



Government of British Columbia

Anti-Money Laundering Jurisdictional Scan

16 September 2019

Draft



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Ministry of Attorney General
501 Belleville St,
Victoria BC V8W 9W7

Attention: Ms. Megan Harris

Subject: Anti-Money laundering jurisdictional review

Dear Ms. Harris:

Attached is our draft jurisdictional scan setting out the findings from our review of Anti-Money Laundering strategy, policy, and implementation in similar jurisdictions to Canada, including countries in the European Union and the United States.

Our findings are based on research/assessments undertaken as described in Section 2 of this jurisdictional scan, and are subject to the restrictions and limitations in scope as set out in Appendix A.

Should you have any questions or concerns, please do not hesitate to contact me at 416-601-6692.

Yours sincerely,

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Partner
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1 Executive summary

1.1 AML/ATF Issues & Trends

1. Throughout the financial services industry, a lack of transparency due to corporate veils and legal privilege results in difficulties identifying ultimate beneficial owners, allowing individuals, private companies, partnerships and trusts to hide their true controlling interest.
2. This leads to difficulties in the reporting, investigating and prosecution of money laundering ("ML") & terrorist financing ("TF") activities.
3. As a result, central registries for beneficial ownership information are in process (Germany) and /or have been developed (Netherlands, UK) across the globe. In at least one instance (Germany), the administration of the central registry has been outsourced to a competent body.
4. Access and data protection are key considerations in each instance of a central registry, with exemptions for the risk of violence, fraud, blackmailing or intimidation being considered. Additionally broader access to information for competent authorities are being implemented. This highlights a perceived need for role-specific access to information (between public, private and supervisory authorities). A number of current registry's lack the verification measures required to ensure the data is reliable and accurate.
5. Disparate information across reporting sectors/industries may lead to FIUs not having a holistic view of the ownership information required to provide quality, effective suspicious transaction reports ("STR") / suspicious activity reports ("SARs") . This may hinder the overall effectiveness in combatting ML/TF activities.
6. In certain countries (e.g. U.S.) law enforcement can access information from the FIU, whereas in other jurisdictions (e.g. Canada) law enforcement does not have direct access.
7. Access to information and privacy considerations often limit the ability for supervisory authorities and law enforcement to share information with each other both within and across jurisdictions.

1.2 Applicability to B.C.

8. A review of various sub-national jurisdictions, in particular the province of Quebec and the states/territories in both Australia and United States ("U.S."), show that some have developed their state legislation to include ML offences. All Australian states and territories, and certain states in the U.S., define laws with penalties, sanctions and sentences. For example certain jurisdictions in Australia include unexplained wealth orders ("UWO"), and shortened time frames to prosecute ML offences.
9. A review of other national jurisdictions and their programs indicated the use of tools such as geographic targeting orders ("GTO") that temporarily focus on an industry and area; and the empowerment of

government agencies separate and in addition to a centralized financial intelligence units (“FIU”) to investigate ML.

10. The UK has established specific regulations to ensure the FIU has sufficient access to required data in order to undertake its functions. The UK has also established regulations to ensure secure protection of data throughout the process, including the dissemination of information to law enforcement.
11. Standardized reporting templates, as well as proper access to technology have been found to be an issue when reporting to a central FIU.
12. Additionally, proper channels surrounding ongoing feedback to individual FIUs and obliged entities have been identified as an opportunity to enhance the quality of information reported and enable more effective prevention and detection of ML/TF.
13. Enhanced provincial/state/regional regulations have been put in place in some jurisdictions (e.g. Netherlands) to ensure legal privilege does not act as an unintentional impediment in determining ultimate beneficial ownership of legal entities.
14. Expanded regulations to require regional reporting entities (“RE”) to report on known beneficial owners enables a more comprehensive view of ownership and provides easier maintenance of a central ownership registry.
15. Central registries have been adapted that consider varying degrees of access to the information within a central register based on the degree to which the information is required (i.e. a FIU would have access to a wider set of information than that of a non-authoritative request).
16. Additionally, access to information within a FIU is dependent on the legal structure within that country (i.e. some law enforcement has direct access to FIU information, whereas others do not).
17. Clearly defined authorities and relevant parties that require access to a central registry, as well as ensuring the registries are in fact accessible (e.g. no technological barriers) to those that require access, is viewed as allowing information availability to those that rely on these registries, while protecting information that does not need to be made available to others. Additionally, case-by-case exemptions are considered when the sharing of said information would lead to undue risk (such as fraud, violence, blackmailing or intimidation).
18. The UK has expanded the bare minimum requirement for a publicly accessible central registry of beneficial owners within the UK, and plans to extend the registry to foreign companies owning land in the UK (similar to the *Land Title Act*). The proposed registry is planned for 2021.
19. The UK has also established data laws to control how personal information is used by organizations, businesses or the government. The Act outlines certain data protection principles to ensure data is used lawfully and transparently, as well as for specified and explicit purposes. Data must also be kept for no longer than necessary, and be handled in a way that ensures appropriate security/protection.
20. Additionally the UK continues to push the envelope through national initiatives such as the JMLIT (agreement between law enforcement, the regulator, and over 30 UK and international financial institutions to exchange and analyze information and intelligence).

21. Effectiveness testing of any enhanced measures, or functions (e.g. FIU reporting, central UBO registry, etc.) can be implemented (as is the case in the Netherlands) in order to enhance the ongoing efforts to detect, deter and investigate ML/TF activities.
22. Taking note of AUSTRAC's estimate of the future inherent risks associated with social media, public information can be considered as a part of a country or regions inherent risk assessment.

2 Background

23. A number of reports commissioned by the British Columbia Government ("B.C.") into money laundering in the province have been released, and a public inquiry into money laundering in B.C. was announced in May 2019.
24. B.C has clearly noted its overall objective of improving economic transparency and public safety, and reducing poverty, organized crime and gang violence in the province by focussing on enhancing its financial crime framework. In order to support these objectives, B.C. retained Deloitte on 23 August 2019 to review jurisdictional examples of Anti-Money Laundering strategy, policy, and implementation globally and in particular in Quebec, and Australia with a focus on New South Wales ("NSW").
25. This jurisdictional scan is structured as follows: Section 3 discusses the Canadian landscape, and the current state of anti-money laundering ("AML") in Canada. Section 4-9 provides a summary of AML jurisdictional review and developments in other jurisdictions, particularly in the United States., European Union (United Kingdom, Germany & Netherlands) and Australia.

3 Canadian landscape

3.1 Federal regime

26. Canada's AML regime is organized as a horizontal federal program comprised of numerous federal departments and agencies. Finance Canada is the domestic and international policy lead for the regime, and is responsible for guiding and informing strategic implementation of its risk-based approach, and overall coordination of this AML strategy.
27. Canada's AML framework is established in *the Proceeds of Crime (Money Laundering) and Terrorist Financing Act*¹ ("PCMLTFA") and its regulations, supported by other key statutes, including the Criminal Code. The Parliament of Canada undertakes a comprehensive review

¹ <https://laws-lois.justice.gc.ca/eng/acts/P-24.501/>

of the PCMLTFA every five years, with the latest amendment to regulations released in July, 2019.

28. The Department of Justice Canada ("DOJ") is responsible for creating and maintaining statutory provisions dealing with criminal law and procedure, and to negotiate and administer mutual legal assistance ("MLA") and extradition treaties.
29. Global Affairs Canada ("GAC") is responsible for the designation of entities and individuals in Canada associated with terrorist activities.
30. Public Safety Canada ("PSC") ensures coordination across all federal departments and agencies responsible for national security and the safety of Canadians, including on terrorist financing matters. It is responsible for the listing of terrorist entities under the Criminal Code.
31. The Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC") is Canada's financial intelligence unit. It is also responsible for supervising and monitoring all RE's and compliance with AML regulations.
32. The AML regime is also supported by a number of other partners including: provincial, territorial and municipal law-enforcement agencies, provincial and territorial financial sector regulators, and self-regulating organizations.

3.2 Performance Measurement

33. The Financial Action Task Force ("FATF") prepared a Mutual Evaluation Report ("MER") on Canada, published in 2016, to assess its compliance and effectiveness implementing the 40 FATF Recommendations to counter money laundering and terrorist financing, and found that Canada has significantly lagged behind in its commitment to compliance². Key findings included insufficient coverage of at-risk professions, namely legal firms; inadequate law enforcement and asset recovery; low numbers of reported suspicious transactions by DNFBPs; and a high risk of misuse of legal persons, including trusts, and arrangements without mitigation.
34. The FATF further found that, while a number of money laundering cases are pursued, overall, the results obtained so far are not commensurate with Canada's money laundering risks. Law enforcement agencies have the necessary tools to obtain information, including beneficial ownership information, but the process is lengthy. Nevertheless, overall, as a result of inadequate alignment of current law enforcement priorities and of resource constraints, efforts are aimed mainly at drug offenses and fraud, with insufficient focus on the other main money laundering risks (corruption, smuggling, standalone money laundering, laundering related to foreign predicate offenses). In addition, investigations generally do not focus on legal entities and trusts (despite the high risk of misuse), especially when more complex corporate structures are involved. There is a high percentage of withdrawals and stays of proceedings in prosecution, and sanctions imposed in money laundering cases are widely viewed as not sufficiently dissuasive.

² Financial Action Task Force, "Anti-money laundering and counter-terrorist financing measures in Canada – 2016". <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Canada-2016-Executive-Summary.pdf>

35. The Government of Canada conducts an annual assessment to identify inherent money laundering and terrorist financing (ML/TF) risks in Canada. The report provides an overview of the risks of money laundering and terrorist financing before the application of any mitigation measures. This report also responds to the revised Financial Action Task Force's (FATF) global AML/ATF standards calling on all members to undergo an assessment of ML/TF risks, and is used to inform reporting entities whose understanding of these risks is vital in applying the preventive controls required to effectively mitigate these risks.
36. Canada has become perceived as a jurisdiction which provides offshore benefits (i.e. less effective ML/TF controls to deter the integration of dirty money into its markets) without traditional offshore drawbacks (e.g. volatile financial system). A key driver of this problem is inadequate legislation, regulation, and oversight of legal entities, which allows criminals to take advantage of non-existent disclosure requirements relating to the beneficial owners of corporations and trusts. This allows companies to abuse the corporate veil and shield the true controlling interest behind the entity. These reportedly lax corporate laws have made Canada a popular destination for the establishment of shell companies with figurehead directors for the purpose of tax evasion³. Foreign investors are especially attracted to Canada's limited partnership structure ("LPs"), a tax structure that requires no tax filing, except for partners who reside in Canada.
37. Recently proposed amendments to the *Canada Business Corporations Act*⁴ ("CBCA") include the requirement that private corporations maintain a register of individuals with significant control.
38. Real estate also provides an attractive channel to integrate criminal funds back into the economy. The FATF has identified weaknesses in Canada's money laundering laws, specifically relating to certain groups which are not considered covered entities, and thus escape appropriate oversight, due diligence and reporting obligations. High-risk entities include mortgage lenders and insurers, land registries, title insurance companies, 'for sale by owner' companies, promoters and redevelopers, and the legal profession in Canada. The Department of Finance Canada published a whitepaper acknowledging this on February 7, 2018⁵. Their unique involvement in real estate transactions and oversight of trust accounts without being RE's for purposes of Anti-Money Laundering and Anti-Terrorist Financing Policy ("AML/ATF") make them vulnerable to money laundering and terrorist financing. Owners of illicit finances in corruption-prone states find it safer to invest in property abroad instead of purchasing property in their own country. Real estate acts as a bank account in bricks-and-mortar form, and ownership is disguised through nominees or numbered companies incorporated in Canada, owned by layers of shell

³ Toronto Star, "Snow Washing: Canada is the world's newest tax haven", January 25, 2017, Online article. Authors: Robert Cribb and Marco Chown Oved, <http://projects.thestar.com/panama-papers/canada-is-the-worlds-newest-tax-haven/>

⁴ <https://laws-lois.justice.gc.ca/eng/acts/C-44/INDEX.HTML>

⁵ Department of Finance Canada, "Reviewing Canada's Anti-Money Laundering And Anti-Terrorist Financing Regime", February 7, 2018. <https://www.fin.gc.ca/activty/consult/amlatfr-rpcfa-eng.pdf>

companies in various tax havens. These properties are often left vacant by owners in order to avoid cheque or bank transfers involved in rental agreements.

3.3 Strategy & Plan

39. The 2019 Federal Budget saw Canada's commitment towards improving its AML regime. The budget announced investments into creating a new Anti-Money Laundering Action, Coordination and Enforcement ("ACE") team, improving FINTRAC capabilities relating to the Fintech and cryptocurrency industries, foreign money services businesses, prepaid products and customer identification, as well as providing for additional public-private partnerships to improve the effectiveness of the AML regime⁶.
40. The government also announced that it would amend the Criminal Code by criminalizing "recklessness" in the context of money laundering, covering persons facilitating the movement of money despite being aware of the risk of money laundering but continues the activity regardless of the risk.⁷ It also promises the creation of a multi-agency task force to combat money laundering and develop a center of expertise on financial crime to help track dirty money. To this extent, \$24-million over five years for the task force and \$28.6-million over four years for the center of excellence have been allocated in the 2019 budget.⁸ In an online news article, it was noted that the federal government needs to ensure that an integrated approach be in place to tackle financial crime and that it includes the expertise of prosecutors, police, accountants, and customs officials⁹.

3.4 Actions of Note: British Columbia

41. As the gateway to the Pacific, B.C. is in a prime geographic location to benefit from commerce, banking, and tourism emanating from Asia. With a significant volume of trade of foreign capital and assets, and a robust underground economy, Greater Vancouver has a high risk of being used to launder the proceeds of crime. This is evident in the fact that unfinanced or cash purchases, comprise 17% to 21% of residential transactions in B.C.¹⁰ .The discord between legal and beneficial owners means that the identification of properties by foreign

⁶ Mc Carthy Tetrault, "Budget 2019: Financial Institutions Update", March 20, 2019, Online Article. Authors: Ana Badour, Barry j. Ryan, Marc J. MacMullin and Nancy J. Carroll, <https://www.mccarthy.ca/en/insights/articles/budget-2019-financial-institutions-update>. Accessed 08 June 2019.

⁷ McCarthy Tetrault, "Budget 2019: Financial Institutions Update", March 20, 2019, Online Article. Authors: Ana Badour, Barry j. Ryan, Marc J. MacMullin and Nancy J. Carroll, <https://www.mccarthy.ca/en/insights/articles/budget-2019-financial-institutions-update>. Accessed 08 June 2019.

⁸ The Star, "Federal budget will provide millions to fight money laundering, financial crime", March 19, 2019, Online Article. Author: Jen St. Denis, <https://www.thestar.com/vancouver/2019/03/19/2019-federal-budget-supports-anti-money-laundering-task-force-and-centre-of-excellence-in-financial-crime.html>. Accessed 08 June 2019.

⁹ The Star, "Federal budget will provide millions to fight money laundering, financial crime", March 19, 2019, Online Article. Author: Jen St. Denis, <https://www.thestar.com/vancouver/2019/03/19/2019-federal-budget-supports-anti-money-laundering-task-force-and-centre-of-excellence-in-financial-crime.html>. Accessed 08 June 2019.

¹⁰ Peter German Report, "Dirty Money – Part 2", March 31, 2019.

owners is highly underestimated. Another unregulated aspect of financial flows in B.C. derives from a lack of external reporting of the source of funds that flow into lawyers' trust accounts.

42. At the center of Canada's attempt to tackle financial crime as it stands currently is B.C.'s beneficial ownership registry and the Land Transparency Act ("The Transparency Act"). It is a one of a kind attempt to combat money laundering and tax fraud by increasing transparency and ending the hidden ownership of real estate. Numbered companies, offshore trusts, and corporations will no longer be able to maintain secrecy and anonymity as beneficial owners, partners, and controlling shareholders will be visible to the public once the registry goes online in 2020.¹¹

3.5 Actions of Note: Québec

43. FATF noted that in some provinces, such as Quebec, federal, provincial, and municipal authorities are relatively more effective in pursuing money laundering, and in recovering assets linked to crime. This is as a result of being significantly more effective, and achieving good results with adequately coordinated action (both at the provincial level and with the RCMP) and units specialized in asset recovery.
44. In the province of Quebec, the cooperation between the RCMP and the relevant provincial police, i.e. the *Sûreté du Québec*, has shown a number of cases of successful recovery of assets. At the municipal level, the Service de Police of the City of Montreal has a unit specialized in the recovery of proceeds of crime and in the investigation of money laundering (*Unité des produits de la criminalité*—Programme UPC-ACCEF). The priority of the investigations in Quebec and in Montreal in particular is clearly to identify assets for confiscation, especially in cases involving organized criminal groups.
45. These effective specialized units, and clear prioritization, have resulted in greater recovery of proceeds of crime by criminal law both in scope, and in type of assets, including in more complex money laundering cases.
46. As a general rule, however, law enforcement agencies in other provinces and at the federal level do not appear to have been able to adopt a "follow the money" approach in practice, nor to initiate a parallel financial investigation, notably because of resource constraints.
47. Québec has also taken steps to improve their AML framework by requiring the registration of Money-Services Businesses ("MSB") to which it has issued the right to pursue activities with the *Autorité des Marchés Financiers* ("AMF")¹², requiring additional information not required by FINTRAC. A MSB must provide the following information:
- a) A description of its legal structure. This document may be a copy of a registration declaration filed with the Québec enterprise registrar, a copy of the constituting act of the business or a copy of the contract of partnership, if applicable.

¹¹ BC Government News, "New legislation makes B.C. global leader in ending hidden ownership", April 02, 2019, Online Article, <https://news.gov.bc.ca/releases/2019FIN0037-000545>. Accessed 08 June 2019.

¹² <https://lautorite.qc.ca/fileadmin/lautorite/reglementation/entreprises-services-monetaires/instructions/2015fev06-esm-ig-en.pdf>

- b) Information about any person or entity who, directly or indirectly, owns or controls the MSB.
- c) The names of the subsidiaries of the MSB, and the names of the parent company and its subsidiaries, including an organizational chart outlining its corporate structure.
- d) A list of all its mandataries (i.e. a person who, by virtue of an agreement, conducts one or more money services on behalf of a MSB), their officers responsible for the money services and their establishments where the money services are offered. A security clearance report must be issued for each of these persons or entities.
- e) A list of the financial institutions that provide banking or financial services to the MSB, the name and address of the branches of the financial institutions with which it deals. It must also disclose the identification number and the name of the holder of each bank account used as part of its activities.
- f) A list of its lenders, other than the financial institutions referred to above, and, if applicable, the names of their officers, directors or partners.

48. The Money-Services Businesses Act requires MSBs to¹³:

- a) Notify the AMF of any change likely to affect the validity of its licence, or of information that it has filed with the AMF, including any change in its licence application, no later than 15 days following the end of the month in which such change took place.
- b) Identify all customers, other than customers of automated teller machines, before a money service can be provided to them¹⁴.
- c) Verify the identity of customers where they conduct transactions that exceed the limits set out in section 8 of the related Regulation¹⁵.

49. The AMF provides a register of money-services businesses (MSBs), which is free and publicly accessible¹⁶. An example of the information provided is illustrated below:

¹³ <http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/E-12.000001/>

¹⁴ If the money-services business is unable to identify the customer or verify the customer's identity, it must refuse to provide a money service under the Act.

¹⁵ http://legisquebec.gouv.qc.ca/en/showdoc/cr/E-12.000001,%20r.%201?langCont=en#ga:l_iv-h1

¹⁶ <https://lautorite.qc.ca/en/general-public/registers/register-money-services-businesses/>

Register – Money-services businesses

including private ATMs

Registers

Register of firms and individuals authorized to practise

Register – Reporting Issuers In Québec - Securities

Register - Insurers, Deposit institutions and Trust companies

Register – VRSPs

Register – Money-services businesses

Register - Transparency Measures

List of equity crowdfunding portals

The AMF provides a register of money-services businesses (MSBs) to which it has issued the right to pursue activities in Québec (operating one or more private ATMs or that offer money services such as currency exchange, funds transfers, the issue or redemption of traveller's cheques, money orders or bank drafts, and cheque cashing).

Note:

A business that is not included in one of the lists below may be currently authorized to provide money services. If the business that you are looking for is not included in the register, please contact an [Information Centre agent](#), who will help you in your research.

Other name(s)

- AFEX AFEXDIRECT

Authorized to offer the following class of services

- Currency exchange
- Funds transfers
- Issue or redemption of traveller's cheques, money orders or bank drafts

Is a mandatary of

- None

Branch(es)

615 BOUL RENÉ-LÉVESQUE O, 460
MONTREAL, QC, H3B 1P5
Tel. : 877 270-3808

Mandatary(ies) and their branches

- None

Automated teller machine(s)

- None



4 United States landscape

4.1 Federal regime

50. The U. S. is a federal republic consisting of 50 states, a federal district, self-governing territories and island possessions. The U.S.'s AML regime consists of a federal program with many states, such as New York, New Jersey and Texas that have parallel criminal ML provisions, with some exceeding federal guidelines¹⁷.
51. The U.S.'s AML framework was established by the *Currency and Financial Transactions Reporting Act* of 1970, as amended by Title III of the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001* ("USA PATRIOT Act") along with other statutes, collectively referred to as *Bank Secrecy Act* ("BSA").
52. The Financial Crimes Enforcement Network ("FinCEN") is United States' financial intelligence unit. FinCEN is a bureau of the US Department of the Treasury. It is responsible for the central collection, analysis, and dissemination of information reported under BSA. Further it interprets, informs and exercises BSA enforcement authority.
53. The Office of Foreign Assets Control ("OFAC"), another bureau of the US Department of the Treasury, administers and enforces economic and trade sanctions based on US foreign policy and national security goals.
54. The U.S. Department of Justice ("USDOJ") is responsible for prosecuting ML offences. A special criminal division of the USDOJ called the Money Laundering and Asset Recovery Section ("MLARS") handles the prosecutions and forfeiture actions.
55. The U.S. AML regime is also supported by a number of other partners including various federal agencies, state and local authorities, federal and state financial sector regulators, and self-regulating organizations. Federal agencies that frequently conduct ML investigations include: U.S. Immigration and Customs Enforcement; the Postal Inspection Service; the Federal Bureau of Investigation; the Internal Revenue Service Criminal Division; the Drug Enforcement Administration; and the U.S. Secret Service. In addition, the Securities and Exchange Commission ("SEC"), as a federal functional regulator for broker dealers, has BSA examination authority and has incorporated

¹⁷ Getting the deal through. "Anti-Money Laundering United States", June 2019. Online article. Authors: Gregory Lisa, Peter Spivack and Rupinder Garcha <https://gettingthedealthrough.com/area/50/jurisdiction/23/anti-money-laundering-united-states/>. Accessed September 5, 2019

compliance with BSA requirements. The SEC further delegates authority to the Financial Industry Regulatory Authority ("FINRA")¹⁸.

4.2 Performance Measurement

56. The FATF performed a mutual evaluation on the U.S. to assess its compliance and effectiveness implementing the 40 FATF Recommendations to counter money laundering, and found that U.S. has a well developed and robust framework for combatting money laundering and terrorist financing but has a few significant gaps in select areas. Key findings of non-compliance include: transparency and beneficial ownership of legal persons, citing lack of timely access to adequate, current and accurate information; and regulation and supervision, customer due diligence and other measures for DNFBP's¹⁹.
57. The FATF further found a lack of a uniform approach to State-level AML efforts noting that it was not clear if AML was a priority for all States.
58. FATF also noted that the US framework would benefit from ensuring that a range of tax crimes are defined as predicate offenses for ML²⁰.
59. Currently money services businesses are state regulated in addition to being federally regulated by FinCEN. States also regulate banks that are chartered by their respective state. The structure at the state level for enforcement is not consistent as each state's department is named something different, and may sit in varying departments within the state government.

4.3 Strategy & Plan

60. In its evaluation, the U.S. was provided with various priority actions to work towards, including: taking steps to ensure that beneficial ownership information of U.S. legal persons is current, adequate and accurate; improving the visibility of AML and State level activities and statistics; and expanding the use of tools²¹.
61. In May 2016, a few months after the FATF evaluation, the U.S. Treasury FinCEN issued a final rule on "Customer Due Diligence" regarding beneficial owner identification obligations for legal entity customers of covered FIs. The rule requires FIs to know and verify the identities of the beneficial owners who own, control, and profit from companies when those companies open accounts.
62. States, such as the New York Department of Financial Services ("NYDFS") has enacted policy, *Part 504* of the NYDFS Superintendent's Regulations, that uses a risk-based anti-terrorism and AML regulation

¹⁸ ICLG.Com, "USA: Anti-Money Laundering 2019" May 9, 2019, Online Article. Authors: Linda Noonan and Joel Cohen. <https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/usa>. Accessed September 5, 2019

¹⁹ Financial Action Task Force, "Anti-money laundering and counter-terrorist financing measures United States – December 2016". <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf>.

Financial Action Task Force, "Anti-money laundering and counter-terrorist financing measures United States – December 2016". <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf>.

²¹ Executive Summary- Financial Action Task Force, "Anti-money laundering and counter-terrorist financing measures United States – December 2016" <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016-Executive-Summary.pdf>

that requires regulated banks, money transmitters and cheque cashers to maintain effective programs to monitor for BSA and AML violations. The NYDFS requires annual submissions of compliance²². Since its adoption of the policy, it has levied fines on NY corporations, one recent one from April 2019 totaling \$405 million²³.

4.4 Actions of Note

63. As of May 11, 2018, entities subject to the BSA were required to verify beneficial ownership when a legal entity customer opens a new account, develop risk profiles and conduct ongoing monitoring of customers, subject to certain exclusions including trusts. FIs are required to verify the identity of beneficial owners using the same evidence required under the Customer Identification Program from the US Patriot Act (at a minimum), and FIs can also use information gathered for the purposes of compliance with OFAC regulations and currency transaction reporting requirements.
64. FinCEN has implemented the use of GTO's since 2017. "GTO's are producing valuable data that is assisting law enforcement and is serving to inform our future efforts to address money laundering in the real estate sector"²⁴. The GTO's in force in 2019 cover 12 select cities and require title insurance companies to identify natural persons behind shell companies involved in cash transactions of \$300,000 or more. GTO are temporary and will last for a set period of time.²⁵
65. On June 10, 2019, four United States senators introduced a bipartisan bill known as the *Illicit Cash ACT* that targets shell companies specifically and aims to "update" the country's anti-money laundering laws, requiring, among other things, beneficial ownership information to be maintained in a comprehensive federal database²⁶."

4.5 Applicability to B.C.

66. As a national body the U.S. has passed legislation and provided authority for partner agencies and task forces that investigate ML and financial crime. These agencies are similar to an independent FIU which liaises with law enforcement and has key partnerships. For example, legislation has enabled U.S. federal agencies like the Internal Revenue Service Criminal Division to perform ML investigations.

²² Protiviti Insights / NYDFS Part 504 AML Requirement.

<https://www.protiviti.com/US-en/insights/validating-aml-models-under-nydfs-part-504-aml-requirement>. Accessed September 5, 2019

²³ NYDFS - Press release, "DFS FINES UNICREDIT GROUP \$405 MILLION FOR VIOLATIONS OF SANCTIONS"

https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1904151

²⁴ Financial Crimes Enforcement Network. FinCEN Renews Real Estate "Geographic Targeting Orders" to Identify High-End Cash Buyers in Six Major Metropolitan Areas. <https://www.fincen.gov/news/news-releases/fincen-renews-real-estate-geographic-targeting-orders-identify-high-end-cash>. Accessed September 5, 2019

²⁵ Financial Crimes Enforcement Network. "FinCEN Reissues Real Estate Geographic Targeting Orders for 12 Metropolitan Areas". <https://www.fincen.gov/news/news-releases/fincen-reissues-real-estate-geographic-targeting-orders-12-metropolitan-areas>. Accessed September 5, 2019

²⁶ "US Senators Introduce Bipartisan Anti-Money Laundering Bill", June 19, 2019, Maya Perry. <https://www.occrp.org/en/daily/10007-us-senators-introduce-bipartisan-anti-money-laundering-bill>. Accessed September 5, 2019

67. The SEC has incorporated compliance with BSA requirements into its regulations and has independent authority to enforce BSA.
68. The NYDFS model, provides legislation requiring certain RE's to maintain an effective program under the BSA which the state then monitors for compliance, and subsequently requires an annual sign off of compliance to the state. Violations are subject to fines and sanctions.
69. Legislation in the U.S. has created customized GTO solutions for regions in need. The GTO's specifically target industries within a jurisdiction, setting thresholds of review, such as, monitoring for all cash real estate purchases in a city over a certain threshold.

5 European Union landscape

5.1 European Union regime

70. The European Union's ("EU") AML regime is organized through a tripartite group consisting of the European Commission ("EC"), the Council of the EU ("the Council") & the European Parliament ("Parliament").
71. The EU's AML framework is established through Directives (framework laws that require adopting through national legislation) and Regulations (laws directly applicable in all member states with no need for national adoption).
72. The EC is responsible for preparing the draft Directives/Regulations (through consultation with its own national experts) and presenting it to the Council and Parliament for evaluation and comment, then subsequently for approval or rejection.
73. The EU adopted the first ML Directive in 1990, and continues revisions in order to mitigate new and emerging ML & TF risks, trends and typologies.
74. In 2015, the EU adopted a modernized regulatory framework including a 4th ML Directive ("AMLD4") combined with the *REGULATION (EU) 2015/847 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006*²⁷.

5.2 Performance Measurement

75. On July 24, 2019, the EC published a communication²⁸ to the European parliament, requiring better implementation of the EU's AML and CTF framework. This included four reports, covering two relevant

²⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R0847>

²⁸ https://ec.europa.eu/info/files/communication-commission-european-parliament-towards-better-implementation-eus-anti-money-laundering-and-counteracting-financing-terrorism-framework_en

pieces²⁹: assessing FIU frameworks, and central bank account registries.

76. The assessment of FIU frameworks found references indicating that some FIUs failed to provide quality feedback to obliged entities, lacked templates for reporting; hampering the quality of reports received; as well as several FIUs not being fully compliant with their obligation to exchange information with other FIUs; often due to technology issues. The report also highlights a need for a stronger mechanism to coordinate and support cross-border cooperation and analysis.
77. The interconnection of central bank account registries report assesses the conditions, technical specifications and procedures for ensuring a secure and efficient interconnection of the centralized bank account registries or data retrieval systems

5.3 Strategy & Plan

78. The 5th ML Directive ("AMLD5"), amending the 4th, was published on June 19, 2018 with Member States required to adopt AMLD5 by January 2020. This Directive focuses on ultimate beneficial ownership registries, prepaid cards, expended list of RE's (virtual currency providers, tax advisors and art traders), high-risk third countries (countries with deficiencies in AML/CTF regimes, central bank registries & cooperation between FIUs and supervisory authorities).
79. Then in November 2018, the 6th EU ML Directive ("AMLD6") was published, required to be adopted by Member States by December 3, 2021. This Directive lists 22 specific predicate offences required by Member States to criminalize. Additionally the definition of ML is expanded to aiding and abetting, attempting and inciting money laundering. The Directive also extends liability to legal persons as well as persons in positions of authority. The Directive also aims to increase international co-operation for prosecution, tougher punishments and more stringent approaches on specified predicate offences (ML to be criminalized even if the conduct was lawful in the jurisdiction in which it was committed).

5.4 Actions of Note

80. Throughout the European Union, including the UK, central registries for beneficial ownership information have been created/initiated, which are operated and maintained by governments in response to the AMLD4 which is now in effect.
81. EU member states have been debating whether their beneficial ownership registries should be open to the public, restricted to government agencies such as financial intelligence, tax authorities, law enforcement, or somewhere in between (for example, including FIs, DNFBPs, journalists, and NGOs) or, as in France, anyone with a taxpayer number (essentially all French adults).
82. AMLD5, mandated that those registries be made public by January 2020, and accessible via a centralized platform by 2021.
83. A further initiative between tax and law enforcement agencies from the participating countries would enable the exchange of data on company beneficial ownership registers and new registers of trusts. The new scheme will begin by exploring the best way for countries to

²⁹ [https://europa.eu/rapid/press-release MEMO-19-4369_en.htm](https://europa.eu/rapid/press-release_MEMO-19-4369_en.htm)

share this information, with a view to developing a truly global common standard. Germany, France, Spain and Italy are leading this initiative and a pilot project is planned. The initiative is currently in the early stages.

5.5 Applicability to B.C.

84. Enhanced provincial/state/regional regulations have been put in place to ensure legal privilege does not unnecessarily impede determining ultimate beneficial ownership of legal entities.
85. Effectiveness testing of any enhanced measures, or functions (e.g. central FIU, central UBO registry, etc.) are implemented in order to enhance the ongoing efforts to detect, deter and investigate ML/TF activities.
86. Levels of access to data housed in shared/central registries are clearly defined, taking into account privacy regulations and best practices.
87. Information sharing across different agencies and countries is encouraged to increase the quality of information reported, and enable more effective prevention and detection of ML/TF.
88. Case-by-case exemptions, upon request, from making ownership information publicly accessible as a result of safety concerns, or where minors are identified as owners, mitigate reasonable privacy concerns.

6 United Kingdom landscape

6.1 National regime

89. The UK's AML/CFT regime is based on the international standards set by the FATF. EU member states sought to reflect the latest FATF standards in the AMLD4, adopted by the UK within national legislation.
90. The principal legislation in the UK consists of the *Proceeds of Crime Act 2002*, the *Terrorism Act 2000*, the *Fraud Act 2006* and *The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017*.
91. *The Criminal Finances Act 2017* amends the *Proceeds of Crime Act 2002* to expand the provisions for confiscating funds to deal with terrorist property and proceeds of tax evasion.
92. *The Data Protection Act 2018* controls how personal information is used by organizations, businesses or the government. The Act outlines certain data protection principles to ensure data is used lawfully and transparently, as well as for specified and explicit purposes. Data must also be kept for no longer than necessary and be handled in a way that ensures appropriate security/protection.
93. The enforcement of these laws is split between a number of national, regional and local organizations, which vary between England and Wales, Scotland or Northern Ireland. The national authorities consist of National Crime Agency (NCA), the Serious Fraud Office (SFO), the

Financial Conduct Authority (FCA) and Her Majesty's Revenue and Customs.

6.2 Performance Measurement

94. FATF performed a mutual evaluation on the UK that was published in December 2018³⁰. During the evaluation, FATF found the UK to be either compliant or largely compliant in all recommendations outside of two: correspondent banking & FIUs. Of note, it was observed that the role and responsibilities of the UKFIU were not clearly defined or enforceable. Additionally the UKFIU had limited IT & human resources to conduct their analysis of SARs.
95. Analysis of the PSC registry, identified several weaknesses including beneficial owners listed with a tax haven address, just under 10% having no beneficial owner, lack of unique identifiers for individuals and companies. A number of recommendations were provided including lowering ownership thresholds (i.e. percentage threshold that must be met to be consider a beneficial owner), data quality and verification restrictions such as drop-down, exact percentage requirements, unique identifiers & requiring entities that collect customer due diligence to report information to the registry.³¹

6.3 Strategy & Plan

96. The Joint Money Laundering Intelligence Taskforce ("JMLIT") was established in 2015 to enable both tactical and strategic intelligence sharing between law enforcement agencies and leading financial institutions in the UK. The JMLIT brings together law enforcement, the regulator, and over 30 UK and international financial institutions to exchange and analyse information and intelligence. By using the NCA's legal gateway, the JMLIT enables private sector institutions to share information with law enforcement partners and other private sector partners on a multilateral basis. The overall aim is to identify priorities and focus the mutual effort deployed against financial crime by the public and private sectors.
97. The Economic Crime Strategic Board (ministerial level public-private board charged with setting UK's strategic priorities for combatting economic crime) published the *Economic Crime Plan 2019-2022*³² in January of 2019, establishing 7 priority areas for the UK to focus on in combatting economic crime.
98. The plan focuses on a better understanding of threats and performance in combatting those threats, better sharing and usage of information between public and private sectors, ensuring the powers, procedures and tools across public and private sectors are effective as possible as well as strengthening public and private capabilities to detect, deter and disrupt economic crime. The plan also focuses on enhancing risk management in the private sector with a risk-based approach to supervision, improving systems for transparency of

³⁰ <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018.pdf>

³¹ <https://www.globalwitness.org/en-gb/blog/10-lessons-uks-public-register-real-owners-companies/>

³² Economic Crime Strategic Board, "Economic Crime Plan". <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Canada-2016-Executive-Summary.pdf>

beneficial ownership and delivering international strategy to enhance security, prosperity and the UK's global influence.

99. In relation to better information-sharing, the plan outlines that the UK should have a sustained focus on identifying where barriers to appropriate information-sharing on economic crime exist, whether domestic or international. The UK should be aware where appropriate information-sharing can be enhanced through guidance, awareness of existing gateways and legislation. These should consider regulatory expectations, operational infrastructure, cost and culture, as well as concerns around data protection, privacy, anti-competitive behaviour, client confidentiality and privilege.

6.4 Actions of Note

100. The UK became the first country to roll out a beneficial ownership registry (a web based, publicly available beneficial ownership registry called the People With Significant Control Register), and 45 countries, including all EU members, have now implemented or are in the process of rolling out beneficial ownership registries, a majority of which are public.
101. The UK Department for Business, Energy & Industrial Strategy has proposed the creation of a register (to be launched in early 2021) noting who owns and controls overseas legal entities that own UK property or participate in UK government procurement. This register, called Overseas Entity Beneficial Ownership Register ("OEBO Register") would be maintained by Companies House.
102. This will extend the beneficial ownership information available for UK legal entities (PSC Register) to overseas legal entities that (i) hold property in the UK, or (ii) bid on significant public procurement contracts.
103. The enhanced regulation of Corporate Service Providers (CSPs), creating law enforcement access to beneficial ownership information, is another means of requiring the collection and maintenance of beneficial ownership information in jurisdictions such as the British Virgin Islands, Jersey and Guernsey where a large number of offshore companies are registered through CSPs, which act as registered agents, resident secretaries and nominees. This approach does not infringe privacy as there is no public access to information.
104. The UK solution to this issue was to create a case-by-case exemption upon request from such public access. So far, a handful of exemptions have been granted in that country.

6.5 Applicability to B.C.

105. The UK has expanded on the bare minimum requirement for a publicly accessible central registry of beneficial owners within the UK, by extending the registry to foreign companies owning land in the UK (similar to the *Land Title Act*). However, verification of the information provided continues to be a concern.
106. Additionally the UK continues to push the envelope through national initiatives such as the JMLIT (agreement between law enforcement, the regulator, and over 30 UK and international financial institutions to exchange and analyze information and intelligence) as well as strategic leadership through the Economic Crime Plan which

focuses on properly regulated and effective information sharing between appropriate parties.

107. The UK has also established data laws to control how personal information is used by organizations, businesses or the government. The Act outlines certain data protection principles to ensure data is used lawfully and transparently, as well as for specified and explicit purposes. Data must also be kept for no longer than necessary and be handled in a way that ensures appropriate security/protection.

7 Netherlands landscape

7.1 National regime

108. The Netherlands' AML regime is based on *the Money Laundering and Terrorist Financing (Prevention) Act* ("WWFT").³³
109. Pursuant to the WWFT, FIU-the Netherlands is the sole organization in the Netherlands where RE's report their unusual transactions. At the organizational level, FIU-the Netherlands has the status of an independent government body. Internationally, FIU-the Netherlands is part of a worldwide FIU network via the Egmont group.³⁴

7.2 Performance Measurement

110. FATF performed a mutual evaluation of the Netherlands in 2011, where the Netherlands was placed on a regular follow-up process as a result of their partial compliance in certain core Recommendations. Some of these findings include beneficial ownership not extending to the natural person(s), or being hindered through legal privilege regarding trusts held by lawyers, accountants and notaries.
111. The FATF also identified shortcomings around Netherlands' FIU ("FIU-NL") where the legal framework surrounding the FIU was not fully established, as well as instances where the FIU did not have sufficient access to data to undertake its functions. The FATF also noted effectiveness issues surrounding the monitoring of online casinos, as well as precious metals dealers, lawyers and accountants.³⁵
112. In 2014, the FATF removed the Netherlands from the regular follow-up process as a result in significant progress in addressing the deficiencies identified in 2011. More specifically, the Netherlands strengthened its framework by amending the WWFT to include additional customer due diligence, STR, and exchange of information

³³ <https://www.fiu-nederland.nl/en/legislation/general-legislation/wwft>

³⁴ <https://www.fiu-nederland.nl/en/fiu-the-netherlands>

³⁵ <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Netherlands%20full.pdf>

requirements. Additionally it enhanced the legal framework of the FIU-NL.

7.3 Actions of Note

113. The Netherlands have committed to establish a public central register of company beneficial ownership information in accordance with AMLD4, covering Dutch corporate and other legal entities.
114. It is expected that the UBO register will not be implemented before 2020. These entities must collect and promptly deliver accurate and up-to-date information about their beneficial owners to the registrar and inform them of any changes.
115. As part of the mandatory customer/client due diligence, third parties, such as banks, life insurers, investment funds, accountants, civil law notaries, attorneys-at-law, and brokers are required to consult the register and compare it with the information provided by the client. Should there be any errors or discrepancies, obliged entities are required to inform the registrar.
116. Privacy safeguards will include registered requests for information, including a fee for those that are not competent authorities. Case-by-case exemptions will be applied if there is a risk of fraud, violence, blackmailing or intimidation. Some designated authorities will have access to a broader set of information than what is publicly available.

8 German landscape

8.1 National regime

117. Germany's AML regime is organized as a horizontal federal program comprised of numerous federal departments and agencies. Bundesanstalt für Finanzdienstleistungs-aufsicht ("BaFin") is the domestic and international policy lead for the regime, and is responsible for guiding and informing strategic implementation of its risk-based approach, and overall coordination of this AML strategy. It is an independent federal institution with headquarters in Bonn and Frankfurt and falls under the supervision of the Federal Ministry of Finance.
118. Germany's AML framework is established in the Geldwäschegesetz – ("GwG") and its regulations, supported by other key statutes, including the Criminal Code ("Strafgesetzbuch"); i.e. § 261 Geldwäsche; Verschleierung unrechtmäßig erlangter Vermögenswerte and the Banking Act ("KWG"). The Federal Government of Germany continuously undertakes a comprehensive review of the AML framework, with the latest amendment to regulations released on 21 June, 2019, and will come into effect on 1 November 2019.
119. In line with EU principles, Germany has been implementing EU anti-money laundering Directives since 1992. This regulatory

framework has been constantly revised in order to mitigate risks relating to money laundering and terrorist financing.

120. The Ministry of Justice and Consumer Protection Germany (“Bundesjustizministerium und für Verbraucherschutz”) in cooperation with the Federal Ministry of the Interior, Building and Community (“Bundesministerium des Innern, für Bau und Heimat”) is responsible for creating and maintaining statutory provisions dealing with criminal law and procedure, and to negotiate and administer mutual legal assistance (“MLA”) and extradition treaties.
121. The Zentralstelle für Finanztransaktionsuntersuchungen is Germany’s financial intelligence unit, and it is part of the General Directorate of Customs.
122. The AML regime is also supported by a number of other partners, including state law-enforcement agencies.

8.2 Performance Measurement

123. The FATF performed a mutual evaluation on Germany in 2010 to assess its compliance and effectiveness implementing the FATF Recommendations to counter money laundering, and found that Germany was not fully in line with the recommendations³⁶. Key findings included weaknesses in the legal framework and in sanctioning for non-compliance with AML/ATF requirements; i.e. the need to amend the Criminal Code to criminalize money laundering in a way that covers all serious predicate offenses, and terrorist financing consistent with international standards.
124. The FATF further recommended improvements to preventive measures, notably by imposing a reporting obligation based on suspicion rather than knowledge as it relates to the proceeds of criminal activity; and clearly establishing that the Zentralstelle für Finanztransaktionsuntersuchungen should carry out more of the core functions of an FIU, as contemplated by the FATF standards.
125. The FATF also recommended to fully and effectively implement the UN Security Council Resolutions (UNSCRs) on terrorist financing, and to apply sanctioning powers more effectively for breaches of AML/ATF obligations. Another recommendation was to strengthen the effective implementation of AML/ATF obligations imposed on DNFBPs, and to improve the collection of statistics and the provision of guidance and feedback from the FIU.
126. In 2014, the FATF concluded, in its third follow-up report, that Germany has addressed the deficiencies related to all core recommendations.
127. However, Germany has not demonstrated sufficient progress on two special recommendations; i.e. combatting terrorist financing and, the ability to more broadly locate and trace terrorist fund freezing of assets and its appropriate monitoring.

³⁶ Financial Action Task Force, “Anti-Money Laundering and Combating the Financing of Terrorism - Germany”. <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Germany%20full.pdf>

8.3 Strategy & Plan

128. In line with AMLD5, Germany has defined its plan to comply with it by its effective date on 10 January 2020.
129. Their strategy and plan focus on the increase of beneficial ownership transparency in companies and trusts to prevent money laundering and terrorist financing via opaque structures. It was, further, acknowledged that there is a need to improve cooperation between FIUs to enhance access to information through centralized bank account registers, as well as the cooperation and exchange of information between AML supervisors and with the European Central Bank.
130. Terrorist financing risks are also a focus, specifically when linked to anonymous use of virtual currencies and pre-paid instruments.
131. Finally, the criteria for assessing high-risk third countries and ensure a common high level of safeguards for financial flows from such countries is part of the action plan.

8.4 Actions of Note

132. Natural persons who hold more than 25% or more of capital shareholding by themselves or with associated persons, or who control more than 25% of voting shares, are required to provide required information for entry into the "Transparency Register", Germany's official beneficial ownership platform.
133. Germany has appointed Bundesanzeiger Verlag GmbH, a publishing house, as the competent body to administer the Transparency Register on behalf of the federal government.

8.5 Applicability to B.C.

134. The administration and management of Germany's ownership registry has been outsourced to a third party provider.

9 Australian landscape

9.1 National regime

135. Australia is governed by a federal system consisting of the Federal government, six State governments and two Territory governments. The States and Territories hold the main criminal law powers and have corresponding criminal offences that pertain to money laundering³⁷.
136. Australia's AML and anti-terrorist financing ("ATF") framework is set out in its *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2017* ("AML/CTF Act"), and its rules and regulations (*Anti-Money Laundering and Counter-Terrorism Financing Rules*

³⁷ ICLG.com, "Australia: Anti-Money Laundering 2019" May 9, 2019, Online Article. Authors: Kate Jackson-Maynes and Amelia Jamieson. <https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/australia>. Accessed September 4, 2019.

Instrument 2007 (No. 1)), and supported by other key statutes, including the *Crimes Act 1914* and *Criminal Code Act 1995*.

137. The Commonwealth Director of Public Prosecutions is the federal authority responsible for prosecuting money laundering offences. Offences committed at the State and Territory level are prosecuted and enforced by the relevant authorities in those jurisdictions. However, it is unlikely that a prosecution under a state or territory law for money laundering would be pursued if one is already brought at the federal level³⁸.
138. Australia's Department of Foreign Affairs and Trade provides and maintains a consolidated list of entities and individuals to which sanctions apply.
139. The Australian Transaction Reports and Analysis Centre ("AUSTRAC") is Australia's AML/CTF regulator and specialist financial intelligence unit. The FIU is responsible for supervising and monitoring all RE's compliance with AML regulations, as well, they collect and analyze financial data from reports submitted by RE's and will disseminate relevant information with their domestic and foreign FIU partners.
140. The Department of Home Affairs is responsible for law enforcement in Australia.
141. AUSTRAC is a government agency under Australia's Department of Home Affairs and is governed by the AML/CTF Act and the *Financial Transaction Reports Act 1988*, amongst others.
142. The AML regime is also supported by a number of other partners including: federal, state and territorial partner agencies including Australian Federal Police and Australian Crime Commission and state and territorial financial sector regulators such as Australian Securities and Investments Commission³⁹.

9.2 Performance Measurement

143. A review of the AML/CTF Act by the Attorney General's Department was undertaken from 2013 to 2016 resulting in 84 recommendations currently in the process of phased-implementation. The latest compilation (#48), is dated 20 December 2018.
144. On August 26, 2019 an online news article from The Guardian reported that AUSTAC's Chief Executive announced more enforcement action in the future against the big banks due to the increased intelligence that they had been receiving. It was also noted that the banks have increased self-reporting of breaches to the agency by 70% since it launched civil action against Commonwealth Bank of Australia

³⁸ Getting the deal through. "Anti-Money Laundering Australia", June 2019. Online article. Authors: Peter Reeves and Georgina Willcock. <https://gettingthedealthrough.com/area/50/jurisdiction/5/anti-money-laundering-australia/>. Accessed September 7, 2019

³⁹ ICLG.com, "Australia: Anti-Money Laundering 2019" May 9, 2019, Online Article. Authors: Kate Jackson-Maynes and Amelia Jamieson. <https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/australia>. Accessed September 4, 2019; and Getting the deal through. "Anti-Money Laundering Australia", June 2019. Online article. Authors: Peter Reeves and Georgina Willcock. <https://gettingthedealthrough.com/area/50/jurisdiction/5/anti-money-laundering-australia/>. Accessed September 7, 2019.

in 2017⁴⁰. According to the article the fines were mostly for late filing of transaction reports.

145. In 2015, FATF released its MER on Australia that assess its compliance and effectiveness implementing the 40 FATF Recommendations to counter money laundering, and found that Australia has a strong institutional framework for combatting money laundering and terrorist financing, but some major improvements are needed in select areas⁴¹.
146. Key findings of non-compliance included insufficient identification, outreach and measures applied for ML/TF risks with not-for-profit (“NFP”) organizations; the need for improved regulation and supervision of DNFBPs in particular real estate agents and lawyers; transparency and beneficial ownership of legal arrangements, in particular with trustee relationships; and that Australia should expand its focus from drugs, tax evasion and fraud to ensure that a greater number of cases of ML are being identified and adequately investigated.
147. The FATF further found that a stronger focus is required on monitoring and measuring success.

9.3 Strategy & Plan

148. Since its last evaluation, Australia committed to working towards addressing its non-compliant and other deficiencies cited in FATF’s 2015 MER.
149. In November 2018 FATF released the *3rd Enhanced Follow-up Report & Technical Compliance Re-Rating* on Australia’s progress. Overall Australia made progress in addressing the technical compliance deficiencies identified and has been re-rated on 7 of 21 Recommendations including: terrorist financing definition and connected international instruments; new technology and ML risk; enhanced due diligence for high risk countries; sanctions for cash couriers; responsibilities for authorities pertaining to Queensland; and NFP organizations⁴².
150. Australia has significantly improved its compliance concerning deficiencies relating to NFP. Australia undertook a comprehensive risk assessment of its NFP sector and has identified higher-risk organizations. The assessment focused on a subset falling within the FATF definition of NFPs. Further Australia announced their intention to update the NFP regulatory framework increasing oversight of charities operating abroad and strengthening governance requirements.
151. In response to shortcomings identified concerning beneficial owners of legal persons and legal arrangements, Australia’s

⁴⁰ The Guardian, “Australia plans more action against big banks on money laundering”, August 26, 2019. Online article. Author: Sonali Paul. <https://www.theguardian.pe.ca/business/reuters/australia-plans-more-action-against-big-banks-on-money-laundering-345402/>. Accessed September 5, 2019

⁴¹ Financial Action Task Force, “Anti-money laundering and counter-terrorist financing measures Australia – April 2015”. <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Australia-2015.pdf>.

⁴² Financial Action Task Force, “Anti-money laundering and counter-terrorist financing measures Australia – 3rd Enhanced Follow-up Report & Technical Compliance Re-Rating – November 2018”. <https://www.fatf-gafi.org/media/fatf/documents/reports/fur/FUR-Australia-2018.pdf>.

government is considering what actions to take that may be needed, releasing a public consultation paper seeking views on the details, scope and implementation of a beneficial ownership register for companies⁴³.

152. To date, a registry has not been established, however if elected in their upcoming elections, Australia's Labor Party has vowed to introduce one that will also cover trust relationships.
153. Australia continues to focus on improving on the remaining FATF noted deficiencies as part of its enhanced follow-up process.
154. The current AML/CTF Act was amended since the 2015 FATF MER. The amendments captures increased AUSTRAC powers; regulations for digital currency providers; and provides some regulatory relief for industry, in particular for cash-in-transit sector, insurance intermediaries and general insurance providers; sharing of compliance obligations; and broadening definitions.⁴⁴ In addition, AUSTRAC released an on-course bookmakers ML assessment for on-course bookmakers to evaluate and improve their ML regimes.
155. Going forward it is estimated that the inherent risk associated with social media platforms is likely to become a focus for AUSTRAC⁴⁵.
156. Australian states and territories have enacted unexplained wealth laws to aid in their investigatory powers. Amendments in 2018 to the AML/CTF Act created a National Cooperative Scheme on Unexplained Wealth, aimed at enhancing the ability of the Commonwealth (national), State and Territory law enforcement agencies to identify, trace and seize assets that cannot be connected to a lawful source. The scheme applies to the Australian Capital Territory, the Northern Territory and NSW⁴⁶.

9.4 Actions of Note: NSW

157. NSW has laws enacted against ML found in their *Casino Control Act 1992*, *Crimes Act 1900* and *Confiscation of Proceeds of Crime Act 1989*. These Acts, among other things, makes it illegal to deal with the proceeds of crime, with a maximum penalty of imprisonment for 20 years, and deems ML as a serious offence.
158. At this state level, police will focus on investigating for predicate offences and will prosecute a money laundering offence in simple cases where offenders may be caught in possession of cash⁴⁷.

⁴³The Guardian "Coalition abandons plan for register to help beat tax avoidance", Online news article, <https://www.theguardian.com/australia-news/2019/feb/11/coalition-abandons-plan-for-register-to-help-beat-tax-avoidance>. Accessed September 5, 2019

⁴⁴ LegalTalk – Insights. "New anti-money laundering and counter-terrorism financing laws". January 30, 2018. Online article. Authors: Murray Deakin and Sara Liu. <https://www.pwc.com.au/legal/assets/legaltalk/new-anti-money-laundering-and-counter-terrorism-financing-laws-300118.pdf>. Accessed September 6, 2019

⁴⁵ Getting the deal through. "Anti-Money Laundering Australia", June 2019. Online article. Authors: Peter Reeves and Georgina Willcock. <https://gettingthedealthrough.com/area/50/jurisdiction/5/anti-money-laundering-australia/>. Accessed September 7, 2019

⁴⁶ Getting the deal through. "Anti-Money Laundering Australia", June 2019. Online article. Authors: Peter Reeves and Georgina Willcock. <https://gettingthedealthrough.com/area/50/jurisdiction/5/anti-money-laundering-australia/>. Accessed September 7, 2019.

⁴⁷ Getting the deal through. "Anti-Money Laundering Australia", June 2019. Online article. Authors: Peter Reeves and Georgina Willcock.

159. NSW's Crime Commission is responsible for obtaining UWO from the Supreme Court of NSW under the *Criminal Assets Recovery Act 1990*. In granting the order, the court must have a reasonable suspicion that the person against whom the order is sought has engaged in a serious crime-related activity or acquired property derived from any serious crime-related activity of another person (whether or not the person against whom the order is made knew or suspected this). A finding under this can be based on a reasonable suspicion that some offence constituting a serious crime-related activity was committed⁴⁸.
160. In NSW and Victoria there is legislation at the State level that requires time limits on prosecutions of money laundering whereby proceedings have to be commenced no later than six and 12 months, respectively after an offence was allegedly to have been committed⁴⁹.
161. Australian Capital Territory in NSW applies a strict liability offence under the *Crimes Act 1900* to deal with property that is suspected of being proceeds of crime⁵⁰.

9.5 Applicability to B.C.

162. As a legislator, NSW has enacted specific state ML laws that include penalties, sanctions and enforcement to address offences committed in the state.
163. NSW's UWO legislation has been adopted as a tool where orders can be obtained on reasonable suspicion that an offence constituting a serious crime-related activity was committed.
164. Legislation has been adopted in NSW around time limits on prosecution of ML offences. In addition there is application of strict liability legislation.
165. AUSTRAC estimates future inherent risks associated with social media where public information can be considered a part of their inherent risk assessment.

<https://gettingthedealthrough.com/area/50/jurisdiction/5/anti-money-laundering-australia/>. Accessed September 7, 2019

⁴⁸ Getting the deal through. "Anti-Money Laundering Australia", June 2019. Online article. Authors: Peter Reeves and Georgina Willcock.

<https://gettingthedealthrough.com/area/50/jurisdiction/5/anti-money-laundering-australia/>. Accessed September 7, 2019

⁴⁹ ICLG.com, "Australia: Anti-Money Laundering 2019" May 9, 2019, Online Article. Authors: Kate Jackson-Maynes and Amelia Jamieson. <https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/australia>. Accessed September 4, 2019.

⁵⁰ ICLG.com, "Australia: Anti-Money Laundering 2019" May 9, 2019, Online Article. Authors: Kate Jackson-Maynes and Amelia Jamieson. <https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/australia>. Accessed September 4, 2019.

Appendix A – Scope, limitations in scope and restrictions

9.6 Scope

166. Pursuant to the General Service Agreement, our procedures during the review involved:

- a. Developing a summary of Anti-Money Laundering regimes across CAN, the U.S., the EU (UK, GER & NLD) and AUS, including:
 - Regulatory framework;
 - AML framework performance measurement;
 - Other publically available information regarding AML Strategy & Plan;
 - Other sources identified through our research.
- b. Highlighting relevant findings that may be of specific interest to the Government of British Columbia.

9.7 Limitations

167. Deloitte agrees that these documents may only be distributed amongst the Client's ministries (and their agencies) and third parties in each case solely in accordance with the purposes contemplated by the General Service Agreement, as long as the Government of B.C. marks the document as strictly confidential, and retains all disclaimers included in the documents prior to disclosure.

168. This report included a high level scan of AML regimes across the aforementioned scope of jurisdictions and is current until September 12, 2019. AML/ATF trends are subject to constant developments, and we are under no obligation to review or update this jurisdictional scan. However, if we consider it necessary, we have the right to withdraw or revise our jurisdictional scan in light of any information, which becomes known to us after the date of this jurisdictional scan.

169. This jurisdictional scan is not a comprehensive review of relevant legislation. Other applicable legislation could exist in each jurisdiction covered that was not encompassed in our scan. Professional judgement was used in selecting jurisdictions and another professional service provider may have selected its own unique jurisdictions.

9.8 Restrictions

170. This jurisdictional scan must be considered as a whole and selecting portions of the jurisdictional scan or the factors noted by us, without considering all factors and analyses together could create a misleading view of the process underlying this jurisdictional scan. The preparation of this jurisdictional scan was a complex process and considers various scenarios and is not necessarily susceptible to partial analysis or summary description. Any attempt to do so could lead to undue emphasis on any particular factor, calculation, or analysis.

171. We reserve the right, but will be under no obligation, to review this jurisdictional scan, and if we consider it necessary, to revise our jurisdictional scan in light of any information, which becomes known to us after the date of this jurisdictional scan. This work was not designed to

identify all circumstances of inappropriate behaviour or other irregularities, if any, which may exist.

172. For the purposes of this jurisdictional scan we have had to assume that the documents or other information researched by us are reliable and complete, unless otherwise stated.
173. Should any of the information provided to us not be factual or correct, or should we be asked to consider different information or assumptions, any analysis set out in this jurisdictional scan could be significantly different.
174. Deloitte used its professional judgment to identify the online sources to be searched, which is largely dependent upon the scope of the investigation, the location of the subjects and budgetary considerations. While Deloitte has access to numerous potential data sources, we are not able to search all of them in the course of any one review. We caution that other professional services firms might reach different judgments about the databases to be searched or produce different findings.
175. A financial statement audit is generally performed with the objective of providing reasonable assurance that financial statements are free from material error whereas a forensic review utilizes accounting and investigative techniques to provide an analysis related to issues and questions that have arisen. Deloitte was not engaged to, and did not perform a financial statement audit, review or compilation for the purpose of expressing an opinion on historical financial statements in accordance with standards established by Chartered Professional Accountants Canada (“CPA Canada”). Accordingly, Deloitte does not express such an opinion or any form of assurance.
176. Deloitte’s services did not constitute an audit conducted in accordance with generally accepted auditing standards, an examination or compilation of, or the performance of agreed upon procedures with respect to prospective financial information, an examination of or any other form of assurance with respect to internal controls, or other attestation or review services in accordance with standards or rules established by the Chartered Professional Accountants of Canada (“CPA Canada”), the Canadian Public Accountability Board (“CPAB”), or other regulatory body. Deloitte did not express an opinion or any other form of assurance on any operating or internal controls, financial statements, forecasts, projections or other financial information.

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