



Public Consultation on the Draft Risk-Based Approach Guidance for Legal Professionals

**A Response by
The Chartered Institute of Legal Executives (CILEX)**

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Introduction

- 1.1. The Chartered Institute of Legal Executives (CILEx) is the professional association and governing body for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers.
- 1.2. CILEx is the Supervisory Authority listed in the Money Laundering Regulations 2017 for Chartered Legal Executives in England and Wales. CILEx has, however, delegated the responsibility of the application of money laundering-related rules to its independent regulator CILEx Regulation Ltd. This is because CILEx is a designated Approved Regulator under the Legal Services Act 2007 and it is a requirement under that Act 2007 to ensure that representation and regulatory matters are separated so that regulation can be carried out independently. CILEx Regulation is the independent regulator of members of CILEx, those who are not members, but who are authorised to undertake reserved legal activities, and who do so in their own entities.
- 1.3. These comments are therefore offered in that context, conscious that CILEx is a professional body supervisor (PBS) under the Regulations but also has delegated the day to day business of that regulation to its independent regulator. They are therefore general comments rather than specific ones which would stray into what is guidance related to 'regulatory arrangements', as defined by s21 of the Legal Services Act, and therefore the domain of CILEx Regulation.

2. Comments

- 2.1. Whilst the guidance is commendably broad and thorough, it is not clear where it sits in the general panoply of related guidance. Its stated aim is to be applicable to all jurisdictions, but the content acknowledges throughout that countries/jurisdictions vary. It is not clear therefore, how legal professionals should read it alongside jurisdiction-specific guidance. For CILEx members, it is not clear how the content dove-tails with that of the UK Legal Sector Affinity Group guidance; the risk of this might be that practitioners gravitate to their jurisdiction-specific guidance first (as more obviously relevant to their practices) thus losing any key messages from the broader FATF guidance. From a CILEx perspective, at least one reference to a Chartered Legal Executive would go some way to supporting the relevance of the publication to our members.
- 2.2. Related to this is a more general point about user-friendliness: the FATF guidance is not that user-friendly. Not only is there the lack of clarity about its 'positioning' (referred to above), but it also adds to the potential burden of regulatory documentation which has to be adhered to. Weighing in at 76 pages, legal professional will have to navigate it and 156 pages of the jurisdiction-specific guidance of the UK Legal Sector Affinity Group, as well as other related guidance that other PBSs and stakeholders (NCA, Home Office etc) will be issuing over time. And yet, it is a stated aim of the guidance to have a '*particular focus on providing guidance to sole practitioners and small firms*' (para 4a). These organisations (as the guidance itself acknowledges) are among the least able, in terms of resources, to engage with large volumes of material which do not make the relevance to their businesses clear up front.
- 2.3. Nor is it always clear how the guidance particularly assists sole practitioners and small firms: although there are references to such legal professionals implementing measures '*proportionate to the scope and nature of the practitioner's practice*', many recommendations nevertheless seem more geared at other larger firms e.g. training staff to identify '*relevant changes in client activity*' (para 108) or undertaking up to 3 risk assessments during the life of certain transactions (paras 104 – 108). Perhaps these legal practitioners might benefit from a refocussed document just for them or clearer demarcation within the existing one?
- 2.4. The guidance might therefore benefit from further editing in order that the key FATF-specific messages stand out. For example, there is quite a lot of material which describes the legal profession and what it does that will be very familiar and/or completely self-evident to any legal professional (e.g. paras 10, 15 – 19, 31 etc). There are also a number of repetitions in the document which could be cut down. Any such editing might hopefully make FATF main points more obvious, assist in differentiating them from the various other sources of guidance, and reduce the volume of material small firms and sole practitioners have to grapple with.

For further details

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