



International Bar Association and the Secretariat of the Organisation for
Economic Co-operation and Development

Report of the Task Force on the Role of Lawyers and International Commercial Structures

May 2019

1 Introduction

- 1.1 Lawyers play a crucial role in society, functioning as key operators in the administration of justice and as guardians of the rule of law. It is an indispensable right for a person to receive independent legal advice, and as such, lawyers owe substantial ethical¹ and professional duties to their clients. Indeed, a lawyer's conduct is regulated in the jurisdiction in which the lawyer practices, and depending on the applicable specific regulations, a lawyer's primary duty is to a client, and/or to the court and to the administration of justice as well as the client.
- 1.2 A lawyer must not act unethically, unprofessionally or in any manner that condones, encourages or constitutes participation in illegal conduct. Moreover, in the exercise of his/her role, a lawyer is well placed not only to identify or detect illegal conduct, but also to facilitate it, by action or inaction, or prevent it.
- 1.3 The events giving rise to what has been termed the Panama Papers² and the Paradise Papers³ have shone a spotlight specifically on offshore commercial structures and the role of lawyers in the establishment and conduct of those structures that may facilitate potentially illegal conduct. As a consequence, there has been much attention in the media on the alleged conduct and/or responsibility of lawyers and the law firms involved in those structures. In this way, we are reminded that the law is not static, but rather dynamic and evolving such that what is considered unethical by society and a reputation risk today may be unlawful tomorrow.
- 1.4 The Task Force on the Role of Lawyers and International Commercial Structures (the 'Task Force') was consequently established by the

1 In the context of the legal profession, the term ethics is sometimes confusing or misleading because, in some jurisdictions, legal ethics or deontology refers to the regulation of lawyers that has the force of law rather than morals, it being understood, however, that such regulation has ethical criteria as a footing. In the context of this report, the term ethics does not mean something that has the binding force of law, but is rather outside the binding law.

2 A reference to the Panama Papers is a reference to the public disclosure in April 2016 of approximately 11 million electronic files sourced from the Panama law firm Mossack Fonseca, whose services included the incorporation and administration of offshore companies.

3 A reference to the Paradise Papers is a reference to the public disclosure in November 2017 of in excess of 13 million documents, many from the Bermuda law firm Appleby and associated service firms.

Secretariat of the Organisation for Economic Co-operation and Development (OECD) and the International Bar Association (IBA) to review and consider the role of lawyers in detecting, identifying and preventing illegal conduct in commercial transactions, in particular, transactions with an international character, where the risks of such conduct may be higher.

- 1.5 Although lawyers’ professional obligations and clients’ rights are regulated by domestic laws and regulations, and/or ethical and deontological codes, the Task Force recognises that there are certain key principles that should apply in this context in order to balance between the rights of, and duties to, the client on the one hand and a lawyer’s other professional or legal duties on the other. The principles that are set out below are therefore without prejudice to rule of law⁴ and related legal conventions, a lawyer’s duty of confidence and laws relating to privilege.⁵

2 Statement of Principles

- 2.1 The Task Force supports the Statement of Principles set out below, recommending them to national bar associations and law societies with a view to encouraging them to adopt the Principles and engage with their governments to explain the role of the Principles in ensuring the proper administration of justice and in upholding the rule of law.⁶

4 The rule of law and similar legal conventions in civil law systems, such as *Rechtsstaat* and *état de droit*, as well as the due administration of justice, are fundamental concepts that cross jurisdictions. It is beyond the scope of this report to explore the concept of the ‘rule of law’ and how it applies in common law, civil law or other legal systems. It is sufficient to note that, in broad terms, there is a recognition that legal norms (or standards) are above political power, that everyone is subject to the law, and there are institutional checks and balances and other mechanisms to encourage transparency and public accountability (see Nadia Nedzel, ‘The Rule of Law: Its History and Meaning in Common Law, Civil Law and Latin American Judicial Systems’ (2010) 10(1) *Richmond Journal of Global Law & Business* 108–109).

5 As an illustration of the substantive character of the law of professional confidence and privilege, s 7 of the Charter of Rights and Freedoms of Canada makes clear, supported by the Supreme Court of Canada, that privilege and professional secrecy are an important civil and legal right or a fundamental and substantive rule of law (see, eg, *Blank v Canada (Minister of Justice)* [2006] 2 SCR 319; *Lizotte v Aviva Insurance Co of Canada* [2016] 2 SCR 521; and two judgments in *Canada (AG) v Chambre des notaires du Québec* (2016 SCC 20) and *Canada (National Revenue) v Thompson* (2016 SCC 21)).

6 The Principles result from the consideration by the Task Force of the questions set out in its terms of reference: see Annexure A.

- 2.2 The Principles are not designed as formal obligations or rules. Rather, they are framed as a broad statement of a principled approach to how lawyers and law firms should conduct themselves when engaged in or undertaking work associated with commercial structures, particularly of an international character.
- 2.3 Notwithstanding this, the Task Force advocates that where the Principles are adopted and form part of domestic law and/or professional regulations, their disregard ought to result in the application of proportionate disciplinary measures. These should include, where appropriate, disbarment, recognised also in foreign jurisdictions.
- 2.4 The Principles are directed to individual lawyers throughout this report, but where relevant, also apply to law firms.⁷
- **Principle 1: Non-facilitation of illegal conduct** – By the very nature of a lawyer’s professional functions, such as the establishment of companies, trusts and partnerships, as well as the conduct of internal investigations, and the design and oversight of compliance programmes, a lawyer may be unwittingly associated with illegal conduct, including financial crimes. A lawyer should not facilitate illegal conduct, and should undertake the necessary due diligence to avoid doing so inadvertently.
 - **Principle 2: Misuse of the duty of confidence and privilege** – The lawyer’s duty of confidence to a client and the concept of legal professional privilege are of fundamental importance to the legal profession. The Task Force recognises this, mindful of the need to preserve the rule of law. However, a lawyer should not use the confidential nature of the lawyer–client relationship or the principles of legal professional privilege to shield wrongdoers. A lawyer should give due and proper consideration to refraining from acting for a client if the lawyer is aware of, or has reasonable grounds to believe, that the main purpose of the retainer is to allow the client to be able to rely on the confidential nature of the lawyer–client relationship (or

⁷ The Task Force recognises that, in some common law jurisdictions, the legal profession is split, with solicitors engaging directly with clients and barristers being retained by solicitors (although some clients retain barristers directly), eg, in Australia, England and Wales, and Hong Kong. The present report is more directed at lawyers who have a direct relationship with a client and handle funds on behalf of a client.

privileged communication) so as to permit or encourage the client to engage in illegal conduct.

Moreover, lawyers should not place themselves in a position where they might be said to be aiding or abetting the commission of a criminal offence.

- **Principle 3: Client due diligence** – A lawyer should undertake and document all reasonable and proportionate inquiries in order to identify and verify a client,⁸ as well as identify any ultimate beneficiary of the conduct or transaction,⁹ the origin of the funds for the transaction (consistent with applicable anti-money laundering or counterterrorism financing legislation), the substantive nature of the conduct or transaction (including expected revenue and taxation consequences of the transaction) and, subject to Principle 5, be satisfied that the conduct and/or transaction is legal in the lawyer’s jurisdictions.

The inquiries that a lawyer undertakes should be heightened if the risk profile of the client, the type of transaction, the origin of the funds, the parties involved and/or the jurisdiction fall within well-established international benchmarks for jurisdictions with increased risk of bribery, corruption and commercial crime (eg, pursuant to the Transparency International Corruption Perception Index), or otherwise raise objectively grounded and reasonably based suspicion.

- **Principle 4: Action where client conduct is, may be or becomes illegal** – Where the conduct of a client is, may be or becomes illegal, even if it was originally legal and the lawyer continues to be retained by the client, a lawyer should advise the client of the consequences of the conduct and recommend that the client pursues alternative solutions. If the client persists in the conduct, the lawyer should give due and proper consideration to ceasing to act, and terminate the retainer.

8 This verification should also be undertaken where the original identification and verification has taken place by another lawyer by whom the client has been referred.

9 A ‘beneficiary’ in this context is to be distinguished from beneficial ownership information, which is considerably wider and is dealt with further below.

Depending on the jurisdiction, a suspicious transaction report may also need to be filed or a similar reporting obligation triggered.¹⁰

- **Principle 5: Multijurisdictional risk** – Where a transaction involves conduct by a client, agents or representatives of a client in more than one jurisdiction and the lawyer has reasonable grounds to believe that the conduct may be or may become illegal in a jurisdiction(s), a lawyer should verify that expert advice is or has been obtained by the client from a lawyer experienced in the conduct or transaction in that jurisdiction. If such advice has not been obtained and the client wishes to proceed with the transaction, the lawyer should recommend that such advice be obtained (at the cost of the client). If the client declines to obtain such advice and persists in the conduct, then the lawyer should give due and proper consideration to ceasing to act and terminate the retainer. The same consideration applies where the client persists in the conduct after obtaining advice and refuses to follow it. Depending on the jurisdiction, a suspicious transaction report may also need to be filed or a similar reporting obligation triggered.
- **Principle 6: Use of illegally obtained information** – While domestic legal frameworks should clearly define the professional duties and obligations on lawyers in relation to what extent illegally obtained evidence may or may not be used, lawyers should strongly discourage a client from paying private parties or public officials to obtain such information, which of itself may constitute a criminal offence in many jurisdictions. To facilitate this, legal frameworks should be consistent across jurisdictions as much as possible, given that it is often through cross-border conduct that confidential or secret information located in country A is accessed (without the consent of the owner of the information) and then disclosed to a person

10 The domestic criteria for reporting suspicious transactions vary across countries. Eg, pursuant to the 4th European Union Anti-Money Laundering Directive, Art 33.1 (a), the test is expressed as ‘knows, suspects, or has reasonable grounds to suspect that...’ contravening conduct has or may occur. In addition, for EU Member States, Art 6 (3) (2) and Recitals 17 and 18 of the 2nd Anti-Money Laundering Directive exclude from a reporting obligation facts learned by a lawyer in opinion work, in court work and in giving legal advice (unless the lawyer has direct knowledge of such offending conduct). Outside these areas, where a lawyer might engage in trustee work or mediation work, a reporting obligation might arise.

in country B. The question as to what use can be made of such information should be resolved by an independent court where necessary (subject to avenues of appeal), based on the applicable domestic legal framework.

- **Principle 7: Disclosure of beneficial ownership** – A lawyer should obtain and maintain up-to-date beneficial ownership information and take reasonable measures to verify its accuracy in relation to the lawyer’s client(s). To this end, domestic laws should provide for the disclosure of ultimate beneficial ownership of any corporation, trust or other legal entity formed within that country’s jurisdiction.¹¹ Furthermore, the Task Force considers that beneficial ownership information should be available to state regulators, investigators and enforcement agencies. Whether it needs to be publicly available is an issue for governments and parliaments to address.¹²
- **Principle 8: Advertising by lawyers on international commercial structures** – Any advertising by lawyers should be transparent, accurate and truthful. How lawyers can advertise and the requirements that must be satisfied to ensure all advertising is accurate and truthful is a matter for domestic regulation by governments (as a matter of law), and bar associations and law societies (as a matter of professional obligations and ethics).

11 A comprehensive definition of beneficial owner can be found in the glossary of the FATF recommendations:

Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

[1] Reference to “ultimately owns or controls” and “ultimate effective control” refers to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.

[2] This definition should also apply to beneficial owner of a beneficiary under a life or other investment linked insurance policy.’

12 The Task Force nevertheless recognises that there are competing views on the disclosure of such information to the public and the extent to which public access to such information enhances an overall sense of integrity, transparency and accountability by all those who use corporate structures for whatever reason, or is undesirable as a matter of privacy policy.

3 Background and methodology

- 3.1 The OECD Secretariat and the IBA formed a joint Task Force in December 2016. Each has a long history of promoting ethical conduct, transparency among the business community and leadership on these issues, both from an international organisation perspective (OECD) and a legal professional perspective (IBA).
- 3.2 The Task Force is under the leadership of the IBA President and the OECD General Counsel and Director for Legal Affairs, Nicola Bonucci. The IBA President is assisted by Robert Wyld (former Co-Chair, IBA Anti-Corruption Committee) and Claudio Visco (former Chair, IBA Bar Issues Commission), while Bonucci is assisted by Natalie Limbasan (Legal Adviser, OECD Legal Directorate). Full details on the composition of the Task Force for the IBA and OECD are set out in Annexure D.¹³
- 3.3 This report does not seek to duplicate existing international or other national (or domestic) guides for the legal profession in terms of how a lawyer should act or not act in certain circumstances. Nor does this report seek to cover the numerous anti-money laundering and counterterrorism financing laws, obligations and disclosure duties that exist in many countries (although they are mentioned where relevant). Rather, it focuses on high-level issues of principle that should assist governments in policy formulation and in guiding lawyers as to how they should conduct themselves, consistent with a lawyer's underlying domestic legal and ethical obligations.
- 3.4 The Task Force adopted the following methodology in undertaking its work:
- A questionnaire was prepared and circulated electronically to IBA bar association and law society members.
 - Various discussions were held through the IBA Bar Issues Commission with senior Task Force members to outline the nature and purpose of the Task Force's work.
 - A series of consultations took place with IBA bar association and law society members.
 - The Task Force undertook its own research, led by Robert Wyld.

¹³ Thanks are also due to the FATF Secretariat for its helpful comments on the report.

- The preparation of the report was undertaken by the senior Task Force members and reviewed by the wider Task Force membership, followed by an interactive process of consultation with the IBA bar association and law society members.
- The penultimate draft report was reviewed by the President of the IBA and the Director for Legal Affairs of the OECD prior to publication.

3.5 The Task Force recognises that social and government attitudes towards the legal profession are changing, and becoming more critical towards lawyers and the conduct of lawyers and their clients. The kind of questions being asked by society of lawyer–client confidentiality include the following:

- Are clients attempting to hide behind lawyer–client confidentiality to get away with dodgy acts?
- Are clients following the letter of the law, exploiting gaps and oversights, without considering the spirit of the law?
- Are lawyers taking responsibility for their role in the funding of corruption, terrorism, arms trafficking, mass drug addiction and other illegal conduct financed by the transfer of illicit funds?
- Are lawyers and their regulators hiding behind the ‘few bad apples’ excuse without looking at the overall regulatory structure of the profession?
- Does the regulation of lawyers work in the public interest if it allows the circumstances giving rise to the first four questions to arise?

3.6 Lawyers understand the complexity of business transactions when they advise upon commercial transactions with an international character. Lawyers appreciate the increasing prevalence of cross-border fraud, corruption, commercial crime, money laundering and the potential for illicit funds to flow to criminal organisations and/or terrorists.¹⁴

14 Eg, lawyers are required to make suspicious transaction reports under anti-money laundering laws in England and Wales (the Proceeds of Crime Act 2002; the Terrorism Act 2000; and the Money Laundering Regulations 2007), while under Australian law (the Anti-Money Laundering and Counter Terrorism Financing Act 2006 (Cth) and associated rules, regulations and instruments) lawyers are not reporting entities and have no obligation to report suspicious transactions. In other jurisdictions, such as Germany, reporting obligations only arise in the case of positive knowledge.

- 3.7 The Task Force believes that it is in the best interest of lawyers, and bar associations and law societies, to work with governments and decision-makers to understand how lawyers can strike a balance between the respect for confidentiality and professional secrecy on the one hand and avoiding being held accountable for the conduct of their clients on the other.
- 3.8 Actions have been taken in certain jurisdictions in an effort to strike such a balance. In Italy, notaries, that is, public officers appointed by the state, are not able to draw a deed of transfer for real estate without ascertaining the origin of the funds. In addition, the deed of transfer must identify the number of cheques or bank drafts that have been used for payment. Other countries, like France, require that, under the fund for payments by lawyers (Caisse de règlements par les avocats or CARPA)¹⁵ system, all funds made available to a lawyer for payment of his/her services or as an agent for transactions in which he/she is involved for his/her clients are paid into an account managed by the bar association. In Norway, a proposal has been tabled that lawyers should open a separate bank account for each client, registered in the names of both the lawyer and the client. The authorities will then have access to information about transfers, deposits and debt on the client's account directly from the bank, without asking the lawyer. This has the advantage of making client accounts less likely to be used for money laundering or tax evasion, and also keeps professional secrecy out of the equation.
- 3.9 As members of society whose actions can impact on the integrity in their community, lawyers share the responsibility of promoting public integrity more broadly in society. Cooperation with governments and decision-makers should therefore extend to promoting a 'whole-of-society' culture of integrity – not only when regulating the justice sector, but also when developing integrity and anti-corruption policies. The Task Force also considers that joint awareness-raising activities and campaigns involving the legal profession should be encouraged in this context.

15 CARPA receives all of the flows of funds handled by lawyers in connection with their professional activity.

3.10 The Financial Action Task Force (FATF) holds a key role in addressing the evolving risks of money laundering and terrorism financing, the factors lawyers need to be aware of to properly undertake risk-based assessments of their clients and the structures that should be implemented by their clients, and to ask the right questions. Lawyers invariably do not know what law enforcement agencies know about criminal or suspected criminal conduct or changing patterns of criminal behaviour. Law firms range from sole practitioners with limited resources to multinational entities practising across multiple jurisdictions with professional management structures. The dilemma facing lawyers has been expressed this way:¹⁶

‘Law firms have been doing these kinds of activities for many, many decades and the important thing to note is that when a company is set up in a so-called tax haven country, it doesn’t necessarily mean there is any tax avoidance or illegal activities there... there are legal, commercial reasons why companies or individuals would love to set up companies in a tax haven.

Based on the past few years’ experience, the media exposure and so on, laws firms – and, for the same reason, professional firms like the big four accounting firms – they are now much more vigilant in what we call risk management, so before they accept an engagement, they will look at all these potential risks and if the client is too high-risk, then they needn’t sign up to accept the client... in practice, it is quite difficult for a firm to actually investigate what the client is using the company for. So there are practical limitations to how much law firms or accounting firms can do, but I think they are trying their best to minimise the risk.’

3.11 The joint initiative of the FATF and the Egmont Group of Financial Intelligence Units assesses the vulnerabilities linked to the concealment of beneficial ownership in order to support further risk analysis by governments, financial institutions and other professional service

16 Dr Antony Ting, associate professor at the University of Sydney Business School quoted in Tom Lodewyke, ‘Lawyers Cautioned in Wake of Paradise Papers Scandal’ *Lawyers Weekly* (Sydney, 8 November 2017) www.lawyersweekly.com.au/biglaw/22221-lawyers-cautioned-in-wake-of-paradise-papers-scandal accessed 9 May 2019.

providers, as reflected in their report of July 2018.¹⁷ In this regard, the Task Force considers that it is for the relevant domestic bodies to decide what is realistic and practicable to require and of whom to require it, and to reflect this in appropriate professional or legal standards, including for their lawyers.

- 3.12 The same applies for lawyers' obligations with regard to the detection, identification and prevention of illegal conduct more generally. However, it is then also for bar associations and law societies to work with governments to enable them to provide appropriate guidance and training offers to their members in order to fulfil and consider membership sanctions.
- 3.13 The Task Force recognises the problems that can arise when lawyers give advice associated with offshore structures designed and/or created by or on behalf of taxpayers in order that the taxpayer can structure its tax affairs in an appropriate (possibly aggressive) manner. The lawyer's advice (and conduct) should always be consistent with his/her legal obligations and the prevailing laws applicable to the taxpayer. Where such structures involve tax evasion, the taxpayer should be held accountable, and any reporting or disclosure obligations should be imposed primarily on the relevant taxpayer.
- 3.14 However, a lawyer may also be subject to reporting obligations, provided that these are in line with pre-existing domestic professional and legal obligations. If the lawyer receives unsatisfactory instructions from a client or information that is incomplete, then the lawyer should give due and proper consideration to ceasing to act if he/she believes the client may be seeking to act illegally. If the lawyer breaches these responsibilities, there should be recourse to appropriate sanctions. The need for balance is clear: a client should be encouraged to see a lawyer to give that client confidential, frank and fearless advice; and any process that might encourage a lawyer to ask fewer questions, to be less knowledgeable or to be less informed, is not to be encouraged.

17 FATF-Egmont Group, *Concealment of Beneficial Ownership*, July 2018 www.fatf-gafi.org/publications/methodsandtrends/documents/concealment-beneficial-ownership.html accessed 9 May 2019.

4 Preliminary research of the Task Force

4.1 During 2017, the Task Force undertook research to determine the nature and extent of obligations imposed on lawyers generally, and on lawyers who specifically practice in commercial transactions with an international character. This research was undertaken with the assistance of bar associations and law societies, which are ‘association’ members of the IBA.

4.2 The bar associations and law societies who assisted the Task Force covered the geographic areas of Africa, Baltic States, Central America, Central Europe, North Asia, Scandinavia and Western Europe.¹⁸

4.3 The preliminary views of the participating bar associations and law societies expressed to the Task Force can be summarised as set out below. It is important to note that for each jurisdiction involved, its particular laws and practices may vary, and developments in each jurisdiction have been particularly dynamic recently:

- Lawyers are regulated by a mixture of legislation, professional ethics and conduct rules, usually administered by an independent association.
- Professional duties exist and apply principally to individual lawyers, not to a law firm.
- Most jurisdictions have mandatory qualifying professional training, with some requiring continuing legal education.
- There is no distinction in any duty or obligation of lawyers when they engage in domestic work and cross-border work.
- In the majority of jurisdictions, a lawyer’s overriding duty is to the client, while in some jurisdictions, such as Australia, the paramount duty is to the court and the administration of justice and then the client.
- In a majority of jurisdictions, a lawyer is under a duty (often expressed in different ways with varying degrees of inquiry required under ‘mandatory duties’, and anti-money laundering and counterterrorism

18 Information was supplied by the bar associations and/or law societies of Belgium, Bosnia and Herzegovina, Colombia, the Czech Republic, England and Wales, Estonia, Fiji, Germany, Hungary, Japan, Lithuania, the Netherlands, Poland, Scotland, South Africa, South Korea, Sweden and Switzerland.

laws) to make certain inquiries, particularly to know and identify the ultimate client, to ask about the client's business and to ask about the identity and activities of any third-party intermediaries.¹⁹

- A lawyer's obligations last as long as the lawyer's mandate and, save for a continuing obligation of confidence, obligations cease when a mandate (or retainer) ceases.
- If conduct is suspected of being illegal on the basis of a lawyer having a reasonable belief as to the consequences of the conduct, then:
 - a lawyer should, and in some jurisdictions, must, inform the client that his/her conduct may be illegal;
 - if the conduct continues or is not adequately addressed by the client, the lawyer should give due and proper consideration to ceasing to act; and
 - if a lawyer has reasonable grounds to believe that his/her client's conduct constitutes anti-money laundering or counterterrorism financing, a report must be made by the lawyer, consistent with any statutory reporting obligation, to the relevant authority or professional organisation.
- There is generally no obligation on a lawyer to investigate whether conduct is legal or illegal in another jurisdiction, but in a number of countries, it is considered prudent to seek advice from a foreign lawyer when dealing with foreign jurisdiction issues.
- There is no obligation on a lawyer to disclose any aspect of offshore conduct or an offshore commercial transaction except if the lawyer's domestic anti-money laundering laws are triggered and require a suspicious transaction report.
- Activities performed by a lawyer in their capacity as an independent professional or as an 'intermediary' are not distinguished.

19 Eg, in the Netherlands, these inquiries are required under the by-laws of the legal profession. In Denmark, the inquiries are regulated by the EU Anti-Money Laundering Directives. In Hungary, the inquiries are a combination of mandatory duties (eg, the identity of the ultimate beneficiary) and anti-money laundering rules (inquiry about the client's business). In Japan, the Japanese Federation of Bar Associations has passed client identity verification rules and regulations.

- A number of respondents have criminal laws that require the reporting of certain financial crimes usually associated with money laundering, terrorism financing and the proceeds of crime (although some countries impose broader disclosure obligations on all citizens, including lawyers) where a suspicion of a financial crime exists,²⁰ while other countries require positive knowledge of a financial crime for a reporting obligation to be triggered.²¹
- In most jurisdictions, a lawyer is under no legal or ethical obligation to report conduct that the lawyer knows or suspects might involve bribery or corruption, tax evasion or any other serious crime, save for specific reporting obligations under anti-money laundering, counterterrorism financing and, most recently, Common Reporting Standard (CRS) and tax avoidance rules.²² In no jurisdiction does a disclosure obligation on a lawyer arise as a consequence of the use of the lawyer's work-product by the client for marketing or other purposes.
- In almost all jurisdictions, a lawyer's duty of confidentiality prevents any disclosure of conduct, information or facts learned by a lawyer during the client mandate, unless consent is given by the client, or a court order or specific legislation authorises disclosure (eg, anti-money laundering laws).

20 Bosnia and Herzegovina (Law on Criminal Proceedings), Colombia (Penal Code, Art 67), Czech Republic (Act No 253/2008 Coll, on proceeds of crime and terrorism financing), Fiji (Legal Practitioners Decree), Germany (Criminal Code and Money Laundering Act 2017), Lithuania (Law on the Prevention of Money Laundering and Terrorist Financing), Netherlands (Code of Criminal Procedure for certain offences), Poland (Criminal Code but advocates bound by professional secrecy and cannot disclose client conduct), Scotland (Criminal Justice and Licensing (Scotland) Act 2010; wide reporting obligations on all persons in Scotland), South Africa (Financial Intelligence Centre Act) and Sweden.

21 Denmark, England and Wales, Estonia, Germany, Hungary, Japan, South Korea and Switzerland.

22 England and Wales has the broadest reporting laws covering money laundering, terrorism financing, proceeds of crime and serious tax evasion. By contrast, Switzerland has no duty unless a lawyer was acting as a financial intermediary, and then any 'serious offence' has to be reported. Under the Fiji Financial Transactions Reporting Act, a Fiji lawyer must report suspicious transactions as lawyers are a 'financial institution' under the relevant act. The information provided by bar associations and law societies, however, pre-dates the adoption by the EU on 25 May 2018 of Directive 2018/822, amending Directive 2011/16/EU with respect to mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. The directive took effect on 25 June 2018 and requires 'intermediaries', including lawyers, to report transactions and arrangements that are considered by the EU to be potentially aggressive.

- A lawyer will be liable for intentional or inadvertent breach of confidentiality and may face disciplinary sanctions.
- If a lawyer learns of or receives illegally obtained information, in some countries, the lawyer should not use such information, should keep it confidential and should advise clients not to use it.²³ In other countries, there is no specific obligation, that is, there is nothing to prevent use being made of the information. Any use will be ultimately determined by a court under its own domestic rules.²⁴

4.4 Additional preparatory considerations of the Task Force are reflected in Annexure A. Annexure B summarises existing guidance concerning the role of lawyers with regard to international commercial structures, which were taken into account by the Task Force in formulating the Principles.

²³ Bosnia and Herzegovina, South Africa and South Korea.

²⁴ Colombia, Denmark, Fiji, Germany, Hungary, Scotland and Switzerland.

ANNEXURE A

THE TERMS OF REFERENCE QUESTIONS CONSIDERED BY THE TASK FORCE

- 1 In the terms of reference, the Task Force identified a number questions to be considered, arising out of the Task Force's work. This Annexure considers those questions, which feed into the Principles.

Question 1

- 2 Question 1 reads as follows:

What steps should lawyers and law firms take to satisfy themselves that they have:

- *sufficient knowledge of their client(s) and of the ultimate beneficiaries of their client's actions (including satisfying themselves in relation to knowledge obtained from a referring law firm or other legal professional); and*
 - *a proper and informed understanding of the purpose of the act or transaction upon which they are instructed to advise and that such act or transaction is not only lawful but also legitimate.*
- 3 The Task Force considers that when a lawyer²⁵ proposes to accept instructions in a cross-border commercial matter, particularly, but not exclusively, from a new client or a client with whom the lawyer has not worked for at least 12 months, the lawyer should, as minimum good practice and consistent with the lawyer's ethical and deontological obligations, undertake the steps outlined below:
 - Apply identified criteria to assess the risk profile of the client and of the lawyer undertaking the work or providing services.

In the absence of specific national laws, or regulations and/or guidelines issued by the competent bar associations, the risk criteria should reflect the *Guidance for Legal Professionals* (the '2008

25 As noted with regard to the main body of the report, references to individual lawyers should be interpreted as applying in the same way to law firms wherever relevant.

FATF Guidance’), Section 3 ‘Guidance for Legal Professionals on Implementing a Risk-Based Approach’ (or other established and current guidance criteria).

- As a minimum, the lawyer should:
 - identify the client;
 - make reasonable inquiries to identify any ultimate beneficiary of the conduct or services to be provided by the lawyer and the origin of the funds to pay a lawyer or fund a transaction;
 - if the client is referred to the lawyer by another lawyer, to obtain from such a lawyer any useful information as to the client profile and his/her activities, and independently verify the client and ultimate beneficiary;
 - make reasonable inquiries (with the proposed client) of the substantive nature of the transaction, including the taxation or revenue consequences sufficient to determine any conflict of interest issues and to assess whether the proposed conduct or transaction is legal;
 - where the transaction has significant tax implications or concerns areas in which the lawyer has no experience, specialisation or qualification, the lawyer should prudently advise the client to seek advice from an experienced lawyer, qualified in and who specialises in the relevant tax law or other area of concern;
 - if the proposed conduct or transaction appears to feature or include unusual circumstances (eg, the variable factors identified in the 2008 FATF Guidance, paragraphs 108–112, and the red flags outlined in Chapter 5 of the report *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals* (the ‘2013 FATF Report’)),²⁶ the lawyer should, at the expense of the client, consider seeking independent

26 In Australia, the money laundering agency, the Australian Transaction Reports and Analysis Centre (AUSTRAC), published its strategic analysis brief *Money Laundering Through Legal Practitioners*, 2015. See p 14 for a list of indicators of potential money laundering or terrorism financing activity relevant to Australian lawyers www.austrac.gov.au/sites/default/files/sa-brief-legal-practitioners.pdf accessed 9 May 2019.

- verification of the instructions provided by the client; should the client refuse to cover the cost of such verification, the lawyer should give due and proper consideration to ceasing to act;
- where part of the conduct or transaction occurs in another jurisdiction, including the country of origin of the client or of the funds used to finance the transaction, the lawyer should prudently advise the client to seek advice from a lawyer in that jurisdiction as to the legality of the proposed conduct or transaction; and
 - if after all reasonable inquiries, the lawyer cannot be satisfied that the proposed conduct or transaction (of the client) is legal or there remains uncertainty as to the legality of the proposed conduct or transaction and the client intends to pursue its original course of action, the lawyer should give due and proper consideration to declining to act.
- Where the conduct or transaction occurs in a high-risk foreign jurisdiction, or a client or any party associated with a client is a high-profile individual (eg, a ‘politically exposed person’²⁷), the lawyer should conduct a more detailed form of due diligence regarding the nature and purpose of the transaction to satisfy himself/herself that the conduct or transaction, and the goals pursued with the latter, are legal.

27 Politically exposed persons (PEPs) are defined as follows in the glossary of FATF recommendations:

Foreign PEPs: individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.

Domestic PEPs: individuals who are or have been entrusted domestically with prominent public functions, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.

International organisation PEPs: persons who are or have been entrusted with a prominent function by an international organisation refers to members of senior management... *i.e.* directors, deputy directors and members of the board or equivalent functions.’

The definition of PEPs is not intended to cover middle-ranking or more junior individuals in the foregoing categories.

The *FATF Guidance on Politically Exposed Persons* is available at www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf accessed 9 May 2019.

- 4 In making a decision whether to accept a client's instructions in cross-border transaction work, a lawyer should carefully assess the risk factors in order to determine the client's risk profile and whether the lawyer should accept the client's instructions. A detailed record should be kept of this determination in the event that the conduct of the lawyer is called into question.
- 5 While a lawyer cannot and should not be expected to monitor a client like a law enforcement agency, it is important that, in cross-border transactions, the lawyer maintains an awareness of the conduct and the transaction, how events and circumstances may change, and whether changes during the course of a transaction may impact adversely on the client's risk profile. In undertaking such monitoring, it is likely that automated processes cannot not fully capture changes in a client's risk profile. Therefore, a lawyer should maintain ongoing contact with the client and an open and transparent dialogue on the transaction, and encourage the client to cooperate in this respect.
- 6 Furthermore, appropriate training should be made available for the lawyer(s) involved to detect any changes that need to be considered. More generally, training and awareness programmes on lawyers' ethical duties and legal obligations should be ensured.

Question 2

- 7 Question 2 reads as follows:

What steps, if any, should lawyers take in the event that acts or transactions previously legal become illegal as a result of a change of law?
- 8 Consistent with existing professional and legal obligations and assuming the lawyer's retainer with the client is current, the lawyer should:
 - identify and determine the client's course of conduct;
 - identify the extent to which the client's proposed course of conduct is or may be illegal;
 - advise the client of the consequences of engaging in such conduct and counsel the client to pursue options that do not involve potentially illegal conduct;

- if the client declines to follow such advice and determines to pursue the original course of conduct, the lawyer should give due and proper consideration to ceasing to act; and
- if the lawyer is subject to any anti-money laundering or counterterrorism financing or other mandatory reporting obligations, the lawyer should consider whether the client's conduct gives rise to any suspicious conduct that might trigger a reporting obligation under law.

Question 3

9 Question 3 reads as follows:

What are the law firm's obligations when conflicting sovereign laws apply in cross-border transactions? What should be the result when notwithstanding the best efforts of the law firm, the client engages in activities that are legal in one jurisdiction but not legal in another jurisdiction?

- 10 Domestic professional and legal obligations are imposed on a lawyer in the jurisdiction where the lawyer practices law. In the case of international law firms, these obligations may also be framed by the rules applicable in the jurisdictions where the law firm operates. As a general principle, laws of one jurisdiction, absent an extraterritorial effect, do not apply to persons in another jurisdiction.
- 11 If a client engages in conduct that is legal in the lawyer's jurisdiction and has no implications in other jurisdictions, there is no issue to address.
- 12 If a client engages in conduct that, to the lawyer's reasonable knowledge, is not or may not be legal in another jurisdiction and questions about the illegality of the conduct are known or suspected by the lawyer, the lawyer should act as outlined in the answer to Question 2.
- 13 Importantly, where there are questions about whether conduct in one jurisdiction is or is not legal, the lawyer should advise the client to seek independent advice from an experienced lawyer in that jurisdiction (at the client's cost). If the client declines to seek that advice and determines to pursue the proposed course of conduct that might result in it being characterised as illegal, the lawyer should act in accordance with the answer to Question 2.

Question 4

14 Question 4 reads as follows:

What is the legal professional's role, if any, in combatting corruption, tax evasion, money laundering and terrorism financing, taking into account professional duties of lawyers and the role that such duties play in preserving the rule of law?

15 While the primary role in fighting corruption, terrorism financing, tax evasion and money laundering lies with governments, lawyers also have a role to play. A lawyer's professional role must be consistent with the lawyer's general obligations to the client and to advise the client to act in a manner consistent with the law wherever the client conducts business.

16 In many jurisdictions, a lawyer's primary obligation is to protect and act in the best interest of the client. In some jurisdictions (eg, Australia), the primary duty is first to the court and the administration of justice and then the client. In almost all jurisdictions, a lawyer is under a duty of confidentiality to keep confidential the affairs of a client. If such affairs are disclosed without a court order or the client's consent, civil and/or criminal sanctions may be imposed on the lawyer.

17 However, by the very nature of a lawyer's professional functions, a lawyer is in a unique position to detect, identify, prevent or even facilitate illegal conduct. Accordingly, a lawyer should advise his/her clients to act consistently with anti-corruption, tax evasion and anti-money laundering and terrorism financing laws that apply to the client, where relevant. To the extent that a lawyer perceives that a client will act inconsistently with such laws, the lawyer should act as outlined in the answer to Question 2.

Question 5

18 Question 5 reads as follows:²⁸

What use, if any, may be made of information illegally garnered by the client and what liability do lawyers have for inadvertent breach of client confidentiality?

28 In the context of this question, the focus is on information obtained for or sought to be disclosed in connection with judicial or arbitral proceedings.

- 19 This question involves two issues, each of which should be considered separately. The first is whether and, if so, to what extent a lawyer may make use of information illegally obtained by a client. The second is what liability a lawyer may face for an inadvertent breach of client confidentiality in connection with such illegally obtained information.
- 20 There appears to be little consistency internationally, other than silence, regarding the extent to which a lawyer (and a client) can make use of illegally garnered information. The general prevailing practice seems to be that, while a lawyer should not make use of such information and should advise the client to act accordingly, it is up to the individual lawyer to assess the position, depending on the circumstances, and leave it to a court to rule on the admissibility of such evidence. However, by contrast, in some countries, like Germany, there are specific rules to be complied with.
- 21 Such openness tends to support the view that, if a lawyer thinks it is in the client's best interest to make use of such information, a client or lawyer can make use of the information subject only to a court allowing it (assuming legal proceedings eventuate).
- 22 There are perhaps three alternative approaches to how and the extent to which illegally obtained information can be used, with the weight of support favouring the third approach:²⁹
- If evidence is relevant, it cannot be excluded if it was obtained by illegal conduct.
 - If evidence was obtained by illegal conduct, it is never admissible.
 - If evidence is obtained by illegal conduct, it is a matter for a court to determine its admissibility, subject to normal judicial appeal rights.
- 23 The Task Force believes that there should be clear laws in all jurisdictions to cover this topic, particularly as the practice of obtaining information through illegal means is becoming increasingly widespread internationally.

29 A very useful comparative analysis is in Gamini Lakshman Peiris, 'The Admissibility of Evidence Obtained Illegally: A Comparative Analysis' (1981) 13.2 *Ottawa Law Review* 309–344.

24 As a matter of general principle under English law, ‘it matters not how you get it: if you steal it even, it would be admissible in evidence’.³⁰ However, the current view is not as simple as that, and while there might be a general discretion available to courts, there are some circumstances in which there is (or perhaps more accurately should be) no discretion. Section 78 of the United Kingdom Police and Criminal Evidence Act 1984 is a good example of the approach often adopted in common law jurisdictions. It reads as follows:

‘78 – Exclusion of unfair evidence

- (1) In any proceedings, the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.
- (2) Nothing in this section shall prejudice any rule of law requiring a court to exclude evidence.’

25 The ordinary approach under UK law is that the court weighs prejudicial effect against probative value.³¹ The UK courts take into account the effects of the European Convention on Human Rights. For example, Article 3 provides that evidence obtained by torture must be excluded as a breach of fundamental human rights and Article 6 provides for the right to a fair trial. Some commentators have suggested that UK law should be more transparent in its approach, articulating clearly those breaches of fundamental rights that would lead to the automatic exclusion of evidence obtained by such breaches.³² However, the general approach

30 *R v Leatham* (1861) 8 Cox CC 498, per Crompton J.

31 See *R v Sang* [1980] AC 402 [1979] Crim LR 655; *Delaney* (1989) 88 Cr App R 338 and *A v Secretary of State for the Home Department* [2005] UKHL 71; [2006] 2 AC 221.

32 Meg Gibson, ‘Illegally or Improperly Obtained Evidence: Does It Matter How You Get It?’ (Cambridge University Law Society, 17 January 2018) <https://culs.org.uk/per-incuriam/legal-updates/illegally-improperly-obtained-evidence-matter-get> accessed 9 May 2019. Also note *Reference; He Majesty’s Advocate v P (Scotland)* [2011] UKSC 44, where the UK Supreme Court held (at [28]) that there was no absolute rule of exclusion; rather in that case, it was a question for the trial judge whether, if the Crown was to lead and rely on the contested evidence about the telephone conversation, the accused would, in all the circumstances, be deprived of his fundamental right under Art 6(1) to a fair trial.

is that there is no exclusionary rule; rather, it is the court's discretion to balance prejudicial effect against probative value.

- 26 The introduction of laws reflecting the above would, in the Task Force's view, create a legal framework in which lawyers, bar associations and law societies, governmental authorities and public administrations, each one within their own remit, can operate with a degree of certainty and consistency.
- 27 On the other hand, the extent to which a lawyer may be liable for the use of inadvertently disclosed confidential information is reasonably clear. In almost all jurisdictions surveyed by the Task Force, a lawyer is liable for the use of a client's confidential information inadvertently disclosed and received by him/her or made available to him/her by the client to the extent he/she was or should have been aware that such disclosure was inadvertent. The liability arises in professional conduct rules. The example in Australia is set out below:³³

'31 Inadvertent disclosure

31.1 Unless otherwise permitted or compelled by law, a solicitor to whom material known or reasonably suspected to be confidential is disclosed by another solicitor, or by some other person and who is aware that the disclosure was inadvertent must not use the material and must:

31.1.1 return, destroy or delete the material (as appropriate) immediately upon becoming aware that disclosure was inadvertent, and

31.1.2 notify the other solicitor or the other person of the disclosure and the steps taken to prevent inappropriate misuse of the material.

31.2 A solicitor who reads part or all of the confidential material before becoming aware of its confidential status must:

31.2.1 notify the opposing solicitor or the other person immediately, and

31.2.2 not read any more of the material.

31.3 If a solicitor is instructed by a client to read confidential material received in error, the solicitor must refuse to do so.'

33 Rule 31, Legal Profession Uniform Australian Solicitors' Conduct Rules 2015.

- 28 Using the Australian example referred to above, if a lawyer inadvertently discloses confidential client information, the lawyer is likely to be in breach of the lawyer's paramount duty to the court and to the administration of justice. The lawyer may also be in breach of the lawyer's ethical duties or be considered to have otherwise engaged in disreputable conduct. Where a lawyer's primary duty is to the client, this duty may compel a lawyer to seek out and/or use illegally obtained information to advance the client's best interest (perhaps only with a court intervening if there is a domestic legal basis to do so).
- 29 The Task Force considers that it is desirable that all jurisdictions should have clear laws and professional obligations detailing the extent to which a lawyer can use illegally obtained client information, including professional rules that cover such conduct, and the sanctions that apply if a lawyer acts in breach of the laws or professional rules.

Question 6

- 30 Question 6 reads as follows:

How can governments clarify the legality of transactions or companies' disclosure requirements relating to such transactions (ie, re beneficial ownership) in order to reduce uncertainties with respect to the issues considered above?

- 31 In May 2016, up to 43 countries attended the Anti-Corruption Summit hosted by the UK Government. In the communiqué published at the conclusion of the summit, the signatory countries made the following statements:

*'We will enhance transparency over who ultimately owns and controls (companies, other legal entities and legal arrangements), to expose wrongdoing and to disrupt illicit financial flows... we will ensure accurate and timely basic and beneficial ownership information (including legal ownership information) is collected, available and fully accessible to those who have a legitimate need for it... it may include establishing public central registers... we will work towards ensuring the effective exchange of beneficial ownership information, in line with applicable data protection laws and rules, both domestically and internationally, and between authorities, including tax authorities, asset recovery offices, financial intelligence units, law enforcement and anti-corruption agencies.'*³⁴

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- 34 The FATF defines a beneficial owner as the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

- 32 Progress since the summit has been mixed. While countries such as the British Virgin Islands, Denmark, and, most recently, Indonesia,³⁵ Norway and the UK,³⁶ as well as the European Union more generally,³⁷ have moved to introduce reforms to establish beneficial ownership registers or, for the EU, to encourage Member States to address the issue, many have not in fact done so.³⁸ Some countries undertook to engage in a process of public consultation.³⁹ In addition, in response to a longstanding fundamental gap in the United States system, the authorities introduced a new rule that came into force in May 2018 requiring banks and other financial institutions to identify and verify the beneficial owner of legal entities, with a regulatory definition of beneficial owner.⁴⁰
- 33 In relation to international data-collection initiatives, for example, in 2017 the Group of Twenty (G20) published *High-Level Principles on Beneficial Ownership* calling for a timely exchange of data with international counterparts.⁴¹ In addition, the FATF has had a long history of taking action to facilitate transparency and timely access to beneficial ownership information on legal persons and legal arrangements. For example, in 2003, the FATF became the first

35 Wilda Asmarini, Maikel Jefriando, Fergus Jensen and Gayatri Suroyo, 'Indonesia issues rules on company ownership to tackle money laundering' *Reuters* (London, 7 March 2018), where it was reported that Indonesia had issued rules requiring corporations to reveal details of beneficial ownership to the government to be updated once a year and open to the public upon request, as part of efforts to tackle money laundering and terrorism financing www.reuters.com/article/us-indonesia-companies-rules/indonesia-issues-rules-on-company-ownership-to-tackle-money-laundering-idUSKCN1GJ0I2 accessed 9 May 2019.

36 Part 21A of the Companies Act 2006 (UK) and the Register of People with Significant Control Regulations 2016.

37 Directive (EC) No 2015/849 of the European Parliament and of the Council dated 20 May 2015.

38 Law Library of Congress, Global Legal Research Center, *Disclosure of Beneficial Ownership in Selected Countries*, July 2017 www.loc.gov/law/help/beneficial-ownership/disclosure-beneficial-ownership.pdf accessed 9 May 2019.

39 The Australia country commitments arising from the summit stated that 'Australia is committed to exploring, via public consultation, options for a beneficial ownership register for companies'. As part of the Australian Government's Open Government Partnership, it undertook a public consultation in February and March 2017, receiving a range of submissions. The Australian Government is yet to respond to the consultation process, while submissions are available at <https://treasury.gov.au/consultation/increasing-transparency-of-the-beneficial-ownership-of-companies> accessed 9 May 2019.

40 Financial Crimes Enforcement Network, *Customer Due Diligence Requirements for Financial Institutions* www.fincen.gov/resources/statutes-regulations/federal-register-notices/customer-due-diligence-requirements accessed 9 May 2019.

41 International Monetary Fund, *G20 Data Gaps Initiative, Global Conferences on DGI*, 20 June 2017 www.imf.org/external/np/seminars/eng/dgi/index.htm accessed 9 May 2019.

international body to establish international standards on beneficial ownership that focus on the legal requirements for financial institutions and other gatekeepers to collect and verify information on the ownership of legal persons and arrangements, and on measures to ensure that reliable information on their beneficial ownership is available to investigators. In 2012, the FATF strengthened its standards on beneficial ownership, providing clarity about how countries should ensure information is available. The revised standards also distinguished between basic ownership information (concerning the immediate legal owners of a company or trust), and beneficial ownership information (concerning the persons who ultimately own or control it). The FATF followed up by issuing *Guidance on Transparency and Beneficial Ownership* in 2014 to further clarify what the FATF standards require. In addition, the Financial Stability Board has guidelines to identify ‘who is who’ and ‘who owns whom’ in the financial system, for which all financial entities must have a legal entity identifier – a 20-digit, alphanumeric code based on the International Organization for Standardization (ISO) 17442 standard for legal entities.⁴²

- 34 Under the Argentinian presidency of the G20 in 2018, the G20 called for the establishment of a global framework for enabling data exchange, cross-referencing, tracing and analysing beneficial owner data on cross-border financial transactions.⁴³ Moreover, in July 2018, the FATF and the Egmont Group of Financial Intelligence Units released a report assessing the vulnerabilities linked to the concealment of beneficial ownership in order to support further risk analysis by governments, financial institutions and other professional service providers.⁴⁴
- 35 In some jurisdictions, listed entities may already satisfy disclosure requirements under domestic listing rules and other corporation law requirements, while, by contrast, the position for non-listed entities appears less certain. Business commentators highlight what they describe

42 Global Legal Entity Identifier Foundation, ‘Introducing the Legal Entity Identifier (LEI)’ www.gleif.org/en/about-lei/introducing-the-legal-entity-identifier-lei accessed 9 May 2019.

43 K N Vaidyanathan, Akshay Mathur and Purvaja Modak, ‘A *Global Framework for Tracing Beneficial Ownership*’ (G20 Insights, 23 July 2018) at www.g20-insights.org/policy_briefs/a-global-framework-for-tracing-beneficial-ownership accessed 9 May 2019.

44 See n 17 above.

as a corporate reluctance to incur extra compliance or disclosure costs for little perceived benefit (a so-called ‘corporate cost-benefit analysis’). Associations of directors and shareholders prefer any disclosure obligation to fall on the person or entity holding the ‘beneficial interest’. The submission by the Law Council of Australia to the Australian Government consultation process captures the overall sentiment:⁴⁵

‘The Law Council considers Australian governments need to holistically examine what information is called for across all levels of government; what verification, due diligence and reporting burdens are being placed on business and the regulated community in assembling and supplying that information; whether the compliance burdens and disclosure obligations are reasonable and proportionate; whether the privacy of individuals is being respected and protected; whether government agencies are maximising efficiency in the way they store, analyse and share that information; and whether the revenue and law enforcement objectives are being achieved.’

- 36 The question of the public or non-public disclosure of beneficial ownership clearly requires significant political leadership and will. Similarly, the question of who precisely should be able to access non-public lists requires political decisions. The Task Force recognises that the question of the disclosure of beneficial ownership as a means to help target illicit financial flows and tax evasion is complex, in particular, regarding how and when that occurs, what governments and parliaments can and will require of its business community or facilitators, and the efficient use and understanding of existing data.

The Task Force considers these are key issues to be pursued in all countries and would benefit from coordination, through frameworks proposed and created by the G20, the FATF or OECD in consultation and coordination with bar associations and law societies, and governments, in order to achieve consistency in approach.

⁴⁵ Law Council of Australia, *Increasing Transparency of Beneficial Ownership of Companies*, 27 March 2017 <https://static.treasury.gov.au/uploads/sites/1/2017/10/c2017-t227751-Law-Council-of-Australia.pdf> accessed 9 May 2019.

Question 7

37 Question 7 reads as follows:

What are lawyers' obligations under different legislations and professional ethical rules:

- *when conduct occurs (by a client instructing a lawyer or a lawyer carrying out or implementing the client's instructions) that may constitute or contribute to a criminal offence; and*
- *when advertising legal services in connection with the use of corporate structures, such as the opening of offshore accounts, which have the potential to be used to conceal criminal offences;*

and can experience with any existing set of rules be used in developing recommendations as set out above?

38 The question of what obligations are imposed on a lawyer (carrying out the client's instructions) in circumstances in which the conduct constitutes, or the lawyer has reasonable grounds to believe that it constitutes, a criminal offence are simple to state and vary depending on the jurisdiction.

- The lawyer is under a duty to inform the client that the client's conduct (or that of the lawyer carrying out the client's instructions) is or may amount to a criminal offence.⁴⁶
- The lawyer should advise the client to change the conduct to ensure the conduct is not criminal.
- If the client declines or refuses to change the conduct and the lawyer has reasonable knowledge as to the nature of the conduct, the lawyer should give due and proper consideration to whether the lawyer should cease to act.
- If the conduct triggers a reporting obligation under anti-money laundering, counterterrorism financing or other laws and

46 While this duty exists in a number of jurisdictions surveyed by the Task Force (Bosnia and Herzegovina, Colombia, Denmark, England and Wales, Hungary, Poland and South Korea), there were some jurisdictions where no such duty exists (Germany and Scotland).

regulations, then the lawyer must make such a report to the relevant authority.

- The lawyer must not engage in conduct that, of itself, is criminal, as he/she will face potential direct criminal liability.
- If a lawyer continues to act for a client and the client engages in criminal conduct, the lawyer is at risk of being indirectly associated with such conduct and may face personal liability for aiding and abetting in the commission of the crime.

39 Where a lawyer is permitted to advertise legal services in a jurisdiction, the lawyer and law firm must do so with truthful, accurate advertising.⁴⁷ If the advertised services involve the use of corporate structures and the use of offshore banking accounts or facilities (which by themselves are legal), there is no express duty on the lawyer, other than to act consistently with the lawyer's general obligations, however, applying heightened due diligence where the risk profile of the client or transaction requires it.

47 As an example, Rule 36 of the Legal Profession Uniform Law Australian Solicitors Conduct Rules 2015 states, in substance, that a lawyer must ensure that any advertising, marketing or promotion in connection with the lawyer (or firm) is not false, misleading or deceptive, or likely to mislead or deceive, or be offensive or prohibited by law.

ANNEXURE B

EXISTING GUIDANCE CONCERNING THE ROLE OF LAWYERS WITH REGARD TO INTERNATIONAL COMMERCIAL STRUCTURES

Professional rules

A lawyer's conduct is generally regulated by a complex and detailed set of professional and legal obligations. Professional rules and regulations usually cover the conduct of a lawyer, generally, with clients and other lawyers, how to behave in court and the extent to which any conduct might give rise to allegations that amount to misconduct or unprofessional conduct warranting sanction. Lawyers usually have prescribed rules covering how client or other funds are dealt with and recorded in general accounts, in trust accounts or in any authorised investments.

While varying between jurisdictions, these rules and regulations can be said to have the following critical features:

- Communications between a lawyer and client are confidential and cannot be disclosed absent client consent or laws authorising disclosure, and confidentiality is a duty of the lawyer and a right of the client.
- A lawyer must not engage in conduct that compromises the lawyer's integrity, or demonstrates that the lawyer is not a fit and proper person, under applicable laws and regulations or professional rules, to practice law.
- The extent of professional duties of a lawyer arise upon engagement (or accepting instructions) and cease when the retainer ceases, there being no ongoing duty or ethical responsibility once a lawyer ceases to act (although the duty of confidence remains in most jurisdictions).
- A lawyer is not obliged to report on the conduct of a client (in any jurisdiction) unless there is a clear obligation imposing a reporting requirement on the lawyer.

Depending on the jurisdiction, a lawyer's primary duty is to the client and/or to the court and the administration of justice.

The professional regulation of lawyers is usually carried out by bar associations and/or law societies in a relevant jurisdiction.⁴⁸

International standards

The FATF has focused on examining the increasing trends of money laundering and terrorism financing as a feature of the flow of illicit funds since the mid-2000s.

In October 2008, the FATF published the 2008 FATF Guidance, a risk-based analysis and guide for countries and lawyers in terms of how they should manage their business and their relationships with clients.

Some findings of particular relevance are set out below:

- Lawyers are members of a regulated profession, and are bound by their specific professional rules and regulations, with their work being fundamental to the promotion of and adherence to the rule of law.⁴⁹
- The risk-based guidance principles are subject to a lawyer's obligation of professional secrecy and to a client's right of legal professional privilege.⁵⁰
- Many lawyers already have an obligation to identify their client and understand the substance of a transaction in order to formulate their advice.⁵¹
- Where a lawyer is unable to comply with applicable due diligence requirements concerning the identity of a client, work or services should not be provided or an existing retainer should be terminated and the lawyer 'should consider making a suspicious transaction report in relation to the customer'.⁵²

48 Eg, in Germany, the Federal Bar Association under the supervision of the Federal Ministry of Justice regulates lawyers. The German Lawyers' Parliament determines professional conduct rules and the Statutory Assembly reviews any amendments to the Federal Lawyers Act. In Switzerland, lawyers' duties are set out in the Federal Public Law and the Lawyers Law, the Rules of Professional Conduct and various Canton lawyers' acts (eg, the Cantonal Supervisory Authority for Lawyers). In Japan, the Duties in the Attorney Act and the Basic Rules on the Duties of Practising Attorneys sets out the framework, with the Japanese Federation of Bar Associations and 52 local bar associations acting as the regulatory agencies for lawyers in Japan.

49 2008 FATF Guidance, para 11.

50 2008 FATF Guidance, paras 11 and 14.

51 2008 FATF Guidance, para 19.

52 2008 FATF Guidance, para 85.

- Given the size, type and activities of lawyers from sole practitioners to large multinational law firms, how each lawyer responds to that lawyer's risk profile may vary considerably, and the lawyer should focus on a 'reasonable and proportionate risk assessment' based on commonly accepted risk criteria – country or geographic risk, client risk and risk associated with the service to be offered or provided.⁵³

The 2008 FATF Guidance called for member countries and national legal bodies to address the increasing problems associated with money laundering and terrorism financing as a feature of financial and commercial transactions. Some countries have imposed anti-money laundering and counterterrorism financing reporting obligations and associated due diligence requirements on lawyers if relevant suspicious conduct is known to a lawyer.⁵⁴ In other countries, there is no such reporting obligation.

Indeed, some country professional law bodies express fundamental opposition to the notion that lawyers should be recruited as agents for law enforcement authorities by any forced disclosure of confidential and/or privileged communications. The Law Council of Australia put it this way in terms of its opposition to lawyers in Australia being designated as a relevant 'reporting entity' under Australia's anti-money laundering laws:⁵⁵

'Yet the obligation to report suspicious matters conflicts with the lawyer's duty to keep information about the client's affairs secret and could also interfere with the operation of the privilege (client legal privilege or legal professional privilege as the terms are used in Australia)... effectively by the client disclosing the information (to a lawyer), pursuant to the AML/'

53 2008 FATF Guidance, paras 106 and 111–112.

54 Eg, the anti-money laundering laws in Bosnia and Herzegovina, England and Wales, Poland, South Africa and Sweden require lawyers to report suspicious transactions. In many other countries, there is no obligation to report conduct under relevant anti-money laundering laws (eg, Australia and Switzerland), or if an obligation arises, it is an obligation to inform the client about the conduct and cease acting if the client persists with the relevant conduct. Numerous professional rules simply require a lawyer to ensure that he/she does not act illegally and cease acting if a transaction involves potentially criminal conduct (eg, South Korea).

55 Law Council of Australia, *Anti-Money Laundering Guide for Legal Practitioners*, January 2016, pp 20 and 21. It should be noted that, while a lawyer must report any 'significant cash transaction' (in excess of AU\$10,000) pursuant to the Financial Transaction Reports Act 1988 (Cth), lawyers are generally excluded from providing a 'designated service' under Australia's anti-money laundering laws (the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)), save for lawyers involved in the provision of mortgages or the operation of mortgage investment schemes.

CTF reporting obligations a lawyer would be statutorily compelled to become an agent of law enforcement authorities, a role that is inherently inconsistent with the lawyer's obligations to the client.'

It might be said that such disclosure is inconsistent with the very foundation of the common law criminal law principle that no person (directly or indirectly through a lawyer) need give self-incriminating evidence about his/her own conduct and may remain silent as to whether he/she committed any offence, that being for the prosecution to prove beyond reasonable doubt.

In 2011, the IBA published *International Principles on Conduct for the Legal Profession* with a comprehensive Commentary (the 'IBA Principles'). While each professional association regulating lawyers has its own ethical and professional conduct rules, the IBA Principles focus on the following:

1. independence – a lawyer is to give a client unbiased and independent advice and representation;
2. honesty, integrity and fairness – a lawyer shall at all times act with the highest standards of honesty, integrity and fairness towards the client, court, other lawyers and all those with whom the lawyer comes into contact;
3. conflict of interest – a lawyer shall not act where a client's interests conflict with the interests of the lawyer, another lawyer or another client unless permitted by local professional rules;
4. confidentiality and secrecy – a lawyer shall at all times keep confidential the affairs of present or former clients unless authorised to disclose such information by the client or any applicable national law; and
5. client's interests – a lawyer shall treat the client's interests as paramount, subject to no conflict with the lawyer's professional duties to the court and the interests of justice, to observe the law and to maintain ethical standards.

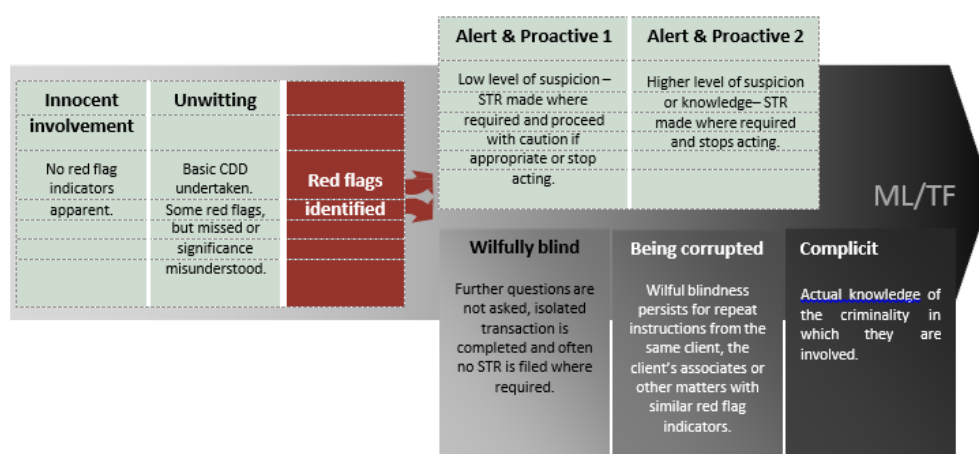
The IBA is currently reviewing the above principles and, with specific regard to IBA Principles four and five, considering whether changes to the commentary might be necessary to reflect the wider debate outlined in this report.

In June 2013, the FATF published the 2013 FATF Report, which concluded that criminals seek out the involvement of legal professionals in their criminal

activities, sometimes because a legal professional is required to complete certain transactions, and sometimes to access specialised legal and notarial skills and services that could assist the laundering of the proceeds of crime and the funding of terrorism. The 2013 FATF Report identifies a number of money laundering and terrorism financing methods that commonly employ or, in some countries, require the services of a legal professional. Inherently these activities pose significant risk, and when clients seek to misuse the legal professional’s services in these areas, even law-abiding legal professionals may be vulnerable. The methods are:

- misuse of client accounts;
- purchase of real property;
- creation of trusts and companies;
- management of trusts and companies;
- managing client affairs and making introductions;
- undertaking certain litigation; and
- setting up and managing charities.

The 2013 FATF Report concluded that, from reviewing the case studies and literature as a whole, the involvement of lawyers in the money laundering of their clients is not as stark as complicit or unwitting; rather, it can be described as a continuum, illustrated in the diagram below.⁵⁶



⁵⁶ The 2013 FATF Report, p 5.

In late 2017, the FATF determined to revise its 2008 guidance, and a revised guidance for lawyers, accountants and trust company service providers is expected in mid-2019.

In late 2017, the European Parliament published its *Recommendation following the inquiry on money laundering, tax avoidance and tax evasion*.⁵⁷ While noting the apparent lack of political will among its Member States to adequately address these issues,⁵⁸ the European Parliament made several statements. The Task Force notes, however, that the reactions of bar associations and law societies to these statements have been critical to date. The statements made by the European Parliament are set out below:

- The European Parliament called for a simplification of tax systems in order to ‘prevent and combat tax avoidance and aggressive tax planning, which may be legal, but are contrary to the spirit of the law’.⁵⁹
- It recognised the need for guidance on a clear distinction between what is illegal and what is legal, even if it runs counter to the spirit of the law, to ensure legal certainty for all concerned.⁶⁰
- While the European Parliament recognised that a lawyer’s duty of confidentiality needed to be balanced with appropriate reporting of suspicious transactions, it noted that it should be without prejudice to, for example, the rights guaranteed by the Charter of Fundamental Rights of the EU and the general principles of criminal law.⁶¹
- In relation to lawyers:
 - Professional secrecy cannot be used for the purposes of protection, or the covering up of illegal practices or violating the spirit of the law.⁶²

57 European Parliament recommendation of 13 December 2017 to the Council and the Commission following the inquiry into money laundering, tax avoidance and tax evasion (2016/3044(RSP)), P8_TA-PROV(2017)0491.

58 *Ibid* clause 9. It should be noted that under the OECD/G20 Inclusive Framework on BEPS, over 125 countries and jurisdictions are collaborating to tackle tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations, known as base erosion and profit shifting (BEPS) measures. See www.oecd.org/tax/beps accessed 9 May 2019.

59 *Ibid* para 3.

60 *Ibid* para 64.

61 *Ibid* para 125.

62 *Ibid* para 138. However, it is unclear how anyone, let alone a lawyer, could be prosecuted for conduct that, while legal, was not in the ‘spirit of the law’. Any such offence would clearly be a radical departure from existing laws and practices, and not one supported by the Task Force.

- Legal professional privilege should not impede adequate reporting of suspicious transactions, which may be required by relevant national laws (to the extent they exist).⁶³
- There should be a clear demarcation line ‘between traditional judicial (legal) advice and lawyers acting as financial operators’.⁶⁴
- An intermediary that is not required to disclose information on a CRS avoidance arrangement or offshore structure due to the obligations of legal professional privilege is required, however, to notify the tax administration of that fact and notify any reportable taxpayer of its disclosure obligations.
- Where lawyers fall outside their specific duties of defence, legal representation or legal advice, they should be required, for the protection of public order, to inform the authorities of certain information that they are aware of.⁶⁵
- Lawyers should be held legally co-responsible when ‘designing tax evasion and aggressive tax plans punishable by law; and money laundering schemes... when they take part in fraud, they must systematically be liable for both penal sanctions and disciplinary measures’.⁶⁶

In March 2018, the OECD published *Mandatory Disclosure Rules for Addressing CRS Avoidance Arrangements and Offshore Structures* (the ‘OECD Model MDR’), which states that information published in the Panama and Paradise Papers ‘demonstrate that professional advisers and other intermediaries continue to design, market or assist in the implementation of offshore structures and arrangements that can be used by non-compliant taxpayers to circumvent the correct reporting of relevant information to the tax administration of their jurisdiction of residence’.

The OECD Model MDR was developed in response to a request from the Group of Seven (G7) and was adopted by EU Member States under EU Directive 2018/822, which took effect on 25 June 2018. National transposition measures

63 *Ibid.*

64 *Ibid.*

65 *Ibid* para 139.

66 *Ibid* para 140.

are due to be in place by 31 December 2019, with the first regular automatic exchange of information due to take place by 31 October 2020.

The OECD Model MDR is based on the framework developed under Action 12 of the Action Plan on Base Erosion and Profit Shifting (BEPS). While these model rules do not form part of the CRS itself, they are expected to be taken into account in assessing whether a country has met its commitment to implement anti-abuse rules to prevent the circumvention of the CRS reporting and due diligence procedures. The design of the applicable penalties is left to EU Member States.

A number of features emerge from the OECD Model MDR:

- They apply to certain arrangements that use an ‘opaque offshore structure’ or ‘CRS avoidance arrangement’ to avoid the disclosure of information such as financial accounts or beneficial ownership under the CRS.
- An obligation to disclose is placed upon an ‘intermediary’, being a person responsible for the design or marketing of the relevant arrangement or offshore structure (called a ‘promoter’) and those with a sufficient level of involvement in the design, marketing, implementation or organisation of such schemes (called a ‘service provider’ providing ‘relevant services’)⁶⁷ to be aware that the scheme is likely to be used to circumvent the CRS, or obscure or disguise the identity of the underlying beneficial owner.
- The definition of an intermediary is not limited to those involved in tax aspects of an arrangement. A restrictive definition would potentially exclude a range of intermediaries, such as investment advisers and lawyers, who do not provide tax advice or tax services.⁶⁸ The definition does not capture persons who only provide limited assistance in the implementation or organisation of an arrangement and could not reasonably be expected to be aware of the elements of an arrangement that have the effect of circumventing the CRS.⁶⁹

67 OECD Model MDR, p 18, where ‘relevant services’ covers any assistance or advice with respect to the design, marketing, implementation or organisation of an opaque offshore structure or a CRS avoidance arrangement.

68 *Ibid* para 44, p 33.

69 *Ibid* para 50, p 34.

For example, a lawyer that completes necessary filing formalities for transferring shares in a foreign company would not be expected to meet the definition, unless he/she had information that would lead a reasonable person to conclude the transfer was a step in implementing an arrangement that would be subject to the OECD Model MDR.⁷⁰

- Disclosure obligations are imposed on an intermediary and, in some instances, a ‘reportable taxpayer’. The following conditions arise, relevant to the role of a lawyer:
 - An intermediary must disclose all the steps and transactions that form part of or constitute the CRS avoidance arrangement or opaque offshore structure, including key details of the underlying investment, organisation and persons involved, and the relevant tax details of the client, reportable taxpayer and any other intermediaries.⁷¹

An intermediary is not required to disclose information concerning a CRS avoidance arrangement or opaque offshore structure where the information is protected from disclosure due to domestic professional secrecy rules, but only to the extent that disclosure would reveal confidential information as defined in the commentary to Article 26 of the OECD Model Tax Convention.⁷²

- An intermediary must give written notice to its domestic tax authority, and its client, that it has information of a CRS avoidance arrangement or opaque offshore structure that is not required to be disclosed.⁷³
 - The liability to report attaches automatically to every person that is an intermediary, but to the extent only to disclose information within that intermediary’s knowledge, possession or control.⁷⁴
- The OECD Model MDR commentary discusses the need for penalties on intermediaries and taxpayers to incentivise compliance with the

70 *Ibid* para 53, p 34.

71 *Ibid* para 65, p 37.

72 *Ibid* Rule 2.4, p 20.

73 *Ibid*.

74 *Ibid* Model Rules, Rule 2.3, p 20.

disclosure requirements. The penalty on an intermediary is suggested as a fixed rate or (if greater) a percentage of the fees paid to the intermediary for the services provided. The percentage rate should be set at a rate to remove any economic incentive to avoid disclosure.⁷⁵

The OECD Model MDR does not require a lawyer to disclose any information that is protected by legal professional privilege, or equivalent professional secrecy obligations. The same approach is reflected in Article 26 of the OECD Model Tax Convention and Article 21 of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. As noted in the BEPS Action 12 report, however, the type of confidentiality obligations that exist between lawyers and their clients are generally designed to protect a reportable taxpayer's or client's ability to obtain confidential legal advice. As such, domestic law in the jurisdiction of the intermediary may have the effect that some or all of the information required to be disclosed under the model rules will be covered by the relevant domestic rules on legal professional privilege. Such information would be excluded from the disclosure requirements, but only to the extent that an information request for the same information could be denied under Article 26 of the OECD Model Tax Convention and Article 21 of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

⁷⁵ *Ibid* Commentary, para 91, p 43.

ANNEXURE C

TERMS OF REFERENCE OF THE TASK FORCE ON THE ROLE OF LAWYERS AND INTERNATIONAL COMMERCIAL STRUCTURES

The recent unauthorised disclosure of a voluminous number of documents (the Panama Papers) from a law firm based in Panama has increased the importance of numerous questions to be asked about the role of lawyers in providing support for clients, some of whose activities may be alleged not to comply with applicable law or, sometimes, governmental objectives. Many governments and regulatory authorities have been considering changes to the regulatory environment that may affect the ongoing role of lawyers.

In line with the framework set out in the memorandum of understanding (MoU) between the IBA and the OECD dated 9 October 2012, the Secretary-General of the OECD and the President of the IBA have agreed to form a joint task force (the Task Force) to consider and make recommendations about some of the issues that arise from the activities of lawyers, including in connection with international transactions and structures.

The questions relating to privacy and security of data and information are important to law firms and all organisations. The Task Force shall not consider computer and data security. Also, privacy laws vary significantly around the globe, and the question of how to comply with these requirements that may vary between jurisdictions is for another body.

The suggested terms of reference for the Task Force will be focused on addressing issues that are likely to arise from the questions set out below, with the objective of developing a set of professional conduct and practice standards to be observed by the lawyers providing legal services, as well as suggestions to governments. These standards, once approved by the Task Force, are to be conveyed to the IBA member bars (and through them to other regulators) with a recommendation to the regulators to adopt them.

1. What steps should lawyers and law firms take to satisfy themselves that they have:
 - sufficient knowledge of their client(s) and of the ultimate beneficiaries of their client's actions (including satisfying themselves in relation to knowledge obtained from a referring law firm or other legal professional); and
 - a proper and informed understanding of the purpose of the act or transaction upon which they are instructed to advise, and that such an act or transaction is not only lawful but also legitimate.
2. What steps, if any, should lawyers take in the event that acts or transactions previously legal become illegal as a result of a change of law?
3. What are the law firm's obligations when conflicting sovereign laws apply in cross-border transactions? What should be the result when, notwithstanding the best efforts from the law firm, the client engages in activities that are legal in one jurisdiction but not legal in another jurisdiction?
4. What is the legal profession's role, if any, in combatting corruption, tax evasion, money laundering and terrorism financing, taking into account professional duties of lawyers and the role that such duties play in preserving the rule of law?
5. What use, if any, may be made of illegally garnered information and what liability do lawyers have for inadvertent breach of client confidentiality?
6. How can governments clarify the legality of transactions or companies' disclosure requirements to such transactions (ie, re beneficial ownership) in order to reduce uncertainties with respect to the issues considered above?
7. What are lawyers' obligations under different legislations and professional ethical rules:
 - when conduct occurs (by a client instructing a lawyer or a lawyer carrying out or implementing the client's instructions) that may constitute or contribute to a criminal offence;
 - when advertising legal services in connection with the use of corporate structures, such as the opening of offshore accounts, which have the potential to be used to conceal criminal offences; and
 - can experience with any existing set of rules be used in developing recommendations as set out above?

ANNEXURE D

COMPOSITION OF THE TASK FORCE

IBA members

Chair: IBA President (David Rivkin, Martin Šolc and Horacio Bernardes Neto)

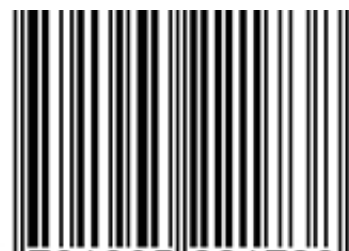
Name	Committee/Division	Country
Bar Issues Commission (BIC)		
Deborah Enix-Ross	BIC Vice Chair	US
Claudio Visco	Immediate Past Chair, BIC	Italy
Section on Public and Professional Interest (SPPI)		
Stephen Denyer	Immediate Past Chair, SPPI	England
Mariano Batalla	Law Firm Management Committee	Costa Rica
Marty Kovnats	Professional Ethics Committee	Canada
Steve Stevens	Professional Ethics Committee	Australia
Peter Binning	Anti-Money Laundering Working Group	England
Legal Practice Division (LPD)		
Peter Bartlett	LPD Vice Chair	Australia
Carola van den Bruinhorst	IBA/LPD Treasurer	The Netherlands
Jocelyn Kelley	Corporate and M&A Law Committee	Canada
Fabio Cagnola	Business Crime Committee	Italy
Jan Handzlik	Business Crime Committee	US
Robert Wyld	Anti-Corruption Committee	Australia
Pascale Dubois	Anti-Corruption Committee	US

OECD Secretariat members

Chair: Nicola Bonucci

Name	Function
Legal Directorate	
Natalie Limbasan	Legal Adviser
Centre for Tax Policy and Administration	
John Peterson	Economist/Policy Analyst
Directorate of Public Governance	
Julio Bacio Terracino	Deputy Head of the Public Sector Division
Chloé Lelievre	Policy Analyst, Governance Reviews and Partnerships Division
Directorate for Financial and Financial Affairs	
Sandrine Hannedouche-Leric	Senior Legal Analyst, Anti-Corruption Division
France Chain	Senior Legal Analyst, Anti-Corruption Division
Trade and Agriculture Directorate	
Rachel Bae	Senior Counsellor

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