

CY - targeted questions for RoL (Virtual) Country Visit, 2024

Ministries

Justice

According to the Bar Association, plans to establish a National Overall Independent Supervisory Authority for Anti - Money Laundering and Sanctions' Supervision may impact upon the protection of the legal professional privilege. Could you comment please and explain the motivation/objectives of the reform? MF

The policy discussion that has been taking place regarding unified AML/CFT supervision, relates to the corporate services or otherwise known as administrative services/TCSP services (trust and company services), which are not covered by any legal privilege provisions. These are stipulated in detail in article 4¹ of the Law Regulating Companies Providing Administrative Services and Related Matters of 2012 (Administrative Services Law). As per the FATF standards² and the latest EU legislation³ (now under the final stages of finalisation/publication) self-regulated bodies such as the Cyprus Bar Association and the Institute of Certified Public Accountants of Cyprus, should have a public body with an oversight function over them regarding their AML/CFT supervisory activities which relate to the provision of administrative services. Additionally, Cyprus has specific ML/TF risks emanating from the provision of these services, and the fostering of the AML/CFT oversight for this sector is of particular value for the Republic. Within this framework, various models of supervision for these services are being assessed, with one option being for the Cyprus Securities and Exchange Commission, to be granted this oversight role with direct supervision rights for the most systemic/riskier Administrative Services Companies (ASPs) that might involve a law firm or an accounting/auditing firm, very much like AMLA will have direct supervisory powers on

¹ <https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=ef871632-f8f7-4e64-a50c-87458c7a1e53>

² Supervisors refers to the designated competent authorities or non-public bodies with responsibilities aimed at ensuring compliance by financial institutions ("financial supervisors") and/or DNFBPs with requirements to combat money laundering and terrorist financing. Non-public bodies (which could include certain types of SRBs) should have the power to supervise and sanction financial institutions or DNFBPs in relation to the AML/CFT requirements. **These nonpublic bodies should also be empowered by law to exercise the functions they perform, and be supervised by a competent authority in relation to such functions.**

A SRB is a body that represents a profession (e.g. lawyers, notaries, other independent legal professionals or accountants), and which is made up of members from the profession, has a role in regulating the persons that are qualified to enter and who practise in the profession, and also performs certain supervisory or monitoring type functions. Such bodies should enforce rules to ensure that high ethical and moral standards are maintained by those practising the profession.

³ Article 2, first paragraph, point (33), 'supervisory authority' means a supervisor who is a public body, or the public authority overseeing self-regulatory bodies in their performance of supervisory functions pursuant to Article 29 of Directive – Text agreed by co-legislators not yet finalised and published [Anti-money laundering: Council and Parliament strike deal on stricter rules - Consilium \(europa.eu\)](https://ec.europa.eu/anti-money-laundering/council-and-parliament-strike-deal-on-strict-rules)

the systemic/riskier financial institutions for ML/TF purposes, enjoying joint assessment powers with the national competent authority.

Therefore, we see no substance in the perception of prospective violations of the legal privilege, coming about with future regulatory changes, regarding tighter/more coordinated supervision of the administrative services provided by lawyers. If this were the case, the relevant provisions of the latest EU package on AML/CFT were to be illegal. We also note that already in some member states, the supervision of these entities is undertaken by a public body, such as in the case of Malta where this is undertaken by the MFSA <https://www.mfsa.mt/our-work/company-service-providers/>.