

# **Anti-Money Laundering Division (AMLD)**

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## **ANTI-MONEY LAUNDERING DIVISION (AML)**

### **Taiwan**

#### **CENTRAL AUTHORITY FOR REPORTING**

[Anti-Money Laundering Division \(AML\)](#), Investigation Bureau, Ministry of Justice, has been assigned the role of central authority for reporting since 2008.

#### **OTHER ANTI-MONEY LAUNDERING REGULATOR(S)**

The Financial Supervisory Commission (FSC)

Taiwan's Central Bank

The Ministry of Economic Affairs

The Ministry of Finance

The Ministry of Justice

The National Police Administration

The Coast Guard Administration

The Bureau of Agricultural Finance

The Directorate General of Customs

#### **ARE LAWYERS COVERED BY ANTI-MONEY LAUNDERING LEGISLATION?**

There are no specific AML requirements imposed on lawyers. The lack of detailed compliance requirements may have several cultural and historical reasons: At least the idealized role of lawyers is to be a sort of a non-governmental jurist charged with the responsibility for safeguarding human rights, ensuring social justice and promoting democracy and the rule of law. Therefore, unlike accountants or investment consultants, the idealized image of lawyers are thehas them as professionals arguing cases in the court rather than as financial experts who assisting clients with their financial matters. Further, historically it was common for Taiwan clients to sometimes have only limited trust in their local attorneys, which – at least in the past - were more often mandated to implement structures and solutions upon detailed instructions by the client, rather than advising on and creating such structures and transactions from scratch, and providing respective advice. As a corollary, information provided by Taiwan clients to their local attorneys was often limited, due to confidentiality concerns.



However, lawyers are subject to the [Attorney Regulation Act](#) and the Attorney Ethics Code and, even though there is no specific and direct AML for lawyers, lawyers can still be disciplined by the competent bar association for their involving in money laundering as an unethical behavior of a legal professional.

At the same time, until at least the recent past, in practice, enforcement appeared to have been spotty, and it could be inferred that compliance could be heightened, correspondingly.

**LIST THE LAWS REGARDING ANTI-MONEY LAUNDERING, INDICATING WHICH LAWS ARE APPLICABLE TO LAWYERS.**

The main and direct regulation of AML is the Money Laundering Control Act (MCLA):

- [Money Laundering Control Act \(MCLA\)](#), the MLCA has been amended several times, and the latest amendment dates from June 2009. However, there is no article directly applying to lawyers.

The other laws related to AML are as following:

- Criminal Code
- Criminal Procedure Code
- Statute for Narcotic Hazards Control
- Police Powers Act
- Organised Crime Prevention Act

In addition, there are several guidelines or bylaws for the related industries to follow:

- Points for Attention by Banks on Money Laundering Prevention
- Model Money Laundering Control Guidelines for Securities Firms
- Model Money Laundering Control Guidelines for Life Insurance Industry
- Model Money Laundering Control Guidelines for Non-Life Insurance Industry

**ARE VISITING LAWYERS SUBJECT TO LOCAL LAWS REGARDING ANTI-MONEY LAUNDERING, AND, IF SO, TO WHAT EXTENT?**

There appear to be money laundering cases that have involved visiting or foreign lawyers.

In principle, as there is no specific legal or regulation addressing this issue as with any criminal statute, visiting or foreign lawyers are equally subject to MCLA.

**LIST ANY MONEY LAUNDERING GUIDANCE FOR LAWYERS (FOR EXAMPLE, LAW SOCIETY OR BAR ASSOCIATION GUIDELINES) CURRENTLY IN PLACE.**

As mentioned in previous question, the guidelines which have been released are mostly for the practitioners in public and financial institutions, such as banks, investment company, trust business or futures commission merchants. So far there are no any AML guidelines specific to lawyers.

**IS THE LAW SOCIETY/BAR ASSOCIATION INVOLVED IN SUPERVISING OR ENFORCING COMPLIANCE WITH ANTI-MONEY LAUNDERING REGULATIONS?**

The Bar Association(s) is not involved in supervising compliance of AML regulations. However, all lawyers are subject to the Attorney Regulation Act and the Attorney Ethics Code; any violation of the ethics codes, such as involving in money laundering, may lead to disciplinary action.

**DESCRIBE CLIENT DUE DILIGENCE REQUIREMENTS, INCLUDING WHEN IT MUST BE UNDERTAKEN BY LAWYERS.**

Active client due diligence in respect to AML is not required to be undertaken by lawyers. However, in Article 31 of the Attorney Ethics Code, a lawyer shall terminate the mandate contract with the client when the lawyer findsound the representation of the client will cause the lawyer to violate the Attorney Ethics Code. Therefore, in order to comply with Article 31, lawyer should at least do some passive due diligence to a certain level.

**DOES YOUR COUNTRY FOLLOW A RISK-BASED APPROACH TO CLIENT DUE DILIGENCE BY LAWYERS?**

As mentioned in the perevious question, client due diligence is not required to be undertaken by lawyers; therefore, there is also no risk-based approach to client due diligence.

**ARE THERE ENHANCED DUE DILIGENCE MEASURES FOR CERTAIN TYPES OF CLIENTS, FOR EXAMPLE, POLITICALLY EXPOSED PERSONS?**

There are currently no enhanced due diligence measures that would apply to lawyers.

**ARE THERE SIMPLIFIED DUE DILIGENCE MEASURES FOR CERTAIN TYPES OF CLIENTS,  
FOR EXAMPLE, LISTED COMPANIES?**

There are currently no specific simplified due diligence measures that would apply to lawyers.

**ARE LAWYERS PERMITTED TO RELY ON THIRD PARTY DUE DILIGENCE? IF YES, PLEASE  
DESCRIBE.**

There are no specific laws and regulations for the issue whether lawyers are able to rely on third party due diligence.

**WHEN IS A LAWYER UNDER AN OBLIGATION TO REPORT SUSPICIOUS  
TRANSACTIONS?**

In the Article 33 of the Attorney Ethics Code, a lawyer shall keep all information related to mandate confidential unless the client's intention or plan of a crime or a criminal action is likely to danger a third party's life or health. In that case, the lawyer shall report the information to competent authority. Therefore, unless the suspicious transaction could danger a third party's life or health, there is no need for a lawyer to report suspicious transactions.

**DOES ATTORNEY/CLIENT PRIVILEGE AND/OR DUTIES OF CONFIDENTIALITY PROVIDE  
A DEFENCE OR PARTIAL/TOTAL EXCEPTION TO THE REQUIREMENT TO REPORT  
SUSPICIOUS TRANSACTIONS?**

As mentioned in previous question, unless the suspicious transaction could danger a third party's life or health, there is no need for a lawyer to report suspicious transactions. Therefore, attorney/client privilege and/or duties of confidentiality will not provide an exception for lawyers since lawyers do not have a general requirement to report suspicious transactions.

**DOES LOCAL LAW PROVIDE ANY CRIMINAL AND/OR CIVIL INDEMNITY TO A LAWYER WHO HAS REPORTED A SUSPICIOUS TRANSACTION?**

Obligated institutions are protected if they can provide proof of acting in good faith when reporting a suspicious financial transaction. However, as lawyers generally are not under any obligation to report suspicious transactions, there is no law mentioned any criminal and/or civil indemnity.

**ONCE A SUSPICIOUS TRANSACTION REPORT HAS BEEN FILED, IS A LAWYER ALLOWED TO PROCEED WITH THE LEGAL ADVICE/TRANSACTION, AND, IF SO, MUST CONSENT FROM AUTHORITIES BE OBTAINED FIRST?**

There are no specific laws and regulations for the issue. The lawyer who filed the suspicious transaction report has a ground to terminate the mandate contract with the client involved suspicious transaction.

**IS THERE A TIPPING-OFF PROHIBITION? IF YES, PLEASE DESCRIBE.**

A tipping-off prohibition exists under Taiwanese legislation, but mainly apply for the practitioners in the financial institution. The prohibition does not apply to lawyers directly.

**DESCRIBE ANY RESTRICTIONS ON ACCEPTING A NEW CLIENT**

According to the article 26 of the Attorney Regulation Act and the article 30 of the Attorney Ethics Code, a lawyer can not accept a new client when there is a conflict of interest. Under article 31 of the Attorney Ethics Code, an attorney cannot take on a new client where the purpose of the mandate is for a clearly illegal purpose; however, it is worth noting that few potential clients would directly state their intention or an illegal purpose for the transactions being contemplated.

**ARE THERE ONGOING MONITORING REQUIREMENTS FOR EXISTING CLIENTS? IF YES, PLEASE DESCRIBE.**

There are currently no ongoing monitoring requirements that would apply to lawyers.

**DESCRIBE ANY OTHER WAYS IN WHICH LAWYERS ARE AFFECTED BY ANTI-MONEY LAUNDERING LEGISLATION.**

In general, lawyers have rarely been felt being affected by AML legislation directly. It is also rarely to see lawyers playing the role of attorney and involving in a real money laundering case.

**HAVE LAWYERS IN YOUR JURISDICTION BEEN IMPLICATED IN MONEY LAUNDERING, INCLUDING ANY TYPE OF COMPLAINT, ARREST OR PROSECUTION?**

There are many money laundering cases in Taiwan have foreigner that have tangentially involved foreign lawyers visiting from overseas jurisdictions or involving fact-scenarios in which their involvement was within the attorney's home jurisdiction involved. However, for Taiwanese attorneys have not been directly prosecuted or implicated into AML cases regarding work on behalf of clients., it does happen to the cases in which the defendants or criminals of money laundering are being lawyer as their profession.

**HAS THE FINANCIAL ACTION TASK FORCE (FATF) CONDUCTED A MUTUAL EVALUATION OF THIS COUNTRY, AND, IF SO, WHAT WERE THE FINDINGS CONCERNING LAWYERS' COMPLIANCE WITH THE FATF 40+9 RECOMMENDATIONS?**

An Asia/Pacific Group mutual evaluation report was released in July 2007. The report highlighted the need to expand AML obligations, including suspicious transactions reporting, to lawyers as well as other non-financial professions. Additionally, the report argued for the enforcement of full compliance with the FATF requirements. It recommends that the bar association be designated as the competent authority responsible for implementing, monitoring and ensuring compliance with AML within the legal profession.

References:

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