



INTERPRETATIVE NOTE

ON

THE AML/CFT OBLIGATIONS OF LEGAL PROCURATORS

*AN INTERPRETATIVE NOTE ISSUED BY THE FIAU TO ASSIST
LEGAL PROCURATORS IN DETERMINING WHEN THEY ARE SUBJECT TO
THE AML/CFT OBLIGATIONS UNDER THE PREVENTION OF MONEY
LAUNDERING ACT AND ANY REGULATIONS, PROCEDURES OR GUIDANCE
ISSUED THEREUNDER*

Issued: 20 May 2015

Background information

1. The Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR) defines a 'subject person' as any legal or natural person carrying out either relevant financial business or relevant activity, as set out in Regulation 2.
2. Legal procurators, as independent legal professionals, are considered to be subject persons when they conduct any of the activities envisaged under paragraph (c) of the definition of 'relevant activity' in Regulation 2 of the PMLFTR.
3. The activities listed in paragraph (c) of the definition of 'relevant activity' in Regulation 2 of the PMLFTR are the following:
 - i. acting on behalf of and for a client in a financial or real estate transaction;
 - ii. assisting a client in the planning or execution of the following transactions:
 - (i) buying and selling of real property or business entities;
 - (ii) managing of client money, securities or other assets, unless the activity is undertaken under a license issued under the provisions of the Investment Services Act;
 - (iii) opening or management of bank, savings or securities accounts;
 - (iv) organisation of contributions necessary for the creation, operation or management of companies; and
 - (v) creation, operation or management of trusts, companies or similar structures, or when acting as a trust or company service provider.
4. This interpretative note is intended to provide assistance to legal procurators in determining whether they are subject persons in terms of the PMLFTR.

Excluded professional activities

5. In order to assist legal procurators in establishing which professional activities, when carried out by legal procurators, would give rise to obligations under the PMLFTR, a list of activities **which are not** considered to constitute 'relevant activity' in terms of paragraph (c) of Regulation 2 of the PMLFTR is being provided:
 - (a) The provision of legal advice, unless such advice is provided in relation to the planning or execution of any of the following transactions:
 - (i) buying and selling of real property or business entities;
 - (ii) managing of client money, securities or other assets;
 - (iii) opening or management of bank, savings or securities accounts;
 - (iv) organisation of contributions necessary for the creation, operation or management of companies; and
 - (v) creation, operation or management of trusts, companies or similar structures, or when acting as a trust or company service provider.
 - (b) The representation of clients in proceedings before the inferior courts;
 - (c) The preparation and filing of judicial acts;

- (d) The payment of court fees on behalf of clients, where the entire payment originates directly and exclusively from the client, and payment is made to the Courts by the client either in cash, by cheque or other negotiable instrument; and
 - (e) The receipt or collection of payment for services rendered by legal procurators or lawyers.
6. The list in paragraph 5 is not meant to constitute an exhaustive list of excluded activities. Legal procurators should seek legal advice when in doubt whether certain professional activities fall within the definition of ‘relevant activity’ under Regulation 2 of the PMLFTR.

Subject persons

7. Legal procurators who carry out relevant activities solely as employees of a government agency, authority, department or entity, and legal procurators who carry out their services exclusively within a private entity or a professional firm, are not subject persons in terms of the PMLFTR.

Questions or queries

8. Any questions or clarifications in relation to the contents of this Interpretative Note may be addressed to the Legal and International Relations Section of the FIAU.

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