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***AML Compliance in the UK and Other Countries***

FATF (Financial Action Task Force) “is an independent inter-governmental body” that is responsible for governing AML (“Anti Money Launderiing”) compliance standards.[[1]](#footnote-1) The recommendations used by FATF are used to help promote “international co-operation” and helps to establish “preventative measures … taken by financial institutions … casinos, real estate dealers, lawyers and accountants.” [[2]](#footnote-2) There have been recent developments in the UK trending (2018). In the US “AML/CFT issues …” have become the forefront of combatting financial crime “at both federal and state levels” assessments are made, and “whether the recommendations” provided “have been fully and properly implemented” determines the effectiveness of the AML/CFT system implemented.[[3]](#footnote-3) Such international cooperation includes: (1] laws that prevent terrorist financing (2) laws that allow for the confiscation of proceeds of crime and terrorist funding (3) “an enforceable means that impose required obligations on financial institutions (4) “institutional or administrative framework” that includes “duties, powers and sanctions.”[[4]](#footnote-4) Depending on the “particular circumstances of [a] country” … “assessors … have [the] discretion …. [to] identify” what strengthens or weakens a current AML/CFT system put into place.[[5]](#footnote-5) The assessors measure “positive, neutral, or negative influence[s] on the overall rating for each recommendation” to determine its fitness.[[6]](#footnote-6) Under (3) mentioned above … “designated non-financial business and professions (DNFBP), financial institutions, financing of terrorism (FT), legal persons and legal arrangements” are also taken into consideration with regard to “financial institutions … fundamental to any AML/CFT assessment.”[[7]](#footnote-7)

According to *Global Compliance News[[8]](#footnote-8),* in 2018, the “EU Anti-Money Laundering Directive (AMLD 5)” took place to “modif[y] the fourth Anti-Money Laundering Directive … released only in 2015.”[[9]](#footnote-9) The purpose for this directive was to address the “beneficial ownership [of] information created under the AMLD4 … [to] be made accessible to the general public [whereby] … beneficial ownership information will be granted to any natural or legal person that can demonstrate a legitimate interest as well as to any person filing a request in relation to a trust or similar legal arrangement which holds or controls any corporate or other legal entity.”[[10]](#footnote-10) Under this provision “information on real estate ownership by any natural or legal person … [is] made centrally available for public authorities.” These measures further enhance the “rights and competencies of national EU Financial Intelligence Units … [which] exten[d] … the cooperation and exchange of information among FIUs and other relevant institutions further facilitated.”[[11]](#footnote-11)

One of the key additions to AML in the UK has been the “failure to prevent (economic crime) clause” which has been implemented to make it a “criminal offense by a corporat[ion] [who] fail[s] to prevent economic crime” and to “reduc[e] the flow of illicit funds through the UK.” [[12]](#footnote-12) This would require “firms … to undertake an extensive compliance review and implement a programme … to ensure their compliance with legislation.” [[13]](#footnote-13) Part (c) of the clause states that “a person commits a money laundering facilitation offence when acting in the capacity of a person associated with (B) “a relevant body … [who] is guilty of an offence.”[[14]](#footnote-14) This includes “the acquisition, use or possession of criminal property, under section 329 of the *Proceeds of Crime Act 2002* (acquisition, use and possession).”[[15]](#footnote-15) Furthermore, a “money laundering offence” includes, in part, the “concealing, disguising, converting, transferring or removing criminal property under section 327 of the *Proceeds of Crime Act 2002*.”[[16]](#footnote-16)

The AMLD 5 (“*EU Fifth Anti-Money Laundering Directive*”)[[17]](#footnote-17) was important because “with *Brexit* in view … the UK will be closely watching … aspects of it which relate to [the] beneficial ownership and the impact of the UK’s PSC register regime … [is] of particular interest.”[[18]](#footnote-18) The purpose of the AMLD 5 is to “combat terrorism and money laundering … [with the potential to] “unmask for the first time the beneficiaries of thousands of secretive trusts.” [[19]](#footnote-19) This was due in part in “response to the *Panama Papers,* in which a global consortium of journalists revealed the widespread use of trusts and opaque offshore structures to launder money generated form bribery, corruption, and tax evasion.”[[20]](#footnote-20) With the UK officially leaving the EU next March, negotiations are still ongoing, with Britain “promis[ing] to abide by all existing and new European laws,”[[21]](#footnote-21) which include:

“the registering of company owners in every member state, access to the names of beneficiaries of trusts for law enforcement agencies and those with a “legitimate interest,” including the investigative journalists and *NGOs*, a cross-border database of company and trust owners, overseen by the *European Commission*, and automatic access to the names of bank account holders for national *financial intelligence units* [“FIUs”].”[[22]](#footnote-22)

Because there was “no-deal [in] Brexit, it is unclear whether the government would still implement new EU laws, such as the fifth anti-money laundering directive.”[[23]](#footnote-23) One of the issues is whether to permit a “public database” which would require member states to “draw up rules to allow [only] those with a “legitimate interest” to have access to “information on a case by case basis.” [[24]](#footnote-24) This is important because in order to take preventative measures, the journalists would need access, “the directive” highlights “preventative work done by non-government organisations”[[25]](#footnote-25) which may or may not have access, be considered to have a legitimate interest under the AMLD 5, in order to combat money laundering. Would journalists have access via the AMLD 5, under Brexit? We’ll see. One of the problems is that “UK … withdr[ew] from the EU” [[26]](#footnote-26) this poses a problem addressed by the “Fundamental Rights Forum” in Vienna, who spoke of the UK’s image which has been “tarnished by media outlets that have caused division.”[[27]](#footnote-27) One of the EU’s Missions and “Responsibili[ties], are to get involved, and “to avoid [the] encourage[ment] [of] hate.” [[28]](#footnote-28) Of importance in the Brexit debate is whether:

“Fundamental rights must be a part of public discourse in the media. They have to belong to the media. Media are also instrumental in holding politicians to account and in defining the limits of what is ‘acceptable’ in a society.”[[29]](#footnote-29)

***Is Public Access a Fundamental Right?***

After Brexit, *The Guardian* states that “millions of EU citizens could find it difficult to assert their right to remain in the UK … under Home Office rules denying them access to their personal records.”[[30]](#footnote-30) The purpose is with regards to immigration so that they cannot obtain material about their cases, which is why the *Data Protection Act 2018* “contains a new exemption permitting Home Office “data controllers” to restrict access to personal data if it would be likely to prejudice ‘effective immigration control.’”[[31]](#footnote-31) The 5th AMLD is doing away with “legitimate interest” such that “competent authorities” only with be “extend[ed] access to beneficial ownership information of companies to the general public.”[[32]](#footnote-32) By this law “the Member State is required to ensure that information on beneficial owners of trusts, or similar structures, be held in a central register where the trustee resides within the Union.”[[33]](#footnote-33)

One of the purposes of “widening the scope of the Directive” was to “adop[t] changes” that not only “reflect new financing trends [but also] … increas[e] transparency regarding the identity of beneficial owners.”[[34]](#footnote-34) A beneficial owner has been defined as, “any natural person(s) who ultimately owns or controls the customer, and/or natural person(s) on whose behalf a transaction or activity is conducted.” “(4th AMLD art. 3, para 6.) [[35]](#footnote-35) A beneficial ownership requires “registers for corporate or other legal entities” and that they be made “available to any member of the general public.”[[36]](#footnote-36) In regards to access to public information, this requirement enables access to those who are deemed a “beneficial owner” if registered can be given access, only to “persons that file a written request.”[[37]](#footnote-37)

NGOs, Global Witness and Transparency International

***Terrorist Financing***

One of the ways in which terrorist are able to finance themselves is through the use of “prepaid cards.” [[38]](#footnote-38) To disable this activity in the spending ecosystem which includes the hiring of people’s to illegally finance endeavors not in accordance with a country’s financial requirements, AMLD has “lower[ed] [the standards, that is] the monetary thresholds for identifying the holders of prepaid cards to address risks linked to their use in financing terrorist activities,” [[39]](#footnote-39) to include “payments carried out with anonymous prepaid cards online, that does not exceed 50 euro and “in-store use of an anonymous pre-paid card” not in excess of 150 euro. There are now “electronic data retrieval systems [which] identify natural or legal persons holding or controlling payment accounts, bank accounts, and safe-deposit boxes.” [[40]](#footnote-40) One of the responsibilities of the FIU (“Financial Intelligence Unit”) to each member state of the EU is to be allowed “direct, immediate, and unfiltered access to that information.”[[41]](#footnote-41) With permissions as a beneficial owner under AMLD 5, EU Member State FIUs would be able to access that information regarding each individual connected to a pre-paid card to determine risks … there are many “high-risk third countries” to whichthe *European Commission* has had “strategic deficiencies in their anti-money laundering or counterterrorism regimes.” This added requirement helps the “AMLD [to] harmoniz[e] the enhanced due diligence requirements [that need to be] performed by the companies conducting business with” other high-risk countries, or in other high risk transactions, such as the solicitation, purchase, and use of pre-paid cards.

“Money laundering exploits payment system vulnerabilities that provide criminals the opportunity to disguise both themselves and the nature of their transactions. Banking fraud groups and other criminals, as they always do, have found and begun to abuse weak links in the chains of security and oversight surrounding products with a great deal of anonymity.”[[42]](#footnote-42)

***Virtual Currency***

There has been “limited regulation and oversight” by “consumer and investors” in the virtual currency world, “outside of the online gaming community.”[[43]](#footnote-43) They have found significant abuses with regards to virtual currencies and pre-paid cards, where “banking fraud groups … have begin to abuse weak links in the chains of security and oversight surrounding products with a great deal of anonyminity.”[[44]](#footnote-44) This is because “virtual currency … unlike regular money is not issued or backed by any government or central bank.”[[45]](#footnote-45) A blockchain is like a “public spreadsheet” a public ledger that keeps track of virtual currencies in private computers however online “public keys” unlike “private keys” can be seen on a blockchain. There has been a significant movement to use virtual currency in “digital wallets” this helps to allow convertible and nonconvertible “forms of virtual currency to be identified in publicly accessible blockchains.[[46]](#footnote-46) With a convertible virtual currency there is a “centralized … administrating authority” whereas “by default, all nonconvertible virtual currency is centralized.”[[47]](#footnote-47)

*The Use of Bitcoin*

However vast no network is completely anonymous, not even bitcoins, which are like a virtual currency where you cen “see every transaction, but not where the transaction came from or where it is going unless someone acknowledges their ownership.” A bitcoin is a convertible and decentralized meaning, it has “no central administrating authority and no central monitoring or oversight.”[[48]](#footnote-48) [How have new AMLD5 laws affected bitcoin and in the UK/EU?]

There are several “key players” to a Bitcoin transaction” exchangers, administrators, and miners, who engage in the “business of exchanging virtual currency (exchangers); engage in the business of issuing centralized virtual currency, establishing rules or its use, and maintain[s] a central payment ledge” (administrators); and those who participat[e] in a decentralized virtual currency network by running … software …and algorithms in a distributed proof-of-work or other distributed proof system used to validate transactions in the virtual currency system (miners).[[49]](#footnote-49) [Who monitors the players to a transaction what systems in place? – depending on centralized banking systems used or not and whether access to public keys is granted by AMLD5, does the EU need permissions to access public keys in the UK or is what is public accessible to all, and how is this similar the same or different than “public information” does public information relate to everything including “public keys?”]

This brings up an important topic: anonymous use of virtual currency. When “one can get money into virtual currency systems … anonymously’ (1) an owner is not identified (2) their numbers and addresses are not identified, and (3) the countries theyre located in are not identified.[[50]](#footnote-50) Without a digital footprint, such as an IP address (“using another individual’s account”) “makes their activities difficult to trace” … including any access to a [required] “public ledger, or blockchain … maintained by vast identified private computer networks … [this] makes it possible that pariticpants… [not only abuse the power) of accessing a network [does centralized or decentralized matter, from a bank or card, pre-paid]: especially those networks required to a maintain a ledger … “by undoing transactions that are thought to be finalized.”[[51]](#footnote-51)

--- pre-paid cards under AMLD 5

*How does the AMLD 5 Play a Role in Virtual Currency*

One of the responses “at the European level” to virtual currencies were three measures undertaken by the “European Banking Authority (“EBA”) to “address the risks of virtual currencies.”[[52]](#footnote-52) These measures, trace the “creation/licencing of a ‘scheme governance authority’ to challenge the “integrity” of the virtual currency as well as trace “extensions (which are difficult, because anonymous) “of market abuse and AML rules to virtual currency transactions; [and to support] the enactment of specific rules of conduct for market participants.” [[53]](#footnote-53)

“Money laundering and terrorist financing purposes” are arguably the “biggest threa[t] associated [to] virtual currenc[y] (or cryptocurrency[y] use.[[54]](#footnote-54) This is important because the “means of exchange … [to] which [a currency] can be transferred, stored and traded electronically” will be changing after Brexit, and new permissions required.[[55]](#footnote-55) There are certain “virtual currency exchange platforms” which are used to trace virtual currencies, and there are certain “firms designated as obliged entities under EU Law, including credit institutions, financial institutions and certain professionals such as auditors and accountants.”[[56]](#footnote-56)

*Virtual Currency: Response by the EU (Effects on Tech)*

What are TF and VCs and P2P? --- How does decentralization play a role in the monitoring of virtual currency, how does this affect banking, or the tracing of IP addresses (footprints), monitoring and public oversight of public keys and ledgers, maintenance of. (threat to use of virtual currency popularity – bring up this subject here, and also how it is one of the biggest threats to virtual currency posed by money laundering and terrorist financing purposes).

After Brexit new AML 5 laws will require the UK to abide by EU laws. As an “EU Member State … the UK is part of a collaborative fight against money laundering and financial crime,”[[57]](#footnote-57) making it more difficult for people in Tech to work in the UK, which used to be a leader or hub, changes to laws will cause the moving of jobs to Europe, to make it more difficult for financial crimes to occur. [input citation] The EU has therefore created a “Europol Information System (EIS), [which would] enabl[e] law enforcement from different countries within the EU to exchange criminal intelligence” such as virtual currency exchanges, however even then “[with] best practices … [and] the right agreements put in place. The UK government must ensure the highest standards … and sustain the importance of implementing effective AML systems.”[[58]](#footnote-58)

Preventing the usage of “virtual currencies [from] abus[e]” … will require changes to the current anonyminity to which terrorist are able to conceal transactions, this is due to the “lack of an EU-level reporting mechanism for identifying suspicious activity.”[[59]](#footnote-59) According to the MLD5, FIU’s “should be able to obtain information” that would allow them to identify the owner and “associate [the] virtual currency address” to that virtual currency.[[60]](#footnote-60)

*UBO’s and High Risk Third Countries*

Another system put in place are UBOs (Ultimate Beneficiary Owners) … which helps to “collaborat[e] data, [which] reduces the number of shell companies in an attempt to prevent illicit behavior by making businesses more transparent.”[[61]](#footnote-61) This would make it difficult for “criminals to continue to benefit from their crimes.”[[62]](#footnote-62) (see above “Terrorist Financing)

There are many high-risk third countries, which are prohibited from joining the EU under this new directive AML 5, and the scope of “identifying” high risk countries has since been broadened.[[63]](#footnote-63) Whereby many risks “stemming from … shell companies and opaque structures … [are] used by criminals and terrorists to hide the real beneficiaries of a transaction, including for tax evasion purposes.” A *shell company* is an “inactive company [that] use[s] as a vehicle for various financial maneuvers or kept dormant for future use in some other capacity.”[[64]](#footnote-64) Under the AMLD 5 *high-risk third countries* are identified by:

“(1) criminalization of money laundering and terrorist financing (2) customer due diligence and recordkeeping requirements (3) reporting of suspicious transactions (4) the powers and procedures of competent authorities (5) the practice in international cooperation; and (6) the existence of dissuasive, proportionate and effective sanctions.”[[65]](#footnote-65)

*Compliance Week,* argues that: “One of the reasons they are so difficult for anti-compliance practitioners to manage is that they are not uncovered by the traditional due diligence used in compliance programs.”[[66]](#footnote-66) The purposes for “due diligence used in compliance programs … is to uncover red flags such as negative media reports, lawsuits, and hits on sanctions lists … negative indicia … [which] turn[s] up in … due diligence investigation[s].” [[67]](#footnote-67)

*Forbes.com* argues that, one of the issues is “continue[d] access to … shared intelligence database[s]” … in order “to collectively be prepared” it has become clear that a “no-deal Brexit [is] on the horizon” this is because with new laws put into place … on their own, the UK will have to be “vigilant and prepared with efficient monitoring systems” if not by application to EU Member State systems of support, on their own “spot and prevent suspicious activity.”[[68]](#footnote-68)

*Due Diligence*

The *European Commission* and *FATF* differ in terms of their methodology for “developing its list” where there is a “careful review of the legal framework, extensive fact-gathering, and onsite visits” with interactive dialogues.[[69]](#footnote-69)

1. Compliance (and Due Diligence)

Wherever there are “high-risk third countries on the list” …. There are a “series of checks and balances that financial institutions must use where there’s a high risk of money laundering or terrorist financing. [[70]](#footnote-70) These checks and balances including a finding of:

“(1) additional information on the customer and on the beneficial owners, (2) additional information on the intended nature of the business relationship, (3) information on the source of funds and source of wealth of the customer and of the beneficial owners, (4) obtaining information on the reasons for the intended or performed transactions, (5) the approval of senior management for establishing or continuing the business relationships, and (6) conducting enhanced monitoring or the business relationship by increasing the number and timing of controls applied and selecting patterns of transactions that need further examination.”[[71]](#footnote-71)

Whenever “tackling money laundering” not only is an “enhanced level of scrutiny required for all business relationships … essential to identify and mitigate any potential risks” but also … “essential to have increased transparency to deter and identif[y] illegal activity.”[[72]](#footnote-72)

***Banking in the US and Tech***

Banks work on a check- based system, where manual review is used to monitor “high-risk transactions and accounts” many of these systems have proven to be inefficient, which is why the US Banking system has “expanded the ranks of its compliance team.”[[73]](#footnote-73) As “regulators …. continu[e] [to] revise [their] rules … focus expand[ing] from organized crime to terrorism” is being used to “targe[t] individual countries and even specific entities as part of their foreign policies.”[[74]](#footnote-74)

***Banking in the UK and Tech***

Whereas in the UK “member states” are required to follow EU laws following their exit from the EU. Why upon leaving the EU, does UK still have to abide by EU laws? The “proposals were issued in response to the evolving and growing threat of terrorism … due to the “significant gaps in the transparency of financial transactions … revealed.”[[75]](#footnote-75) In addition, the Secretary of State will have to pass “UK anti-money laundering and terrorist financing regulations” according to AML 5 as well as SAMLA 2018, *The Anti-Money Laundering Act 2018.[[76]](#footnote-76)*

1. *The Anti-Money Laundering Act 2018 (SAMLA 2018)*

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***Brexit, FIUs, and Request to Obtain Information***

One of the biggest changes occurring after Brexit and the AML 5, are the “new powers for financial intelligence units … [and the affect that has had on their] power to request obtain and use information from any obliged entity based on their own analysis and intelligence which used to be “triggered [only] by a prior suspicious activity report.”[[77]](#footnote-77)

All participating countries have been affected by the passage of AML 5, to which they are required to be complaint to, and based on whether or not they are considered a high-risk third country, different rules may apply. Similarly the passage of new laws in other countries, who are AML 5 complaint, requires “member states to establish centralized registers or data retrieval systems to enable financial intelligence units and national competent authorities to access information about the identities of holders of bank and payment accounts and safe-deposit boxes.”[[78]](#footnote-78)

***Beneficial Ownership***

*Denmark* was one of the first counties to implement a published register of company shareholders, under the required under *Article 30*, which requires the reporting of beneficial ownership made available to “competent authorities (e.g. financial intelligence units).”[[79]](#footnote-79) Company online databases are primarily responsible for the recording of PSCs (People of Significant Control) who meet the criteria, either directly or indirectly holding more than 25% of the shares to a company.[[80]](#footnote-80)

*Article 31*, under the AML 5 directive “requires trustees to ‘obtain and hold adequate, accurate and up-to-date information on beneficial ownership regarding the trust.’[[81]](#footnote-81) Whereby “the protector (if any), beneficiaries or class of beneficiaries, and any other person exercising control over the trust”[[82]](#footnote-82) is required to include such information “on a central register of trusts.”[[83]](#footnote-83) The “HMRC [is one of the “competent authorities”] who are responsible for maintaining a register, however “the UK has no plans to make this information available to the public.”[[84]](#footnote-84)

Theres a difference between “companies and trusts” argues *UK Prime Minister David Cameron*, he highlighted the necessity for a solution to “addres[s] the potential misuse of companies, such as central public registries” arguing that it is not appropriate.[[85]](#footnote-85) Trusts on the other hand, require different treatment, where the :implications for privacy are far greater” argues *Lord Newby …* where there has to be more than a mandatory registration requirement, claiming it to be “disproportionate [in its] approach … [and] undermines the common-law basis of trusts in the UK.”[[86]](#footnote-86) This is a very “complex task” especially when “confronted with data protection and privacy requirements.”[[87]](#footnote-87) In fact one citizen in France argues that “the publication of her personal data infringed on the right to a private life.”[[88]](#footnote-88)

***AML Compliance in the US***

FATF stands for The Financial Action Task Force, an “intergovernmental organization” who serve as “gatekeepers … who are in a position to facilitate or inhibit money laundering and terrorism financing.” [[89]](#footnote-89) FATF assists with the monitoring of “soft-law developments,” to encourage “U.S. legal professionals to follow” in response to new regulations, applicable to English speaking countries, where FATF exists, “endorsed by more than 180 jurisdictions, the World Bank and the International Monetary Fund.” (Does FATF exist in non English speaking countiries?) FATF’s current objective are:

“1) revising and clarifying the global standards for combating money laundering and terrorism financing; 2) promoting global implementation of its standards; 3) identifying and responding to new money laundering and terrorist financing threats; and 4) engaging with stakeholders and partners throughout the world.” [[90]](#footnote-90)

According to *FATF* “the greatest risks should receive the most attention.”[[91]](#footnote-91) Their guides use a “risk-based approach” which is “founded on the premise that there are finite resources available to combat money laundering and terrorism financing … [to] be used in the most efficient manner possible.”[[92]](#footnote-92)

*The 2008 Lawyer Guidance*, identifies three different kinds of risk factors: client risk, and service risk.[[93]](#footnote-93) STR is a recommendation, not required, but up for later discussion, upon agreement by FATF and legal professionals, not designated as “truly [a] part of a risk-assessment process.”[[94]](#footnote-94) STR stands for “suspicious transaction reporting” which is a “risk-based approach for the financial sector and those other sectors include[ing] a number of provisions.”[[95]](#footnote-95) AML is not limited to legal professionals alone, who may be “subject to universal criminal liability, when acting as a notary public or as a financial or corporate broker, [as well as] disciplinary rules designed specifically for legal professionals and administered by regulatory bodies.”[[96]](#footnote-96)

***AML Compliance in the UK versus the US***

The AML/CFT “legislation implemented [in] the EU’s money laundering directives … were based in large part of the FATF recommendations.”[[97]](#footnote-97) Risk assessment by the U.S. and U.K. are very similar in their “risk assessments … [which have] provid[ed] a stronger understanding of how two leading economies …. Better identify, analyze, and mitigate the challenges that they face.”[[98]](#footnote-98) They both use the “risk-based approach under” FATF, there are both “similarities and differences in how the two nations view various threats.”[[99]](#footnote-99) FAFT helps stakeholders identify risks as well as recognize their “obligations to combat laundering using [this] risk-based approach.”[[100]](#footnote-100) The UK takes a more empirical approach to measuring risks per industry, however when it comes to assessing “money laundering and terrorist financing risk assessments” the US separated the “two topics into separate assessments: the National Money Laundering Risk Assessment and the National Terrorist Financing Risk Assessment.”[[101]](#footnote-101)

The UK “focused on money laundering, with only the final chapter devoted to terrorist financing.”[[102]](#footnote-102) Whereas the US focused on terrorist financing, and “the many ways that terrorist obtain financing – including kidnapping … drug trafficking, and individual fundraising not affiliated with a charitable organization” which were not included in the “U.K. Report.”[[103]](#footnote-103) In addition both the US and the UK reports discussed beneficial ownership, “a beneficial owner is [an] individual who owns or controls a bank account.”[[104]](#footnote-104) The UK focused on the many threats posed by “money laundering” and that such “arrangements … [could be] made [through] companies, trusts, and partnerships with hidden owners.”[[105]](#footnote-105)

The US recently signed a *G-20 Beneficial Ownership Action Plan*, which mentions risk assessments to be undertaken by *The White House* through its “renewed commitment to advocate for comprehensive legislation to impose a beneficial owner requirement.” [[106]](#footnote-106) One political issue raised is whether “stronger requirements would undermine client confidentiality … [which] state-level officials claim collecting the information would be burdensome.”[[107]](#footnote-107)

“AML and CFT ris[k]” reports have been evaluated by both the “US and the UK.”[[108]](#footnote-108) The UK questioned “whether government regulation was necessary” and by March 2015 decided that there was a ““strong case” for introducing AML regulations.”[[109]](#footnote-109) The UK report found the current risk to be low, when it comes to “money-laundering …. [and] virtual currencies.”[[110]](#footnote-110) “The Report concluded that criminals … were not currently using virtual currencies to raise funds, pay for infrastructure or move money into and out of the country.”[[111]](#footnote-111) Those who use gigital currency also known as money transmitters are “obligate[d] … to comply with the AML and CFT regulations.”[[112]](#footnote-112) While the US is “ahead of the UK in terms of regulating digital currencies” there is still more work to be done, “according to the US money laundering report.”[[113]](#footnote-113)

*Money Laundering in the UK – Prosecuting Offences*

In the UK money laundering offences are “investigated by the National Crime Agency (NCA) and the police and Her Majesty’s Revenue and Customs (HMRC).”[[114]](#footnote-114) As a general rule, the “Crown Prosecution Services” prosecute offenses, and those “cases involving serious fraud or corruption” are investigated by the “Serious Fraud Office.” Overall the “Financial Conduct Authority (FCA)” has the power to investigate and prosecute offenses under POCA.”[[115]](#footnote-115) POCA applies whenever there is “money laundering [that] has taken/is taking place in another jurisdiction” such as outside of the UK, such criminal conduct is punishable upon “disclosure [of the] offence under POCA. POCA may also apply to “criminal conduct” if elements met, if the act is done in the UK, and wherever there is “failure to disclose knowledge or suspicion (or where there were reasonable grounds for knowing or suspecting” that too may give rise to an offence under POCA.[[116]](#footnote-116) However, a money laundering offence is not considered punishable if occurring within or outside the territory of the UK, and if the relevant conduct when it occurred was not unlawful under criminal law that applies to that country or territory, if at the time of the offence reasonable grounds were held to believe the conduct occurred outside of the UK or in another country, thus counting as an “overseas conduct defences, in relation to the disclosure offences.”[[117]](#footnote-117) Then POCA would not apply, or be used in those cases to prosecute.

Both individuals and corporations can be prosecuted for money laundering. In fact, most “offences in POCA apply to corporations as well as individuals.”[[118]](#footnote-118)

*New AML Laws in the UK 2017*

New as of 2017, are The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017) (look up on google.)[[119]](#footnote-119) The purpose of these regulations are to provide for some “written assessment of money laundering risk and prescribe … internal controls.”[[120]](#footnote-120) These new regulations not only enable written assessments but also encourage due diligence on the behalf of compliance officers, including the requirement to specify beneficial ownership that trusts provide.[[121]](#footnote-121)

“The principal AML requirements are contained in the MLR 2017 … require relevant persons to, among other things, carry out appropriate levels of risk assessment, implement adequate policies, controls and procedures, and carry out appropriate levels of customer due diligence (CDD).” [[122]](#footnote-122)

There are penalties for failure to comply with MLR 2017, which include failure to: “(1) carry out risk assessments, (2) apply policies and procedures, (3) appoint a nominated officer, (4) keep required records, (5) apply customer due diligence measures when required, (6) conduct ongoing monitoring of a business relationship; and (7) take additional measures in relation to a Politically Exposed Person (PEP).”[[123]](#footnote-123)

*New AML Laws UK 2018*

The Office for Professional Body Anti-Money Laundering Supervision (OPBAS) is working with the private sector “to tackle illicit finance whilst minimizing the burdens on legitimate business.”[[124]](#footnote-124) OPBAS is one of the newest implementations in the UK acting as a watchdog, made up of “legal professional[s] and supervisors in the UK. High standards have been set, due to the “Money Laundering Regulations of 2017.” There is a “2016 Action Plan” which will be used in the delivery of the government’s commitment to deepen partnerships with the private sector.[[125]](#footnote-125) The purpose of this organization is to “investigate and penalize,” while strengthening cooperation following the expansion of “law enforcement powers through the Criminal Finances Act” which helped to update the Money Laundering Regulations, which have helped to set international standards, “rais[ing] awareness of financial crime and how to guard against it.”[[126]](#footnote-126)

*What is AML?* [insert this topic at the beginning of the paper, when talking about new laws in the uk changed]

AML stands for Anti-Money Laundering. There are three stages: placement, layering, and integration.[[127]](#footnote-127) “Placement is the movement of cash from its source … [which] can be easily disguised or misrepresented.”[[128]](#footnote-128) This occurs by putting back into the “financial system” monies to appear clean, “sometimes through the wiring or transferring [of money] through numerous accounts.”[[129]](#footnote-129) The Bank Secrecy Act (BSA) was created in 1970 and is administered by the Financial Crimes Enforcement Network, in the US, “provid[ing] law enforcement and regulatory agencies with the most effective tools to combat money laundering.”[[130]](#footnote-130) The BSA has since been “enhanced and amended.”[[131]](#footnote-131) The Bank Secrecy Act included: (1) the establishment of requirements for recordkeeping and reporting by private individuals, banks, and other financial institutions; (2) Designed to help identify the source, volume, and movement of currency and other monetary instruments transported or transmitted into or out of the US or deposited in financial institutions; (3) and Requires banks to (a) report cash transactions over $10,000, using the Currency Transaction Report, (b) properly identify persons conducting transactions; and (c) maintain a paper trail by keeping appropriate records of financial transactions.[[132]](#footnote-132)

*AML Enforcement in the US*

It is a crime to engage in “any type of financial transaction [where there is] … knowledge that the funds were proceeds of “criminal activity.’””[[133]](#footnote-133) AML/CFT laws are specifically designed to combat the financing of terrorism. The following laws pertain to anti-money laundering: (1) Money Laundering and Financial Strategy Act 1998, (2) USA Patriot Act 2001, (3) Suppression of the Financing of Terrorism Implementation Act 2002, and (3) Intelligence Reform and Terrorism Prevention Act 2004.[[134]](#footnote-134) Legislation, such as the Bank Secrecy Act “appl[ies] to “financial institutions,” [such as] … banks, broker-dealers, casinos, futures commissions merchants, money services business, mutual funds and other persons.”[[135]](#footnote-135) Although there are “criminal prohibitions on terrorism financing [to individuals]. Legal entities [can] be held liable for violations of the Bank Secrecy Act.[[136]](#footnote-136)

AML/CFT laws are “extraterritorial.” This effects means that’s the laws apply to activities conducted “in, with, or involving the United States.”[[137]](#footnote-137) International agreements, or “multilateral agreements” that “include AML/CFT provisions …. Facilitate [both the] exchang[e] of banking and other financial records [as well as] in money laundering cases involving other countries.”[[138]](#footnote-138)

The Financial Crimes Enforcement Network (FinCEN) “issu[es] and enforce[es] regulations with respect to AML/CFT laws … facilitate[ing] [the processing of] information sharing among law enforcement agencies and the federal financial regulatory authorities.”[[139]](#footnote-139) With regards to compliance, FinCEN 314 list, 314(a), “enables law enforcement to solicit information from financial institutions related to such investigations.”[[140]](#footnote-140) There are three elements to making a FinCEN list, executed by Federal, state, local, and foreign law enforcement: (1) the sending of requests for information regarding subjects suspected of terrorism or money laundering, (2) the review of requests every two weeks, sent via a secure internet website to financial institutions across the country, and (3) the prompt search by financial institutions of their entire customer database for any accounts maintained within the last 12 months and any transactions conducted within the last 6 months by named subjects on the list.[[141]](#footnote-141) The primary purpose of maintaining a FinCEN list is to “enhance law enforcement’s ability to identify FinCEN sanctioned countries and fight terrorism and money laundering.”[[142]](#footnote-142)

*The Bank Secrecy Act*

FinCEN is a “bureau within the Treasury Department” responsible for “implement[ing], administer[ing], and enforce[ing] compliance with authorities by what is “known as the Bank Secrecy Act [“BSA”].”[[143]](#footnote-143) The BSA provides the “legislative framework” for preventing money laundering, and is also known as “The Currency and Foreign Transactions Reporting Act of 1970,” and “sometimes referred to as an “anti-money laundering” law (“AML”) or jointly as “BSA/AML.”” [[144]](#footnote-144)

In order to enforce violations, The Bank Secrecy Act relies upon a “BSA E-Filing System in order to submit Suspicious Activity Reports.”[[145]](#footnote-145) The Bank Secrecy Act governs the activities of financial institutions, who are “required to assist U.S. government agencies in detecting and preventing money laundering.”[[146]](#footnote-146) Under this act, financial institutions are required to: (1) “keep records of cash purchases of negotiable instruments,” (2) file reports of cash transactions exceeding $10,000,” and (3) “report suspicious activity that might signal criminal activity.”[[147]](#footnote-147) The BSA also includes a “provisio[s] of the USA Patriot Act, which requires every bank to adopt a customer identification program.”[[148]](#footnote-148) Financial institutions include: “national banks, federal savings associations, federal branches, and agencies of foreign banks.”[[149]](#footnote-149)

Under the Bank Secrecy Act (BSA), banks are required to:

* “Establish effective BSA compliance programs
* Establish effective customer due diligence systems and monitoring programs
* Screen against Office of Foreign Assets Control (OFAC) and other government lists
* Establish an effective suspicious activity monitoring and reporting process
* Develop risk-based anti-money laundering programs”[[150]](#footnote-150)

1. *The OCC*

The OCC “conducts regular examinations of” these financial institutions “to determine compliance with the BSA” in the US.[[151]](#footnote-151) There are alert systems, advisories, and rulemakings provided by the US Department of Treasury, who along with the OCC determine “who may be engaged in fraudulent activities” as well as find those “deemed to be of high-risk for money laundering or terrorist financing activities.”[[152]](#footnote-152) There are BSA/AML risk management programs, which are supported by US law enforcement who “provid[e] banks with access to resources and tools” to help them with the “fil[ing] [of] money laundering and terrorist financing investigations.”[[153]](#footnote-153) They are responsible for “provid[ing] the requisite notices to law enforcement to deter and detect money laundering, terrorist financing and other criminal acts and the misuse of our nation’s financial institutions.”[[154]](#footnote-154)

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