

## Anti-Money Laundering Risk Advisory: Shell Corporations

### When does this risk assessment apply?

Lawyers and Quebec notaries must be alert to the risks of becoming involved with a client engaged in criminal activity such as money laundering. Vigilance is required because the means for these, and other criminal activities, may be transactions for which lawyers commonly provide services.

Criminals are increasingly turning to shell companies to facilitate money laundering. Anonymous shell companies allow criminals to hide their identities, conceal the origin and flow of money, hide the identities of true beneficiaries or enhance the perception of legitimacy. They are typically used during the “layering phase” of money laundering involving often complex financial transactions designed to hide the illegal source of funds.

Legal advisors must be aware of the risks when dealing with clients looking for assistance with products or transactions that would facilitate anonymity and allow beneficial owners to remain hidden without a reasonable explanation. While client identification and verification rules are essential to ensure that lawyers know their clients, it is imperative that lawyers and notaries also understand the facts relating to their retainers, particularly when a shell corporation is involved.

They must ask probing questions to ensure that they understand the subject-matter and objectives of their retainers, including:

- whether there is a legitimate business or legal reason for using a particular corporate structure;
- who are the legal and beneficial owners of the property and business entities;
- who has control of the business entities; and
- where it is unclear, what is the nature and purpose of complex or unusual transactions.

Legal advisors 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 and Quebec notaries should be on the lookout for suspicious circumstances, including the following when setting up or representing shell corporations:

| 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 seeking to establish a shell corporation or the agent of the corporation in person.                             |
|                     | The client or corporation's reasons for selecting the lawyer are unclear given the lawyer's geographic location or practice area.  |
|                     | The lawyer is not asked to provide any legal services other than assisting with the creation of the shell corporation.   |
|                     | The corporation is transacting with a party that 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 lawyer experiences difficulty obtaining necessary, reliable information to identify an agent of the corporation or verify the agent's identity.  |
|                     | Insufficient information is provided by the client to identify the beneficial owners of the corporation.   |
|                     | Third parties or intermediaries are involved, including in providing instructions.   |
|                     | The corporation has been refused counsel or changed counsel recently or several times without apparent good reason.  |
|                     | The corporation has no or nominal assets, or assets consisting solely of cash and cash equivalents.  |
|                     | The corporation was incorporated in a jurisdiction that might enable anonymity.  |
|                     | The corporation's financial transactions occur in a jurisdiction that minimizes transparency or provides an environment more amenable to money laundering.   |
|                     | Gaps or red flags in the corporation's online presence are evident.  |
|                     | Inconsistent information exists relating to the corporation; e.g. a corporation doing business in one jurisdiction has an address and contact information in one or more other jurisdictions.                                  |



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|                          | The lawyer encounters contact concealment, e.g. a generic email address, no physical address, etc.   |
|                          | The client offers to pay an unusually high fee for the legal services.   |
| <i>Transaction Risks</i> | The lawyer is not asked to provide any substantial legal services in connection with the transaction.  |
|                          | The lawyer cannot obtain information necessary to identify the originator or beneficiary of a transaction.   |
|                          | The corporation's transactions appear inconsistent with the corporation's or the other party's profile/circumstances (e.g. age, income, geographic location or occupation).  |
|                          | The corporation transacts through a foreign bank and exceeds the anticipated volume projected in its client profile for wire transfers in a given time period, or the corporation exhibits a high level of sporadic activity that is inconsistent with normal business patterns. |
|                          | A corporation makes payments that have no stated purpose, do not reference goods or services, or identify only a contract or invoice number.   |
|                          | The goods or services of the company do not match the company's profile based on information provided by the client.   |
|                          | The corporation transacts with businesses sharing the same address.  |
|                          | The client's business discloses the frequent involvement of beneficiaries located in high-risk, offshore financial centers.  |
|                          | Multiple high-value payments or transfers are made or instructed between shell companies with no apparent legitimate business purpose.   |
|                          | The client attempts cash transactions with an inability to explain the source of funds/wealth.   |
|                          | The client uses partial signatures on contracts and/or invoices.   |
|                          | The lawyer is retained to complete a transaction after funds have already been advanced or after a loan agreement or a security agreement has been signed.   |
|                          | Transaction documents are unusual or inconsistent with the client's explanation of the transaction.  |