

Anti-Money Laundering Risk Advisory: Trusts

When does this risk assessment apply?

While there are many legitimate uses of trusts for matters such as estate planning and asset management, members of the legal profession must be on guard against clients who wish to use such instruments for an improper or fraudulent purpose. Some criminals see trusts as potentially useful vehicles to hide the origin and ownership of assets.

Disguising the real owners and parties to a transaction is a necessary requirement for money laundering to be successful, and although there may be legitimate reasons for hiding ownership, it should be considered a red flag.

The use of trusts to purchase real property poses an increased risk that the trust will be used to obscure ownership and launder the proceeds of crime. Legal counsel who are asked to become involved in the management of a trust should be extremely wary, as this is a technique used by criminals to provide respectability and legitimacy to their activities.

Lawyers and Quebec notaries must strictly comply with client identification rules including the requirement to know their client and the source of the client's funds, and to understand the nature and scope of the retainer. Legal counsel must be satisfied on an objective basis that every transaction is legitimate, prior to acting or continuing to act.

What are risk factors?

To address the risks, lawyers should be on the lookout for suspicious circumstances, including the following when asked to create or be involved in the management of trusts:

Type of Risk	Description of Risk
<i>Client Risks</i>	The retainer involves a non-face-to-face transaction where the legal advisor has not previously met the client in-person.
	The client's reasons for selecting the legal advisor are unclear given the geographic location or practice area.
	The client offers to pay an unusually high fee for the services or to provide a substantial retainer that is excessive considering the scope of the retainer.
	The client or a party in the matter (or a family member or close associate) has a suspected or known history of drug trafficking, money laundering, actions resulting in civil forfeiture, loansharking, fraud, high-stakes gambling or similar activity.
	The legal advisor experiences difficulty obtaining necessary, reliable information to identify the client and verify the client's identity, or the



	client appears unusually familiar with the client identification and verification requirements.
	Third parties or intermediaries are involved, including in providing instructions, without good reason.
	The client has been refused counsel or changed counsel recently or several times without apparent good reason.
Transaction Risks	A complicated ownership structure is created when there is no legitimate or economic reason for it.
	There is no sensible reason for the transaction.
	The client changes instructions without explanation, especially at the last minute.
	The legal advisor is not asked to provide any substantial legal services in connection with the transaction.
	The proposed retainer relates to keeping documents or other goods, holding large deposits of money or otherwise using the trust account of the lawyer or notary without the provision of legal services.
	An existing trust agreement contains minimal details regarding the arrangement or is poorly drafted.
	Beneficiaries are difficult to identify; beneficiaries are minors.
	The relationship between individual people named in the trust agreement suggests that there may be no legitimate purpose to the transaction.
	The transfer of funds is not consistent with the known legitimate income of the client.
	The client is evasive about the source of funds for the trust.