



NOVA SCOTIA
BARRISTERS' SOCIETY

Geographic Risk Information

4.13 Client Identification

Definitions

4.13.1 ...

(c) “electronic funds transfer” means an electronic transmission of funds conducted by and received at a financial institution or a financial entity headquartered in and operating in a country that is a member of the Financial Action Task Force, where neither the sending nor the receiving account holders handle or transfer the funds, and where the transmission record contains a reference number, the date, transfer amount, currency and the names of the sending and receiving account holders and the conducting and receiving entities;

...

[emphasis added]

Exemptions re: Certain Funds

4.13.7 Subregulation 4.13.8 does not apply:

- (a) where the client is a financial institution, public body or reporting issuer;
- (b) in respect of funds
 - (i) paid by or to a financial institution, public body or a reporting issuer,
 - (ii) received by a lawyer from the trust account of another lawyer,
 - (iii) received from a peace officer, law enforcement agency or other public official acting in their official capacity,
 - (iv) paid or received to pay a fine, penalty, or bail, or
 - (v) paid or received for professional fees, disbursements or expenses;
- (c) to an electronic funds transfer.

Requirement to Verify Client Identity

4.13.8 When a lawyer is engaged in or gives instructions in respect of any of the activities described in subregulation 4.13.6, the lawyer must:

- (a) obtain from the client and record, with the applicable date, information about the source of funds described in subregulation 4.13.6; and
- (b) verify the identity of the client, including the individual(s) described in subregulation 4.13.5(b)(iv) and, where appropriate, the third party using the documents or information described in subregulation 4.13.13.

...

Only electronic funds transfers (EFTs) conducted by and received at financial institutions headquartered and operating in a country that is a member of the FATF is covered by the exemption set out in subregulation 4.13.7(c). The lawyer should check the Financial Action Task Force website (<http://www.fatf-gafi.org/countries/#FATF>) to gather information in this regard. Lawyers must also be aware that neither the sending nor receiving account holders may handle or transfer the funds.

EFT transmission records must contain a reference number, the date, transfer amount, currency, and the names of the sending and receiving account holders and the financial institutions conducting and receiving the EFT.

The lawyer also has to ask further questions and take further precautions if there are flags on the transaction as identified in the other guidance materials that are already available on the Society's website, including the Risk Advisories: <https://nsbs.org/legal-profession/your-practice/responsibilities-requirements/client-id/>. If the country from which an EFT originates is a member of the FATF but has deficiencies identified, the lawyer may need to make further inquiries of the client to satisfy themselves that the transaction is legitimate and will not breach any of the lawyer's legal or ethical obligations.

If the lawyer wishes to accept funds from a non FATF member country, the client's identify must be verified, and a high level of due diligence is required. It is recommended that the lawyer begin with a search of the FATF website to determine what risks are associated with that country. It is up to the lawyer to do as much diligence as will sufficiently establish that the transaction is legitimate and will not result in the lawyer engaging in or assisting a client to engage in money laundering or terrorist financing. The lawyer should be familiar with the Act, Regulations and refer to the additional information that is available on the Society's website: <https://nsbs.org/legal-profession/your-practice/responsibilities-requirements/client-id/>. The law and information in this area are evolving, and the lawyer must ensure that they have current information.

The high risk countries that are not members of FATF are identified on the FATF website, as well as other information about the communications with those countries by the FATF, the international monitoring that is happening, and the steps being taken by some countries to come into compliance. While the lawyer is not exempted from verifying the identity of the client if the lawyer chooses to accept an EFT from a non-member country, the lawyer must ensure that doing so is safe and reasonable in the circumstances. It may be prudent to obtain advice from the lawyer's insurer and/or their own financial institution.

Financial Action Task Force (<https://www.fatf-gafi.org/>)

The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

While geographic risk is not in itself determinative of the legitimacy of any particular transaction, lawyers should ensure that they make additional inquiries of clients before proceeding to provide legal services. The FATF has identified the following as high risk factors (<http://www.fatf-gafi.org/media/fatf/documents/reports/Risk-Based-Approach-Legal-Professionals.pdf>):

- a) Countries/areas identified by credible sources¹ as providing funding or support for terrorist activities or that have designated terrorist organizations operating within them.
- b) Countries identified by credible sources as having significant levels of organized crime, corruption, or other criminal activity, including source or transit countries for illegal drugs, human trafficking and smuggling and illegal gambling.
- c) Countries subject to sanctions, embargoes or similar measures issued by international organizations such as the United Nations.
- d) Countries identified by credible sources as having weak governance, law enforcement, and regulatory regimes, including countries identified by FATF statements as having weak AML/CFT regimes, and in relation to which financial institutions (as well as DNFBPs) should give special attention to business relationships and transactions.

¹ "Credible sources" refers to information that is produced by reputable and universally recognised international organisations and other bodies that make such information publicly and widely available. In addition to the FATF and FATF-style regional bodies, such sources may include, but are not limited to, supra-national or international bodies such as the International Monetary Fund, the World Bank and the Egmont Group of Financial Intelligence Units.

Member Countries of the FATF

(see <http://www.fatf-gafi.org/countries/#FATF> for current list)

- 1) Argentina
- 2) Australia
- 3) Austria
- 4) Belgium
- 5) Brazil
- 6) Canada
- 7) China
- 8) Denmark
- 9) Finland
- 10) France
- 11) Germany
- 12) Greece
- 13) Hong Kong (China)
- 14) Iceland
- 15) India
- 16) Ireland
- 17) Israel
- 18) Italy
- 19) Japan
- 20) Korea
- 21) Luxembourg
- 22) Malaysia
- 23) Mexico
- 24) Netherlands, Kingdom of
- 25) New Zealand
- 26) Norway
- 27) Portugal
- 28) Russian Federation
- 29) Saudi Arabia
- 30) Singapore
- 31) South Africa
- 32) Spain
- 33) Sweden
- 34) Switzerland
- 35) Turkey
- 36) United Kingdom
- 37) United States