Overview Report: New Developments & Miscellaneous Documents

1.	Bill 8 – Finance Statutes Amendment Act, 2021	https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/42nd-parliament/1st-session/bills/progress-of-bills
2.	BCFSA News Release dated May 19, 2021	https://www.bcfsa.ca/pdf/news/BCFSAStatus05192021.pdf
3.	Joint Statement in Support of Single Regulator – RECBC, dated March 2, 2021	https://www.recbc.ca/about-us/media/news/joint-statement
4.	BC Gov News Release – Amendments to improve oversight for real estate, financial services dated March 2, 2021	https://news.gov.bc.ca/releases/2021FIN0017-000368
5.	Memorandum of Understanding between The Office of the Superintendent of Real Estate and the Real Estate Council of British Columbia – December 18, 2019	N/A
6.	FATF Guidance – Politically Exposed Persons (Recommendations 12 and 22) – June 2013	N/A
7.	CAN-001787 – FIR: Money Laundering Trends Associated to the Black Axe Organized Crime Group	N/A
8.	CAN-001788 – Typology Report: China-linked money	N/A

	laundering organizations - casinos	
9.	CAN-001789 – Typology Report: China-linked money laundering organization – money mules	N/A
10.	CAN-001790 – Typology Report: China-linked money laundering organizations – private lenders	N/A
11.	CAN-001791 – Environmental Scan: COVID-19 – Virtual Currency	N/A

Appendix A

Bill 8 – Finance Statues Amendment Act, 2021

1st Session, 42nd Parliament (2020–2021)
THIRD READING

Certified correct as passed Third Reading on the 9th day of March, 2021
Kate Ryan-Lloyd, Clerk of the Legislative Assembly

HONOURABLE SELINA ROBINSON
MINISTER OF FINANCE

BILL 8 – 2021
FINANCE STATUTES AMENDMENT ACT, 2021

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Financial Institutions Act

1 Section 21 of the Financial Institutions Act, R.S.B.C. 1996, c. 141, is amended

(a) by adding the following subsection:

(2.1) The superintendent must not consent to an acquisition referred to in subsection (2) if the superintendent believes on reasonable grounds that it is not in the public interest to consent. , and

(b) in subsection (5) by striking out "an arrangement, acquisition or disposition by reinsurance***" and substituting "***an arrangement referred to in subsection (1) or a disposition by reinsurance referred to in subsection (3)***".***

2 Section 23 is amended by striking out "or the minister considers necessary in determining***" and substituting "***considers necessary for determining***".***

3 Section 33.1 (1) is amended by striking out "the Authority may appoint the superintendent***" and substituting "***the superintendent may appoint an employee of the Authority***".***

4 Section 67 is amended

(a) in subsection (2) by striking out "the Authority considers***" and substituting "***the superintendent considers***" and by striking out "***the Authority may order***" and substituting "***the superintendent may order***", and***

(b) in subsection (3) by striking out "consent of the Authority***" and substituting "***consent of the superintendent***".***

5 Section 96 (3) (c) is amended by striking out "recovered by the Authority***" and substituting "***recovered by the superintendent***".***

6 Section 124 is amended

(a) in subsection (1) by striking out "or Authority***" wherever it appears, and***

(b) in subsection (2) by striking out "directed by the Authority***" and substituting "***directed by the superintendent***" and by striking out "***Authority or***".***

7 Section 127 is amended

(a) by repealing subsection (3) and substituting the following:

(3) At intervals specified by the superintendent, a financial institution must file with the superintendent one or more of the following reports as specified, and in the form established, by

the superintendent:

(a) a financial affairs report;

(b) a market conduct practices report;

(c) a risk management practices report;

(d) a corporate governance report. ***, and***

(b) by adding the following subsection:

(5) The superintendent may require an insurance company to file with the administrator of a national database of market conduct, with whom the Authority has entered into an agreement under section 219.01, a market conduct practices report

(a) instead of filing such a report with the superintendent under subsection (3), or

(b) if so directed by the superintendent, in addition to filing such a report with the superintendent under subsection (3).

8 Section 160 is amended

(a) in subsection (1) (a) and (b) by striking out "or extraprovincial credit union***",***

(b) by repealing subsection (2),

(c) in subsection (3) by adding "and***" at the end of paragraph (e) and by repealing paragraph (f), and***

(d) by repealing subsection (4) and substituting the following:

(4) The superintendent must not issue a business authorization under subsection (3) if the superintendent believes on reasonable grounds that it is not in the public interest to issue the business authorization.

9 The following sections are added:

Business authorization for extraprovincial credit union

160.1 (1) The following extraprovincial credit unions may file with the Authority an application for a business authorization, in the form established by the superintendent, in accordance with this section:

(a) an extraprovincial credit union whose primary jurisdiction is not Canada;

(b) an extraprovincial credit union whose primary jurisdiction is Canada.

(2) The Authority may issue a business authorization to an extraprovincial credit union referred to in subsection (1) (a) if

(a) the credit union meets the requirements of section 160 (3) (a) to (d) and (g), with all references to "superintendent" in that section to be read as references to "Authority", and

(b) the Authority is satisfied that, in the credit union's primary jurisdiction, a credit union from British Columbia could be authorized to carry on business as an extraprovincial corporation.

(3) The Authority must not issue a business authorization under subsection (2) if

(a) the Authority believes on reasonable grounds that it is not in the public interest to issue the business authorization, or

(b) the Authority has not received the consent of the deposit insurance corporation.

(4) Section 160 (5) applies to the issuance of a business authorization under subsection (2) of this section, with all references to "superintendent" in section 160 (5) to be read as references to "Authority".

(5) Before issuing a business authorization to an extraprovincial credit union under subsection (2), the Authority must consider the prescribed criteria.

(6) The Authority must issue a business authorization to an extraprovincial credit union referred to in subsection (1) (b) if the corporation provides information in support of its application that is satisfactory to the Authority.

Amended business authorization

160.2 (1) An extraprovincial corporation that has a business authorization may at any time file with the superintendent an application, in the form established by the superintendent, for an amended business authorization.

(2) If an extraprovincial corporation provides information in support of its application under subsection (1) that is satisfactory to the superintendent, the superintendent

(a) may issue an amended business authorization to an extraprovincial corporation referred to in section 160 (1) (a) or (c) or 160.1 (1) (a), and

(b) must issue an amended business authorization to an extraprovincial corporation referred to in section 160 (1) (b) or (d) or 160.1 (1) (b).

10 Section 160.1 (3), as enacted by section 9 of this Act, is amended by striking out "or***" at the end of paragraph (a) and by repealing paragraph (b) and substituting the following:***

(b) the deposit insurance corporation has not, after considering the prescribed criteria, provided the Authority with consent, or

(c) the deposits, within the meaning of section 260, of the credit union's depositors are not guaranteed in accordance with the prescribed requirements.

11 Section 161 is amended by striking out "Authority's power***" and substituting "***power of the Authority or the superintendent***".***

12 Section 163 is amended

(a) by repealing subsection (3) and substituting the following:

(3) At intervals specified by the superintendent, an extraprovincial corporation must file with the superintendent one or more of the following reports as specified, and in the form established, by the superintendent:

(a) a financial affairs report;

(b) a market conduct practices report;

(c) a risk management practices report;

(d) a corporate governance report. ***, and***

(b) by adding the following subsection:

(5) The superintendent may require an extraprovincial insurance corporation to file with the administrator of a national database of market conduct, with whom the Authority has entered into an agreement under section 219.01, a market conduct practices report

(a) instead of filing such a report with the superintendent under subsection (3), or

(b) if so directed by the superintendent, in addition to filing such a report with the superintendent under subsection (3).

13 Section 187 (3) is amended by striking out "that the Authority considers necessary for the evaluation of the application.***"***

14 Section 201 (3) (c) is amended

(a) in subparagraph (vi) by striking out "section 26***" and substituting "***section 28.2***", and***

(b) in subparagraph (vii) by striking out "section 38***" and substituting "***section 29.1***".***

15 Section 201 (2) to (8) is repealed and the following substituted:

(2) Subject to subsections (3) and (3.1), the minister may make regulations

(a) transferring to the superintendent appointed under section 207 a power or duty given to the Authority under this Act or the *Credit Union Incorporation Act*, and

(b) reversing a transfer of a power or duty made under paragraph (a).

(3) A regulation made under this section must not transfer the following:

(a) the power to establish and amend, under section 94.1 (1), a code of market conduct for an insurance company;

(b) the powers, under section 94.2 (4),

(i) to establish and amend a code of market conduct for a credit union, and

(ii) to require the board of directors of a credit union to adopt that code;

(c) the power to make rules under section 201.1;

(d) the power to require the council to establish written administrative policies and procedures under section 226 (1) and the power to give consent to their implementation under section 226 (3);

(e) a power or duty under Part 9, other than a power or duty under section 277, 277.1 or 277.2.

(3.1) A regulation made under this section must be effective on a date specified in the regulation that is at least 3 months after the date of deposit of the regulation under the *Regulations Act*.

(3.2) Subsection (3.1) does not apply to the first regulation made under this section.

(4) A regulation made under this section may

(a) impose terms and conditions that the minister considers advisable, including limits on delegation by the superintendent under section 207 (2) of a transferred power or duty, and

(b) establish transitional rules in relation to the transfer of a power or duty under subsection (2) (a) or (b) of this section.

16 Section 201 (3.2), as enacted by section 15 of this Act, is repealed.

17 Section 201.2 (a) is amended by adding "unless the regulations provide otherwise***" after "***in accordance with the regulations***".***

18 Section 207 is amended

(a) in subsection (2) by repealing paragraph (b) and substituting the following:

(b) subject to a limit under section 201 (4), may, in writing and with or without terms and conditions, delegate to an officer, employee or agent of the Authority a power or duty that is transferred to the superintendent by a regulation made under section 201. ***,***

(b) in subsection (2) by striking out everything after paragraph (b), and

(c) by adding the following subsections:

(2.1) A delegation under this section is revocable and does not prevent the superintendent from exercising a delegated power.

(2.2) A person purporting to exercise a power of the superintendent by virtue of a delegation under this section must, when requested to do so, produce evidence of the person's authority to exercise the power.

19 Sections 208 and 218.1 (1) (a) and (f) are amended by striking out "the Authority or***" wherever it appears.***

20 Section 218.2 (1) is amended

(a) in the definition of* "self-evaluative compliance audit" *by striking out "the Authority or***", and***

(b) in the definition of **"self-evaluative compliance audit document"** ***by striking out "***, the Authority***".***

21 Sections 219 and 219.01 are amended by striking out "may enter***" and substituting "***and the superintendent may each enter***".***

22 Section 235 is amended

(a) by repealing subsections (1) to (2.1) and substituting the following:

(1) The following orders must be in writing:

(a) an order of the Authority under any of the following provisions:

(i) section 26 (1) or (2) *[liquidation and dissolution]*;

(ii) section 31 (b) *[filing quarterly statements and producing records]*;

(iii) section 241.1 *[assessment of costs]*;

(iv) section 248 (2) *[supervision of central credit union]*;

(v) section 249 (1) or (7) *[revocation of business authorization]*;

(vi) section 277 (2) *[orders in relation to credit union that is subject to supervision]*;

(b) an order of the superintendent under any of the following provisions:

(i) section 48 (2) *[designation of connected party]*;

(ii) section 58 *[requiring declaration of share ownership]*;

(iii) section 61 (2) *[extension to apply for business authorization]*;

(iv) section 67 (2) *[capital and liquidity of financial institutions]*;

(v) section 93 *[prohibition against unfair, misleading or deceptive documents]*;

(vi) section 99 (2) *[removal of directors and officers]*;

(vii) section 107 (1) *[requiring meeting of directors]*;

(viii) section 109 (2) *[circulation of director's statement]*;

(ix) section 117 (2) *[appointment of auditor]*;

(x) section 124 *[additional reporting by auditor]*;

(xi) section 125 (1) *[appointment of additional auditor]*;

(xii) section 137 *[requiring review of investment and lending policy]*;

(xiii) section 142 (2) *[other authorized investments]*;

(xiv) section 143 *[disposal of investments]*;

(xv) section 144 (3) *[designation of related parties]*;

(xvi) section 193 (2) *[requiring existing societies to apply for business authorization]*;

(xvii) section 197 *[amendment of charter]*;

(xviii) section 206 *[requirement to insure]*;

(xix) section 211 *[requirement to provide information]*;

(xx) section 214 *[special examination]*;

(xxi) section 215 *[investigation]*;

(xxii) section 241.1 *[assessment of costs]*;

(xxiii) section 244 (2) or (5) *[order to cease or remedy]*;

(xxiv) section 245 *[order to freeze property]*;

(xxv) section 247 *[valuation of assets and insurance contracts]*;

(xxvi) section 248 (1) *[requiring central credit union to hold special general meeting]*;

(xxvii) section 249 (1.01) or (7.1) *[revocation of business authorization]*;

(xxviii) section 253.1 (8) *[administrative penalties]*;

(xxix) section 275 *[supervision of credit union]*;

(xxx) section 276 (e) *[duration of supervision]*;

(xxxi) section 277 (1) *[orders in relation to credit union that is subject to supervision]*;

(xxxii) section 285 (1) *[delegation to stabilization authority]*;

(c) an order of the council under any of the following provisions:

(i) section 231 (1) *[council's powers in relation to licences]*;

(ii) section 241.1 *[assessment of costs]*.

(2) A consent or a refusal of a consent of the Authority under any of the following provisions must be in writing:

(a) section 13 (1) *[incorporation]*;

(b) section 18 (1) *[continuation of extraprovincial trust corporation or extraprovincial insurance corporation into British Columbia]*;

(c) section 19 (1) (b) *[continuation of trust company or insurance company out of British Columbia]*;

(d) section 20 (3) *[amalgamation of trust company or insurance company]*;

(e) section 21 (1) or (3) *[arrangement or disposition by reinsurance]*;

(f) section 226 (3) *[administrative policies]*.

(2.1) A consent or a refusal of a consent of the superintendent under any of the following provisions must be in writing:

(a) section 10.1 (2) (a) or (b) *[Business Corporations Act application to extraprovincial corporations]*;

(b) section 12 (3) *[names for trust companies and insurance companies]*;

(c) section 15 *[alteration of memorandum, notice of articles or articles]*;

(d) section 16 *[conversion of special Act insurance company]*;

(e) section 21 (2) *[acquisition of assets]*;

(f) section 33 *[restoration of trust company or insurance company]*;

(g) section 50 (4) *[major share acquisition]*;

(h) section 67 (2.1) or (3) *[capital and liquidity of financial institutions]*;

(i) section 69 (1) *[appointment of receiver]*;

(j) section 99 (3) *[removed directors and officers]*;

(k) section 141 (2) (c) *[investment in a corporation]*;

(l) section 142 (1) (a), (b) or (c) *[other authorized investments]*;

(m) section 147 *[related party transactions]*;

(n) section 197.1 (3) or (4) *[alteration to constitution or bylaws or amalgamation of authorized society]*;

(o) section 276 (c) *[duration of supervision]*.

(2.2) A refusal of the Authority to issue a business authorization must be in writing. ***,***

(b) in subsection (5) (b) by striking out "249 (7) (b)***" and substituting "***249 (7)***",***

(c) in subsection (5) (c) by adding "or (2.1)***" after "***subsection (2)***", and***

(d) in subsection (5) (d) (iii) by striking out "issued***".***

23 Section 235, as amended by section 22 of this Act, is amended

(a) in subsection (1) (b) by repealing subparagraph (xvii), and

(b) in subsection (2.1) by adding the following paragraph:

(j.1) section 139.1 (1) *[credit union entering into prescribed transaction]*; ***.***

24 Section 236 is amended

(a) in subsection (1) (a) (ii) by adding "or (2.1)***" after "***section 235 (2)***",***

(b) in subsection (2) by striking out "conclusively deemed to be***", and***

(c) in subsection (3) (b) by striking out "249 (1)***" and substituting "***249 (1.01)***".***

25 Section 237 is amended

(a) in subsection (2) (a) by striking out "277 (d) to (g)***" and substituting "***277 (1) (d) or (2) (a), (c) or (d)***",***

(b) in subsection (2) (c), (e) and (f) by adding "or (2.1)***" after "***section 235 (2)***", and***

(c) in subsection (3) (a) by striking out "the minister or***".***

26 Section 238 (1) is amended

(a) by striking out "acting in accordance with a delegation by the Authority,***", and***

(b) by repealing paragraph (a) and substituting the following:

(a) intends to make an order under section 93 (1) or (2) *[prohibition against unfair, misleading or deceptive documents]* or 231 (1) (g), (h), (i) or (j) *[council may suspend, cancel or restrict licences]*, and ***.***

27 Section 238.1 is amended

(a) in subsection (1) by striking out "If the Authority***" and substituting "***If the superintendent, or the Authority, depending on which of them has the power to make the order,***",***

(b) in subsection (1) (a) by striking out "93 (1) or (2),***" and by striking out "***277 (d) to (f)***" and substituting "***277 (1) (d) or (2) (a) or (c)***",***

(c) in subsection (1) by striking out "the Authority may***" and substituting "***the superintendent or Authority, as applicable, may***" and by striking out "***but the Authority***" and substituting "***but the superintendent or Authority***",***

(d) by repealing subsection (2) (a) and substituting the following:

(a) require a hearing before the superintendent or Authority, as applicable, by delivering written notice to the superintendent or Authority, or ***, and***

(e) in subsection (3) by striking out "the Authority***" and substituting "***the superintendent or Authority, as applicable,***".***

28 Section 240 (1) (g) is amended by striking out "his***" and substituting "***the person's***".***

29 Section 242 is amended

(a) by adding the following subsection:

(0.1) In this section, **"consent"** means consent under any of the following provisions:

(a) section 10.1 (2) (b) *[Business Corporations Act application to extraprovincial corporations]*;

(b) section 21 (2) *[acquisition of assets]*;

(c) section 67 (2.1) *[capital and liquidity of financial institutions]*;

(d) section 141 (2) (c) *[investment in a corporation]*;

(e) section 142 (1) (a) *[other authorized investments]*. ***,***

(b) in subsection (1) by striking out ", the superintendent acting in accordance with a delegation by the Authority,***",***

(c) by repealing subsection (1) (a) and substituting the following:

(a) an order under any of the following provisions:

(i) section 93 *[prohibition against unfair, misleading or deceptive documents]*;

(ii) section 109 (2) *[circulation of director's statement]*;

(iii) section 125 (1) *[appointment of additional auditor]*;

(iv) section 137 *[requiring review of investment and lending policy]*;

(v) section 143 *[disposal of investments]*;

(vi) section 231 (1) *[council may suspend, cancel or restrict licences and impose fines]*;

(vii) section 247 (2) or (4) *[valuation of assets and insurance contracts]*;

(viii) section 253.1 (8) *[administrative penalties]*;

(a.1) an order under section 241.1 *[assessment of costs]* that is not related to a decision that may be appealed to the Supreme Court under section 242.4 (1); ***,***

(d) in subsection (1) (b) to (d) by striking out "referred to in section 235 (2)***",***

(e) by repealing subsection (1) (e) and substituting the following:

(e) the issuance subject to conditions of a licence under Division 2 of Part 6; ***, and***

(f) by repealing subsection (1) (g) and (h).

30 Section 242.4 is amended

(a) by adding the following subsection:

(0.1) In this section, **"consent"** means consent under any of the following provisions:

(a) section 13 (1) *[incorporation]*;

(b) section 15 *[alteration of memorandum, notice of articles or articles]*;

(c) section 16 *[conversion of special Act insurance company]*;

(d) section 18 (1) *[continuation of extraprovincial trust corporation or extraprovincial insurance corporation into British Columbia]*;

(e) section 19 (1) (b) *[continuation of trust company or insurance company out of British Columbia]*;

(f) section 20 (3) *[amalgamation of trust company or insurance company]*;

(g) section 21 (1) or (3) *[arrangement or disposition by reinsurance]*;

(h) section 33 *[restoration of trust company or insurance company]*;

(i) section 50 (4) *[major share acquisition]*;

(j) section 67 (3) *[capital and liquidity of financial institutions]*;

(k) section 69 (1) *[appointment of receiver]*;

(l) section 99 (3) *[removed directors and officers]*;

(m) section 142 (1) (b) or (c) *[other authorized investments]*;

(n) section 147 *[related party transactions]*;

(o) section 197.1 (3) or (4) *[alteration to constitution or bylaws or amalgamation of authorized society]*;

(p) section 276 (c) *[duration of supervision]*. ***,***

(b) in subsection (1) by adding "or the superintendent, depending on which of them has the power to make the decision,***" after "***the Authority***",***

(c) by repealing subsection (1) (a) and substituting the following:

(a) an order under any of the following provisions:

(i) section 48 (2) *[designation of connected party]*;

(ii) section 67 (2) *[capital and liquidity of financial institutions]*;

(iii) section 99 (2) *[removal of directors and officers]*;

(iv) section 144 (3) *[designation of related parties]*;

(v) section 193 (2) *[requiring existing societies to apply for business authorization]*;

(vi) section 197 *[amendment of charter]*;

(vii) section 244 (2) or (5) *[order to cease or remedy]*;

(viii) section 245 (1) *[order to freeze property]*;

(ix) section 275 *[supervision of credit union]*;

(x) section 277 (1) (d) or (2) (a), (c) or (d) *[orders in relation to credit union that is subject to supervision]*;

(a.1) an order under section 241.1 *[assessment of costs]* that is related to a decision that may be appealed to the Supreme Court under this subsection;

(a.2) any other order of the Authority under section 241.1; ***,***

(d) in subsection (1) (b) to (d) by striking out "referred to in section 235 (2)***",***

(e) by adding the following subsection:

(2.1) The superintendent is a party to an appeal of a decision of the superintendent to the Supreme Court. ***,***

(f) in subsection (4) (a) to (c) by adding "or superintendent, as the case may be***" after "***the Authority***",***

(g) by repealing subsection (4) (d) and substituting the following:

(d) the decision of the Authority or superintendent, as the case may be; ***, and***

(h) in subsection (5) (a) by adding "or superintendent, as the case may be,***" after "***the Authority***".***

31 Section 242.4 (1) (a) (vi), as enacted by section 30 of this Act, is repealed.

32 Sections 243 (1) (c) and 248 (5) (a) are amended by striking out "277 (e)***" and substituting "***277 (2) (a)***".***

33 Section 244 (2) is amended by striking out "in the opinion of the Authority***" and substituting "***in the opinion of the superintendent***" and by striking out "***, the Authority may***" and substituting "***the superintendent may***".***

34 Section 245 (1) is amended

(a) in paragraph (b) by striking out "Authority or***", and***

(b) by striking out "the Authority may***" and substituting "***the superintendent may***".***

35 Section 249 is amended

(a) in subsection (1) (a) by adding "superintendent,***" after "***Authority,***",***

(b) by repealing subsection (1) (h),

(c) by adding the following subsection:

(1.01) If the superintendent has reasonable grounds to believe any of the things set out in subsection (1) (a) to (g), the superintendent by order may impose conditions in respect of the financial institution's permit or business authorization. ***,***

(d) in subsection (1.1) by striking out "subsection (1) (h), (i) or (j)***" and substituting "***subsection (1) (i) or (j) or the superintendent may make an order under subsection (1.01)***",***

(e) in subsection (2) by striking out "subsection (1) (h) or (j)***" and substituting "***subsection (1) (j) or the superintendent may make an order under subsection (1.01)***", and***

(f) by repealing subsection (7) and substituting the following:

(7) The Authority may by order reinstate a permit or business authorization that has been revoked under subsection (1) (j), either unconditionally or subject to conditions the Authority considers appropriate.

(7.1) The superintendent may by order cancel a condition imposed under subsection (1.01) in respect of a permit or business authorization.

36 Section 253.1 (1) is amended

(a) by striking out "the opinion of the Authority***" and substituting "***the opinion of the superintendent***",***

(b) in paragraph (e) by striking out "the Authority or***", and***

(c) by striking out "the Authority may give written notice***" and substituting "***the superintendent may give written notice***".***

37 Section 275 is amended by striking out "the Authority by order***" and substituting "***the superintendent by order***" and by striking out "***the supervision of the Authority***" and substituting "***the supervision of the superintendent***".***

38 Section 277 is amended

(a) by renumbering the section as section 277 (1),

(b) in subsection (1) by striking out "supervision of the Authority, the Authority may***" and substituting "***supervision of the superintendent, the superintendent may***",***

(c) in subsection (1) (a) by striking out "Authority's***" and substituting "***superintendent's***",***

(d) in subsection (1) by adding "and***" at the end of paragraph (c),***

(e) in subsection (1) (d) by striking out "Authority***" and substituting "***superintendent***",***

(f) in subsection (1) by repealing paragraphs (e) to (g), and

(g) by adding the following subsection:

(2) If a credit union is subject to the supervision of the superintendent, the Authority may make orders

(a) appointing an individual, who may be an employee of the Authority, as the administrator of the credit union if the Authority considers that the credit union

(i) is not otherwise likely to be released from supervision within a reasonable period of time, or

(ii) has breached a term or condition imposed or a requirement of an order made by the superintendent while supervising the credit union,

(b) terminating the appointment of the administrator appointed under paragraph (a),

(c) if an administrator has been appointed under paragraph (a), terminating the appointment of and removing any or all of the directors and officers of the credit union and appointing directors and officers to fill any vacancy, and

(d) if an administrator has been appointed under paragraph (a) and the capital base of the credit union is less than the amount prescribed for the purposes of this paragraph, requiring

(i) the credit union to amalgamate with another credit union,

(ii) the credit union to dispose of all or substantially all of its assets and liabilities to another credit union, or

(iii) the credit union to be wound up.

39 Section 277.1 is repealed and the following substituted:

Additional circumstances in which section 277 (2) orders may be made

277.1 (1) Subject to subsection (2), when a credit union is not subject to the supervision of the superintendent, the Authority may make an order under section 277 (2) with respect to the credit union as though that credit union were subject to the supervision of the superintendent.

(2) An order referred to in subsection (1) may be made if the Authority considers that

(a) one or more of the circumstances referred to in section 275 apply to the credit union, and

(b) supervision would not be adequate to ensure that a guarantee under section 266 would not need to be invoked.

40 Section 277.2 is amended by striking out "section 277***" and substituting "***section 277 (2)***".***

41 Section 285 (1) is amended by striking out "section 277 (a) to (d)***" and substituting "***section 277 (1) (a) to (d)***".***

42 Section 286 is repealed.

43 Section 287 is amended by striking out "powers of the Authority***" and substituting "***powers of the superintendent***".***

44 Section 290 is repealed and the following substituted:

Transfer of disciplinary powers

290 (1) The Lieutenant Governor in Council may make regulations

(a) transferring from the council to the superintendent all of the powers granted to the council under sections 231 to 232.1 and 232.6,

(b) reversing a transfer of powers made under paragraph (a), and

(c) establishing transitional rules in relation to the transfer of powers under paragraph (a) or (b).

(2) A regulation made under this section must be effective on a date specified in the regulation that is at least 3 months after the date of deposit of the regulation under the *Regulations Act*.

Real Estate Services Act

45 Section 1 of the Real Estate Services Act, S.B.C. 2004, c. 42, is amended

(a) by adding the following definition:

"Authority" means the BC Financial Services Authority established under section 2 of the *Financial Services Authority Act*; ***,***

(b) by repealing the definitions of* "bylaw"*, "compensation committee", "council member", "discipline committee" and "hearing committee",

(c) by adding the following definition:

"prescribed" means prescribed by regulation of the Lieutenant Governor in Council; ***,***

(d) by repealing the definition of* "real estate council"*,

(e) by repealing the definition of* "rules" *and substituting the following:

"rules" means rules made by the Authority under section 89.2; ***,***

(f) by repealing the definition of* "superintendent" *and substituting the following:

"superintendent" means the Superintendent of Real Estate appointed under section 2.1 (1); ***, and***

(g) by adding the following definition:

"temporary licence" means a licence, of any level or category, described in section 14 *[temporary licences]*; ***.***

46 The following section is added to Part 1:

Superintendent of Real Estate

2.1 (1) The Authority's board of directors must appoint a Superintendent of Real Estate in accordance with section 10 *[statutory decision makers]* of the *Financial Services Authority Act*.

(2) The superintendent may exercise the powers and must perform the duties vested in or imposed on the superintendent under this Act, the *Real Estate Development Marketing Act* and the *Strata Property Act*.

(3) The superintendent may, in writing, delegate any of the superintendent's powers or duties under this Act.

(4) The superintendent may impose conditions or restrictions on any delegation made under subsection (3).

47 Section 5 is amended

(a) by repealing subsection (1) and substituting the following:

(1) The following levels of licences are established for the purposes of this Act:

(a) a brokerage licence, which authorizes a brokerage to provide real estate services through a managing broker, associate broker or representative;

(b) a managing brokerage licence, which authorizes a managing broker to act for a brokerage for all purposes under this Act and to carry out the responsibilities referred to in section 6 (2) *[brokerage must have a managing broker]*;

(c) an associate broker licence, which authorizes an associate broker to provide real estate services under the supervision of a managing broker;

(d) a representative licence, which authorizes a representative to provide real estate services under the supervision of a managing broker. ***, and***

(b) by adding the following subsection:

(2.1) A person may not be licensed as an associate broker unless the person meets the educational and experience requirements to be licensed as a managing broker.

48 Section 9 is repealed and the following substituted:

How to make an application

9 (1) A person may apply for a new licence, or for the renewal, amendment or reinstatement of a licence, by submitting to the superintendent an application

(a) in the form and manner required by the superintendent, and

(b) containing the information required by the superintendent.

(2) The application must be accompanied by the following, as applicable:

(a) any other information or records required by the superintendent;

(b) any prescribed fee in relation to the application;

(c) any prescribed fee in relation to a licence;

(d) any prescribed assessment in relation to the expenses of the Authority;

(e) any assessment levied under section 104 (1) *[insurance fund assessments and deductibles]* by the insurance corporation and required to be paid before a licence is issued, amended or reinstated;

(f) any assessment levied under section 113 (1) *[compensation fund assessments]* by the compensation fund corporation and required to be paid before a licence is issued, amended or reinstated.

(3) A fee referred to in subsection (2) (c) and an assessment referred to in subsection (2) (d), (e) or (f) are refundable if the licence in respect of which the application is made is not issued, amended or reinstated, as the case may be.

(4) In addition to any other information required by the superintendent,

(a) an application for a brokerage licence must identify the persons proposed to act as managing brokers in relation to the brokerage, and

(b) an application for a managing broker, associate broker or representative licence must identify the brokerage in relation to which the applicant proposes to be licensed.

(5) An individual who is licensed as a brokerage and qualified to be licensed as a managing broker is deemed to be licensed as a managing broker in relation to the brokerage unless an application under subsection (1) in relation to the brokerage licence indicates that the individual will not be acting in that capacity.

(6) The superintendent may refuse to accept an application until any amount owed by the applicant to the Authority, insurance corporation or compensation fund corporation is paid.

(7) If a person submits an application for the renewal of the person's licence on or after the earlier of the dates referred to in section 12 (a) and (b), the superintendent may accept the application for renewal instead of requiring the person to submit an application for a new licence.

(8) If a person's licence is inoperative or suspended, the superintendent may authorize the person to apply for the renewal of the licence instead of applying for the reinstatement of the licence or for a new licence.

49 Section 10 is amended by adding the following paragraph:

(b.1) in the case of an applicant for a licence renewal who is an individual, the applicant meets the educational requirements specified by the superintendent; ***.***

50 Sections 13 (4), 15 (4) and 24 (3) are amended by striking out "it must***" and substituting "***the superintendent must***".***

51 Section 13 is amended by adding the following subsections:

(5) The superintendent may, by order, require the applicant to pay the expenses, or part of the expenses, incurred by the Authority in relation to the applicant's opportunity to be heard under subsection (3).

(6) Amounts ordered as referred to in subsection (5)

(a) must not exceed the applicable limit that is prescribed in relation to the type of expenses to which they relate, and

(b) may include the remuneration expenses incurred in relation to employees, officers or agents of the Authority engaged in providing the opportunity to be heard.

52 Section 15 (5) is amended by striking out "real estate council's***" and substituting "***superintendent's***".***

53 Section 18 (d) is amended by striking out "Division 2 *[Discipline Proceedings]****" and substituting "***Division 2 *[Discipline Proceedings Relating to Licensees]****".***

54 Section 19 (2) is amended by repealing paragraphs (b) to (d) and substituting the following:

(b) by order of the superintendent under

(i) section 24 *[cancellation or suspension of licence if qualification not met]*, or

(ii) Division 2 *[Discipline Proceedings Relating to Licensees]* of Part 4.

55 The following section is added:

Form and content of brokerage reports

25.1 If, under the rules, a brokerage is required to file with or submit to the superintendent a report, or another record in place of a report, the report or record must

(a) be filed or submitted in the form and manner required by the superintendent,

(b) include the information required by the superintendent, and

(c) be accompanied by any information or records required by the superintendent.

56 Section 28 (3) (c) is repealed and the following substituted:

(c) prescribed payments.

57 The heading to Division 1 of Part 4 is repealed and the following substituted:

Division 1 – Conduct, Complaints and Investigations Relating to Licensees .

58 Section 35 is amended

(a) in subsection (1) (b) by striking out "their licence***" and substituting "***the licence***",***

(b) in subsection (1) (e) by striking out "or 48 *[investigations by superintendent]****",***

(c) in subsection (1) (f) by striking out "the real estate council, a discipline committee or***",***

(d) in subsection (1) by adding the following paragraph:

(f.1) fails to comply with an undertaking that the licensee gave under section 53.1; ***, and***

(e) in subsection (2) by striking out "a discipline committee***" and substituting "***the superintendent***".***

59 Section 37 is amended

(a) in subsection (1) by striking out "On its own initiative or on receipt of a complaint, the real estate council***" and substituting "***The superintendent***",***

(b) by repealing subsection (2),

(c) in subsection (3) by striking out "a person carrying out the investigation***" and substituting "***the superintendent***",***

(d) in subsection (3) (a) by striking out "copy records***" and substituting "***remove or copy records***", and***

(e) in subsection (3) (b) (i) and (ii) by striking out "the investigator***" and substituting "***the superintendent***".***

60 Section 38 is amended

(a) in subsection (1) by striking out "the Supreme Court***" and substituting "***a justice***", and***

(b) in subsections (2) and (4) by striking out "the court***" and substituting "***the justice***".***

61 The heading to Division 2 of Part 4 is repealed and the following substituted:

Division 2 – Discipline Proceedings Relating to Licensees .

62 Section 39 is repealed.

63 Section 40 is amended

(a) by repealing subsection (1) and substituting the following:

(1) Following an investigation under section 37 *[investigations of licensees]* or the cancellation of an administrative penalty under section 57 (4) (a.1) *[administrative penalties]*, the superintendent

may issue a notice to the affected licensee and conduct a discipline hearing. ***, and***

(b) in subsection (2) (c) by striking out "discipline committee***" and substituting "***superintendent***".***

64 Section 41 is amended

(a) by repealing subsection (1) and substituting the following:

(1) At any time before the time set for the discipline hearing, the licensee who received a notice under section 40 *[notice of discipline hearing]* may deliver to the superintendent a written proposal that includes the licensee's consent to the superintendent making a specified order under section 43 *[discipline orders]* without conducting a hearing. ***,***

(b) by repealing subsections (3) and (4) and substituting the following:

(3) The superintendent may accept or reject the proposal.

(4) If the superintendent accepts the proposal,

(a) the superintendent may make the proposed order, and

(b) no further proceedings may be taken under this Division or Division 5 *[Administrative Penalties]* with respect to the matter, other than to enforce the terms of the order as proposed or to deal with a contravention of the order. ***,***

(c) in subsection (5) by striking out "referred,***", and***

(d) in subsection (5) (a) by adding "or***" at the end of subparagraph (i) and by repealing subparagraph (ii).***

65 Section 42 is amended

(a) in subsection (1) by striking out "a discipline committee***" and substituting "***the superintendent***",***

(b) in subsection (2) by striking out "discipline committee***" and substituting "***superintendent***", and***

(c) by adding the following subsection:

(3) The superintendent may conduct a discipline hearing by way of written submissions or oral hearing, or a combination of both.

66 Section 43 is amended

(a) in subsections (1) and (2) by striking out "discipline committee***" and substituting "***superintendent***",***

(b) in subsection (1) (a) by striking out "if it determines***" and substituting "***if the superintendent determines***",***

(c) in subsection (2) (b) by striking out "committee***" and substituting "***superintendent***",***

(d) by adding the following subsection:

(2.2) Despite subsections (2) (i) and (j) and (2.1), if the discipline hearing was conducted following the cancellation of an administrative penalty under section 57 (4) (a.1) *[administrative penalties]*, the sum of the discipline penalty and any additional penalty for a contravention must not be more than the highest amount of the administrative penalty indicated in the notice of administrative penalty for the contravention. ***,***

(e) in subsections (3) and (4) by striking out "a discipline committee***" and substituting "***the superintendent***", and***

(f) in subsection (5) by striking out "A discipline committee***" and substituting "***The superintendent***".***

67 Section 44 is amended

(a) in subsection (1) by striking out "A discipline committee***" and substituting "***The superintendent***" and by striking out "***real estate council***" and substituting "***Authority***",***

(b) in subsection (2) (a) by striking out "applicable limit prescribed by regulation***" and substituting "***applicable prescribed limit***",***

(c) in subsection (2) (b) by striking out "real estate council, or members of the discipline committee,***" and substituting "***Authority***", and***

(d) in subsections (3) and (4) by striking out "real estate council***" wherever it appears and substituting "***Authority***".***

68 Section 45 is amended

(a) by repealing subsection (1) and substituting the following:

(1) The superintendent may act under this section if

(a) the superintendent believes on reasonable grounds that there has been conduct in respect of which the superintendent could make an order under section 43 *[discipline orders]* against a licensee, and

(b) the superintendent considers that

(i) the length of time that would be required to complete an investigation or hold a discipline hearing, or both, in order to make such an order would be detrimental to the public interest, and

(ii) it is in the public interest to make an order under this section against the licensee. ***,***

(b) in subsections (2) and (8) by striking out "discipline committee***" and substituting "***superintendent***",***

(c) in subsection (3) by striking out "a discipline committee***" and substituting "***the superintendent***",***

(d) in subsection (4) by striking out "A discipline committee***" and substituting "***The superintendent***", and***

(e) in subsection (8) (a) by striking out "if it determines***" and substituting "***if the superintendent determines***".***

69 Section 46 is amended

(a) by repealing subsection (1) and substituting the following:

(1) The superintendent may make an order under this section if the superintendent believes on reasonable grounds that a licensee has contravened this Act, the regulations or the rules in a way that is contrary to the public interest. ***,***

(b) in subsections (2) to (4) by striking out "discipline committee***" and substituting "***superintendent***", and***

(c) in subsection (5) by striking out "A discipline committee***" and substituting "***The superintendent***".***

70 Section 47 is repealed and the following substituted:

Publication of orders

47 (1) As soon as practicable, the superintendent must, subject to the regulations, publish a copy of each order made under this Division.

(2) The superintendent must provide a copy of an order required to be published under subsection (1) to any person requesting the copy, on payment of the prescribed fee.

71 The heading to Division 3 of Part 4 is repealed and the following substituted:

Division 3 – Investigations and Proceedings Relating to Unlicensed Activity ***.***

72 Section 48 is amended

(a) by repealing subsections (1) and (2) and substituting the following:

(1) The superintendent may conduct an investigation to determine whether an unlicensed person has

(a) engaged in any activity for which a licence under this Act is required, or

(b) failed to comply with an undertaking that the unlicensed person gave under section 53.1.

(2) The superintendent may issue a notice of hearing and conduct a hearing following an investigation under subsection (1) or the cancellation of an administrative penalty under section 57 (4) (a.1) *[administrative penalties]*. ***,***

(b) by repealing subsection (3), and

(c) by repealing subsection (4) and substituting the following:

(4) The following provisions of this Part apply to the superintendent acting under this Division in relation to an unlicensed person as if the superintendent were exercising authority under the applicable provision in relation to a licensee:

(a) section 37 (3) and (4) *[investigations of licensees]*;

(b) subject to subsection (5) of this section, section 38 *[order by justice for search and seizure]*;

(c) section 40 (2) and (3) *[notice of discipline hearing]*, in relation to notices of hearing issued by the superintendent under subsection (2) of this section;

(d) section 41 *[consent orders]*, in relation to orders that the superintendent may make under section 49 *[orders respecting unlicensed activity]*;

(e) section 42 *[discipline hearings]*, in relation to hearings conducted by the superintendent under subsection (2) of this section;

(f) section 46 *[orders to freeze property]*.

(5) For the purposes of subsection (4) (b), section 38 applies if there are reasonable grounds to believe that an unlicensed person has engaged in any activity for which a licence under this Act is required.

73 Section 49 is amended

(a) by repealing subsection (1) and substituting the following:

(1) This section applies if, after a hearing under section 48 (2) *[superintendent hearings]*, the superintendent determines that the person subject to the hearing

(a) did not hold a licence under this Act at a time when the person was engaged in any activity for which such a licence was required, or

(b) failed to comply with an undertaking that the person gave under section 53.1. ***,***

(b) in subsection (2) (a) by adding "referred to in subsection (1) (a)***" after "***the activity***",***

(c) by repealing subsection (2) (c) and substituting the following:

(c) subject to subsection (2.01), require the person to pay the expenses, or part of the expenses, incurred by the Authority in relation to either or both of the investigation and the hearing to which the order relates; ***, and***

(d) by adding the following subsections:

(2.01) Amounts required to be paid under subsection (2) (c)

(a) must not exceed the applicable prescribed limit in relation to the type of expenses to which they relate, and

(b) may include the remuneration expenses incurred in relation to employees, officers or agents of the Authority engaged in the investigation or hearing.

(2.2) Despite subsections (2) (d) and (e) and (2.1), if the hearing was conducted following the cancellation of an administrative penalty under section 57 (4) (a.1) *[administrative penalties]*, the sum of the penalty and any additional penalty for a contravention must not be more than the

highest amount of the administrative penalty indicated in the notice of administrative penalty for the contravention.

(2.3) Money received by the Authority on account of a penalty under subsection (2) (d) or, subject to the regulations, an additional penalty under subsection (2) (e) may be expended by the Authority only for the purpose referred to in section 44 (3).

(2.4) An amount ordered to be paid under subsection (2) (c), (d) or (e) is a debt owing to the Authority and may be recovered as such.

74 Section 50 is repealed.

75 Section 51 is amended

(a) in subsection (1) (a) by striking out "or 50 *[orders against licensees in the public interest]****",***

(b) by repealing subsection (2) and substituting the following:

(2) If the circumstances referred to in subsection (1) apply, the superintendent may make an order referred to in section 49 (2) (a) or (b) *[orders respecting unlicensed activity]*. ***,***

(c) by adding the following subsection:

(2.1) Despite any other provision of this Division, the superintendent may make an order referred to in subsection (2)

(a) whether or not a notice of hearing has been issued under section 48 *[investigations, hearings and other authority relating to unlicensed persons]*,

(b) without giving notice to the unlicensed person, and

(c) without providing the unlicensed person an opportunity to be heard. ***, and***

(d) by repealing subsection (3) and substituting the following:

(3) The following provisions apply to the superintendent acting under this section in relation to an unlicensed person as if the superintendent were exercising authority under section 45 *[orders in urgent circumstances]* in relation to a licensee:

(a) section 45 (4), (5) and (8), in relation to orders made under subsection (2) of this section;

(b) section 45 (6), in relation to hearings under section 48 (2) *[investigations, hearings and other authority relating to unlicensed persons]*;

(c) section 45 (7), in relation to notices under section 48 (2).

76 Section 53 (1) is repealed and the following substituted:

(1) As soon as practicable, the superintendent must, subject to the regulations, publish each order made by the superintendent under this Division.

77 The following Division is added to Part 4:

Division 3.1 – Undertakings by Licensees and Unlicensed Persons

Undertakings

53.1 (1) This section applies to a licensee or an unlicensed person if the superintendent has reason to believe that

(a) the licensee or the unlicensed person has contravened this Act, the regulations or the rules, or

(b) the licensee has

(i) breached a restriction or condition of the licence, or

(ii) done anything that constitutes wrongful taking or deceptive dealing.

(2) In the circumstances referred to in subsection (1), the superintendent may, with or without an investigation or a hearing under this Part,

(a) give notice to the licensee or the unlicensed person of the superintendent's reason for believing that this section applies to the licensee or the unlicensed person, and

(b) accept a written undertaking from the licensee or the unlicensed person to do one or more of the following:

(i) comply with terms or conditions set by the superintendent, which may include a condition that the licensee or the unlicensed person pay the expenses, or part of the expenses, incurred by the Authority in relation to the undertaking;

(ii) do anything that the licensee or the unlicensed person is required to do under this Act;

(iii) cease or refrain from doing anything that the licensee or the unlicensed person is prohibited from doing under this Act.

(3) Expenses assessed under subsection (2) (b) (i)

(a) must be for the matters, and must not exceed the amounts, set out in the regulations, and

(b) may include remuneration expenses for employees, officers or agents of the Authority engaged in matters related to the undertaking.

(4) An undertaking given by a licensee or an unlicensed person under this section is binding on the licensee or unlicensed person.

78 Section 54 is amended

(a) by repealing subsection (1) (d),

(b) in subsection (1) (e) by striking out "Division 3 *[Authority of Superintendent]****" and substituting "***Division 2 *[Discipline Proceedings Relating to Licensees]* or Division 3 *[Investigations and Proceedings Relating to Unlicensed Activity]****",***

(c) by repealing subsections (2) and (3), and

(d) in subsection (4) by striking out "Subject to this Division, sections***" and substituting "***Sections***".***

79 Section 55 is repealed.

80 Section 56 is amended

(a) in subsection (1) by striking out "superintendent***" and substituting "***Authority***",***

(b) in subsection (1) (a) by striking out "specified rules***" and substituting "***specified provisions of this Act, the regulations or the rules***",***

(c) in subsection (1) (b) by striking out "the amount***" and substituting "***the amount, or range of amounts,***",***

(d) in subsection (1) (b) by striking out "specified rule***" and substituting "***specified provision of this Act, the regulations or the rules***",***

(e) in subsection (1) (b) by striking out "and***" at the end of subparagraph (i), by adding "***, and***" at the end of subparagraph (ii) and by adding the following subparagraph:***

(iii) different depending on whether the administrative penalty is paid

(A) no more than 30 days after the date the notice of the administrative penalty is served or delivered under section 57 (3),

(B) more than 30 days after the date of service or delivery,

(C) no more than 30 days after the date the opportunity to be heard is provided under section 57 (4), or

(D) more than 30 days after the date of the opportunity to be heard. ***, and***

(f) in subsection (2) by striking out "imposed***" and substituting "***established***" and by striking out "***$50 000***" and substituting "***$100 000***".***

81 Section 57 is amended

(a) by repealing subsection (1) and substituting the following:

(1) If the superintendent is satisfied that a person has contravened a provision of this Act, the regulations or the rules that has been designated under section 56 (1) (a) *[designated contraventions]*, the superintendent may issue a notice imposing on the person an administrative penalty that consists of one or more of the following:

(a) an amount permitted by the rules;

(b) a requirement to complete a specified course of studies or training;

(c) if the person is a licensee, restrictions or conditions on the licence. ***,***

(b) in subsection (2) (b) by striking out "the amount of***",***

(c) in subsections (2) (c) and (d) and (7) by striking out "licensee***" wherever it appears and substituting "***person***",***

(d) in subsection (2) (c) by striking out "licensee's***" and substituting "***person's***",***

(e) in subsection (2) (d) by striking out "14 days***" and substituting "***30 days***" and by striking out "***allowed by the real estate council***" and substituting "***allowed by the superintendent***",***

(f) in subsection (2) (d) (i) by striking out "the rule***" and substituting "***the provision of this Act, the regulations or the rules***",***

(g) in subsection (2) (d) (ii) by striking out "payable to the real estate council***" and substituting "***payable to the Authority***",***

(h) in subsection (3) (b) by adding "or other person***" after "***a former licensee***",***

(i) in subsection (4) by striking out "The real estate council must provide the licensee***" and substituting "***The superintendent must provide the person***",***

(j) by repealing subsection (4) (a) and substituting the following:

(a) cancel the administrative penalty,

(a.1) cancel the administrative penalty and issue a notice to the person under section 40 (1) *[discipline hearing]* or 48 (2) *[hearing relating to unlicensed person]* if the superintendent is satisfied that issuing the notice is more appropriate than imposing the administrative penalty, or ***, and***

(k) in subsections (4) (b), (5) and (6) by striking out "real estate council***" wherever it appears and substituting "***Authority***".***

82 The following section is added to Division 5 of Part 4:

Publication

57.1 (1) Subject to the regulations, the superintendent may publish a copy of

(a) each notice of administrative penalty issued under section 57 (1), and

(b) each decision made under section 57 (4) to confirm or cancel an administrative penalty.

(2) The superintendent must provide a copy of a notice or a decision published under subsection (1) to any person requesting the copy, on payment of the prescribed fee.

83 Section 58 is amended

(a) in subsection (1) by striking out "real estate council or***",***

(b) in subsection (1) (a) by striking out ", the rules or the bylaws***" and substituting "***or the rules***",***

(c) in subsection (1) (b) by striking out "a discipline committee or***", and***

(d) in subsection (2) by striking out ", the bylaws***".***

84 Section 59 (1) is repealed and the following substituted:

(1) If the superintendent makes an order under section 43 *[discipline orders]* or 45 *[orders in urgent circumstances relating to licensees]* cancelling or suspending a licence, the superintendent may apply to the Supreme Court for the appointment of a receiver or receiver manager of all or any part of the property of the licensee.

85 Section 60 is amended in paragraph (f) of the definition of* "compensable loss" *by striking out "by regulation***".***

86 Section 61 is amended

(a) in subsection (2) (b) by striking out "under section 45 (2) (a) *[orders in urgent circumstances]* or 51 (2) (b) *[superintendent's orders in urgent circumstances]****" and substituting "***under section 45 (2) (a) *[orders in urgent circumstances relating to licensees]****", and***

(b) in subsection (2) (c) by striking out "real estate council or***".***

87 Section 62 is amended

(a) by repealing subsection (1), and

(b) by repealing subsection (2) and substituting the following:

(2) If more than one claim has been made in relation to a licensee, the superintendent may consider the claims together.

88 Section 63 is amended

(a) in subsection (1) by striking out "The compensation committee to which a claim has been referred under section 62 *[referral to committee]* must consider the claim***" and substituting "***If a claim is made, the superintendent must consider the claim***",***

(b) in subsection (2) by striking out "compensation committee***" and substituting "***superintendent***",***

(c) in subsection (3) by striking out "compensation committee***" and substituting "***superintendent***" and by striking out "***it considers***" and substituting "***the superintendent considers***", and***

(d) by repealing subsection (4) and substituting the following:

(4) If the superintendent declines to make a determination or assessment under subsection (1) (b) or (3) and a court subsequently makes the determination or assessment, or both, the claim must be reconsidered by the superintendent.

89 Section 64 is amended by striking out "a compensation committee***" and substituting "***the superintendent***" and by striking out "***the committee***" and substituting "***the superintendent***".***

90 Section 65 is amended

(a) in subsection (1) by striking out "compensation committee***" and substituting "***superintendent***",***

(b) in subsection (3) by striking out "or 50 *[superintendent orders in the public interest]****", by striking out "***discipline committee or***" and by striking out "***compensation committee in relation to its determination***" and substituting "***superintendent in relation to the superintendent's determination***",***

(c) by repealing subsection (4) and substituting the following:

(4) For certainty, subsection (3) does not apply in relation to an order of the superintendent under section 41 *[consent orders]* or 48 (4) (c) *[application of section 41 in relation to unlicensed activity]*. ***, and***

(d) in subsection (5) by striking out "a compensation committee***" and substituting "***the superintendent***".***

91 Section 68 (a) is amended by striking out "a compensation committee***" and substituting "***the superintendent***".***

92 Sections 69, 70 (1.1) and 72.2 (2) are amended by striking out "amount prescribed by regulation***" and substituting "***prescribed amount***".***

93 Section 70 (1) is amended

(a) in paragraph (a) by striking out "real estate council or***", and***

(b) in paragraph (b) by striking out "or 51 (2) (b) *[superintendent's orders in urgent circumstances]****".***

94 Section 72.1 is amended

(a) in subsection (3) by striking out "If the real estate council is satisfied***" and substituting "***If the superintendent is satisfied***" and by striking out "***the real estate council may***" and substituting "***the superintendent may***", and***

(b) in subsection (3) (b) (ii) by striking out "real estate council***" and substituting "***Authority***".***

95 Section 72.4 (1) is amended by striking out "real estate council***" in both places and substituting "***Authority***".***

96 Part 6 is repealed.

97 The heading to Part 6.1 is repealed and the following substituted:

Part 6.1 – BC Financial Services Authority .

98 Section 89.1 is repealed.

99 Section 89.2 is amended

(a) in subsections (1) to (5) by striking out "superintendent***" and substituting "***Authority***",***

(b) in subsections (1) to (3) by striking out "the regulations***" and substituting "***section 89.4***",***

(c) in subsection (2) (a) (ii) by striking out "duration***" and substituting "***term***",***

(d) in subsection (2) (a) by adding the following subparagraph:

(vi) providing that the Act does not apply to a licensee in specified circumstances; ***,***

(e) in subsection (3) (a) by striking out "a hearing committee of the real estate council***" and substituting "***the superintendent***", and***

(f) by repealing subsections (6) and (7) and substituting the following:

(6) The Lieutenant Governor in Council may, by regulation,

(a) make a rule or repeal or amend a rule made by the Authority under this section, and

(b) specify powers of the Lieutenant Governor in Council to make regulations under this Act and authorize the Authority to make rules under those specified powers.

(7) A regulation made under subsection (6) (a) is deemed to be a rule made by the Authority.

(8) No rule made by the Authority may amend or repeal a regulation made by the Lieutenant Governor in Council.

100 Section 89.3 is repealed.

101 Section 89.4 is repealed and the following substituted:

Procedures for rules

89.4 Before making, amending or repealing a rule, the Authority must do the following:

(a) publish the proposed rule for public comment in accordance with the regulations unless the regulations provide otherwise;

(b) obtain the consent of the minister in accordance with the regulations;

(c) comply with any other prescribed procedures and requirements.

102 The following sections are added to Part 6.1:

Regulation prevails over rule

89.5 If a rule made by the Authority conflicts with a regulation made by the Lieutenant Governor in Council, the regulation prevails.

Transition – Authority rules

89.6 (1) The Authority may make a rule without complying with section 89.4 (a) if, in the Authority's opinion, the rule does not change in a material way

(a) a rule made by the Authority under section 89.2, or

(b) a rule made by the superintendent under section 89.2, as that section read immediately before the coming into force of section 99 of the *Finance Statutes Amendment Act, 2021*.

(2) This section is repealed 3 years after the date it comes into force.

103 Section 91 (1) (a) is repealed and the following substituted:

(a) one member appointed by the Lieutenant Governor in Council; ***.***

104 Section 94 (3) is amended by striking out "real estate council***" and substituting "***Authority***".***

105 Section 98 (2) (b) is amended by striking out "the real estate council,***".***

106 Section 100 (1) is amended

(a) by repealing paragraph (a) and substituting the following:

(a) one director appointed by the Lieutenant Governor in Council; ***, and***

(b) by adding the following paragraph:

(c) 3 directors appointed in accordance with the regulations, if any, by the directors appointed under paragraph (a) or (b).

107 Section 102 (3) is amended by striking out "real estate council***" and substituting "***Authority***".***

108 Section 104 is amended by adding the following subsection:

(0.1) In subsections (1) and (2), **"licensee"** includes an applicant for a licence.

109 Section 105 is amended

(a) by renumbering the section as section 105 (1), and

(b) by adding the following subsection:

(2) The insurance corporation must, out of the insurance fund, pay fees, established by the Authority, to reimburse the Authority for expenses incurred by the superintendent to collect assessments levied under section 104 (1) by the insurance corporation.

110 Section 107 (2) (b) is amended by striking out ", the real estate council***".***

111 Section 110 (1) (a) is amended by striking out "real estate council***" and substituting "***Authority***".***

112 Section 113 is amended by adding the following subsection:

(0.1) In subsections (1) and (2), **"licensee"** includes an applicant for a licence.

113 Section 114 is repealed and the following substituted:

Amounts paid from fund

114 (1) The compensation fund corporation must, out of the special compensation fund, pay fees, established by the Authority, to reimburse the Authority for expenses incurred by the superintendent

(a) to deal with claims under Part 5 *[Payments from Special Compensation Fund]*, and

(b) to collect assessments levied under section 113 (1) by the compensation fund corporation.

(2) In addition to amounts required to be paid under Part 5 and subsection (1) of this section, the compensation fund corporation may authorize payment out of the special compensation fund for expenses incurred

(a) to administer the fund, including expenses incurred by the directors of the compensation fund corporation in carrying out the purposes of the fund and remuneration paid to directors,

(b) to process claims against the fund,

(c) for any other matter relating to the protection and maintenance of the fund, or

(d) for any other prescribed matter.

114 Section 117 (2) (b) is amended by striking out ", the real estate council***".***

115 Section 118 (1) (e) is repealed and the following substituted:

(e) fails to comply with an order of the superintendent; ***.***

116 Section 122 is amended

(a) by repealing subsection (1), and

(b) in subsection (2) (a) by striking out ", the rules and the bylaws***" and substituting "***and the rules***".***

117 Section 123 (1) is amended by striking out "the real estate council, a hearing committee,***".***

118 The following section is added:

Fees for educational courses

123.1 The superintendent may establish fees for educational courses provided by the Authority or the superintendent regarding

(a) the operation and regulation of the real estate industry, and

(b) issues related to real estate and real estate services.

119 The following section is added:

Opportunities to be heard

126.1 An opportunity to be heard under this Act may be provided by receiving written submissions or conducting an oral hearing, or a combination of both, as specified

(a) by the Superintendent of Financial Institutions for an opportunity to be heard under section 108 (2), or

(b) by the superintendent for any other opportunity to be heard under this Act.

120 Section 127 is repealed and the following substituted:

Evidence of licence

127 A statement as to the existence, nonexistence or status of a licence under this Act purporting to be certified by the superintendent is proof, in the absence of evidence to the contrary, of the fact so certified, without proof of the signature or official position of the superintendent.

121 Section 128 is repealed and the following substituted:

Personal liability protection

128 (1) In this section, **"protected individual"** means an individual who is any of the following:

(a) the superintendent;

(b) an individual acting on behalf of or under the direction of the Authority or the superintendent;

(c) an individual acting on behalf of or under the direction of the foundation, the insurance corporation or the compensation fund corporation.

(2) Subject to subsection (3), no legal proceeding for damages lies or may be commenced or maintained against a protected individual because of anything done or omitted

(a) in the exercise or intended exercise of any power under this Act, or

(b) in the performance or intended performance of any duty under this Act.

(3) Subsection (2) does not apply to a protected individual in relation to anything done or omitted in bad faith.

(4) Subsection (2) does not absolve the Authority from vicarious liability arising out of anything done or omitted by an individual referred to in any of paragraphs (a) and (b) of the definition of "protected individual" for which the Authority would be vicariously liable if this section were not in force.

(5) Subsection (2) does not absolve the foundation, the insurance corporation or the compensation fund corporation, as applicable, from vicarious liability arising out of anything done or omitted by an individual referred to in paragraph (c) of the definition of "protected individual" for which the foundation, the insurance corporation or the compensation fund corporation would be vicariously liable if this section were not in force.

122 Section 129 is repealed.

123 Section 130 is amended

(a) by repealing subsections (2) (c), (d.1), (e), (e.1) and (h) and (3),

(b) in subsection (2) (c.1) by striking out ", including by prescribing matters respecting which the superintendent may or must make rules***",***

(c) by repealing subsection (2) (d) and substituting the following:

(d) respecting fees or assessments to be paid by applicants or licensees in relation to the issuing, reinstatement or amendment of a licence, which fees or assessments may be different for different levels or categories of licences; ***, and***

(d) in subsection (2) by adding the following paragraph:

(d.01) establishing penalties or interest charges to be paid by licensees on the late payment of a fee or assessment referred to in paragraph (d); ***.***

124 Sections 137.1 to 139 and 148 are repealed.

Transitional Provisions

Transition – definitions

125 In sections 126 to 133:

"asset" includes a right and property;

"Authority" means the BC Financial Services Authority established under section 2 of the *Financial Services Authority Act*;

"council member" has the same meaning as in section 1 of the *Real Estate Services Act*, as it read immediately before the coming into force of section 45 (b) of this Act;

"liability" includes an obligation;

"new superintendent" means the Superintendent of Real Estate appointed under section 2.1 (1) of the *Real Estate Services Act*, as enacted by section 46 of this Act;

"real estate council" has the same meaning as in section 1 of the *Real Estate Services Act*, as it read immediately before the coming into force of section 45 (d) of this Act;

"superintendent" means the Superintendent of Real Estate appointed under the *Real Estate Development Marketing Act*, as it read immediately before the coming into force of section 169 (b) of this Act.

Transition – dissolution of real estate council

126 (1) The real estate council is dissolved and discontinued.

(2) The appointment of each council member is rescinded.

(3) All operations, activities and affairs of the real estate council are transferred to the Authority and are to be carried on and continued by the Authority.

(4) Proceedings and other activities that are commenced or conducted by the real estate council, or to which the real estate council is a party, are

(a) in the case of proceedings and other activities that are related to a decision made by the real estate council under the *Real Estate Services Act*, deemed to be proceedings and other activities commenced or conducted by the new superintendent, or to which the new superintendent is a party, and are to be continued as such, and

(b) in the case of any other proceedings and other activities, deemed to be proceedings and other activities commenced or conducted by the Authority, or to which the Authority is a party, and are to be continued as such.

(5) A ruling, order or judgment in favour of or against the real estate council may be enforced by or against the Authority.

Transition – transfer of assets and liabilities

127 (1) All assets of the real estate council are transferred to and vested in the Authority.

(2) All liabilities of the real estate council are transferred to and assumed by the Authority.

(3) For certainty, assets transferred to the Authority under this section include records and parts of records.

(4) A reference to the real estate council in any record that creates, evidences or otherwise relates to an asset or liability that is transferred from the real estate council to the Authority under this section is deemed to be a reference to the Authority.

(5) All records that, immediately before the coming into force of this section, were in the custody or under the control of the real estate council must be delivered by the real estate council to the Authority.

Transition – how transfer of assets takes effect

128 (1) Despite any other enactment, a transfer and vesting effected under section 127 (1) takes effect

(a) without the execution or issue of any record,

(b) without any registration or filing of this Act or any other record in or with any registry, office or court,

(c) despite any prohibition on all or any part of the transfer, and

(d) despite any condition, including the absence of any consent or approval that is or may be required for all or any part of the transfer.

(2) In any record in or by which the Authority deals with an asset transferred by this Act, it is sufficient to cite this Act as effecting and confirming the transfer, from the real estate council to the Authority, of the title to the asset and the vesting of that title in the Authority.

Transition – dealing with transferred assets

129 If an asset transferred to the Authority under section 127 (1) is registered or recorded in the name of the real estate council,

(a) the Authority may, in its own name,

(i) effect a transfer, charge, encumbrance or other dealing with the asset, and

(ii) execute any record required to give effect to that transfer, charge, encumbrance or other dealing, and

(b) an official

(i) who has authority over a registry or other office, including, without limitation, the personal property registry, in which title to or interests in the asset is registered or recorded, and

(ii) to whom a record referred to in paragraph (a) (ii), executed by or on behalf of the Authority, is submitted in support of the transfer, charge, encumbrance or other dealing

must give the record the same effect as if it had been duly executed by the real estate council.

Transition – transfer is not a default

130 Despite any provision to the contrary in a record, the transfer to the Authority of an asset or liability under section 127 does not constitute a breach or contravention of, or an event of default under, the record and, without limiting this, does not entitle any person who has an interest in the asset or liability to claim any damages, compensation or other remedy.

Transition – superintendent

131 The appointment of the superintendent is rescinded.

Transition – regulations

132 (1) The Lieutenant Governor in Council may make regulations the Lieutenant Governor in Council considers necessary or advisable to

(a) more effectively bring this Act into operation, or

(b) remedy any transitional difficulties, in respect of any matter, encountered in the transition

(i) from the real estate council to the Authority,

(ii) from the superintendent to the new superintendent, or

(iii) from the Authority to the Superintendent of Financial Institutions appointed under section 207 of the *Financial Institutions Act*.

(2) A regulation under subsection (1) may be made retroactive to a specified date that is not earlier than the date this section comes into force and, if made retroactive, is deemed to have come into force on the specified date.

(3) This section and any regulations made under it are repealed 3 years after the date this section comes into force.

Transition – repeal of amendments that may become inoperative

133 The Lieutenant Governor in Council may, by regulation, repeal the following provisions of the *Financial Institutions Amendment Act, 2019*, S.B.C. 2019, c. 39:

(a) section 42 (b) as it adds subparagraph (vii.2);

(b) section 67 (a) as it strikes out "197,";

(c) sections 67 (c), 70, 119 and 120.

Consequential and Related Amendments

134 The Acts listed in Column 1 of Schedule 1 to this Act are amended in the provisions listed opposite them in Column 2 by striking out "Authority***" wherever it appears and substituting "***superintendent***".***

135 The provisions of the Financial Institutions Act listed in Schedule 2 to this Act are amended by striking out "Authority's***" wherever it appears and substituting "***superintendent's***".***

136 The provisions of the Real Estate Services Act listed in Schedule 3 to this Act are amended by striking out "real estate council***" wherever it appears and substituting "***superintendent***".***

Credit Union Incorporation Act

137 Section 11 (3) (e) of the Credit Union Incorporation Act, R.S.B.C. 1996, c. 82, is amended by striking out "submitted to the Authority a personal information return in the prescribed form and disclosing the prescribed information***" and substituting "***submitted to the superintendent a personal information return in the form established by the superintendent that discloses the information required by the superintendent***".***

138 Sections 16 (2), 17 (1) (b) and (2), 20 (2), 21 (1) (b) and (2), 28.2, 28.3 and 33.3 (1), (2) (b) and (3) (b) are amended by striking out "section 277 (g) of the *Financial Institutions Act*** " and substituting "***section 277 (2) (d) of the *Financial Institutions Act*** ".***

139 Sections 17 (1) (a) and 21 (1) (a) are amended by striking out "section 277 (e) of the *Financial Institutions Act*** " and substituting "***section 277 (2) (a) of the *Financial Institutions Act*** ".***

140 Section 26.2 (2) is amended by striking out "On receiving notice***" and substituting "***On receipt by the superintendent of notice***" and by striking out "***who may be the Authority's own employee or employees***" and substituting "***who may be an employee or employees of the Authority***".***

141 Section 28.2 is amended by striking out "Authority's supervision***" and substituting "***superintendent's supervision***".***

142 Section 64 (8) is amended by striking out "written approval of the Authority***" and substituting "***written approval of the superintendent***".***

143 Section 85 (1) is amended by striking out "supervision by the Authority***" and substituting "***supervision by the superintendent***".***

144 Sections 93 and 94 are repealed and the following substituted:

Orders, consents and refusals must be in writing

93 (1) An order of the Authority under section 29.1 (1) *[winding up on direction of Authority]* must be in writing.

(2) An order of the superintendent under any of the following provisions must be in writing:

(a) section 76 (9) (a) or (b) *[special general meetings]*;

(b) section 77 (9) (a) or (b) *[members' special resolutions at general meetings]*;

(c) section 77.1 (7) (a) or (b) *[member's proposal at annual general meeting]*.

(3) A consent or refusal of a consent of the Authority under any of the following provisions must be in writing:

(a) section 11 (2) *[incorporation]*;

(b) section 15.1 (4) (c) *[transfer of incorporation to British Columbia]*;

(c) section 15.2 (1) (b) *[transfer of incorporation from British Columbia]*;

(d) section 16 (3) *[business acquisition by asset transfer]*;

(e) section 20 (3) *[amalgamation]*.

(4) A consent or refusal of a consent of the superintendent under any of the following provisions must be in writing:

(a) section 39.71 *[alteration of constitution or rules]*;

(b) section 44 (8) (b) *[attaching rights or restrictions to membership shares]*;

(c) section 81 (1.1) *[business outside British Columbia]*;

(d) section 90 (2) *[insurance by central credit union]*.

(5) Written reasons must be given for an order referred to in subsection (1) or (2) or a refusal of a consent referred to in subsection (3) or (4).

Power to impose conditions

94 (1) The Authority may

(a) impose conditions that the Authority considers necessary or desirable in respect of an order referred to in section 93 (1) or a consent referred to in section 93 (3), and

(b) remove or vary the conditions by the Authority's own motion or on the application of a person affected by the order or consent.

(2) The superintendent may

(a) impose conditions that the superintendent considers necessary or desirable in respect of an order referred to in section 93 (2) or a consent referred to in section 93 (4), and

(b) remove or vary the conditions by the superintendent's own motion or on the application of a person affected by the order or consent.

(3) A condition imposed under subsection (1) or (2) is part of the order or consent in respect of which it is imposed, whether contained in or attached to the order or consent or contained in a separate document.

145 Section 93 (3), as enacted by section 144 of this Act, is amended by adding the following paragraphs:

(d.1) section 16.1 (3) *[business acquisition of an extraprovincial credit union by asset transfer]*;

(f) section 20.1 (2) (b) *[amalgamation with extraprovincial credit union]*.

146 Section 95 is amended

(a) by repealing subsections (1) and (2) and substituting the following:

(1) Before taking any of the following actions, the Authority must deliver notice in writing to any person directly affected:

(a) making an order under section 29.1 (1) *[winding up on direction of Authority]*;

(b) giving a consent referred to in section 93 (3) subject to conditions;

(c) by the Authority's own motion, varying conditions imposed in respect of an order or consent;

(d) refusing to give a consent referred to in section 93 (3).

(1.1) Before taking any of the following actions, the superintendent must deliver notice in writing to any person directly affected:

(a) giving a consent referred to in section 93 (4) subject to conditions;

(b) by the superintendent's own motion, varying conditions imposed in respect of an order or consent;

(c) refusing to give a consent referred to in section 93 (4).

(2) Not later than 14 days after receiving notice, a person directly affected may,

(a) if notice is received under subsection (1), require a hearing before the Authority by delivering a notice in writing to the Authority, or

(b) if notice is received under subsection (1.1), require a hearing before the superintendent by delivering a notice in writing to the superintendent. ***, and***

(b) in subsection (5) by striking out "the Authority***" and substituting "***the Authority or the superintendent, as the case may be,***" and by striking out "***subsection (1)***" and substituting "***subsection (1) or (1.1)***".***

147 Section 96 is amended by striking out "the Authority***" wherever it appears and substituting "***the Authority or the superintendent***".***

148 Section 97 (1) is amended

(a) by striking out "the Authority or a panel of it***" and substituting "***the Authority, a panel of it or the superintendent***", and***

(b) in paragraph (g) by striking out "his or her***" and substituting "***the person's***".***

149 Section 98 is amended

(a) by repealing subsection (1) (a) to (c) and substituting the following:

(a) an order referred to in section 93 (2),

(b) a consent, referred to in section 93 (4) (c) or (d), that is given subject to conditions, or

(c) a refusal to give a consent referred to in section 93 (4) (c) or (d) ***,***

(b) in subsection (3) (a) by striking out "section 93 (2)***" and substituting "***section 93 (3) or (4) (a) or (b)***" and by adding "***or***" at the end of the paragraph,***

(c) in subsection (3) (b) by striking out "of the Authority***" and by striking out "***section 93 (2), or***" and substituting "***section 93 (3) or (4) (a) or (b)***", and***

(d) by repealing subsection (3) (c).

Financial Information Act

150 Schedule 2 to the Financial Information Act, R.S.B.C. 1996, c. 140, is amended by striking out "Real Estate Council of British Columbia***".***

Financial Institutions Amendment Act, 2019

151 Section 8 (b) of the Financial Institutions Amendment Act, 2019, S.B.C. 2019, c. 39, as it enacts section 61 (8.1) and (8.2) of the Financial Institutions Act, is amended by striking out "Authority***" wherever it appears and substituting "***superintendent***".***

152 Section 14, as it enacts section 94.2 (2) and (3) of the Financial Institutions Act, is amended by striking out "Authority***" wherever it appears and substituting "***superintendent***".***

153 Section 25, as it enacts section 139.1 of the Financial Institutions Act, is amended by striking out "Authority***" wherever it appears and substituting "***superintendent***".***

154 Section 28 (b) and (c) is repealed.

155 Section 32, as it amends section 187 (8) of the Financial Institutions Act, is amended by striking out "Authority***" and substituting "***superintendent***".***

156 Section 45, as it enacts section 209.1 of the Financial Institutions Act, is amended by striking out "Authority***" and substituting "***superintendent***".***

157 Section 87 is repealed.

158 Section 114, as it enacts sections 77 (9) to (11) and 77.1 (7) to (9) of the Credit Union Incorporation Act, is amended by striking out "Authority***" wherever it appears and substituting "***superintendent***".***

159 Section 117 (b), as it enacts section 81 (1.2) (a) of the Credit Union Incorporation Act, is amended by striking out "Authority***" and substituting "***superintendent***".***

Financial Services Authority Act

160 Section 4 of the Financial Services Authority Act, S.B.C. 2019, c. 14, is amended by adding the following paragraphs:

(h) *Real Estate Development Marketing Act*;

(i) *Real Estate Services Act*;

(j) *Strata Property Act*.

161 Section 8 (5) is amended

(a) in paragraph (d) by striking out "and the Registrar of Mortgage Brokers***" and substituting "***, the Registrar of Mortgage Brokers and the Superintendent of Real Estate***", and***

(b) by repealing paragraph (d.1) and substituting the following:

(d.1) any power or duty of the Authority under the *Financial Institutions Act* or the *Credit Union Incorporation Act*, ***.***

162 Section 10 is amended by adding the following paragraph:

(d) the Superintendent of Real Estate appointed under section 2.1 (1) of the *Real Estate Services Act*.

163 Section 11 (3) is repealed and the following substituted:

(3) Part 1 of the *Public Service Benefit Plan Act* applies to the Authority's officers and employees, or the group of the Authority's officers and employees, to whom that Part is declared to apply by order of the Lieutenant Governor in Council.

164 Section 11 (3), as enacted by section 163 of this Act, is repealed.

165 Section 12 is amended

(a) in subsection (1) by striking out "or***" at the end of paragraph (b), by adding "***, or***" at the end of paragraph (c) and by adding the following paragraph:***

(d) by or on behalf of, as the case may be, any of the following:

(i) the Real Estate Foundation of British Columbia continued under section 90 (1) of the *Real Estate Services Act*;

(ii) the Real Estate Errors and Omissions Insurance Corporation continued under section 99 (1) of the *Real Estate Services Act*;

(iii) the Real Estate Compensation Fund Corporation established under section 109 (1) of the *Real Estate Services Act*. ***,***

(b) in subsection (2) by striking out "Subject to subsections (3) to (5),***" and substituting "***Subject to subsections (3) to (5.2),***", and***

(c) by adding the following subsections:

(5.1) Money received by the Authority under section 43 (2) (i) or (j) *[discipline orders]* or 49 (2) (d) or (e) *[orders respecting unlicensed activity]* of the *Real Estate Services Act* may be expended only for the purpose referred to in section 44 (3) *[enforcement expenses and discipline penalties]* of that Act.

(5.2) Money received by the Authority under section 57 *[administrative penalties]* of the *Real Estate Services Act* may be expended only for the purpose referred to in section 57 (6) of that Act.

Freedom of Information and Protection of Privacy Act

166 Schedule 2 to the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, is amended by striking out the following:

Public Body: Office of the Superintendent of Real Estate

Head: Superintendent ***.***

167 Schedule 3 is amended by striking out the following:

Real Estate Council of British Columbia ***.***

Insurance (Captive Company) Act

168 The Insurance (Captive Company) Act, R.S.B.C. 1996, c. 227, is amended by adding the following section:

Personal liability protection

12.1 (1) In this section:

"Authority" means the BC Financial Services Authority established under section 2 of the *Financial Services Authority Act*;

"protected individual" means an individual who is any of the following:

(a) the superintendent;

(b) an individual acting on behalf of or under the direction of the superintendent.

(2) Subject to subsection (3), no legal proceeding for damages lies or may be commenced or maintained against a protected individual because of anything done or omitted

(a) in the exercise or intended exercise of any power under this Act, or

(b) in the performance or intended performance of any duty under this Act.

(3) Subsection (2) does not apply to a protected individual in relation to anything done or omitted in bad faith.

(4) Subsection (2) does not absolve the Authority from vicarious liability arising out of anything done or omitted by a protected individual for which the Authority would be vicariously liable if this section were not in force.

Real Estate Development Marketing Act

169 Section 1 of the Real Estate Development Marketing Act, S.B.C. 2004, c. 41, is amended

(a) by adding the following definition:

"Authority" means the BC Financial Services Authority established under section 2 of the *Financial Services Authority Act*; ***, and***

(b) by repealing the definition of **"superintendent"** ***and substituting the following:***

"superintendent" means the Superintendent of Real Estate appointed under section 2.1 (1) of the *Real Estate Services Act*; ***.***

170 Section 31 (2) (b) is amended by striking out "superintendent***" and substituting "***Authority***".***

171 Section 36 is amended

(a) in subsection (1) (b) (ii) by striking out "incurred by the superintendent***" and substituting "***incurred by the Authority***", and***

(b) in subsection (2) (b) by striking out "superintendent***" and substituting "***Authority***".***

172 Section 44 is repealed and the following substituted:

Delegation by superintendent

44 (1) The superintendent may, in writing, delegate any of the superintendent's powers or duties under this Act.

(2) The superintendent may impose conditions or restrictions on any delegation made under subsection (1).

173 Section 45 is repealed and the following substituted:

Personal liability protection

45 (1) In this section, **"protected individual"** means an individual who is any of the following:

(a) the superintendent;

(b) an individual acting on behalf of or under the direction of the Authority or the superintendent.

(2) Subject to subsection (3), no legal proceeding for damages lies or may be commenced or maintained against a protected individual because of anything done or omitted

(a) in the exercise or intended exercise of any power under this Act, or

(b) in the performance or intended performance of any duty under this Act.

(3) Subsection (2) does not apply to a protected individual in relation to anything done or omitted in bad faith.

(4) Subsection (2) does not absolve the Authority from vicarious liability arising out of anything done or omitted by a protected individual for which the Authority would be vicariously liable if this section were not in force.

Regulations Act

174 The Schedule to the Regulations Act, R.S.B.C. 1996, c. 402, is amended by striking out "Rules of the BC Financial Services Authority under the *Financial Institutions Act*;***" and substituting "***Rules of the BC Financial Services Authority under the *Financial Institutions Act* or the *Real Estate Services Act*;***".***

Strata Property Act

175 Section 1 (1) of the Strata Property Act, S.B.C. 1998, c. 43, is amended by repealing the definition of* "superintendent" *and substituting the following:

"superintendent" means the Superintendent of Real Estate appointed under section 2.1 (1) of the *Real Estate Services Act*; ***.***

176 The following section is added:

Personal liability protection

291.1 (1) In this section:

"Authority" means the BC Financial Services Authority established under section 2 of the *Financial Services Authority Act*;

"protected individual" means an individual who is any of the following:

(a) the superintendent;

(b) an individual acting on behalf of or under the direction of the superintendent.

(2) Subject to subsection (3), no legal proceeding for damages lies or may be commenced or maintained against a protected individual because of anything done or omitted

(a) in the exercise or intended exercise of any power under this Act, or

(b) in the performance or intended performance of any duty under this Act.

(3) Subsection (2) does not apply to a protected individual in relation to anything done or omitted in bad faith.

(4) Subsection (2) does not absolve the Authority from vicarious liability arising out of anything done or omitted by a protected individual for which the Authority would be vicariously liable if this section were not in force.

Trade, Investment and Labour Mobility Agreement Implementation Act

177 Section 48 of the Trade, Investment and Labour Mobility Agreement Implementation Act, S.B.C. 2008, c. 39, is repealed.

178 Section 55 is repealed.

Commencement

179 The provisions of this Act referred to in column 1 of the following table come into force as set out in column 2 of the table:

Item	Column 1 **Provisions of Act**	Column 2 **Commencement**
1	Anything not elsewhere covered by this table	The date of Royal Assent
2	Sections 1 to 13	By regulation of the Lieutenant Governor in Council
3	Sections 15 to 150	By regulation of the Lieutenant Governor in Council
4	Sections 160 to 167	By regulation of the Lieutenant Governor in Council
5	Sections 169 to 176	By regulation of the Lieutenant Governor in Council

SCHEDULE 1

(Section 134)

Item	Column 1 **Act being amended**	Column 2 **Provision**
1	*Business Corporations Act*, S.B.C. 2002, c. 57	324 (1)
2	*Credit Union Incorporation Act*, R.S.B.C. 1996, c. 82	11 (5) 14 (2) 15.1 (5) (a) (iii) 15.2 (2) 17 (1) (a) 21 (1) (a) 25.3 26.2 26.3 27.1 (1) (e) and (4) 29.1 (2) (c) 29.3 33.1 39.1 (b) 39.71 40 (2)

		44 (8) (b) 65 (4) 69 (2) 74 (2) 76 (9) to (11) 81 (1.1) 90 (2) 92 (3)
3	*Financial Institutions Act*, R.S.B.C. 1996, c. 141	1 (1) in the definitions of "extraprovincial insurance corporation", "insurance company" and "unaffiliated director" 10.1 (2) (b) 13 (2) (e) 13 (4) 15 16 21 (2) 22 (2) (c) 23 25 25.1 33 33.1 (6) 47 (2) and (3) 48 (1), in the definition of "connected party", and (2) 50 (4) 51 58 60 (2) 61 63 64 (1) 69 76 (2), (3) and (5) 77 (a) (ii) 87 (1) (a) 92 93 96 (1), (2), (3) (a) and (b) and (4) 97 (2) 99 (2), (3) and (5) 101.1 102 (5) 105 107 (1) 109 (2) 117 (2) 118 125 126.14 (2) 126.15 (1) 126.16 (3) 126.23 126.24 126.27 (2) 126.29 131 (4) 137 141 (2) (c) 142 143 144 (3) 147 150 (1) 151 (2) 154 160 164 (2) (a) and (3) 166 187 (1) and (6) to (8) 193 (2) 194

		197 197.1 (1) (b) (i), (3) and (4) 201.1 (1) (d) (ii) and (k) 206 215.1 (1), (2) (b) and (4) to (9) 235 (3) 241 (2) and (3) 242 (3) 244 (2) (f) (iii) and (g) and (3) to (5) 245 (1) (e), (6) and (7) 246 247 248 (1) 252 (3) 253.1 (3), (6) to (9), (12) and (16) 253.2 (2) 253.3 275 (b) to (b.2) 276 285 288 289 (3) (a.1), (f.2) (ii), (p.5) (v), (p.6) and (p.7), (4.1) and (4.2)

SCHEDULE 2

(Section 135)

***Financial Institutions Act* Provisions**
67 (2.1) and (2.2) 126.29 (1) 144 (3) 197 245 (1) (d) and (5) 248 (1) (c) 275 (c) and (e) 285 (1)

SCHEDULE 3

(Section 136)

***Real Estate Services Act* Provisions**
10 11 12 13 14 15 (1), (3) and (4) 16 18 21 22 (2) 24 36 38 (1) 41 (2) 45 (5) to (7) 46 (8) 61 (1) 66 72.1 (2) and (4) (b) 89.2 (2) (f) 116 117 (4)

Appendix B

BCFSA News Release, May 19, 2021

BC Financial Services Authority Provides Status Update on
Its Integration with B.C.'s Real Estate Regulators

New organization structure and new Senior Executive Team appointments
expected to be in place in summer 2021

May 19, 2021

(Vancouver, B.C.) - BC Financial Services Authority ("BCFSA") is pleased to provide a status update on its previously announced integration with the Real Estate Council of BC ("RECBC") and the Office of the Superintendent of Real Estate ("OSRE").

The integration, which is expected to be complete this summer, will create a single integrated regulator of B.C.'s financial services sector. The sector, which includes credit unions, trust companies, insurance companies, mortgage brokers, pension plans, and real estate services, is not only a key driver of B.C.'s economy but also directly impacts the lives of individual British Columbians.

The integration will simplify accountabilities and enhance regulatory oversight through more effective and efficient business processes, investigations, and enforcements. Creating a single financial services regulator was also a key recommendation from the Expert Panel on Money Laundering Report released in May 2019.

BCFSA will focus on the financial services sector as a whole and as such, will be organized on a functional basis with departments that oversee the entire sector including Supervision, Policy, and Market Conduct.

Blair Morrison, the current CEO of BCFSA, will continue in that role post-integration. Seasoned executives from all three organizations will report into the CEO. BCFSA's new leadership team will include Erin Seeley, RECBC's current Chief Executive Officer, and Micheal Noseworthy, B.C.'s current Superintendent of Real Estate. Seeley will take on the role of Senior Vice President of Policy and Stakeholder Engagement, while Noseworthy will serve as Senior Vice President of Compliance and Market Conduct.

A full list of BCFSA's future Senior Executive Team can be found here.

"BCFSA's Board of Directors is looking forward to BCFSA completing the integration with OSRE and RECBC and working with the new executive team of B.C.'s integrated regulator of the financial services sector," said Dr. Stanley Hamilton, BCFSA's Chair, Board of Directors. "BCFSA's senior leaders bring years of experience and are experts in their field. Their knowledge and understanding of the financial services sector will be key in leading BCFSA's work to protect British Columbians."

“Through the integration, BCFSA will be positioned to provide strengthened consumer protection as a modern, efficient, and effective regulator,” said Morrison. “We will continue to focus on innovation and continuous improvement, bringing a single lens to the oversight of the financial services sector with enhanced information sharing. The sector is rapidly changing, and BCFSA as its regulator must be at the forefront of these changes.”

B.C.’s Ministry of Finance announced in 2019 that BCFSA would become the single regulatory for real estate in the province with accountabilities for licensing, conduct, investigations, and discipline. Upon completion of the integration, BCFSA will have the sole authority over real estate education and licensing as well as investigations and discipline responsibilities for licensed and unlicensed real estate activity, including real estate development marketing. It will also have rule-making authority governing the conduct of real estate licensees.

BCFSA is committed to working with all regulated entities to ensure the smoothest possible transition to a single regulator. Communications will increase as BCFSA, RECBC, and OSRE move closer to the integration. Until that time, BCFSA, RECBC and OSRE will continue to carry out their individual legislated responsibilities and operate as separate organizations.

About BC Financial Services Authority

BC Financial Services Authority (“BCFSA”) is a Vancouver-based Crown regulatory agency of the Government of British Columbia. Currently, BCFSA has four pillars of responsibility: pension plans, mortgage brokers, financial institutions (including credit unions, insurance, and trust companies) and the Credit Union Deposit Insurance Corporation (“CUDIC”).

Media Contact:
Sarah Lusk, Communications Director
[redacted]

Appendix C

Joint Statement in Support of Single Regulator – RECBC, March 2, 2021

Joint Statement

RECBC

Published on 2 March, 2021

Statement in Support of Legislative Change to Create a Single Financial Services Regulator

VANCOUVER – Today's announcement by Minister of Finance Selena Robinson is a positive step forward in better serving British Columbians by bringing together the Office of the Superintendent of Real Estate ("OSRE") and the Real Estate Council of BC ("RECBC") within the BC Financial Services Authority ("BCFSA"). This continues the collaborative work and planning that has been ongoing since the Province announced plans to integrate oversight of the real estate and financial services sectors in 2019.

Blair Morrison, CEO of BCFSA, said, "We are extremely pleased by today's introduction of legislative amendments to bring our three organizations together. This is a major milestone in our journey to becoming a modern, efficient and effective regulator. Over the past year, team members across RECBC, OSRE, and BCFSA have been working hard to bring our collective strengths together, in the interest of building a stronger regulatory model that better serves British Columbians."

BCFSA, RECBC and OSRE are committed to keeping all stakeholders informed while work continues towards a smooth and seamless transition later this summer. Until the integration takes place, each organization will continue their work to protect the public interest under their separate regulatory mandates.

Following the integration of the three regulators, BCFSA will have regulatory responsibility for:

- Licensed real estate professionals
- Unlicensed real estate activity
- Real estate development marketing
- Mortgage brokers
- Credit unions
- Pension plans
- Trust companies
- Insurance companies
- Credit Union Deposit Insurance Corporation of B.C.

BCFSA will announce its new organizational structure once the legislative amendments have been passed. Blair Morrison will remain as CEO with Erin Seeley and Micheal Noseworthy as members of a broader senior executive team.

BC FINANCIAL SERVICES AUTHORITY □

OFFICE OF THE SUPERINTENDENT OF REAL ESTATE □

REAL ESTATE COUNCIL OF BRITISH COLUMBIA (https://recbc.ca/)

Appendix D

BC Government News Release – Amendments to Improve Oversight for Real Estate, Financial Services, March 2, 2021

- Skip to main content
- Skip to footer

British Columbia News

Amendments to improve oversight for real estate, financial services

https://news.gov.bc.ca/23891
Tuesday, March 2, 2021 10:25 AM

Victoria - People buying or selling a home will benefit from a real estate industry with more efficient and co-ordinated oversight from BC Financial Services Authority (BCFSA).

The Province is making legislative amendments to pave the way for BCFSA to become the single regulator for real estate in B.C. later in 2021.

“Whether it’s buying a home or remortgaging an existing property, British Columbians should be at ease knowing one of the biggest purchases of their lives is conducted safely and securely,” said Selina Robinson, Minister of Finance. “These changes will help protect consumers and better co-ordinate oversight of B.C.’s financial services sector, including the real estate market. Moving to a single regulator is a significant step to help BCFSA continue to address fraudulent activities and build protections against money laundering.”

In 2019, the Province announced that B.C. would be moving to a single regulator of financial services and real estate by bringing the responsibilities of the Real Estate Council of British Columbia and the Office of the Superintendent of Real Estate under BCFSA. The amendments will help create a single authority responsible for regulating real estate in B.C. to ensure a more co-ordinated approach to all segments of the financial services sector.

Creating a single regulator for real estate was a key recommendation from the Real Estate Regulatory Structure Review in 2018, as well as the Expert Panel on Money Laundering in BC Real Estate in 2019.

BCFSA currently regulates B.C.’s financial services market, including credit unions, trust companies, registered pension plans, insurance companies and mortgage brokers. The amendments introduced to the Real Estate Services Act will give BCFSA authority with respect to:

- education and licensing for real estate professionals;
- establishing rules governing the conduct for real estate professionals; and
- investigation and discipline for licensed and unlicensed individuals.

In addition, amendments to financial institutions legislation were introduced to empower the superintendent of financial institutions with most regulatory decision-making functions. This will enable BCFSA to operate more effectively as it acquires a new major set of responsibilities around real estate.

These legislative changes will enable BCFSA to become the fully integrated financial services sector regulator later in 2021.

Quotes:

Blair Morrison, CEO, BC Financial Services Authority –

“Bringing the regulation of financial services and real estate under one roof will allow BCFSA to become a modern, efficient and effective regulator for B.C.’s entire financial services sector. By integrating and enhancing its investigative, compliance and enforcement capacity and approach, BCFSA will provide strengthened consumer protection and foster increased public confidence.”

Stanley Hamilton, chair, BCFSA’s board of directors –

“BCFSA’s board of directors welcomes the evolution of B.C.’s regulatory regime with the introduction of these legislative amendments. The board of directors takes its accountabilities relating to approving BCFSA’s strategy and providing operational oversight seriously. We look forward to working closely with the CEO to deliver BCFSA’s mandate as we move forward.”

Micheal Noseworthy, head of the Office of the Superintendent of Real Estate –

“By centralizing our expertise under BCFSA, we will be building on our strengths and streamlining our work to better protect consumers in British Columbia. As the financial services and real estate markets are rapidly changing, we will focus on innovation and continuous improvement, bringing a single lens to the oversight of financial services and real estate with enhanced information sharing.”

Erin Seeley, CEO, Real Estate Council of British Columbia –

“Today’s changes will help modernize and strengthen our regulatory system, while keeping the focus on protecting consumers. Public protection continues to be our priority as we move toward a single regulator and beyond.”

Learn More:

To read the Real Estate Regulatory Structure Review, visit:
https://news.gov.bc.ca/files/Real_Estate_Regulatory_Structure_Review_Report_2018.pdf
(https://news.gov.bc.ca/files/Real_Estate_Regulatory_Structure_Review_Report_2018.pdf)

To read the Expert Panel on Money Laundering in BC Real Estate report, visit:
https://news.gov.bc.ca/files/Combatting_Money_Laundering_Report.pdf
(https://news.gov.bc.ca/files/Combatting_Money_Laundering_Report.pdf)

To learn more about BC Financial Services Authority, visit: https://www.bcfsa.ca/ (https://www.bcfsa.ca/)

Ministry of Finance

Media Relations
250 882-6696

Translations

- 3-2-21_BCFSA_Chinese(simplified).pdf (https://bcgovnews.azureedge.net/translations/releases/2021FIN0017-000368/3-2-21_BCFSA_Chinese(simplified).pdf)
- 3-2-21_BCFSA_Chinese(traditional).pdf (https://bcgovnews.azureedge.net/translations/releases/2021FIN0017-000368/3-2-21_BCFSA_Chinese(traditional).pdf)
- 3-2-21_BCFSA_French.pdf (https://bcgovnews.azureedge.net/translations/releases/2021FIN0017-000368/3-2-21_BCFSA_French.pdf)
- 3-2-21_BCFSA_Punjabi.pdf (https://bcgovnews.azureedge.net/translations/releases/2021FIN0017-000368/3-2-21_BCFSA_Punjabi.pdf)

Appendix E

Memorandum of Understanding between the Office of the Superintendent of Real Estate and the Real Estate Council of British Columbia - December 18, 2019

MEMORANDUM OF UNDERSTANDING

BETWEEN

The Office of the Superintendent of Real Estate

AND

The Real Estate Council of British Columbia

1. Parties

1.1 This Memorandum of Understanding (MOU) is made and entered into by and between the Office of the Superintendent of Real Estate (OSRE), and the Real Estate Council of British Columbia (RECBC).

2. Purpose

2.1 The purpose of this MOU is to establish the terms and conditions under which RECBC will share incoming complaint files with OSRE, and the circumstances in which OSRE will undertake to conduct investigations under section 48(1)(b) of the *Real Estate Services Act* (RESA).

3. Term of MOU

3.1 This MOU is effective upon the date it is signed and executed by the duly authorized representatives of the parties to this MOU and shall remain in effect until either party terminates the agreement.

3.2 This MOU may be terminated, without cause, by either party upon sixty (60) days' written notice.

3.3 The termination of this agreement will not interrupt any investigations already being carried out by OSRE or RECBC.

4. Background

4.1 OSRE and RECBC co-regulate the real estate industry in British Columbia and are mandated to protect the public interest and prevent harm to real estate consumers.

4.2 As per RESA section 36(1) and (2), persons may make complaints against licensees by writing to RECBC. Once a complaint has been received, RECBC may conduct an investigation to determine whether professional misconduct or conduct unbecoming a licensee has occurred. RECBC may also investigate a licensee on its own initiative.

4.3 As per RESA section 48(1)(b), the Superintendent of Real Estate may investigate a licensee to determine whether they have (a) contravened RESA, the regulations, or the rules, (b) breached a restriction or condition of their license, or (c) done anything that

constitutes wrongful taking or deceptive dealing, in a way that is seriously detrimental to the public interest.

4.4 In order to effectively carry out its authority under section 48(1)(b), OSRE requires the ability to review incoming complaints where the alleged wrongdoing or misconduct may be seriously detrimental to the public interest.

5. Terms

5.1 OSRE will only investigate complaints of a serious nature where it appears that a licensee may have acted in a way that is seriously detrimental to the public interest.

5.2 RECBC agrees to share with OSRE incoming complaints that may be seriously detrimental to the public interest.

5.3 OSRE will review all complaints received from RECBC to confirm if 5.1 applies, and will notify RECBC within thirty (30) days of receipt of the complaint regarding the results of this determination.

5.4 If OSRE determines that 5.1 does not apply, OSRE will promptly send the complaint back to RECBC for its consideration.

5.5 OSRE will conduct the investigation as expeditiously as possible given the priority and risk level of the complaint and the operational capacity of OSRE's investigative staff.

5.6 OSRE will provide RECBC with the investigation report and any other material pertaining to the investigation, in a form consistent with RECBC's practices and standards for the expected appropriate outcome. RECBC shall keep OSRE informed about its practices and standards.

5.7 Within fifteen (15) days receipt of the investigation report, RECBC will notify OSRE in writing if it considers that further investigation is required, including the nature of and reasons for the request. During this period, the parties may exchange ideas, information, and advice respecting the investigation's appropriate outcome.

5.8 Following the fifteen (15) day period established in 5.7, OSRE will either direct RECBC to issue a notice of hearing or will notify RECBC that OSRE's investigation is complete, and in both cases will also provide RECBC with all other material pertaining to the investigation as provided in 5.6.

5.9 OSRE will be solely responsible for communicating directly with all parties during the course of an investigation, including communication of any outcome. RECBC will be responsible for communicating with all parties if a notice of hearing is issued and for directing inquiries respecting ongoing OSRE investigations to OSRE.

6. Confidentiality

6.1 There may be circumstances in which OSRE and RECBC are required to share confidential information for the purposes of an investigation.

6.2 OSRE and RECBC recognize the importance of maintaining confidentiality of all information that is obtained for the purposes of an investigation under this MOU.

6.3 Any information that is obtained under this MOU shall be treated as confidential, subject to disclosures required by law or as may be necessary or advisable to fulfil a duty or purpose under RESA.

6.4 All parties will preserve the confidentiality of information as is required under the *Freedom of Information and Protection of Privacy Act* in relation to any information that is obtained for the purposes of conducting an investigation.

6.5 The sharing of confidential information pursuant to this MOU is done in reliance on the foregoing assurances and shall not constitute a waiver of any legally cognizable privilege as to any person other than the parties to this agreement.

7. Reporting

7.1 OSRE shall update RECBC on active investigations pursuant to this MOU, as requested.

SIGNED at Vancouver, British Columbia:

Micheal Noseworthy
Superintendent of Real Estate
Office of the Superintendent of Real Estate

Date: DEC 18 2019

Erin Seeley
Chief Executive Officer
Real Estate Council of British Columbia

Date: December 19, 2019

Appendix F

FATF Guidance – Politically Exposed Persons (Recommendations 12 and 22) – June 2013

FATF

FATF GUIDANCE

POLITICALLY EXPOSED PERSONS (RECOMMENDATIONS 12 AND 22)

June 2013

FINANCIAL ACTION TASK FORCE

The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.

For more information about the FATF, please visit the website:

www.fatf-gafi.org

CONTENTS

ACRONYMS

AML/CFT	Anti-Money Laundering / Countering the Financing of Terrorism
CDD	Customer Due Diligence
DNFBPs	Designated Non-Financial Business or Professions
FIU	Financial Intelligence Unit
ML	Money Laundering
PEP	Politically Exposed Person
STR	Suspicious Transaction Report
TF	Terrorist Financing
UNCAC	United Nations Convention against Corruption

I. INTRODUCTION

1. A politically exposed person (PEP) is defined by the Financial Action Task Force (FATF) as an individual who is or has been entrusted with a prominent public function. Due to their position and influence, it is recognised that many PEPs are in positions that potentially can be abused for the purpose of committing money laundering (ML) offences and related predicate offences, including corruption and bribery, as well as conducting activity related to terrorist financing (TF). This has been confirmed by analysis and case studies. The potential risks associated with PEPs justify the application of additional anti-money laundering / counter-terrorist financing (AML/CFT) preventive measures with respect to business relationships with PEPs. To address these risks, FATF Recommendations 12 and 22 require countries to ensure that financial institutions and designated non-financial businesses and professions (DNFBPs) implement measures to prevent the misuse of the financial system and non-financial businesses and professions by PEPs, and to detect such potential abuse if and when it occurs.

2. These requirements are preventive (not criminal) in nature, and should not be interpreted as stigmatising PEPs as such being involved in criminal activity. Refusing a business relationship with a PEP simply based on the determination that the client is a PEP is contrary to the letter and spirit of Recommendation 12.

3. The FATF first issued mandatory requirements covering foreign PEPs, their family members and close associates[1] in June 2003.[2] In February 2012, the FATF expanded the mandatory requirements to domestic PEPs and PEPs of international organisations, in line with Article 52 of the *United Nations Convention against Corruption* (UNCAC).[3] Article 52 of the UNCAC defines PEPs as "individuals who are, or have been, entrusted with prominent public functions and their family members and close associates", and includes both domestic and foreign PEPs. The main aim of the obligations in Article 52 of UNCAC is to fight corruption, which the FATF endorses. However, it is important to note that the aim of the 2012 FATF requirements extends more broadly to the fight against ML and its predicate offences (designated categories of offences), including corruption, and TF.

4. Consistent with this objective, Recommendation 12 requires countries to implement measures requiring financial institutions to have appropriate risk management systems in place to determine whether customers or beneficial owners are foreign PEPs, or related or connected to a foreign PEP, and, if so, to take additional measures beyond performing normal customer due diligence (CDD) (as defined in Recommendation 10) to determine if and when they are doing business with them.

5. For domestic PEPs and international organisation PEPs, financial institutions must take reasonable measures to determine whether a customer or beneficial owner is a

1 See the *2003 FATF 40 Recommendations*: Recommendation 6 (for financial institutions) and Recommendation 12 (for DNFBPs).

2 The 2003 FATF Recommendations encouraged countries to extend the requirements to domestic PEPs.

3 The UNCAC is also referred to as the *Mérida Convention,* after the Mexican city where the high level signing Conference was held. The UNCAC was adopted by the United Nations General Assembly in October 2003, and subsequently entered into force in December 2005.

domestic/international organisation PEP, and then assess the risk of the business relationship. For higher risk business relationships with domestic PEPs and international organisation PEPs, financial institutions should take additional measures consistent with those applicable to foreign PEPs.

6. Recommendation 12 applies to financial institutions, and Recommendation 22 requires countries to apply these requirements to DNFBPs.

7. Effective implementation of the PEPs requirements has proven to be challenging for competent authorities, financial institutions and DNFBPs worldwide. This is evident from the results of the assessments of compliance with the *2003 FATF 40 Recommendations,* undertaken by the FATF, FATF-style regional bodies, International Monetary Fund and World Bank.[4] Implementation challenges have also been identified through publicly available supervisory reports and regulatory actions, and high profile cases of (former) government leaders and their relatives who appeared to have significant assets available abroad which were inconsistent with their official or licit income.

8. It is also important to note that the effective implementation of Recommendations 10, 12 and 22 have to be part of a full and effective implementation of the FATF Recommendations as a whole. See the *Reference Guide and Information Note on the Use of the FATF Recommendations to Support the Fight Against Corruption.*

9. This guidance paper is *non-binding* and should be read in conjunction with FATF Recommendations 12 and 22, and their Interpretive Notes. It is a guidance tool that is based on the experiences of countries, international organisations, the private sector and non-governmental organisations, and which may assist competent authorities and financial institutions and DNFBPs to effectively implement those Recommendations.

II. DEFINITIONS

10. For the purpose of this guidance paper, the definitions set out in the Glossary to the FATF Recommendations apply.[5] The FATF Glossary definition of *politically exposed person* is meant to have the same meaning as the term *persons with prominent public functions* (as used in UNCAC Article 52).

11. In particular, the following definitions, which do not cover middle ranking or more junior individuals, apply to this guidance paper:

- *Foreign PEPs:* individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.

[4] All FATF Mutual Evaluations are published on the website of the FATF, www.fatf-gafi.org, which also holds links to the websites of the FATF-style regional bodies, the IMF and World Bank. See the assessment of Recommendations 6 and 12 of the *2003 FATF 40 Recommendations* in each of these reports.

[5] See in particular, the Glossary definitions of: *beneficial owner, competent authorities, country, criminal activity, financial institutions, designated non-financial businesses and professions, international organisations, politically exposed person, reasonable measures, risk, satisfied, should,* and *supervisors.*

- *Domestic PEPs:* individuals who are or have been entrusted domestically with prominent public functions, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.
- *International organisation PEPs:* persons who are or have been entrusted with a prominent function by an international organisation, refers to members of senior management or individuals who have been entrusted with equivalent functions, *i.e.* directors, deputy directors and members of the board or equivalent functions.
- *Family members* are individuals who are related to a PEP either directly (consanguinity) or through marriage or similar (civil) forms of partnership.
- *Close associates* are individuals who are closely connected to a PEP, either socially or professionally.

12. The difference between a foreign PEP and a domestic PEP is the country which has entrusted the individual with the prominent public function. Pursuant to the definition of PEPs, other factors, such as country of domicile or nationality, are not relevant in determining the type of PEP, but may be relevant in determining the level of risk of a specific domestic PEP (as foreign PEPs are always high risk). It should also be noted that a domestic PEP is subject to the foreign PEPs requirements if that individual is also a foreign PEP through another prominent public function in another country.

13. Throughout the remainder of this guidance paper, references to *Recommendation 12* should be interpreted to mean both Recommendations 12 and 22, as the PEPs requirements are applicable to both financial institutions and DNFBPs.

III. THE RELATIONSHIP BETWEEN RECOMMENDATIONS 10 (CUSTOMER DUE DILIGENCE) AND RECOMMENDATION 12, AND THE SPECIFIC REQUIREMENTS FOR PEPS.

14. Recommendations 10 and 12 are both part of the overall set of customer due diligence (CDD) requirements. The ability to determine if customers or beneficial owners are PEPs fully depends upon the effective implementation of CDD measures, including the identification, verification, and ongoing due diligence requirements as set out in Recommendation 10 (for financial institutions) and Recommendation 22 (for DNFBPs), as well as the effective application of a risk based approach (Recommendation 1). CDD measures are the indispensable starting point as they must be applied to any type of customer.

15. Recommendation 10 does not require CDD measures to be applied to customers who conduct "occasional" transactions below the applicable thresholds in the circumstances which are described in Recommendations 10 and 16 (wire transfers). Consequently, financial institutions and DNFBPs are not expected to determine whether such customers are PEPs, or to apply in such cases the enhanced measures required by Recommendation 12. However, if the financial institution or DNFBP

was provided with information which clearly indicates a PEP status of the occasional customer, it would obviously have to apply the requirements of Recommendation 12.

16. The relationship between Recommendations 10 and 12, and the resulting requirements for determining if clients are foreign or domestic/international organisation PEPs can be summarised in three steps. Although these steps are sequenced, to determine if a new customer is a PEP (at the on-boarding or customer intake stage), it is understood that the three steps can take place at the same time. The three steps are further explained in the following table:

<table>
<tr><th colspan="2">Step 1: Full and effective implementation of Recommendation 10</th></tr>
<tr><td colspan="2">For foreign and domestic/international organisation PEPs
Implement effective CDD measures in line with Recommendation 10.
Recommendation 10 is the indispensable starting point for the effective implementation of Recommendation 12.
Recommendation 12 imposes additional requirements for PEPs which are summarised in step 2 and 3.</td></tr>
<tr><th colspan="2">Step 2: Determine if a customer is a PEP[6]</th></tr>
<tr><td>For foreign PEPs
Recommendation 12 requires appropriate risk management systems to determine whether the customer or beneficial owner is a foreign PEP.
This means that proactive steps must be taken, such as assessing customers on the basis of risk criteria, risk profiles, the business model, verification of CDD information, and the institution's own research, to determine whether a customer or a beneficial owner is a foreign PEP.</td><td>For domestic/international organisation PEPs
Recommendation 12 requires taking reasonable measures, based on the assessment of the level of risk, to determine whether the customer or beneficial owner is a domestic PEP.
This means reviewing, according to relevant risk factors, CDD data collected pursuant to Recommendation 10 in order to determine whether a customer or beneficial owner is a domestic PEP.
Determine the risk of the business relationship and, in low risk cases, no further steps to determine if a customer is a PEP are required.</td></tr>
<tr><th colspan="2">Step 3: Take risk mitigation measures</th></tr>
<tr><td>For foreign PEPs
Apply the enhanced risk mitigation measures of Recommendation 12 in all cases.</td><td>For domestic/international organisation PEPs
In cases of a higher risk business relationship with the PEP, apply the enhanced risk mitigation measures of Recommendation 12.</td></tr>
</table>

17. The different sets of requirements to detect PEPs (one for foreign PEPs, and one for domestic/international organisation PEPs) reflect that the level of risks are different. In practice financial institutions and DNFBPs will often use one customer on-boarding procedure for all customers.

6 For the purposes of determining whether a customer or beneficial owner is a PEP, use of commercial databases is not required by the FATF Recommendations, and is not sufficient for the implementation of Recommendation 12.

18. When considering whether to establish or continue a business relationship with a PEP, the focus should be on the level of ML/TF risk associated with the particular PEP, and whether the financial institution or DNFBP has adequate controls in place to mitigate that ML/TF risk so as to avoid the institution from being abused for illicit purposes should the PEP be involved in criminal activity. This decision should be taken on the basis of the customer due diligence process and with an understanding of the particular characteristics of the public functions that the PEP has been entrusted with. The decision to establish or continue a customer relationship with a PEP should be guided primarily by an assessment of ML/TF risks, even if other considerations, such as regulatory risk, reputational risk or commercial interests, are taken into account.

19. Financial institutions and DNFBPs should consider whether they may be more vulnerable to domestic PEPs compared to foreign PEPs. For example, small financial institutions, with little or no exposure to foreign financial markets, who determine they are dealing with a foreign PEP, should consider in detail the reasons why such a relationship is being started. Financial institutions who operate in domestic markets where there are known issues relating to corruption should consider whether their exposure to domestic PEPs may be higher than to foreign PEPs.

20. In all cases, where a financial institution or DNFBP suspects or has reasonable grounds to suspect that funds are the proceeds of criminal activity, a STR (Suspicious Transaction Report) should be filed with the FIU (Financial Intelligence Unit).

A. FOREIGN PEPS

21. Pursuant to Recommendation 12, financial institutions and DNFBPs are required to have *appropriate risk management systems* as part of their internal rules to determine if a customer or beneficial owner is a foreign PEP. What risk management system is appropriate for a financial institution or DNFBP depends on the nature of the institution's business, the nature of its client profile, expected transactions and on other risk factors.

22. Financial institutions and DNFBPs doing business with a foreign PEP may not have much first-hand knowledge or direct access to information about variables such as what a reasonable income would be for a foreign public official at a particular level or in a particular position. This can make it more difficult to assess information, both at the account opening stage and during monitoring of the customer relationship. Consequently, appropriate risk management systems need to be implemented to address these particular risks both at the account opening/CDD stage, and when existing foreign customers become PEPs. If one of the tools used for the determination of foreign PEPs (see Section V below) indicate the presence of a PEP, but if doubts still exist, further investigation is necessary to be able to reach a sufficiently clear decision on the classification of the customer.

23. Foreign PEPs are always considered high risk and require the application of enhanced due diligence measures, as for all higher risk customers as described in Recommendation 10.[7] Recommendation 12 requires that the decision to engage or maintain the business relationship with the foreign PEP customer should not be taken at the ordinary level of the hierarchy, but at the level of the senior management. This should further lead to more proactive steps, in particular, to an

[7] See paragraph 20 of the Interpretative Note to Recommendation 10.

increase in the monitoring of the business relationship, in order to determine whether those transactions or activities appear unusual or suspicious. Recommendation 12 also requires that financial institutions and DNFBPs take reasonable measures to establish the source of wealth and the source of funds.

24. Examples of such enhanced CDD measures include (but are not limited to): *i)* obtaining additional information on the customer; *ii)* obtaining additional information on the intended nature of the business relationship, and on the reasons for intended or performed transactions; *iii)* obtaining information on the source of funds or source of wealth of the customer; and *iv)* conducting enhanced monitoring of the business relationship, potentially by increasing the number and timing of controls applied, and identifying patterns of transactions that warrant additional scrutiny.

B. DOMESTIC AND INTERNATIONAL ORGANISATION PEPS

25. A financial institution or DNFBP may perform the steps that are required for the implementation of the domestic/international organisation PEP requirements in concert as part of their procedures implementing Recommendation 10. Pursuant to Recommendation 12, financial institutions and DNFBPs are required to take reasonable measures as part of their internal controls to determine if a customer or beneficial owner is a domestic/international organisation PEP. To do this, financial institutions and DNFBPs should review, according to relevant risk factors, the CDD data collected pursuant to Recommendation 10.

26. In case the customer is determined to be a domestic/international organisation PEP, then financial institutions or DNFBPs should undertake a risk assessment of the PEPs business relationship. To this effect, they should notably gather sufficient information to understand the particular characteristics of the public functions that the PEP has been entrusted with and, in the case of an international organisation, the business model of that organization. Information on international organisations, for example, may be found on their respective website. The risk assessment should be a composite assessment of all the risk factors and needs to be done to determine if the business relationship with the PEP is of a higher risk. This assessment of the business relationship may take into account, among other factors *i)* customer risk factors, *ii)* country risk factors, and *iii)* product, service, transaction or delivery channel risks.[8] Additional factors to be taken into account should include the nature of the prominent public function that the PEP has, such as his or her level of seniority, access to or control over public funds and the nature of the position held.

27. If the risk assessment establishes that the business relationship with the domestic/international organisation PEP presents a normal or low risk, the financial institution and DNFBP is not required to apply enhanced due diligence measures. If, however, it suggests that the business relationship is of a higher risk, then the financial institution or DNFBP needs to take consistent measures that are required for foreign PEPs in as set in Recommendation 12 (b) to (d).

28. When implementing Recommendation12, financial institutions and DNFBPs should ensure that they assess the risk of the customer and business relationship on the basis of the data collected

[8] See paragraph 15 of the Interpretative Note to Recommendation 10.

pursuant to Recommendation10.[9] If as a result of this assessment, a financial institutions or DNFBP has no reason to believe that a customer is a domestic/international organisation PEP, then based on this assessment it may not need to take additional measures at this stage to determine if a customer is a domestic/international organisation PEP. Financial institutions and DNFBs should be satisfied, based on reasonable measures[10], that the domestic/international organisation PEP is not a higher risk customer, at the account opening stage or at a later stage. If the business relationship is high risk, then low risk factors become irrelevant and the measures the financial institutions and DNFBPs have in place in relation to such customers should be consistent with those applicable to foreign PEPs and other high risk customers.

29. It is possible that a financial institution or DNFBP rates a customer relationship with customer as high risk because of other factors, without determining at first that this customer is a domestic/international organisation PEP. If this is the case, then the enhanced due diligence measures that Recommendation 10 requires to be applied to this relationship because of these other factors, could lead to the determination that the customer is a domestic/international organisation PEP and, accordingly, lead to the application of the enhanced due diligence requirements stated in Recommendation 12.

30. The risk based approach for domestic/international organisation PEPs ("reasonable measures") implies that in some jurisdictions, some or all business relationships with domestic/international obligations PEPs may pose an equally high risk as those with foreign PEPs. Jurisdictions should not assume that the risk for all domestic/international organisation PEPs is the same, and that the risk is always lower for domestic/international organisation PEPs. Countries should base their assessment of risks in accordance with their obligations under Recommendation 1, and communicate the appropriate guidance to financial institutions and DNFBPs. Financial institutions and DNFBPs need to undertake their own assessment in this regard.

31. Even if a business relationship with a domestic/international obligation PEP is not initially deemed to be high risk, it may evolve into a higher risk business relationship at a later stage. Financial institutions and DNFBPs should conduct ongoing due diligence on their business relationship, consistent with Recommendation 10, to ensure they identify any changes to the risk of the customer relationship. If the risk changes and becomes high, the required measures of Recommendation 12 need to be applied.

C. IDENTIFICATION OF BENEFICIAL OWNERS

32. Recommendation 12 requires the determination that a customer is a PEP. The PEP could be the customer or the beneficial owner of a legal entity that is the client. There is a risk that corrupt PEPs could circumvent AML/CFT and anti-corruption safeguards by opening accounts, establish business relationships or conducting transactions by using third parties, such as intermediaries,

[9] In scenarios that qualify for simplified due diligence and which involve customer identification, financial institutions are not released from the obligation to determine domestic PEPs status of the customer. However, simplified due diligence may limit the extent of what are reasonable measures for PEP determination.

[10] The Glossary defines "reasonable measures" as meaning "appropriate measures which are commensurate with the ML/FT risks". In this context, that would mean taking into account other relevant risk factors as described in the Interpretative Note to Recommendation 10.

legal entities or legal arrangements. Cases have demonstrated that corrupt PEPs often use legal entities to obscure their identity by being the beneficial owner of the client in order to distance themselves from transactions, and to access the financial system undetected. Intermediaries (*e.g.,* lawyers, real estate and escrow agents, lobbyists, bankers) have been known to access the financial system on behalf of PEPs to conceal the controller of the assets.

33. When conducting CDD, financial institutions and DNFBPs are required to identify the beneficial owner, and take reasonable measures to verify the identity of the beneficial owner, pursuant to Recommendations 10[11] and 22. If there are objective grounds to believe that a beneficial owner is a PEP, complete verification is mandatory in any case. Where a person is purporting to act on behalf of a beneficial owner (or is acting on behalf of a natural person), it is best practice to inquire the reason for doing so. This may lead to awareness that the beneficial owner of the client is a PEP.

34. If the person who is acting on behalf of a PEP, or if a customer or beneficial owner is identified as a family member or close associate of a PEP, then the requirements for PEPs should also apply accordingly.

Beneficiaries of life insurance policies

35. Additionally, the Interpretative Note to Recommendation 12 requires financial institutions to take reasonable measures to determine whether the beneficiaries of a life insurance policy and/or, where required, the beneficial owner or the beneficiary are PEPs. This should occur at the latest at the time of the pay out, and should be covered by the internal controls of the financial institution. The financial institution that processes payments purporting to be from life insurance policy pay-outs should apply risk-based monitoring of such payments to determine if the recipient of the funds is a PEP.

IV. SCOPE OF RECOMMENDATION 12

A. PROMINENT PUBLIC FUNCTION

36. The Glossary definition of *politically exposed person* provides some examples of the types of prominent public functions that an individual may be or may have been entrusted with by a foreign or domestic government (*e.g.,* Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials) or by an international organisation (*e.g.,* directors, deputy directors and members of the board or equivalent function).

37. Middle ranking or more junior individuals in the foregoing categories are explicitly excluded from the Glossary definition of *politically exposed person.* However, there should be awareness that middle ranking and more junior officials could act on behalf of a PEP to circumvent AML/CFT controls. These less prominent public functions could be appropriately taken into account as customer risk factors in the framework of the overall assessment of risks associated with the

[11] Recommendation 10 requires that the beneficial owner (the natural person) be identified and that the financial institution understand the purpose and intended nature of the business relationship.

business relationship in accordance with Recommendation 10 when they are acting on behalf of a PEP.

38. Although the Glossary definition includes some examples of what is meant by *prominent public function*, the precise level of seniority which triggers the PEPs requirements is not specified, and the list of examples provided is not exhaustive. This is because what constitutes a *prominent public function* domestically depends on the size (*e.g.* number of inhabitants, size of the budget), particular organisational framework of government or international organisation concerned, and the powers and responsibilities associated with particular public functions and other factors that are considered as part of the risk assessment under Recommendation 1. For example, prominent public functions may exist at the federal, state or provincial, and/or municipal levels. Jurisdictions may use the risk assessment in Recommendation 1 to identify the specific levels and types of PEPs which pose a higher risk.

39. It is a good practice for countries to provide guidance to financial institutions and DNFBPs concerning what constitutes a *prominent public function* for both domestic and foreign PEPs. The starting-point is the FATF Recommendations, with the specific guidance to be informed by the risk assessment. The absence of guidance can create or perpetuate unintended determinations by financial institutions and DNFBPs on who is (and is not) a PEP. Not only will this make monitoring compliance more difficult for supervisory agencies, but it may lead to case-by-case PEP decisions by reporting institutions that are influenced by the political preferences or business interests of senior management.

40. A number of approaches are possible. In some cases, it may be best practice for such guidance to specify a baseline list of particular positions within government which are sufficiently prominent so as to qualify as a PEP (*e.g.,* President, minister, deputy minister, etcetera), and to make the list publicly available (for example on the internet). Another possible method would be to use asset disclosures of public officials who are required to disclose their assets. In these instances, domestic and foreign financial institutions and DNFBPs could potentially access such information. This is particularly important for foreign financial institutions and DNFBPs, as corrupt officials will tend to hide proceeds of corruption abroad, yet it is extremely difficult for financial institutions and DNFBPs to determine which customers would be considered PEPs in a foreign country.

41. Another approach would be to describe generally the types of responsibilities that are sufficiently prominent (*e.g.,* final approval over government procurement processes, responsibility for budgetary spending over a certain amount, decision making powers over government subsidies and grants). It should be made clear that any list cannot be relied on as the sole source of information and does not override financial institutions' and DNFBPs' assessment of risk of the business relationship and the client in other ways.

42. For foreign PEPs, the financial institution or DNFBP may be less likely to have first-hand knowledge of the PEP's domestic situation readily at hand. Such information may be available from other institutions within the same financial group which are doing business in the foreign country or, alternatively, through the internet or other relevant sources.

43. International organisations could also provide information on their organisational structure and business model, as well as the type of functions that their senior management has been

entrusted with, and, where relevant, the type of institutional measures taken to prevent the misuse of these functions.

B. TIME LIMITS OF PEP STATUS

44. Recommendation 12 also defines a PEP as being someone who has been (but may no longer be) entrusted with a prominent public function. The language of Recommendation 12 is consistent with a possible open ended approach (*i.e.*, "once a PEP – could always remain a PEP"). The handling of a client who is no longer entrusted with a prominent public function should be based on an assessment of risk and not on prescribed time limits.

45. The risk based approach requires that financial institutions and DNFBPs assess the ML/TF risk of a PEP who is no longer entrusted with a prominent public function, and take effective action to mitigate this risk. Possible risk factors are:

- the level of (informal) influence that the individual could still exercise; the seniority of the position that the individual held as a PEP; or
- whether the individual's previous and current function are linked in any way (*e.g.*, formally by appointment of the PEPs successor, or informally by the fact that the PEP continues to deal with the same substantive matters).

C. FAMILY MEMBERS AND CLOSE ASSOCIATES

46. Recommendation 12 applies also to family members and close associates of the PEP. The Recommendation does not define the scope of the terms *family members* and *close associates,* as this depends to some extent on the social-economic and cultural structure of the country of the PEP. Identifying such persons is also challenging, since the number of persons who qualify as family members and close associates is fluid, and may change significantly over time.

47. It is best practice for countries to provide financial institutions and DNFBPs with working definitions or examples of close associates and family members. When doing so, it should be kept in mind that such working definitions and examples should not be interpreted too narrowly or too widely.

48. For *family members*, this includes such relevant factors as the influence that particular types of family members generally have, and how broad the circle of close family members and dependents tends to be. For example, in some cultures, the number of family members who are considered to be close or who have influence may be quite small (*e.g.*, parents, siblings, spouses/partners, and children). In other cultures, grandparents and grandchildren might also be included, while in others, the circle of family members may be broader, and extend to cousins or even clans.

49. For *close associates*, examples include the following types of relationships: (known) (sexual) partners outside the family unit (*e.g.* girlfriends, boyfriends, mistresses); prominent members of the same political party, civil organisation, labour or employee union as the PEP; business partners or associates, especially those that share (beneficial) ownership of legal entities with the PEP, or who are otherwise connected (*e.g.*, through joint membership of a company board). In the case of

personal relationships, the social, economic and cultural context may also play a role in determining how close those relationships generally are.

50. For the assessment of risk, it is the links between the close associate and/or family member with the PEP that determine the level of risk. In some cultures, several different ethno-cultural-religious links (*e.g.* tribe, clan, caste, sect) may fit the description of both close associates and family members.

51. For foreign PEPs, the financial institution or DNFBP may not have first-hand knowledge of the PEP's cultural context readily at hand. Such information may be available from other institutions within the same financial group which are doing business in the foreign country or, alternatively, through the internet and other relevant sources.

52. The FATF Recommendations require that family members and close associates of PEPs should be determined to be PEPs because of the potential for abuse of the relationship for the purpose of moving the proceeds of crime, or facilitating their placement and disguise, as well as for terrorist financing purposes. Consistent with the risk based approach outlined above, the period for which family members and close associates of PEPs who are no longer entrusted with a prominent public function should be treated as PEPs is directly related to the assessment of risk for the PEP. For example, the infant son of a foreign PEP would not be a PEP (unless he holds a prominent public function, such as being the heir to the throne or Presidency). Although the infant son is not a PEP himself, he should be treated as a foreign PEP as long as his parent is considered to be a foreign PEP. Likewise, the close associate of a domestic PEP should be treated as a domestic PEP, even if that associate does not qualify as a PEP in his/her own right, for as long as the status of the domestic PEP remains.

53. If a financial institution or DNFBP finds that a PEP has known family members and close associates, it should search its records to determine whether it may be providing financial services to such members or associates, and if so classify them as PEPs and apply the required enhanced due diligence measures.

V. GUIDANCE ON THE USE OF SOURCES OF INFORMATION FOR THE DETERMINATION OF PEPS, THEIR FAMILY MEMBERS & CLOSE ASSOCIATES

54. Determining whether customers or beneficial owners are PEPs and/or finding out who are their family members and close associates can be challenging, particularly when dealing with foreign PEPs for whom current information may not be readily available. Another implementation issue is determining whether existing clients of financial institutions and DNFBPs have become PEPs since the business relationship began. PEP-related corruption case typologies and supervisory reports (see Annex 2) show that, in many cases, the financial institutions and DNFBPs knew within at least a year after the relationship began that they were dealing with a PEP, yet failed to apply the appropriate risk classification and mitigation procedures. It is important that financial institutions and DNFBPs periodically monitor their existing client base against changes in the PEP universe and not just at the time of client on-boarding.

55. It is important to stress that customer due diligence is the key source of information for the purpose of determining that a customer is a PEP, as required by Recommendations 10 and 12. For

example, a key factor in this ongoing process is the customer's principle occupation, or employment. However, there are several other sources of information that can be used by financial institutions and DNFBPs to assist in determining if a client is a PEP. Financial institutions and DNFBPs should consider using additional sources of information, particularly when determining if a client is a foreign PEP, for the reasons noted above.

56. Unlike law enforcement and supervisors, financial institutions and DNFBPs have access to a valuable source of information: the customer. They should utilise this rather than relying on third party providers. However, financial institutions and DNFBPs will often need to use more than one of these sources of information to support CDD and/or to gather other information required by Recommendation 12 (such as on the source of funds and the source of wealth). As is indicated for some of the sources the disadvantages of using some sources to help determine that a customer is a PEP may outweigh potential advantages.

57. As a general starting point to enable an assessment of risk of specific customers, risk management systems or other internal control mechanisms should draw on a range of sources for establishing ML/TF risk and take this information effectively into account. This should not be limited to international instruments, Recommendations and guidelines, but should be extended to FATF, FATF-style regional bodies, IMF/World Bank and non-governmental organisation (NGO) reports and assessments, whether mutual evaluations, or assessments and analyses of AML/CFT compliance, governance, corruption, revenue management and transparency (including natural resource revenue management and transparency).

A. ENSURING CLIENT CDD INFORMATION IS UP-TO-DATE

58. Existing clients sometimes become PEPs after they enter a business relationship, so it is essential that financial institutions and DNFBPs monitor non-PEP accounts for a change in the PEP-status, customer profile or account activity and update customer information. Such ongoing monitoring should be based on risk, consistent with Recommendation 10.

B. EMPLOYEES

59. FATF Interpretative Note to Recommendation 18 requires internal control policies to include ongoing employee training programmes. These training programmes need to address effective ways of determining whether clients are PEP and to understand, assess and handle the potential risks associated with PEPs. Training should also use real life case studies and examples to ensure it is up to date. Human input and analysis from experienced and trained employees can be more valuable than automated software programmes for detecting and handling the risks associated with PEPs. This is especially the case for high net worth customers that are PEPs, which potentially carry the highest corruption and ML risks.

C. INTERNET AND MEDIA SEARCHES

60. Financial institutions and DNFBPs frequently use the internet and media as sources of information for the determination, monitoring, verification of information in relation to PEPs, although noting that information that is retrieved may not in all cases be comprehensive or reliable. While general searches on the larger search engines can prove difficult because of the number of

"hits" that would require reviewing, free search tools are offered through AML-specific websites that would be more targeted. In addition, searching focused sources that could be linked to the customer may assist in locating relevant information (for example, (social) media websites in the customer's country of origin). Internet searches can also assist in retrieving general relevant (country) information. For example, for a financial institution or DNFBP it is relevant to know which countries prohibit certain PEPs (such as elected officials) from maintaining bank accounts abroad.

D. COMMERCIAL DATABASES

61. There are a variety of commercial databases available which may assist in the detection of PEPs. Use of these databases is not required by the FATF Recommendations, and is not sufficient for compliance with Recommendation 12. Financial institutions, DNFBPs and competent authorities can acquire access to such databases–although the subscription costs may be (too) high for many institutions. As well, the costs of such systems are necessarily passed on to the clients, which will ultimately increase the cost of accessing financial services. The fact that the cost of using commercial websites is too high for some institutions should be taken into account when assessing compliance with the PEP requirements.

62. The use of these databases should never replace traditional CDD processes. Using any lists or database software to assist in the determination that a client is a PEP may increase the risk that financial institutions or DNFBPs wrongly assume that if a name is (not) in such a database then the client is (not) a PEP. Such databases are simply additional sources of information about higher risk individuals in determining whether the person is a potential PEP or family members and close associates of PEPs. Commercial databases also have limitations of which competent authorities, financial institutions and DNFBPs should be aware:

- Commercial databases are not necessarily comprehensive or reliable as they generally draw solely from information that is publicly available and thus the subscribing financial institutions or DNFBPs have no way of verifying the accuracy, comprehensiveness and/or quality of the information contained in the databases. With elections, cabinet changes, and the general turnover of public officials taking place almost daily around the world, these lists cannot be relied upon as being up-to-date.
- The definition of PEPs used by providers of such databases may or may not align with the definition used in a particular country or accurately reflect the functions entrusted by a particular international organisation.
- The subscribing financial institutions and DNFBPs may not fully understand the parameters used to populate the database and the technical capabilities of the database. For example; the database may not catch certain names, or may exclude certain categories of PEPs.
- Inconsistent transliterations and spellings of names affect the ability of financial institutions and DNFBPs to match names in general. Scrubbing customer databases for matches against commercial databases may result in many false positives if such databases contain insufficient or inadequate

identifier information. This increases the risk of missing true matches and requires additional resources to separate false positives from true matches.

63. Financial institutions and DNFBPs using such databases as a support tool should ensure that they are fit for the purpose and are not simply outsourcing their risk assessment.

E. GOVERNMENT ISSUED PEP-LISTS

64. Countries sometimes publish lists of domestic PEPs or prominent public functions, although this is not required by the FATF standards and such lists have potential shortcomings and can pose potential challenges for effective implementation. There are two types of lists that countries may publish: a list of positions/functions that would be held by a PEP, or a list of actual names of PEPs. In general, while the inclusion on a list can confirm the fact that a person is a PEP, not being featured on a list does not exclude the possibility that a person is nevertheless a PEP.

65. With regard to the list of *actual names*, such lists of domestic PEPs can be problematic as they are quickly outdated, difficult to manage, costly to maintain, and do not contain family members or close associates, and therefore the FATF does not advocate this approach. In addition, such lists depend on the foreign country's interpretation of what constitutes a prominent public function and the criteria for listing an individual as a PEP may diverge from the interpretation and criteria which is applicable domestically. Finally, there is risk that financial institutions and DNFBPs would rely exclusively on the list, fail to consider other customers who may be PEPs, and therefore fail to have fully assessed the risk of the business relationship; significantly impacting the effectiveness of the measures.

66. On the other hand, compiling a list of domestic *positions/functions* that are considered to be p*rominent public functions* (*i.e.*, positions held by PEPs) is a practice that can provide financial institutions and DNFBPs with an important source of information to determine who is a PEP. Given that the definition of *prominent public function* depends on the particular organizational framework of a government and can vary from country-to-country, a list of functions also assists financial institutions and DNFBPs with the difficult task of interpreting the categories of public officials they should consider as a PEP in foreign countries.

67. Compiling and maintaining a list of domestic positions/functions would not be overly onerous for individual countries. In fact, many countries already have such a list (or at least a starting-point) of public functions that are required to file asset disclosures. Since it is a list of positions/functions which are likely to remain consistent for a period of time (as opposed to a list of names which can change from one day to the next) occasional updating would be sufficient. Again, the process for updating would be similar to that used for asset disclosure systems.

68. Close associates and family members of PEPs might never be listed, but are still to be treated as PEPs, as required by Recommendation 12. Conducting CDD on a family member or close associate might also reveal information that can be cross-checked and used to verify information about the PEP which has been obtained from other sources.

F. IN-HOUSE DATABASES AND INFORMATION SHARING WITHIN FINANCIAL GROUPS OR COUNTRIES

69. Some financial institutions and DNFBPs may choose to develop in-house databases as a tool to assist in the determination of who is a PEP. Similar to commercial databases, they may be very costly and resource intensive for financial institutions and DNFBPs to keep such database lists up-to-date. Recommendation 18 (internal controls and foreign branches and subsidiaries) requires financial groups to implement procedures for sharing information with the group for AML/CFT purposes. In relation to foreign PEPs, it is best practice for institutions within international financial groups to share information on PEPs for AML purposes. Additionally, financial institutions and DNFBPs within a country may be able to provide general information which is helpful to determine whether a PEP is trying to abuse the financial system (*e.g.*, the level of corruption in the country, the level of income for certain types of positions, etcetera).

70. However, data protection laws and/or privacy legislation may limit the ability of a financial institution or DNFBP to obtain information from a financial institution or DNFBP within the group in another jurisdiction for the purpose of verifying customer information, including on why the customer is opening an account in a foreign jurisdiction. Where this causes the financial institution or DNFBP to be unable to comply with the CDD requirements of Recommendation 10 in specific cases, the good practice is to refuse to open the account, commence business relations or process the transaction(s), or the business relationship should be terminated.

71. Where a financial institution or DNFBP frequently seeks information from financial institutions and DNFBPs in a particular country for the purposes of verifying CDD information, but is regularly denied on the grounds of data protection or privacy legislation, the institutions should consider notifying its supervisor and/or FIU. This offers the supervisor and/or FIU an opportunity to raise the issue with its foreign counterpart in an effort to find a solution which will meet the needs of both AML/CFT and privacy/data protection systems.

72. Some countries allow their financial institutions and DNFBPs to alert other financial institutions and DNFBPs in specific cases of action that they take regarding a customer, such as the termination of a customer relationship. Provided that a legal basis is created for such information exchange, this can prevent PEPs whose business was refused or terminated from shopping around.

G. ASSET DISCLOSURE SYSTEMS

73. Countries have asset disclosure systems in place that apply to those individuals that hold prominent public functions. In implementing disclosure requirements, agencies managing asset disclosures usually need to build a list of the public officials required by law to file disclosures, so as to be able to monitor compliance. Financial institutions and DNFBPs could be aware of which countries require asset declarations from PEPs and require their customers to submit copies of such declarations. These could be used to help assess the PEP customer's risk level as part of ongoing monitoring to ensure account activity is consistent with assets and value disclosed. It should be noted that in many disclosure systems the accuracy of the disclosures form can be verified either on a routine basis, upon complaint, when corruption investigations are launched, etcetera. While many disclosure agencies are involved in conducting verification activities, their effectiveness varies due

to their overall capacity, resource endowment, availability of sources of information for cross-checking the content of disclosures, etcetera.

74. These names of filers and/or list of positions, where publicly available, can help financial institutions and DNFBPs to determine if a client is a PEP. Asset disclosure systems can also provide insight into the public functions that a country deems to be prominent. Some asset disclosure systems can provide guidance on the names of individuals filling these functions and their family members or close associates (where these are to file, or be named. In addition, asset disclosure systems may provide access to additional data, such as the date of birth and identification numbers, which can assist financial institutions and DNFBPs to determine the PEP status of clients.

75. Financial institutions and DNFBPs should be aware that the criteria used by a foreign country to determine which functions are covered by asset disclosure requirements may not correspond with the domestic criteria for a definition of a PEP. A further limitation is that an asset disclosure form is a self-declaration and, therefore, may not contain verified information or may contain (deliberately) contain false statements. Although there may be sanctions available for filing false or inaccurate information in an asset disclosure form, financial institutions and DNFBPs should take reasonable efforts to verify the information.

H. CUSTOMER SELF-DECLARATIONS

76. Self-declaration by a customer of their PEP status (*i.e.* by disclosing present or former employment or principal occupation clearly recognizable as a PEP) is known as a means of helping to determine whether that customer is a PEP. Some financial institutions and DNFBPs may also choose to obtain verbal or written declarations from customers to facilitate taking civil, administrative or criminal action against those PEPs who wrongly chose to not identify themselves as such.

77. However, financial institutions and DNFBPs who provide the customer with a PEP definition and ask the customer if they meet that definition should ensure that they do not rely solely on such self-declarations (which may in fact be false). Such a procedure would shift the financial institution's or DNFBP's obligation to their customer, which is not an acceptable practice. Moreover, many customers would not be able to determine if they are indeed a PEP, or not – for example because the customer is not aware of the definition of a PEP. Instead, businesses should actively engage with customers and elicit information pertinent to the different elements of the PEP definition. To do this effectively, well-trained staff and effective information gathering is required.

I. INFORMATION SHARING BY COMPETENT AUTHORITIES

78. The competent authorities may also have general information which is helpful in determining whether a PEP is trying to abuse the financial system (*e.g.*, the level of corruption in the country, the level of income for certain types of positions, etcetera) or specific information about particular persons which would facilitate the detection of foreign PEPs. Where such information may be made publicly available (*i.e.,* over the internet), it is best practice to do so. Alternatively, formal or informal networking or MOUs (Memorandum of Understanding) may be required so that information can be shared among domestic or foreign counterparts, also for purposes of disclosure to financial institutions and DNFBPs (provided there is a legal basis for doing so and provided that MOUs, where

applicable, allow such sharing). Both general information concerning the country from which a foreign PEP originates and more specific information (*e.g.*, about particular persons) are useful tools for verifying CDD information.

VI. MEASURES APPLICABLE TO THE DIFFERENT TYPES OF PEPS

A. FOREIGN PEPS AND HIGH RISK BUSINESS RELATIONSHIPS WITH DOMESTIC & INTERNATIONAL ORGANISATION PEPS

79. Foreign PEPs are always considered a high risk that warrants taking enhanced due diligence measures. In addition, business relationships with domestic PEPs and international organisation PEPs that are determined to be high risk should be subject to such measures. In both circumstances, the following enhanced due diligence measures apply: senior management approval, reasonable measures to establish the source of wealth and the source of funds, and enhanced ongoing monitoring of the business relationship.

80. For higher risk PEP relationships, it is a misconception to assume that detailed knowledge of a PEP may allow the relationship to be treated as other than high risk. For example, a foreign head of government remains a high risk PEP, no matter what the staff of the financial institution or DNFBP (*i.e.* account or client managers, senior executive staff) may know about this particular person, or the product provided. To appropriately manage the risks related to higher risk PEPs, financial institutions and DNFBPs may give greater weighting or emphasis in applying enhanced due diligence measures in specific situations.

Obtain senior management approval

81. Pursuant to Recommendation 12, financial institutions and DNFBPs should be required to obtain senior management approval for establishing (or continuing, for existing customers) business relationships with foreign PEPs. Recommendation 12 does not define or specify the precise level of seniority within a financial institution or DNFBP that would be considered sufficient for being able to approve establishing or maintaining a customer relationship with a PEP because such a definition would not be meaningful in all countries and in all relevant contexts.

82. What will constitute *senior management* will depend on the size, structure, and nature of the financial institution or DNFBP involved. However, the objective is to ensure that more senior levels of management are aware of relationships with PEPs and that financial institutions and DNFBPs do not in any circumstance undertake business relationships with them in the absence of adequate controls. To make this assessment, the senior management person(s) involved will need to have a deep knowledge of the institution's AML/CFT programmes (*i.e.*, the internal control programmes), and a strong understanding of the potential or existing customer's ML/TF risk profile. Additionally, the senior management person(s) should have active involvement in the approval process of the institution's AML/CFT policies and procedures.

83. Appropriate arrangements for senior management approval can include having monitoring committees in place – or comparable decision making structures - that review high risk PEP customer and business relationships (both at the customer intake or acceptance stage as well as on an on-going basis). These structures should normally include the AML/CFT head, compliance

officers and customer service representatives. Larger or international financial institutions and DNFBPs may have a centralized monitoring/review process for higher risk PEPs. These structures can also help to ensure that all relevant internal information is carefully considered in specific cases. The responsibility regarding final decisions on customer relationships with PEPs should be clearly described. In all cases, it is best to document the approval or refusal by those involved in writing.

84. Although Recommendation 12 only requires senior management approval for establishing or continuing the customer relationship, it may be desirable, where financial institutions or DNFBPs lack the resources to implement internal controls and enhance ongoing monitoring mechanisms sufficiently to mitigate risk, for senior management to have a process to actively manage the termination of a the business relationship.

85. Senior management mechanisms to address the foregoing should be part of the internal control programs that financial institutions and DNFBPs are required to have in place pursuant to Recommendation 18. This should, *inter alia*, ensure that appropriate information regarding PEPs is available within institutions, when and where necessary, and include internal policies, procedures and controls relating to PEPs. The type and extent of internal control measures to be taken should be appropriate having regard to the risk of ML/TF and the size and nature of the business. Internal compliance manuals should not simply repeat regulatory requirements regarding PEPs - but should be tailored to the type of business and PEP customers that a firm does business with.

Establish the source of wealth and source of funds

86. Financial institutions and DNFBPs should be required to take reasonable measures to establish the source of wealth and the source of funds of foreign PEPs, pursuant to Recommendation 12. "Wealth" and "funds" are two different concepts.

87. The *source of wealth* refers to the origin of the PEP's entire body of wealth (*i.e.*, total assets). This information will usually give an indication as to the volume of wealth the customer would be expected to have, and a picture of how the PEP acquired such wealth. Although financial institutions and DNFBPs may not have specific information about assets not deposited or processed by them, it may be possible to gather general information from commercial databases or other open sources.

88. The *source of funds* refers to the origin of the particular funds or other assets which are the subject of the business relationship between the PEP and the financial institution or DNFBP (*e.g.*, the amounts being invested, deposited, or wired as part of the business relationship). Normally it will be easier to obtain this information but it should not simply be limited to knowing from which financial institution it may have been transferred. The information obtained should be substantive and establish a provenance or reason for having been acquired.

89. Information about the source of wealth and source of funds is useful for ongoing due diligence purposes. When conducting ongoing due diligence of the business relationship, it is important for financial institutions and DNFBPs to ensure that the level and type of transactions are consistent with the institution's knowledge of the PEP's source of wealth and source of funds. The aim is to ensure that the reason for the business relationship is commensurate with what one could reasonably expect from the PEP, given his/her particular circumstances. When making this determination, the following factors should be taken into account: the current income of the PEP;

sources of wealth and funds which could be explained from previous positions, business undertakings, and family estates.

90. Where the level or type of activity in the business relationship diverges from what can be reasonably explained, given the knowledge of the PEP's source of wealth and source of funds, prompt further assessments of the situation should be undertaken. The outcomes of that assessment should determine if the business relationship is to be established or maintained, or whether further steps would be necessary, such as termination of the business relationship[12] and/or filing STRs to the financial intelligence unit (FIU), consistent with Recommendation 20 (reporting of suspicious transactions).

91. There is often an absence of information to help determine the source of wealth. Some institutions and DNFBPs will rely on (basic) information on publicly disclosed assets (going beyond the lists of persons that need to be disclosed). Many countries with asset disclosure systems have provisions in place on public access to the information in the disclosures, and make disclosures available on-line. While in many cases only a summary of the information filed by officials is made publicly available, the information that can be accessed sometimes includes categories such as values of income, real estate, stock holdings sources of income, positions on boards of companies, etcetera. Often, financial institutions and DNFBPs must primarily rely on a declaration by the (potential) customer. Where financial institutions and DNFBPs are relying on the customer's declaration of the source of funds/wealth, and inability to verify the information should be taken into account in establishing its value.

92. When inquiring into the source of wealth, it is also best practice to try to obtain a more specific overview of how much wealth the PEP has or controls, although it is understood that it may not always be fully possible to have an overview of the PEP's entire body of assets, especially when this information is not voluntarily disclosed. Failure to voluntarily disclose this information could also be considered a red flag.

93. The following sources of information are useful for verifying the accuracy of the customer's declaration about the source of wealth and source of funds: publicly available property registers, land registers, asset disclosure registers, company registers, past transactions (in the case of existing customers), and other sources of information about legal and beneficial ownership, where available. In the case of particularly high-profile PEPs, an internet search (including of social media) may also reveal useful information about the PEP's wealth and lifestyle and about their official income. Discrepancies between customer declarations and information from other sources could be indicators of ML suspicion and should never be disregarded.

94. When researching the source of wealth and source of funds, financial institutions and DNFBPs should focus on what can be reasonably explained, rather than on what might be expected. It seems that in some countries, in practice, PEPs are *expected* to have access to larger amounts of either licitly or illicitly obtained (cash) funds than non-PEPs, (*e.g.*, because there is an implicit expectation that individuals holding certain positions may have illicit income from corruption and other offences). This may lead to circumstances in which a higher risk PEP is assessed as having a lower customer risk and/or to cases where financial institutions and DNFBPs have incorrectly

[12] In some cases, the competent authorities may request the financial institution or DNFBP not to terminate the business relationship, yet.

justified their (continued) business with a PEP based on the wealth and funds that could be *expected*, rather than on the wealth and funds that could reasonably be *explained.* Basing a risk assessment on such expectations is not compliant with Recommendation 12.

Conduct enhanced ongoing monitoring of the business relationship

95. Foreign PEPs are always considered high risk, which means that enhanced ongoing monitoring of the business relationship is always required, as is the case for higher risk domestic/international organisation PEPs. Some examples of enhanced due diligence measures are set out in paragraph 20 of the Interpretive Note to Recommendation 10. In practice, financial institutions and DNFBPs with the resources to implement electronic monitoring systems are able to conduct automated monitoring on a relatively constant basis. However, financial institutions and DNFBPs without the resources to fully computerise and fully link CDD information to an electronic monitoring system do not have this capacity. In such cases, more manual and resource-intensive methods of ongoing monitoring will be needed. This is an important implementation issue, especially for smaller financial institutions and DNFBPs.

96. When assessing the ML/TF risk level of a relationship with a domestic/international organisation PEP, financial institutions and DNFBPs should take into account such factors as whether the PEP:

- has business interests which are related to his/her public functions (conflict of interest);
- is involved in public procurement processes; whether the PEP holds several (related or unrelated) prominent public functions which may enable influence to be exerted at several key decision making points in a process, especially in spending departments;
- is from a country which has been identified by the FATF or others as having strategic AML/CFT regime deficiencies, or is known to have a high level of corruption;
- has a prominent public function in sectors known to be exposed to corruption levels, such as the oil and gas, mining, construction, natural resources, defence industries, sports, gaming, gambling sectors; or
- has a prominent public function that would allow him/her to exert a negative impact on the effective implementation of the FATF Recommendations in his/her country. The exact range of prominent public positions that this would apply to will likely differ from country to country, but could include the head of state, key ministers and other political or parliamentary leaders.

97. A broader selection of red flags and indicators of suspicion that are also useful for financial institutions and DNFBPs is provided in Annex 1.

98. When assessing whether adequate controls are in place to mitigate the risk of doing business with a particular PEP, consideration should be given to the level, frequency and extent of ongoing

monitoring and (enhanced) due diligence that will be required. It is important for the financial institutions and DNFBPs to use their understanding of the risks posed to ensure the systems they have in place are appropriate. The systems will therefore not be the same for all financial institutions and DNFBPs.

B. DOMESTIC & INTERNATIONAL ORGANISATION PEPS WHEN NOT HIGHER RISK

99. When the risk assessment established that the business relationship with a domestic/international organisation PEP does not present a higher risk, the PEP in question can be treated like any other normal customer, *i.e.* the financial institution and DNFBP should apply normal customer due diligence measures and monitoring. When undertaking ongoing due diligence as required under Recommendation 10, it should be noted that a change in circumstances may change the level of risk applicable to a particular PEP, such that enhanced CDD and/or the measures set out in Recommendation 12 should be applied. This may necessitate a reconsideration of whether the financial institution or DNFBP has implemented internal controls which are sufficient to mitigate the higher level of risk. If the financial institution or DNFBP determines that it has not implemented internal controls which are sufficient to mitigate the higher level of risk, the business relationship should be terminated.

C. LIFE INSURANCE POLICIES WITH HIGHER RISKS

100. The Interpretative Note to Recommendation 12 requires life insurance companies to determine whether individuals who are beneficiaries of the proceeds of life insurance policies are PEPs. This applies to foreign and domestic PEPs. Where a life insurance company has a client relationship with such an individual (for example, because the individual is him- or herself a holder of a life insurance policy) then the life insurance company should have already determined if the individual is a PEP. However, life insurance companies often do not have client relationships with beneficiaries. Where this is the case, the life insurance company should conduct CDD and make a PEP determination at the time that the company is gathering information and preparing the documentation to support the pay-out of the proceeds. The life insurance company should treat such beneficiary as a new customer for the purpose of applying this requirement.

VII. SUPERVISION

101. As part of the assessment of risk conducted under Recommendation 1, competent authorities (which include supervisors) should identify and evaluate their National Risk Assessment (Recommendation 1), and ML/TF risks presented by PEPs and their activities in each jurisdiction and incorporate this knowledge and expertise into their risk-based approach to supervision, in line with Recommendation 26.

102. Supervisors should ensure that financial institutions and DNFBPs understand that assessing the reputational risk is not the same as assessing the risk that the institution will be abused for illicit purposes (*i.e.*, ML/TF risk) and should assess risk management controls and compliance with the PEPs requirements, and apply effective sanctions for non-compliance, in line with Recommendations 26 (regulation and supervision of financial institutions), 28 (and DNFBPs) and

35 (sanctions). Supervisory efforts should include a detailed review of systems used to determine and monitor PEPs, and not simply be a check of what source is used to detect PEPs. Countries may also consider publishing the sanctions which have been imposed for PEP violations to increase the awareness of risk involved in doing business with higher risk PEPs in the absence of adequate AML/CFT controls. At the same time, supervisors

103. Supervisors should also pay attention to PEPs, where appropriate, as a high-risk category in their role of taking necessary legal or regulatory measures to prevent criminals or their associates from holding, or being the beneficial owner of, a significant or controlling interest, or holding a management function in, a financial institution or DNFBP. In past cases, corrupt PEPs have captured domestic and foreign financial institutions and DNFBPs by gaining ownership, management control, or becoming a shareholder with a significant controlling interest in a financial institution or DNFBP – allowing them to exert control over the functioning of the institution or business and making use of it as a vehicle for corruption and ML.

104. In addition to actual control, financial institutions and DNFBPs face potential political pressures associated with a PEP and possible retributions for not accepting a PEP or filing an STR on a PEP. These are potential issues that supervisors need to be aware of and monitor for compliance for, as required by Recommendation 26 (regulation and supervision of financial institutions) and Recommendation 28 (regulation and supervision of DNFBPs), as well as in their role of supervising financial institutions engaged in correspondent banking services (Recommendation 13, correspondent banking). Supervisors should be aware of these risks and take appropriate steps to mitigate them.

105. It is important for competent authorities, to understand that the detailed measures required for the implementation of Recommendation 12 and Recommendation 22 may differ from one sector to another, and even within a sector.[13] Regulatory requirements and day-to-day supervision should take into account the risk that businesses face, depending on their size, business products and other relevant factors. To this end, supervisors need to ensure that their staff is appropriately trained and resourced. This, in combination with a regulatory framework that is tailored to the needs of each sector / business line, should ensure that there is regulatory certainty. The publication of guidance, informed by supervision, should further clarify regulatory expectations for financial institutions and DNFBPs.

106. Supervisors (and other competent authorities) have an important role to play by providing guidance (pursuant to Recommendation 34, guidance and feedback) to financial institutions and DNFBPs on what constitutes a PEP (this could include definitions of *prominent public function, family members, and close* associates) and how to effectively apply the PEP requirements. It is equally important that supervisors articulate what the expectations are regarding higher risk customers that are PEPs. The detection and identification of PEPs should not be seen in practice as an aim in itself and lead to a ticking the box approach. However, the handling of the risks of higher risk PEPs is the key to the effective implementation of Recommendation 12. To this end supervisors could provide detailed guidance on good and poor practice to identify PEPs and about their regulatory expectations (*e.g.*, when to file an STR or to terminate a customer relationship). This

[13] For example, the regulatory needs regarding PEPs may be different for global financial groups compared to small local not-for-profit cooperative credit unions.

should be an ongoing process which reflects changing in wider risk factors and involves dialogues with stakeholders. Supervisors may choose to undertake horizontal and thematic supervisory reviews of the implementation of Recommendation 12 by financial institutions and DNFBPs, and to publish the general results of these reviews as guidance that is relevant for both financial institutions and DNFBPs. Such guidance reports should not only focus on identified common shortcomings, but also identify best practices, including information on how to detect PEPs, as well as PEP's family members and close associates. Such reviews should be based on a representative sample of institutions.

Internal controls (Recommendation 18)

107. In addition to the supervision of the general customer due diligence requirements, supervisors should also pay attention to internal controls of financial institutions and DNFBPs. Their supervisory methodology as it relates to PEPs should include: *i)* internal policies, procedures and controls, including appropriate compliance management arrangements, *ii)* a relevant ongoing employee training programme; and *iii)* an independent audit function to test the system. Competent authorities need to assess the relevance of the internal manuals for each supervised entity.

VIII. OTHER ISSUES

A. IMMUNITY FROM PROSECUTION AND CONVICTION

108. A common misconception is that PEPs who may enjoy immunity from prosecution and conviction (for example, Heads of State who, during their term of office, are immune from prosecution for actions committed prior to their taking office; or diplomats who are immune from prosecution and conviction in the countries where they are posted), are therefore exempt from the requirements of Recommendation 12. However, this is not the case. PEPs are not immune from the application of the requirements of Recommendation 12 or from being the subject of the obligation to report suspicious transactions pursuant to Recommendation 20. Although immunity may slow down or prevent the criminal prosecution and conviction of such PEPs, a STR may trigger an investigation which could identify other persons without immunity who are involved in criminal activity, and who could be prosecuted immediately (*e.g.*, co-conspirators or accomplices). In addition, the PEP may lose the immunity from domestic prosecution at a later stage, at which point a criminal investigation could be opened or continued.

109.In addition, in light of the expanding modern doctrine of immunity, under which criminal activities are not considered to fall within official acts of state and under which even high state officials have personal criminal responsibility for such criminal activities, criminal immunity should not simply be assumed to exist.

B. CONSISTENCY WITH ANTI-DISCRIMINATION LAWS

110. Another common misconception is that the proper implementation of PEP requirements would breach anti-discriminatory laws which safeguard the equality of all citizens of a country. It is important to realise that the requirements of Recommendation 12 are one of many additional preventive CDD measures that the FATF requires for higher risk business relationships. Other

examples are correspondent banking (Recommendation 13), new technologies (Recommendation 15) and wire transfers (Recommendation 16). What these requirements have in common with Recommendation 12 is that they focus on higher risk business relationships – whether those relationships are with natural persons or legal persons. These requirements are specifically linked to prominent public functions, irrespective of the personal characteristics of the persons holding them. The definition of a PEP is not linked in any way to any of the personal characteristics that fall within the prohibited grounds for discrimination by international conventions.

C. SHARING OF BEST PRACTICES BETWEEN BUSINESS ASSOCIATIONS

111. National and international business associations have developed sector specific guidance to assist their members to implement the requirements regarding PEPs. While such guidance is not FATF endorsed, it may nevertheless be a useful source of information for financial institutions and DNBPBs. Supervisors could assist business associations to exchange guidance and best practices.

ANNEX 1: PEPS RED FLAGS / INDICATORS

I. INTRODUCTION

1. The determination that a customer is a PEP is not an aim in itself but forms part of the process that enables financial institutions and DNFBPs to assess the different types of higher risks related to PEPs. Determining that a customer is a PEP does not absolve financial institutions and DNFBPs of further ongoing due diligence specifically tailored to the fact that the client is a PEP. Being a PEP does not prejudge a link to criminal activities, or equate to being a criminal and / or subsequent abuse of the financial system. Similarly, the fact that a person is a domestic/international organisation PEP does not automatically imply that he/she poses a higher risk. Financial institutions and DNFBPs need nevertheless to be aware of the risks that a PEP may abuse the financial system to launder illicit proceeds, and financial institutions and DNFBPs need to be aware of the red flags / indicators that can be used to detect such abuse.

2. The FATF has developed a collection of red flags / indicators that can be used to assist in the detection of misuse of the financial systems by PEPs during a customer relationship. This list of red flags / indicators is relevant to detect those PEPs that abuse the financial system, and does not intend to stigmatize all PEPs. Often, matching one or more of these red flags / indicators may only raise the risk of doing business with a customer (red flags, risk factors), and several red flags may need to be met to create a suspicion. However, in some cases and depending on the specific circumstances, matching just one or more of these red flags / indicators will directly lead to a ML suspicion[14] (indicators of suspicion).

3. These PEP red flags are not an exhaustive list and are complementary to the usual ML red flags that a reporting entity may be using. The methods of those PEPs that engage in illicit activity change and therefore indicators of their activity will do so as well. Also, there may be other red flags that should be considered as equally important in a particular country or region.

II. DETECTING MISUSE OF THE FINANCIAL SYSTEM BY PEPS – RED FLAGS AND INDICATORS FOR SUSPICION

A. PEPS ATTEMPTING TO SHIELD THEIR IDENTITY:

4. PEPs are aware that their status as a PEP may facilitate the detection of their illicit behaviour. This means that PEPs may attempt to shield their identity, to prevent detection. Examples of ways in which this is done are:

- Use of corporate vehicles (legal entities and legal arrangements) to obscure the beneficial owner.

[14] If, during the establishment or course of the customer relationship with a PEP, or when conducting occasional transactions for a PEP, a financial institution or DNFBP suspects ML, then the institution should file an STR to the financial intelligence unit (FIU), in accordance with FATF Recommendation 20. The FATF Recommendations do not require that a customer relationship with a PEP is terminated in case of suspicion or multiple suspicions; however, financial institutions and DNFBPs should be aware of the fact that continuing such a business relationship may create criminal liability, if appropriate.

- Use of corporate vehicles without valid business reason.
- Use of intermediaries when this does not match with normal business practices or when this seems to be used to shield identity of PEP.
- Use of family members or close associates as legal owner.

B. RED FLAGS AND INDICATORS RELATING TO THE PEP AND HIS BEHAVIOUR:

5. Specific behaviour and individual characteristics of PEPs may raise red flags / risk levels or cause a suspicion:

- Use of corporate vehicles (legal entities and legal arrangements) to obscure *i)* ownership, *ii)* involved industries or *iii)* countries.
- The PEP makes inquiries about the institution's AML policy or PEP policy.
- The PEP seems generally uncomfortable to provide information about source of wealth or source of funds.
- The information that is provided by the PEP is inconsistent with other (publicly available) information, such as asset declarations and published official salaries.
- The PEP is unable or reluctant to explain the reason for doing business in the country of the financial institution or DNFBP.
- The PEP provides inaccurate or incomplete information.
- The PEPs seeks to make use of the services of a financial institution or DNFBP that would normally not cater to foreign or high value clients.
- Funds are repeatedly moved to and from countries to which the PEPs does not seem to have ties with.
- The PEP is or has been denied entry to the country (visa denial).
- The PEP is from a country that prohibits or restricts its/certain citizens to hold accounts or own certain property in a foreign country.

C. THE PEP'S POSITION OR INVOLVEMENT IN BUSINESSES:

6. The position that a PEP holds and the manner in which the PEP presents his/her position are important factors to be taken into account. Possible red flags are:

- The PEP has a substantial authority over or access to state assets and funds, policies and operations.
- The PEP has control over regulatory approvals, including awarding licences and concessions.
- The PEP has the formal or informal ability to control mechanisms established to prevent and detected ML/TF.

- The PEP (actively) downplays importance of his/her public function, or the public function s/he is relates to associated with.
- The PEP does not reveal all positions (including those that are *ex officio*).
- The PEP has access to, control or influence over, government or corporate accounts.
- The PEP (partially) owns or controls financial institutions or DNFBPs, either privately, or *ex officio*.
- The PEP (partially) owns or controls the financial institution or DNFBP (either privately or *ex officio*) that is a counter part or a correspondent in a transaction.
- The PEP is a director or beneficial owner of a legal entity that is a client of a financial institution or a DNFBP.

D. RED FLAGS AND INDICATORS RELATING TO THE INDUSTRY/SECTOR WITH WHICH THE PEP IS INVOLVED:

7. A connection with a high risk industry may raise the risk of doing business with a PEP. Under Recommendation 1, competent authorities, financial institutions and DNFBPs are required for determining which types of clients may be higher risk. For this, financial institutions and DNFBPs will also be guided by national guidance or risk assessments. Which industries may be at risk depends on the risk assessments and varies from country to country, and on other industry safeguards that may be in place. Examples of higher risk industries are:

- Arms trade and defence industry.
- Banking and finance.
- Businesses active in government procurement, *i.e.*, those whose business is selling to government or state agencies.
- Construction and (large) infrastructure.
- Development and other types of assistance.
- Human health activities.
- Mining and extraction.
- Privatisation.
- Provision of public goods, utilities.

E. BUSINESS RELATIONSHIP / TRANSACTION, PURPOSE OF BUSINESS RELATIONSHIP:

8. Red flag and indicators can also relate to the specific business relationship or transaction:

- Multiple STRs have been submitted on a PEP.

- (Consistent) use of rounded amounts, where this cannot be explained by the expected business.
- Deposit or withdrawal of large amounts of cash from an account, use of bank cheques or other bearer instruments to make large payments. Use of large amounts of cash in the business relationship.
- Other financial institutions and DNFBPs have terminated the business relationship with the PEP.
- Other financial institutions and DNFBPs have been subject to regulatory actions over doing business with the PEP.
- Personal and business related money flows are difficult to distinguish from each other.
- Financial activity is inconsistent with legitimate or expected activity, funds are moved to or from an account or between financial institutions without a business rationale.
- The account shows substantial activity after a dormant period; or over a relatively short time; or shortly after commencing the business relationship.
- The account shows substantial flow of cash or wire transfers into or out of the account.
- Transactions between non-client corporate vehicles and the PEP's accounts.
- A PEP is unable or reluctant to provide details or credible explanations for establishing a business relationship, opening an account or conducting transactions.
- A PEP receives large international funds transfers to a gaming account. The PEP withdraws a small amount for gaming purposes and withdraws the balance by way of cheque.
- A PEP uses third parties to exchange gaming chips for cash and vice versa with little or minimal gaming activity.
- A PEP uses multiple bank accounts for no apparent commercial or other reason.

F. PRODUCTS, SERVICE, TRANSACTION OR DELIVERY CHANNELS:

9. The FATF Recommendations (Interpretative Note to Recommendation 10) contain examples of products, industries, service, transaction or delivery channels, which are of a higher risk, irrespective of the type of customer. These examples are:

- Private banking.
- Anonymous transactions (including cash).

- Non-face-to-face business relationships or transactions.
- Payments received from unknown or un-associated third parties.

10. If these industries, products, service, transaction or delivery channels are used by PEPs, then this adds an additional risk factor (depending on the nature of the PEP). In addition to the examples already listed in the FATF Recommendations, there are other products, industries, service, transaction or delivery channels that can become additionally vulnerable when used by PEPs. Examples of these are:

- Businesses that cater mainly to (high value) foreign clients.
- Trust and company service providers.
- Wire transfers, to and from a PEP account that cannot be economically explained, or that lack relevant originator or beneficiary information.
- Correspondent and concentration accounts.
- Dealers in precious metals and precious stones, or other luxurious goods.
- Dealers in luxurious transport vehicles (such as cars, sports cars, ships, helicopters and planes).
- High end real estate dealers.

G. COUNTRY SPECIFIC RED FLAGS AND INDICATORS

11. The FATF Recommendations (Interpretative Note to Recommendation 10) contain examples of higher risk country or geographic risk factors, irrespective of the type of customer. Additionally, the following red flags and indicators relating to countries can be taken into account when doing business with a PEP:

- The foreign or domestic PEP is from a higher risk country (as defined by the FATF in Recommendation 19, or the Interpretative Note to Recommendation 10).
- Additional risks occur if a foreign or domestic PEP from a higher risk country would in his/her position have control or influence over decisions that would effectively address identified shortcomings in the AML/CFT system.
- Foreign or domestic PEPs from countries identified by credible sources as having a high risk of corruption.
- Foreign or domestic PEPs from countries that have not signed or ratified or have not or insufficiently implemented relevant anti-corruption conventions, such as the UNCAC, and the OECD Anti-Bribery Convention.
- Foreign or domestic PEPs from countries with a mono economies (economic dependency on one or a few export products), especially if export control or licensing measures have been put in place.

- Foreign or domestic PEPs from countries that are dependent on the export of illicit goods, such as drugs.
- Foreign or domestic PEPs from countries (including political subdivisions) with political systems that are based on personal rule, autocratic regimes, or countries where a major objective is to enrich those in power, and countries with high level of patronage appointments.
- Foreign or domestic PEPs from countries with poor and/or opaque governance and accountability.
- Foreign or domestic PEPs from countries identified by credible sources as having high levels of (organised) crime.

ANNEX 2: SOURCES OF CASE INFORMATION

There is an abundance of sources with information on cases related to PEPs. This list below highlights those sources that were used as input to the drafting of this guidance paper.[15]

- *Banks' management of high ML risk situations, How banks deal with high risk customers (including PEPs), correspondent banking relationships and wire transfers,* Financial Services Authority (FSA), United Kingdom, 2011.
- *Barriers to Asset Recovery, An Analysis of the Key Barriers and Recommendations for Action* (Stephenson, Gray, Power, Brun, Dunker and Panjer), StAR (World Bank / UNODC) 2011.
- *Corruption – ML Nexus: an Analysis of Risks and Control Measures in West Africa*, GIABA.
- *Corruption Cases Search Center*, Stolen Asset Recovery Initiative (StAR) at http://star.worldbank.org/corruption-cases (World Bank / UNODC).
- *Due diligence obligations of Swiss banks when handling assets of "politically exposed persons",* Swiss Financial Market Supervisory Authority (FINMA), 2011.
- *Laundering the Proceeds of Corruption*, Financial Action Task Force, July 2011.
- *PEPs, Preventive Measures for the Banking Sector* (Greenberg, Gray, Schantz, Latham, Gardner), StAR (World Bank / UNODC) 2010.
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- Specific Risk Factors in the Laundering of Proceeds of Corruption - Assistance to reporting institutions, Financial Action Task Force, June 2012.
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- The Secret Life of a Shopaholic, How an African Dictator's Playboy son went on a multi-million dollar shopping spree in the U.S., Global Witness, 2009.
- *Third round Mutual Evaluation Reports,* Financial Action Task Force 2005 – 2012 (at www.fatf-gafi.org).
- Undue Diligence, How Banks do Business with Corrupt Regimes, Global Witness, 2009.

15 The FATF does not necessarily partially or fully endorse all of the views expressed in all of these publications.

- *Using Asset Disclosure for Identifying PEPs* (Rossi, Pop, Clementucci, Sawaqed) World Bank, 2012.
- Wolfsberg Anti-Corruption Guidance, the Wolfsberg Group, 2011.

Appendix G

CAN-001787 – FIR: Money Laundering Trends Associated to the Black Axe Organized Crime Group

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FINANCIAL INTELLIGENCE REPORT

20/21-SIRA-010

Money Laundering Trends Associated to the Black Axe Organized Crime Group

CONTEXT:
Numerous active fraud investigations in North America have put the Black Axe on the radar of intelligence and law enforcement agencies, despite being unknown to authorities in North America before 2012-2013. The purpose of this report is to provide a deeper insight into the Black Axe's suspected money laundering activity by analyzing the financial data included in FINTRAC disclosures related to Black Axe members, in conjunction with other sources.

ASSESSMENT:
FINTRAC assesses that the Black Axe organized crime group is a money laundering threat, capable of disguising illicit proceeds as legitimate. Most notably, the group is opportunistic and adept at exploiting a range of victims, through several forms of fraud, with varying degrees of financial impact. The group has proved willing and able to exploit government employees and financial institutions, as well as collaborate internationally to move both illicitly derived goods and funds. By leveraging the Nigerian diaspora and its business connections, Black Axe members transact internationally in the vast majority of analysed disclosures. These disclosures exhibit Black Axe success in moving their ill-gotten proceeds to jurisdictions offering corporate secrecy, with flexibility. Money laundering techniques are centred on obscuring the identities of perpetrators through the use of suspecting and unsuspecting third parties and fraudulent identities. Money is then usually moved rapidly through a series of accounts and transactions across multiple financial institutions. These findings suggest this organized crime group, while still relatively new to law enforcement, employs a range of simple and sophisticated fraud schemes, and money laundering techniques as needed.

BOTTOM LINE/WHY IT MATTERS:
The criminal activities employed by the Black Axe have the potential to impact a large number of Canadian and American victims. In order to generate profits, the Black Axe has employed a wide-variety of criminal schemes, including mass marketing fraud (MMF) and vehicle theft rings. The group has the capacity to organize itself transnationally, leveraging networks and connections abroad to further layer the proceeds of crime. While the value of Black Axe disclosures from FINTRAC totals are in the tens of millions of Canadian dollars, this represents only prescribed transactions in the FINTRAC database and not the entirety of below threshold and activity which did not arouse suspicion.

BACKGROUND

1. In support of law enforcement priorities related to the Black Axe organized crime group and their financing, FINTRAC undertook an analysis of tactical financial intelligence disclosures involving members of the group. The Black Axe was not known to have a Canadian presence until 2012-2013, but has recently garnered law

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enforcement interests due to the growing threat posed to Canadians who increasingly fall victims to their fraudulent schemes.

2. The Black Axe Movement began in Nigeria as a fraternity called the Neo-Black Movement of Africa (NBM) in the late 1970s at the University of Benin. The Neo-Black Movement of Africa is the official name used to form legal entity status around the world for the group in each jurisdiction. For example, in Toronto, the Neo-Black Movement of Africa Canada Zone has been a registered not-for-profit organization since 2012. There is some dissent between whether the two names represent two groups, but both publicly available and law enforcement sources point to the groups as one, and will be referred to interchangeably, as is the general consensus amongst law enforcement and consulted scholars[1].

3. The Black Axe has developed into what is sometimes referred to as a "confraternity", while others refer to it as a "Nigerian Mafia" because of their profit-oriented, organized and violent crimes, and the rivalries developed between other Nigerian organized crime groups. Some also refer to the group as a religious cult due to intertwined elements of Nigerian superstitions and pseudo-religious ideologies.

4. According to both open sources and law enforcement, it is suspected that Black Axe members must pay dues to their zones, as outlined in the group's constitution[2], which is similar to the modus operandi associated with many hierarchical organized crime groups. When fees are high or if pressure to generate funds for the group is significant, this could cause pressure for Black Axe members to conduct illicit activities, including MMF. The lead Zone, NBM Africa, accepts dues from other Zones and offers the global network strategic direction.

5. The Black Axe is organized with a strict hierarchy of titled roles.[3] Through these roles the Black Axe practices entry rituals, uses codes and hand signals, and conducts intelligence collection/covert operations much like other traditional organized crime groups. Further uniting Black Axe members is a common regalia resembling paramilitary organizations. Black Axe publications act as propaganda to maintain a charitable image in the public eye, despite the group's controversial nature. Nicknames, termed "strongnames", are given to new members upon joining and reflect the names of African politicians and leadership figures, but more concerning, are strongnames after prominent terrorists[4].

[1] Najuju.wordpress.com. (2014). Constitution and Disciplinary Measures of NBM.
[2] Ibid.
[3] Ibid.
[4] Ibid.

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BLACK AXE IN CANADA

6. The Black Axe has had a history in Canada dating back to 2003 (self-proclaimed), having established the Black Axe Canada Zone and subsequently the Vancouver Zone; transactions in FINTRAC disclosures confirm that suspicious Black Axe financial activities date back into the early 2000s. The Black Axe, as an organized crime group, was not on Canadian law enforcement radar until 2013, and has since gained increased attention as the perceived threat is now better understood by authorities.

7. The Black Axe in Canada is actively involved in large scale fraud and vehicle theft rings. In one example, a Canadian Black Axe member, Akohomen Ighedosie, allegedly participated in a $5 billion dollar plus romance scandal in the US, involving both Canadian and American victims and was investigated nationally by the FBI[5]. In order to help facilitate their criminal activities in Canada and abroad, the Black Axe has actively exploited the financial sector and government. For example, Service Ontario employees knowingly assisted Black Axe members in large scale vehicle theft rings based out of the greater Toronto area (GTA)[6]. FINTRAC assesses that exploitation of professionals likely contributes to the scale of the threat of money laundering activities derived from its for-profit crimes.

ANALYSIS OF FINTRAC TRANSACTIONS AND DISCLOSURES

FINANCIAL TRENDS IN BLACK AXE DISCLOSURES

Cash Activity Trends

8. There are 375 large cash transactions reports (LCTRs) (over CAD $10,000). The majority of these transactions are conducted within Toronto's surrounding areas where the group is most active. Banks reported the majority of the cash activity, which accounted for 82% of LCTRs between 2003 and 2016.

9. Transactional data reported in suspicious transaction reports (STRs) indicates that cash was used in 714 reported transactions involving Black Axe disclosures. "Cash out" activity (ATM withdrawals, wires received with cash payment, etc.) was noted in reported transactions. Transactional analysis suggests that Black Axe members may be placing four to five times the cash into the Canadian financial system than they are withdrawing for use, indicating that some of their illicit activities are cash intensive.

[5] Ross, S. (2015). Shadowy Black Axe Group Leaves Trail of Tattered Lives. & CBC. Khandaker, T. (2015). The Notorious Black Axe has Put Down Roots in Canada. Vice News.
[6] CBC. (2015). GTA Luxury Vehicle Thefts Linked to Nigerian Crime Ring Black Axe.

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10. Out of the top 10 cities receiving the largest value of cash deposits, the top 7 are located in the GTA; and similarly, the top 8 cities for cash withdrawals are also located in the GTA. It is important to consider that the majority of disclosures included in this analysis originated from targets residing in the GTA, therefore the results are likely more representative of the Toronto Zone's financial activity. Despite the focus on the Toronto Zone, the Vancouver region is also present, which could represent financial (and other) ties between the Canadian zones.

Electronic Funds Transfer Trends

11. STRs indicate that the largest volume of domestic electronic fund transfers (EFTs) were conducted by Black Axe members at financial institutions located in the GTA. In all, EFT values in this dataset have generally increased over time.

12. The majority of sustained EFT activity across all years was between Canada and the US, and Nigeria. Meanwhile, transfers to and from other jurisdictions appear only in limited windows of time. EFT volumes confirm previously mentioned links with US counterparts within FINTRAC's Black Axe disclosures. Based on transaction data, there appears to be financial ties between Canadian Black Axe members and two US States. These transactions include a US location known for legal and illegal transnational shipping of used cars.

13. Analysis shows that there is significantly more value incoming to Canada from Nigeria than what is outgoing. Considering that Black Axe members are expected to send dues to the head Zone in Nigeria and that Nigerian expats habitually send remittances back to family members, it was expected that the majority of funds in this dataset would flow outward from Canada towards Nigeria. Yet, further analysis highlighted that limited funds go directly from Canada to Nigeria.

14. Financial intelligence, as well as media reports, suggest that the Black Axe is involved in sending used cars from Canada to Nigeria and Ghana (both legitimately bought and stolen vehicles), which explains some of the incoming funds from Nigeria. It is likely that the Black Axe employs trade based money laundering (TBML) techniques by comingling the proceeds of crime through car companies and import/export companies, which could explain the incoming funds from Nigeria.

15. EFTs related to a specific Asian trade hub are observed to be related to incoming funds to Canadian accounts, MSBs, and the purchase of used auto parts. Chinese metal and plastic companies have been reported in several disclosures. All of these jurisdictional trends suggest the Black Axe is capable of making and leveraging connections worldwide as necessary to perform operations through both personal accounts and businesses. It further indicates an opportunistic nature and ability to adapt in jurisdictionsthat offer corporate and banking secrecy.

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PREVALENT FRAUD SCHEMES IN BLACK AXE DISCLOSURES

16. In analyzing Black Axe disclosures, the following fraud schemes were most prominently present:

Suspected Offences Related to Black Axe Disclosures

Suspected Fraud Offence	Percent of Cases Observed
General Mass Marketing Fraud (Romance, Lottery, etc.)	51%
Cheque Fraud	19%
Identity Fraud	27%

17. *419/Mass Marketing Fraud:* A 419 scam could manifest in many fashions, such as advanced-fee scams, mail fraud, romance or lottery scams, all of which have been used by Black Axe members in the past. 48% of Black Axe disclosures specifically identified at least one 419 scam. Other types of fraud were also present with 419 fraud scams, such as identify fraud.

18. Romance Scams were suspected in fewer disclosures than other general 419 scams in this set. A significant time investment is made by perpetrators of romance scandals to form an emotional bond with the victim[7]. In the romance scam model, small financial requests of the victim are followed by larger requests for "crisis" relief or other "unsolvable" conundrums, which appeals to the emotional attachment the victim has with the perpetrator. This bond can lead to large financial loss to victims comparatively to other MMF scams as well as third party laundering opportunities for the perpetrator[8].

19. FINTRAC assesses that funds derived from MMF, including romance scams, are largely underreported by victims to law enforcement which presents a challenge in comprehensively estimating the Black Axe financial footprint. Despite this, American and Canadian-Nigerian Black Axe members have been charged by US law enforcement of a five billion dollar romance scandal against victims from both nations, with victims and illicit activity dating back several years (Black Axe members are facing extradition to the US after their Canadian cases). American cases against the Black Axe appear to hold significantly larger value than Canadian law enforcement cases, despite both perpetrators and victims spanning both sides of the border. It is assessed that the level of proceeds in Canada from Black Axe fraud is higher than FINTRAC's own cases indicate, given that:

- Canadian fraud "boiler rooms" are known to target two to three times more Americans than Canadians[9]; and

[7] Whitty, M. and Buchanan, T. (2012). Psychology of the Online Dating Romance Scam. & Doyle, S. Online Dating Made this Woman a Pawn in a Global Crime Plot. Wired.
[8] CAFC. (2015). 2014 Annual Statistical Report.
[9] FINTRAC. (2015). Mass Marketing Fraud: Money Laundering Methods and Techniques.

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- FINTRAC only holds a certain level of prescribed transactions in its database and is not privy to the financial details that are collected by law enforcement when a warrant for banking records is used.

PREVALENT MONEY LAUNDERING TRENDS AND TECHNIQUES IN BLACK AXE DISCLOSURES

Top Trends and Techniques Observed in Black Axe Disclosures

Suspected Money Laundering Trends Identified	Percent of Cases Observed
Funnel Accounts (technique)	40%
Third Parties (technique)	30%
Real Estate (sector)	19%
Trade Based Money Laundering (typology)	59%

20. After money is extracted from individuals (i.e. through various MMF scams), the Black Axe needs a way to launder their illicitly gained funds. In analyzing Black Axe disclosures, the following money laundering trends and techniques were most prominent throughout the dataset:

21. *Funnel Accounts*: The Black Axe uses individuals around the world to layer transactions by using third party personal accounts as a funnel for funds. Funds appear to be funnelled making use of identity fraud techniques, in which Black Axe members, under several aliases, moved funds rapidly amongst personal accounts held in different financial institutions. The group also hired unsuspecting third parties who used their personal accounts as a funnel for Black Axe funds. Therefore, funnel accounts were used in conjunction with fraudulent identification or with third parties as a laundering technique at the placement and layering stages.

22. In several disclosures, laundering funds involved the emotional manipulation of victims in order to solicit help to move (launder) their money. It is suspected that the appeal to emotions decreases the "cost of business" for the Black Axe, as these victims (especially those of romance scams) may be willing to move funds for next to nothing. Frequent third party deposits into accounts were cited in 30% of FINTRAC Black Axe disclosure summaries as well as rapid movement of funds in 16% of disclosures. Rapid movement of funds includes those originating from one personal account to another by the subject, and various third party deposits by potential money mules and victims.

23. Regardless of the way victims are approached (through romance or an "employment opportunity"), third parties are used by the Black Axe as a facilitation technique to ML.

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24. *Real Estate:* FINTRAC disclosure summaries highlight incidents where real estate was purchased in Canada under suspicious circumstances by Black Axe-related individuals. These purchases likely represent one technique used at the integration stage of ML. The purchase of these properties involved significant cash activities and sufficient suspicion for reporting entities to send STRs in these incidents. While the number of incoming EFTs related to Black Axe property purchases in Canada per year have remained steady, the overall value has increased substantially. FINTRAC disclosures also link Canadian NBM subjects as property owners in an area close to a free trade zone–where Black Axe-related persons have registered businesses, and the organization has an Established Zone. This is in close proximity to Lagos, where much reported Black Axe activity occurs. Open sources and transaction analysis together suggest that there could be significant connections between Black Axe members in Canada and Lagos.

25. *Trade based Money Laundering:* FINTRAC disclosures, STRs, and law enforcement investigations have identified Black Axe members as business owners and employees of used car and import/export companies. Potential Black Axe-related transactions have been reported extensively in Lagos, and to a lesser extent, in a nearby free trade zone. Inbound funds transfers in the dataset are often related to used auto sales, real estate purchases, vehicle parts, textile purchases, other container shipments and student fees. Outbound transactions are often allegedly for the purpose of remittances and property. Given Black Axe activities in both of these areas, FINTRAC assesses that it is reasonable to consider the area in proximity to the free trade zone an exploitable region by the Black Axe for further ML activities, including TBML.

26. Media articles suggest a nexus between the Black Axe and used car sales/exports from Canada to Nigeria and Ghana. This includes a large number of vehicles that Black Axe members have stolen in the GTA and subsequently exported[10]. Some cars appear to be legitimately purchased from auction houses by these companies and, thus, it is assessed that legitimately purchased vehicles are comingled with those stolen at the time of shipping. There is a high risk that potential criminal proceeds from other criminal activities - such as MMF - are backing the "legitimate" purchase of vehicles. In Africa, the vehicles are being sold at approximately half their fair market value[11], which may create economic implications and imposes unfair competition for legitimate African automotive sales competitors. EFTs also showed that funds originating from Hong Kong were also involved in the purchase of used vehicle parts.

27. The extent to which illicit and licit funds/goods are comingled by members of the Black Axe for the purpose of conducting TBML is unknown; however, according to media articles, a single law enforcement investigation involved over 500 vehicles alone[12]. The intent and capability of the Black Axe to organize large scale vehicle theft

[10] CBC. (2015). GTA Luxury Vehicle Thefts Linked to Nigerian Crime Ring Black Axe.
[11] Ibid.
[12] Ibid.

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and subsequent TBML have existed in the Canadian context and thus pose a ML threat. Used auto sales are a known sector of vulnerability in related to several predicate offences, including MMF.[13]

CONCLUSION

28. Canadian Black Axe members have been involved in large scale theft and exportation of vehicles to Ghana and Nigeria, which appears to comingle with legitimately purchased used vehicles, and are thus indicative of TBML schemes.

29. Thus far, disclosure analysis shows that the group has significant ability to leverage international ties for the movement of money through the financial system, the most important of these jurisdictions over time being the US and Nigeria. Significant findings included the inward flow of EFTs from Nigeria amongst Black Axe cases.

30. Black Axe members are capable of a variety of generic schemes: lottery scams, romance scams, and large scale luxury vehicle theft and exportation. Their key methods for money laundering indicate significant use of third parties, the use of multiple identities/aliases, rapid flow of funds, and the comingling of funds between business and personal accounts. Black Axe is also capable of other forms of serious crime that have a Canadian nexus, such as human trafficking. Several links suggest that there is a criminal nexus between the Black Axe in Canada and other domestic organized crime groups, as well as international organized crime.

31. FINTRAC assesses that Black Axe is financially opportunistic and shows both willingness and the ability to exploit government employees and financial institutions to commit crimes and launder funds. In all, the findings demonstrate a money laundering capability that could allow the group to continue to move and convert illicit proceeds in the foreseeable future.

Product Description	A **Financial Intelligence Report (FIR)** provides fundamental intelligence on the development, nature and/or extent of money laundering (ML) or terrorist financing (TF) inside and/or outside Canada to assist FINTRAC clients in detecting, preventing and deterring ML/TF. Unless otherwise flagged as collateral information from other sources, the intelligence facts presented are derived exclusively from FINTRAC data. All judgements and analytic comments are the responsibility of the Strategic Intelligence & Data Exploitation Lab (SIDEL). A FIR may not directly or indirectly identify an individual who provided a report or information to FINTRAC, or a person or entity about whom a report or information was provided.

UNCLASSIFIED version of June 2017 analysis created January 2021

[13] FINTRAC. (2015). Mass Marketing Fraud: Money Laundering Methods and Techniques.

Appendix H

CAN-001788 – Typology Report: China-linked Money Laundering Organizations - Casinos

Financial Transactions and Reports Analysis Centre of Canada
Centre d'analyse des opérations et déclarations financières du Canada

Canada

Reference number: 768677
February 2021

TYPOLOGY REPORT

China-linked money laundering organizations

Theme:	**Money laundering related to the casino sector in Canada**
Jurisdiction:	**Canada**

Overview of typology

1. Project ATHENA—a public-private partnership launched in December 2019 to combat money laundering in Canada—identified suspicious casino-related transactions that heavily focused on the use of bank drafts. These transactions are suspected to have roots in underground banking and the criminal abuse of Informal Value Transfer Systems (IVTS). The vast majority of transactions reported as part of project ATHENA are suspected to be tied to China-linked money laundering organizations. China-linked money laundering activity in Canada has been predominantly concentrated in the Greater Vancouver and Greater Toronto Area.

2. The bank accounts of suspected money mules reported to FINTRAC in suspicious casino-related transactions demonstrate a high volume of cash deposits from various unknown sources and wire transfers from unrelated third parties. These accounts are depleted primarily through the purchase of bank drafts payable to third parties and traced to casinos.

3. IVTS rely on the formal banking system for transactions that demand the use of the formal banking system, such as the purchase of financial instruments, wire transfers, and inter- and intra-bank funds transfers.

4. Criminal abuse of IVTS is fundamental to the repatriation of proceeds to drug source (or transit) countries. Professional money laundering networks also use criminal IVTS to facilitate third party trade settlement, capital flight, capital control circumvention, and sanctions evasion to "offset" the laundering of criminal proceeds. Criminal proceeds are intermingled with capital flight by high rollers from China using Canadian casinos.

Key roles and characteristics

5. FINTRAC suspects that many of the individuals reported in suspicious casino-related transactions associated with Project ATHENA were money mules. FINTRAC considers a money mule to be an individual who, wittingly or unwittingly, transfers or transports proceeds of crime on behalf of a criminal organization or money launderer. One type of money mule observed in suspicious casino-related transactions commonly reported their occupation as 'student' or 'unemployed'. Their bank accounts demonstrated in-and-out activity, with a high

volume of cash deposits from various unknown sources, which were used to purchase bank drafts payable to third parties or casinos.

6. A second type of money mule identified in Project ATHENA-related suspicious transactions typically exhibited the following account activity: cash deposits from unknown sources, wire transfers from third parties or trading companies, the purchase and redemption of various investments, and casino-gaming activity.

7. Professional money launderers with links to organized crime networks are reported to be using casinos to launder criminal proceeds, while also facilitating Chinese currency control circumvention.

Drivers and enablers

8. China-linked money laundering organizations capitalize on the significant demand to move funds out of China, juxtaposed with constantly mounting barriers to using formal financial channels to do so. Currency control restrictions create black market opportunities for China-linked professional money laundering networks with access to a supply of illicit cash from drug trafficking.

9. Research indicates that Vancouver is a hub for China-linked organized crime, with a complex network of criminal alliances and underground banking laundering money from Canada into and out of China, and to other locations including Latin America.

10. Linkages between drug markets in North America, supplied by precursor chemicals from China and cocaine from Latin America, have created mutually beneficial criminal alliances and money-laundering opportunities in Canada. Partnerships between Canadian, Mexican, Middle Eastern and Chinese organized crime groups have resulted in large quantities of illicit cash transiting through key Canadian hubs such as Toronto and Vancouver.

11. R3 (PII) Injury to national defence, security or international relations [redacted]
R3 (PII) Injury to national defence, security or international relations; R6 (PII) The proper administration or enforcement of an Act [redacted]

R3 (PII) Injury to national defence, security or international relations [redacted]

Ibid

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R3 (PII) Injury to national defence, security or international relations; R6 (PII) The proper administration or enforcement of an Act

12. Casinos are a cash-intensive business with a high volume of anonymous transactions, providing a strong cover for illicit funds. Eighteen of the organized crime groups assessed by the Criminal Intelligence Service of Canada in 2019 are reportedly using casinos and gambling to launder their proceeds of crime.[3] The actual number of organized crime groups participating in money laundering via casinos is believed to be even greater than reported.

Indicators and Industry nexus

13. The below table (table 1) provides some examples of indicators that were observed by FINTRAC in suspicious casino-related transactions involving Project ATHENA:

Table 1. Example of indicators associated with money laundering through casinos

Reporting entity (financial institutions, casino)
Client's account shows high volume of casino gaming activity (such as deposits of casino cheques or bank draft issuances to casinos) and transactions involving high-value goods (such as real estate or luxury vehicles).
Client's account is credited by numerous casino cheques whose memo indicates that the funds are not the result of casino winnings.
Client's account activity appears to be circular in nature. For example, client deposits casino cheques followed by the purchase of bank drafts that are ultimately used at one or more casinos. Soon after, casino cheques—whose memo indicates that the funds are not the result of casino winnings—are deposited back into the account.
Client's account appears to be used exclusively for casino gaming activity at one or more casinos. For example, there is no evidence of everyday banking such as payroll or bill payments. Instead, the activity consists of casino cheque deposits, bank draft issuances to casinos or point-of-sale purchases, or ATM cash withdrawals at casinos.

[3] Criminal Intelligence Service Canada. *National Criminal Intelligence Estimate on the Canadian Criminal Marketplace: Money Laundering and Fraud 2020.* September 28, 2020.

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Client's account is funded by various means, such as cash deposits, casino cheques, wire transfers from third parties or trading companies, or investment redemptions such as Guaranteed Investment Certificates. From there, the funds are primarily depleted by credit card payments, account transfers or transactions involving casinos, such as bank draft issuances, point of sale purchases or ATM cash withdrawals.
Client issues multiple bank drafts to oneself or to third parties that are ultimately used at one or more casinos.
Client reports ongoing source of funds in their account to be casino winnings but no matching debits to casinos are identified.
Client is accompanied to a casino by an individual who is subject to a gaming ban.
Client deposits a high volume of bank drafts to patron gaming fund account or regularly uses bank drafts as a form of gaming buy-in.

Implications and opportunities

14. Professional money laundering networks capitalize on the demand for IVTS created by obstructions to the formal financial system—such as currency controls and sanctions—and leverage global cash pools to launder criminal proceeds on behalf of their criminal clients, while facilitating remittances, capital flight, and trade payments on behalf of third parties. IVTS, which allow value to be transferred between individuals or entities in different locations without the physical transfer/movement of funds across jurisdictions, can be used by transnational organized criminal and professional money laundering networks to settle account and facilitate money laundering.

15. While IVTS and underground banking typically operate outside of the formal financial system, some transactions require the use of the financial system. Where IVTS crosses over into the formal financial system (through the use of money mules, bank accounts, bank drafts, cheques, and inter-bank transfers), [redacted] Indicators of suspicious casino-related transactions can help identify possible money mule accounts and transactions that may be related to money laundering activity.

R6 (PII) The proper administration or enforcement of an Act

Appendix I

CAN-001789 – Typology Report: China-linked Money Laundering Organization – Money Mules

Financial Transactions and Reports Analysis Centre of Canada
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Canada

Reference number: 749023
February 2021

TYPOLOGY REPORT

China-linked money laundering organizations

Theme:	**Money laundering involving the use of money mules**
Jurisdiction:	**Canada**

Overview of typology

1. Global illicit finance networks often operate through multi-level compensation schemes that leverage global cash pools. In Canada, criminal cash pools used in the casino sector for bypassing Chinese currency control restrictions also interact with other sectors such as the housing market.

2. China-linked professional money launderers in Canada are known to use an informal value transfer system (IVTS), which involves professional money launderers (PML) in Canada working in tandem with underground bankers in China to facilitate currency control circumvention while laundering domestic criminal proceeds. China-linked money laundering activity in Canada has been predominantly concentrated in the Greater Vancouver and Greater Toronto Area.

3. The formal financial system is critical to the settlement of these compensation schemes, with students [redacted] and homemakers engaged as suspected money mules in order to move illicit funds through financial institutions on behalf of organized crime syndicates. FINTRAC considers a money mule to be an individual who, wittingly or unwittingly, transfers or transports proceeds of crime on behalf of a criminal organization or money launderer.

R3 (PII) Injury to national defence, security or international relations

4. Project ATHENA—a public-private partnership launched in December 2019 to combat money laundering in Canada—identified suspicious casino-related transactions involving the use of suspected money mules. The vast majority of transactions reported as part of project ATHENA are suspected to be tied to China-linked money laundering organizations.

5. The following common methods and techniques were observed in suspicious transactions reported to FINTRAC involving suspected money mules:
   - Flow-through activity
   - High volume of cash/cheque deposits, bank drafts or wire transfers
   - Structured deposits, below reporting thresholds
   - Unknown source and disposition of funds

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6. Canadian casinos are often a location of choice to launder proceeds of crime and are increasingly used as financial intermediaries (e.g., currency exchange, refining).

7. Suspicious casino-related transactions reported to FINTRAC identified individuals suspected to be money mules making cash purchases of casino chips and/or exchanging small denomination bills for large denomination bills (i.e., refining). Suspicious transactions also identified individuals facilitating cash/credit advances at casinos, with minimal or no subsequent gaming activity, likely on behalf of a third party.

8. Suspicious transactions reported to FINTRAC also highlighted the use of suspected money mule accounts to facilitate the acquisition of real estate. Funds placed in these accounts are utilized for the purchase of bank drafts payable to lawyers, notaries, and real estate investment corporations.

Key roles and characteristics

9. Two types of money mules were observed in suspicious transactions reported to FINTRAC. The first type commonly reported their occupation as 'student' or 'unemployed'. Their bank accounts demonstrated in-and-out, pass-through activity with high deposit volumes of cash from unknown sources, drafts, cheques and money transfers, which were utilized to purchase bank drafts payable to third parties or casinos.

10. The second type of money mule often reported their occupation as 'homemaker' or 'housewife' and typically exhibited the following account activity: cash deposits from unknown sources and multiple locations; wire transfers from third parties or trading companies in China and Hong Kong; the purchase and redemption of various investments; and casino-gaming activity.

11. The method of placing funds into the account was usually through high volumes of cash deposits from automated machines in multiple locations but predominantly concentrated in the Greater Vancouver and Greater Toronto Area, through wire transfers from other bank accounts, and through wire transfers from China or Hong Kong. Large sums of illicit cash were broken down into multiple transactions, just below the reporting threshold.

12. Suspected money mules appear to be facilitating the laundering of funds through casinos through refining of small denomination bills to large denomination bills or bank drafts through the purchase of casino chips, and facilitating access to cash advance.

13. The bank accounts of suspected money mules are also used to facilitate the acquisition of real estate. These accounts are funded by multiple cash/cheque deposits, bank drafts and funds transfers from various third parties, including notaries, law firms, and real estate investment corporations. [redacted]

R6 (PII) The proper administration or enforcement of an Act [redacted]

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Drivers and enablers

14. China-linked money launderers in Canada are capitalizing on the demand for access to cash outside of China, created by currency control restrictions, to launder illicit proceeds. Illicit cash fuels this underground economy.

15. Linkages between illicit drug markets in North America, supplied by precursor chemicals from China and cocaine from Latin America, have created mutually beneficial criminal alliances and money-laundering opportunities in Canada.

16. Casinos are a cash-intensive business with a high volume of anonymous transactions, providing a strong cover for illicit funds. Eighteen of the organized crime groups assessed by the Criminal Intelligence Service of Canada in 2019 are reportedly using casinos and gambling to launder their proceeds of crime.[1] The actual number of organized crime groups participating in money laundering via casinos is believed to be even greater than reported.

17. Clients can conduct casino gaming activity relatively anonymously. While casinos in Canada are monitored, there is no customer identification until threshold transactions are reached, and the verification on the source of funds only occurs in certain circumstances depending on the jurisdiction.

18. Gaps in beneficial ownership transparency allows criminals to use companies, offshore trusts and nominee owners to conceal assets such as real estate.

19. Gaps in reporting obligations: Mortgage brokers, private lenders, lawyers and notaries (in Quebec) are not subject to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* and are not required to report suspicious activities or large cash transactions to FINTRAC.

Indicators and Industry nexus

20. The below table (table 1) provides some examples of money laundering indicators relevant to money mules observed by FINTRAC in suspicious transaction reports—submitted by casino and bank sectors—

[redacted]
R1 (PII) Police or regulatory investigative techniques, methods or procedures

[1] Criminal Intelligence Service Canada. "National Criminal Intelligence Estimate on the Canadian Criminal Marketplace: Money Laundering and Fraud 2020." September 28, 2020.

Financial Transactions and Reports Analysis Centre of Canada
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Table 1. Example of indicators associated with money laundering involving the use of money mules

Reporting entity (bank, casino)
Exchange of small denomination bills for larger denomination bills at the cashier window.
Exchange of a large amount of small denomination bills for casino tickets, and later for large denomination bills.
Large cash purchase of casino chips and/or exchange of small denomination bills for large denomination bills, in amounts below the reporting threshold.
Client obtains multiple cash/credit advances from their credit card or casino credit account, with minimal or no casino gaming activity.
Client's occupational information (e.g. homemaker, unemployed, student) is inconsistent with the pattern of financial account activities (e.g. account shows high volume of casino gaming activity; account shows a high volume of bank drafts related to real estate investment).
Client's account activity appears to be circular in nature. For example, client deposits casino cheques followed by the purchase of bank drafts that are ultimately used at one or more casinos. Soon after, casino cheques—whose memo indicates that the funds are not the result of casino winnings—are deposited back into the account.
Client's account shows a high volume of cash deposits, below the reporting threshold, whose source of funds is unknown.
Client's account activity shows an unusual flow of funds that is inconsistent with the client's stated occupation. For example, client's account is funded by cash/cheque deposits from multiple unrelated third parties and financial institutions, and offset by outgoing transfers and bank drafts to lawyers, notaries and real estate investments corporations.

Implications and opportunities

21. Global illicit finance networks, such as underground banking networks leveraged by China-linked money laundering organisations, use complex offsetting schemes to place and transfer proceeds of crime. The placement and layering of illicit proceeds in the financial system by money mules offers a unique window into their activities. [redacted] R6 (PII) The proper administration or enforcement of an Act

22. Federal and provincial implementation of regulations to address beneficial ownership transparency have the potential to improve law enforcement's ability to identify the true owners of assets in support of money laundering investigations.

23. Amendments were made to the *Canadian Business Corporations Act* in June 2019. These changes enable greater transparency over company ownership and aim to assist authorities in prosecuting financial crimes. British Columbia, Manitoba, Saskatchewan and Quebec have passed similar regulations related to provincially incorporated corporations, which are at various stages of implementation.

24. British Columbia's *Land Owner Transparency Act* addresses the transparency of beneficial ownership in real estate. It requires, since November 2020, the disclosure of all individual, corporate and partnership structures that have a beneficial interest in property in British Columbia.

Appendix J

CAN-001790 – Typology Report: China-linked Money Laundering Organizations – Private Lenders

Financial Transactions and Reports Analysis Centre of Canada
Centre d'analyse des opérations et déclarations financières du Canada

Canada

Reference number: 768515
February 2021

TYPOLOGY REPORT

China-linked money laundering organizations

Theme:	**Money laundering related to private lenders in the casino and real estate sector in Canada**
Jurisdiction:	**Canada**

Overview of typology

1. China-linked professional money launderers in Canada are known to use an informal value transfer system (IVTS) that involves private lenders in Canada, acting as professional money launderers (PML), working in tandem with underground bankers in China to facilitate currency control circumvention while laundering domestic criminal proceeds. China-linked money laundering activity in Canada has been predominantly concentrated in the Greater Vancouver and Greater Toronto Area.

2. Professional money launderers are individuals, organizations or networks that provide third-party money laundering services to criminals and organized crime groups. Generally the structure of these networks consists of individuals who control, co-ordinate, collect and transmit illicit funds, and who operate together to negotiate laundering deals on behalf of organized crime groups and other illicit actors.

3. Currency control restrictions create black market opportunities for professional money laundering organizations. While there are numerous other strategies for bypassing Chinese currency control restrictions, underground banking networks linked to Chinese money laundering organizations in Canada often leverage the proceeds of crime.

4. Using this IVTS, wealthy Chinese citizens seeking to bypass currency controls provide their funds to a China-based underground banker who has a business relationship with a PML in Canada. Upon arrival in Canada, wealthy Chinese citizens are provided with cash or bank drafts sourced from criminal proceeds by a Canadian PML. These illicit funds can be laundered through casino gaming activity, and subsequently cashed out and invested in real estate, luxury vehicles and high-value goods in Canada.

Key roles and characteristics

5. While underground banking activity typically runs parallel to, and independent of, the formal banking system, criminal abuse of IVTS often utilizes the formal financial system for the integration of illicit funds and the

settlement of transactions. Examples include the purchase of financial instruments, wire transfers, and inter- and intra-bank funds transfers.

6. Canada-based private lenders involved in this typology are often money services businesses with ties to organized crime networks involved in money laundering. These networks often operate or control money services businesses doing business under varying names. [redacted] R6 (PII) The proper administration or enforcement of an Act [redacted] Cash obtained from drug trafficking organizations is ingested by the money laundering organization and disbursed via transfers in Canada as described below.

7. A private lender is any lender who is not associated or affiliated with a traditional financial institution. While not all private lenders are loan sharks, private lenders engaged in loan sharking are more likely to use cash proceeds from organized crime networks to lend, as opposed to private lenders who use legitimate sources of funds. In Canada, a loan shark is an individual or entity that provides loans with extremely high interest rates and are often linked to criminal organizations that will use the threat of force to ensure repayment. [1]

8. In the context of China-linked money laundering organizations, private lenders in Canada are primarily observed in the context of loans being issued to casino patrons. They are also suspected of taking part, to an unknown extent, in issuing loans related to the purchase of real estate. As a result of changes to casino policies regarding large-cash buy-ins, private lenders tied to China-linked money laundering organizations have adapted by employing money mules to make structured purchases of banks drafts with illicit cash. These drafts are subsequently used for casino buy-ins by the clients of private lenders.

9. Ledgers can be reconciled between the underground banker in China and the professional money launderer in Canada through a domestic transfer in mainland China to an account controlled by the Canadian PML, or the funds owed to the PML in Canada can be used to purchase illicit drugs (and drug precursors) or goods (such as textiles, electronics or toys) for shipment to Canada.

10. Goods, funds, or cryptocurrencies can also be transferred to Latin America to complete a variation on the Black Market Peso Exchange (BMPE), which involves the abuse of commercial trade and the use of money brokers and complicit merchants to repatriate illicit proceeds to drug source countries. While this is a money laundering method that has traditionally been used by transnational organized crime groups to place proceeds of crime into the U.S. financial system through structured cash deposits, the basic scheme can be operated in any jurisdiction, and suspected to have been operated in a Canadian context. Complicit money brokers sell those dollars to a Colombian or Mexican importer, who pays the broker in pesos, to fund the purchase of goods that are then shipped to Colombia or Mexico. Using a variation of this scheme, the deficit between what the underground

[1] The term loan shark is also used to refer to institutions that use predatory lending practices that are not necessarily fraudulent, including lenders that provide payday and title loans. Canada's Criminal Code limits usurious lending practices and prohibits the charging of interest rates above 60% per year.

banker in China owes the PML in Canada can be settled through the transfer of funds or the shipment of goods from China to Latin America to settle accounts related to the repatriation of illicit drug proceeds.

11. Criminal cash pools used for loan-sharking in the casino sector also interact with other sectors such as the housing market. While it remains unknown how much of the illicit cash laundered through casino gaming is subsequently invested into real estate, suspicious transactions reported to FINTRAC highlighted the use of suspected money mule accounts to facilitate the acquisition of real estate. Funds placed in these accounts are utilized for the purchase of bank drafts payable to lawyers, notaries, and real estate investment corporations.

Drivers and enablers

12. Underground banks and private lenders connected to China-linked money laundering organizations are thriving as a the result of the significant demand to move funds out of China, juxtaposed with constantly mounting barriers to using formal financial channels to do so. Professional money launderers in Canada capitalize on this demand by providing access to illicit cash, which can then be laundered through casino gaming and invested in real estate and other high value assets such as luxury vehicles. Illicit cash fuels this underground economy.

13. Underground banking mechanisms, inherently clandestine by their nature, are complex, not well understood, and often difficult to detect. Some of the vulnerabilities associated with these mechanisms include settlement across multiple jurisdictions through value or cash outside of the banking system in some cases; the use of businesses that are not regulated financial institutions; the use of net settlement over a long period of time; and, the commingling of licit and illicit proceeds.

14. The proliferation of unregulated private lending in Canada creates an opportunity for money launderers to participate undetected, and use real estate lending processes to mask the laundering of criminal proceeds. A lack of beneficial ownership transparency allows criminals to use companies, offshore trusts, and nominee owners to conceal assets such as real estate.

15. Gaps in reporting obligations: Unlike traditional banks, private lenders are not subject to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* and are not required to report suspicious activities or large cash transactions to FINTRAC.

Indicators and Industry nexus

16. The below table (Table 1) provides some examples of money laundering indicators relevant to private lenders observed by FINTRAC in suspicious transaction reports—submitted by casino and bank sectors—

[redacted]
R1 (PII) Police or regulatory investigative techniques, methods or procedures
[redacted]

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Canada

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Table 1. Example of indicators associated with money laundering by private lenders.

Reporting entity (bank, casino)
"High-limit" gambler from a jurisdiction where there is a currency control limitation observed meeting with residents of Canada who make cash available for gambling activities.
Passing of high value cash or chips between casino patrons.
High value buy-in or cash outs of casino value chips, and passing them to high-limit players or taking them off-site after minimal play.
Large cash buy-in, primarily with small denomination bills, after meeting with an individual who is the subject of a casino ban for loan sharking activities.
Account funded by a high volume of cash deposits, utilized for drafts payable to oneself and third parties, including those related to casino gaming or real estate investment.
Deposit of high value bank draft or cash, depleted via rapid transfer of funds between client's accounts, automatic banking cash withdrawals, and cheques related to real estate investment.
Account funded by wire transfers from China and multiple cash deposits under the reporting threshold. Funds are immediately offset with drafts or transfers to third parties. The source of funds, purpose of transactions and relationship with third parties are unknown.
Multiple cash deposits, primarily under the reporting threshold and processed at separate transit locations in a different province. The funds are utilized towards outgoing drafts to third parties.
Funds sent to client's own account in China or to a third party in China for which the purpose is unclear.

Implications and opportunities

17. Global illicit finance networks often operate through multi-level compensation schemes, which leverage global cash pools. Illicit cash is a commodity for which there is an offer and a demand.

18. These networks have been observed to simultaneously engage in major money laundering on behalf of transnational organized crime groups while facilitating remittances, capital flight, sanctions evasion, and trade payments on behalf of third parties, using the formal financial system, informal value transfer systems and trade-based money laundering.

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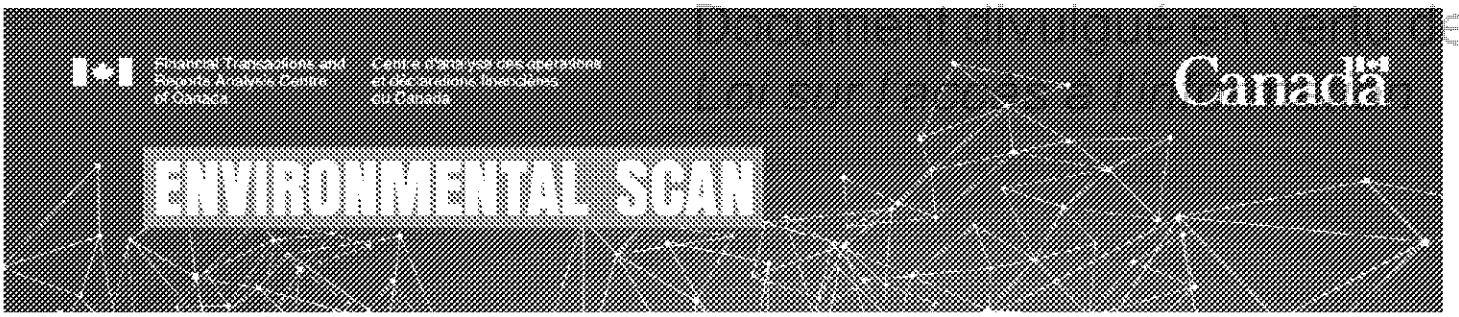
19. The formal financial system is critical to the settlement of these compensation schemes. Where IVTS and underground banking crosses over into the formal financial system (through the use of money mules, bank drafts, bank accounts, cheques, and money transfers) R6 (PII) The proper administration or enforcement of an Act [redacted]

Appendix K

CAN-001791 – Environmental Scan: COVID-19 – Virtual Currency



Reference number: 20/21-EPRP-SIRA/SPAR-003

June 2020

COVID-19 – Virtual Currency

Introduction

COVID-19 – Virtual Currency is the first edition of FINTRAC's environmental scan of effects of the COVID-19 pandemic on virtual currencies (VC). This report focuses on:

1) ***Key observations*** on VC related to the pandemic, with a particular emphasis on the ones that could impact the VC landscape and create new vulnerabilities for FINTRAC and Canada's anti-money laundering and anti-terrorist financing regime; and
2) ***Areas of potential concern*** that could inform FINTRAC operational decision-making and policy development.

This scan, which is primarily based on available open source, and supplemented with Government of Canada partner information, is intended for information purposes only and should not be construed as recommendations or advice.

Key observations

The COVID-19 pandemic has disrupted virtual currency transactions while creating new opportunities for criminals in the virtual currency space both within Canada and internationally. The following trends have been observed through open sources and government publications.

Open Source

- Global Bitcoin transactions totalled 1.1 million Bitcoin over 8 days starting March 9 2020, peaking at 319,000 Bitcoin per day on March 13, 2020, compared to an average of 52,000 Bitcoin per day in the previous three months.[1] Global Bitcoin transactions have continued to increase, totalling 2.5 million Bitcoin from June 10 to June 17, 2020.[2]
- A halvening of Bitcoin occurred in mid May, an event where the mining of new blocks was cut in half from 12.5 BTC to 6.25 BTC. The halving and resulting decrease in Bitcoin supply along with unprecedented low interest rates have contributed to an increase in

[1] "Bitcoin Transactions Per Day:" Bitcoin Transactions Per Day. YCharts, 2020. https://ycharts.com/indicators/bitcoin_transactions_per_day.
[2] "Bitcoin Transactions Per Day:" Bitcoin Transactions Per Day. YCharts, 2020. https://ycharts.com/indicators/bitcoin_transactions_per_day.

the price of Bitcoin. [3] Currently, Bitcoin's price is up about 33% since the beginning of January 2020. Bitcoin's price has increased from $12,644.26 CAD in the first week of May to $13,253.52 CAD in the second week of June. [4]

- Ransomware payments using virtual currencies have decreased significantly since the COVID-19 pandemic intensified in the U.S. and Europe in early March. The number of unique active ransomware entities, which is defined as a ransomware address or cluster of linked addresses receiving cryptocurrency payments has dropped significantly.[5] Instead, cyber criminals have focused on phishing and website scams with almost a third of all confirmed phishing and counterfeit pages related to COVID-19.[6] Crypto thefts, hacks, and frauds totaled $1.4 billion in the first five months of 2020, fueled in part by coronavirus-related crypto crimes. [7]
- The disruption in global supply chains caused by COVID-19 has increased the price of precursor chemicals for the manufacturing of heroin, methamphetamines and fentanyl. Similarly, Mexican drug cartels experienced challenges in purchasing fentanyl from the Hubei province in China which is a global supply hub for fentanyl trade. [8] These changes have coincided with a reduction in darknet market sales suggesting a decrease in drug trafficking using cryptocurrencies as reported by Chainalysis.[9] Similarly a darknet study on cannabis sales found a decreased proportion of larger quantity sales. [10]

Partners and Stakeholders

- In April 2020, CSIS has reported that cyber-criminals and state-sponsored actors had begun using COVID-19-based social engineering tactics in widespread cyber campaigns.
- Cyber criminals claiming to be representatives of charities or organizations like the World Health Organization (WHO) solicit virtual currency donations to fund the

[3] "Mining Pools' Activity Suggests They're Preparing for a Bitcoin Price Surge Following the Halving." Chainalysis Blog. May 11, 2020. https://blog.chainalysis.com/reports/mining-pools-bitcoin-halving-2020.
[4] Gogo, Jeffrey. "Bitcoin to Rise to $20K This Year Spurred by Government Money Printing and Covid-19: Bloomberg: News Bitcoin News." Bitcoin News. Bitcoin.com, June 5, 2020. https://news.bitcoin.com/bitcoin-to-rise-to-20k-this-year-spurred-by-government-money-printing-and-covid-19-bloomberg/.
[5] "Ransomware Attackers Aren't Sparing Anyone During Covid-19." Chainalysis Blog, April 14, 2020. https://blog.chainalysis.com/reports/ransomware-covid-19.
[6] "Bolster's Q1 2020 State of Phishing and Online Fraud Report: COVID-19 Related Scam Sites Surpass Quarter of a Million." Business Wire, May 13, 2020.
[7] O'Connell, Justin. "Fake Covid-19 PPE Products Don't Sell On Dark Net Markets." Forbes. June 02, 2020. https://www.forbes.com/sites/justinoconnell/2020/06/02/fake-covid-19-ppe-products-dont-sell-on-dark-net-markets/#22a02240ecbb.
[8] Hamilton, Keegan. "Sinaloa Cartel Drug Traffickers Explain Why Coronavirus Is Very Bad for Their Business." Vice, March 23, 2020. https://www.vice.com/en_us/article/bvgazz/sinaloa-cartel-drug-traffickers-explain-why-coronavirus-is-very-bad-for-their-business.
[9] "Covid-19 Is Changing the Relationship Between Bitcoin Price and Bitcoin Spending." Chainalysis Blog, March 30, 2020. https://blog.chainalysis.com/reports/covid-19-bitcoin-price-bitcoin-spending.
[10] Groshkova, Teodora, Tiberiu Stoian, Andrew Cunningham, Paul Griffiths, Nicola Singleton, and Roumen Sedefov. "Will the Current COVID-19 Pandemic Impact on Long-Term Cannabis Buying Practices?" Journal of Addiction Medicine. May 29, 2020. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7282402/.

purchase of masks, research, test kits, and charitable donations.[11] According to a new report from Microsoft, COVID-19-themed cyber attacks spiked to nearly a million a day during the first week of March. However, just a week later, these decreased by 30% and by April, attacks leveraging the COVID-19 crisis dropped below 100,000 per day. The report notes that pandemic-themed attacks have settled significantly, but are likely to continue as long as the virus persists. [12]

- Similarly, RCMP NCIT notes that criminals have adapted existing fraud methods and techniques to include the sale of fake, counterfeit, or non-existent health services and products in demand as a result of COVID-19.[13] Counterfeiters have focused on selling fake COVID-19 home test kits, pharmaceuticals and offer unconfirmed and often false advice on the treatment of COVID-19 on the internet and the darknet.[14] These transactions are conducted using virtual currencies.

Areas of potential concern

- Cybersecurity experts have stated there has been exponential growth in phishing and website scams which typically collect proceeds in cryptocurrency. In March 2020, researchers found 102,676 websites related to medical scams, with 1,092 sites either offering hydroxychloroquine or spreading misinformation about using it to cure COVID-19. Bolster, discovered multiple phishing websites peddling fake COVID-19 cryptocurrencies and crypto wallets that aim to siphon data for future phishing, targeted malware, or credential stealing.[15]
- IT networks of all businesses are deemed especially vulnerable during this time, as are virtual private network (VPN) servers used by the millions of Canadians who are currently working from home. In the coming weeks, criminal actors may also increase their efforts to target people seeking assistance in applying for COVID-19 social benefits offered by the Government of Canada.[10]

Potential Implications

- The current fluctuations in the price of Bitcoin has fueled an increase in Bitcoin purchases as buyers enter the virtual currency market for investment purposes.

[11] "Cyber Threats to Canada During The COVID-19 Pandemic." Canadian Security Intelligence Service, April 17, 2020.
[12] "Exploiting a Crisis: How Cybercriminals Behaved during the Outbreak." Microsoft Security. June 16, 2020. https://www.microsoft.com/security/blog/2020/06/16/exploiting-a-crisis-how-cybercriminals-behaved-during-the-outbreak/.
[13] "National Critical Infrastructure Bulletin COVID-19-Related Frauds, Scams, and Cyber Threats." Royal Canadian Mounted Police, April 14, 2020.
[14] "Viral Marketing: Counterfeits, Substandard Goods, and Intellectual Property Crime in The COVID-19 Pandemic." Europol, April 18, 2020
[15] "Bolster's Q1 2020 State of Phishing and Online Fraud Report: COVID-19 Related Scam Sites Surpass Quarter of a Million." Business Wire, May 13, 2020. https://www.businesswire.com/news/home/20200513005152/en/Bolster's-Q1-2020-State-Phishing-Online-Fraud.

- As a result of the pandemic, some Canadian virtual currency exchanges have suspended services at their physical locations while others are likely to be impacted by closures ordered by Provincial authorities.[16] The coming into force of regulations for virtual currency exchanges can present challenges for Know Your Client (KYC) protocols as more exchanges shift to primarily conducting digital identification.

[16] "The Impact of COVID-19 Restrictions on Money Laundering Typologies" Criminal Intelligence Service of Canada, May 30, 2020.