

The Role and Responsibilities of Gatekeepers in the Fight against Illicit Financial Flows: A Unifying Framework

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Uniting gatekeepers against illicit financial flows¹

The Unifying Framework is a value-based self-regulatory framework for private sector intermediaries who are strategically positioned to prevent or interrupt illicit financial flows – collectively referred to as “gatekeepers”. The framework consists of five core practices and is intended to realize three fundamental principles within and across

gatekeeping industries worldwide. The framework was designed by gatekeepers for gatekeepers,² be they individuals, entities, or professional associations. It provides a mechanism for recognition, ownership, consensus building and collaboration within a diverse community of private sector professionals, from art advisers to bankers to real estate agents, among others. While no replacement for binding regulation, value-centred self-regulation is essential for the realization of true integrity, transparency and accountability – above and beyond compliance.

Three principles

1) Integrity 2) Transparency 3) Accountability

Five practices

1. Establish clear, concrete and up-to-date policies
2. Promote effective due diligence
3. Centre a culture of integrity through training and incentives
4. Foster a “speak-up” culture
5. Collaborate across industries and sectors

All gatekeepers

Accountants • art advisers • bankers • corporate service providers • lawyers • luxury goods dealers • notaries • private wealth managers • real estate agents ...

Part A of this document explains the scope and role of the gatekeeping universe, the need for and goals of the [Unifying Framework](#), and a brief glimpse of the requisite next steps for gatekeepers and regulators alike. Part B outlines the five core practices of the Unifying Framework itself.

This cross-sectoral, transnational approach to gatekeeper self-regulation presents an exciting opportunity to stunt the flow of illicit funds worldwide. To realize this potential, all gatekeepers are invited to publicly endorse the Unifying Framework and to begin or continue to take concrete steps toward implementation of the framework’s five core practices. Professional associations are particularly well situated to propel these efforts by setting behavioural and ethical norms within their industries and

by imposing self-regulatory measures, even in the absence of government enforcement. Though the mechanics of implementation may differ, commensurate to the scale of each entity and the particularities of each industry, the recommended practices are broadly applicable.

We believe that the globalized nature of illicit financial flows demands a global response – across industries and borders. We hope that the Unifying Framework can spur further recognition of gatekeepers’ role in the movement and management of illicit funds, the broad scope of the gatekeeping universe, and, most importantly, the essentiality of (and the real possibilities for) cross-sectoral, transnational collaboration.

Part A: Background

Who are the gatekeepers?

Global investigations – including the so-called “Panama” and “Paradise” papers and the more recent “FinCEN Files” – have drawn widespread attention to the essential role of certain professional industries in relation to international money laundering, financial fraud, corruption schemes, tax/sanctions evasion and criminal/terrorist financing. To successfully commit and move the proceeds of such transactions, actors often require assistance from private sector intermediaries, most notably accountants, art advisers, bankers, corporate service providers, lawyers, luxury goods dealers, notaries, private wealth managers and real estate agents.

Regardless of whether such assistance is provided knowingly or unknowingly, these professionals can open access to financial markets, set up complex company structures, manage shell companies, and otherwise blur the nature and origin of ill-gotten gains.³ Given their central role in the global economy, this professionally diverse group of service providers is also strategically situated to interrupt or prevent illicit financial flows by exercising appropriate due diligence when providing their specialized services.⁴ While sometimes presented as “enablers” or “facilitators” of illicit activity, the reality is that much of the so-called enabling or facilitating is unintentional. Further, the term “gatekeepers” more accurately captures the dual potential to promote or impede illicit transactions.

Gatekeeping opportunities may be obvious, but the types of activities that enable the movement or investment of illicit funds may also closely resemble standard day-to-day work for professionals in these industries. Perfectly legal transactions, such as purchasing a home, investing in art, or creating a new corporation for a client, may aid illicit activities by coating their proceeds with the gloss of legitimacy. Absent proper knowledge, policies and procedures, it is often difficult for individual professionals to identify, act upon, or report clients or transactions intent on furthering corrupt behaviour.

Harnessing gatekeeper potential

Past attempts to harness gatekeeper potential have almost exclusively taken a national and/or sector-specific approach to regulation.⁵ However, the diverse array of industries and fragmented regulatory frameworks – both cross-sectorally and transnationally – stymie effective gatekeeper mobilization. While professionals in some countries are highly regulated, others have no affirmative duty to report suspected criminal activity or verify the origin of the assets they handle.⁶ This patchwork and frequently lacklustre approach to gatekeeper regulation has come at a high cost, allowing corrupt actors to manipulate markets, erode public services, fund criminal networks, waste trillions of dollars annually⁷ and damage the reputation of gatekeepers themselves. These costs are often unevenly distributed, thus exacerbating global economic inequalities.⁸ High-profile investigations have demonstrated how, through the

intentional or inadvertent assistance of gatekeepers, illicit funds flow out of developing or middle-income countries and into major financial centres far removed from people and places in need of public investment.⁹

Effectively harnessing gatekeeper potential to combat illicit financial flows presents an opportunity to reduce the massive cost of corrupt behaviour and capitalize on the efficiency of honest markets. To this end, the Unifying Framework provides a set of practices designed to realize the three core principles of integrity, transparency and accountability within and across gatekeeping industries. It is intended to address any transaction that may objectively facilitate money laundering, corruption, financial fraud, tax/sanctions evasion, or criminal/terrorist financing, irrespective of whether such acts are codified as criminal in a given jurisdiction.

Professional associations, in particular, play a pivotal role in facilitating productive cooperation and incentivizing behavioural and cultural change among industry actors. This role is magnified in industries characterized by small-scale practitioners, which may have less familiarity with or resources for implementing the recommended practices.

The Unifying Framework does not replace existing rules or regulations, such as those promoted by the Financial Action Task Force¹⁰ and its member states. Rather, the framework aims to promote the practice of upholding transparency, integrity and accountability regardless of the present regulatory landscape. Through self-regulation and collective action, gatekeepers will be able to leverage their power and skills to combat illicit financial flows and enhance efficiency and welfare worldwide.

Benefits of a common, cross-sectoral approach

The adoption of a common framework uniting the diverse array of gatekeeping professionals presents various benefits. First, such a framework invites collective recognition and collective action. Many gatekeepers and even entire gatekeeping industries do not fully appreciate their role in facilitating harmful financial activities. A unified framework recognizes the risks presented by actual or potential clients and the importance, across the board, of going above and beyond mere legal compliance. This includes creating actionable internal policies and incentive structures that are more focused on realizing the principles of integrity, transparency and accountability than on complying with a legally mandated regulatory floor. Abiding by a country’s laws and regulations is necessary, but often insufficient. When it comes to corruption, money laundering, financial fraud, tax/sanctions evasion and criminal/terrorist financing, pervasive regulatory gaps and under-enforcement have prevented laws from meaningfully guiding gatekeeper behaviour, or stemming the flow of illicit funds.¹¹

Second, the transnational and multi-sectoral nature of illicit financial flows demands a transnational and multi-sectoral response. Sophisticated corrupt actors are presently able to evade accountability by designing schemes that straddle various jurisdictions. The current universe of fragmented, sector-specific regulation cannot effectively capture such activities nor can it coordinate a response to prevent them. A common value-based approach to the roles and responsibilities of gatekeepers would deter such schemes by streamlining cross-sectoral and transnational cooperation while also building trust and confidence across and within gatekeeping industries. This approach more adequately addresses the reality of our interconnected world, in which the weakness of one gatekeeper becomes the weakness of all. Implementing common ethical standards reduces the ability of corrupt actors to seek out weak links. Furthermore, the Unifying Framework does not intend to preclude the development of more sector-specific recommendations. Rather, it provides a common foundation from which such initiatives can take shape.

Finally, the development of a unified ethical framework will minimize the costs of illicit financial flows to society while maximizing the benefits of increased integrity. The economic waste of corruption and money laundering, combined with the cost of investigations, prosecutions and financial recovery, amount to a high toll exacted upon societies, governments and private sector actors. Putting the Unifying Framework into practice will help prevent corrupt acts ex-ante, and thus mitigate the costs of corruption and prosecutorial fallout. Particularly in light of demonstrated international commitment to investigate and prosecute grand corruption, money laundering and financial fraud, gatekeepers would save money, time and stress by embracing a proactive, instead of reactive, approach to corrupt behaviour. Additionally, the Unifying Framework offers gatekeepers significant benefits. It will help grow gatekeepers' social license to operate in high-risk and low-risk environments alike – an increasingly valuable asset that is hard to obtain and easy to lose. Furthermore, given the growing emphasis around corporate environmental, social and governance standards, as well as respect for human rights, this framework provides gatekeepers with many of the basic tools necessary to overcome the next wave of regulatory hurdles.

Looking forward

To maximize its effectiveness, the Unifying Framework must be paired with in-depth adaptations and guidance at the sector-level and a similar framework for regulators. As to the former, this task force intends to tackle transnational sector-specific guidance by continuing to leverage the insights of industry leaders and welcoming the collaboration of interested parties. As to the latter, it is important to urge governments to coordinate and implement unifying measures, as well as robust oversight and enforcement mechanisms. It is also crucial that governments and gatekeeping industries build goodwill and establish avenues for information-sharing and public-private collaboration. Both self-regulation and government regulation can and should function as complementary forces in the pursuit of efficient and honest markets.

Gatekeeper task force

The Unifying Framework was developed by a cross-sectoral task force of industry leaders convened by the World Economic Forum Partnering Against Corruption Initiative (PACI)¹² and the Global Future Council on Transparency and Anti-Corruption,¹³ in conjunction with the Council's agenda for business integrity.¹⁴ The project also benefitted from the support of the joint World Bank-UNODC Stolen Asset Recovery Initiative.¹⁵ The task force itself represents leaders in finance, investment, corporate law, art and antiquities markets, and real estate, with the goal of creating a framework by gatekeepers for gatekeepers.¹⁶

Part B: The Unifying Framework

At the core of the Unifying Framework are three fundamental principles:

- 1) Integrity
- 2) Transparency
- 3) Accountability

However, absent actionable policies, these fundamental principles are at risk of becoming empty promises. To this end, the framework's recommended practices should be embedded into each gatekeeper's DNA as a means for achieving the three core principles, rather than as an end in themselves. In a similar vein, while the following five practices form the basis of the Unifying Framework today, this framework is intended to function as a living document that will develop overtime as relevant parties, industries and best practices change – all towards the goal of achieving integrity, transparency and accountability within this linchpin in the global economy. All gatekeepers are invited to publicly endorse the Unifying Framework and to begin or continue to take concrete steps towards implementation of the framework's core principles and practices.

1. Establish clear, concrete and up-to-date policies

Gatekeepers should establish clear and concrete policies regarding their overarching commitment to transparency, integrity and accountability, as well as to each of the below practices. Companies and professional associations should also revise confidentiality policies and practices to prioritize integrity over client interests when necessary. Policies should be written, distributed to all employees and contractors, and made publicly available to the greatest extent possible. They should also be clearly communicated and actively embraced by those in top leadership positions. Where norms or policies are ambiguous, ample research demonstrates a natural inability to classify situations as ethical.¹⁷ This tendency is exacerbated in contexts that present the potential for personal financial gain or professional advancement.¹⁸ Specificity and clarity in an institution's anti-corruption and anti-money laundering policies help minimize the ability to consciously or subconsciously rationalize self-interested and destructive practices. Gatekeeping is eroded by the assumption that ethical dilemmas will be obvious or intuitive.

To effectively tailor internal policies, gatekeepers should perform thorough risk assessments, at a minimum, on an annual basis and in response to internal and external changes in markets, clientele, or practices and patterns of abuse. This will allow gatekeepers to understand how vulnerabilities manifest within their own organizations and within their clients. While some risks may persist for decades, geographic patterns and popular destinations for corrupt funds can fluctuate rapidly in response to substantive and procedural developments at the national, regional, or sector level. Further, recent advancements in the digital global financial system, such as blockchain and cryptocurrencies, reinforce the importance of continuously re-evaluating risks and adjusting

internal policies, practices and employee education accordingly. Finally, as these policies evolve overtime, it is essential that resource allocation follows suit. Even the most robust policies can be made meaningless by underfunding.

2. Promote effective due diligence

To stem the flow of illicit funds, gatekeepers must know their client network and the source of their clients' assets. While gatekeepers should always conduct adequate due diligence, certain contexts require a heightened level of due diligence, which may be triggered by client characteristics or by red flags raised during the course of a transaction.¹⁹

Gatekeepers should systematically engage in enhanced due diligence where the risk of financial crime is categorically high, such as when dealing with politically exposed persons,²⁰ high-value transactions (particularly those involving cash or non-financed purchases), complex or opaque organizational structures, and organizations or individuals with significant presence in high-risk jurisdictions. A more individualized approach to enhanced due diligence should be triggered when clients raise red flags, regardless of the initial risk rating. For example, transactions that appear to make little economic sense, or clients who are particularly adamant on withholding key identifying information. It is important that red flags are triggered at the earliest possible opportunity, before gatekeepers become compromised by or overly enmeshed in a suspicious transaction. The characteristics and metrics that prompt both systematic and individualized enhanced due diligence should be revised, at a minimum, on an annual basis and in response to changes in practices and patterns of abuse.

Finally, when providing services for a legal entity, it is essential that gatekeepers know the entity's ultimate beneficiaries. Legal and regulatory measures to increase transparency around so called "beneficial owners" (i.e. those who ultimately own or have control over a legal entity) are gaining momentum in key markets worldwide, but gatekeepers should not wait for legislatures to act. Rather, gatekeepers should proactively begin to establish a system for addressing non-disclosure of beneficial ownership, and develop procedures for uniformly gathering and retaining this information. Knowing one's true customer and/or end user reduces risks and saves costs in the long term by avoiding unexpected complications or litigation.

3. Centre a culture of integrity through training and incentives

Gatekeepers should fully integrate a culture of integrity within their organizational structure. Since corporate culture defines what it takes to build consensus and succeed within an organization, it plays a central role in shaping behaviour and decision-making.²¹ Corporations must turn their attention to how key dimensions of corporate culture, such as values, leadership, norms and incentives, might support or undermine commitments to transparency and anti-corruption.²²

Integrity is not a state, it is an act. Concrete practices – above and beyond written policies or mission statements – play a powerful role in signaling a company’s true culture and priorities. To foster a culture of integrity, organizations should prioritize internal training and incentives. For example, employees and contractors should be incentivized to uphold transparent and honest business practices. This also requires adequate oversight from and accountability of senior management. Additionally, employees, at all levels, should receive up-to-date education and training on the risks and prevalence of illicit funds within their gatekeeping industry. The duty to uphold integrity should not be siloed into a niche role within the corporate structure, but rather integrated into the responsibilities of each and every employee. They need to understand their vulnerabilities and be equipped to resist undue pressures from corrupt actors. By adopting practices such as these, gatekeepers can meaningfully centre integrity within their corporate culture.

4. Foster a “speak-up” culture

Gatekeepers should promote open communication and proactively destigmatize the practice of speaking up.²³ Evidence overwhelmingly indicates that most whistleblowers’ first intuition and intention is to report internally.²⁴ Embracing an open organizational culture will maximize the likelihood that suspicious conduct is reported and addressed in-house, which reduces the financial and reputational costs of public exposure.²⁵

Gatekeepers can promote a speak-up culture in their workplace by ensuring that all employees and contractors are aware of the processes for communicating and handling concerns internally. These processes should allow for multiple avenues of reporting and guarantee that reports are handled by neutral parties, either within or outside of the organization. To the greatest extent possible, gatekeepers should maintain whistleblower anonymity or confidentiality and provide support in the form of confidential guidance and follow-up. Finally, it is essential that gatekeepers presume reports are made in good faith and protect whistleblowers against retaliation.²⁶ These measures harness the benefits of a receptive corporate culture while also acknowledging the personal risk involved in speaking out.

5. Collaborate across industries and sectors

Gatekeepers should proactively take advantage of the broad network of similarly situated professionals. This includes collaboration and communication across borders and industries. Like the parable of the six blind men and the elephant, the distinct and historically siloed nature of gatekeeping industries has resulted in an incomplete understanding of corrupt actors and the risks they pose.

In particular, gatekeepers can bolster market integrity through the sharing of best practices. Gatekeepers can help one another overcome implementation barriers or transform entrenched, ineffective practices. While some professionals and entities are old hands at addressing risks related to financial crime, others may be more tech-adept or open to experimentation. Everyone has something to learn.

Without prejudice to legal and professional obligations, sharing client information can cut the costs of rooting out illicit funds and reduce the risk of unexpectedly encountering legal issues. While this degree of collaboration may be unprecedented in many gatekeeping industries, institutions are increasingly recognizing the need for shared databases, information streams and standards in order to rid their markets of illicit funds.²⁷ Further, the advent of privacy enhancing technologies²⁸ expands the extent to which gatekeepers can be transparent and collaborative without compromising pre-existing legal duties.

Finally, gatekeepers and state actors should pursue opportunities for public-private collaboration. National anti-corruption and anti-money laundering systems rely heavily on the private sector for gathering information, detecting the movement of illicit funds and enforcing relevant regulations. States will be able to reduce the costs and collateral of regulation and enforcement if government agencies are able to work with gatekeepers to verify information across borders and industries. In the same vein, private sector actors could benefit immensely from reliable communication with and information from regulatory bodies and enforcement authorities, including access to relevant databases to aid client due diligence. Increasing transparency and collaboration across the public-private divide can help all actors productively guide market behaviour and stem the flow of illicit funds worldwide.

Endnotes

1. The term “illicit financial flows” is generally used to describe the movement of funds that are illegal in their source, transfer, or intended use, such as the proceeds of tax evasion, capital for terrorist financing, or corruption. Our definition of illicit financial flows does not start and stop with the letter of the law, but rather encompasses such acts regardless of whether they are codified as criminal in a particular jurisdiction.
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5. See, e.g. International Ethics Standards Board for Accountants, *International Code of Ethics for Professional Accountants*, <https://www.ethicsboard.org/international-code-ethics-professional-accountants>; ABA, *Model Rules of Professional Conduct*, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct; Association of Professional Art Advisors, *APAA Code of Ethics*, <https://www.artadvisors.org/about/code-of-ethics>.
6. See, e.g. Collin, Matthew, *What the FinCEN Leaks Reveal about the Ongoing War on Dirty Money*, Brookings, September 2020, <https://www.brookings.edu/blog/up-front/2020/09/25/what-the-fincen-leaks-reveal-about-the-ongoing-war-on-dirty-money>; Portman, Rob and Tom Carper, *Permanent Subcommittee on Investigations Staff Report: The Art Industry and U.S. Policies that Undermine Sanctions*, U.S. Senate, July 2020, <https://www.hsgac.senate.gov/imo/media/doc/2020-07-29%20PSI%20Staff%20Report%20-%20The%20Art%20Industry%20and%20U.S.%20Policies%20that%20Undermine%20Sanctions.pdf>; Transparency International, *Who is Opening the Gates for the Kleptocrats?*, June 2020, <https://www.transparency.org/en/news/who-is-opening-the-gates-for-kleptocrats> [hereinafter *Kleptocrats*]; OECD and International Bar Association, *Report of the Task Force on the Role of Lawyers and International Commercial Structures*, 2019, <https://www.ibanet.org/Conferences/The-role-of-lawyers-in-international-commercial-structures.aspx>.
7. International Monetary Fund, *Corruption: Costs and Mitigating Strategies*, May 2016, <https://www.imf.org/external/pubs/ft/sdn/2016/sdn1605.pdf>.
8. Tax Justice Network, *Financial Secrecy Index: Introducing the FSI 2020*, <https://fsi.taxjustice.net/en>.
9. See e.g. Kunzelman, Michael, “US Authorities Move to Seize Ex-Gambia Dictator’s Mansion”, *Washington Post*, 16 July 2020, https://www.washingtonpost.com/national/us-authorities-move-to-seize-ex-gambia-dictators-mansion/2020/07/16/cd2b8612-c779-11ea-a825-8722004e4150_story.html; “Teodorin Obiang: French Court Fines Equatorial Guinea VP”, *BBC*, 10 February 2020, <https://www.bbc.com/news/world-europe-51449951>.
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11. *Kleptocrats*, *supra* note 6.
12. World Economic Forum, *Partnering Against Corruption Initiative*, <https://www.weforum.org/communities/partnering-against-corruption-initiative>.
13. World Economic Forum, *Global Future Council on Transparency and Anti-Corruption*, <https://www.weforum.org/communities/gfc-on-transparency-and-anti-corruption>.
14. The four key pillars of the Global Future Council on Transparency and Anti-Corruption agenda include ethics beyond compliance, corporate culture, emerging technologies and collective action. See World Economic Forum Global Future Council on Transparency and Anti-Corruption, *Ethics and Integrity Beyond Compliance*, October 2020, http://www3.weforum.org/docs/WEF_GFC_on_Transparency_and_AC_pillar1_beyond_compliance_2020.pdf.
15. World Bank and UNODC, *Stolen Asset Recovery Initiative*, <https://star.worldbank.org>.

16. The World Economic Forum Gatekeepers Task Force includes the following contributors: Katja Bechtel, Lead, World Economic Forum Partnering Against Corruption Initiative; Nicole Bigby, Partner and General Counsel, Bryan, Cave, Leighton, Paisner; Nicola Bonucci, Managing Director, Investigations and Compliance, Paul Hastings; Elodie Chalmers, Global Head Anti-Money Laundering and Anti-Corruption, UBS; Julian Colborne-Baber, Partner, Deloitte; Rachel Davidson-Raycraft, Fellow, World Economic Forum Global Future Council on Transparency and Anti-Corruption; Tess Davis, Executive Director, The Antiquities Coalition; Gerda Ferreira, Executive Head, Group Financial Crime, Forensics & Security/Group Risk, Nedbank Limited; Delia Ferreira Rubio, Chair, Transparency International; Claire Handley, Chief Ethics and Compliance Officer, JLL; Bahare Heywood, Chief Risk and Compliance Officer, Clifford Chance; Solvej Krause, Financial Sector Specialist, UNODC-World Bank Stolen Asset Recovery Initiative (StAR); Andrej Leontiev, Partner, Taylor Wessing; Gabriella Margherito, AML Regulatory Changes and Group Obligations, Standard Chartered Bank; Marc-André Renold, Professor and UNESCO Chair in International Cultural Heritage Law, University of Geneva, Member of the Responsible Art Market (RAM) Initiative Advisory Group; Andrew Robinson, Partner, Deloitte; Tomislav Šunjka, Principal of Šunjka Law, Senior Vice-Chair of the IBA Asset Recovery Subcommittee; and Catherine Vaughan, Global Financial Crime, Ethics, and Compliance Leader, EY.
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21. Kim, supra note 18, at 437, 439-40, 441-42.
22. Good Intentions, supra note 17, at 3.
23. OECD, The Detection of Foreign Bribery: The Role of Whistleblowers and Whistleblower Protection, 2017, <https://www.oecd.org/corruption/anti-bribery/OECD-The-Role-of-Whistleblowers-in-the-Detection-of-Foreign-Bribery.pdf> [hereinafter Role of Whistleblowers].
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25. Transparency International, Blowing the Whistle for Corporate Success, June 22, 2020, https://www.transparency.org/en/blog/blowing-the-whistle-for-corporate-success?utm_medium=email&utm_campaign=The%20week%20in%20corruption%2026%20June%202020&utm_content=The%20week%20in%20corruption%2026%20June%202020+CID_60c9ad519880c132fbc248006ad5622&utm_source=Email%20marketing%20software&utm_term=Blowing%20the%20whistle%20for%20corporate%20success.
26. See generally, Role of Whistleblowers, supra note 23; OECD, Committing to Effective Whistleblower Protection, March 2016, <http://www.oecd.org/corruption-integrity/reports/committing-to-effective-whistleblower-protection-9789264252639-en.html>.
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