Overview Report: International Legal Initiatives

A. Scope of Overview Report

1. This overview report sets out a chronology of international anti-money laundering instruments.

B. 1986 – *Money Laundering Control Act*

2. In 1986, the United States became the first jurisdiction to designate money laundering a criminal offence[1] with the introduction of the *Money Laundering Control Act* of 1986 (Public Law 99-570).[2] The *Act* was targeted at "transactional offences" and "transportation offences," discussed below.[3]

3. "Transactional offences" involved the conduct (or attempted conduct) of financial transactions involving the proceeds of "specified unlawful activity" with the intention of promoting that activity, or with the knowledge that the transaction was designed to conceal the proceeds of unlawful activity or to avoid a transaction reporting requirement.[4] "Transportation offences" prohibited the "transportation, transmission or transference of a monetary instrument into or out of the USA with the intent to promote some "specified unlawful activity", or with the knowledge that they are the proceeds of unlawful activity, or that the transportation is designed to conceal the proceeds or avoid a reporting requirement."[5]

4. The *Act* also prohibited engagement in a transaction knowing that it involved criminally derived property with a value greater than US$10,000.[6]

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[1] While the United States first criminalized money laundering in the *Money Laundering Control Act*, its first legislative attempt to combat money laundering through legislation has been identified as the 1970 *Financial Recordkeeping and Reporting of Currency and Foreign Transactions Act* (31 (U.S.C. 5311), commonly referred to as the *Bank Secrecy Act*. The *Bank Secrecy Act* required the financial industry to assist in the detection and prevention of criminal offences through the imposition of record-keeping and reporting requirements: Perus C. van Duyne, Jackie H. Harvey & Liliya Y. Gelemerova, *The Critical Handbook of Money Laundering* (London: Palgrave Macmillan, 2018) at 43-44; Stephen Platt, *Criminal Capital: How the Finance Industry Facilitates Crime* (London: Palgrave Macmillan,2015) at 22.
[2] Money Laundering Control Act of 1986, Subtitle H of Title 1 of the Anti-Drug Abuse Act of 1986; Doug Hopton, *Money Laundering*, 2nd ed. (London: Gower, 2016) at 33.
[3] Doug Hopton, *Money Laundering*, 2nd ed. (London: Gower, 2016) at 33.
[4] Doug Hopton, *Money Laundering*, 2nd ed. (London: Gower, 2016) at 33.
[5] Doug Hopton, *Money Laundering*, 2nd ed. (London: Gower, 2016) at 33.
[6] Doug Hopton, *Money Laundering*, 2nd ed. (London: Gower, 2016) at 33.

C. 1988 - UN Vienna Convention

5. In 1984, the United Nations General Assembly began work towards a global convention to combat drug trafficking.[7] The result of these efforts, the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (the "***Vienna Convention***")[8] was adopted in Vienna on December 19, 1988 and opened for signature the following Day.[9] The convention built upon two earlier conventions, the *Single Convention on Narcotic Drugs, 1961*[10] and the *Convention on Psychotropic Substances* of 1971.[11]

6. According to the Preamble, the Parties to the *Vienna Convention* were "[d]eeply concerned by the magnitude of and rising trend in the illicit production of, demand for and traffic in narcotic drugs and psychotropic substances, which pose a serious threat to the health and welfare of human beings and adversely affect the economic, cultural and political foundations of society." The preamble noted particular concern that "children are used in many parts of the world as an illicit drug consumers market."

7. The principal focus of the Convention is, according to Article 2, "to promote co-operation among the Parties so that they may address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension," and to take "necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems."

8. However, the Parties were also aware, according to the Preamble, that "illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels." They were determined

[7] UNGA Res 39/141, UNGA Res 42/111; Peter M. German, *Proceeds of Crime and Money Laundering* (Toronto: Thomson Reuters, 1998) (loose-leaf updated 2019, release 3) at 1A-5.
[8] UNTS 1582, Can TS 1990/42.
[9] Peter Alldridge, *What Went Wrong with Money Laundering Law* (London: Palgrave Macmillan, 2016) at 9; Peter M. German, *Proceeds of Crime and Money Laundering* (Toronto: Thomson Reuters, 1998) (loose-leaf updated 2019, release 3) at 1A-5.
[10] UNTS 520; Can TS 1964/30.
[11] Can TS 1988/35

"to deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing."

9. The Convention includes the following definitions:

a. "Proceeds" means any property derived from or obtained, directly or indirectly, through the commission of an offence established in accordance with article 3, paragraph 1;

b. "Property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets.

10. Article 3 of the Convention requires Parties to establish certain offences. Each Party is required to "adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally":

(a)(i) the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the Single Convention on Narcotic Drugs of 1961 and the Convention on Psychotropic Substances of 1971,

(ii) the cultivation of opium poppy, coca bush or cannabis plant for the purpose of production of narcotic drugs contrary to the provisions of the Single Convention on Narcotic Drugs of 1961 and the Convention on Psychotropic Substances of 1971,

(iii) the possession or purchase of any narcotic drug or psychotropic substance for any of the activities enumerated in (i) above,

(iv) the manufacture, transport or distribution of equipment, materials, or of substances knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances, and

(v) the organization, management or financing of any of the enumerated offences.

11. As well, under Article 3, Parties are required to establish criminal offences respecting the following conduct, when committed intentionally:

(b)(i) conversion or transfer of property, knowing that such property is derived

- from any offence or offences established in accordance with provisions identified above, or

- from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with the provisions identified above or from an act of participation in such an offence or offences;

12. Article 3 further requires Parties to criminalize, when committed intentionally, the "the possession, purchase or cultivation of narcotic drugs of psychotropic substances for personal consumption contrary to the provisions of the" Single Convention on Narcotic Drugs of 1961 and the Convention on Psychotropic Substances of 1971. It goes on to impose additional requirements with respect to these offences, including, among others, those related to *mens rea*, sanction, alternatives to conviction and punishment and aggravating factors.

13. Several other Articles require Parties to take additional steps to make these measures more effective. For example:

a. **Confiscation** – under Article 5, Parties are required:

- to adopt measures to enable confiscation of:
    - proceeds derived from certain offences established under the Convention, or property the value of which corresponds to that of such proceeds,
    - narcotic drugs and psychotropic substances, materials and equipment or other instrumentalities used in or intended for use in any manner in certain offences established under the Convention,
- to adopt measures to enable its authorities to identify, trace, and freeze or seize proceeds, property, instrumentalities, for the purpose of eventual confiscation

- to empower its courts to order that bank, financial or commercial records be made available or be seized, and a Party must not decline to act under this provision on the ground of bank secrecy, and
- following a valid request from another Party respecting confiscation of proceeds, property or instrumentalities, to take measures to identify, trace, and freeze or seize them and to submit a valid request or confiscation order to its courts or competent authorities in order to give effect to the confiscation where consistent with Canadian law.

b. **Extradition** – under Article 6, each of the offences established under the Convention are deemed to be an extraditable offence in any extradition treaty existing between Parties. The Parties undertook to include such offences as extraditable offences in future extradition treaties between them. The Convention can also be used as a basis for extradition where Parties require a treaty.

c. **Mutual legal assistance** – under Article 7, the Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences established under the Convention, which may include:

- Taking evidence or statements from persons,
- Effecting service of judicial documents,
- Executing searches and seizures,
- Examining objects and sites,
- Providing information and evidentiary items,
- Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records, and
- Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes.

d. **Co-operation and training** – under Article 9, with a view to enhancing the effectiveness of law enforcement action to suppress the commission of offences established under the Convention, Parties shall, on the basis of bilateral or multilateral agreements, among other things:

- Facilitate the secure and rapid exchange of information concerning all aspects of offences,

- Co-operate with one another in conducting inquiries concerning, among other things, the movement of proceeds or property derived from the commission of an offence.
- Develop or improve training programs for its law enforcement and other personnel dealing with, among other things:
    - Detection and monitoring of the movement of proceeds and property derived from, and narcotic drugs, psychotropic substances, and instrumentalities used or intended for use in, the commission of offences, and
    - Methods used for the transfer, concealment or disguise of such proceeds, property and instrumentalities.

14. Canada is a signatory to the Convention and ratified it on July 5, 1990.[12] It came into force on November 11, 1990. Canada's obligations under the Convention are implemented principally through the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 (the "***CDSA***").[13] Prior to the enactment of the *CDSA*, the Convention was implemented through the *Criminal Code*, R.S.C. 1985, c. C-46, the *Food and Drugs Act*, R.S.C. 1985, c. F-27, and the *Narcotic Control Act*, R.S.C. 1985, c. N-I.[14]

D. 1989 – Group of Seven Economic Declaration

15. The Group of Seven ("**G7**") consists of the heads of state or government of seven major industrial democracies. It meets annually to deal with major economic and political issues facing their domestic societies and the international community as a whole. The

[12] United Nations, "19. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances" online: *United Nations Treaty Collection* <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-19&chapter=6>.
[13] Tanya Dupuis & Robin MacKay, *Bill C-26: An Act to Amend the Controlled Drugs and Substances Act and to Make Consequential Amendments to Other Acts* (Ottawa: Library of Parliament, 2008) < https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/LegislativeSummaries/PDF/39-2/c26-e.pdf>; Jane Allain & Peter Niemczak, *Bill C-8: Controlled Drugs and Substances Act* (Ottawa: Library of Parliament, 1997 <https://isomerdesign.com/Cdsa/CG/ls-240e.pdf>; Daniel Dupras, ***Canada's*** *International Obligations under the Leading International Conventions on the Control of Narcotic Drugs*, (Ottawa: Library of Parliament, 1998 <https://sencanada.ca/content/sen/committee/371/ille/library/dupras-e.htm#_ftn8>.
[14] Jane Allain & Peter Niemczak, *Bill C-8: Controlled Drugs and Substances Act* (Ottawa: Library of Parliament, 1997 <https://isomerdesign.com/Cdsa/CG/ls-240e.pdf>; Daniel Dupras, ***Canada's*** *International Obligations under the Leading International Conventions on the Control of Narcotic Drugs*, (Ottawa: Library of Parliament, 1998 <https://sencanada.ca/content/sen/committee/371/ille/library/dupras-e.htm#_ftn8>.

seven member countries are France, the United States, the United Kingdom, Germany, Japan, Italy, and Canada.[15]

16. At the conclusion of its 1989 meeting in Paris, a year after the adoption of the *Vienna Convention*, the members of the G7 released an Economic Declaration which included two paragraphs respecting issues related to illegal drugs and the proceeds of drug offences:[16]

> The drug problem has reached devastating proportions. We stress the urgent need for decisive action, both on a national and an international basis. We urge all countries, especially those where drug production, trading and consumption are large, to join our efforts to counter drug production, to reduce demand, and to carry forward the fight against drug trafficking itself and the laundering of its proceeds.
>
> Accordingly, we resolve to take the following measures within relevant fora: ….
>
> - Conclude further bilateral or multilateral agreements and support initiatives and cooperation, where appropriate, which include measures to facilitate the identification, tracing, freezing, seizure and forfeiture of drug crime proceeds.
> - Convene a financial action task force from Summit participants and other countries interested in these problems. Its mandate is to assess the results of cooperation already undertaken in order to prevent the utilization of the banking system and financial institutions for the purpose of money laundering, and to consider additional preventive efforts in this field, including the adaptation of the legal and regulatory systems so as to enhance multilateral judicial assistance. The first meeting of this task force will be called by France and its report will be completed by April 1990.

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[15] Government of Canada, "Canada and the G7" (2019) online *Government of Canada* < https://www.international.gc.ca/world-monde/international_relations-relations_internationales/g7/index.aspx?lang=eng#a1 >; Munk School of Global Affairs & Public Policy, "What are the G7 and G8?" (2016) online: *G7 Information Centre* < http://www.g8.utoronto.ca/what_is_g8.html>; The European Union is a "non-enumerated member" of the G7. It participates in G7 activities, but does not assume its rotating presidency: European Commission, "Role of the G7" (online) *European Commission* <https://ec.europa.eu/info/food-farming-fisheries/farming/international-cooperation/international-organisations/g7_en>.

[16] G7 Economic Declaration, Paris, July 16, 1989 <http://www.g8.utoronto.ca/summit/1989paris/communique/index.html>.

E. 1990 – Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime[17]

17. In 1990, the Council of Europe Committee of Ministers opened for signature the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (the "***Strasbourg Convention***").[18] The requirements of the *Strasbourg Convention* emphasize the need for money laundering offences, mechanisms for the restraint, seizure and confiscation of property, international cooperation, and new investigative techniques.[19]

18. While Canada is neither a signatory nor a Party to *Strasbourg Convention*, it is significant in that, unlike the *Vienna Convention*, the money laundering offences required by the *Strasbourg Convention* are not limited to activity associated with funds derived from drug offences.[20] This expansive approach would later be adopted in other international instruments that followed the *Strasbourg Convention*.[21]

F. 1998 – U.S. *Money Laundering and Financial Crimes Strategy Act*

19. In 1998, the United States Congress passed the *Money Laundering and Financial Crimes Strategy Act* (H.R. 1756). The *Act* amended federal law to redefine "money laundering and related financial crimes" to mean either:[22]

a. The movement of illicit cash or cash equivalent proceeds into, out of, or through the United States, or through certain United States financial institutions; or

b. The meaning given to the phrase under State or local criminal statutes pertaining to the movement of illicit cash or cash equivalent proceeds.

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[17] CETS 141.
[18] Council of Europe, "Chart of signatures and ratifications of Treaty 141" online: *Council of Europe* < https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/141/signatures>.
[19] Peter M. German, *Proceeds of Crime and Money Laundering* (Toronto: Thomson Reuters, 1998) (loose-leaf updated 2019, release 3) at 1A-11; CETS 141.
[20] Maria Bergström, "The Global AML Regime and the EU AML Directives: Prevention and Control" in Colin King, Clive Walker and Jimmy Gurulé, *The Palgrave Handbook of Criminal and Terrorism Financing Law* (London: Palgrave Macmillan, 2018) at 35.
[21] Suhuyini H. Abudulai, *A Guide to Canadian Money Laundering Legislation*, 5th ed. (Toronto: LexisNexis, 2018) at 3; Peter M. German, *Proceeds of Crime and Money Laundering* (Toronto: Thomson Reuters, 1998) (loose-leaf updated 2019, release 3) at 1A-11.
[22] Library of Congress, "H.R. 1756 – Money Laundering and Financial Crimes Strategy Act of 1998" online: *Congress.gov* <https://www.congress.gov/bill/105th-congress/house-bill/1756>.

20. The *Act* also directed the President of the United States (acting through the Secretary of the Treasury and in consultation with the Attorney General), to develop a five-year anti-money laundering strategy.

G. 1999 – OECD Anti-Bribery Convention

21. The Organization for Economic Co-operation and Development (the "**OECD**") is an intergovernmental economic organization consisting of 36 member states.[23] The Government of Canada describes the OECD as an organization "dedicated to ensuring the sustainable economic prosperity of its members and non-members through the advancement of economic, social and democratic best practices."[24]

22. The OECD served as the international forum for development of the *Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions* ("***Anti-Bribery Convention***")[25] agreed to in 1999. Forty-four countries have ratified the Convention, including Canada.[26] Article 1 of the *Anti-Bribery Convention* requires signatories to put in place legislation that criminalizes the act of bribing a foreign public official. The *Anti-Bribery Convention* does not require that the act of accepting a bribe be criminalized.

23. The *Anti-Bribery Convention* contemplated that, for anti-money laundering purposes, bribery of a foreign public official should be treated in the same manner as bribery of one's own public official. Article 7 (Money Laundering) states:

> Each Party which has made bribery of its own public official a predicate offence for the purpose of the application of its money laundering legislation shall do

[23] Government of Canada, "Canada and the Organisation for Economic Co-operation and Development (OECD)" (2019) online: *Government of Canada* < https://www.international.gc.ca/world-monde/international_relations-relations_internationales/oecd-ocde/index.aspx?lang=eng>.
[24] Government of Canada, "Canada and the Organisation for Economic Co-operation and Development (OECD)" (2019) online: *Government of Canada* < https://www.international.gc.ca/world-monde/international_relations-relations_internationales/oecd-ocde/index.aspx?lang=eng>.
[25] UNTS 2802; Can TS 1999/23.
[26] Organization for Economic Co-operation and Development, "OECD Anti-Bribery Convention: Entry into Force of the Convention" (2019) online *OECD.org* < http://www.oecd.org/daf/anti-bribery/oecdanti-briberyconventionentryintoforceoftheconvention.htm>.

so on the same terms for the bribery of a foreign public official, without regard to the place where the bribery occurred.

24. The *Anti-Bribery Convention,* Article 12 (Monitoring and Follow-up), established a peer monitoring process to monitor implementation. Monitoring is carried out by the OECD Working Group on Bribery through a four-stage process:[27]

a. Phase 1 evaluates the adequacy of a country's legislation to implement the Convention;

b. Phase 2 assesses whether a country is applying this legislation in practice;

c. Phase 3 focuses on enforcement of the Convention, the 2009 Anti-Bribery Recommendation, and outstanding recommendations from Phase 2;

d. Phase 4 focuses on enforcement and cross-cutting issues tailored to specific country needs, and outstanding recommendations from Phase 3.

H. 2000 – United Nations *Convention against Transnational Organized Crime*

25. The United Nations *Convention against Transnational Organized Crime*[28] (the "***Palermo Convention***") was adopted by the General Assembly in November 2000[29] and entered into force in September 2003.[30] It was signed and ratified by Canada on December 14, 2000 and May 13, 2002, respectively.[31] The *Palermo Convention* is supplemented by three Protocols, which target specific areas and manifestations of organized crime:[32]

[27] Organization for Economic Co-operation and Development, "Country monitoring of the OECD Anti-Bribery Convention" (2019) online *OECD.org* < http://www.oecd.org/daf/anti-bribery/countrymonitoringoftheoecdanti-briberyconvention.htm>.
[28] UNTS 2225, Can TS 2003/28.
[29] UNGA Res 55/25.
[30] United Nations Office on Drugs and Crime, "United Nations Convention against Transnational Organized Crime and the Protocols thereto" (2019) online: *UNODC.org* < https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>.
[31] https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=_en
[32] United Nations Office on Drugs and Crime, "United Nations Convention against Transnational Organized Crime and the Protocols thereto" (2019) online: *UNODC.org* < https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>.

a. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (signed and ratified by Canada on December 14, 2000 and May 13, 2002, respectively);[33]

b. The Protocol against the Smuggling of Migrants by Land, Sea and Air (signed and ratified by Canada on December 14, 2000 and May 13, 2002, respectively);[34] and

c. The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (signed by Canada on March 20, 2002).[35]

26. The 190 States that ratified the *Palermo Convention* "committed themselves to taking a series of measures against transnational organized crime, including the creation of domestic criminal offences (participation in an organized criminal group, money laundering, corruption and obstruction of justice); the adoption of new and sweeping frameworks for extradition, mutual legal assistance and law enforcement cooperation; and the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities."[36]

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[33] UNTS vol. 2237, p. 319; Doc A/55/383 < https://treaties.un.org/doc/Treaties/2000/11/20001115%2011-38%20AM/Ch_XVIII_12_ap.pdf >;Global Affairs Canada, "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, New York, 15 November 2000" (2014) online: *Global Affairs Canada* <https://treaty-accord.gc.ca/details.aspx?id=103848>.

[34] UNTS vol. 2241, p. 507; Doc. A/55/383 < https://treaties.un.org/doc/Treaties/2000/11/20001115%2011-21%20AM/Ch_XVIII_12_bp.pdf>. Global Affairs Canada, "The Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, New York, 15 November 2000" (2014) online: *Global Affairs Canada* <https://treaty-accord.gc.ca/result-resultat.aspx? type=2>.

[35] UNTS vol. 2326, p. 208; Doc. A/55/383/Add.2 < https://treaties.un.org/doc/Treaties/2001/05/20010531%2011-11%20AM/Ch_XVIII_12_cp.pdf >; Global Affairs Canada, "The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Supplementing the United Nations Convention against Transnational Organized Crime, New York, 15 November 2000" (2014) online: *Global Affairs Canada* <https://treaty-accord.gc.ca/result-resultat.aspx?type=2>.

[36] R.E. Kadyrov & I.V. Prohhorov, "Regulating Cryptocurrencies: New Challenges to Economic Security and Problems Created by Individuals Involved in the Schemes of Laundering Cryptocurrencies-Generated Profits" (2018) III Network AML/CFT Institute International Scientific and Research Conference "FinTech and RegTech: Possibilities, Threats and Risks of Financial Technologies" 383 at 387 <https://knepublishing.com/index.php/Kne-Social/article/view/1568>; United Nations Office on Drugs and Crime, "United National Convention against Transnational Organized Crime and the Protocols Thereto" online: *United National Office on Drugs and Crime* <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>.

27. The *Palermo Convention* also specifically addresses several aspects of money laundering. For example:

a. ***Criminalization of the laundering of proceeds of crime*** - under Article 6, each State Party is required to adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;
- The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;
- Subject to the basic concepts of its legal system:
  - The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;
  - Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

b. ***Measures to combat money-laundering*** – under Article 7, each State Party is required to:

i. institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions;

ii. ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as

a national centre for the collection, analysis and dissemination of information regarding potential money laundering; and

iii. consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

c. ***Confiscation*** – under Article 12, each Party is required to adopt, to the greatest extent possible within their domestic legal system, measures to enable:

i. confiscation of proceeds of crime derived from offences covered by the Convention or property the value of which corresponds to that of such proceeds;

ii. confiscation of property, equipment or other instrumentalities used in or destined for use in offences covered by the Convention.

d. ***Identification, tracing, freezing and seizure*** – Article 12 also requires each Party to adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of the proceeds of crime derived from offences covered by the Convention or property the value of which corresponds to that of such proceeds, as well as property, equipment or other instrumentalities used in or destined for use in offences covered by the Convention.

I. 2003 – UN Convention Against Corruption

28. The United Nations Convention against Corruption[37] (“***UNCAC***”) was adopted by the UN General Assembly on 31 October 2003.[38] It entered into force on 14 December 2005. As of 6 February 2020, there were 187 parties to the *UNCAC*.[39] It was signed by Canada on 21 May 2004 and ratified on 2 October 2007.[40]

[37] UNTS 2349; Can TS 2007/7.
[38] UNGA Res 58/4.
[39] United Nations Office on Drugs and Crime, “United Nations Convention against Corruption” (2020) online: *UNODC.org* < https://www.unodc.org/unodc/en/corruption/uncac.html>.
[40] Global Affairs Canada, “United Nations Convention against Corruption, New York, 31 October 2003” (2014) online *Government of Canada* < https://treaty-accord.gc.ca/details.aspx?id=104995>.

29. Article 3 of the *UNCAC* states that it applies "to the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with this Convention."

30. Article 14 sets out the measures intended to prevent money-laundering, including:

a. **Record-keeping and the reporting of suspicious transactions** - institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money- laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

b. **Financial intelligence unit -** ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

c. **Cross-border transfer of cash and negotiable instruments** - consider implementation of feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

d. **Recording of information -** consider implementation of appropriate and feasible measures to require financial institutions, including money remitters:

- To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;

- To maintain such information throughout the payment chain; and

- To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

31. Chapter III of the *UNCAC* specifies the types of conduct that Parties must or must consider criminalizing, including:

a. Article 15 – bribery of national public officials;

b. Article 16 – bribery of foreign public officials and officials of public international organizations;

c. Article 17 – embezzlement, misappropriation or other diversion of property by a public official;

d. Article 18 – trading in influence;

e. Article 19 – abuse of functions;

f. Article 20 – illicit enrichment, subject to the constitution and fundamental principles of the legal system of each Party;

g. Article 21 – bribery in the private sector;

h. Article 22 – embezzlement of property in the private sector;

i. Article 23 – laundering of proceeds of crime:

- The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

- The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

- Subject to the basic concepts of its legal system:

  - The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

- Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

- For purposes of implementing or applying paragraph 1 of this article:

    - Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

    - Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

    - For the purposes of subparagraph *(b)* above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there.

j. Article 24 – concealment; and

k. Article 25 – obstruction of justice.

32. Unlike some of the other criminalization provisions of *UNCAC*, the criminalization of money laundering under Article 23 is mandatory, although the provision may be adapted if necessary to conform to the "fundamental principles" of each State Party's domestic law.

33. The Legislative Guide for the Implementation of the *UNCAC* provides guidance on Article 23 to legislators tasked with incorporating Article 23 into a state's domestic legislation but is not authoritative.[41]

[41] United Nations Office on Drugs and Crime, Legislative Guide for the Implementation of the United Nations Convention against Corruption, 2nd ed. (New York: United Nations, 2012) at 69–74, paras 220-251, online: <https://www.unodc.org/documents/treaties/UNCAC/Publications/LegislativeGuide/UNCAC_Legislative_Guide_E.pdf >

34. The legislative guide reinforces that the scope of the predicate offences and certain conduct captured by domestic money laundering legislation should be broad, and that States and regions try to make their approaches, standards and legal systems related to this offence compatible, so that they can cooperate with one another in controlling the international laundering of criminal proceeds.

35. Paragraph 227, for example, emphasizes the importance of imposing few limits on the list of predicate offences to which money laundering offences may be connected:

> As a result of all these initiatives, many States already have money laundering laws. Nevertheless, such laws may be limited in scope and may not cover a wide range of predicate offences. Article 23 requires that the list of predicate offences include the widest possible range and at a minimum the offences established in accordance with the Convention against Corruption.

36. Similarly, paragraphs 245 and 246 again stress the importance of limiting the restrictions on predicate offences, while also discouraging State Parties from limiting possible predicate offences to those committed within their borders.

37. According to paragraph 245, under Article 23, States parties must apply these offences to proceeds generated by "the widest range of predicate offences".

38. According to paragraph 246, at a minimum, these must include a "comprehensive range of criminal offences established in accordance with this Convention." For this purpose, "predicate offences shall include offences committed both within and outside the jurisdiction of the State party in question…."

39. Finally, paragraph 248 encourages States to ensure that money laundering offences are not contingent on conviction for the predicate offence:[42]

> An interpretive note for the Convention against Corruption states that "money-laundering offences established in accordance with this article are understood to be independent and autonomous offences and that a prior conviction for the

[42] United Nations Office on Drugs and Crime, Legislative Guide for the Implementation of the United Nations Convention against Corruption, 2nd ed (New York: United Nations, 2012) at 46–74, paras 220-249, online: <https://www.unodc.org/documents/treaties/UNCAC/Publications/LegislativeGuide/UNCAC_Legislative_Guide_E.pdf>.

> predicate offence is not necessary to establish the illicit nature or origin of the assets laundered. The illicit nature or origin of the assets and, in accordance with article 28, any knowledge, intent or purpose may be established during the course of the money-laundering prosecution and may be inferred from objective factual circumstances" ...

40. Other chapters of the *UNCAC* dealt with international cooperation, asset recovery, and technical assistance and information exchange.

41. According to Ferguson, "although not expressly mandated, there is a strong suggestion by *UNCAC* that states look to international standard-setting bodies, such as the FATF, when designing anti-money laundering frameworks."[43]

J. 2013 – G8 Annual Meeting Final Communique

42. The final communiqué of the 2013 annual meeting of the G8[44] included the following content relevant to money laundering:[45]

> **Transparency of companies and legal arrangements**
>
> 30. A lack of knowledge about who ultimately controls, owns and profits from companies and legal arrangements, including trusts, not only assists those who seek to evade tax, but also those who seek to launder the proceeds of crime, often across borders. Shell companies can be misused to facilitate illicit financial flows stemming from corruption, tax evasion and money laundering. Misuse of shell companies can be a severe impediment to sustainable economic growth and sound governance. We will make a concerted and collective effort to tackle this issue and improve the transparency of companies and legal arrangements. Improving transparency will also improve the investment climate; ease the security of doing business and tackle corruption and bribery. It will support law enforcement's efforts to pursue criminal networks, enforce sanctions, and identify and recover stolen assets.

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[43] Gerry Ferguson, *Global Corruption" Law, Theory & Practice*, 3rd ed. (Victoria, B.C.: University of Victoria, 2018 at 331.

[44] Russia was admitted to the G7 in 1998, joining Canada, the United States, the United Kingdom, France, Germany, Japan and Italy at which point it came to be known as the G8. Russia's membership was suspended in 2014: Jim Acosta, "U.S., other powers kick Russia out of G8" (2014) online: *CNN.com* < https://www.cnn.com/2014/03/24/politics/obama-europe-trip/index.html>.

[45] G8 Lough Erne Leaders Communiqué, Lough Erne, Northern Ireland, United Kingdom, June 18, 2013 < http://www.g7.utoronto.ca/summit/2013lougherne/lough-erne-communique.html>.

31. We are determined to take action to tackle the misuse of companies and legal arrangements. We will lead by example in our implementation of the Financial Action Task Force (FATF) standards. We today agreed to publish national Action Plans based on common principles (annexed). Subject to our different constitutional circumstances, these Action Plans set out the concrete action, with respect to money laundering and tax evasion, each of us will take to tackle this issue to ensure that companies know who really owns and controls them by requiring companies to obtain and hold information on their beneficial ownership, and to ensure that this information is available in a timely fashion to law enforcement, tax collection agencies and other relevant authorities as appropriate, including financial intelligence units, for example through central registries; and by ensuring trustees know the beneficial ownership information regarding the trust and that law enforcement, tax collection agencies and other relevant authorities as appropriate, including financial intelligence units, can access this information. We will work with our FATF partners to ensure ambitious progress at a global level, including by prioritising the assessment of relevant FATF recommendations.

Anti-Money Laundering

32. Our financial systems are exposed to significant risks from money laundering and terrorist financing. We fully support the FATF Standards and commit to implementing them effectively. We support the FATF's identification and monitoring of high risk jurisdictions with strategic anti-money laundering and counter-terrorist financing (AML/CFT) deficiencies, and encourage all countries to take measures to ensure they meet the FATF standards. We are committed to ensuring proportionate and effective supervision and enforcement of our AML/CFT requirements to ensure corporate wrongdoers are held to account.

33. Taking measures to enhance financial transparency would also improve the opportunities for African business and for markets to expand. As African economies grow, African financial institutions will increasingly risk exposure to illicit financial activity, affecting the opportunities for African business and markets to expand. We will hold the first Public-Private Sector Dialogue with Eastern and Southern African nations on 6-8 September in Swakopmund, Namibia, involving governments and financial institutions from the G8 and the region. This will provide a platform for greater ongoing collaboration, dialogue and public-private sector partnership, and we will consider extending the Dialogue to other regions on an annual basis.

K. 2014 – G20 Leaders' Summit – Brisbane, Australia

43. At its 2014 Leaders' Summit in Brisbane, Australia, the G20[46] agreed to the "G20 High-Level Principles on Beneficial Ownership Transparency:"[47]

> The G20 considers financial transparency, in particular the transparency of beneficial ownership of legal persons and arrangements, is a high priority. The G20 Leaders' Declaration from St Petersburg states, 'We encourage all countries to tackle the risks raised by the opacity of legal persons and legal arrangements'. In order to maintain the momentum, Leaders called upon Finance Ministers to update them by the 2014 G20 Leaders' Summit on the steps taken by G20 countries 'to meet FATF standards regarding the beneficial ownership of companies and other legal arrangements such as trusts by G20 countries leading by example.'
>
> At their meeting in Sydney in 2014, Finance Ministers and Central Bank Governors requested the ACWG provide them with an update before their April meeting on concrete actions the G20 could take to lead by example on beneficial ownership transparency and the implementation of relevant FATF standards. Following the G20 ACWG meeting in Sydney, ACWG co-chairs reported to Finance Ministers and Central Bank Governors that the ACWG agreed that G20 countries will lead by example by developing G20 High-Level Principles on Beneficial Ownership Transparency that will set out concrete measures G20 countries will take to prevent the misuse of and ensure transparency of legal persons and legal arrangements.
>
> Improving the transparency of legal persons and arrangements is important to protect the integrity and transparency of the global financial system. Preventing the misuse of these entities for illicit purposes such as corruption, tax evasion and money laundering supports the G20 objectives of increasing growth through private sector investment.
>
> The G20 is committed to leading by example by endorsing a set of core principles on the transparency of beneficial ownership of legal persons and

[46] Founded in 1999, the G20 describes itself as "the premier forum for international economic cooperation [that] brings together the leaders of both developed and developing countries from every continent" G20, "What is the G20?" (2020) *G20.org* < https://g20.org/en/about/Pages/whatis.aspx>. Membership in the G20 consists of Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, the Republic of Korea, Russia, Saudi Arabia, South Africa, Turkey, the United Kingdom, the United States and the European Union: G20, "G20 Participants" (2020) *G20.org* < https://g20.org/en/about/Pages/Participants.aspx>.

[47] "G20 High-Level Principles on Beneficial Ownership Transparency" Brisbane, Australia, 2014 < http://www.g20.utoronto.ca/2014/g20_high-level_principles_beneficial_ownership_transparency.pdf>.

arrangements that are applicable across G20 work streams. These principles build on existing international instruments and standards, and allow sufficient flexibility to for our different constitutional and legal frameworks.

1. Countries should have a definition of ‘beneficial owner’ that captures the natural person(s) who ultimately owns or controls the legal person or legal arrangement.

2. Countries should assess the existing and emerging risks associated with different types of legal persons and arrangements, which should be addressed from a domestic and international perspective.

   a. Appropriate information on the results of the risk assessments should be shared with competent authorities, financial institutions and designated non-financial businesses and professions (DNFBPs) and, as appropriate, other jurisdictions.

   b. Effective and proportionate measures should be taken to mitigate the risks identified.

   c. Countries should identify high-risk sectors, and enhanced due diligence could be appropriately considered for such sectors.

3. Countries should ensure that legal persons maintain beneficial ownership information onshore and that information is adequate, accurate, and current.

4. Countries should ensure that competent authorities (including law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) have timely access to adequate, accurate and current information regarding the beneficial ownership of legal persons. Countries could implement this, for example, through central registries of beneficial ownership of legal persons or other appropriate mechanisms.

5. Countries should ensure that trustees of express trusts maintain adequate, accurate and current beneficial ownership information, including information of settlors, the protector (if any) trustees and beneficiaries. These measures should also apply to other legal arrangements with a structure or function similar to express trusts.

6. Prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units should have timely access to adequate, accurate

and current information regarding the beneficial ownership of legal arrangements.

7. Countries should require financial institutions and DNFBPs, including trust and company service providers, to identify and take reasonable measures, including taking into account country risks, to verify the beneficial ownership of their customers.

a. Countries should consider facilitating access to beneficial ownership information by financial institutions and DNFBPs.

b. Countries should ensure effective supervision of these obligations, including the establishment and enforcement of effective, proportionate and dissuasive sanctions for non-compliance.

8. Countries should ensure that their national authorities cooperate effectively domestically and internationally. Countries should also ensure that their competent authorities participate in information exchange on beneficial ownership with international counterparts in a timely and effective manner.

9. Countries should support G20 efforts to combat tax evasion by ensuring that beneficial ownership information is accessible to their tax authorities and can be exchanged with relevant international counterparts in a timely and effective manner.

10. Countries should address the misuse of legal persons and legal arrangements which may obstruct transparency, including:

a. prohibiting the ongoing use of bearer shares and the creation of new bearer shares, or taking other effective measures to ensure that bearer shares and bearer share warrants are not misused; and

b. taking effective measures to ensure that legal persons which allow nominee shareholders or nominee directors are not misused.

The G20 is committed to leading by example in implementing these agreed principles. As a next step, each G20 country commits to take concrete action and to share in writing steps to be taken to implement these principles and improve the effectiveness of our legal, regulatory and institutional frameworks with respect to beneficial ownership transparency.