

Anti-Money Laundering Risk Advisory: Private Lending

When does this risk assessment apply?

Criminals may attempt to use private lending transactions to launder the proceeds of crime, and may engage the services of lawyers for the transactions.

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

All lawyers and Quebec notaries should be alert to and appropriately consider risk factors associated with illegal activity when retained to do any of the following:

- Drafting, reviewing or advising on a loan agreement, promissory note, guarantee, mortgage, security agreement or other loan documents;
- Registering a security agreement for a private loan; or
- Taking any steps to assist with the advance or recovery of funds related to a private loan.

What are risk factors?

In addressing the risks, legal counsel should be on the lookout for suspicious circumstances, including the following for private lending transactions:

Type of Risk	Description of Risk
Client Risks	The retainer involves a non-face-to-face transaction where the legal advisor has not previously met the client in-person.
	The client's reasons for selecting the lawyer or Quebec notary are unclear given the geographic location or practice area.
	A party to the transaction (or a family member or close associate) has an alleged or known history of drug trafficking, money laundering, civil forfeiture, loansharking, fraud, high-stakes gambling or similar activity.
	The lawyer or notary 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.
	The transactions involve third parties or intermediaries, including in providing instructions.



	The client has been refused counsel or changed counsel recently or several times without apparent good reason.
	The client offers to pay an unusually high fee for the services.
	The client's instructions change unexpectedly and for no logical reason.
Transaction Risks	There is no clear or plausible reason for the borrower not borrowing from a commercial lender.
	The loan seems inconsistent with the client's or the other party's profile/circumstances (e.g. age, income, geographic location or occupation).
	The lawyer or notary is not asked to provide any substantial legal services in connection with the transaction.
	Funds are exchanged between the parties in cash but the parties are unable to explain the source of funds/wealth.
	The borrower named in the loan documents is not the actual recipient of the funds.
	There is no security registered for the loan, without explanation, or the security is a subsequent mortgage or charge on a fully or near-fully encumbered property.
	The actual or agreed-to repayment period is unusually short.
	The legal professional is retained after the funds have already been advanced or after the loan agreement or security agreements have been signed.
	The loan documents are unusual or inconsistent with the client's explanation of the transaction.
	The interest rate exceeds the criminal rate or is substantially above/below market rates.



	The funds are received from or paid out to an offshore jurisdiction that is known to be secretive or restrictive.
	The entity providing the loan proceeds (or receiving the loan payout) is not the party named in the loan documentation and the relationship between the entity and the named party is not apparent.