



## Anti-Money Laundering Risk Advisory: Litigation

### When does this risk assessment apply?

To avoid assisting or furthering illegal activity, lawyers must be aware of the risks associated with providing certain types of legal services. Litigation, particularly debt recovery actions, may pose risks. Criminals may attempt to launder proceeds of crime by filing and recovering on civil claims. This could, for example, involve using fabricated documents to misrepresent transactions or claim an interest in property. A lawyer should not assist a client in enforcing a contract that may be based on criminal activity.

Lawyers must know their clients and properly understand the facts relevant to their retainers. Where there are suspicious circumstances, a lawyer must be satisfied on an objective basis that the transaction is legitimate, prior to acting or continuing to act.

Lawyers should be alert to and appropriately consider risk factors when retained to assist with the recovery of funds including:

- a private loan (secured or unsecured);
- a builder's lien claim;
- a claim for recovery of capital investment;
- a claim for defective goods, including intellectual property; or
- a claim for unpaid commercial invoices.

### What are risk factors?

In addressing the risks, lawyers should be on the lookout for suspicious circumstances, including the following for debt recovery actions:

Type of Risk	Description of Risk
<b>Client Risks</b>	The retainer involves a non-face-to-face transaction where the lawyer has not previously met the client in person.
	The client's reasons for selecting the lawyer are unclear given the lawyer's geographic location or practice area.
	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.



	<p>The lawyer experiences difficulty obtaining necessary, reliable information to identify the client and verify the client's identity. Conversely, the client appears unusually familiar with client identification and verification requirements.</p>
	<p>The transactions involve third parties or intermediaries, including in providing instructions.</p>
	<p>The client has been refused counsel or changed counsel recently or several times without apparent good reason.</p>
	<p>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.</p>
	<p>Client instructions change unexpectedly and for no logical reason.</p>
<b><i>Transaction Risks</i></b>	<p>The claim settles quickly with little or no work being done by the lawyer. The defendant does not contest the claim, resulting in default judgment with the claim paid immediately.</p>
	<p>The debt relates to a contract based on criminal activity.</p>
	<p>The claim seems inconsistent with the client's or the other party's profile/circumstances (e.g. age, income, geographic location or occupation).</p>
	<p>The claim asserts that funds were exchanged between the parties but the client is unable to satisfactorily explain the source of funds/wealth.</p>
	<p>The claim is against an individual/entity that is not the actual recipient of the funds in question.</p>
	<p>The documents supporting the claim are unusual or inconsistent with the client's explanation of the transaction or with other documents.</p>
	<p>No security is registered for the loan, without explanation, or the security is a subsequent mortgage or charge on a fully or near-fully encumbered property.</p>



	The actual or agreed-to repayment period for the debt is unusually short.
	The interest rate for the loan exceeds the criminal rate or is substantially above/below market rates.
	The funds to settle the claim are received from or paid out to a third party whose relationship to the parties is unknown, or to an offshore jurisdiction that is known to be secretive or restrictive.