

**FEATURES**

## **Anti-Money Laundering Compliance and the Legal Profession**



**President Ranil Wickremesinghe was among the invitees at the National Law Conference held in Nuwara Eliya recently. The event highlighted the significance of economic restructuring and growth.**

**By Dr. Dayanath Jayasuriya P. C.**

Addressing the recent Bar Association Convention in Nuwara-Eliya, President Ranil Wickremasinghe highlighted the need for Sri Lanka to be in readiness for the forthcoming Financial Action Task Force (FATF) assessment on Sri Lanka as its ratings on the degree of compliance by the country will be crucial for Sri Lanka to attract investors.

The Financial Action Task Force (FATF) leads global action to tackle money laundering, terrorist and proliferation financing. The 39-member body sets international standards to ensure national authorities can effectively go after illicit funds linked to drugs trafficking, the illicit arms trade, cyber fraud and other serious crimes. Sri Lanka is subject to the FATF mandate through the intermediation from the Asia Pacific Group on Money Laundering (APG) consisting of 42 member jurisdictions, of which, Sri Lanka is a founding member.

The FATF was established in 1989 and is based in Paris. The FATF Recommendations – there are 40 in all- are the basis on which all countries should meet the shared objective of tackling money laundering, terrorist financing and the financing of proliferation. The FATF calls upon all countries to effectively implement these measures in their national systems.

The FATF research on numerous typologies of how money is laundered, and terrorism is funded, promotes global standards to mitigate the risks, and assesses whether countries are taking effective action. In total, more than 200 countries and jurisdictions have committed to implement the FATF's Standards as part of a coordinated global response to preventing organized crime, corruption, and terrorism. Countries and jurisdictions are assessed with the help of nine FATF Associate Member organizations and other global partners, the IMF and the World Bank.

The FATF's decision-making body, the FATF Plenary, meets three times per year and holds countries to account if they do not comply with the Standards. If a country has strategic deficiencies in their regimes to counter money laundering or terrorist financing, then it can be named a Jurisdiction under Increased Monitoring. However, if such country repeatedly fails to implement FATF Standards and it has strategic deficiencies to counter ML/TF, then it is identified as a High-Risk Jurisdiction. These two categories of identification are referred to as "the grey list" and "the black list", respectively.

A country placed on the 'black list' is generally subject to international sanctions and countries are called to apply enhanced due diligence and counter-measures as deemed appropriate. FATF delisted Sri Lanka from FATF's Compliance Document which is more commonly identified as "the Grey List". The decision was taken at the FATF Plenary held during 13-18 October 2019 in Paris. It was way back in 2017 that Sri Lanka was identified as a country that has not made sufficient progress in four areas namely, International Co-operation, Supervision, Legal Persons and Arrangements and Targeted Financial Sanctions on Proliferations against Iran and North Korea.

Sri Lanka's Financial Transactions Reporting Act, No. 6 of 2006 (FTRA), identifies, inter alia, Lawyers, Notaries, and other independent legal professionals as Reporting Entities under this Act, when they prepare for or carry out transactions for their clients in relation to any of the following activities:

- (i) buying and selling of real estate;
- (ii) managing of client money, securities or other assets;
- (iii) management of bank, savings or securities accounts;

- (iv) organization of contributions for the creation, operation or management of companies, and
- (v) creation, operation or management of legal person or arrangements and the buying and selling of business entities

and to register with the Financial Intelligence Unit (FIU) and appoint a Compliance Officer to ensure that the provisions of the FTRA and other Rules and Regulations issued by the FIU are adhered to.

Legal professionals operate within a broad spectrum of business structures that vary from country to country and even within a country. Ranging from sole practitioners to multi-national firms, they provide a vast range of services. Given the diversity in scale and activities, some legal professions may be more vulnerable to being exploited for money laundering (ML) and terrorist financing (TF) than others.

In 2019 FATF published an important set of Guidance for a Risk-Based Approach for Legal Professionals

([www.fatf-gafi.org/publications/documents/Guidance-RBA-legal-professionals.html](http://www.fatf-gafi.org/publications/documents/Guidance-RBA-legal-professionals.html))

This guidance is aimed at legal professionals, countries and their competent authorities, including supervisors of the legal profession, as well as practitioners that have legal professionals as customers.

The guidance aims to support legal professionals in the design of effective measure to manage their ML/TF risks, when establishing or maintaining business relationships. In particular, it explains the obligation for legal professionals to identify and verify beneficial ownership information and provides examples of simplified, standard and enhanced CDD measures.

The guidance contains a section for supervisors of legal professionals. It explains the RBA to supervision as well as the supervision of the RBA. The guidance highlights the importance of supervision of beneficial ownership requirements and nominee arrangements so that up-to-date information on legal persons and legal arrangements is maintained and available in a timely manner.

The FATF developed this non-binding guidance with significant input from the legal profession, including through a public consultation in March 2019, to ensure that it reflects their practical expertise and good practices. It replaces the version of 2008 and brings it in line with the current FATF Recommendations.

FATF has also issued a set of Guidance for a Risk-Based Approach for Trust and Company Service Providers.

Case studies from around the world demonstrate how law firms and lawyers get implicated even by unwittingly assisting parties to a money laundering transaction by not following basic rules of 'Knowing Your Customer' and conducting proper due diligence. This makes it all the more

important for the legal professionals to be fully conversant with their legal obligations. In countries that are particularly vulnerable to money laundering and terrorist funding activities by acts of corruption, the sale of arms and drugs etc. lawyers need to be conscious that they always act on the right side of the law. Through seminars, codes of conduct and training programmes it is imperative that the legal professionals in this country are made better aware of their legal obligations.

Source : <https://island.lk/anti-money-laundering-compliance-and-the-legal-profession/>

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