trust accounts and the purposes of transactions conducted through these accounts, and to monitor the accounts for unusual or suspicious transactions.

Investigations conducted by Australian law enforcement agencies acknowledge that legal professionals' trust accounts may be used (knowingly or unknowingly) to launder or conceal the true origin of funds, including, in particular, cash payments. Similarly, France has recognized that the vulnerabilities of legal professionals stem primarily from account management or escrow activity that they may carry out either by virtue of a legal obligation or on a voluntary basis. The sums of in-transit<sup>25</sup> or managed funds are often significant, while the funds themselves may be of fraudulent origin.

#### 1.2.4. Real Estate Transactions

Real estate transactions allow corrupt actors to not only obscure their proceeds of crime, but also to enjoy the profits accruing from a long-term investment. In real estate transactions, legal professionals are often involved in preparing, reviewing and registering mortgage documents and purchase agreements, and in ensuring that transactions proceed smoothly. In some countries, legal professionals assist with the arrangements for final settlement by processing payments through their trust accounts. For example, in a property sale and purchase transaction in a number of G20 countries, the buyer first transfers the purchase funds to the trust account of their legal professional, who then transfers them to the trust account of the seller's legal professional, who then finally transfers the funds to the seller.

A paper by the European Parliament titled Understanding Money-Laundering through Real Estate Transactions highlights some examples of how real-estate transactions can be used for money laundering purposes:<sup>26</sup>

- Use of nominee: a legal professional may stand in the place of the real buyer to give an appearance of a legitimate buyer without a criminal record.
- Trust and shell companies: criminals can deposit their proceeds of crime into offshore trusts and then utilize funds from these trusts to purchase property and as collateral to obtain loans.<sup>27</sup>

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<sup>25</sup> In-transit funds are funds that have been received and recorded by an entity, but which have not yet been recorded in the records of the bank where the funds are deposited.

<sup>26</sup> European Parliament, *Understanding money laundering through real estate transactions*, [https://www.europarl.europa.eu/cmsdata/161094/7%20-%2001%20EPRS\\_Understanding%20money%20laundering%20through%20real%20estate%20transactions.pdf](https://www.europarl.europa.eu/cmsdata/161094/7%20-%2001%20EPRS_Understanding%20money%20laundering%20through%20real%20estate%20transactions.pdf). Accessed on 11 September 2022.

<sup>27</sup> FATF Report, *Money Laundering Using Trust and Company Service Providers*, <https://www.fatf-gafi.org/media/fatf/documents/reports/Money%20Laundering%20Using%20Trust%20and%20Company%20Service%20Providers..pdf>. Accessed on 28 October 2022, pp. 70

- Overvalued or undervalued transactions: criminals collaborate with legal professionals and property agents to overstate or understate asset values compared with their true values. Overvalued assets can then be used as collateral to obtain bigger loans from fictitious lenders so as to launder the proceeds of crime.
- Cash: legal professionals can assist criminals to deposit cash with multiple banks so as to avoid reporting thresholds. These funds can then be used to purchase real estate.
- Financing schemes: credit and mortgage schemes can be used to disguise proceeds of crime by mixing illicit funds with legitimate funds.

Legal professionals such as lawyers and notaries are required to comply with AML obligations, arising from FATF Recommendation 22, including to identify their clients and report suspicious transactions in residential and commercial property transactions.<sup>28</sup> AML frameworks applied by countries require legal professionals to implement Know Your Client (KYC) and Customer Due Diligence (CDD) to identify and report suspicious transactions. The responses to the questionnaire from G20 members show that some of them require legal professionals that are involved in real estate transactions to identify any potential money laundering risks within the transaction.

In Brazil, the involvement of legal professionals in real estate transactions is not only limited to assistance with purchase and sale, but extends to providing advice, consultation, accounting and audit activities. Similarly, Argentina requires notaries to report to the Argentine Financial Information Unit if they engage in transactions related to the purchase and sale of real estate in excess of six million Argentine pesos, as well as transactions involving real estate located in border zones that are earmarked for development, and in the border security zone, regardless of purchasers' identities or the amounts involved.<sup>29</sup>

Türkiye and Spain acknowledge that when lawyers conduct financial transactions related to real estate transactions, they are subject to the ML/TF prevention obligations. Japan also recognizes that transactions on behalf of clients related to necessary acts or procedures for the buying and selling of residential lots and buildings may present a risk of ML/TF.

The high level of money laundering risk that pertains to notaries arises from their role in real estate transactions. In some civil law countries, notaries commonly play a crucial role in such transactions. The latest amendments of the AML legislation in Germany obliges legal professionals to report real estate transactions to the FIU if these exhibit conspicuous features that suggest the possibility of ML/TF. This extension of the reporting obligation for lawyers arose out of the findings of the National Risk Assessment, which identified the real estate sector as one of the key areas that are subject to heightened money laundering risks.

In Italy, notaries are key players in real estate transactions and company incorporations. Thus, they are required to comply with AML obligations and STRs reporting. STRs that they send yearly to the Italian FIU account for more than 90% of the total reports submitted by all legal professionals. Currently, Italy is developing an automated system (notarial data warehouse)

<sup>28</sup> FATF, *Guidance For A Risk-Based Approach Real Estate Sector*, <https://www.fatf-gafi.org/media/fatf/documents/recommendations/RBA-Real-Estate-Sector.pdf>. Accessed on 1 September 2022.

<sup>29</sup> Ministerio de Justicia y Derechos Humanos Presidencia de la Nación, *Encubrimiento Y Lavado de Activos de Origen Delictivo: Resolución 70/2011 Reporte Sistemático de Operaciones "on line"* <http://servicios.infoleg.gob.ar/infolegInternet/anexos/180000-184999/182612/texact.htm>. Accessed on 28 October 2022.

which is connected to the FIU and other supervising entities. This system could further detect the suspicious activities that may be linked to money laundering and the predicate offences.

### 1.3. Regulatory Framework

As described above, legal professional services may be misused in certain circumstances by corrupt actors to facilitate money laundering. Consequently, legal professionals are subject to the AML/CFT regulatory frameworks in many G20 countries in order to monitor their activities and prevent abuses. As part of these efforts, it is important to take into consideration the good practices that have been developed to date by the G20 countries as part of their regulatory frameworks.

Strong regulatory frameworks are critical to preventing and/or monitoring the involvement of legal professionals in money laundering, particularly where corruption offences serve as predicate crimes. Regulation provides legal professionals with instruments to better identify suspicious clients and activities, and creates a system to prevent legal professionals from cooperating with or being exploited by criminals engaged in money laundering and other illegal activities. Additionally, robust regulations, which require disclosure, provide authorities with effective enforcement powers, and criminalize potential offences reduce not only money laundering, but also the extent of other illegal activities, such as drug trafficking and other economic crimes.<sup>30</sup> This also reduces the immense cost of corrupt behavior, which can impact countries' economic development.<sup>31</sup>

Most G20 countries have enacted and implemented some level of regulation and supervision for legal professionals to combat money laundering in their AML/CFT regulatory frameworks, including when corruption is the predicate crime. Overall, these provisions may be categorized as (i) laws and regulations, (ii) self-regulation, and (iii) codes of conduct.

#### Laws and Regulation

Laws and regulations contain the principles and rules that govern the affairs of society, and are created and enforced by the competent authority. Some countries also use the term "act" to refer to statutes created by the legislature. Drawing from the questionnaire responses, a number of G20 members have enacted specific provisions focused on legal professionals in their national legislation, including the adoption of FATF Recommendations.<sup>32</sup>

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<sup>30</sup> Chong, Alberto & Lopez-de-Silanes, Florencio. *Money Laundering and Its Regulation. Economics and Politics.* (27<sup>th</sup> ed.) 10.2139/ssrn.1820066 [https://www.researchgate.net/publication/5106238\\_Money\\_Laundering\\_and\\_Its\\_Regulation](https://www.researchgate.net/publication/5106238_Money_Laundering_and_Its_Regulation). Accessed on 26 October 2022.

<sup>31</sup> STAR, *The Role and Responsibilities of Gatekeepers in the Fight against Illicit Financial Flows: A Unifying Framework*, <https://star.worldbank.org/publications/role-and-responsibilities-gatekeepers-fight-against-illicit-financial-flows-unifying>. Accessed on 26 October 2022.

<sup>32</sup> According to FATF, all requirements for financial institutions, or DNFBPs or VASPs should be introduced either (a) in law (Customer Due Diligence (R.10), Suspicious Transaction Report reporting (R.20), and Tipping-off and Confidentiality (R.21)), or (b) for all other cases, in law or enforceable means (the country has discretion). The term "enforceable means" refers to regulations, guidelines, instructions or other documents or mechanisms that set out enforceable AML/CFT requirements in mandatory language with sanctions for non-compliance, and which are issued or approved by a competent authority. The sanctions for non-compliance should be effective, proportionate and dissuasive.

The United Kingdom has established a network of legislation that governs supervision and monitoring programs in the legal sector. The Proceeds of Crime Act 2002, the Sanctions and Anti-Money Laundering Act 2018, and the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs) are the main pieces of legislation that make up the United Kingdom's AML/CFT regime. The MLRs require independent legal professionals to identify and verify the identity of their clients, understand the risks associated with the sector, and adopt appropriate policies, controls and procedures in line with the FATF Recommendations. In line with the risk-based approach, relevant legal professionals must identify the money laundering and terrorist financing risks they are subject to and ensure the business's policies, controls and procedures effectively mitigate these risks. The Legal Sector Affinity Group, formed of the United Kingdom's legal sector AML/CFT supervisions both regulatory and representative bodies for legal services in the United Kingdom, has jointly produces guidance on complying with the MLRs to help legal professionals navigate the risks and AML obligations associated with the sector. The guidance covers obligations relating to governance, client due diligence (CDD) and enhanced due diligence (EDD), policies, controls and procedures, suspicious activity reports (SARs), staff training and record-keeping, amongst other areas that have been identified as posing risks in the MLRs.

Likewise, Spain's AML legislation mandates the supervision of legal professionals, including the conducting of inspections and checks by Sepblac, Spain's FIU. Sepblac also applies a risk-based approach to ensure that supervisory measures are focused on different economic sectors and the activities which pose a greater risk of ML/TF. Over the last few years, Sepblac has increased its focus on the supervision of legal professionals by streamlining its procedures and adopting measures to ensure compliance with the AML/CFT framework by DNFBPs, particularly legal professionals. Amendments effected to Spain's AML legislation in 2018 enhance the definition of legal professionals.

Meanwhile, anti-money laundering obligations applicable to legal professionals in Indonesia are governed by the Anti-Money Laundering Law and Government Regulation Number 61 of 2021 on Reporting Parties in the Prevention and Eradication of Money Laundering. The government agency responsible for supervising and monitoring the activities of notaries (the Ministry of Law and Human Rights' Directorate General of General Law Administration / DG AHU), has issued a number of regulations that impose AML compliance requirements on notaries. These include:

- Minister of Law and Human Rights Regulation Number 9 of 2017 on the Application of 'Know Your Customer' to Notaries.
- Two circulars of DG AHU on Guidelines for Implementation and Compliance Supervision of 'Know Your Customer' for Notaries

Mexico's AML legislation obliges all legal professionals (lawyers, notaries, and public brokers) to report certain information on their services to the Ministry of Finance and Public Credit (SHCP, by its Spanish acronym). In 2021, Mexico enhanced its AML regulatory framework in

response to its National Risk Assessment on Money Laundering and Terrorism Financing (NRA) that was conducted in 2020. Additionally, a bill was presented in the Senate to amend various provisions of the AML legislation and insert new provisions in order to enhance the obligation for DNFBPs, including legal professionals, to comply with AML legislation and regulations. In Korea, the Act on Regulation and Punishment of Criminal Proceeds Concealment applies to any individuals, including legal professionals.

In Germany, the Administrative Offences Act applies to legal professionals, in conjunction with the Money Laundering Act, the Tax Consultancy Act, the Federal Code for Lawyers, the Patent Agents Code, and the Act Regulating the Accountancy Profession. Powers and responsibilities in relation to notaries are defined by Germany's federal states. Public authorities are empowered to impose all of the sanctions set forth in the Money Laundering Act. A number of adjustments to the money laundering prevention requirements have recently been made in respect of legal professionals. The amendments, which entered into force in 2020, apply to all professionals enjoying 'legal privilege' (notaries, lawyers, tax advisors and accountants). These amendments are particularly relevant for lawyers with regard to reporting obligations. Since the amendments were introduced, the privilege exemption no longer applies to all activities that are covered by the professional duty of confidentiality, but rather is limited to information obtained in the course of giving legal advice or conducting legal representation.

### **Self-Regulation and Codes of Conduct**

Self-regulation may consist of standards, guidance or other forms of principles established by a self-regulatory organization. The organization may have the ability to establish, monitor, and enforce those standards. Meanwhile, a code of conduct is a defined set of rules, principles, values, and expectations that have been developed for members of an organization to guide their expected behavior. A code of conduct provides a foundation for ethical decision-making within the organization. A number of G20 countries regulate and supervise legal professionals through self-regulation and codes of conduct. They are commonly developed by legal professional associations.

In addition to the reporting requirements under Australia's AML/CTF legislative framework, legal professionals are also subject to self-regulation under legislation and rules governing legal practice and professional standards. These standards preclude legal professionals from engaging in unlawful conduct or furthering unlawful purposes, and provide safeguards against the misuse or exploitation of the legal profession for money-laundering purposes. For example, there are robust regulations and standards governing practicing certificates and related conditions, practice management, including regular independent auditing of trust accounts, continuing professional development, complaints handling processes, cost arrangements with clients, record-keeping, customer due diligence and professional discipline.

In the United States, lawyers are primarily self-regulated by organizations such as the American Bar Association (ABA) at the national level, and at the state level through state bar associations, courts, and legislatures. The ABA has initiated several ongoing efforts in recent years to examine whether to adopt new ethical standards for lawyers relating to AML. The ABA Model Rules of Professional Conduct, which are advisory only, serve as models for state rules governing lawyers and their relationships with their clients, the courts and third parties. Most states have enacted rules based on the model rules. Currently, the ABA is looking into

amending the model rules so as to increase the obligations of attorneys to exercise due diligence when dealing with clients who engage in conduct or activities that should give rise to suspicions of criminal activities. Similarly, in Korea, lawyers have ethical obligations as legal professionals. If they violate those obligations, they may be subject to disciplinary actions.

#### **1.4. AML Supervisory Bodies for Legal Professionals, and Their Roles**

In mitigating the risks and effects of money laundering, including the threats, vulnerabilities and consequences that arise in the legal professional sector, supervisory authorities<sup>33</sup> have significant roles to play, including:

- Conducting assessments of the AML risks that pertain to legal professionals
- Developing strategic AML policies for legal professionals.
- Strengthening internal control systems for self-regulatory organizations that regulate and supervise legal professionals.
- Issuing regulations to enhance the application of KYC and CDD by legal professionals.
- Improving dissemination of information and training for supervisors in self-regulatory bodies for legal professionals.
- Improving cooperation and coordination with related ministries and agencies in monitoring money laundering risks involving legal professionals.

Routine Activity Theory is a criminology theory which explains how the opportunity for a crime may arise in the absence of a guardian that is capable of preventing the crime. A capable guardian can be anything, either a person or thing, that discourages crime from taking place, formally or informally.<sup>34</sup> In this context, a capable guardian is a designated supervisory body responsible for supervising and monitoring legal professionals in relation to money laundering and corruption risks. Correspondingly, the FATF Recommendations advise that supervisory bodies should be vested with oversight and monitoring authority in order to ensure that legal professionals comply with AML frameworks.

Most G20 members assigned their FIUs as the authorities which have responsibilities for supervising and monitoring legal professionals' compliance with AML provisions, in addition to receiving STRs and producing financial analysis of STRs. There are also a number of countries in which government agencies act as the AML supervisory body for legal professionals, while yet others assign the responsibility to legal professional associations.

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<sup>33</sup> A "supervisory authority" is an authority that is established by a country or state to supervise compliance with a specific regulation. In this context, such supervisory authorities are responsible for supervising and monitoring AML compliance.

<sup>34</sup> Jory A. Maes. *Can Routine Activities Theory Be Applied to Explain White Collar Crime? a Crime-Specific Analysis Using Reverse Redlining*, <https://epublications.regis.edu/cgi/viewcontent.cgi?article=1479&context=theses>. Accessed on 26 October 2022

## **Financial Intelligence Units as AML Supervisory Bodies for Legal Professionals**

A number of G20 countries, including Argentina, Australia, and South Africa, have assigned their FIUs with AML responsibilities, including compliance by legal professionals with AML frameworks.

Argentina's Financial Information Unit (UIF) is the agency charged with ML/TF prevention and deterrence, with the UIF's Supervision Directorate being the body responsible for supervision procedures,<sup>35</sup> while the Analysis Directorate is in charge of analyzing suspicious transaction reports submitted by notaries in their capacity as regulated entities.

In South Africa, the Financial Intelligence Centre has power to supervise and enforce AML compliance pursuant to the Financial Intelligence Centre (FIC) Act. The FIC Act requires certain categories of business, including legal professionals, to take steps in respect of client identification, record-keeping, reporting of information, and internal compliance structures.

## **Government Agencies as AML Supervisory Bodies for Legal Professionals**

AML/CFT supervisory responsibilities in relation to legal professionals can be assigned to designated governmental supervisory bodies, such as in Mexico, where the Ministry of Finance and Public Credit (SHCP, by its acronym in Spanish) has authority to receive reports and notices, request information that is necessary to the performance of its duties, coordinate with other domestic and foreign supervisory and public security authorities, issue secondary legislation, and conduct on-site visits through its decentralized bodies.

The Tax Administration Service (SAT) is a decentralized administrative body under the SHCP that regulates, supervise and monitor the DNFBPs, including legal professionals. This supervisory body, receives suspicious activities reports, conducts on site verifications and files information requirements to verify and monitor AML compliance, and if necessary, impose administrative sanctions.

## **Legal Professional Associations as AML Supervisory Authorities**

Several G20 members assign supervisory responsibilities to legal professional associations, including India and the United States. India's state bar councils and the Bar Council of India at the national level are responsible for supervising advocates, establishing professional conduct and etiquette rules for advocates, and imposing disciplinary measures.

Likewise, in the United States, attorneys are primarily self-regulated, both at the national level by organizations such as the American Bar Association (ABA) and at the state level through state bar associations, courts, and legislatures. In some states, membership of the state bar association is required for a lawyer to represent clients. State bar associations enforce the rules and regulations that govern lawyer ethical behavior and the unauthorized practice of law, and discipline attorneys who violate the rules, among other things. Attorneys are required to file a form (Form 8300) for cash transactions exceeding USD 10,000. They may also opt to use a Form 8300 under certain circumstances for cash transactions of less than USD 10,000.

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<sup>35</sup> República Argentina - Poder Ejecutivo Nacional, *Procedimiento de Supervisión Basado En Riesgos de la Unidad de Información Financiera*, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/315000-319999/318170/res154.pdf>. Accessed on 25 October 2022.

The resulting information is collected by the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN) under the Bank Secrecy Act (BSA).

### **Hybrid Approach**

Some countries assign AML supervisory authority in respect of legal professionals to more than one type of agency, such as in the case of Brazil, China, France, Germany, Indonesia, Italy, Russia, Saudi Arabia, Spain, the United Kingdom, and Türkiye.

France has a different supervisory authority for each legal profession. While all legal professionals are ultimately supervised by the Ministry of Justice, lawyers are supervised by *Caisses Autonomes des Règlements Pécuniaires des Avocats (CARPA)*, notaries by the *Interdepartmental Chambers/ Council of Notaries (CSN)*, and other legal professionals by a national council, disciplinary chamber, departmental chamber or national independent commission.

In Italy, AML supervision in respect of legal professionals is conducted by the *Guardia di Finanza* and the professional associations. The *Guardia di Finanza* is a specialized police unit that reports directly to the Minister of the Economy and Finance. This agency supervises and monitors AML compliance by notaries and lawyers. It is worth noting that, according to the Italy's AML Law, legal professionals are obliged to send STRs to the FIU without delay. After receiving STRs, the FIU then conduct a financial analysis and disseminate the results of the analysis to the competent law enforcement authorities (*Guardia di Finanza* and the *Direzione Investigativa Antimafia/Anti-Mafia Investigation Directorate*) for subsequent possible investigations.

In Russia, the risks of involvement of specialist advocates and/or their clients in illicit schemes are mitigated by relevant control measures taken by the Ministry of Justice, the Federal Chamber of Advocates, the Federal Service for Financial Monitoring, the Bank of Russia, and the Federal Tax Service. One significant supervisory measure that has been pursued is the development of AML/CFT guidance for specialist advocates, and its subsequent dissemination through the website of the Federal Chamber of Advocates and the personal accounts of advocates on this website. Furthermore, the Council of the Federal Chamber of Advocates, by its decision of 25 January 2022, adopted the Rules of Internal Control to Counter Money Laundering, Financing of Terrorism and Proliferation of Weapons of Mass Destruction.

In Indonesia, AML supervisory powers are vested in *INTRAC* (the Indonesian FIU), *National Land Agency/Ministry of Agrarian Affairs and Spatial Planning (NLA)*, and the self-regulatory bodies (SRBs), which have the authority to supervise, regulate and/or impose sanctions on legal professionals for AML non-compliance. *INTRAC* is responsible for monitoring and supervising the reporting obligations of reporting parties, including legal professionals, while the *NLA* and the *Licensed Conveyancers Association* conduct supervision in relation to compliance in the real estate sector. Meanwhile, notaries come under the supervisory authority of the *Notaries' Association's Disciplinary Committee*, and advocates under that of the *Indonesian Advocates' Council's Disciplinary Committee*.

In Germany, supervisory authority over legal professionals comes within the ambit of administrative authority, and AML supervision is linked to the professional supervision performed by chambers and bar associations, as well as presidents of the regional courts who perform supervisory functions in respect of notaries.

In the Netherlands, AML supervision for notaries and other legal professionals providing similar services is carried out by the BFT (Bureau Financieel Toezicht / Financial Supervision Office), whereas AML supervision in respect of attorneys-at-law is conducted by local bar presidents, supported by the Dutch Bar Association (Nederlandse Orde van Advocaten / NOvA), which also provides guidances that are tailored to the legal profession. Both the BFT and NOvA conduct risk-based investigations into possible violations of the AML/CFT legislation, including violations resulting from corruption. In addition, other forms of supervision are also employed, including thematic investigations. Investigations can result in findings of violations of AML/CFT legislation, including corruption. Common findings relate to inadequate CDD/KYC procedures, monitoring of transactions, reporting of transactions and/or internal policies and controls.

In Spain, AML supervision over legal professionals is conducted by Sepblac, Spain's FIU, whose supervisory tasks include conducting risk-based inspections and checking on legal professionals' compliance. Between 2014 and 2021, 44 inspections of major law firms, involving some 6,400 lawyers, were completed, with the focus being on compliance with AML/CFT training obligations and audit requirements under Spanish law. As a result of these inspections, 6 law firms were sanctioned (fined and reprimanded) and 4 firms were required to implement remedial measures. In addition, 54 control actions were undertaken in 2017-18. For 2022, 2 additional inspections are planned for firms that are linked to the real estate sector.



**Figure 1 Supervisory Bodies for Legal Professionals in G20 Countries**

The above diagram shows how AML supervision is conducted in respect of legal professionals in the G20 countries that responded to the questionnaire. The majority of G20 members assign supervisory powers to a number of agencies, including FIUs, government agencies, and legal professional associations. Three countries assign supervisory functions to their FIUs, while two others do so to their legal professional associations. Meanwhile, legal professionals in Mexico are supervised by a government agency.

## 1.5. Risk Assessment

The FATF Guidance on National ML/TF Risk Assessment identifies that risk assessment is an essential component of an effective AML/CFT regime.<sup>36</sup> Risk assessment can be used to gain an understanding of how risks may occur and the consequences of those risks.<sup>37</sup> The findings of a risk assessment should help to identify appropriate mitigation measures to prevent a risk from happening and to identify action to overcome the impact if it does in fact occur. Assessing ML/TF risk involves an information analysis process to understand the likelihood of these risks occurring, and the impact that these risks would have on individual legal professionals, the entire legal professional sector and on the national economy.

The main intent behind the global AML framework, in particular, the FATF Recommendations in regard to legal professionals, is to ensure that legal professionals are not used to launder the proceeds of crime. According to the OECD, additional or supplementary rules and procedures may also be used provided that they address the genuine risks that are involved.<sup>38</sup> Therefore, a risk assessment is essential to assess not only money laundering risks but also predicate crimes, particularly corruption. Once these risks are properly understood, countries can then apply AML measures that correspond to the level of risk. Consequently, risk assessment enables countries to prioritize their resources and allocate them more efficiently.<sup>39</sup>

The responses from G20 countries show that risk assessments have been conducted to identify money laundering threats and vulnerabilities pertaining to legal professionals. Drawing on these responses, risk assessments may be differentiated into two types: (i) national risk assessments that are conducted by countries or national authorities, and (ii) sectoral risk assessments.

### National Risk Assessments

A national risk assessment (NRA) defines the level and nature of ML/TF risks that a country faces. It is a self-conducted exercise involving multiple public and private stakeholders in the country. Most G20 members have undertaken an NRA to identify and mitigate their national risks.

According to the NRA conducted by Spain, the legal professions pose a high level of endogenous or intrinsic risk due to a need on the part of organized crime groups for the

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<sup>36</sup> FATF. (2013). *FATF Guidance on National Money Laundering and Terrorist Financing Risk Assessment*, pp. 4.

<sup>37</sup> The Society for Risk Analysis. (2018). *Core Subject of Risk Analysis*, pp.5..

<sup>38</sup> OECD, *Risk-based regulation: Making sure that rules are science-based, targeted, effective and efficient* <https://www.oecd.org/gov/regulatory-policy/chapter-six-risk-based-regulation.pdf>. Accessed on 25 October 2022

<sup>39</sup> FATF. (2013). *FATF Guidance on National Money Laundering and Terrorist Financing Risk Assessment*, pp. 4.

technical and legal expertise provided by legal professionals. However, the degree of exposure to ML/FT risk on the part of solicitors representing clients in courtroom legal proceedings is considered low. Nevertheless, the level of risk in relation to other services provided by solicitors is higher. Italy also developed an NRA in 2014,<sup>40</sup> which was followed by a follow-up report (NRA-FUR) in 2018.<sup>41</sup> The NRA-FUR acknowledges that the relative vulnerabilities of notaries and lawyers are significant and very significant, respectively.<sup>42</sup>

The United States' National Money Laundering Assessment explains that attorneys are licensed by state bar associations and are bound by professional codes of ethics. This document also identifies that while attorneys have strong professional entry and continuing ethical requirements, these may not adequately address ML/TF vulnerabilities and do not require reporting of suspicious activity to the authorities. In addition, there are no enforceable mechanisms to compel attorneys to follow voluntary best-practice guidelines nor any mechanisms which would result in the issuance of civil or criminal penalties for failing to comply with these practices.<sup>43</sup>

In Mexico, the NRA on Money Laundering and Terrorism Financing 2020 assessed the risks pertaining to the activities of DNFBPs, including legal professionals, and found that legal professional services are medium to low risk. Meanwhile, Russia's latest risk assessment report, published in 2018,<sup>44</sup> states that the risk of involvement of specialist advocates in money laundering schemes is low. This conclusion was based on a variety of indicators, such as the findings of sectoral assessments on money laundering risks, the insignificant number of financial operations that involve specialist advocates, the fact that only isolated cases of specialist advocates' involvement in money laundering schemes has been identified, the low level of violation of AML/CFT laws, and the insignificant potential damage that resulted from violations. However, the risk of involvement of notaries in money laundering schemes is considered to be moderate. Similarly, Saudi Arabia's NRA also indicates that lawyers have a low risk of ML/TF exposure as they do not have the right to act on behalf of their clients when performing financial transactions. Meanwhile in the Netherlands, the NRA concluded that corruption risks are low and the abuse of legal services to conceal the proceeds of corruption does not constitute one of the top ten ML risks.

## Sectoral Risk Assessments

A Sectoral Risk Assessment (SRA) aims to identify, analyze and assess the specific risks that pertain to a given activity sector. Drawing on the questionnaire responses, a number of G20

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<sup>40</sup> Financial Security Committee, *Italy's National Assessment of Money-Laundering and Terrorist Financing Risks*, [http://www.dt.tesoro.it/export/sites/sitodt/modules/documenti\\_en/prevenzione\\_reati\\_finanziari/prevenzione\\_reati\\_finanziari/NRA\\_Synthesis\\_11\\_01\\_2017.pdf](http://www.dt.tesoro.it/export/sites/sitodt/modules/documenti_en/prevenzione_reati_finanziari/prevenzione_reati_finanziari/NRA_Synthesis_11_01_2017.pdf). Accessed on 26 October 2022.

<sup>41</sup> Ministero dell'Economia e delle Finanze, *National money laundering and terrorist financing risk assessment report*, [https://www.dt.mef.gov.it/en/pubblicazioni/analisi\\_nazionale\\_rischi\\_riciclaggio/](https://www.dt.mef.gov.it/en/pubblicazioni/analisi_nazionale_rischi_riciclaggio/). Accessed on 26 October 2022.

<sup>42</sup> Italian Ministry of Economy and Finance. *Italy's national money laundering and terrorist financing risks assessment drawn up by the Financial Security Committee - Up to date as of 2018*. [https://www.dt.mef.gov.it/en/pubblicazioni/analisi\\_nazionale\\_rischi\\_riciclaggio/](https://www.dt.mef.gov.it/en/pubblicazioni/analisi_nazionale_rischi_riciclaggio/), accessed on 20 October 2022, pp. 30.

<sup>43</sup> The Department of the Treasury, *National Money Laundering Risk Assessment*, <https://home.treasury.gov/system/files/136/2022-National-Money-Laundering-Risk-Assessment.pdf>. Accessed on 20 October 2022, pp. 46-47.

<sup>44</sup> Fedshfm, *national money laundering risk assessment*, [https://www.fedshfm.ru/content/files/documents/2018/national\\_money\\_laundering\\_risk\\_assessment5.pdf](https://www.fedshfm.ru/content/files/documents/2018/national_money_laundering_risk_assessment5.pdf). Accessed on 26 October 2022.

countries have performed SRAs to assess the level of exposure of legal professionals to ML/FT risks.

In France, all of the legal professions have developed SRAs that analyze the threats, vulnerabilities and risks related to ML in situations where corruption is the predicate crime. In Japan, the JFBA has summarized the results of its investigations and analysis, and set out the findings in a publication titled 'Risk Assessment of Money Laundering in Legal Practice,' which is used by attorneys when applying measures having regard to the risk-based approach. Japan's National Public Safety Commission annually prepares and publishes an NRA-FUR, which describes the risks of ML/TF in transactions carried out by legal professionals.



## Chapter 2: Supervisory Measures for Legal Professionals to Mitigate Corruption-Related Money Laundering Risks

Effective supervision of legal professionals is a significant element of an effective AML and anti-corruption regime. Supervision regimes comprise a wide range of supervisory measures, including the obligations of legal professionals under AML and anti-corruption frameworks, awareness raising, compliance evaluation or assessment, and sanctioning. This chapter will discuss the good practices developed by G20 countries when implementing supervisory measures for legal professionals to prevent money laundering and corruption offences.

### 2.1. Legal Professionals' Obligations to Mitigate Corruption-Related Money Laundering

Obligated entities, including legal professionals, play a significant role in preventing money laundering and corruption. They provide information that enables the relevant FIU and law enforcement to mitigate and manage money laundering and corruption risks, and to prosecute related offences. Legal professionals in the majority of G20 countries are obliged entities that are subject to supervisory measures. According to the G20 countries' responses, legal professionals are generally required to conduct client identification/CDD, report suspicious transactions, and perform record keeping.

#### Customer Identification/Customer Due Diligence (CDD)

Legal professionals, as recommended by FATF Recommendations 1, 11, 12, 15, and 17, are required to conduct CDD in specific circumstances when identifying and verifying information on their clients, including beneficial ownership and the nature of the transaction. In particular, legal professionals are obligated to perform CDD when carrying out client transactions that involve real estate, the management of client assets, and creating, operating or managing legal entities:

As discussed above, the vulnerability of legal professionals to money laundering risks varies according to the type of service they provide. Thus, performing CDD prior to and during a transaction is an important mitigation measure to identify and respond to money laundering risks. Given this, most G20 members have made CDD a mandatory obligation for legal professionals.

In this regard, France has issued a *vade mecum* (handbook) on AML/CFT and has published common guidelines on due diligence by legal professionals. Accordingly, legal professionals generally apply CDD, particular where there is a risk of corruption-related money laundering. The CDD process in France includes carrying out client and beneficial owner identification and, to some extent, retaining and updating this information. For lawyers, CARPA is currently developing a database to facilitate the identification of private individuals and beneficial owners. Additional due diligence will also be applied to notaries, particularly in relation to the consistency of checks during real estate transactions, transactions involving complex corporate structures and certified attestation requests from foreign clients.

In Saudi Arabia, the AML/CFT legislation requires the conducting of due diligence to identify and verify information provided by clients or ultimate beneficiaries so as to enable law firms and notaries to assess their exposure to risks. Similarly in China, the “Measures for the Administration of Law Firms Engaged in Legal Business of Securities” that has been issued by the China Securities Regulatory Commission stipulates that lawyers are required to conduct CDD in all cases, and enhanced due diligence (EDD) in the case of clients with complex equity structures, foreign clients or where the law firm is expected to act as a nominee. Further, the Ministry of Justice has issued notarization rules that require notaries in China to collect basic identity information and identity certifications in relation to clients.

### Reporting Obligations

Legal professionals may be required to report suspicious transactions when they engage in professional activities or provide services that are vulnerable to money laundering risks. The imposition of reporting obligations can assist the relevant authorities to detect and monitor potential money laundering threats. There are a number of reporting mechanisms utilized by G20 members that serve different objectives. This includes: (i) reporting through an annual reporting mechanism; and (ii) reporting through suspicious transaction reports (STRs) to the national FIU.

With regard to annual reporting, Japan requires attorneys to submit annual reports to their bar associations detailing how they have complied with the obligations imposed on them by the Rules on Verification of Client Identity and Retention of Records, and the Regulations on Verification of Client Identity and Retention of Records (the Rules and Regulations). In relation to STRs, Indonesia’s AML legislation requires legal professionals to identify, verify and monitor client transactions that are suspicious and which potentially give rise to money laundering risks.

In principle, legal professionals in Germany are not required to report regularly to the supervisory authorities. Instead, the supervisory authorities conduct inspections on an ad hoc basis. Within this framework, entities that are inspected may be subjected to comprehensive reporting obligations vis-à-vis the supervisory authorities. Depending on the circumstances, this may also involve reports relating to corruption.

Suspicious transaction reporting requirements vary between G20 countries. The following table illustrates the diversity of reporting obligations that are currently in place.

Country	Legal Professional	Reporting Trigger / Form of Reporting	Supervisory Agency
<b>Argentina</b>	Notaries	Transactions > 4,200,000 Argentina pesos	FIU
<b>Australia</b>	Solicitors, solicitor corporations, partnerships of solicitors	Cash transactions > AUD 10,000	AUSTRAC
<b>Brazil</b>	All legal professionals	Serious indications of money laundering	COAF

<b>France</b>	Lawyers, notaries, insolvency practitioners, judicial trustees		Any suspicious transaction, All transactions between lawyer and client	CARPA
<b>Italy</b>	All legal professionals		Suspicious transactions under Article 35 Legislative Decree 231/2007	FIU
<b>Japan</b>	Attorneys		Annual report	Bar Association
<b>Mexico</b>	All legal professionals		Transactions stipulated in the AML/CFT legislation	Tax Administration Service (SAT) and FIU
<b>Russia</b>	All legal professionals		Suspicious transactions	Federal Financial Monitoring Service
<b>Saudi Arabia</b>	All legal professionals		Suspicious sources of funds and transactions	FIU (SAFIU)
<b>Spain</b>	All legal professionals, in particular, law firms <sup>45</sup>		Inspections and requests for information using a risk-based approach	SEPBLAC
<b>Türkiye</b>	All legal professionals		Assets or transactions that are potentially illicit or that are used for illicit purposes, transactions in amounts that exceed the amounts designated by the ministry	MASAK
<b>United Kingdom</b>	All legal professionals		Transaction involved when the client or the practice is at risk of having committed any of the principal offences under sections 327 to 329 of Proceeds of Crime Act 2002	National Crime Agency (NCA)
<b>United States</b>	Attorneys, Notaries public		Cash payments > USD 10,000 International transportation of currency > USD 10,000	U.S. tax authority, Department of Homeland Security's Customs and Border Protection unit

**Table 1 Reporting Obligations in G20 Countries**

In South Africa, notwithstanding reporting obligations, legal professional privilege continues to be respected as the FIC Act excludes the requirement to report if the relevant information was obtained through communications between an attorney, client or third party made in

<sup>45</sup> Supervision is adjusted for notaries and registrars: supervisory powers/monitoring tools by the respective self-regulatory organizations (SROs), and indirect supervision by SEPBLAC in respect of the activities undertaken by the SROs.

confidence for the purposes of legal advice or litigation. According to South Africa, the main difficulty in applying mandatory reporting to legal professionals under the FIC Act is a lack of clarity on how this can be made compatible with legal professional privilege.

Given the potential conflict between disclosure obligations and the duty to protect legal professional privilege, the United Kingdom has established the Legal Sector Affinity Group guidance provides a detailed decision-making framework to support legal professionals in understanding when it is appropriate to make a disclosure.

In Italy, legal professionals can choose to submit STRs directly to the FIU or to their respective self-regulatory bodies (authorized by decree of the Ministry of Economy). When legal professionals send the STRs to self-regulatory bodies, they subsequently submit the reports to the FIU using IT metrics and encryption tools set out in according to specific protocols of agreement with the FIU. This system ensures the protection of disclosers' anonymity (in addition to the confidentiality of the content of STRs).

### **Record Keeping**

Record keeping is a mechanism to retain data and information that has been gathered. Important data and information is retained so it can be reviewed against an ongoing transaction, or for other purposes, such as future investigations.

Some G20 countries require legal professionals to perform record keeping. For example, Australia imposes record keeping obligations as one of the professional standards of legal professionals. For legal practices operating trust accounts, relevant state and territory rules require them to keep accurate records, which are audited by an external examiner annually each financial year. Solicitors are also subject to supervisory powers that can be exercised by AUSTRAC, including inspection of premises and production of business records to ensure compliance with FTR Act obligations.

Brazil also requires record keeping for every transaction involving domestic or foreign currency, securities, bonds, metals or any asset that can be converted into cash which exceeds the threshold set by the competent authority. Similarly, Italy and Türkiye impose obligations to verify identification data and to prepare and retain verification records and records of certain transactions. Japan also imposes the obligation to verify identification data and the obligation to prepare and preserve verification records and records of specified mandated acts on legal and accounting professionals for certain transactions.

Saudi Arabia's AML legislation requires obliged entities to retain documents and data for all financial transactions, and commercial and monetary transactions, whether local or foreign, for a period of not less than ten years. In specific cases, Saudi Arabia's Public Prosecution Service may oblige DNFBPs, including legal professionals, to extend the record keeping period for as long as required for the purpose of a criminal investigation or prosecution. Such records should be kept in physical or electronic form. Similarly, China requires lawyers to retain work files and records. Additionally, notaries are obligated to preserve comprehensive records of all notarial business and processes for a minimum of 20 years under the "Rules for Notarization Procedure and Measures for the Administration of Notarial Archives."

## 2.2. Developing AML Awareness for Legal Professionals

Enhancing legal professionals' understanding and knowledge of money laundering risks and corruption is essential. Improving the awareness of legal professionals of the risk of money laundering and the consequences of being involved in money laundering-related activities can help guide legal professionals on how to identify, prevent and monitor money laundering risks in relation to the services they provide and activities they undertake.

Some G20 countries have developed and implement AML awareness programs that generally involve a variety of activities, with training, workshops and publications being the most common.

### Training and Workshops

A number of G20 countries provide training and workshops for legal professionals to equip them with the necessary knowledge and skills to improve compliance with AML and anti-corruption measures. Some countries have specifically organized personalized training and workshops for legal professionals, while others have initiated training plans for professionals who are exposed to money laundering risks, such as legal professionals, judicial officials, and other relevant professionals.

France's Conseil National des Barreaux (CNB), a national bar association, conducts training specifically focused on AML/CFT for lawyers. The Conférence des Bâtonniers (which brings together the heads of France's bar associations) has also strengthened the training system for bâtonniers (bar council presidents) on the controls to be carried out in law firms. Meanwhile, the Conseil Supérieur du Notariat (national council of notaries) has created an e-learning programme that is accessible to all notaries and their staff and, together with the professional bodies, provides numerous training courses in the regions.

In 2014, France's National Council of Judicial Administrators and Legal Representatives (CNAJMJ) initiated an intensive training plan for professionals and their employees that provides them with personalized assistance in AML/CFT matters.

According to Italy, the FIU is engaged in many training initiatives and workshops to improve the awareness of legal professionals' AML obligations. Most of these activities are conducted in cooperation with related self-regulatory bodies, including training initiatives to improve the capacity of legal professionals to properly detect and report STRs.

In Saudi Arabia, the Ministry of Justice (MOJ) has organized a number of training programmes and workshops aimed at judges, notaries, and lawyers in order to raise awareness of ML/TF. Similarly, In Indonesia, regular workshops are also organized for notaries. According to the Ministry of Law and Human Rights, these events have had a significant beneficial impact by improving customer due diligence and suspicious transaction reporting, which has been further facilitated by the launching of the GoAML application (an online platform that allows reporting entities to submit STRs electronically). Thanks to these initiatives, a total of 38 STRs have been reported to INTRAC by Indonesian notaries to date. Similarly, Saudi Arabia's Oversight and Anti-Corruption Authority (Nazaha) has held several seminars and workshops for legal professionals, with the aim of raising awareness and building capacity on corruption-related money laundering risks and prevention measures. In arranging these events, Nazaha

collaborated with international organizations, the private sector, and professional associations.

Germany's FIU engages in an ongoing dialogue with legal professionals that are obliged entities using a variety of forums. To enhance this dialogue, the FIU hosts annual AML meetings and workshops in order to raise the awareness of obliged entities.

## **Publications and Guidelines**

Publications and guidelines are commonly used by G20 countries to disseminate updated anti-corruption and AML information. They enable authorities to reach wider audiences of legal professionals. Several countries provide information on portals or websites, while others have developed guidelines or printed catalogues to be distributed to legal professionals.

The U.S. Treasury regularly publishes and updates their National Strategy for Combatting Terrorist and Other Illicit Financing, which is informed by the United States' National Risk Assessment on Money Laundering (NMLRA), among other risk assessments. Türkiye's Presidency of Financial Crimes Investigation Board has also issued a handbook for lawyers, an up-to-date brochure for notaries, guidelines on enhanced measures, guidelines on crypto-asset service providers, guidelines on savings & loans finance companies, and guidelines on identifying the parties to foreign trust agreements.

The FIUs of some G20 members, such as Italy, Japan, Mexico and Spain, have developed a wide range of relevant publications. Italy's FIU has published documents relating to anomaly indicators, models, and patterns of anomalous behavior<sup>46</sup> and AML/CFT typologies,<sup>47</sup> as well as press releases on risk factors and symptomatic elements of specific emerging illegal operations,<sup>48</sup> that aim to raise the awareness of money laundering risks among legal professionals.

Japan Financial Intelligence Center (JAFIC) has published a commentary on the NRA-FUR in the JFBA's magazine in order to enhance the understanding of legal professionals on money laundering risks and prevention measures.

Mexico's FIU coordinated the update of the 2020 National Risk Assessment on Money Laundering and Terrorism Financing (NRA) in collaboration with other relevant authorities. As part of the process, various activities were carried out to boost the AML awareness of related stakeholders, including legal professionals.

Spain's Commission for the Prevention of Money Laundering and Monetary Offences (CPBCIM, or the "AML Commission") and its supporting bodies (Sepblac and its secretariat, whose functions are performed by the Spanish Treasury) consistently strive to raise awareness of money laundering risks among legal professionals. The activities undertaken to date include publishing Spain's NRA, a risk catalogue for legal professions, and several guidances. The NRA is available on the CPBCIM website. Sepblac has also issued a set of

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<sup>46</sup> UIF, *Indicatori, schemi e comunicazioni inerenti a profili di anomalia*, <https://uif.bancaditalia.it/normativa/norm-indicatori-anomalia/index.html>. Accessed on 26 October 2022.

<sup>47</sup> UIF, *Quaderni dell'antiriciclaggio*, <https://uif.bancaditalia.it/pubblicazioni/quaderni/index.html>. Accessed on 26 October 2022.

<sup>48</sup> UIF, *Prevention of Financial Crime Phenomena Linked to The COVID-19 Emergency*, [https://uif.bancaditalia.it/normativa/norm-indicatori-anomalia/COVID-19\\_prevention\\_of\\_financial\\_crime\\_16042020.pdf?language\\_id=1](https://uif.bancaditalia.it/normativa/norm-indicatori-anomalia/COVID-19_prevention_of_financial_crime_16042020.pdf?language_id=1). Accessed on 26 October 2022.

risk indicators on corruption in international transactions. Likewise, Saudi Arabia's MOJ has published a manual on AML/CFT requirements to be applied by lawyers, which highlights the risks that lawyers are exposed to.

In China, the Ministry of Justice, bar association, notarial association, law firms and notarial institutions have jointly completed the 2020 Risk Report on Anti-Money Laundering and Terrorist Financing Risks for Lawyers and the 2020 Risk Report on Anti-Money Laundering and Terrorist Financing Risks for Notaries. The two reports identify and analyze the major AML risks face by these legal professions.

As part of the program of regular training and courses provided for the legal profession in order to increase awareness of reporting obligations in respect of corruption-related unusual transactions, the Netherlands is currently considering the development of guidance on AML red flags, and on reporting obligations in relation to foreign bribery-based money laundering. The initiative focuses on the legal professions as they are considered to play a crucial role in setting up complex business structures. To deliver the initiative, the Dutch government is working in collaboration with the Netherlands Bar Association and the Royal Dutch Association of Civil-law Notaries. In addition, case studies are published via newsletters and websites as part of the effort to strengthen the feedback loop. Similarly, regional and federal chambers of the legal professions in Germany provide their members with up-to-date information on ML risks and prevention measures via their websites and regular training courses.

### **2.3. Using Information and Communications Technology (ICT) to Enhance Supervisory Measures**

The use of ICT enables authorities to detect, prevent, and monitor ML/TF risks more efficiently. According to recent FATF research on the application of technology in relation to AML programs,<sup>49</sup> banking technology can examine customer transaction behavior to analyze patterns and predict future transactions. Such examination can, for example, be used to spot suspicious activities based on anomalous patterns or behaviors. Moreover, some banks have developed data-sharing platforms to detect crime-related transactions.<sup>50</sup> ICT can also be harnessed to enhance customer due diligence, suspicious transaction analyses and reporting, and as a means of information sharing. By using ICT, stakeholders are able to undertake AML/CFT activities in a more timely and cost effective way.

Some G20 countries already use ICT to enhance their AML/CFT frameworks. Overall, G20 countries use ICT for reporting, monitoring, and coordination, and as an analytical tool for enhancing money laundering risk detection.

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<sup>49</sup> FATF, *Opportunities and Challenges of New Technology for AML/CFT*, <https://www.fatf-gafi.org/media/fatf/documents/reports/Opportunities-Challenges-of-New-Technologies-for-AML-CFT.pdf>. Accessed on 14 September 2022.

<sup>50</sup> The Wall Street Journal, *Bank Start Using Information Sharing Tools to Detect Financial Crime*, <https://www.wsj.com/articles/banks-start-using-information-sharing-tools-to-detect-financial-crime-11658741402>. Accessed on 14 September 2022.

## ICT for Reporting, Monitoring, and Inter-Agency Stakeholders Coordination

According to FATF research on the use of technology in AML programs, artificial intelligence and machine learning can be applied to big data to automatically analyze, process and monitor suspicious transactions, and to distinguish such transactions from normal or legal transactions in real time.<sup>51</sup> Similarly, ICT, such as distributed ledger technology (DLT) and application programming interfaces (APIs), can facilitate related stakeholders, such as law enforcement agencies, to perform data sharing, follow-up sharing, and enable examination and supervision operations by several entities simultaneously.<sup>52</sup>

Some G20 countries apply ICT to report and coordinate money laundering detection and prevention in relation to legal professionals. For example, Russia has set up individual personal accounts for legal professionals on the official website of the Federal Financial Monitoring Service. This website enables legal professionals to interact with the authorized body. Such personal accounts are used, in particular, by legal professionals, advocates, notaries, control (supervisory) bodies, including chambers of advocates and notaries, and others, for the purpose of:

- requesting the online submission of documents;
- reporting the level of involvement of reporting subjects in suspicious activities;
- exchanging experiences and expertise;
- providing feedback on the use of information provided to the Service;
- submitting registers of supervised subjects to the Service.

Similarly, in Japan, attorneys have to submit annual reports in compliance with attorneys' obligations under the Rules and Regulations. Responses are consolidated into an electronic file for each bar association to facilitate the identification of attorneys who need to be called to attend hearings and other actions. Likewise, the use of ICT for money laundering supervision has been incorporated into the French National Action Plan on AML-CFT (2021) as a key action to be implemented by the end of 2022.

## ICT as an Analytical Tool to Enhance Money Laundering Risk Detection

Machine learning can assist enforcement authorities to identify money laundering risks by using computational methods to process and analyze data on a large scale in respect of money laundering typologies and suspicious activities. According to the FATF, a variety of analyses using ICT to detect money laundering can be developed, such as:<sup>53</sup>

- Examining entities' transactions with social links and other sources to identify any suspicious features.
- Capturing anomalous behavior of an entity and comparing it with other groups of similar character.

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<sup>51</sup>FATF, *Opportunities and Challenges of New Technology for AML/CFT*, <https://www.fatf-gafi.org/media/fatf/documents/reports/Opportunities-Challenges-of-New-Technologies-for-AML-CFT.pdf>. Accessed on 14 September 2022.

<sup>52</sup> FATF, *Opportunities and Challenges of New Technology for AML/CFT*, <https://www.fatf-gafi.org/media/fatf/documents/reports/Opportunities-Challenges-of-New-Technologies-for-AML-CFT.pdf>. Accessed on 14 September 2022.

<sup>53</sup> FATF, *Opportunities and Challenges of New Technology for AML/CFT*, <https://www.fatf-gafi.org/media/fatf/documents/reports/Opportunities-Challenges-of-New-Technologies-for-AML-CFT.pdf>. Accessed on 14 September 2022.

- Analyzing historical behavior to establish suspicious patterns.

According to the responses to the questionnaire, it is apparent that a number of G20 countries apply ICT to detect money laundering risks. In Italy, the STR collection process is conducted using an ICT system. In addition, new identity resolution techniques, graph database systems and alert engines are being developed for the purpose of enhancing the analysis of networks and activities. The new technology will employ risk indicators and classification algorithms, machine learning techniques and semantic analysis.

## **2.4. Mechanisms to Examine Legal Professionals' AML Compliance**

Examining the implementation of AML and supervisory measures is crucial to ensuring effective compliance with AML programs by legal professionals. This can be achieved by performing audits or assessments, and by imposing sanctions on legal professionals who fail to comply with their AML obligations.

### **2.4.1. Assessment on Compliance with AML Supervisory Measures**

Assessments allow countries to scrutinize the AML compliance of legal professionals and to measure the effectiveness of current supervisory measures. Some G20 members have established mechanisms to assess legal professionals' compliance with AML supervisory measures. According to the responses received, such assessments can be conducted by a supervisory body or on a self-assessment basis.

### **2.4.2. Assessment Conducted by Supervisory Body**

Assessment can be performed by a supervisory body or a third party appointed by the government. Such assessments aim to examine gaps between the relevant regulations and their implementation, and the findings are used to determine action plans to address the challenges. Among the G20 countries, those that apply this type of assessment mechanism are Argentina, Brazil, China, France, Germany, Italy, Russia, Saudi Arabia, South Africa, Spain, the Netherlands, the United Kingdom and Türkiye. The most common methods used by these countries in assessing legal professionals' AML compliance are assessing and analyzing documents related to or submitted by legal professionals, on-site visits, and inspection and investigation.

In Argentina, the UIF (Argentina's FIU) commences an assessment by analyzing collated documents. If they find non-compliance with legal professionals' obligations, they may impose administrative/civil sanctions, or, in the case of non-serious violations, they may order that corrective action be taken, which action is subject to subsequent evaluation by the UIF.

Italy's Guardia di Finanza has powers to carry out inspections and checks on persons and professionals, acquire data and information from reporting parties, and conduct in-depth investigations of information received from various authorities through international

cooperation and of suspicious transaction reports forwarded by Italy's FIU. The FIU also performs inspections and audits in order to ascertain compliance with STR obligations.<sup>54</sup>

In Türkiye, supervision of compliance with AML obligations is carried out by inspectors. The Presidency may request that an inspection be conducted on an individual basis or as part of an inspection program. Responsibility for inspection in relation to notaries is vested in the Inspection Board of the Ministry of Justice. Notaries are also inspected by the Chief Public Prosecutor's Offices in May each year. Investigations are carried out directly or on the basis of findings of non-compliance arising out of reports submitted to the Treasury and Finance Experts of the Presidency.

For lawyers in Germany, the frequency and rigor of inspections are based on the risks arising out of the specific context in which legal advice is provided. Any involvement by lawyers, and all activities of tax advisors and accountants, are subject to further risk assessment by their self-regulatory bodies. Prior to performing inspections, the self-regulatory bodies assess the obliged entities under their purview in accordance with the National Risk Assessment (NRA) and the Supranational Risk Assessment (SNRA), as well as the FIU's operational-level priority risk areas.

In Saudi Arabia, supervisory bodies of legal professionals can conduct on-site inspections based on information that has been gathered on money laundering risks in particular sectors. Furthermore, the General Directorate of Law Practice periodically evaluates risks at the end of the year to assess the level of AML compliance in relation to corruption and other crimes. This is done using questionnaires that are sent to all legal practitioners. These questionnaires include questions on how to identify risk factors and the due diligence measures that are applied. The results of such evaluations provide the supervisory bodies with insights as to the sectors that require greater focus.

### **Self-Assessment**

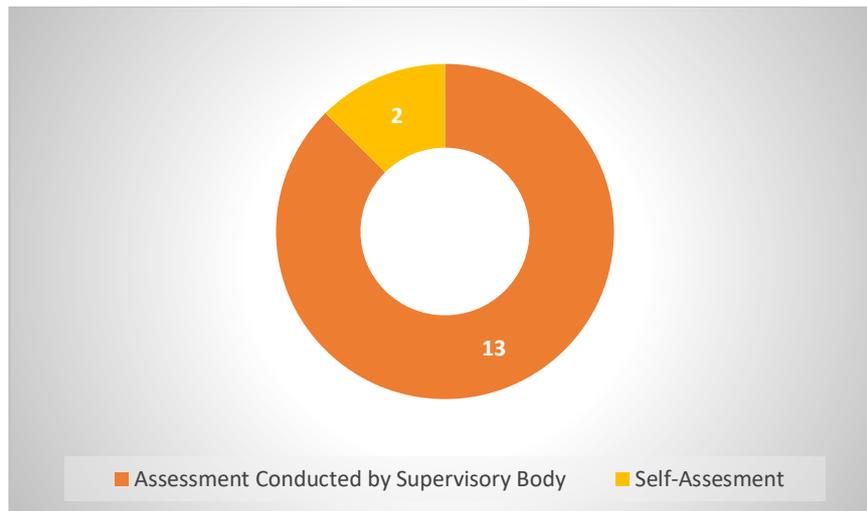
Self-assessment involves checks or audits that are carried out by legal professionals themselves. Some G20 members, such as Japan and Indonesia, have adopted this form of assessment for legal professionals.

Attorneys in Japan are required to submit annual reports on the performance of their obligations as attorneys under the Rules and Regulations. These reports are evaluated, and if an indication of involvement in money laundering or non-compliance with the Rules and Regulations is found, the bar association will take the necessary action, such as launching an investigation or giving advice. Disciplinary action may also be initiated if an attorney fails to follow advice that has been proffered or fails to submit an annual report.

Indonesia also applies a self-assessment mechanism to notaries, using the Guidance on Sectoral Risk Assessment of Notaries published by the Ministry of Law and Human Rights. Notaries are required to identify inherent risks in the services they provide, their internal control mechanisms, residual risks, impact of risks, and priority risks.

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<sup>54</sup> Normattiva, *Decreto Legislativo 21 novembre 2007, n. 231*, <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2007-11-21:231!vig=>. Accessed on 25 October 2022.



**Figure 2 AML - Compliance Assessment of Legal Professionals**

The above graph illustrates how AML-compliance assessments of legal professionals are conducted in the G20 countries that responded to the questionnaire. Overall, the vast majority of G20 members assign AML-compliance assessment responsibilities to supervisory bodies, while two countries operate a self-assessment system.

### 2.4.3. Enforcement and Sanctions

Research indicates that white collar criminals are rational investors who consider the risk-to-return ratio when engaging in crime. This means that, they will generally take into consideration the likely returns if they are successful, and the likely punishment if they are caught. According to Italy's FIU, when the number of STR reports increases by 10%, vulnerability to money laundering decreases by 1%.<sup>55</sup> This suggests that there is a significant correlation between increases in AML reporting compliance and decreases in potential money laundering activities. Many G20 countries apply criminal and/or administrative/civil and disciplinary sanctions to legal professionals who fail to comply with their AML obligations.

#### Criminal Sanctions

Criminal sanctions allow offenders to be incapacitated for a period by imprisoning them, or by supervising them closely. Such sanctions also deter offenders (and potential offenders) by penalties given or threatened. Whichever type of sanction is chosen (imprisonment or penalties), one of the anticipated outcomes will be a reduction in criminal behaviour and a corresponding increase in compliance with relevant regulations.<sup>56</sup>

A number of G20 countries impose criminal sanctions for violations of their respective AML frameworks. In Australia, for example, criminal penalties may be imposed on legal professionals who deal with the proceeds of crime. Penalties include significant sentences of imprisonment and/or significant monetary fines. These penalties are tiered based on the value

<sup>55</sup> Pellegrina, L.D., Maio, G.D., Masciandaro, D., and Saraceno, M. *Money Laundering and Criminal Deterrence: Evidence from Italy*, <https://cear.gsu.edu/files/2019/05/Masciandaro.pdf>. Accessed on 15 September 2022.

<sup>56</sup> Tait, D. (2001). *The Effectiveness of Criminal Sanctions: A Natural Experiment, Report 33/96-7 To The Criminology Research Council, DMT Subdivision Management & Law No.2001/1, University of Canberra*, pp. 2

of proceeds dealt with, and the person's level of culpability. Similarly, legal professionals in the United States are subject to the same criminal and civil sanctions as other individuals and entities for failing to meet reporting requirements.

In Italy, legal professionals can be sanctioned with imprisonment. In Japan, individual legal professionals (other than lawyers) can be sanctioned by terms of imprisonment with work or fines or both, while firms (legal persons) can be sanctioned by fines.

### **Administrative/Civil Sanctions**

Administrative sanctions (known as civil sanctions in some G20 countries) enable the imposition of punitive financial sanctions and administrative measures upon relevant persons for contraventions of the regulations. They also serve as a deterrent to those operating in the wider economy and other businesses sectors.<sup>57</sup> This type of sanction allows regulators to respond appropriately to the circumstances of each case, and to provide a proportionate alternative to prosecution for business and other persons who fail to comply with relevant regulations.<sup>58</sup> Administrative sanctions may include reprimands, monetary sanctions such as fines, confiscation of illegal income or assets, and suspension or revocation of a lawyer's practicing license.

In a number of G20 countries, including Argentina, Brazil, Spain, South Africa, Mexico, and Saudi Arabia, administrative sanctions may be imposed on AML non-complaint legal professionals, including reprimands, fines, penalties, and suspension or revocation of licenses. In Argentina, legal persons who violate the AML framework are liable to a fine amounting to 20% of the value of the property that is the subject matter of the crime, up to a maximum of 500,000 pesos. Meanwhile, Brazil can impose reprimands, fines, temporary disqualification for a period of up to ten years, and suspension of practice rights for legal professionals who fail to comply with AML obligations. Similarly, Mexico's supervisory bodies may impose sanctions that range from fines up to the definitive revocation of notaries, public brokers and custom agents license.

Saudi Arabia's supervisory authority may impose one or more of the following measures on legal professionals who violate the AML framework:

- Issuance of written warning;
- Order to comply with a specific instruction;
- Order to provide regular reports on the measures taken to address an identified violation;
- Monetary fine of up to 5,000,000 riyals per violation;
- Ban on employment of individuals within the sector over which the supervisory authority has competence for a period to be determined by the supervisory authority;
- Restrictions on the powers of directors or executive or supervisory management members and controlling owners, including appointing one or more temporary controllers;

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<sup>57</sup> Isle of Man Financial Services Authority, *Anti-Money Laundering and Countering the Financing of Terrorism (Civil Penalties) Regulations 2019*, <https://www.iomfsa.im/media/2633/civil-penalties-guidance.pdf>. Accessed on 24 October 2022, pp. 4.

<sup>58</sup> Government of Welsh, *Review of the use and effectiveness of civil sanctions*, <https://senedd.cymru/media/ce5bqtsv/gen-ld10647-w.pdf>. Accessed on 24 October 2022, pp. 3.

- Dismissal or replacement of directors or of executive or supervisory management members;
- Suspension, restriction or prohibition on an activity, business or profession, or of certain business activities or products; and
- Suspension, restriction or revocation of license.

In Indonesia, the Ministry of Justice and Human Rights can issue oral and written warnings, and impose temporary suspensions, and honorable and dishonorable dismissal in respect of notaries who fail to comply with AML regulations. The following table shows the number and type of administrative sanctions imposed on notaries in Indonesia between 2017 and 2020.

Sanctions	2017	2018	2019	2020
<b>Oral warning</b>	0	0	0	0
<b>Written warning</b>	6	1	1	1
<b>Temporary suspension</b>	4	3	10	10
<b>Honorable dismissal</b>	0	1	0	0
<b>Dishonorable dismissal</b>	3	1	1	5

**Table 2 Number of Sanctions Imposed on Notaries in Indonesia between 2017 - 2022**

### **Disciplinary Sanctions**

Disciplinary sanctions are actions imposed by the authorities or supervisory bodies in response to violations of the regulations or a code of conduct. They stipulate clear consequences for non-compliance with the regulations or code of conduct, and provide an opportunity for the sanctioned party to change their behaviour and comply with the AML framework, especially when they may have been unaware of their non-compliance. It is important that disciplinary sanctions be imposed in a consistent manner in order to avoid any appearance of discrimination or partiality, which would only serve to undermine the deterrent effect of such sanctions.

Legal professional associations in some G20 countries impose disciplinary sanctions for violations of AML obligations. For instance, in India, the disciplinary committee of the Bar Council of India has the power to impose disciplinary measures for violations of The Advocates' Act, including reprimands, suspension, and revocation of license. In Germany, the laws governing the legal professions provide disciplinary sanctions for violations of the duties of legal professionals, including their AML obligations. For example, the disciplinary measures that may be imposed on notaries include written reprimands and/or fines, and ultimately dismissal. However, these disciplinary measures are not specifically aimed at violations of corruption-related money laundering prevention measures, but apply to all professional obligations.

### **Hybrid Sanctions**

The term "hybrid sanctions" refers to the possibility of simultaneously imposing a combination of sanctions in pursuit of multiple punishment purposes. Such hybrid sanctions could include imposing financial impacts and disbarring offenders from professional practice. The inclusion of information in this Compendium on hybrid sanctions does not imply that countries

mentioned in the above paragraphs above have only criminal or only administrative sanctions available. Some G20 members, including China, France, Germany, the Netherlands, Russia, the United Kingdom, and the United States have adopted AML frameworks that incorporate a range of different types of sanctions, such as criminal, administrative/civil, and disciplinary sanctions.

Professional Body AML Supervisors (PBSs) of the United Kingdom have a range of enforcement tools available to them. These range from administrative sanctions, including censures and financial penalties, to suspension, restriction or withdrawal of membership or authorisation to practice, and the ability to direct members to take action to remedy non-compliance and promote future compliance. PBSs can also take disciplinary action for failure to comply with AML obligations. For example, when the Solicitors Regulation Authority finds firms are not upholding their obligations, they will in the first instance engage with that firm to remedy any failures. However, repeated or sustained breaches of their rules could lead to disciplinary action. Specifically, Law Society of Scotland conducts risk based supervisory reviews to identify important failures to comply with the MLRs. Following review of the findings, the Society's Anti-Money Laundering Sub-Committee (AMLSC) can decide to make a complaint about the conduct of the solicitor concerned. Decisions regarding complaints are made by the independent Scottish Solicitors Discipline Tribunal (SSDT) who have various sanctions available to them including fines and strike-offs. The AMLSC will also refer matters to law enforcement for criminal investigation where this is considered to be appropriate.

France's framework also includes the power to impose various types of sanctions (civil, disciplinary, administrative/civil and penal). According to France's MER, the following sanctions have been imposed on legal professionals in recent years:

- For notaries, 19 disqualifications of between six months and eight years arising from inspection reports received by the Public Prosecutor between 2015 and 2020.
- For lawyers, one disciplinary sanction (consisting of a one-month ban on practicing) imposed since 2015.

In China, non-compliant lawyers and law firms are subject to administrative sanctions by the authorities and lawyers' associations, and criminal sanctions if they commit criminal offences. The administrative sanctions that may be imposed on law firms include warnings, fines, confiscation of illegal income, temporary suspension of business operations to allow corrective action to be taken, and revocation of license. The disciplinary actions imposed by lawyers' associations mainly include admonishments, circulation of public notices of criticism, and disqualification. Similarly, supervisory bodies in the Netherlands have broad sanctioning powers that include administrative sanctions, e.g., fines, orders (subject to penalties for non-compliance), official warning or instruction letters, criminal sanctions (e.g. fines and terms of imprisonment), and disciplinary measures (e.g., warnings, fines, suspension or disbarment).

The responses to the questionnaire also indicate that a number of G20 countries can impose only two types of sanction, for example, Italy, Türkiye and Indonesia can impose both criminal and administrative sanctions on non-compliant legal professionals under their AML frameworks, while Japan can impose criminal and disciplinary sanctions on non-compliant legal professionals excluding lawyers, and can impose disciplinary sanctions on non-complaint lawyers.

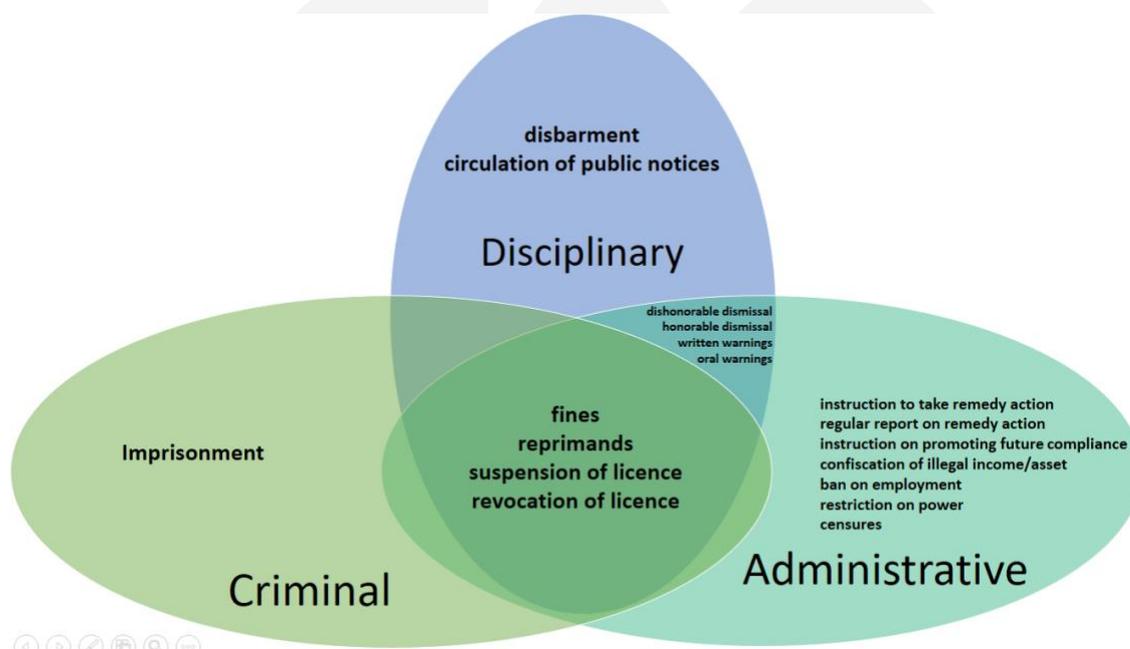
Türkiye’s Law No. 5549 provides that the sanctions that may be imposed for failure to comply with AML obligations are as follows:

- Administrative fines: pursuant to Article 13 of Law No. 5549, the amount of the administrative fine is determined by the article of the law that has being violated, and identity of the obligated party. Fines range from 30,000 Turkish lira up to 5% or more of the transaction amount.
- Judicial penalties: pursuant to Article 14 of Law No. 5549, imprisonment and judicial fines may be imposed for violations of the obligations set out in Paragraph 2 of Articles 4, 7 and 8 of Law No. 5549.

Criminal and administrative sanctions are also set out in Italy’s Decree 231/2007, under which criminal penalties may be applied in respect of a variety of breaches, including failure to comply with identification requirements, failure to submit client register or late or incomplete submission of client register, failure to submit STR, etc. Meanwhile, administrative sanctions may be applied in respect of violations such as failure to comply with a suspicious transaction suspension order, failure to report a suspicious transaction, failure to keep a client register, violation of disclosure obligations to the FIU, etc.

In Japan, criminal sanctions and disciplinary sanctions may be applied to legal professionals excluding lawyers, and disciplinary sanctions may be applied to lawyers. Criminal sanctions may be imposed on both natural persons and legal entities for non-compliance with AML regulations, which sanctions include imprisonment with work or fines or both for natural persons and fines for legal persons. Disciplinary sanctions are applicable in the case of attorney and judicial scriveners.

The diagram below illustrates the types of sanction featured in this compendium. These sanctions may be imposed in the G20 countries for non-compliance with AML/CFT obligations.



**Figure 3 Types of AML/ CFT Sanctions in G20 Countries<sup>59</sup>**

<sup>59</sup> In some jurisdictions, disciplinary sanctions are considered as one form of administrative sanction

## 2.5. Whistleblowing System

Whistleblowing is a mechanism through which members of organizations voluntarily report wrongdoing, which reports can then be used by the organization to initiate corrective action and improvements. Whistleblowing is a very important mechanism for preventing and mitigating money laundering risks.<sup>60</sup> Robust whistleblower measures, such as protections for persons who report corruption, encourage persons to come forward to report suspected wrongdoing. Drawing from the questionnaire responses, several G20 countries have incorporated whistleblowing systems into their AML/CFT frameworks.

### 2.5.1. Whistleblowing Channels

A whistleblowing channel can allow members of the public or members of an organization to report suspicious activities in a confidential manner that may lead to the potential discovery and disclosure of suspected wrongdoers or criminal activities. Overall, the G20 countries provide both internal and external whistleblowing channels.

#### Internal Reporting

Internal reporting refers to a reporting channel within an organization. Members of organizations may report suspected misconduct to an audit department, a compliance officer, a supervisor, an in-house legal counsel or even an internal “hot line” or “tip line.” Internal reporting can enable organizations to identify misconduct and other criminal acts committed by its employees. It also assists the organization in preventing crime and in developing effective AML and anti-corruption systems within the organization.

A number of G20 countries use internal reporting channels as part of their whistleblowing systems, including Australia and Spain. In Australia, if the discloser is a ‘public official’ and the conduct in question constitutes a ‘disclosure’ under the Public Interest Disclosure Act 2013 (PID Act), a breach of money laundering prevention measures or other AML obligations, it can be reported under the PID Act. The PID Act enables a public official to disclose suspected wrongdoing by another public official or by an Australian government agency, and generally requires that an internal disclosure within the discloser’s agency be made in the first instance before making an external disclosure. There is a similar process under Australia’s Corporations Act 2001 for internal reporting within companies operating in Australia

Association of Land, Business and Movable Property Registrars of Spain launched its whistleblowing channel on March 1, 2022. This is an internal channel that enables the communication, even anonymously, of relevant information on possible non-compliance with the provisions of the AML legislation, the AML regulations and internal compliance policies at the corporate level. The objective is that any registrar, registry employee, manager and/or employee of the Association of Registrars and of the territorial deanships can report AML non-compliances.

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<sup>60</sup> Bhal, K. T., & Dadhich, A. (2011). Impact of ethical leadership and leader–member exchange on whistle blowing: The moderating impact of the moral intensity of the issue. *Journal of Business Ethics*, 103(3), pp. 485-496.

## External Reporting

External reporting is when information on suspected wrongdoing is reported externally to the discloser's organization or the organization to which the information relates. This authority must guarantee independence, confidentiality, data protection and secrecy in order to qualify. Suspicious or irregular activities in a number of G20 countries are reported to external reporting bodies, such as in Japan, the United States and Spain.

In Japan, each bar association operates a contact center to receive complaints about attorneys from members of the public. In addition, any aggrieved person may request that disciplinary action be taken against an errant attorney by the JFBA or a bar association.

In the United States, pursuant to the Anti-Money Laundering Act of 2020 (AMLA) and the Bank Secrecy Act, any individual who provides original information relating to a violation of the AML legislation can report the wrongdoing not only to their employers but also to the Secretary of the Treasury and the Attorney General. Whistleblowers can be individuals or groups of individuals acting jointly. U.S. citizenship is not required as money laundering is frequently transnational in nature.

As a member of the European Union, Spain is currently drafting legislation to adopt EU Directive 2019/1937 on the Protection of Persons Who Report Infringements of Union Law, which requires member states to establish internal and external reporting channels.

### 2.5.2. Whistleblowing Tools

A whistleblowing system provides tools that allow a whistleblower to communicate information on a potential offence in a confidential and straightforward manner. These tools may include a hotline, mail, e-mail, and/or website reporting channels. According to one study, whistleblowing systems can be made more effective if they provide a combination of reporting channels (e.g., directly to specific trusted persons, via a telephone hotline, or through an online channel).<sup>61</sup>

In Russia, for example, reports can be submitted through the personal accounts of legal professionals on the website of the Federal Financial Monitoring Service, and in the framework of agreements between the Service and control (supervisory) bodies, chambers of advocates and notaries. Additionally, it is possible to report to the Service through its official website by sending an electronic message or by means of a dedicated hotline.

Similarly, Spain has established a procedure through which notarial employees can anonymously send information related to possible infringements to a special email address at the Centralized Organization for the Prevention of Money Laundering (OCP). In the Netherlands, various government institutions facilitate whistleblower reporting mechanisms, including relevant supervisory organizations, such as BFT and NOvA.

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<sup>61</sup> Vanderkerckhove, W., and others. (2016). *Effective speak-up arrangements for whistleblowers*. The Association of Chartered Certified Accountants, pp. 10 -14.

### 2.5.3. Whistleblower Protection

Whistleblower protection is crucial to the success of anti-corruption and AML detection and enforcement. Whistleblowers who report these offences can put themselves, family members and colleagues at risk. Instead of admitting to corruption and mending their ways, wrongdoers may instead choose to attack or retaliate. Retaliation against disclosers is a serious threat to the effectiveness of anti-corruption programmes, and harms individuals and their livelihoods.<sup>62</sup>

Australia has incorporated whistleblower protection regimes for the corporate sector. If a legal professional is involved in a company's misconduct, this would provide legal protection to the whistleblower from reprisal or breach of their confidentiality.

South Africa has passed the Protection Against Harassment Act (PAHA) to protect whistleblowers from harassment as a result of their whistleblowing. Harassment under PAHA is defined as "directly or indirectly engaging in conduct that the harasser knows or ought to know causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person." Any individual, including those who report a legal professional's wrongdoing, can obtain a protection order against a person harassing them. This is granted by the Magistrate's Court and prohibits the perpetrator from harassing the victim any further.

### 2.5.4. Whistleblower Rewards or Incentives

Monetary rewards are often offered to whistleblowers to compensate and redress the personal and professional distress they may endure during the investigation process. According to a study conducted by Harvard Business School, financial incentives help to increase the detection and deterrence of crime in a cost-effective way.<sup>63</sup>

Based on the responses of the G20 countries, the United States is one jurisdiction that provides financial incentives for whistleblowers. Specifically, in 2020, the United States passed legislation to enhance its AML whistleblower program. Once implemented, the program will provide for mandatory awards to whistleblowers who report violations of the Bank Secrecy Act (BSA). The United States has also created the Kleptocracy Asset Recovery Rewards Program, which pays rewards to qualified individuals who provide information leading to the seizure, restraint or forfeiture of assets linked to foreign government corruption.

German law provides effective incentives for legal professionals who conduct self-reporting. Pursuant to the German Criminal Code (StGB), a person will not incur a penalty for money laundering under subsections (1) to (5) if that person voluntarily reports the offence to the competent authority or voluntarily occasions such a report to be made, unless the act had already been discovered, in whole or in part, at the time and the offender knew this or, based on a reasonable assessment, should have expected this.

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<sup>62</sup> UNODC, *Whistle-blowing systems and protections*, <https://www.unodc.org/e4j/fr/anti-corruption/module-6/key-issues/whistle-blowing-systems-and-protections.html>, Accessed on 26 October 2022.

<sup>63</sup> Dey, Aiyasha and Heese, Jonas and Perez Cavazos, Gerardo. (2021). *Cash-for-Information Whistleblower Programs: Effects on Whistleblowing and Consequences for Whistleblowers*, pp.34

## Chapter 3: Case Studies on Corruption-Related Money Laundering Involving Legal Professionals

In this chapter we present some good practices developed by G20 members in dealing with corruption-related ML cases that involve legal professionals with a view to sharing these good practices and improving the capacity of members to resolve similar cases. The section is divided into a number of parts: case response process, cooperation with relevant stakeholders in responding to cases, and barriers encountered by G20 countries.

### 3.1. How Countries Respond to Corruption-Related Money Laundering Cases Involving Legal Professionals

Anti-corruption enforcement measures benefit from money laundering investigations that are conducted hand in hand with corruption investigations as corruption is often the predicate offence to money laundering. This approach enables law enforcement agencies to recover proceeds of corruption and unlawful financial gains as well as to identify corruption schemes and networks themselves.<sup>64</sup>

Several G20 members have reported money laundering cases involving legal professionals. However, only a small number of G20 members have dealt with corruption-related money laundering cases that involve legal professionals.

#### Case Study 1: France

France reported a case of corruption-related money laundering involving the former president of the International Association of Athletics Federations (IAAF), its officials, and the former president's lawyer. The main proceedings commenced in August 2015, with the opening of a preliminary investigation by the National Financial Prosecutor's Office following an alert issued by the World Anti-Doping Agency, which uncovered evidence that an athlete paid a large sum of money as a bribe to have a positive drug test covered up.

The lawyer of the former IAAF president participated in a conspiracy to receive funds from athletes in return for concealing, delaying or suppressing disciplinary sanctions imposed on those athletes. After multiple investigations, including the exchange of international rotatory letters, indictments and the issuance of arrest warrants, the former president of the IAAF, his lawyer, and other collaborators were prosecuted on charges that included passive and active corruption, money laundering by an organized gang, and breach of trust. On September 16, 2020, the Paris Criminal Court convicted all of the defendants on the relevant charges, including the French lawyer for complicity in active and passive corruption.

<sup>64</sup> Alessandra Fontana and Pedro Gomes Pereira. (2012). *Using Money Laundering Investigations to Fight Corruption in Developing Countries*, U4 Anti-Corruption Resource Centre, U4, pp. 1.

The case response process involves a number of stages that are the responsibility of various authorities. These stages commonly include detection, investigation, prosecution, and asset recovery.

Detection is the initial process that enables authorities to identify unusual transactions which may indicate the occurrence of corruption-related money laundering offences. Overall, the primary source of detection in the majority of G20 countries is information received from reporting entities. Other sources of detection include the identification of suspicious transactions leading to money laundering from evidence that was seized or forfeited during a predicate crime investigation, and the identification of irregular transactions as a result of the regular audits or examinations conducted by legal professional associations.

The following are sources of valuable information to detect corruption-related money laundering cases:

- Suspicious Transaction Reports

For instance, South Africa's FIU received reports of suspicious and unusual transactions that contained the following red flags:

- Multiple large sums of money were being deposited into the trust account by different persons and companies over a period of two years. These funds were used to make payments to other depositors in South Africa and abroad
- Funds from this account were being remitted to foreign jurisdictions deemed to be tax havens.
- Funds were also transferred to the attorney's personal credit card; his practice expenses were also paid directly from the trust account.

- Suspicious Activity Reports (SARs)

In the United Kingdom, SARs are made by financial institutions and other professionals such as solicitors, accountants and estate agents. SARs can also be submitted by private individuals. As soon as an individual 'knows' or 'suspects' that a person is engaged in money laundering or dealing in criminal property, they must submit a Suspicious Activity Report to the National Crime Agency. Alternatively, rather than making a direct SAR, legal professionals can report suspicions via a legal services regulator or professional body hotline, or can report to their law firm's Money Laundering Reporting Officer who is responsible for receiving and making disclosures.

- Regular Audit or Examination of Legal Professionals

In the United Kingdom, detection also takes place through annual spot checks and examinations conducted in law firms by professional body supervisors.

- Predicate Crime Evidence

The Indonesian anti-graft agency has experience in detecting potential money laundering offences based on bank account records and documents seized during corruption investigations.

Following detection, if the STR or SAR, investigative evidence, or examination/audit findings identify activity that is suspicious, the authorities can then gather further data and information from the FIU, reporting entities and any other relevant stakeholders. Therefore, close collaboration with other agencies is essential when dealing with corruption-related money laundering cases.

### **3.2. Joint Investigation and Parallel Investigation in Corruption-Related Money Laundering Cases Involving Legal Professionals**

Joint investigations or parallel investigations by a number of competent authorities can be undertaken on a temporary basis for the purpose of pursuing criminal investigations. This form of collaboration can be an efficient and effective means of responding to cross-border crimes. Joint investigations also facilitate the coordination of investigations and prosecutions conducted in parallel across jurisdictions.

Several G20 countries have experience in conducting joint investigations and parallel investigations in response to corruption-related money laundering cases involving legal professionals.

#### **Case Study 2: Indonesia**

Indonesia has conducted a parallel investigation with the United Kingdom's Serious Fraud Office (SFO) and Singapore's Corrupt Practices Investigation Bureau (CPIB) into a bribery-related money laundering case. The investigation led to a former CEO of Garuda Indonesia, the country's national flag carrier, being convicted of accepting bribes related to aircraft procurements. The scheme involved the laundering of Rp 87.4 billion through multiple channels, the conversion of funds into various foreign currencies, and the transfer of funds to multiple overseas bank accounts. The perpetrator also transferred funds to purchase apartments in Australia and Singapore. In carrying out these activities, he was assisted by a legal professional who claimed to have "unknowingly" concealed the illicit funds.

This investigation began when the Indonesian authorities received information from the SFO and CPIB relating to another corruption case involving the former CEO. Following this, the Indonesian anti-graft agency worked closely with the SFO and CPIB to obtain evidence and seize the perpetrator's assets in Australia.

Spain also actively engages in international collaboration with bodies such as Europol and Interpol in cross-border cases. In addition, cases such as the Panama Papers, and the Pandora and Luxembourg leaks have led Sepblac to cross-check the leaked information against its databases, which has triggered further supervisory investigations and cooperation with other competent authorities.

### 3.3. International Networks to Facilitate Investigations of Corruption-Related Money Laundering Cases Involving Legal Professionals

Given rapid technological development that facilitates money laundering on a transnational basis, cross-border collaboration between authorities and relevant stakeholders is essential for the effective technical assistance, information sharing, and the recovery of illicit funds. International networks allow countries to engage with their international partners so as to combat money laundering and corruption. Such networks may comprise countries, international organizations, authorities, or other relevant bodies.

The questionnaire responses indicate that several G20 countries use well-established international networks to assist them in responding to money laundering and to recover proceeds of crime. In conducting investigations, the United States has utilized international networks such as the Egmont Group, Camden Asset Recovery Inter-agency Network (CARIN), European Union Agency for Criminal Justice Cooperation (Eurojust), International Anti-Corruption Coordination Centre (IACCC), and StAR/Interpol Global Focal Points Network, along with many other regional networks to enhance its corruption and money laundering-related investigations. The United States also used similar channels for informal cooperation to investigate and prosecute cases involving the 1 Malaysia Development Berhad (1MDB) scheme.

The Australian Federal Police (AFP) maintains strong intelligence and operational relationships with international partners through its active involvement in various group such as the Five Eyes Law Enforcement Group's Money Laundering Working Group and Controllers Practitioners Groups, CARIN, Asset Recovery Interagency Network – Asia Pacific (ARIN-AP), United Nations Office on Drugs and Crime, Interpol and Europol (where AFP is the Australian representative for money laundering) and the Asia/Pacific Group on Money Laundering (APG). Where the principals controlling money laundering syndicates are beyond Australian borders, the AFP leverages its international relationships to disrupt and dismantle those syndicates. For example, cooperation between the AFP, Australian Criminal Intelligence Commission and overseas law enforcement agencies resulted in the disruption of the KHANANI Money Laundering Organization (MLO). The MLO acted on behalf of Transnational Serious & Organised Crime (TSOC) groups and terrorist organization to launder billions of dollars annually between Pakistan, the UAE, United States, United Kingdom, Canada, Australia, and other countries.

To exchange intelligence information among FIUs, several G20 countries are facilitated by international networks such as the Egmont Group. The Egmont Group facilitates and prompts the exchange of information, knowledge, and cooperation amongst member FIUs. According to Italy, FIU-to-FIU international cooperation is essential for exchanging information through dedicated IT channels (the Egmont Secure Web and, at European level, the FIU.Net), as they ensure the security and confidentiality of exchanges. This information has helped Italy's FIU to develop in-depth analyses and provide financial information, particularly where suspicious activities feature significant links with other jurisdictions. Furthermore, the collected information is also beneficial for preparing rogatory requests to foreign law enforcement agencies.

### 3.4. Considerations When Responding to Cases Involving Legal Professionals

While authorities in the G20 countries have vast experience in dealing with money laundering cases, they continue to encounter challenges, particularly when legal professionals are involved. This section provides an insight into a number of constraints that have been identified and how countries address them.

The following are some of the considerations that G20 countries should be cognizant of when dealing with cases involving legal professionals:

#### **Legal Professional Privilege / Secrecy**

Legal professional privilege or secrecy is a fundamental legal right that provides immunity from the exercise of powers which would otherwise compel the disclosure of privileged information, including the production of documents. Legal privilege preserves the confidentiality and secrecy of those communications in business and commercial situations with clients. In common law systems, legal professional privilege and confidentiality are a fundamental component of the rule of law. Documents are normally protected by this privilege if they contain confidential information supplied by a client, or advice supplied by a legal professional to a client. In civil law systems, legal professional privilege and secrecy requirements vary from one jurisdiction to another.<sup>65</sup>

In some cases, legal professional privilege and secrecy can be misused to engage in illicit activities and avoid detection by the authorities. In dealing with corruption-related money laundering cases, the Indonesian authorities have encountered legal professionals who refused to disclose required documents by relying on the privilege defense. In such cases, legal professional privilege will not apply where the client has specifically sought the assistance of the legal professional help to facilitate criminal activities.

In the United Kingdom, to resolve the tension between disclosure obligations under the Proceeds of Crime Act 2002 and the all-encompassing duties of client confidentiality and the duty to protect legal professional privilege, the Legal Sector Affinity Group serves as a decision-making framework which has provided guidance as to when legal professionals are permitted to make a disclosure. According to this guidance, legal professional privilege does not extend to documents which themselves form part of a criminal or fraudulent act, or communications which take place in order to obtain advice with the intention of carrying out an offence. It is irrelevant whether or not the legal professionals are aware that they are being used for that purpose. If the legal professionals are unwittingly being involved by their client in a criminal activity, the courts require prima facie evidence<sup>66</sup> before legal professional privilege can be displaced. The sufficiency of that evidence depends on the circumstances: it is easier to infer a prima facie case where there is substantial material available to support the inference of an offence. While legal professionals may decide if prima facie evidence exists, they may also ask the court for directions.

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<sup>65</sup> Savage, D. *GIR Guide to Sanctions – Second Edition: EU Sanctions Enforcement*, <https://www.stewartslaw.com/news/gir-guide-to-sanctions-reporting-professional-secrecy-and-legal-professional-privilege/>. Accessed on 21 October 2022.

<sup>66</sup> Sufficient corroborating evidence appears to exist to support a case.

In France, specific protective provisions apply in respect of searches and seizures carried out at the premises of certain legal professionals, particularly lawyers and notaries, in order to ensure the protection of professional secrecy. France also has provisions that establish reinforced protections, such as the requirement that a magistrate and a representative of the bar association be present, restriction on access to seized documents, and the right to contest a seizure before a magistrate. However, these protective provisions may be disapplied if the legal professional is implicated in the offence for which evidence is sought.

### **Cross-Jurisdiction Information Sharing**

Money laundering and corruption cases that involve a number of countries make it essential that information can be shared between jurisdictions. While substantial progress has been made in improving information-sharing capabilities and affordability, many challenges remain. Time-efficient information sharing is essential for the successful investigation of many cases. If information-sharing powers are not fit for purpose, this can frustrate timely and effective investigative and enforcement action.

The development of international networks can assist information exchange and overcome the obstacles that hamper or prevent cross-border information sharing. An example of such a network is the ARIN-AP, which enables the cross-border exchange of information on individuals, companies, and assets in order to facilitate the recovery of proceeds of crime. Collaboration between legal professional associations can also help to elicit information in a timely fashion. Legal professional associations may establish partnerships with similar organizations in other countries to provide a wider professional network, capacity building, and knowledge and information sharing. The Indonesian Notaries Association has established partnerships with the Dutch and German notaries' associations. These strong partnerships allow the Indonesian Ministry of Justice and Human Rights to gain insights and information on due diligence obligations and compliance in those countries so that they can serve as benchmarks for the development of legislation and regulations in Indonesia. The Indonesian authorities can also obtain information for investigative purposes through legal professional association networks.

### **Limited Resources and Capacity**

Responding to corruption-related money laundering cases, particularly those involving complex schemes, requires adequate resources and knowledge. However, a number of G20 countries face challenges in this regard. According to the United States, obstacles that may affect asset recovery cooperation include challenges such as the lack of competent authorities in jurisdictions from whom assistance is required. In many instances, the failure to designate a central or competent authority impedes the ability to seek assistance from a jurisdiction where evidence regarding criminal activity or recoverable proceeds of crime may be located.

Meanwhile, South Africa has experienced problems in investigating and prosecuting cases of stand-alone and third-party money laundering. These problems are related to the lack of resources and expertise available to law enforcement agencies and authorities to proactively identify the money laundering networks and syndicates operating behind the predicate offenses which they do investigate and prosecute. These problems are compounded by the fact that the networks and syndicates often have overseas links.

## Time-Consuming Mutual Legal Assistance Process

Mutual legal assistance (MLA) is the formal method of international cooperation for obtaining government to government assistance, particularly for obtaining evidence to support the investigation or prosecution of criminal offences and to recover proceeds of crime. Such cooperation may involve various agencies and can include multiple procedural steps. Some G20 countries have stated that MLA is a time-consuming and resource-intensive process, and can present challenges when responding to corruption-related money laundering cases.

The Netherlands has stated that the slow pace of MLA in complex cases can be a major obstacle given that investigations are often transnational in character, while Australia has noted that delays in the MLA process can be due to the relevant jurisdiction not being readily identifiable, or where a jurisdiction is not able to provide timely assistance.

### 3.5. The Way Forward

This Compendium has illustrated various good practices that can be used when designing and implementing supervisory measures in respect of legal professionals so as to prevent corruption-related money laundering in G20 countries. It also highlights a number of lessons learned in respect of the obstacles encountered by G20 countries and the efforts to strengthen global anti-corruption efforts. In the light of these good practices and lessons learned, it may be concluded that the G20 countries should collectively progress implementation of concrete measures to mitigate corruption-related money laundering risks involving legal professionals by:

- Fully implementing relevant principles, standards, and international commitments in this area, notably, the FATF Recommendations;
- exchanging good practices in the implementation of effective regulatory frameworks and supervisory measures for legal professionals with due regard to legal professional privilege and secrecy protection;
- considering developing or supporting the development of measures such as rules or guidance for legal professionals so as to resolve the tension between legal professional privilege and disclosure obligations, and to explain when legal professional privilege may be disapplied;
- strengthening cooperation and engagement with FIUs, law enforcement agencies, relevant authorities, and legal professional associations to enhance multi-jurisdictional information sharing in a convenient, timely, and effective manner. Such robust cooperation can also help countries to obtain informal assistance in certain circumstances, particularly in cases where time is of the essence;
- encouraging assistance, where possible, in investigation and asset recovery to help countries in dealing with cases of corruption-related money laundering, especially countries with limited resources; and
- sharing knowledge and conducting capacity building to enhance the capacity and expertise of law enforcement agencies and relevant authorities when dealing with complex corruption-related money laundering cases.

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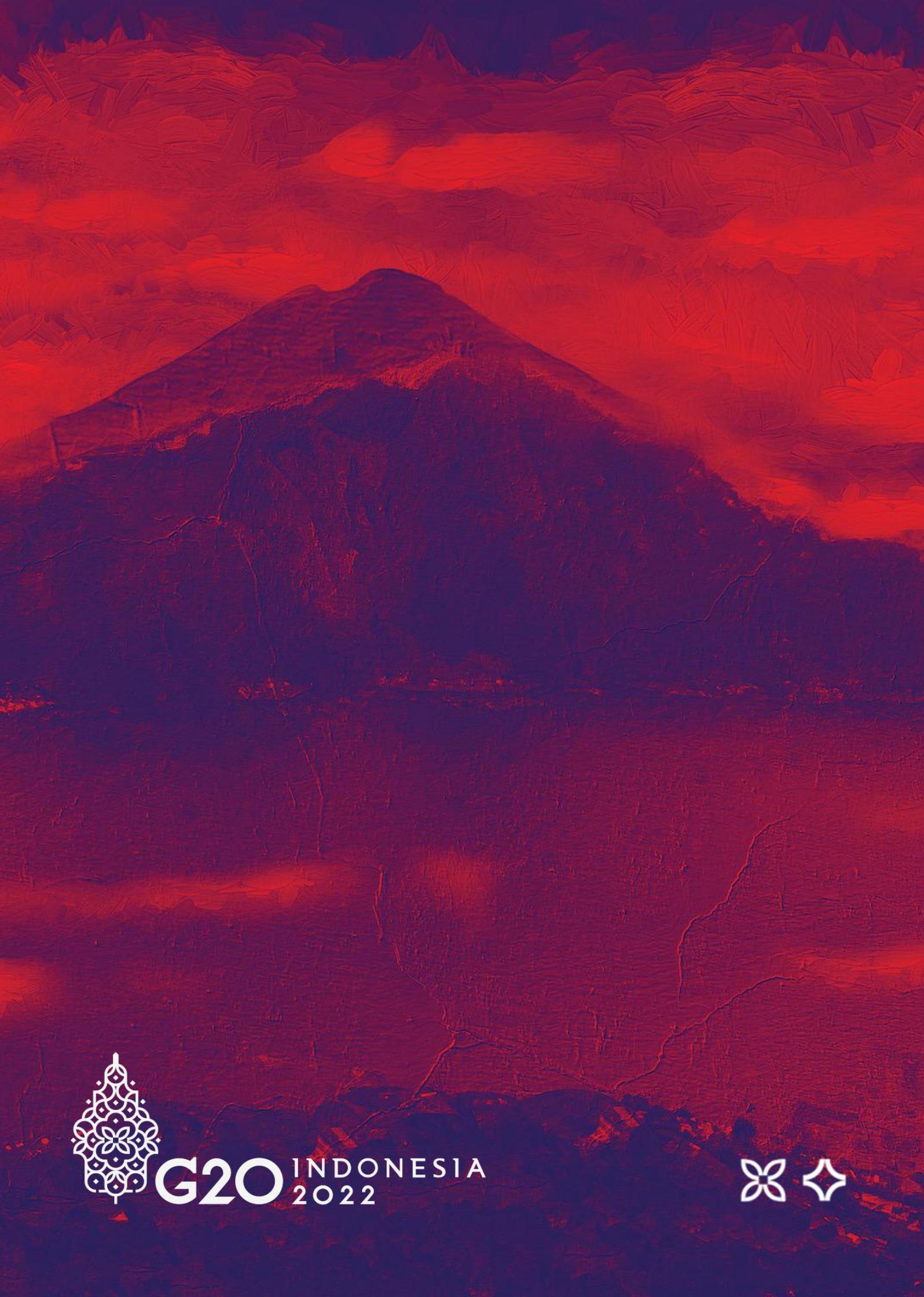
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