



Strategic Intelligence Report

Exploitation of legal professionals

Latest date of information: **March 2016**

Key observations

1. Professional legal expertise continues to be seen as an important enabler for criminals, increasing their capacity to operate in both legitimate and criminal markets and conceal illicit activity including money trails. (FOUO)

s37(1)(a)

s37(1)(a), s37(2)(b)

4. While the intelligence picture on legal professionals has improved slightly in terms of numbers of cases s37(1)(a), it still suffers from the key intelligence gaps s37(1)(a) s37(1)(a). The extent of complicit through to unwitting legal involvement in money laundering and financial crime remains largely unknown, s37(1)(a) s37(1)(a)

5. AUSTRAC receives transaction reports about the financial activity of lawyers and their clients mostly from second parties (banks and other financial institutions), but it is technically challenging to extract, interpret and assess the intelligence value of this data. (P)

6. The relatively small number of cases showing legal professionals implicated in money laundering is at odds with the general view, based on law enforcement and regulator operational experience, that lawyers are high risk. This disparity may point to limitations in record keeping about the role of legal professionals during investigations. (Sens)

Aim

1. This report provides a stock-take of current knowledge and intelligence held by AUSTRAC and its partner agencies on money laundering activity involving legal professionals. (U)
2. It draws together a range of intelligence material to identify the main known or suspected money laundering (ML) methods involving legal professionals. It also highlights intelligence gaps that need to be addressed to enable authorities to more accurately assess the level of ML/TF risk in the legal services sector. (U)

Context

3. The misuse of professionals as advisers to assist, unwittingly or otherwise, in money laundering is a recognised threat. The s37(1)(a) found a significant degree of professional involvement, unwittingly or otherwise, in money laundering matters particularly for more sophisticated crimes. The involvement of professionals in money laundering ranges across a spectrum from unwitting abuse, through weak customer due diligence, to coerced activity and complicit conduct. (Sens)
4. Lawyers have obligations under the *Financial Transaction Reports Act 1988* (FTR Act) to report transactions involving cash of AUD10,000 or more. However, lawyers and other professional 'gatekeepers' (such as accountants and real estate agents) are generally not subject to regulation under Australia's *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act), unless they provide a designated service under the Act which rarely occurs. This regulatory gap represents a major deficiency in Australia's implementation of the Financial Action Taskforce (FATF) Recommendations that form the international standards for AML/CTF.¹
5. Due to limited AMLCTF coverage of legal professionals, a key intelligence gap exists in relation to identifying and understanding patterns of financial activity associated with this high-risk sector. These intelligence gaps hamper proactive detection of money laundering or unusual activity involving legal professionals. It also hinders investigations into cases where legal professionals are involved. (U)

The current environment

6. The growing use of specialists and professional facilitators continues to be a key feature of the organised crime environment in Australia. Investigations show that criminals use legal practitioners to undertake transactions to:
 - conceal proceeds of crime
 - obscure ultimate ownership through complex layers and legal entity structures
 - avoid tax
 - work around regulatory controls
 - provide a veneer of legitimacy to criminal activity
 - create distance between criminal entities and their illicit income or wealth
 - avoid detection and confiscation of assets and
 - hinder law enforcement investigations. (U)

¹ See *Financial Action Taskforce International standards on combating money laundering and the financing of terrorism & proliferation: The FATF Recommendations*, p. 19, http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

7. Legal professionals, either wittingly or unwittingly, provide or offer their technical expertise and know-how to a client which can facilitate money laundering. Services that are susceptible to money laundering include:

- lawyer/solicitor trust accounts
- managing clients' finances, investments and other assets
- conveyancing services, such as buying and selling real estate
- establishing and administering complex domestic and foreign legal entity structures (such as trusts and companies) and accounts. (U)

Financial footprint

8. AUSTRAC receives some cash transaction reporting (under the FTR Act), albeit limited in volume and quality, directly from legal practitioners. Indirect reporting on financial activity linked to the profession also comes from reporting entities (primarily financial institutions) providing designated services (such as opening and maintaining accounts, domestic and international transfers) to legal practitioners. This transaction reporting largely relates to international funds transfer instructions (IFTI's) with, to a limited extent, some suspicious matter reporting. While larger in volume than FTR reporting, significant limitations confront analysts trying to extract relevant reports and identify beneficiaries, particularly those based overseas. (Sen)

Significant cash activity

9. Significant cash transaction reporting from solicitors shows that a significant amount of money moves through trust accounts controlled by legal professionals. This reporting relates to cash transactions of AUD10,000 or more and comes in two categories: threshold transaction reports (TTRs) under the AML/CTF Act and significant cash transaction reports by solicitors (SOLTRs) under the FTR Act. (FOUO)

10. For the three financial years since 2012-13, approximately AUD148 million was reported in TTRs based on analysis of a sample of legal property and/or trust related entities.² This compares with almost AUD33 million in SOLTRs.³ In 2014, there was almost AUD36 million reported in incoming TTRs (i.e. deposits into Australian legal entity accounts), and over AUD10 million in total was reported in SOLTRs.⁴ The discrepancy between the SOLTR and TTR amounts is unclear, but it could be an indication of underreporting of SOLTRs. The discrepancy may also be a result of data limitations and the possibility that not all legal professionals were captured in the search results. (Sens)

s33, s37(2)(b), s47B

- s33, s37(2)(b), s47B

s33, s37, s47B

³ Section 3 of the FTR Act defines 'solicitor' as a person who practices as a solicitor, whether by himself or herself, as a member of a solicitor corporation or as a member of a partnership of solicitors, and whether or not the person also practises as a barrister.

⁴ These transactions relate to those legal entity reports that meet the legal terms criteria. See footnote 2 of this report.

s33, s37(2)(b), s47B

- s33, s37(2)(b), s47B

International funds transfers

12. Financial transaction reporting continues to show large international funds flows into and out of legal property or trust related entities. (U)

13. For the three financial years since 2012-13, about 20,000 transactions totalling at least AUD1 billion each year have been linked to a sample of legal property and/or trust related entities.⁵ More than 83 per cent of these transactions involved international funds transfers. Incoming transfers made up a majority of all legal entity transactions, both in amount and volume. The high volume and value of incoming IFTIs may, in part, be due to the increased involvement of foreign investors in the Australian residential and commercial property market. Australian legal professionals may be engaged by foreign investors to handle settlement transactions. This is consistent with the trends identified in the sample of SMRs/SUSTRs linked to legal professionals (see paragraphs 15 - 20 of this report), which show that large amounts of money are being moved into legal entity accounts, possibly for property settlements. (FOUO)

14. The top five source countries for incoming transfers by volume and amount, for the three year period, are major commercial trade and financial hubs for Australia: Singapore, Hong Kong, Malaysia, the United Kingdom and China. Incoming transfers from China to legal entity accounts in Australia was at its highest in the 2014-15 period. As noted in AUSTRAC operational intelligence reporting, increased funds flow from China during this period may be due to stronger buying power of the Chinese RMB against a weaker AUD, changes to investment policies in both China and Australia, and Australia's relatively stable economy and prospect of good returns.⁶ (Sens)

Suspicious transactions

15. s33, s37(2)(b), s47B

A small sample of suspicious matter reports (SMRs) relating to legal professionals and their trust accounts were analysed to arrive at an initial picture of the type of activity involved.⁷ A range of reasons for suspicion give rise to these reports, with the most common being:

- Avoiding reporting obligations
- Inconsistent with customer profile
- Unusual account activity
- Unusually large cash transaction or transfer
- Suspicious behaviour
- Country/jurisdiction risk (Sens)

16. The most common transactions reported in the SMRs are:

- Structured cash deposits into lawyer trust accounts
- Account withdrawals, mostly in cheque payable to a lawyer trust account

s33, s37(2)(b), s47B

PROTECTED Sensitive

- Incoming international funds transfers into lawyer trust accounts, mostly from China; and
- Domestic electronic funds transfers (EFT) into and out of trust and personal accounts. (U)

17. Many of the SMRs analysed involve large amounts of money being transferred from third parties overseas into accounts based in Australia. In these instances, reporting entities noted that the transactions may be related to property settlements in Australia, although these suspicions have not been confirmed. (Sens)

s37(2)(b)

19. The most common reasons for suspicion where reporting entities selected an offence type are money laundering, tax evasion, offence against the Commonwealth, State or Territory law and the proceeds of crime. (U)

20. Gaps in transaction reporting limit the ability to detect and follow the increasingly sophisticated money laundering trails and business structures organised crime uses to conceal illicit income. SMRs provide a source of intelligence for authorities as they detail information not captured by other financial transaction report types collected by AUSTRAC (such as Significant Cash Transaction Reports (SCTRs and SOLTRs)). SMRs can also point to a number of investigative leads for authorities. However, the inability to receive this financial intelligence direct from professionals makes it difficult and time consuming to match and identify links across entities. (FOUO)

Links to national criminal targets

s33, s37, 47B

22. Although these numbers appear small relative to the size of the profession, their services increase the capacity of crime syndicates to engage in complex money laundering methods and hide behind layers of legal structures. (U)

s33, s37, 47B

28. This case highlights the high money laundering risk within the legal sector. These risks are heightened when complicit legal professionals facilitate money laundering by enabling criminals to access legal services and when criminals are given access to the rest of the regulated sector, under a seemingly legitimate guise. (FOUO)

Property dealings involving the proceeds of crime

s37(2)(b), s47B

s37(2)(b), s47B

s37(2)(b), s47B

Misuse of legal entity structures

s33, s37, s47B

- s33, s37, s47B
- s33, s37, s47B
- s33, s37, s47B

s33, s37, s47B

s33, s37, s47B

s37, s47B

s33, s37, s47B

s33, s37(1)(a), s37(2)(b), s47B

s33, s37(1)(a), s37(2)(b), s47B

Misuse of legal professional privilege

37. Authorities continue to report how legal professional privilege can hinder intelligence collection and investigation. s47B

International exposure

38. The use of legal trust accounts to move money continues to present a high money laundering risk. s33, s37(2)(b), s47B

39. Legal trust accounts share a similar vulnerability to money remitters. They enable purchases and transfers to be made in the name of a legal professional rather than their client. (FOUO)

40. This vulnerability is being exploited, with authorities concerned about significant overseas transfers into legal trust accounts for suspected illicit dealing. s33, s37(2)(b), s47B

- s33, s37(2)(b), s47B

- s33, s37(2)(b), s47B

- s33, s37(2)(b), s47B

s37, s47B

s33, s37(2)(b), s47B

41. Authorities have identified legal professionals advising foreign entities on the development of complex structures to conceal the purchase of assets from domestic regulators. s37, s47B

s37, s47B

43. In some instances fraudulent documents have been provided by lawyers in response to requests from authorities for further information. s37, s47B

Intelligence gaps

44. While the intelligence picture concerning legal professionals has gradually improved with slightly more evidence available, the methods of exploitation remain the same as those identified in the s37

45. There remains only a relatively small body of information showing legal professionals implicated in money laundering. This is surprising given the consensus among law enforcement that the sector is high risk, based on operational experience s37

. The gap between the high-risk view and case evidence may point to limitations in the recording and documenting of the role of legal professionals during investigations. Difficulties in developing cases involving legal professionals with sufficient evidence to mount prosecutions may be another reason for the limited number of cases relative to the perceived risk. Where investigations are stymied and lawyers are not the prime target, information on their role may not be held in a form that is easily retrieved. This is a major stumbling block for building an evidence base that reliably informs risk assessment beyond perceptions of risk. (FOUO)

46. The absence of direct SMR and IFTI reporting obligations on legal professionals limits the capacity of law enforcement to identify complicated money laundering and tax evasion schemes. s37

s37

This is an acute problem when the source of funds is from foreign countries with limited or no AML/CTF measures. (FOUO)

s37(2)(b), s47B

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47. Authorities often have difficulty in obtaining the true identities of clients and beneficial owners of money directly from legal practitioners because of legal professional privilege. Due to the lack of SMR reporting for lawyers, it can be difficult in many cases to distinguish legitimate legal advice from advice complicitly given in money laundering. This is particularly true in cases where the advice provided in illicit dealings is substantially the same as advice that is given during the course of establishing a trust or company or purchasing property. There are a number of cases where legal practitioners or their clients have avoided prosecutions due to the complex challenges of building evidence to prove complicit involvement in laundering funds. (FOUO)

48. Legal professionals have significant cash transaction reporting (SCTR) requirements under s15A of the FTR Act for cash amounts of AUD10,000 or more, but these can be easily avoided through the use of structured payments to law firms. Given the limited reporting requirements applied to solicitors, legal trust accounts are increasingly at risk of being a vehicle to move illicit funds.¹⁷ Although legal trust accounts are subject to auditing from legal practice bodies, law enforcement authorities require a search warrant to view trust accounting records. This has been identified as a 'catch 22' for law enforcement. Without a warrant they cannot obtain sufficient intelligence to link the legal professional to ML operations. Without sufficient intelligence to link the legal professional to ML activity, obtaining a warrant is challenging.¹⁸ (FOUO)

Implications and recommendations

49. In the absence of AML/CTF regulation, exploitation of professionals for money laundering may increase, as tighter controls in other sectors forces organised crime to engage advisers and experts to establish more sophisticated methodologies. (FOUO)

50. Continuing growth across the Australian housing market may lead to an increased use of property transactions to launder the proceeds of crime. AUSTRAC is already starting to see a marked increase in the amounts invested into property by foreign entities. While most of this foreign property investment is likely to be legitimate, property is a highly attractive money laundering vehicle for criminals. As conveyancing work grows, legal professionals may be at increased risk of being exploited for money laundering. (FOUO)

51. In the meantime, law enforcement and intelligence agencies should explore ways by which information from operations and investigations can be collected, recorded and stored to improve the picture of evidence on lawyers in ML and financial crime. (Sens)

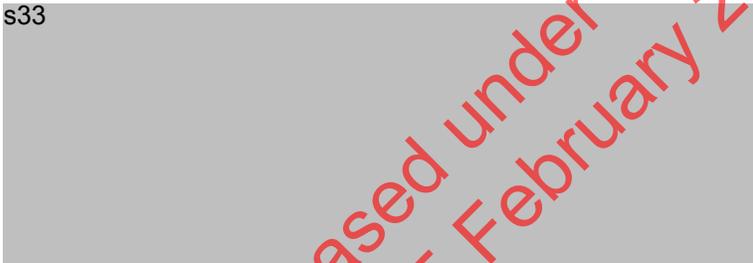
52. A closer analysis of SCTR reporting could point to supervisory work targeting legal professionals to raise awareness of reporting obligations and improve SCTR reporting quality and compliance to AUSTRAC. (Sens)

s37(2)(b), s47B

s37, s47B



s33



Additional information

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