

Flemish Bar Council ¹

Regulations pursuant to Articles 38 and 39 of the Belgian Act of 11 January 1993 for the prevention of the use of the financial system for money laundering and the financing of terrorism

1. Whereas pursuant to Article 38§1 of the Act of 11 January 1993 for the prevention of the use of the financial system for money laundering and the financing of terrorism, the inspection authorities set forth the terms and conditions for applying the obligations laid down in Chapter II of the Act by way of regulation.
2. Whereas pursuant to Article 496 of the Belgian Judicial Code, the Flemish Bar Council determines and harmonises the rules and practices of the profession and guarantees the coordination of measures to combat money laundering and the financing of terrorism and the enforcement of the statutory and regulatory provisions in that regard.
3. Whereas pursuant to Article 39 of the Act of 11 January 1993 for the prevention of the use of the financial system for money laundering and the financing of terrorism, the competent inspection, supervisory or disciplinary authorities have the power and responsibility to introduce effective mechanisms to check that enterprises and persons are complying with their obligations by or pursuant to law, and may carry out an inspection on the basis of a risk assessment.
4. That the competent authorities on the basis of Articles 455, 458 and 459 of the Judicial Code are the chairmen and boards of the Bar Council on the one hand and the disciplinary tribunals and disciplinary appeal tribunals on the other hand.

The general meeting of the Flemish Bar Council approves the following regulations:

Article 1 - Scope of applicability

These regulations apply to lawyers registered at a bar of the Flemish Bar Council whenever they, as part of their professional activity,

a) assist a client in the planning or execution of transactions relating to:

1. buying or selling of real estate or business entities;
2. managing client money, securities or other assets;
3. opening or management of bank, savings or securities accounts;
4. the organisation of contributions necessary for the creation, operation or management

¹ Free translation of “Reglement in toepassing van artikel 38 en 39 van de wet van 11 januari 1993 tot voorkoming van het gebruik van het financiële stelsel voor het witwassen van geld en de financiering van terrorisme”

- of companies;
5. the creation, operation or management of companies, trusts, fiduciary or similar legal structures.

b) or when they act in the name and on behalf of their client in any financial or real estate transactions.

Article 2 – Obligation to identify and duty of vigilance

2.1. A lawyer who acts for a client within the context of an activity as referred to in Article 1 – even if only on an occasional basis – must be consistently vigilant and familiarise himself with internal procedures in order to ensure compliance with statutory provisions, particularly:

- The obligation to identify the client in accordance with Article 7 § 1 of the Act of 11 January 1993. The lawyer must identify his client and verify his identity on the basis of a supporting document of which a copy will be made on paper or an electronic data carrier:
 1. if the client wishes to enter into a business relationship by which he becomes an ordinary client of the lawyer;
 2. if the client, outside of a business relationship as referred to in 1, wishes to perform a transaction for an amount of EUR 10,000 or more, or which consists of a transfer of funds within the meaning of Article 7 § 1, 2b of the Act of 11 January 1993;
 3. if there is a suspicion, in cases other than those mentioned in the provisions of 1 and 2 above, of money laundering or the financing of terrorism;
 4. if there is any doubt whether earlier identity details, obtained with regard to a client who has already been identified, are true or accurate.
- The obligation to identify mandataries of the client.
- The obligation to identify the ultimate beneficiary or beneficiaries of the client.

2.2 Information regarding the purpose and anticipated nature of the business relationship is also gathered during the identification.

2.3. In accordance with Article 14 of the Act, the lawyer must be consistently vigilant with regard to the business relationship and attentively investigate the performed transactions as well as, where relevant, the origin of the funds. He must ensure that the transactions are consistent with his knowledge of the client as well as the client's professional activities and risk profile.

2.4. The information obtained will be continually updated and supplemented by new details obtained from or about the client in order to check whether the involvement and role of the lawyer in providing services to the client is compatible with the information about the purpose and anticipated nature of the business relationship. Identification procedures must be applied afresh for clients who present themselves again after a number of years.

The lawyer must ensure that the identification data he has collected corresponds to the statutory obligations and recommendations of the Flemish Bar Council and of his bar.

2.5 The lawyer must pay specific attention to atypical or abnormal conduct, questions or transactions of the client.

2.6. The lawyer must take into consideration that the Act of 11 January 1993 imposes tighter vigilance measures depending on the client's profile. Based on the risk assessment, he must apply those tighter

vigilance measures to situations that by their nature may involve a higher risk of money laundering or financing of terrorism.

Special vigilance measures are in any case required for a client who is not physically present at the identification and with regard to a client or ultimate beneficiary who is a politically prominent person within the meaning of the Act of 11 January 1993.

2.7. The lawyer must consistently apply internal methods and procedures in this regard, including an acceptance procedure for clients that is adapted to the size and nature of his firm's activities and which is adequate to reasonably know and follow up the correct identity and activity of his clients.

Where possible and reasonable, available national and international sources of information about potential clients and their activities will be used, appropriate questions will be asked at the start of the business relationship and the introduction will be assisted by reliable intermediaries or consultants.

The lawyer will work from the client's risk profile which depends on certain and established information that he has already obtained from and about the client, the experiences that have been built up in a business relationship, whether or not long-standing, the risk factor of the country in which the client operates and the nature of the dealings that can involve a greater or lesser risk of money laundering.

He must pay special attention:

- if funds appear in the client's account from an unexpected source, or not in accordance with what was already known at that stage about the client or the transaction;
- if the client's activity or access to funds changes in such a way that it is difficult to explain from what the lawyer knows at that stage about the client's affairs;
- if there are peculiarities about the transaction for which there does not seem to be any reasonable commercial explanation, for instance if the income, commercial benefit for the client or commercial logic of the transaction is unclear, or if the business structure or construction is not transparent or seems unnecessarily complex for the commercial goal that is to be achieved;
- if transactions in cash or negotiable instruments are proposed or transactions via accounts of the lawyer for or from people or enterprises that are not yet clients, or whose identity and/or interest in the transaction is not clear or traceable.

The lawyer must ask the required questions to the client at all times, where necessary also in writing, in order to clarify any uncertain aspects.

2.8. In any case, the lawyer must attentively investigate all transactions or facts that he deems particularly susceptible to money laundering or the financing of terrorism, due to their nature or unusual character having regard to the client's activities, or due to the surrounding circumstances or capacity of the persons involved.

2.9. If the firm or alliance has appointed a lawyer who is responsible for the application of the Act in accordance with Article 6 of these regulations, he must draw up a written report concerning the further investigation initiated by him as a result of the unclear circumstances referred to in Article 2.7. This report – which must be retained by the lawyer - must contain at least the following information:

- the origin and destination of the funds that form the subject of the transaction;
- the identity of the client or the beneficial owners (name, address, occupation);
- the characteristics of the transaction.

2.10. If the client refuses to provide the information that the lawyer is compelled to request, the lawyer will not enter into any business relationship or will end his involvement and may not perform transactions for the client. The information must be provided within a period as provided for in Article 4.2 of these regulations.

However, he is not obliged to do this if he is determining the legal position of this client or defending or representing the client in or in connection with legal proceedings, including giving advice on instituting or avoiding legal proceedings.

The same exception applies in connection with the ultimate beneficiaries of joint accounts, in accordance with Article 11 §1(3) of the Act, whose identity may not be disclosed by the lawyer because of professional secrecy, on condition that the lawyer confirms in writing or electronically to the depositary institution that the ultimate beneficiaries of the joint account concerned are clients with whom he has a relationship for the purpose of determining their legal position, or for defending or representing them in or in connection with legal proceedings, including giving advice on instituting or avoiding legal proceedings.

Article 3 – Internal organisation measures

3.1. The lawyer must ensure that internal procedures are introduced for gathering the required information relating to the identification of the clients concerned and with regard to the written reports insofar as these must be retained. He must retain those documents for five years after the termination of the business relationship or performance of the transaction.

3.2. When recruiting and appointing employees, the lawyer must ensure that recruited people who can come into contact with clients and transactions as referred to in Article 1 are reliable, where appropriate by requesting the submission of a certificate of good conduct.

Article 4 – Informing clients

4.1. Prior to commencing the cooperation, the lawyer must inform his potential client about the existing statutory framework, the instituted internal procedure, the nature of the personal information collected in relation to him and the fact that this information will be kept on record. He must further be informed that the procedure also requires his cooperation and that in accordance with Article 8 § 3 of the Act of 11 January 1993, companies are obliged to prove the details of the ultimate beneficiary and any updated information in that regard to lawyers.

4.2. At the start of the cooperation, the lawyer must inform his potential client that if he does not provide the required information within a period that may not exceed two weeks, other than in exceptional circumstances, the lawyer will not enter into the business relationship and, if he has already provisionally acted, that he must end his involvement.

Article 5 – Professional secrecy – Declaration of suspicion

5.1. The lawyer must comply with professional secrecy under all circumstances.

5.2. Nevertheless if a lawyer, who in accordance with Article 26 § 3 of the Act of 11 January 1993 establishes facts during the performance of the activities listed in Article 3(5) of that Act that he knows

or suspects are related to money laundering or the financing of terrorism, he must immediately inform the chairman of the Bar Council to which he belongs. He must submit all information and useful documents to the chairman at the same time.

The information will not be disclosed if it was received from or about a client when the lawyer was determining his legal position, or defending or representing the client in or in connection with legal proceedings, including giving advice on instituting or avoiding legal proceedings, regardless of whether such information is received or obtained before, during or after such proceedings.

Determining the legal position of the client includes providing legal advice in the broad sense.

The lawyer should consult the chairman in case of doubt.

5.3. The lawyer must put an end to his involvement as soon as the declaration of suspicion is submitted via the chairman to the Belgian Financial Intelligence Processing Unit (CTIF-CFI). The chairman will inform the lawyer concerned for this purpose.

5.4. If a judicial authority or the Belgian Financial Intelligence Processing Unit (CTIF-CFI) requests the lawyer to provide additional information within the scope of the Act of 11 January 1993, the lawyer may only comply if he does so via his chairman.

Article 6 – Appointment of a responsible lawyer

6.1. In an association or grouping among more than ten lawyers, entered into by means of an agreement under Belgian law or foreign law, or by the creation of or admission to a legal entity under Belgian or foreign law, the associated or grouped lawyers will appoint a lawyer among them, in accordance with Article 18 of the Act of 11 January 1993, who is responsible for the firm to the extent defined by law and for the application of the Act. An 'association' or 'grouping' ought to be understood as defined in the Flemish Bar Council regulations of 8 November 2006 on alliances among lawyers and single shareholder companies of lawyers.

Any board of the Bar Council may deviate with reasons from the numerical condition referred to in the first paragraph by also making certain associations or groupings of less than or equal to ten lawyers or certain lawyers subject to the application of that paragraph.

6.2. If the firm has branches in several bars in Belgium or in Belgium and abroad, the duties and responsibilities of this responsible lawyer for compliance with the Belgian Anti-Money Laundering Act will be performed on behalf of the entire alliance by a lawyer appointed for that purpose from a domestic or foreign branch of the firm. This responsible lawyer must be a shareholder, partner or fee earner. He must comply with the regulations and recommendations/explanations of the Flemish Bar Council.

The firm will be exempt from designating a responsible lawyer under these regulations if a responsible lawyer has already been appointed for that firm pursuant to comparable regulations of the Ordre des Barreaux Francophones et Germanophone (Bar Council of French and German-Speaking Lawyers). In that case, the responsible lawyer must comply with both the regulations and recommendations/explanations of the Flemish Bar Council and of the Ordre des Barreaux Francophones et Germanophone.

6.3. The associated or grouped lawyers must furnish the name of that responsible lawyer to the chairman/chairmen of the bar(s) to which they belong.

6.4. The responsible lawyer appointed by the association or grouping must comply with the obligations set out in Article 18 of the Act of 11 January 1993, in particular:

- he must make the lawyers of the firm aware of the applicable statutory provisions and internal procedures and check whether they have reliable information and adequate training;
- he must check whether the lawyers of the firm comply with all applicable provisions and the effectiveness of the internal procedures;
- he must check compliance with the obligations to make aware and train the lawyers of the firm within the limits of the internal procedures;
- he must consult the lawyer or lawyers concerned, in full confidence, in case of a clear breach of the applicable procedures or of the right of access to information;
- he must assist the lawyers with regard to the application of the rules of professional practice and of the provisions of the Act of 11 January 1993;
- he must check declarations of suspicion before submitting them to the chairman;
- he must check compliance with the client's right to information;
- he must ensure that written reports are drawn up and communicated to him on the basis of Article 14 § 2(2) of the Act of 11 January 1993;
- he must ensure the centralised storage of the required documents.

6.5. The responsible lawyer must draw up a report of his activities, in particular regarding conformity checks based on the information gathered by him, at least once a year. If requested, he must report on his mandate to the competent chairman, etc.

Article 7 – Prevention and control measures

7.1. The Board of the Flemish Bar Council and the local bars regularly cooperate in order to work out prevention measures to help combat money laundering. These preventive measures may specifically consist of training programmes or the sending of questionnaires.

The questionnaires aim to make potentially and existing subjected lawyers aware of the statutory provisions and these regulations and to ensure their effective application. They are generally directed by the chairmen and/or the Flemish Bar Council to members of the bar or to potentially subjected lawyers, as well as the associations and groupings that include potentially subjected lawyers. The answers to the questionnaires sent by the chairmen are also forwarded to the Flemish Bar Council.

Prior to their entry into force, the prevention measures are approved by the general meeting of the Flemish Bar Council.

7.2. Local bars can also carry out inspections in law firms at the chairman's initiative and do so in any case as soon as there are indications that a lawyer, association or grouping is contravening or threatening to contravene the aforementioned Act of 11 January 1993 or these regulations.

The Belgian Financial Intelligence Processing Unit (CTIF-CFI) may approach the chairman with a request to carry out an inspection.

If the Board of the Bar Council thinks it is advisable, preventive inspections will be organised on the basis of drawing lots or according to a system or criteria determined by the local board.

Every inspection in a firm will be carried out by at least two members of the bar concerned. The bars can agree to establish inspection units among themselves or with the Flemish Bar Council consisting of members of various bars and representatives of the Flemish Bar Council, in order to carry out the inspections. The results of the inspection will be forwarded to the chairman of the lawyer concerned and to the Flemish Bar Council. The local bars will send an annual inspection report to the Flemish Bar Council.

The Board of the Flemish Bar Council issues an annual report on these inspection activities to the general meeting of the Flemish Bar Council. This report is issued without reference to the names of the inspected lawyers or of the inspected associations or groupings of lawyers.

Article 8 – Entry into force

These regulations enter into force on the date of their publication in the Belgian Official Journal.

Approved at the general meeting of the Flemish Bar Council of 21 December 2011.

Published in the Belgian Official Journal of 30 December 2011.

Entry into force on 30 December 2011.

Orde van Vlaamse Balies:

The Flemish Bar Association *Orde van Vlaamse Balies* represents all 14 Dutch speaking Bar Associations of Belgium, totalizing over 8000 Belgian and foreign lawyers.

Its purpose is to work for a proper and efficient administration of justice and to promote the lawyers' practice. The *Orde van Vlaamse Balies* maintains a permanent dialogue with the public authorities on any such subjects as may be of interest for the legal profession and anyone seeking justice, and it does not refrain from expressing its ideas and considerations on this matter.

The Order is involved in legal aid and is strongly in favour of a smooth access to justice.

It supports the training of young lawyers and the general and permanent formation of lawyers.

The *Orde van Vlaamse Balies* is a member of several international lawyers' organisations and plays an active role in the defence of the principles and prerogatives of the legal profession.

The Flemish lawyers choose their representatives for the general assembly. The general assembly constitutes the Order's parliament. It outlines the main lines of policy and designates the members of the board of directors and its chairman who are in charge of the day-to-day management.

Via its website www.advocaat.be, a generous offer of legal and practical information is available both to the general public and to each lawyer in particular. In addition, lawyers may also consult an own intranet that has been developed in conjunction with the Bar Associations. The *Orde van Vlaamse Balies* also organises congresses and colloquia on subjects related to the lawyers' world.

The offices of the *Orde van Vlaamse Balies* are situated in the heart of Brussels, in the immediate neighbourhood of the Federal Parliament and the Flemish Parliament.