

AML Compliance in the UK and the US

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ABSTRACT

Money laundering impacts the UK not only on an economic level but also raises a “moral obligation.”¹ Even after the UK leaves the EU, it will still be required to adhere to the principles of law established by the various inter-governmental regimes responsible for detecting and stopping illicit and criminal activity.² FATF is The Financial Action Task Force responsible for setting standards and promoting effective implementation of “legal, regulatory and operational measures” for combatting money laundering, terrorist financing, financing the proliferation of weapons of mass destruction, and other related threats to the integrity of the international financial system.”³ Another example of a supervisory authority is the Law Society, which has “delegated all regulatory functions to the Solicitors Regulation Authority ... act[ing] independently ... responsible for monitoring and enforcing solicitors compliance with their AML obligations.”⁴ The basis for anti-money laundering legislation in the UK has mostly “been formed from EU directives and recommendations from the Government.”⁵ Meanwhile, in the US, The USA Patriot Act of 2001 amends the Bank Secrecy Act (BSA) that requires “all financial institutions to establish Anti-Money Laundering (AML) programs.”⁶

¹ Vishal Marria, *The Future of Money Laundering After Brexit*, (February 14, 2019), <https://www.forbes.com/sites/vishalmarria/2019/02/14/the-future-of-money-laundering-after-brexit/#20722d88fb19>.

² Vishal Marria, *The Future of Money Laundering After Brexit*, (February 14, 2019), <https://www.forbes.com/sites/vishalmarria/2019/02/14/the-future-of-money-laundering-after-brexit/#20722d88fb19>.

³ *What is behind our AML legislation?*, Gambling Commission, <https://www.gamblingcommission.gov.uk/for-gambling-businesses/Compliance/General-compliance/AML/Approach-to-AML/What-is-behind-our-AML-legislation.aspx>.

⁴ *Anti-money laundering*, The Law Society, <https://www.lawsociety.org.uk/support-services/risk-compliance/anti-money-laundering/>.

⁵ *What is behind our AML legislation?*, Gambling Commission, <https://www.gamblingcommission.gov.uk/for-gambling-businesses/Compliance/General-compliance/AML/Approach-to-AML/What-is-behind-our-AML-legislation.aspx>.

⁶ *Anti Money Laundering (AML) in the United States of America*, Banker’s Academy, <http://bankersacademy.com/resources/free-tutorials/57-ba-free-tutorials/606-aml-usa-sp-74>.

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INTRODUCTION

According to the National Crime Agency's National Strategic Assessment 2017, money laundering alone costs the UK an "estimated £24 Billion" a year,⁷ whereby the illegal proceeds from serious and organised crime, drugs, cybercrime, and people trafficking are "laundered through UK banks and other regulated businesses, ... includ[ing] money from international criminal activity or corruption."⁸ Taking its toll on society, and requiring new professional standards as a growing "social basis for fighting against money laundering" continues.⁹ Banks and Financial Institutions in the UK, are being pressured to look beyond a purely "regulatory perspective" alone, while taking extreme measure to "enhance their procedures and due diligence."¹⁰ Such as engaging in the "Flag It Up Campaign, which focuses on the social impact of money laundering ... [and requires the filing of] suspicious activity reports."¹¹

In the UK the anti-money laundering regime is composed of the following organizations and required to follow the following laws and rules set out in the "Proceeds of Crime Act 2002 (POCA), the Money Laundering, Terrorist Financing and Transfer of Funds (Information of the Payer) Regulations 2017 (MLR 2017) and the Terrorism Act 2000 (TA 2000) and the Terrorism Act 2006 (TA 2006)."¹² Other Organizations that are involved in Anti-Money Laundering are the IFA, the NRA "UK National Risk Assessment of Money Laundering and Terrorist Financing,"

⁷ UK Law and Guidance, Institute of Financial Accountants, <https://www.ifa.org.uk/technical-resources/aml/uk-law-and-guidance>.

⁸ Laura Oliver, The knock-on impact of money laundering to wider society, The Spectator (March 21, 2018), <https://blogs.spectator.co.uk/2018/03/the-knock-on-impact-of-money-laundering-to-wider-society/>.

⁹ Laura Oliver, The knock-on impact of money laundering to wider society, The Spectator (March 21, 2018), <https://blogs.spectator.co.uk/2018/03/the-knock-on-impact-of-money-laundering-to-wider-society/>.

¹⁰ Laura Oliver, The knock-on impact of money laundering to wider society, The Spectator (March 21, 2018), <https://blogs.spectator.co.uk/2018/03/the-knock-on-impact-of-money-laundering-to-wider-society/>.

¹¹ Laura Oliver, The knock-on impact of money laundering to wider society, The Spectator (March 21, 2018), <https://blogs.spectator.co.uk/2018/03/the-knock-on-impact-of-money-laundering-to-wider-society/>.

¹² UK Law and Guidance, Institute of Financial Accountants, <https://www.ifa.org.uk/technical-resources/aml/uk-law-and-guidance>.

HM Treasury, Home Office and the National Crime Agency (e.g. Flag It Up Campaign). The newest “regulator set up by the government to strengthen the UK’s anti-money laundering (AML) supervisory regime and ensure the professional body AML supervisors provide consistently high standards of AML supervision” is The Office for Professional Body Anti-Money Laundering Supervision (OPBAS).¹³

AML has three stages: placement, layering, and integration,¹⁴ and 5 pillars. The purpose of anti-money laundering laws, regulations, and procedures are to “prevent criminals from disguising illegally obtained funds as legitimate income.”¹⁵ One of the major differences between AML in the US and the UK, is that in the US there is BSA, US Patriot Act, and OPBAS, whereas in the UK there are CIP Requirements for Beneficial Interest, an Action Plan, and EU Directives, and after Brexit, this may also have an effect on AML Compliance.

Both the US and the UK “anti-money laundering laws and regulations compare favorably in that both regimes stipulate extensive regulatory requirements for banking institutions to implement and maintain anti-money laundering procedures.”¹⁶ Both have implemented procedures such as: (1) customer due diligence programmes (2) designation of a compliance officer (3) ongoing training programmes (4) audit procedures to test for effectiveness and (4) suspicious activity reporting requirements.¹⁷ Recently, FATF “an intergovernmental body that

¹³ Office for Professional Body Anti-Money Laundering Supervision (OPBAS), Financial Conduct Authority (March 14, 2019), <https://www.fca.org.uk/opbas>.

¹⁴ Money Laundering in the EU, <https://people.exeter.ac.uk/watupman/undergrad/ron/methods%20and%20stages.htm>.

¹⁵ Will Kenton, Anti Money Laundering (AML), Investopedia (September 10, 2019), <https://www.investopedia.com/terms/a/aml.asp>.

¹⁶ Sidley Austin LLP, US and UK Anti-money Laundering Requirements Compared, International Law Office (September 5, 2008), <https://www.internationallawoffice.com/Newsletters/Banking/USA/Sidley-Austin-LLP/US-and-UK-Anti-money-Laundering-Requirements-Compared>.

¹⁷ Sidley Austin LLP, US and UK Anti-money Laundering Requirements Compared, International Law Office (September 5, 2008), <https://www.internationallawoffice.com/Newsletters/Banking/USA/Sidley-Austin-LLP/US-and-UK-Anti-money-Laundering-Requirements-Compared>.

develops policies to combat financial crime” stated that the UK is doing an insufficient job at “investigat[ing] high-end money laundering.”¹⁸ While each country has its own unique system for detecting and combatting money laundering the US seems to be doing a better job than the UK. Similarly OPBAS found that “despite EU requirements, ... 80 percent failed to have the proper governance arrangements [required] to combat [money laundering],” it seems as though most members are not sufficiently being trained, and such lack of preparation, is making it difficult to keep up, there simply “isn’t enough regulation going on.”¹⁹ And with *Brexit* ongoing, “it is possible that regulators will continue to prefer lax regulation implementation if it encourages investment and combats economic damage caused by instability.”²⁰

LITERATURE REVIEW

The two main approaches to tackling Anti-Money Laundering are enforcement and prevention.²¹ In the UK “the cornerstone of the enforcement approach is provided by the 2002 *Proceeds of Crime Act*, in which virtually “any interaction with the proceeds of crime” is criminalised. The Act created offences of concealing (section 327), arranging (section 328) and acquisition (section 329) of proceeds of crime and sets out provisions for the confiscation of assets acquired through criminal activity.”²² When it comes to prevention, two approaches have

¹⁸ Where the UK Fails on Anti-Money Laundering, PYMNTS (March 15, 2019), <https://www.pymnts.com/aml/2019/corruption-watch-uk-high-end-money-laundering/>.

¹⁹ Where the UK Fails on Anti-Money Laundering, PYMNTS (March 15, 2019), <https://www.pymnts.com/aml/2019/corruption-watch-uk-high-end-money-laundering/>.

²⁰ Where the UK Fails on Anti-Money Laundering, PYMNTS (March 15, 2019), <https://www.pymnts.com/aml/2019/corruption-watch-uk-high-end-money-laundering/>.

²¹ Matt Hopkins & Nikki Shelton, Identifying Money Laundering Risk in the United Kingdom: Observations from National Risk Assessments and a Proposed Alternative Methodology, Eur J Crim Policy Res 25, 63–82 (2019), (June 20, 2018), <https://link.springer.com/article/10.1007%2Fs10610-018-9390-5>.

²² Matt Hopkins & Nikki Shelton, Identifying Money Laundering Risk in the United Kingdom: Observations from National Risk Assessments and a Proposed Alternative Methodology, Eur J Crim Policy Res 25, 63–82 (2019), (June 20, 2018), <https://link.springer.com/article/10.1007%2Fs10610-018-9390-5>.

been taken a “rule-based and a risk-based” approach.²³ Its important to note that: “Across most countries in the world, financial entities and designated nonfinancial businesses and professions (DNFBPs) are required to follow certain rules in relation to the prevention of ML.”²⁴ A rule-based system, focuses on corporate social responsibility as well relies heavily on “suspicious activity reporting,” (SARs).²⁵ It involves the “standardisation of rules and regulations ... which is hard to measure.”²⁶ In a risk-based approach, “there is a requirement that appropriate steps are taken to identify and assess risk (whether these be customers, products or services).”²⁷ This involves organizations such as the Financial Action Task Force (FATF), which requires members to be aware of the risks, as well reiterated in the EU’s 4th Money Laundering Directive, who defines a risk-based approach as one that is able to “identify, understand and mitigate the risks of money laundering.”²⁸

In general a qualitative approach has been taken when measure the risks associated with Anti-Money Laundering “The first UK NRA (see HM Treasury 2015) sets out an approach based around understanding the threats, vulnerabilities and consequences of ML.”²⁹ The legal

²³ Matt Hopkins & Nikki Shelton, Identifying Money Laundering Risk in the United Kingdom: Observations from National Risk Assessments and a Proposed Alternative Methodology, Eur J Crim Policy Res 25, 63–82 (2019), (June 20, 2018), <https://link.springer.com/article/10.1007%2Fs10610-018-9390-5>.

²⁴ Matt Hopkins & Nikki Shelton, Identifying Money Laundering Risk in the United Kingdom: Observations from National Risk Assessments and a Proposed Alternative Methodology, Eur J Crim Policy Res 25, 63–82 (2019), (June 20, 2018), <https://link.springer.com/article/10.1007%2Fs10610-018-9390-5>.

²⁵ Matt Hopkins & Nikki Shelton, Identifying Money Laundering Risk in the United Kingdom: Observations from National Risk Assessments and a Proposed Alternative Methodology, Eur J Crim Policy Res 25, 63–82 (2019), (June 20, 2018), <https://link.springer.com/article/10.1007%2Fs10610-018-9390-5>.

²⁶ Matt Hopkins & Nikki Shelton, Identifying Money Laundering Risk in the United Kingdom: Observations from National Risk Assessments and a Proposed Alternative Methodology, Eur J Crim Policy Res 25, 63–82 (2019), (June 20, 2018), <https://link.springer.com/article/10.1007%2Fs10610-018-9390-5>.

²⁷ Matt Hopkins & Nikki Shelton, Identifying Money Laundering Risk in the United Kingdom: Observations from National Risk Assessments and a Proposed Alternative Methodology, Eur J Crim Policy Res 25, 63–82 (2019), (June 20, 2018), <https://link.springer.com/article/10.1007%2Fs10610-018-9390-5>.

²⁸ Matt Hopkins & Nikki Shelton, Identifying Money Laundering Risk in the United Kingdom: Observations from National Risk Assessments and a Proposed Alternative Methodology, Eur J Crim Policy Res 25, 63–82 (2019), (June 20, 2018), <https://link.springer.com/article/10.1007%2Fs10610-018-9390-5>.

²⁹ Matt Hopkins & Nikki Shelton, Identifying Money Laundering Risk in the United Kingdom: Observations from National Risk Assessments and a Proposed Alternative Methodology, Eur J Crim Policy Res 25, 63–82 (2019), (June 20, 2018), <https://link.springer.com/article/10.1007%2Fs10610-018-9390-5>.

landscape when it comes to Anti-Money Laundering is constantly changing, since 2018 “changes introduced under the Fourth Money Laundering Directive implemented in the UK via the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017” to the 5th Money Laundering Directive adopted June 19, 2018.³⁰ The five key issues, addressed in the revised directive are as follows: (1) safeguards for financial flows from high-risk third countries, (2) enhancing powers of the EU FIUs and facilitating cooperation, (3) ensuring centralized national bank and payment account registers or central data retrieval systems in all Member States, (4) tackling terrorist financing risks linked to virtual currencies, and (5) tackling risks linked to anonymous pre-paid instruments (e.g. pre-paid cards).³¹ The new EU deadline to transpose the provisions into national law was January 10, 2020.³²

While *Brexit* was in the works, even if UK withdrew from the EU, “or any transition period, the government ... stated that the UK intend[ed] to implement the provisions of the 5MLD.”³³ The UK chose not to opt-in to the 6MLD (regardless of Brexit) “[to] not be bound by its provisions,” however even if they chose to be bound they would have “met many of the requirements.”³⁴ Meanwhile, the deadline for EU Member States to transpose provisions to national law is December 3, 2020.³⁵ “This Directive focuses on introducing a unified list of 22

³⁰ “2018: A year in review” Anti-money laundering, Tackling illicit finance, Kingsley Napley (January 2019), <https://www.kingsleynapley.co.uk/resources/download/363/2018-a-year-in-review-anti-money-laundering.pdf>.

³¹ “2018: A year in review” Anti-money laundering, Tackling illicit finance, Kingsley Napley (January 2019), <https://www.kingsleynapley.co.uk/resources/download/363/2018-a-year-in-review-anti-money-laundering.pdf>.

³² “2018: A year in review” Anti-money laundering, Tackling illicit finance, Kingsley Napley (January 2019), <https://www.kingsleynapley.co.uk/resources/download/363/2018-a-year-in-review-anti-money-laundering.pdf>.

³³ “2018: A year in review” Anti-money laundering, Tackling illicit finance, Kingsley Napley (January 2019), <https://www.kingsleynapley.co.uk/resources/download/363/2018-a-year-in-review-anti-money-laundering.pdf>.

³⁴ “2018: A year in review” Anti-money laundering, Tackling illicit finance, Kingsley Napley (January 2019), <https://www.kingsleynapley.co.uk/resources/download/363/2018-a-year-in-review-anti-money-laundering.pdf>.

³⁵ “2018: A year in review” Anti-money laundering, Tackling illicit finance, Kingsley Napley (January 2019), <https://www.kingsleynapley.co.uk/resources/download/363/2018-a-year-in-review-anti-money-laundering.pdf>.

specific predicate offences for money laundering activity which all EU Member States must criminalise in national legislation (if they have not already done so).”³⁶

METHODOLOGY

Anti-Money Laundering Laws are not unique to the UK, and exist in the US and in other countries, as well as in the EU. This study seeks to draw a comparison, between the systems put in place in the UK, and the ones whether similar or different put in place in other countries, are more or less effective in combatting in money laundering and crime. This dissertation takes a qualitative approach to analyzing the data compiled, by the various organizations responsible for monitoring crime, and responding to it, and what is being done to systematically deal with the problems arising due to criminal activity associated with money laundering. In recent years advances in technologically have changed the landscape, when it comes to detecting crime, making it easier, and sometimes harder, this paper discusses those issues. Moreover, advances to the laws have been put in place and implemented, and this paper will discuss whether the laws prescribed implemented made a positive difference to the rate of crime in those countries. Overtime many things have changed, and while AML has become “more effective in dealing with the problem ... its complexity increases,”³⁷ with financial institutions are the “forefront of the fight against money-laundering.” This paper examines, the responsibility that financial institutions have to monitor and respond to crime, and the number of complex organizations who’s laws recommend these processes, explaining who put these laws into place, and what

³⁶ “2018: A year in review” Anti-money laundering. Tackling illicit finance, Kingsley Napley (January 2019), <https://www.kingsleynapley.co.uk/resources/download/363/2018-a-year-in-review-anti-money-laundering.pdf>.

³⁷ Dionysios S. Demetis, A Systems Theoretical approach for Anti-Money Laundering informed by a Case Study in a Greek Financial Institution: Self-reference, AML, its systemic constitution and technological consequences, The London School of Economics and Political Science (2014), <http://etheses.lse.ac.uk/2571/1/U615520.pdf>.

organizations are responsible for calculating the risks associated with money-laundering, the rates of crime, and who dictates what laws are to be followed in order to adequately respond to this growing trend in crime rate in the UK and beyond. Furthermore, we will also be examining the effects that *Brexit* on the UK, in terms of the laws that they currently follow, should follow, and whether leaving the EU will have had any impact on their ability to combat money laundering.

DISCUSSION

AML Compliance in the UK and the US

FATF (Financial Action Task Force) “is an independent inter-governmental body” that is responsible for governing AML (“Anti Money Laundering”) compliance standards.³⁸ 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.”³⁹ 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.⁴⁰ 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

³⁸ Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations, Financial Action Task Force (FATF) Reference Document, (February 27, 2004), <http://www.fatf-gafi.org/media/fatf/documents/reports/methodology.pdf>.

³⁹ Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations, Financial Action Task Force (FATF) Reference Document, (February 27, 2004), <http://www.fatf-gafi.org/media/fatf/documents/reports/methodology.pdf>.

⁴⁰ Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations, Financial Action Task Force (FATF) Reference Document, (February 27, 2004), <http://www.fatf-gafi.org/media/fatf/documents/reports/methodology.pdf>.

financial institutions (4) “institutional or administrative framework” that includes “duties, powers and sanctions.”⁴¹ 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.⁴² The assessors measure “positive, neutral, or negative influence[s] on the overall rating for each recommendation” to determine its fitness.⁴³ 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.”⁴⁴

According to *Global Compliance News*⁴⁵, 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.”⁴⁶ 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

⁴¹ Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations, Financial Action Task Force (FATF) Reference Document, (February 27, 2004), <http://www.fatf-gafi.org/media/fatf/documents/reports/methodology.pdf>.

⁴² Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations, Financial Action Task Force (FATF) Reference Document, (February 27, 2004), <http://www.fatf-gafi.org/media/fatf/documents/reports/methodology.pdf>.

⁴³ Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations, Financial Action Task Force (FATF) Reference Document, (February 27, 2004), <http://www.fatf-gafi.org/media/fatf/documents/reports/methodology.pdf>.

⁴⁴ Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations, Financial Action Task Force (FATF) Reference Document, (February 27, 2004), <http://www.fatf-gafi.org/media/fatf/documents/reports/methodology.pdf>.

⁴⁵ Juergen Kraiss, EU:5th EU Anti-Money Laundering Directive published, *Global Compliance News*, (July 16, 2018), <https://globalcompliancenews.com/eu-5th-anti-money-laundering-directive-published-20180716/>.

⁴⁶ Juergen Kraiss, EU:5th EU Anti-Money Laundering Directive published, *Global Compliance News*, (July 16, 2018), <https://globalcompliancenews.com/eu-5th-anti-money-laundering-directive-published-20180716/>.

or similar legal arrangement which holds or controls any corporate or other legal entity.”⁴⁷ 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.”⁴⁸

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.”⁴⁹ This would require “firms ... to undertake an extensive compliance review and implement a programme ... to ensure their compliance with legislation.”⁵⁰ 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.”⁵¹ This includes “the acquisition, use or possession of criminal property, under section 329 of the *Proceeds of Crime Act 2002* (acquisition, use and possession).”⁵² Furthermore, a “money

⁴⁷ Juergen Kraiss, [EU:5th EU Anti-Money Laundering Directive published](https://globalcompliancenews.com/eu-5th-anti-money-laundering-directive-published-20180716/), Global Compliance News, (July 16, 2018), <https://globalcompliancenews.com/eu-5th-anti-money-laundering-directive-published-20180716/>.

⁴⁸ Juergen Kraiss, [EU:5th EU Anti-Money Laundering Directive published](https://globalcompliancenews.com/eu-5th-anti-money-laundering-directive-published-20180716/), Global Compliance News, (July 16, 2018), <https://globalcompliancenews.com/eu-5th-anti-money-laundering-directive-published-20180716/>.

⁴⁹ Irene Madongo, [UK anti-money laundering \(AML\) – Hot topics for 2018](https://www.riskscreen.com/kyc360/article/uk-anti-money-laundering-aml-hot-topics-2018/), KYC360, (January 18, 2018), <https://www.riskscreen.com/kyc360/article/uk-anti-money-laundering-aml-hot-topics-2018/>

⁵⁰ Irene Madongo, [UK anti-money laundering \(AML\) – Hot topics for 2018](https://www.riskscreen.com/kyc360/article/uk-anti-money-laundering-aml-hot-topics-2018/), KYC360, (January 18, 2018), <https://www.riskscreen.com/kyc360/article/uk-anti-money-laundering-aml-hot-topics-2018/>

⁵¹ [Failure to prevent money laundering: Sanctions and Anti-Money Laundering Bill \[Lords\] – in a Public Bill Committee](https://www.theyworkforyou.com/psc/2017-19/Sanctions%20and%20Anti-Money%20Laundering%20Bill/06-0%202018-03-06c.154.4), TheyWorkForYou, (March 6, 2018), [https://www.theyworkforyou.com/psc/2017-19/Sanctions and Anti-Money Laundering Bill/06-0 2018-03-06c.154.4](https://www.theyworkforyou.com/psc/2017-19/Sanctions%20and%20Anti-Money%20Laundering%20Bill/06-0%202018-03-06c.154.4).

⁵² [Failure to prevent money laundering: Sanctions and Anti-Money Laundering Bill \[Lords\] – in a Public Bill Committee](https://www.theyworkforyou.com/psc/2017-19/Sanctions%20and%20Anti-Money%20Laundering%20Bill/06-0%202018-03-06c.154.4), TheyWorkForYou, (March 6, 2018), [https://www.theyworkforyou.com/psc/2017-19/Sanctions and Anti-Money Laundering Bill/06-0 2018-03-06c.154.4](https://www.theyworkforyou.com/psc/2017-19/Sanctions%20and%20Anti-Money%20Laundering%20Bill/06-0%202018-03-06c.154.4).

laundering offence” includes, in part, the “concealing, disguising, converting, transferring or removing criminal property under section 327 of the *Proceeds of Crime Act 2002*.”⁵³

The AMLD 5 (“*EU Fifth Anti-Money Laundering Directive*”)⁵⁴ 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.”⁵⁵ In 2020, there will be “changes to anti-money laundering rules ... under the 5MLD” that will require “UK entities ... to carry out client due diligence (CDD) [and have] significant control [over] (PSC) register and trust registration services (TRS).”⁵⁶ Under the PSC regime, a TRS must be registered. What is a TRS? A TRS is a “private register held by HMRC which records beneficial ownership information about certain types of trust.”⁵⁷

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.”⁵⁸ How can this be done? New customers will be “subject to the PSC regime or to registration on the TRS” collecting proof of the customer’s registration ... as part of its CDD measures.”⁵⁹

Combatting terrorism and money laundering via the unveiling of thousands of secretive trusts was due in part in “response to the *Panama Papers*, in which a global consortium of journalists

⁵³ Failure to prevent money laundering: Sanctions and Anti-Money Laundering Bill [Lords] – in a Public Bill Committee, TheyWorkForYou, (March 6, 2018), [https://www.theyworkforyou.com/psc/2017-19/Sanctions and Anti-Money Laundering Bill/06-0 2018-03-06c.154.4](https://www.theyworkforyou.com/psc/2017-19/Sanctions%20and%20Anti-Money%20Laundering%20Bill/06-0%202018-03-06c.154.4).

⁵⁴ Irene Madongo, UK anti-money laundering (AML) – Hot topics for 2018, KYC360, (January 18, 2018), <https://www.riskscreen.com/kyc360/article/uk-anti-money-laundering-aml-hot-topics-2018/>

⁵⁵ Irene Madongo, UK anti-money laundering (AML) – Hot topics for 2018, KYC360, (January 18, 2018), <https://www.riskscreen.com/kyc360/article/uk-anti-money-laundering-aml-hot-topics-2018/>

⁵⁶ People with significant control register and trust registration service to become integrated into client due diligence requirements, <https://www.lexology.com/library/detail.aspx?g=eba407bb-13e6-46bf-8b7a-4a03831d6c08>.

⁵⁷ People with significant control register and trust registration service to become integrated into client due diligence requirements, <https://www.lexology.com/library/detail.aspx?g=eba407bb-13e6-46bf-8b7a-4a03831d6c08>.

⁵⁸ Juliette Garside, UK to adopt EU laws on combating terrorism and money laundering: Letter to MP Margaret Hodge confirms decision on fifth anti-money laundering directive, *The Guardian*, (July 23, 2018), <https://www.theguardian.com/world/2018/jul/23/uk-eu-laws-terrorism-money-laundering-margaret-hodge>.

⁵⁹ People with significant control register and trust registration service to become integrated into client due diligence requirements, <https://www.lexology.com/library/detail.aspx?g=eba407bb-13e6-46bf-8b7a-4a03831d6c08>.

revealed the widespread use of trusts and opaque offshore structures to launder money generated from bribery, corruption, and tax evasion.”⁶⁰ 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,”⁶¹ 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”].”⁶²

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.”⁶³ 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.”⁶⁴ This is important because in order to take preventative measures, the journalists would

⁶⁰ Juliette Garside, [UK to adopt EU laws on combating terrorism and money laundering: Letter to MP Margaret Hodge confirms decision on fifth anti-money laundering directive](https://www.theguardian.com/world/2018/jul/23/uk-eu-laws-terrorism-money-laundering-margaret-hodge), The Guardian, (July 23, 2018), <https://www.theguardian.com/world/2018/jul/23/uk-eu-laws-terrorism-money-laundering-margaret-hodge>.

⁶¹ Juliette Garside, [UK to adopt EU laws on combating terrorism and money laundering: Letter to MP Margaret Hodge confirms decision on fifth anti-money laundering directive](https://www.theguardian.com/world/2018/jul/23/uk-eu-laws-terrorism-money-laundering-margaret-hodge), The Guardian, (July 23, 2018), <https://www.theguardian.com/world/2018/jul/23/uk-eu-laws-terrorism-money-laundering-margaret-hodge>.

⁶² Juliette Garside, [UK to adopt EU laws on combating terrorism and money laundering: Letter to MP Margaret Hodge confirms decision on fifth anti-money laundering directive](https://www.theguardian.com/world/2018/jul/23/uk-eu-laws-terrorism-money-laundering-margaret-hodge), The Guardian, (July 23, 2018), <https://www.theguardian.com/world/2018/jul/23/uk-eu-laws-terrorism-money-laundering-margaret-hodge>.

⁶³ Juliette Garside, [UK to adopt EU laws on combating terrorism and money laundering: Letter to MP Margaret Hodge confirms decision on fifth anti-money laundering directive](https://www.theguardian.com/world/2018/jul/23/uk-eu-laws-terrorism-money-laundering-margaret-hodge), The Guardian, (July 23, 2018), <https://www.theguardian.com/world/2018/jul/23/uk-eu-laws-terrorism-money-laundering-margaret-hodge>.

⁶⁴ Juliette Garside, [UK to adopt EU laws on combating terrorism and money laundering: Letter to MP Margaret Hodge confirms decision on fifth anti-money laundering directive](https://www.theguardian.com/world/2018/jul/23/uk-eu-laws-terrorism-money-laundering-margaret-hodge), The Guardian, (July 23, 2018), <https://www.theguardian.com/world/2018/jul/23/uk-eu-laws-terrorism-money-laundering-margaret-hodge>.

need access, “the directive” highlights “preventative work done by non-government organisations”⁶⁵ 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”⁶⁶ 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.”⁶⁷ One of the EU’s Missions and “Responsibili[ties], are to get involved, and “to avoid [the] encourage[ment] [of] hate.”⁶⁸ 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.”⁶⁹

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

⁶⁵ Juliette Garside, UK to adopt EU laws on combating terrorism and money laundering: Letter to MP Margaret Hodge confirms decision on fifth anti-money laundering directive, *The Guardian*, (July 23, 2018), <https://www.theguardian.com/world/2018/jul/23/uk-eu-laws-terrorism-money-laundering-margaret-hodge>.

⁶⁶ Daniel Boffey, British media’s Brexit coverage sows division – EU commissioner, *The Guardian*, (September 24, 2018), <https://www.theguardian.com/media/2018/sep/24/british-media-brexit-coverage-sows-division-says-eu-commissioner.r>

⁶⁷ Daniel Boffey, British media’s Brexit coverage sows division – EU commissioner, *The Guardian*, (September 24, 2018), <https://www.theguardian.com/media/2018/sep/24/british-media-brexit-coverage-sows-division-says-eu-commissioner>.

⁶⁸ Daniel Boffey, British media’s Brexit coverage sows division – EU commissioner, *The Guardian*, (September 24, 2018), <https://www.theguardian.com/media/2018/sep/24/british-media-brexit-coverage-sows-division-says-eu-commissioner>.

⁶⁹ Daniel Boffey, British media’s Brexit coverage sows division – EU commissioner, *The Guardian*, (September 24, 2018), <https://www.theguardian.com/media/2018/sep/24/british-media-brexit-coverage-sows-division-says-eu-commissioner>.

personal records.”⁷⁰ 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.’”⁷¹ 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.”⁷² 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.”⁷³

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.”⁷⁴ 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.”⁷⁵ A beneficial ownership requires “registers for corporate or

⁷⁰ Owen Bowcott, [Data laws could harm EU citizens’ attempts to stay in UK, court told](https://www.theguardian.com/politics/2019/jan/17/eu-citizens-right-to-remain-brexit-personal-records-high-court), The Guardian, (January 17, 2019), <https://www.theguardian.com/politics/2019/jan/17/eu-citizens-right-to-remain-brexit-personal-records-high-court>.

⁷¹ Owen Bowcott, [Data laws could harm EU citizens’ attempts to stay in UK, court told](https://www.theguardian.com/politics/2019/jan/17/eu-citizens-right-to-remain-brexit-personal-records-high-court), The Guardian, (January 17, 2019), <https://www.theguardian.com/politics/2019/jan/17/eu-citizens-right-to-remain-brexit-personal-records-high-court>.

⁷² Luke Mizzi, Tessa Borg Bartolo, [Analysing the major amendments to be brought about by The Fifth Anti-Money Laundering Directive](http://www.mondaq.com/x/731430/Money+Laundering/Analysing+The+Major+Amendments+To+Be+Brought+About+By+The+Fifth+AntiMoney+Laundering+Directive), Mamo TCV, (August 28, 2018), <http://www.mondaq.com/x/731430/Money+Laundering/Analysing+The+Major+Amendments+To+Be+Brought+About+By+The+Fifth+AntiMoney+Laundering+Directive>.

⁷³ Luke Mizzi, Tessa Borg Bartolo, [Analysing the major amendments to be brought about by The Fifth Anti-Money Laundering Directive](http://www.mondaq.com/x/731430/Money+Laundering/Analysing+The+Major+Amendments+To+Be+Brought+About+By+The+Fifth+AntiMoney+Laundering+Directive), Mamo TCV, (August 28, 2018), <http://www.mondaq.com/x/731430/Money+Laundering/Analysing+The+Major+Amendments+To+Be+Brought+About+By+The+Fifth+AntiMoney+Laundering+Directive>.

⁷⁴ Georg Greitemann, [Germany: 5th Anti-Money Laundering Directive Adopted: Extension Of Beneficial Ownership Registers](http://www.mondaq.com/germany/x/694196/Money+Laundering/5th+AntiMoney+Laundering+Directive+Adopted+Extension+Of+Beneficial+Ownership+Registers), Mondaq, (April 20, 2018), <http://www.mondaq.com/germany/x/694196/Money+Laundering/5th+AntiMoney+Laundering+Directive+Adopted+Extension+Of+Beneficial+Ownership+Registers>.

⁷⁵ Jenny Gesley, [European Union: 5th Anti-Money Laundering Directive Enters into Force](http://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/), Library of Congress, (July 16, 2018), <http://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/>.

other legal entities” and that they be made “available to any member of the general public.”⁷⁶ 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.”⁷⁷

NGOs, Global Witness and Transparency International

What are NGOs? NGO’s “are private nonprofit organizations that pursue activities intended to serve the public good.”⁷⁸ Part of their responsibility is to “undertake community development to serve the needs of citizens,”⁷⁹ funded by “charitable donations and voluntary service for support.”⁸⁰ There is a growing need to help “reduce the risk of terrorist financing or abuse”⁸¹ by focusing on “due diligence” as well as organizational structure, funding disbursement, and other record keeping requirements.⁸² Usually when searching for “unusual or suspicious activities” there may be lacking “proper documentation,” reference checks may be required to “verif[y] the source and use of funds.”⁸³ Regulatory compliance needs which must be met, include: “list management, customer-centric databases/CRM needs.”⁸⁴

What is “Global Witness”? Its an “international NGO ... that works to break the links between [things such as] corruption and human rights abuses.”⁸⁵ According to Transparency

⁷⁶ Jenny Gesley, [European Union: 5th Anti-Money Laundering Directive Enters into Force](http://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/), Library of Congress, (July 16, 2018), <http://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/>.

⁷⁷ Jenny Gesley, [European Union: 5th Anti-Money Laundering Directive Enters into Force](http://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/), Library of Congress, (July 16, 2018), <http://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/>.

⁷⁸ [BSA/AML Manual](https://bsaaml.ffiec.gov/manual/PersonsAndEntities/06), <https://bsaaml.ffiec.gov/manual/PersonsAndEntities/06>.

⁷⁹ [BSA/AML Manual](https://bsaaml.ffiec.gov/manual/PersonsAndEntities/06), <https://bsaaml.ffiec.gov/manual/PersonsAndEntities/06>.

⁸⁰ [BSA/AML Manual](https://bsaaml.ffiec.gov/manual/PersonsAndEntities/06), <https://bsaaml.ffiec.gov/manual/PersonsAndEntities/06>.

⁸¹ [BSA/AML Manual](https://bsaaml.ffiec.gov/manual/PersonsAndEntities/06), <https://bsaaml.ffiec.gov/manual/PersonsAndEntities/06>.

⁸² [BSA/AML Manual](https://bsaaml.ffiec.gov/manual/PersonsAndEntities/06), <https://bsaaml.ffiec.gov/manual/PersonsAndEntities/06>.

⁸³ [BSA/AML Manual](https://bsaaml.ffiec.gov/manual/PersonsAndEntities/06), <https://bsaaml.ffiec.gov/manual/PersonsAndEntities/06>.

⁸⁴ [The Challenge](https://www.innovativesystems.com/charities-ngo-industry), <https://www.innovativesystems.com/charities-ngo-industry>.

⁸⁵ [Global Witness](https://en.wikipedia.org/wiki/Global_Witness), Wikipedia, https://en.wikipedia.org/wiki/Global_Witness.

International the CPI “Corruption Perceptions Index” “reveals that a majority of countries are showing little to no improvement in tackling corruption.”⁸⁶ According to one study, keeping money out of politics has been one strategy toward lessening corruption. By “keeping big money out of politics ... to ensur[e] political decision-making serves the public interest and curb[s] opportunities for corrupt deals.”⁸⁷

Meanwhile, *Transparency International* is a “non-governmental organization based in Berlin, Germany ... founded in 1993.”⁸⁸ The primary purpose of this non-profit is to “take action to combat global corruption with civil societal anti-corruption measures and to prevent criminal activities arising from corruption.”⁸⁹ Corruption can occur in different scales, “in general corruption is a form of dishonesty or criminal activity undertaken by a person or organization entrusted with a position of authority, often to acquire illicit benefit, or, abuse of entrusted power for one’s private gain.”⁹⁰

Which is why the EU developed the 5AMLD to “enhance transparency ... to prevent money laundering” and to “tackle financing risks linked to anonymous use of virtual currencies and of prepaid instruments by limiting the anonymity of those currencies, wallet providers, prepaid cards companies.”⁹¹ Note that the “5AMLD went into effect on July 9, 2018, but the EU Member States have 18 months to comply with the new rules. That made January 2020, the deadline to implement 5AMLD.”⁹²

⁸⁶ [CPI 2019: Global Highlights](https://www.transparency.org/news/feature/cpi_2019_global_highlights), Transparency International, (January 23, 2020), https://www.transparency.org/news/feature/cpi_2019_global_highlights.

⁸⁷ [CPI 2019: Global Highlights](https://www.transparency.org/news/feature/cpi_2019_global_highlights), Transparency International, (January 23, 2020), https://www.transparency.org/news/feature/cpi_2019_global_highlights.

⁸⁸ [Transparency International](https://en.wikipedia.org/wiki/Transparency_International), https://en.wikipedia.org/wiki/Transparency_International.

⁸⁹ [Transparency International](https://en.wikipedia.org/wiki/Transparency_International), https://en.wikipedia.org/wiki/Transparency_International.

⁹⁰ [Corruption](https://en.wikipedia.org/wiki/Corruption), <https://en.wikipedia.org/wiki/Corruption>.

⁹¹ [EU Fifth AML Directive: How Banks Can Prepare for Five Key Changes](https://feedzai.com/blog/5aml-d-how-banks-can-prepare-for-five-key-changes/), (November 18, 2019), <https://feedzai.com/blog/5aml-d-how-banks-can-prepare-for-five-key-changes/>.

⁹² [EU Fifth AML Directive: How Banks Can Prepare for Five Key Changes](https://feedzai.com/blog/5aml-d-how-banks-can-prepare-for-five-key-changes/), (November 18, 2019), <https://feedzai.com/blog/5aml-d-how-banks-can-prepare-for-five-key-changes/>.

Terrorist Financing

One of the ways in which terrorist are able to finance themselves is through the use of “prepaid cards.”⁹³ 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,”⁹⁴ 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.”⁹⁵ 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.”⁹⁶ 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 which the *European Commission* has had “strategic deficiencies in their anti-money laundering or counterterrorism regimes.” This added requirement helps the “AMLD [to]

⁹³ Jenny Gesley, [European Union: 5th Anti-Money Laundering Directive Enters into Force](http://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/), Library of Congress, (July 16, 2018), <http://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/>.

⁹⁴ Jenny Gesley, [European Union: 5th Anti-Money Laundering Directive Enters into Force](http://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/), Library of Congress, (July 16, 2018), <http://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/>.

⁹⁵ Jenny Gesley, [European Union: 5th Anti-Money Laundering Directive Enters into Force](http://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/), Library of Congress, (July 16, 2018), <http://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/>.

⁹⁶ Jenny Gesley, [European Union: 5th Anti-Money Laundering Directive Enters into Force](http://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/), Library of Congress, (July 16, 2018), <http://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/>.

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.”⁹⁷

Virtual Currency

There has been “limited regulation and oversight” by “consumer and investors” in the virtual currency world, “outside of the online gaming community.”⁹⁸ 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 anonymity.”⁹⁹ This is because “virtual currency ... unlike regular money is not issued or backed by any government or central bank.”¹⁰⁰ A blockchain is like a “public

⁹⁷ Shanique Smith, [You Think You Know, But You Have No Idea: Effective Oversight in the Era of Increasing Facelessness. Is it Possible?](https://www.acams.org/aml-white-paper-anonymity/), ACAMS, <https://www.acams.org/aml-white-paper-anonymity/>, or <http://www.acams.org/wp-content/uploads/2015/08/You-Think-You-Know-But-You-have-No-Idea-S-Smith.pdf>.

⁹⁸ Shanique Smith, [You Think You Know, But You Have No Idea: Effective Oversight in the Era of Increasing Facelessness. Is it Possible?](https://www.acams.org/aml-white-paper-anonymity/), ACAMS, <https://www.acams.org/aml-white-paper-anonymity/>, or <http://www.acams.org/wp-content/uploads/2015/08/You-Think-You-Know-But-You-have-No-Idea-S-Smith.pdf>.

⁹⁹ Shanique Smith, [You Think You Know, But You Have No Idea: Effective Oversight in the Era of Increasing Facelessness. Is it Possible?](https://www.acams.org/aml-white-paper-anonymity/), ACAMS, <https://www.acams.org/aml-white-paper-anonymity/>, or <http://www.acams.org/wp-content/uploads/2015/08/You-Think-You-Know-But-You-have-No-Idea-S-Smith.pdf>.

¹⁰⁰ Shanique Smith, [You Think You Know, But You Have No Idea: Effective Oversight in the Era of Increasing Facelessness. Is it Possible?](https://www.acams.org/aml-white-paper-anonymity/), ACAMS, <https://www.acams.org/aml-white-paper-anonymity/>, or <http://www.acams.org/wp-content/uploads/2015/08/You-Think-You-Know-But-You-have-No-Idea-S-Smith.pdf>.

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. Note: “Cryptocurrency relies on public and private keys to transfer value from one person (individual or entity) to another, and must be cryptographically signed each time it is transferred.”¹⁰¹ 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.¹⁰² With a convertible virtual currency there is a “centralized ... administrating authority” whereas “by default, all nonconvertible virtual currency is centralized.”¹⁰³

The Use of Bitcoin

However vast no network is completely anonymous, not even bitcoins, which are like a virtual currency where you can “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.”¹⁰⁴

The use of crypto currency for money laundering continues to be a debate, recently FINRA “US Financial Industry Regulatory Authority” issued fines for “failure to comply with

¹⁰¹ FATF Report Virtual Currencies Key Definitions and Potential AML/CFT Risks, (June 2014), <https://www.fatf-gafi.org/media/fatf/documents/reports/Virtual-currency-key-definitions-and-potential-aml-cft-risks.pdf>

¹⁰² Shanique Smith, You Think You Know, But You Have No Idea: Effective Oversight in the Era of Increasing Facelessness. Is it Possible?, ACAMS, <https://www.acams.org/aml-white-paper-anonymity/>, or <http://www.acams.org/wp-content/uploads/2015/08/You-Think-You-Know-But-You-have-No-Idea-S-Smith.pdf>.

¹⁰³ Shanique Smith, You Think You Know, But You Have No Idea: Effective Oversight in the Era of Increasing Facelessness. Is it Possible?, ACAMS, <https://www.acams.org/aml-white-paper-anonymity/>, or <http://www.acams.org/wp-content/uploads/2015/08/You-Think-You-Know-But-You-have-No-Idea-S-Smith.pdf>.

¹⁰⁴ Shanique Smith, You Think You Know, But You Have No Idea: Effective Oversight in the Era of Increasing Facelessness. Is it Possible?, ACAMS, <https://www.acams.org/aml-white-paper-anonymity/>, or <http://www.acams.org/wp-content/uploads/2015/08/You-Think-You-Know-But-You-have-No-Idea-S-Smith.pdf>.

AML legislation” specifically to Morgan Stanley the “38th-biggest bank in the world.”¹⁰⁵

Meanwhile “global central bankers” have been working on how to address the regulation of digital currencies, but have yet to “reach an agreement on how to do so,” based upon the minimal risks posed to the current financial system, if they were to allow the introduction of new digital payments, expanding the world of digital payments with the implementation of the *Facebook Libra*. One concern is how “banking and financial market[s]” will be able to sustain their “intermediation” abilities under existing “deposit-taking of banks and their business models.”¹⁰⁶ To address the risks posed by cryptocurrency exchanges, where a lack of transparency exists, would be for “correspondent banks [who] handle the transactions” to be “help liable for financial crimes committed through transactions” who do not maintain accurate KYC/CDD data of wire transfers, the “Know Your Customer” requirement for bitcoin exchange and AML Compliance.¹⁰⁷

For a period it was unclear whether it would be mandated by current laws for “virtual currencies” to be regulated through a central bank. At the present moment virtual currencies exist in databases “transacted through online networks.”¹⁰⁸ The Travel Rule was created by FATF, to require “member countries ... to pass customer information to each other when transferring crypto assets” like a “wire transfer ... under the Bank Secrecy Act (BSA).”¹⁰⁹ The new “Travel

¹⁰⁵ Simon Chandler, [Crypto is Tightening Up Its Anti-Money Laundering Game, While Banks Are Still Being Fined for Non-Compliance](https://cointelegraph.com/news/crypto-is-tightening-up-its-anti-money-laundering-game-while-banks-are-still-being-fined-for-non-compliance), (January 2, 2019), <https://cointelegraph.com/news/crypto-is-tightening-up-its-anti-money-laundering-game-while-banks-are-still-being-fined-for-non-compliance>.

¹⁰⁶ Simon Chandler, [Crypto is Tightening Up Its Anti-Money Laundering Game, While Banks Are Still Being Fined for Non-Compliance](https://cointelegraph.com/news/crypto-is-tightening-up-its-anti-money-laundering-game-while-banks-are-still-being-fined-for-non-compliance), (January 2, 2019), <https://cointelegraph.com/news/crypto-is-tightening-up-its-anti-money-laundering-game-while-banks-are-still-being-fined-for-non-compliance>.

¹⁰⁷ Simon Chandler, [Crypto is Tightening Up Its Anti-Money Laundering Game, While Banks Are Still Being Fined for Non-Compliance](https://cointelegraph.com/news/crypto-is-tightening-up-its-anti-money-laundering-game-while-banks-are-still-being-fined-for-non-compliance), (January 2, 2019), <https://cointelegraph.com/news/crypto-is-tightening-up-its-anti-money-laundering-game-while-banks-are-still-being-fined-for-non-compliance>.

¹⁰⁸ [The FinTech Revolution: An Introduction to Financial Technology](https://www.blankrome.com/publications/fintech-revolution-introduction-financial-technology), (March 2017), <https://www.blankrome.com/publications/fintech-revolution-introduction-financial-technology>.

¹⁰⁹ [Cryptocurrency Exchanges Grappling with New FATF Rule Requiring Disclosure of Customer Information](https://ciphertrace.com/fatf-crypto-travel-rule/?utm_campaign=Search+%7C+FATF+Blog&utm_source=adwords&utm_medium=ppc&utm_term=%2Bfatf%2B), (June 21, 2019), [https://ciphertrace.com/fatf-crypto-travel-rule/?utm_campaign=Search+%7C+FATF+Blog&utm_source=adwords&utm_medium=ppc&utm_term=%2Bfatf%](https://ciphertrace.com/fatf-crypto-travel-rule/?utm_campaign=Search+%7C+FATF+Blog&utm_source=adwords&utm_medium=ppc&utm_term=%2Bfatf%2B)

Rule, which applies to all cryptocurrency transactions over \$1,000 threshold”¹¹⁰ this is in response to scams, misappropriation of funds, massive losses to investors, and ponzi schemes which have “defrauded millions.”¹¹¹

The Travel Rule is most similar to the Bank Secrecy Act (BSA) which subjects CVCs “Convertible Virtual Currency service providers” to regulation, while FinCEN “The US Treasury’s Financial Crimes Enforcement Network” keeps track of CVC service providers via the secure sharing of information such as found by transfers that use SWIFT messaging during exchanges of “cryptocurrency blockchains.” The Travel Rule applies to “regulatory requirements for Virtual Asset Service Providers (VASPs)” managing “cryptocurrency transactions” and monitoring “sender and receiver information” like the BSA in the US monitors “bitcoin ATMs, as well as peer-to-peer and transaction networks [which are] subject to the regulation.”¹¹²

Likewise cyptocurrency has emerged as a “new global currency” in blockchains introduced on social media and “other tech Titans,” these new technologies mean that a “more sophisticated AML/CTF regulation [may be necessary to] enabl[e] compliance while preserving privacy.”

Since the passing of the AMLD5, “new rules require crypto exchanges and custodial service providers to register with their local regulator and demonstrate compliance [with a] “know-your-customer (KYC) and anti-money laundering AML procedures” giving “greater

20%2Brule&hsa_acc=3197964388&hsa_mt=b&hsa_ver=3&hsa_src=g&hsa_net=adwords&hsa_grp=76240422670&hsa_cam=2044532301&hsa_kw=%2Bfatf%20%2Brule&hsa_tgt=kwd-837712892877&hsa_ad=357888616764&gclid=CjwKCAiAp5nyBRABEiwApTwjXhAzsFX9Oad58LiUsHtdRJCzo1cAINnQpB8AJOWml2Hz9OmEsChw-hoC2IUQAvD_BwE.

¹¹⁰ [Q2 2019 Cryptocurrecny Anti-Money Laundering Report](https://ciphertrace.com/q2-2019-cryptocurrency-anti-money-laundering-report/), <https://ciphertrace.com/q2-2019-cryptocurrency-anti-money-laundering-report/>.

¹¹¹ [Q2 2019 Cryptocurrecny Anti-Money Laundering Report](https://ciphertrace.com/q2-2019-cryptocurrency-anti-money-laundering-report/), <https://ciphertrace.com/q2-2019-cryptocurrency-anti-money-laundering-report/>.

¹¹² [Q2 2019 Cryptocurrecny Anti-Money Laundering Report](https://ciphertrace.com/q2-2019-cryptocurrency-anti-money-laundering-report/), <https://ciphertrace.com/q2-2019-cryptocurrency-anti-money-laundering-report/>.

power and reach to financial intelligence units and law enforcement.”¹¹³ This law affects “EU’s 28 member states” while in the UK “crypto firms will need to register with the local regulator ... the Financial Conduct Authority (FCA).”¹¹⁴ While FATF’s, an international governing body, applies only to “39 member countries” engaging in “crypto-to-crypto exchanges.”¹¹⁵ Under the 5AMLD5, member states are subjected to fines, “two times the amount benefited by the transactions,” fine will be imposed upon non-compliance with AML, to be determined by member states and upon the improved cooperation of “financial institutions [with] the authorities” to facilitate “settlement to avoid ... fines” while “ensur[ing] all data is considered in the AML detection process [via newly updated] AML transaction monitoring systems.”¹¹⁶

What is a virtual currency? “VC is a technology-neutral generic term for all privately issued types of money that are not tied to the money of the central bank (“legally established currency”) in the form of cash or central bank money in the current monetary system.”¹¹⁷ The “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

¹¹³ Ian Allison, [European Crypto Firms Brace for Higher Costs as AMLD5 Takes Effect](https://www.coindesk.com/european-crypto-firms-brace-for-higher-costs-as-amld5-takes-effect), (Jan 10, 2020), <https://www.coindesk.com/european-crypto-firms-brace-for-higher-costs-as-amld5-takes-effect>.

¹¹⁴ Ian Allison, [European Crypto Firms Brace for Higher Costs as AMLD5 Takes Effect](https://www.coindesk.com/european-crypto-firms-brace-for-higher-costs-as-amld5-takes-effect), (Jan 10, 2020), <https://www.coindesk.com/european-crypto-firms-brace-for-higher-costs-as-amld5-takes-effect>.

¹¹⁵ Ian Allison, [European Crypto Firms Brace for Higher Costs as AMLD5 Takes Effect](https://www.coindesk.com/european-crypto-firms-brace-for-higher-costs-as-amld5-takes-effect), (Jan 10, 2020), <https://www.coindesk.com/european-crypto-firms-brace-for-higher-costs-as-amld5-takes-effect>.

¹¹⁶ [EU Fifth AML Directive: How Banks Can Prepare for Five Key Changes](https://feedzai.com/blog/5amld-how-banks-can-prepare-for-five-key-changes/), (November 18, 2019), <https://feedzai.com/blog/5amld-how-banks-can-prepare-for-five-key-changes/>.

¹¹⁷ <https://paytechlaw.com/en/new-legal-definition-amld5/>

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).¹¹⁸

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.¹¹⁹ 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 participants... (not only abuse the power) of accessing a network - especially those networks required to a maintain a ledger ... “by undoing transactions that are thought to be finalized.”¹²⁰

What is being done to change the current crypto-landscape, as more systems for monitoring transactions are being implements, and required to be complied with, efforts to expand the ways in which we communicate using currency has been suggested by tech giants such as Facebook, who has a personal stake in the matter as an example of a “PEP politically exposed [person]”¹²¹ who was once “vulnerable to corruption – for ongoing risks”¹²² as database upon which user information could be misused to as a resource for outside use. There is an

¹¹⁸ Shanique Smith, [You Think You Know, But You Have No Idea: Effective Oversight in the Era of Increasing Facelessness. Is it Possible?](https://www.acams.org/aml-white-paper-anonymity/), ACAMS, <https://www.acams.org/aml-white-paper-anonymity/>, or <http://www.acams.org/wp-content/uploads/2015/08/You-Think-You-Know-But-You-have-No-Idea-S-Smith.pdf>.

¹¹⁹ Shanique Smith, [You Think You Know, But You Have No Idea: Effective Oversight in the Era of Increasing Facelessness. Is it Possible?](https://www.acams.org/aml-white-paper-anonymity/), ACAMS, <https://www.acams.org/aml-white-paper-anonymity/>, or <http://www.acams.org/wp-content/uploads/2015/08/You-Think-You-Know-But-You-have-No-Idea-S-Smith.pdf>.

¹²⁰ Shanique Smith, [You Think You Know, But You Have No Idea: Effective Oversight in the Era of Increasing Facelessness. Is it Possible?](https://www.acams.org/aml-white-paper-anonymity/), ACAMS, <https://www.acams.org/aml-white-paper-anonymity/>, or <http://www.acams.org/wp-content/uploads/2015/08/You-Think-You-Know-But-You-have-No-Idea-S-Smith.pdf>.

¹²¹ [EU Fifth AML Directive: How Banks Can Prepare for Five Key Changes](https://feedzai.com/blog/5aml-d-how-banks-can-prepare-for-five-key-changes/), (November 18, 2019), <https://feedzai.com/blog/5aml-d-how-banks-can-prepare-for-five-key-changes/>.

¹²² [EU Fifth AML Directive: How Banks Can Prepare for Five Key Changes](https://feedzai.com/blog/5aml-d-how-banks-can-prepare-for-five-key-changes/), (November 18, 2019), <https://feedzai.com/blog/5aml-d-how-banks-can-prepare-for-five-key-changes/>.

inherent need for not only the sharing of members to a transaction when it comes to cryptocurrency, to detect fraud, but also improve upon the means by which “politically exposed persons”¹²³ can protect themselves and their information from being misused to facilitate corruption, that is, being used as a basis for decision making, in transactions, which they are not a party to, and then be affected by the misuse of funds, funneled to unmonitored “anti-money laundering programs.”¹²⁴

More research is needed when it comes to how money is used or misused, and how the transfer of assets should or should not benefit the recipient, especially not to criminals. Which is one reason why “Facebook” has taken on a “leadership position” to combat the use of “coin ... [to finance] terrorism ... and money laundering” in response to the “difficulty” faced by those who seek to “enforc[e] political sanctions to threats to the primacy of the US dollar.”¹²⁵ Why not a new currency, the “Libra” as suggested by Facebook to “the global financial system” in a “dark market,” with new rules likely to reduce the number of exchanges because of “FAFTF’s travel rule ... [and increased] anonymiz[ing] [of] “cryptocurrency transaction.”¹²⁶ To improve upon transfers, and at the same time mitigate rates of misuse of electronic transfers of monies in the form of cryptocurrency, Facebook envisions “a new global currency [which would be] decentralized, [a] programmable database, designed to support ... [and] serve as an efficient medium of exchange for billions of people around the world.”¹²⁷ The purpose for this

¹²³ [EU Fifth AML Directive: How Banks Can Prepare for Five Key Changes](https://feedzai.com/blog/5aml-d-how-banks-can-prepare-for-five-key-changes/), (November 18, 2019), <https://feedzai.com/blog/5aml-d-how-banks-can-prepare-for-five-key-changes/>.

¹²⁴ [EU Fifth AML Directive: How Banks Can Prepare for Five Key Changes](https://feedzai.com/blog/5aml-d-how-banks-can-prepare-for-five-key-changes/), (November 18, 2019), <https://feedzai.com/blog/5aml-d-how-banks-can-prepare-for-five-key-changes/>.

¹²⁵ [Q2 2019 Cryptocurrency Anti-Money Laundering Report](https://ciphertrace.com/q2-2019-cryptocurrency-anti-money-laundering-report/), <https://ciphertrace.com/q2-2019-cryptocurrency-anti-money-laundering-report/>.

¹²⁶ [White Paper v2.0](https://libra.org/en-US/white-paper/), <https://libra.org/en-US/white-paper/>.

¹²⁷ [Rachel Wolfson, Facebook’s Cryptocurrency Libra Validates Blockchain, But Industry Experts Voice Concerns](https://www.forbes.com/sites/rachelwolfson/2019/06/19/facebook-cryptocurrency-libra-validates-blockchain-but-industry-experts-voice-concerns/#3ca5059e72f4), <https://www.forbes.com/sites/rachelwolfson/2019/06/19/facebook-cryptocurrency-libra-validates-blockchain-but-industry-experts-voice-concerns/#3ca5059e72f4>.

“distributed technology” is to create “an open and trustworthy system” one that will not only “enhanc[e] traditional financial systems” and “governance” but will also continue to build “safe and compliant financial applications” under the selective oversight of “Association Members.”¹²⁸

How this new network will operate, has yet to be realized, cyptocurrency will be again discussed July 2020, as Facebook is scheduled to appear at a hearing by “The House Financial Services Committee and the Senate Committee on Banking, Housing and Urban Affairs.”¹²⁹

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.”¹³⁰ 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.”¹³¹

“Money laundering and terrorist financing purposes” are arguably the “biggest threa[t] associated [to] virtual currenc[y] (or cryptocurrency[y] use.”¹³² This is important because the “means of exchange ... [to] which [a currency] can be transferred, stored and traded

¹²⁸ [White Paper v2.0](https://libra.org/en-US/white-paper/#cover-letter), <https://libra.org/en-US/white-paper/#cover-letter>.

¹²⁹ [Q2 2019 Cryptocurrency Anti-Money Laundering Report](https://ciphertrace.com/q2-2019-cryptocurrency-anti-money-laundering-report/), <https://ciphertrace.com/q2-2019-cryptocurrency-anti-money-laundering-report/>.

¹³⁰ Simont Braun, [AMLD5 and Cryptocurrencies](https://www.lexology.com/library/detail.aspx?g=35d0bed0-2fb0-41a0-9f07-31ebcf6a95e0), Lexology, (October 22, 2018), <https://www.lexology.com/library/detail.aspx?g=35d0bed0-2fb0-41a0-9f07-31ebcf6a95e0>.

¹³¹ Simont Braun, [AMLD5 and Cryptocurrencies](https://www.lexology.com/library/detail.aspx?g=35d0bed0-2fb0-41a0-9f07-31ebcf6a95e0), Lexology, (October 22, 2018), <https://www.lexology.com/library/detail.aspx?g=35d0bed0-2fb0-41a0-9f07-31ebcf6a95e0>.

¹³² Simont Braun, [AMLD5 and Cryptocurrencies](https://www.lexology.com/library/detail.aspx?g=35d0bed0-2fb0-41a0-9f07-31ebcf6a95e0), Lexology, (October 22, 2018), <https://www.lexology.com/library/detail.aspx?g=35d0bed0-2fb0-41a0-9f07-31ebcf6a95e0>.

electronically” will be changing after Brexit, and new permissions required.¹³³ 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.”¹³⁴

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

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,”¹³⁵ 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.”¹³⁶

¹³³ Jaak Poldma, Rebecca Dipple, New EU and UK Anti-Money Laundering Rules: The Fifth AML Directive Extends to Cryptocurrencies, (September 13, 2018), <https://www.orrick.com/Insights/2018/09/New-EU-and-UK-Anti-Money-Laundering-Rules-The-Fifth-AML-Directive-Extends-to-Cryptocurrencies>.

¹³⁴ Jaak Poldma, Rebecca Dipple, New EU and UK Anti-Money Laundering Rules: The Fifth AML Directive Extends to Cryptocurrencies, (September 13, 2018), <https://www.orrick.com/Insights/2018/09/New-EU-and-UK-Anti-Money-Laundering-Rules-The-Fifth-AML-Directive-Extends-to-Cryptocurrencies>.

¹³⁵ Vishal Marria, The Future of Money Laundering After Brexit, (February 14, 2019), <https://www.forbes.com/sites/vishalmarria/2019/02/14/the-future-of-money-laundering-after-brexit/#20722d88fb19>.

¹³⁶ Vishal Marria, The Future of Money Laundering After Brexit, (February 14, 2019), <https://www.forbes.com/sites/vishalmarria/2019/02/14/the-future-of-money-laundering-after-brexit/#20722d88fb19>.

Preventing the usage of “virtual currencies [from] abus[e]” ... will require changes to the current anonymity to which terrorist are able to conceal transactions, this is due to the “lack of an EU-level reporting mechanism for identifying suspicious activity.”¹³⁷ 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.¹³⁸

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.”¹³⁹ This would make it difficult for “criminals to continue to benefit from their crimes.”¹⁴⁰ (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.¹⁴¹ 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

¹³⁷ Jaak Poldma, Rebecca Dipple, [New EU and UK Anti-Money Laundering Rules: The Fifth AML Directive Extends to Cryptocurrencies](https://www.orrick.com/Insights/2018/09/New-EU-and-UK-Anti-Money-Laundering-Rules-The-Fifth-AML-Directive-Extends-to-Cryptocurrencies), (September 13, 2018), <https://www.orrick.com/Insights/2018/09/New-EU-and-UK-Anti-Money-Laundering-Rules-The-Fifth-AML-Directive-Extends-to-Cryptocurrencies>.

¹³⁸ Jaak Poldma, Rebecca Dipple, [New EU and UK Anti-Money Laundering Rules: The Fifth AML Directive Extends to Cryptocurrencies](https://www.orrick.com/Insights/2018/09/New-EU-and-UK-Anti-Money-Laundering-Rules-The-Fifth-AML-Directive-Extends-to-Cryptocurrencies), (September 13, 2018), <https://www.orrick.com/Insights/2018/09/New-EU-and-UK-Anti-Money-Laundering-Rules-The-Fifth-AML-Directive-Extends-to-Cryptocurrencies>.

¹³⁹ Vishal Marria, [The Future of Money Laundering After Brexit](https://www.forbes.com/sites/vishalmarria/2019/02/14/the-future-of-money-laundering-after-brexit/#20722d88fb19), (February 14, 2019), <https://www.forbes.com/sites/vishalmarria/2019/02/14/the-future-of-money-laundering-after-brexit/#20722d88fb19>.

¹⁴⁰ Vishal Marria, [The Future of Money Laundering After Brexit](https://www.forbes.com/sites/vishalmarria/2019/02/14/the-future-of-money-laundering-after-brexit/#20722d88fb19), (February 14, 2019), <https://www.forbes.com/sites/vishalmarria/2019/02/14/the-future-of-money-laundering-after-brexit/#20722d88fb19>.

¹⁴¹ Jaelyn Jaeger, [EU Expands controversial AML country blacklist](https://www.complianceweek.com/aml/eu-expands-controversial-aml-country-blacklist/24669.article), (February 13, 2019), <https://www.complianceweek.com/aml/eu-expands-controversial-aml-country-blacklist/24669.article>.

various financial maneuvers or kept dormant for future use in some other capacity.”¹⁴² 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.”¹⁴³

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.”¹⁴⁴ 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].”¹⁴⁵ For example, in the US, new (CDD) rule from 2016 forces banks to know the names of their customers in order to reveal them to law enforcement agencies [to avoid the] anonymous misuse of shell companies shall be prevented.”¹⁴⁶ In fact, post-Brexit, “British firms won’t be permitted to set up small shell companies to get around losing mainland Europe distribution rights.”¹⁴⁷

¹⁴² Jaclyn Jaeger, *EU Expands controversial AML country blacklist*, (February 13, 2019), <https://www.complianceweek.com/aml/eu-expands-controversial-aml-country-blacklist/24669.article>.

¹⁴³ Will Kenton, *What is a Shell Corporation?*, Investopedia (March 21, 2019), <https://www.investopedia.com/terms/s/shellcorporation.asp>.

¹⁴⁴ *The continuing problem of shell companies*, <https://www.complianceweek.com/blogs/the-man-from-fcpa/the-continuing-problem-of-shell-companies>.

¹⁴⁵ *The continuing problem of shell companies*, <https://www.complianceweek.com/blogs/the-man-from-fcpa/the-continuing-problem-of-shell-companies>.

¹⁴⁶ *Shell corporation*, Wikipedia, https://en.wikipedia.org/wiki/Shell_corporation.

¹⁴⁷ Joe McGrath, *Euro Watchdog Warns Against Shell Companies Post-Brexit*, (May 31, 2017), <https://www.institutionalinvestor.com/article/b1505p9lf8f72s/euro-watchdog-warns-against-shell-companies-post-brexit>.

Forbes.com argues that, one of the issues is “continue[d] access to ... shared intelligence database[s].”¹⁴⁸ In order “to collectively be prepared” it became clear once a “no-deal Brexit [was] 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.”¹⁴⁹

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.¹⁵⁰ In the UK “all financial institutions and all DNFBP’s [are required] to conduct customer due diligence [whereby they] obtain and maintain beneficial ownership [of] information in a manner that is ... in line with the FATF requirements.”¹⁵¹ The UK has a firm understanding of ML/TF risks, which is reflected in their ability to assess and coordinate law enforcement agencies during the detection of money laundering activities, risks which have been identified by the NRA, through the enhancement of “public/private information sharing.”¹⁵² The UK seeks to provide international cooperation by enhancing OPBAS ability to “identif[y] inconsistencies in the supervision of lawyers and accountants” in the establishment “of beneficial ownership [of] information ... to increase

¹⁴⁸ Vishal Marria, *The Future of Money Laundering After Brexit*, (February 14, 2019), <https://www.forbes.com/sites/vishalmarria/2019/02/14/the-future-of-money-laundering-after-brexit/#20722d88fb19>.

¹⁴⁹ Vishal Marria, *The Future of Money Laundering After Brexit*, (February 14, 2019), <https://www.forbes.com/sites/vishalmarria/2019/02/14/the-future-of-money-laundering-after-brexit/#20722d88fb19>.

¹⁵⁰ Jaclyn Jaeger, *EU Expands controversial AML country blacklist*, (February 13, 2019), <https://www.complianceweek.com/aml/eu-expands-controversial-aml-country-blacklist/24669.article>.

¹⁵¹ *Anti-money laundering and counter-terrorist financing measures*, (December 2018), <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018.pdf>.

¹⁵² *Anti-money laundering and counter-terrorist financing measures*, (December 2018), <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018.pdf>.

transparency.”¹⁵³ How has UK promoted “effective global implementation of proliferation-related TFS,” by “designating entities under the UN and EU proliferation financing (PF) sanctions” to freeze assets, and “close the gaps in the EU system.”¹⁵⁴ TFS stands for “targeted financial sanctions” which have the ability to freeze “terrorist related assets pursuant to both UNSCR regimes,” sanctions are applied where there is a breach of these requirements, and where there are “weaknesses in supervision,” UK has one of the most “robust confiscation regime[s] applying both “criminal and civil measures to deprive terrorists of their assets.”¹⁵⁵

In responding to this “overlap between money laundering and terrorist financing” enhanced due diligence procedures have required the UK to participate in the NCA’s “Flag It Up campaign, “which focuses on the social impact of money laundering ... [and] urges those in the sector to file suspicious activity reports directly with the NCA.”¹⁵⁶

‘Rules and regulations can make crimes like money-laundering seem distant, and removed from everyday life. Compliance can become just a tick-boxing exercise,’ says Phillippa Foster Back CBE, Director for the Institute of Business Ethics (IBE).”¹⁵⁷

There are (CDD) Client Due Diligence “reporting and monitoring requirements under the regulations” set by the “Money Laundering Regulations 2017 in the UK, and to help IFA members checklists have been made available to them. The checklists help with “policies,

¹⁵³ [Anti-money laundering and counter-terrorist financing measures](https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018.pdf), (December 2018), <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018.pdf>.

¹⁵⁴ [Anti-money laundering and counter-terrorist financing measures](https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018.pdf), (December 2018), <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018.pdf>.

¹⁵⁵ [Anti-money laundering and counter-terrorist financing measures](https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018.pdf), (December 2018), <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018.pdf>.

¹⁵⁶ <https://blogs.spectator.co.uk/2018/03/the-knock-on-impact-of-money-laundering-to-wider-society/>

¹⁵⁷ <https://blogs.spectator.co.uk/2018/03/the-knock-on-impact-of-money-laundering-to-wider-society/>

controls and procedures, awareness and training, record keeping, firm's risk assessment of money laundering or terrorist financing, CDD, reporting, supervision, and monitoring."¹⁵⁸

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."¹⁵⁹ 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 of the business relationship by increasing the number and timing of controls applied and selecting patterns of transactions that need further examination."¹⁶⁰

¹⁵⁸ <https://www.ifa.org.uk/technical-resources/aml/uk-law-and-guidance>

¹⁵⁹ Jaelyn Jaeger, [EU Expands controversial AML country blacklist](https://www.complianceweek.com/aml/eu-expands-controversial-aml-country-blacklist/24669.article), (February 13, 2019), <https://www.complianceweek.com/aml/eu-expands-controversial-aml-country-blacklist/24669.article>.

¹⁶⁰ Jaelyn Jaeger, [EU Expands controversial AML country blacklist](https://www.complianceweek.com/aml/eu-expands-controversial-aml-country-blacklist/24669.article), (February 13, 2019), <https://www.complianceweek.com/aml/eu-expands-controversial-aml-country-blacklist/24669.article>.

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.”¹⁶¹

Banking in the US and Tech

In the US the Federal Reserve System, FinCEN and the OCC have made a coordinated effort to “strengthen the financial system against illicit financial activity.”¹⁶² Banks have been encourage to be “innovative” while complying with “BSA/AML requirements.”¹⁶³ They have even encouraged the implementation of “AI-based transaction monitoring systems to identify suspicious activity,”¹⁶⁴ during the testing of new technologies, leniency has been requested for where existing processes have not been sufficient, improved upon. Without “automatically assume that the banks’ existing processes are deficient,” “FinCEN [will] consider requests for exceptions and exemptions for the testing and potential use of new technologies.”¹⁶⁵

One of the innovative ways in which “complex regulatory” requirements have been improved, in a “dynamic and fast moving” period of risk, while reporting “suspicious transactions” has resulted in the implementation of “AI” i.e. new technologies combined with “human-expertise” to ensure less “exposure to risk, fines and reputational damage” through the use of RPAs “machine learning and robotic process automation” which scores, alerts, and

¹⁶¹ Jaclyn Jaeger, [EU Expands controversial AML country blacklist](https://www.complianceweek.com/aml/eu-expands-controversial-aml-country-blacklist/24669.article), (February 13, 2019), <https://www.complianceweek.com/aml/eu-expands-controversial-aml-country-blacklist/24669.article>.

¹⁶² Anthony Peyton, [US regulators rouse banks to AML innovation](https://www.fintechfutures.com/2018/12/us-regulators-rouse-banks-to-aml-innovation/), (December 5, 2018), <https://www.fintechfutures.com/2018/12/us-regulators-rouse-banks-to-aml-innovation/>.

¹⁶³ Anthony Peyton, [US regulators rouse banks to AML innovation](https://www.fintechfutures.com/2018/12/us-regulators-rouse-banks-to-aml-innovation/), (December 5, 2018), <https://www.fintechfutures.com/2018/12/us-regulators-rouse-banks-to-aml-innovation/>.

¹⁶⁴ [Transforming Transaction Monitoring & Reporting of Suspicious Activity](https://www.niceactimize.com/anti-money-laundering/suspicious-activity-monitoring/), <https://www.niceactimize.com/anti-money-laundering/suspicious-activity-monitoring/>.

¹⁶⁵ Anthony Peyton, [US regulators rouse banks to AML innovation](https://www.fintechfutures.com/2018/12/us-regulators-rouse-banks-to-aml-innovation/), (December 5, 2018), <https://www.fintechfutures.com/2018/12/us-regulators-rouse-banks-to-aml-innovation/>.

monitors workflows, which can be calculated through an automated system prior to “mak[ing] ... [a] final decision.”¹⁶⁶ For example, there are “human-guided ... and unsupervised machine learning” which can not only “identify known risk scenarios” but also maintains “predictive” powers for use in the analysis of “analytics” which lend insight to the “discovery of previously unknown money laundering risks” through the assessment of “relationships” between “entities ... [while] meet[ing] compliance regulations.”¹⁶⁷

Providing a more “cost-effectiv[e]” system that “eliminates the need for redundant hardware and other costly IT modules” can help in the avoidance of clerical errors or decisions made based on “false positives” by a more “intuitive” based approach of analyzing “insights” with an “entity-centric view,” that can continuously be “test[ed], [and] tune[d],” to further improve upon the weighing of responsibilities of financial institutions to minimize time wasted through “more accurate detection analytics” which are “agile enough to detect fast changing risk scenarios” between both banking and non-banking institutions, while establishing more reliable methods of setting priorities of focus upon evaluating a “complete system [of] transparency for teams and regulators” when it comes to “establish[ing] standard processes” which not only improve but “empower” AML productivity.¹⁶⁸

Banks that 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.”¹⁶⁹ As

¹⁶⁶ Transforming Transaction Monitoring & Reporting of Suspicious Activity, <https://www.niceactimize.com/anti-money-laundering/suspicious-activity-monitoring/>.

¹⁶⁷ Transforming Transaction Monitoring & Reporting of Suspicious Activity, <https://www.niceactimize.com/anti-money-laundering/suspicious-activity-monitoring/>.

¹⁶⁸ Transforming Transaction Monitoring & Reporting of Suspicious Activity, <https://www.niceactimize.com/anti-money-laundering/suspicious-activity-monitoring/>.

¹⁶⁹ Stuart Breslow, Mikael Hagstroem, Daniel Mikkelsen, & Kate Robu, The new frontier in anti-money laundering, McKinsey & Company, (November 2017), <https://www.mckinsey.com/business-functions/risk/our-insights/the-new-frontier-in-anti-money-laundering>.

“regulators continu[e] [to] revise [their] rules ... focus expand[ing] from organized crime to terrorism” is being used to “target[t] individual countries and even specific entities as part of their foreign policies.”¹⁷⁰

Banking in the UK and Tech

In the age of technology, with an ability to “send money to another bank in real time ... criminals have been quick to exploit these innovations.”¹⁷¹ According to “The City of London Police’s National Fraud Intelligence Bureau (NFIB) over £32 million has been reported to be lost as a result of CEO fraud alone. Organisations in both the UK and the US have experienced losses of thousands to millions of dollars/pounds.”¹⁷² Today, over “90% of UK current accounts are ... covered by” Pay.UK, who now has an ability to track down these illegal payment networks, set up by criminals to transfer funds, and investigate in detail exactly how the monies have been stolen and the means by which those “illicit funds [have been] dispersed across a network.”¹⁷³ This new system of tracking by MITS “Mule Insights Tactical Solution ... underpinned by Vocalink’s Anti-Money Laundering (AML) Insights solution” pinpoints not only “suspected illegal activities,” but can also track “suspicious payments” between multiple accounts “within the same or different financial institutions.”¹⁷⁴

¹⁷⁰ Stuart Breslow, Mikael Hagstroem, Daniel Mikkelsen, & Kate Robu, The new frontier in anti-money laundering, McKinsey & Company, (November 2017), <https://www.mckinsey.com/business-functions/risk/our-insights/the-new-frontier-in-anti-money-laundering>.

¹⁷¹ FinTech Futures, How new AML tech is freezing the fraudsters, (March 6, 2019), <https://www.fintechfutures.com/2019/03/how-new-aml-tech-is-freezing-the-fraudsters/>.

¹⁷² FinTech Futures, How new AML tech is freezing the fraudsters, (March 6, 2019), <https://www.fintechfutures.com/2019/03/how-new-aml-tech-is-freezing-the-fraudsters/>.

¹⁷³ FinTech Futures, How new AML tech is freezing the fraudsters, (March 6, 2019), <https://www.fintechfutures.com/2019/03/how-new-aml-tech-is-freezing-the-fraudsters/>.

¹⁷⁴ FinTech Futures, How new AML tech is freezing the fraudsters, (March 6, 2019), <https://www.fintechfutures.com/2019/03/how-new-aml-tech-is-freezing-the-fraudsters/>.

In addition to those measures, UK “member states” will be 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.”¹⁷⁵ 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*.¹⁷⁶

FinTech stands for “financial technology.”¹⁷⁷ There are “traditional bank account[s] and [there are] fintech account[s].”¹⁷⁸ In the UK fintech is a “rapidly growing open banking system” which has been “approved by the Financial Conduct Authority to provide open banking-enabled services to consumers and SMEs.”¹⁷⁹ The UK was the “first to introduce open banking” and “has been way ahead of the game in terms of fintech innovation.”¹⁸⁰ In the UK “Financial technology, or fintech” seeks to “inspire conversation and innovation” while enabling “start-ups and scaleups to provide more efficient and streamlined offerings” which has “disrupt[ed] traditional banking, payment and lending services.”¹⁸¹

¹⁷⁵ Colleen Stretch, [Brexit – What Now for the UK’s AML Regime?](https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/), (September 2016), <https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/>.

¹⁷⁶ Jaak Poldma, Rebecca Dipple, [New EU and UK Anti-Money Laundering Rules: The Fifth AML Directive Extends to Cryptocurrencies](https://www.orrick.com/Insights/2018/09/New-EU-and-UK-Anti-Money-Laundering-Rules-The-Fifth-AML-Directive-Extends-to-Cryptocurrencies), (September 13, 2018), <https://www.orrick.com/Insights/2018/09/New-EU-and-UK-Anti-Money-Laundering-Rules-The-Fifth-AML-Directive-Extends-to-Cryptocurrencies>.

¹⁷⁷ [The FinTech Revolution: An Introduction to Financial Technology](https://www.blankrome.com/publications/fintech-revolution-introduction-financial-technology), (March 2017), <https://www.blankrome.com/publications/fintech-revolution-introduction-financial-technology>.

¹⁷⁸ [Fintech: Friend or foe to anti-financial crime?](https://www.acamstoday.org/fintech-friend-or-foe-to-anti-financial-crime/), (June 3, 2019), <https://www.acamstoday.org/fintech-friend-or-foe-to-anti-financial-crime/>.

¹⁷⁹ [The Recipe Behind the UK’s Fintech Success](https://www.finextra.com/blogposting/18038/the-recipe-behind-the-uks-fintech-success), (October 22, 2019), <https://www.finextra.com/blogposting/18038/the-recipe-behind-the-uks-fintech-success>.

¹⁸⁰ [The Recipe Behind the UK’s Fintech Success](https://www.finextra.com/blogposting/18038/the-recipe-behind-the-uks-fintech-success), (October 22, 2019), <https://www.finextra.com/blogposting/18038/the-recipe-behind-the-uks-fintech-success>.

¹⁸¹ [Top 50 fintech startups and scaleups in the UK for 2020](https://about.beauhurst.com/blog/fintech-startup-companies/), (December 12, 2019), <https://about.beauhurst.com/blog/fintech-startup-companies/>.

The Anti-Money Laundering Act 2018 (SAML 2018)

The “Sanctions and Anti-Money Laundering Act 2018 (SAML 2018) is enabling legislation to allow the UK to impose economic and other sanctions, and money laundering and terrorist financing regulations, after the departure from the EU.”¹⁸² However, even after the UK’s departure from EU, they have vowed to “continue to work together on AML issues after Brexit,” including compliance with the MLD5, even though deadlines for implementation have not been set.¹⁸³ The UK has even “proposed [to] tight[en] up MLR 2017 ... [and expand] ... the range of businesses” they will apply to areas such as “the virtual or crypto-currencies sector,” as discussed above, in response to growing concerns when it comes to banking and tech.¹⁸⁴

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.”¹⁸⁵

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

¹⁸² Practical Law Business Crime and Investigations, Sanctions and Anti-Money Laundering Act 2018: overview, Thomson Reuters, [https://uk.practicallaw.thomsonreuters.com/w-015-4069?originationContext=knowHow&transitionType=KnowHowItem&contextData=\(sc.Default\)&firstPage=true&hcp=](https://uk.practicallaw.thomsonreuters.com/w-015-4069?originationContext=knowHow&transitionType=KnowHowItem&contextData=(sc.Default)&firstPage=true&hcp=).

¹⁸³ The UK’s anti-money laundering laws post-Brexit, (August 29, 2019), <https://www.openaccessgovernment.org/anti-money-laundering-laws-post-brexit/72376/>.

¹⁸⁴ The UK’s anti-money laundering laws post-Brexit, (August 29, 2019), <https://www.openaccessgovernment.org/anti-money-laundering-laws-post-brexit/72376/>.

¹⁸⁵ Jaak Poldma, Rebecca Dipple, New EU and UK Anti-Money Laundering Rules: The Fifth AML Directive Extends to Cryptocurrencies, (September 13, 2018), <https://www.orrick.com/Insights/2018/09/New-EU-and-UK-Anti-Money-Laundering-Rules-The-Fifth-AML-Directive-Extends-to-Cryptocurrencies>.

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.”¹⁸⁶

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).”¹⁸⁷ 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.¹⁸⁸

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.’”¹⁸⁹ Whereby “the protector (if any), beneficiaries or class of beneficiaries, and any other person exercising control over the trust”¹⁹⁰ is required to include such information “on a central register of

¹⁸⁶ Jaak Poldma, Rebecca Dipple, New EU and UK Anti-Money Laundering Rules: The Fifth AML Directive Extends to Cryptocurrencies, (September 13, 2018), <https://www.orrick.com/Insights/2018/09/New-EU-and-UK-Anti-Money-Laundering-Rules-The-Fifth-AML-Directive-Extends-to-Cryptocurrencies>.

¹⁸⁷ Colleen Stretch, Brexit – What Now for the UK’s AML Regime?, (September 2016), <https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/>.

¹⁸⁸ Colleen Stretch, Brexit – What Now for the UK’s AML Regime?, (September 2016), <https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/>.

¹⁸⁹ Colleen Stretch, Brexit – What Now for the UK’s AML Regime?, (September 2016), <https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/>.

¹⁹⁰ Colleen Stretch, Brexit – What Now for the UK’s AML Regime?, (September 2016), <https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/>.

trusts.”¹⁹¹ The “HMRC” is one of the “competent authorities” responsible for maintaining a register, however “the UK has no plans to make this information available to the public.”¹⁹²

There’s a difference between “companies and trusts” argues *UK Prime Minister David Cameron*, he highlighted the necessity for a solution to “address[s] the potential misuse of companies, such as central public registries” arguing that it is not appropriate.¹⁹³ Trusts on the other hand, require different treatment, where the implications for privacy are “far greater.”¹⁹⁴ *Lord Newby* argues that 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.”¹⁹⁵ The purpose of a registration requirement would be to limit “legal arrangements” to “certain trusts [with] a legitimate interest” to determining “beneficial owner[s]” to any “information accessible to persons [or] organisations” who claim to have a “legitimate interest” to “assess the conditions and technical specifications” by which any establishment of “registers of trusts (and companies)” who’s interconnection either imposing or not imposing “data protection and privacy requirements” will suffer “tax consequences.”¹⁹⁶ Since the passing of the EU’s “accelerat[e] implementation of the 4th AMLD in 2017, “the EU has taken [an] international lead ... with regard to [the importance of] information sharing.”¹⁹⁷ This is a very

¹⁹¹ Colleen Stretch, [Brexit – What Now for the UK’s AML Regime?](https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/), (September 2016), <https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/>.

¹⁹² Colleen Stretch, [Brexit – What Now for the UK’s AML Regime?](https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/), (September 2016), <https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/>.

¹⁹³ Colleen Stretch, [Brexit – What Now for the UK’s AML Regime?](https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/), (September 2016), <https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/>.

¹⁹⁴ Colleen Stretch, [Brexit – What Now for the UK’s AML Regime?](https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/), (September 2016), <https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/>.

¹⁹⁵ Colleen Stretch, [Brexit – What Now for the UK’s AML Regime?](https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/), (September 2016), <https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/>.

¹⁹⁶ Colleen Stretch, [Brexit – What Now for the UK’s AML Regime?](https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/), (September 2016), <https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/>.

¹⁹⁷ Colleen Stretch, [Brexit – What Now for the UK’s AML Regime?](https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/), (September 2016), <https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/>.

“complex task” especially when “confronted with data protection and privacy requirements.”¹⁹⁸

In fact one citizen in France argues that “the publication of her personal data infringed on the right to a private life.”¹⁹⁹

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.”²⁰⁰ 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.” FATF’s current objectives 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.”²⁰¹

According to *FATF* “the greatest risks should receive the most attention.”²⁰² Their guides use a “risk-based approach” which is “founded on the premise that there are finite resources

¹⁹⁸ Colleen Stretch, *Brexit – What Now for the UK’s AML Regime?*, (September 2016), <https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/>.

¹⁹⁹ Colleen Stretch, *Brexit – What Now for the UK’s AML Regime?*, (September 2016), <https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/>.

²⁰⁰ 2010 ABA Prof. Law. 3

²⁰¹ 2010 ABA Prof. Law. 3

²⁰² 2010 ABA Prof. Law. 3

available to combat money laundering and terrorism financing ... [to] be used in the most efficient manner possible.”²⁰³

The 2008 Lawyer Guidance, identifies three different kinds of risk factors: client risk, and service risk.²⁰⁴ 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.”²⁰⁵ 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.”²⁰⁶ 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.”²⁰⁷

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.”²⁰⁸ Risk assessment by the U.S. and U.K. are very similar, having expressed a consolidated effort to “provide a stronger understanding of how two leading economies [can] better identify, analyze, and mitigate the challenges that they face.”²⁰⁹ According to FATF, when the two nations adhere to a “risk-based approach” while noting both “similarities and differences” this can improve their ability “to view

²⁰³ 2010 ABA Prof. Law. 3

²⁰⁴ 2010 ABA Prof. Law. 3

²⁰⁵ 2010 ABA Prof. Law. 3

²⁰⁶ 2010 ABA Prof. Law. 3

²⁰⁷ 2010 ABA Prof. Law. 3

²⁰⁸ 2010 ABA Prof. Law. 3

²⁰⁹ Alex Zerden, Sarah Freuden, BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

various threats.”²¹⁰ One of the systems maintained by countries other than the US and UK are based on inspections, whereby they maintain the authority to carry out an “issuance of observation[n]” upon any entity bearing a high “risk-rating” diagnosis of which “significant activities” i.e. “products and services” that violate AML/CFT laws and regulations as observed by their assigned “supervised entity” with the capacity to confirm risk -level[s] arising to those levels which would require “corrective actions and/or sanctions,” administered by those supervising entities, with transparency authority.²¹¹ FAFT helps stakeholders identify risks as well as recognize their “obligations to combat laundering using [this] risk-based approach.”²¹² 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.”²¹³

The UK “focused on money laundering, with only the final chapter devoted to terrorist financing.”²¹⁴ Whereas the US focused on terrorist financing, and “the many ways that terrorist obtain financing – including kidnapping ... drug trafficking, and individual fundraising not

²¹⁰ Alex Zerden, Sarah Freuden, BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

²¹¹ Guidance for a Risk-Based Approach The Banking Sector, (October 2014), <http://www.fatf-gafi.org/media/fatf/documents/reports/Risk-Based-Approach-Banking-Sector.pdf>.

²¹² Alex Zerden, Sarah Freuden, BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

²¹³ Alex Zerden, Sarah Freuden, BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

²¹⁴ Alex Zerden, Sarah Freuden, BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

affiliated with a charitable organization” which were not included in the “U.K. Report.”²¹⁵ 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.”²¹⁶ 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.”²¹⁷

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.”²¹⁸ One political issue raised is whether “stronger requirements would undermine client confidentiality ... [which] state-level officials claim collecting the information would be burdensome.”²¹⁹

“AML and CFT ris[k]” reports have been evaluated by both the “US and the UK.”²²⁰ The UK questioned “whether government regulation was necessary” and by March 2015 decided that there was a ““strong case” for introducing AML regulations.”²²¹ The UK report found the current

²¹⁵ Alex Zerden, Sarah Freuden, *BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering*, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

²¹⁶ Alex Zerden, Sarah Freuden, *BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering*, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

²¹⁷ Alex Zerden, Sarah Freuden, *BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering*, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

²¹⁸ Alex Zerden, Sarah Freuden, *BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering*, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

²¹⁹ Alex Zerden, Sarah Freuden, *BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering*, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

²²⁰ Alex Zerden, Sarah Freuden, *BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering*, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

²²¹ Alex Zerden, Sarah Freuden, *BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering*, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

risk to be low, when it comes to “money-laundering [and] virtual currencies.”²²² “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.”²²³ Those who use digital currency also known as money transmitters are “obligate[d] ... to comply with the AML and CFT regulations.”²²⁴ 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.”²²⁵

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).”²²⁶ As a general rule, the “Crown Prosecution Services” prosecute offences, 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 offences under POCA.²²⁷ 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. While “dishonesty” is “not required” to prove the commission of an

²²² Alex Zerden, Sarah Freuden, BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

²²³ Alex Zerden, Sarah Freuden, BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

²²⁴ Alex Zerden, Sarah Freuden, BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

²²⁵ Alex Zerden, Sarah Freuden, BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

²²⁶ Joel M. Cohen, Stephanie Brooker, Anti-Money Laundering Laws and Regulations 2019, ICLG, (September 5, 2019), <https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/uk>

²²⁷ Joel M. Cohen, Stephanie Brooker, Anti-Money Laundering Laws and Regulations 2019, ICLG, (September 5, 2019), <https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/uk>

offence, others defences to “money laundering” will be evaluated under POCA 2002, concerning the “appropriate consent to transaction[s]” as well as any “reasonable excuse[s] for not making a disclosure” whenever “the relevant conduct” in question is found to have “occurred outside of the UK” and meets the criteria of what is considered a “unlawful [activity] at the time in the territory,” provided that “the elements of each of the principal offences and the defences [are made] available” for evaluation.²²⁸ POCA may also apply to “criminal conduct” occurring in the UK, and meets the required elements, 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.²²⁹

On the other hand, 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 defenses, in relation to the disclosure offences.”²³⁰ Its important to remember that: POCA applies only to “prescribed persons” covered by “SARs compliance regulations concerning “lawful disclosures” in the event that “information contained” within those reports concerning persons as defined under POCA, will be “used by authorities to pursue further inquiries and investigations ... [with the potential to] lead to the prosecution of wrongdoers.”²³¹ Then POCA would not apply, or be used in those cases to

²²⁸ Money laundering under the Proceeds of Crime Act 2002 -overview, https://www.lexisnexis.com/uk/lexispsl/corporatecrime/document/391421/55KB-9471-F188-N12W-00000-00/Money_laundering_under_the_Proceeds_of_Crime_Act_2002_overview.

²²⁹ Joel M. Cohen, Stephanie Brooker, Anti-Money Laundering Laws and Regulations 2019, ICLG, (September 5, 2019), <https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/uk>

²³⁰ Joel M. Cohen, Stephanie Brooker, Anti-Money Laundering Laws and Regulations 2019, ICLG, (September 5, 2019), <https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/uk>

²³¹ Suspicious activity reports, <https://www.cms-lawnow.com/aczone/money-laundering/suspicious-activity-reports>.

prosecute. -Both individuals and corporations can be prosecuted for money laundering. In fact, most “offences in POCA apply to corporations as well as individuals.”²³²

Furthermore, the HMRC “is a supervisory body for Money Laundering Regulations” in the UK.²³³ It’s a “non-ministerial department of the UK Government responsible for the collection of taxes, the payment of some forms of state support and the administration of other regulatory regimes including the national minimum wage.”²³⁴ This is to ensure that people do not cheat the system. HMRC is a leader “on policy maintenance and policy development.”²³⁵

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)²³⁶ The purpose of these regulations are to provide for some “written assessment of money laundering risk and prescribe ... internal controls.”²³⁷ 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.²³⁸

²³² Joel M. Cohen, Stephanie Brooker, Anti-Money Laundering Laws and Regulations 2019, ICLG, (September 5, 2019), <https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/uk>

²³³ Register or renew your money laundering supervision with HMRC, (March 8, 2019), <https://www.gov.uk/guidance/register-or-renew-your-money-laundering-supervision-with-hmrc>.

²³⁴ HM Revenue and Customs, Wikipedia, https://en.wikipedia.org/wiki/HM_Revenue_and_Customs.

²³⁵ About us, <https://www.gov.uk/government/organisations/hm-revenue-customs/about>.

²³⁶ Karolos Seeger, Alex Parker, Ceri Chave, & Andrew Lee, UK Implements New Anti-Money Laundering Rules, Compliance & Enforcement, (June 26, 2017), https://wp.nyu.edu/compliance_enforcement/2017/06/29/uk-implements-new-anti-money-laundering-rules/.

²³⁷ Karolos Seeger, Alex Parker, Ceri Chave, & Andrew Lee, UK Implements New Anti-Money Laundering Rules, Compliance & Enforcement, (June 26, 2017), https://wp.nyu.edu/compliance_enforcement/2017/06/29/uk-implements-new-anti-money-laundering-rules/.

²³⁸ Karolos Seeger, Alex Parker, Ceri Chave, & Andrew Lee, UK Implements New Anti-Money Laundering Rules, Compliance & Enforcement, (June 26, 2017), https://wp.nyu.edu/compliance_enforcement/2017/06/29/uk-implements-new-anti-money-laundering-rules/.

“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).”²³⁹

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).”²⁴⁰

Overall the MLR 2017 encourages “relevant persons ... to adopt a more risk-based approach towards anti-money laundering [with regards to how they] conduct due diligence.”²⁴¹ Relevant persons, may also include “gambling providers” in addition to “trustees [with a] greater obligation [for] transparency of beneficiaries in their trusts.”²⁴² The purpose for the MLR 2017, is to provide a system or procedure for which relevant persons can produce a “written AML risk report [to] address[s] its customers, countries of operation, products and services, transactions, [and] delivery channels.” Meanwhile, depending on the “size and nature of the business” they may also be required to create “written policies” to “identify risks ... [as well as] repor[t], [and

²³⁹ Joel M. Cohen & Stephanie Brooker, Anti-Money Laundering Laws and Regulations 2019, ICLG, (September 5, 2019), <https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/uk>.

²⁴⁰ Joel M. Cohen & Stephanie Brooker, Anti-Money Laundering Laws and Regulations 2019, ICLG, (September 5, 2019), <https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/uk>.

²⁴¹ Money Laundering Regulations 2017 now in force what you need to know, (June 29, 2017), <https://www.burges-salmon.com/news-and-insight/legal-updates/money-laundering-regulations-2017/>.

²⁴² Money Laundering Regulations 2017 now in force what you need to know, (June 29, 2017), <https://www.burges-salmon.com/news-and-insight/legal-updates/money-laundering-regulations-2017/>.

keep] record[s] [as part of their] monitoring requirements.”²⁴³ Sometimes a more “simplified due diligence” protocol, may be found appropriate, in circumstances where there may be “geographical risk factors” subjecting them to “black list ... high risk jurisdictions” for any “transaction[s] [where] enhanced due diligence” may be required, and where “additional risk assessment[s] [may be found to be] compulsory” -in other words, “ceas[ing] to be automatic.”²⁴⁴

Also included in the MLR 2017, are CDD requirements for written agreements and “documentation in respect of the customer and/or beneficial owner” and also applies to PEPs, people “trusted with prominent public functions both in the UK and overseas.”²⁴⁵ One offense to be wary of, are making any “reckless[s] ... statement[s] in the context of money laundering [that would be considered] false or misleading ... and punishable by a fine and/or up to 2 years’ imprisonment.”²⁴⁶

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.”²⁴⁷ 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”

²⁴³ [Money Laundering Regulations 2017 now in force what you need to know](https://www.burges-salmon.com/news-and-insight/legal-updates/money-laundering-regulations-2017/), (June 29, 2017), <https://www.burges-salmon.com/news-and-insight/legal-updates/money-laundering-regulations-2017/>.

²⁴⁴ [Money Laundering Regulations 2017 now in force what you need to know](https://www.burges-salmon.com/news-and-insight/legal-updates/money-laundering-regulations-2017/), (June 29, 2017), <https://www.burges-salmon.com/news-and-insight/legal-updates/money-laundering-regulations-2017/>.

²⁴⁵ [Money Laundering Regulations 2017 now in force what you need to know](https://www.burges-salmon.com/news-and-insight/legal-updates/money-laundering-regulations-2017/), (June 29, 2017), <https://www.burges-salmon.com/news-and-insight/legal-updates/money-laundering-regulations-2017/>.

²⁴⁶ [Money Laundering Regulations 2017 now in force what you need to know](https://www.burges-salmon.com/news-and-insight/legal-updates/money-laundering-regulations-2017/), (June 29, 2017), <https://www.burges-salmon.com/news-and-insight/legal-updates/money-laundering-regulations-2017/>.

²⁴⁷ John Glen, [UK launches new anti-money laundering watchdog](https://www.gov.uk/government/news/uk-launches-new-anti-money-laundering-watchdog), (January 23, 2018), <https://www.gov.uk/government/news/uk-launches-new-anti-money-laundering-watchdog>.

which will be used in the delivery of the government’s commitment to deepen partnerships with the private sector.²⁴⁸ 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.”²⁴⁹

The History of AML in the US

AML stands for Anti-Money Laundering. There are three stages: placement, layering, and integration.²⁵⁰ “Placement is the movement of cash from its source ... [which] can be easily disguised or misrepresented.”²⁵¹ This occurs by putting back into the “financial system” monies to appear clean, “sometimes through the wiring or transferring [of money] through numerous accounts.”²⁵² 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.”²⁵³ The BSA has since been “enhanced and amended.”²⁵⁴ 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

²⁴⁸ John Glen, [UK launches new anti-money laundering watchdog](https://www.gov.uk/government/news/uk-launches-new-anti-money-laundering-watchdog), (January 23, 2018), <https://www.gov.uk/government/news/uk-launches-new-anti-money-laundering-watchdog>.

²⁴⁹ John Glen, [UK launches new anti-money laundering watchdog](https://www.gov.uk/government/news/uk-launches-new-anti-money-laundering-watchdog), (January 23, 2018), <https://www.gov.uk/government/news/uk-launches-new-anti-money-laundering-watchdog>.

²⁵⁰ [Money Laundering in the EU: Methods and Stages of Money Laundering](https://people.exeter.ac.uk/watupman/undergrad/ron/methods%20and%20stages.htm), <https://people.exeter.ac.uk/watupman/undergrad/ron/methods%20and%20stages.htm>.

²⁵¹ [Money Laundering in the EU: Methods and Stages of Money Laundering](https://people.exeter.ac.uk/watupman/undergrad/ron/methods%20and%20stages.htm), <https://people.exeter.ac.uk/watupman/undergrad/ron/methods%20and%20stages.htm>.

²⁵² [History of Anti-Money Laundering Laws](https://www.fincen.gov/history-anti-money-laundering-laws), <https://www.fincen.gov/history-anti-money-laundering-laws>.

²⁵³ [History of Anti-Money Laundering Laws](https://www.fincen.gov/history-anti-money-laundering-laws), <https://www.fincen.gov/history-anti-money-laundering-laws>.

²⁵⁴ [History of Anti-Money Laundering Laws](https://www.fincen.gov/history-anti-money-laundering-laws), <https://www.fincen.gov/history-anti-money-laundering-laws>.

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.²⁵⁵

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.””²⁵⁶ 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 2004.²⁵⁷ 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.”²⁵⁸ Although there are “criminal prohibitions on terrorism financing [to individuals]. Legal entities [can] be held liable for violations of the Bank Secrecy Act.”²⁵⁹

AML/CFT laws are “extraterritorial.” Meaning the laws apply to activities conducted “in, with, or involving the United States.”²⁶⁰ International agreements, or “multilateral agreements”

²⁵⁵ [History of Anti-Money Laundering Laws](https://www.fincen.gov/history-anti-money-laundering-laws), <https://www.fincen.gov/history-anti-money-laundering-laws>.

²⁵⁶ [USA: Anti Money Laundering 2019](https://www.iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/usa), ICLG, <https://www.iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/usa>.

²⁵⁷ Cadwalader Wickersham & Taft LLP, [Anti-money laundering and fraud in the USA](https://www.lexology.com/library/detail.aspx?g=330bdf46-1eb9-4a14-8d7e-9851feb2839e), Lexology, <https://www.lexology.com/library/detail.aspx?g=330bdf46-1eb9-4a14-8d7e-9851feb2839e>.

²⁵⁸ Cadwalader Wickersham & Taft LLP, [Anti-money laundering and fraud in the USA](https://www.lexology.com/library/detail.aspx?g=330bdf46-1eb9-4a14-8d7e-9851feb2839e), Lexology, <https://www.lexology.com/library/detail.aspx?g=330bdf46-1eb9-4a14-8d7e-9851feb2839e>.

²⁵⁹ Cadwalader Wickersham & Taft LLP, [Anti-money laundering and fraud in the USA](https://www.lexology.com/library/detail.aspx?g=330bdf46-1eb9-4a14-8d7e-9851feb2839e), Lexology, <https://www.lexology.com/library/detail.aspx?g=330bdf46-1eb9-4a14-8d7e-9851feb2839e>.

²⁶⁰ Cadwalader Wickersham & Taft LLP, [Anti-money laundering and fraud in the USA](https://www.lexology.com/library/detail.aspx?g=330bdf46-1eb9-4a14-8d7e-9851feb2839e), Lexology, <https://www.lexology.com/library/detail.aspx?g=330bdf46-1eb9-4a14-8d7e-9851feb2839e>.

that “include AML/CFT provisions Facilitate [both the] exchange[e] of banking and other financial records [as well as] in money laundering cases involving other countries.”²⁶¹

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.”²⁶² With regards to compliance, FinCEN 314 list, 314(a), “enables law enforcement to solicit information from financial institutions related to such investigations.”²⁶³ 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.²⁶⁴ 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.”²⁶⁵

²⁶¹ Cadwalader Wickersham & Taft LLP, [Anti-money laundering and fraud in the USA](https://www.lexology.com/library/detail.aspx?g=330bdf46-1eb9-4a14-8d7e-9851feb2839e), Lexology, <https://www.lexology.com/library/detail.aspx?g=330bdf46-1eb9-4a14-8d7e-9851feb2839e>.

²⁶² Cadwalader Wickersham & Taft LLP, [Anti-money laundering and fraud in the USA](https://www.lexology.com/library/detail.aspx?g=330bdf46-1eb9-4a14-8d7e-9851feb2839e), Lexology, <https://www.lexology.com/library/detail.aspx?g=330bdf46-1eb9-4a14-8d7e-9851feb2839e>.

²⁶³ [FinCEN Regulations](https://www.csiweb.com/industries-we-serve/financial-institutions/regulatory-compliance/federal-regulations/fincen-compliance), CSI, <https://www.csiweb.com/industries-we-serve/financial-institutions/regulatory-compliance/federal-regulations/fincen-compliance>.

²⁶⁴ [FinCEN Regulations](https://www.csiweb.com/industries-we-serve/financial-institutions/regulatory-compliance/federal-regulations/fincen-compliance), CSI, <https://www.csiweb.com/industries-we-serve/financial-institutions/regulatory-compliance/federal-regulations/fincen-compliance>.

²⁶⁵ [FinCEN Regulations](https://www.csiweb.com/industries-we-serve/financial-institutions/regulatory-compliance/federal-regulations/fincen-compliance), CSI, <https://www.csiweb.com/industries-we-serve/financial-institutions/regulatory-compliance/federal-regulations/fincen-compliance>.

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”].”²⁶⁶ 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.””²⁶⁷

In order to enforce violations, The Bank Secrecy Act relies upon a “BSA E-Filing System in order to submit Suspicious Activity Reports.”²⁶⁸ 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.”²⁶⁹ 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.”²⁷⁰ The BSA also includes a “provisio[s] of the USA Patriot Act, which requires every bank to adopt a customer identification program.”²⁷¹ Financial institutions include: “national banks, federal savings associations, federal branches, and agencies of foreign banks.”²⁷²

²⁶⁶ FinCEN’s Mandate From Congress, 31 U.S.C. 310, <https://www.fincen.gov/resources/fincens-mandate-congress>.

²⁶⁷ FinCEN’s Mandate From Congress, 31 U.S.C. 310, <https://www.fincen.gov/resources/fincens-mandate-congress>.

²⁶⁸ Suspicious Activity Reports (SAR), Office of the Comptroller of the Currency, (April 1, 2013), <https://www.occ.treas.gov/topics/bank-operations/financial-crime/suspicious-activity/index-suspicious-activity.html>.

²⁶⁹ Suspicious Activity Reports (SAR), Office of the Comptroller of the Currency, (April 1, 2013), <https://www.occ.treas.gov/topics/bank-operations/financial-crime/suspicious-activity/index-suspicious-activity.html>.

²⁷⁰ Suspicious Activity Reports (SAR), Office of the Comptroller of the Currency, (April 1, 2013), <https://www.occ.treas.gov/topics/bank-operations/financial-crime/suspicious-activity/index-suspicious-activity.html>.

²⁷¹ Suspicious Activity Reports (SAR), Office of the Comptroller of the Currency, (April 1, 2013), <https://www.occ.treas.gov/topics/bank-operations/financial-crime/suspicious-activity/index-suspicious-activity.html>.

²⁷² Bank Secrecy Act, Office of the Comptroller of the Currency, <https://www.occ.treas.gov/topics/supervision-and-examination/bsa/index-bsa.html>.

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”²⁷³

The OCC

The OCC “conducts regular examinations of” these financial institutions “to determine compliance with the BSA” in the US.²⁷⁴ 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.”²⁷⁵ 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.”²⁷⁶ 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.”²⁷⁷

²⁷³ Bank Secrecy Act, Office of the Comptroller of the Currency, <https://www.occ.treas.gov/topics/supervision-and-examination/bsa/index-bsa.html>.

²⁷⁴ Bank Secrecy Act, Office of the Comptroller of the Currency, <https://www.occ.treas.gov/topics/supervision-and-examination/bsa/index-bsa.html>.

²⁷⁵ Bank Secrecy Act, Office of the Comptroller of the Currency, <https://www.occ.treas.gov/topics/supervision-and-examination/bsa/index-bsa.html>.

²⁷⁶ Bank Secrecy Act, Office of the Comptroller of the Currency, <https://www.occ.treas.gov/topics/supervision-and-examination/bsa/index-bsa.html>.

²⁷⁷ Bank Secrecy Act, Office of the Comptroller of the Currency, <https://www.occ.treas.gov/topics/supervision-and-examination/bsa/index-bsa.html>.

What is AML, and the 5 Pillars

In the US, there are 5 pillars governing AML “Anti-Money Laundering” and BSA Compliance under FinCEN, the most recent pillar being “the establishment of a risk-based, customer due diligence procedure.”²⁷⁸ The “Bank Secrecy Act compliance program (collectively “AML”) rests upon four pillars: (1) written policies and procedures; (2) a designated AML compliance officer; (3) independent testing of the institution’s AML program; and (4) implementation of an adequate employee training program.”²⁷⁹ This new rule not only amends the “Bank Secrecy Act ... effective July 2016, [but also required full compliance] by May 11, 2018.”²⁸⁰

At a minimum a proper BSA/AML program must include the following:

- A system of internal controls to ensure ongoing compliance;
- Independent testing of BSA/AML compliance;
- The designation of an individual responsible for day-to-day compliance; and
- Training for appropriate personnel.²⁸¹

²⁷⁸ Stuart P. Lott, The “Fifth Pillar” of AML/BSA Compliance FinCEN Issues Final Rule for New Customer Due Diligence Requirements under the Bank Secrecy Act, Bradley, (July 20, 2016), <https://www.financialservicesperspectives.com/2016/07/the-fifth-pillar-of-amlbsa-compliance-fincen-issues-final-rule-for-new-customer-due-diligence-requirements-under-the-bank-secrecy-act/>.

²⁷⁹ Stuart P. Lott, The “Fifth Pillar” of AML/BSA Compliance FinCEN Issues Final Rule for New Customer Due Diligence Requirements under the Bank Secrecy Act, Bradley, (July 20, 2016), <https://www.financialservicesperspectives.com/2016/07/the-fifth-pillar-of-amlbsa-compliance-fincen-issues-final-rule-for-new-customer-due-diligence-requirements-under-the-bank-secrecy-act/>.

²⁸⁰ FinCEN Adds Fifth BSA Compliance “Pillar,” The NCUA Report National Credit Union Administration, <https://www.ncua.gov/newsroom/ncua-report/2017/fincen-adds-fifth-bsa-compliance-pillar>.

²⁸¹ FinCEN Adds Fifth BSA Compliance “Pillar,” The NCUA Report National Credit Union Administration, <https://www.ncua.gov/newsroom/ncua-report/2017/fincen-adds-fifth-bsa-compliance-pillar>.

The purpose behind the fifth pillar, implemented by FinCEN, the US Treasury Department Financial Crimes Enforcement Network, is to impose a “new requirement” that requires “banks, broker-dealers, mutual funds, futures commission merchants, and brokers in commodities” to “identify and verify the identity of the natural persons behind the legal entity customers – [i.e] the beneficial owners.”²⁸² FinCEN provided a “two-year implementation period.”²⁸³ So that whenever “an account is opened by a new or existing legal entity customer” the financial institution would have to identify its true owners based upon the following criteria, which would include anyone who owns 25% or more equity interest either directly or indirectly, or includes any individual who has a “significant responsibility to control, manage, or direct a legal entity customer Who regular performs similar functions.”²⁸⁴

In order to identify the beneficial owners a CIP Program, has been established to “verify the identity of individual customers under the financial institution’s customer identification program (CIP).”²⁸⁵ Whereby financial institutions are required to “verify that information using reasonable and practicable risk-based procedures.”²⁸⁶ Factors involved in this process, require examination of the “reliability of the information” to make sure a true and accurate identification

²⁸² Stuart P. Lott, The “Fifth Pillar” of AML/BSA Compliance FinCEN Issues Final Rule for New Customer Due Diligence Requirements under the Bank Secrecy Act, Bradley, (July 20, 2016), <https://www.financialservicesperspectives.com/2016/07/the-fifth-pillar-of-amlbsa-compliance-fincen-issues-final-rule-for-new-customer-due-diligence-requirements-under-the-bank-secrecy-act/>.

²⁸³ FinCEN Adds Fifth BSA Compliance “Pillar.” The NCUA Report National Credit Union Administration, <https://www.ncua.gov/newsroom/ncua-report/2017/fincen-adds-fifth-bsa-compliance-pillar>.

²⁸⁴ Stuart P. Lott, The “Fifth Pillar” of AML/BSA Compliance FinCEN Issues Final Rule for New Customer Due Diligence Requirements under the Bank Secrecy Act, Bradley, (July 20, 2016), <https://www.financialservicesperspectives.com/2016/07/the-fifth-pillar-of-amlbsa-compliance-fincen-issues-final-rule-for-new-customer-due-diligence-requirements-under-the-bank-secrecy-act/>.

²⁸⁵ Stuart P. Lott, The “Fifth Pillar” of AML/BSA Compliance FinCEN Issues Final Rule for New Customer Due Diligence Requirements under the Bank Secrecy Act, Bradley, (July 20, 2016), <https://www.financialservicesperspectives.com/2016/07/the-fifth-pillar-of-amlbsa-compliance-fincen-issues-final-rule-for-new-customer-due-diligence-requirements-under-the-bank-secrecy-act/>.

²⁸⁶ Stuart P. Lott, The “Fifth Pillar” of AML/BSA Compliance FinCEN Issues Final Rule for New Customer Due Diligence Requirements under the Bank Secrecy Act, Bradley, (July 20, 2016), <https://www.financialservicesperspectives.com/2016/07/the-fifth-pillar-of-amlbsa-compliance-fincen-issues-final-rule-for-new-customer-due-diligence-requirements-under-the-bank-secrecy-act/>.

of the beneficial owners, and if necessary determine whether a financial institution must rely on a financial institutes “affiliates” to identify and verify a legal entity’s beneficial owners. Entities excluded from this fifth pillar, include “entities registered with the SEC or the CFTC,” insurance companies, non-US financial institutions established in jurisdictions who’s regulators maintain beneficial ownership information, and non-US governmental entities engaging in non-commercial activities.”²⁸⁷ Furthermore, “CIP procedures and risk-based monitoring [have been used] to identify suspicious transactions.”²⁸⁸ However there are deficiencies to these programs ability to adhere to BSA/AML regulatory requirements. Under the new CDD rule, each financial institution must not only review new account policies and procedures, updating them with the new beneficial ownership identification requirements, but they must also determine the beneficial owners ie the current legal entity customers, as well as ensure compliance with all “CIP, CDD. And risk-based monitoring requirements.”²⁸⁹

AML Compliance in the US

According to the “Paris-based Financial Action Task Force (FATF), which sets international anti-money laundering (AML) standards” rated the US as having the “lowest possible ratings for preventing criminals from laundering money using shell companies, and the

²⁸⁷ Stuart P. Lott, The “Fifth Pillar” of AML/BSA Compliance FinCEN Issues Final Rule for New Customer Due Diligence Requirements under the Bank Secrecy Act, Bradley, (July 20, 2016), <https://www.financialservicesperspectives.com/2016/07/the-fifth-pillar-of-amlbsa-compliance-fincen-issues-final-rule-for-new-customer-due-diligence-requirements-under-the-bank-secrecy-act/>.

²⁸⁸ Stuart P. Lott, The “Fifth Pillar” of AML/BSA Compliance FinCEN Issues Final Rule for New Customer Due Diligence Requirements under the Bank Secrecy Act, Bradley, (July 20, 2016), <https://www.financialservicesperspectives.com/2016/07/the-fifth-pillar-of-amlbsa-compliance-fincen-issues-final-rule-for-new-customer-due-diligence-requirements-under-the-bank-secrecy-act/>.

²⁸⁹ Stuart P. Lott, The “Fifth Pillar” of AML/BSA Compliance FinCEN Issues Final Rule for New Customer Due Diligence Requirements under the Bank Secrecy Act, Bradley, (July 20, 2016), <https://www.financialservicesperspectives.com/2016/07/the-fifth-pillar-of-amlbsa-compliance-fincen-issues-final-rule-for-new-customer-due-diligence-requirements-under-the-bank-secrecy-act/>.

oversight attorneys and real estate agents, black marks tarnishing the country’s overall powerful framework to counter financial crime.”²⁹⁰ On a more positive note, the same FATF evaluators also gave the “US high marks tied to its oversight of banks, sharing of information and tackling terrorist financing.”²⁹¹ Overall in the battle for achieving effectiveness, and to combat deficiencies to current systems in place, since the “Panama Papers scandal” regarding “how terrorists, criminals and the corrupt ... hide illicit assets behind murky ownership structures” came out, the US has since been put “under more stringent evaluations focusing on effectiveness rather than technical compliance.”²⁹² It was “Wikileaks [that] released the Panama Papers, documents detailing how wealthy Europeans laundered money and avoided sanctions to skip paying taxes.”²⁹³ Compared to the UK (*see below*), the US “system has serious gaps that impede timely access to beneficial ownership information,” and poorly ranked in terms of “corporate ownership.”²⁹⁴ Overall the US does impose a range of sanctions, and “remedial measures, including informal supervisory actions.”²⁹⁵ In addition, the US has been praised by FATF for their Financial Institutions (FIs) “evolved understanding of ML/TF risks and obligations” as well as their “systems and processes for implementing preventative measures” such as, “onboarding

²⁹⁰ FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing, ACFCS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

²⁹¹ FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing, ACFCS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

²⁹² FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing, ACFCS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

²⁹³ EU Fifth AML Directive: How Banks Can Prepare For Five Key Changes, (November 18, 2019), <https://feedzai.com/blog/5aml-d-how-banks-can-prepare-for-five-key-changes/>.

²⁹⁴ FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing, ACFCS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

²⁹⁵ FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing, ACFCS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

customers, transaction monitoring and reporting suspicious transactions.”²⁹⁶ The greatest “burden” to the US financial sector lies in the “required measures under the Bank Secrecy Act (BSA).”²⁹⁷

Corporate Transparency in the US According to FATF

One of the biggest problems when it comes to corporate transparency is that “as long as certain states exist in [a] way [that] sell[s] corporate secrecy the US will be singled out by FATF.”²⁹⁸ In a troubled sense, “those working behind the scenes with power, wealth and political influence” are the “real ones controlling US tax havens ... protect[ing] their interest and keep[ing] their secrecy.”²⁹⁹ The Obama administration “proposed legislation to mandate companies to disclose beneficial owners” ... however Congress had yet to introduce the bill, “according to *Reuters*.”³⁰⁰ Although “Federal authorities have a good understanding of the risks of complex structures of legal persons and arrangements being used to hide ownership and lauder money”³⁰¹ there are still “serious gaps” and “the US will continue to lag behind our global

²⁹⁶ FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing, ACFCS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

²⁹⁷ FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing, ACFCS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

²⁹⁸ FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing, ACFCS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

²⁹⁹ FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing, ACFCS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

³⁰⁰ FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing, ACFCS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

³⁰¹ FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing, ACFCS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

partners.”³⁰² According to FATF the “US [is] non-compliant, [receiving the] lowest rating, tied to beneficial ownership and oversight as designated non-financial business, such as those involved in company formation.”³⁰³ It seems as though it doesn’t matter that the “US Treasury finalized rules requiring banks to request and capture beneficial ownership details at account opening, but institutions have no way to verify what they are told.”

How Does AML in the US Work?

The basic tenants of an AML compliance program under FINRA 3310.³⁰⁴ Along with compliance with the Bank Secrecy Act and the implementation of “Anti-Money Laundering rules” the primary purpose of AML is to “detect and report suspicious activity” such as “securities fraud and market manipulation.” Under FINRA 3310, AML compliance may include the following: an approved program, reasonably designed to detect and report suspicious activity, reasonably designed to achieve compliance with the AML rules (including “a risk-based customer identification program (CIP) that enables firms to form a reasonable belief that it knows the true identity of its customers,”³⁰⁵ that can be “independently tested to ensure proper implementation of the program,” that requires “each FINRA member firm to submit contact information for its AML Compliance Officer through the FINRA Contact System (FCS), and requires “ongoing training [be conducted] and provided to appropriate personnel.”³⁰⁶

³⁰² FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing, ACFCS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

³⁰³ FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing, ACFCS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

³⁰⁴ Anti-Money Laundering (AML), <https://www.finra.org/rules-guidance/key-topics/aml>.

³⁰⁵ Anti-Money Laundering (AML), <https://www.finra.org/rules-guidance/key-topics/aml>.

³⁰⁶ Anti-Money Laundering (AML), <https://www.finra.org/rules-guidance/key-topics/aml>.

There are four pillars to an effective AML program.

- (1) Development of internal policies, procedures, and related controls.
- (2) Designation of a compliance officer.
- (3) A thorough and ongoing training program.
- (4) Independent review for compliance.³⁰⁷

In addition, there are CDD compliance measures, some of which have been added recently. CDD, is “Customer Due Diligence” which is “the process ... [by which] relevant information about the customer is collected and evaluated for any potential risk for the organization or money laundering/terrorist financing activities.”³⁰⁸

AML Compliance in the UK

In recent news, the UK has been criticized as “professional enablers,” a system which is “highly fragmented.”³⁰⁹ -Whereby “80% ... lack appropriate governance arrangements to tackle dirty money” their primary government sponsored source OPBAS, oversees 22 professional bodies, “and meant to ensure consistent supervision among the bodies,” however not only do they (1) “fail to gather full basic information on members (as a first step)” but they also (2) do not undertake any form of money laundering supervision at all.³¹⁰ -The “Celmenti reforms in 2006 demanded legal bodies separate their regulatory and other functions” however that has yet

³⁰⁷ James M. Deltch & Anthony Nguyen, CPA, On compliance: Four pillars of an effective BSA/AML program, CUInsight, (April 28, 2016), <https://www.cuinsight.com/compliance-four-pillars-effective-bsaaml-program.html>.

³⁰⁸ Customer Due Diligence: the Process and It's Types, (November 20, 2018), <https://sumsub.com/blog/customer-due-diligence/>.

³⁰⁹ UK professional groups criticized over money laundering prevention, Financial Times, <https://www.ft.com/content/318490a0-44ad-11e9-a965-23d669740bfb>.

³¹⁰ UK professional groups criticized over money laundering prevention, Financial Times, <https://www.ft.com/content/318490a0-44ad-11e9-a965-23d669740bfb>.

to take place among the accountancy professions, an “overlap” was found by “62% of accountancy trade associations ... between their lobbying and regulatory functions.”³¹¹ Currently, the “Institute of Chartered Accountants in England and Wales Oversee money laundering rules for accountants.”³¹²

The UK is a “global leader in promoting corporate transparency and it is using the results of its risk assessment to further strengthen the reporting and registration of corporate structures.”³¹³ At the “UN and EU level” the “UK has been highly effective in investigating, prosecuting and convicting a range of terrorist financing activity ... tak[ing] on a leading role in designating terrorists,” as well as “target[ing] financial sanctions ... domestically.”³¹⁴ Note that “the UK was one of the first jurisdictions to introduce a public register of company beneficial ownership and a register of trusts with tax consequences, going well beyond FATF’s own recommendations in some respects.”³¹⁵ UK is “one of two countries” to be “fully compliant with its beneficial ownership recommendations ... [and] meet that standard.”³¹⁶

AML in the UK v. US – Primary Differences

The “international AML standard-setter” is the “Financial Action Taskforce (FATF).”³¹⁷ FATF is responsible for assessing the “United Kingdom’s anti-money laundering and counter

³¹¹ UK professional groups criticized over money laundering prevention, Financial Times, <https://www.ft.com/content/318490a0-44ad-11e9-a965-23d669740bfb>.

³¹² UK professional groups criticized over money laundering prevention, Financial Times, <https://www.ft.com/content/318490a0-44ad-11e9-a965-23d669740bfb>.

³¹³ The United Kingdom’s measures to combat money laundering and terrorist financing, FATF, (December 7, 2018), <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-united-kingdom-2018.html>.

³¹⁴ The United Kingdom’s measures to combat money laundering and terrorist financing, FATF, (December 7, 2018), <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-united-kingdom-2018.html>.

³¹⁵ UK global leader in fight against money laundering, International Investment, (December 11, 2018), <https://www.internationalinvestment.net/news/4000149/uk-global-leader-fight-money-laundering>.

³¹⁶ UK global leader in fight against money laundering, International Investment, (December 11, 2018), <https://www.internationalinvestment.net/news/4000149/uk-global-leader-fight-money-laundering>.

³¹⁷ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019),

terrorist financing (AML/CFT) system.”³¹⁸ The UK is “one of the largest financial services provider in the world.”³¹⁹ As such, through a series of public-private partnerships, as well as the implementation of “AML/CFT polices, strategies and proactive initiatives” the UK has been able to combat money laundering “achieving 1400 convictions each year,” that includes utilizing tools to “obtain beneficial ownership and other information,” despite needing to modernize and increase “its resources and the[ir] suspicious activity reporting.”³²⁰

However, the UK has a “multiplicity of players involved in AML supervision.”³²¹ In the UK’s “regulated sector” there are several components to “an effective anti-money laundering (AML) program.”³²² Its important to note that the quality of intelligence determines the pace at which those “operating on the coalface” can determine whether there has indeed been a violation. Within the “regulated sector” there are several internal controls which have been set up to control and “identify suspected money-laundering.”³²³ First off, all suspected money-laundering reports must be sent to the UK’s financial intelligence unit (FIU) in the dorm of a

<https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

³¹⁸ The United Kingdom’s measures to combat money laundering and terrorist financing, FATF, (December 7, 2018), <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-united-kingdom-2018.html>.

³¹⁹ The United Kingdom’s measures to combat money laundering and terrorist financing, FATF, (December 7, 2018), <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-united-kingdom-2018.html>.

³²⁰ The United Kingdom’s measures to combat money laundering and terrorist financing, FATF, (December 7, 2018), <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-united-kingdom-2018.html>.

³²¹ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019), <https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

³²² Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019), <https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

³²³ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019), <https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

suspicious activity report (SARs).”³²⁴ Its not just be chance that these crimes are reported, and many report are due to simple adherence to “doing the right thing,” however in “non-financial sectors” the same is not true, in fact such “patchy ... reporting” has been complained about by the government, and states that there is a need for a “credible deterrent” to help “drive widespread compliance with AML regulations.”³²⁵

Improving standards “in AML supervision” required the UK to implement another body of legislation, the “Office for Professional Body Anti-Money Laundering Supervision (OPBAS), based within the Financial Conduct Authority (FCA)”³²⁶ As stated earlier, quality intelligence has been needed, and one thing OPBAS does is that it helps to “improve[s] consistency of professional body AML supervision in the accountancy and legal sectors.”³²⁷ There are “22 professional body supervisors on the one side and three statutory supervisors.”³²⁸ The three statutory supervisors are “the Financial Conduct Authority, HM Revenue and Customs (HMRC), and the Gambling Commission.”³²⁹ OPBAS has the power to not only enable regulations, but

³²⁴ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019), <https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

³²⁵ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019), <https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

³²⁶ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019), <https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

³²⁷ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019), <https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

³²⁸ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019), <https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

³²⁹ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019),

also has the power to offer some direction, “official direction,” when it comes to “publicly censur[ing] a professional body supervisor ... ultimately, to recommend to HM Treasury that they consider removing the supervisor’s AML role.”³³⁰

According to the OPBAS Annual Report: “80% of professional body supervisors lacked adequate governance arrangements and 92% lacked adequate ‘whistleblowing’ channels.”³³¹ Even where there is no AML supervision, which is at about 23%, a “risk-based approach” is still undertaken, some professional body supervisors, simply “lack the requisite skills and resources in their overall approach.”³³² In part, some approaches to “taking robust AML enforcement action” have been influenced by “their ability to attract membership,” not wanting to run the “risk of repelling members.”³³³

There are no plans for a more unitary approach to AML, “nor a universally state-led one.”³³⁴ Overall in the UK there is a “need to demonstrate adequate understanding of risk,

<https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

³³⁰ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019), <https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

³³¹ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019), <https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

³³² Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019), <https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

³³³ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019), <https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

³³⁴ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019), <https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

perform[ance] of sophisticated compliance assessments and an [under]tak[ing] of an intelligence-led approach to favour larger supervisors with more resources within their grasp.”³³⁵

OPBAS was created in 2017, along with the introduction of money laundering regulations, the primary purpose of this organization is “intended to give effect to the requirement, and to strengthen UK’s anti money laundering supervisory regime.”³³⁶ In effect the OPBAS, is like the “supervisor of supervisors” with the aim of ensuring that professional body anti-money laundering supervisors comply with the UKs anti-money laundering obligations.”³³⁷ The creation of the OPBAS followed, due to concerns that with only 22 SROs i.e. “self-regulatory organisations” there would be a significant “deficienc[y] in information sharing. According to “Article 48 of the Fourth Money Laundering Directive (MLD4) ... Member States [in the UK are] oblig[e]d [and] require[d] [to allow] competent authorities [to] effectively monitor and take necessary steps to ensure compliance with the Directive.”³³⁸ OPBAS, as part of the FCA, has the power to review and issue directions to SROs.³³⁹ With that power, they can determine whether there was a failure to comply with their “obligations under the Money Laundering Regulations” and if any “false of misleading information” was provided, then, and only then can the “OPBAS ...have the ability to publicly censure ... or recommend it be

³³⁵ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019), <https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

³³⁶ Calum Macdonald, OPBAS, the UK’s new anti-money laundering supervisor, becomes operational, Allen & Overy Investigations Insight, (January 16, 2018), <http://www.aoinvestigationsinsight.com/opbas-uk-anti-money-laundering-supervisor/>.

³³⁷ Calum Macdonald, OPBAS, the UK’s new anti-money laundering supervisor, becomes operational, Allen & Overy Investigations Insight, (January 16, 2018), <http://www.aoinvestigationsinsight.com/opbas-uk-anti-money-laundering-supervisor/>.

³³⁸ Calum Macdonald, OPBAS, the UK’s new anti-money laundering supervisor, becomes operational, Allen & Overy Investigations Insight, (January 16, 2018), <http://www.aoinvestigationsinsight.com/opbas-uk-anti-money-laundering-supervisor/>.

³³⁹ Calum Macdonald, OPBAS, the UK’s new anti-money laundering supervisor, becomes operational, Allen & Overy Investigations Insight, (January 16, 2018), <http://www.aoinvestigationsinsight.com/opbas-uk-anti-money-laundering-supervisor/>.

removed as a designated SRO.³⁴⁰ Its important to note that “confidential information gathered by OPBAS will be subject to protections.” The FCA has “information gathering powers” which block and make it a criminal offense to “inappropriate[ly] disclose ... [any] SRO’s confidential information.”³⁴¹

Examples of SROs and How They Been Affected?

Building a better “risk-based approach” to supervisors provisions, would be to find a “credible deterrent” to the “sharing of information both among supervisors and between supervisors and law enforcement.”³⁴² The FCA is basically in a new role “overseeing the anti-money laundering and counter terrorist financing (“AML” and “CTF”) supervision by the 22 SROs in the accountancy and legal sectors.”³⁴³ The UK government, “intends that the FCA and SRO ... engage collaboratively ... [to] strengthen the AML supervisory regime ... focus[ing] on outcomes.”³⁴⁴

CONCLUSION

Applying a risk-based approach to anti-money laundering has proven to be most effective in countries like the UK, who put a greater emphasis on “focus on outputs” and which “resources

³⁴⁰ Calum Macdonald, OPBAS, the UK’s new anti-money laundering supervisor, becomes operational, Allen & Overy Investigations Insight, (January 16, 2018), <http://www.aoinvestigationsinsight.com/opbas-uk-anti-money-laundering-supervisor/>.

³⁴¹ Calum Macdonald, OPBAS, the UK’s new anti-money laundering supervisor, becomes operational, Allen & Overy Investigations Insight, (January 16, 2018), <http://www.aoinvestigationsinsight.com/opbas-uk-anti-money-laundering-supervisor/>.

³⁴² The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017, 2017 No. 1301, http://www.legislation.gov.uk/ukxi/2017/1301/pdfs/ukxiem_20171301_en.pdf.

³⁴³ The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017, 2017 No. 1301, http://www.legislation.gov.uk/ukxi/2017/1301/pdfs/ukxiem_20171301_en.pdf.

³⁴⁴ The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017, 2017 No. 1301, http://www.legislation.gov.uk/ukxi/2017/1301/pdfs/ukxiem_20171301_en.pdf.

... will have the biggest impact.”³⁴⁵ When one applies a risk-based approach and takes “due diligence measures” this assures that money managing services will not be sued for “money laundering or terrorist financing.”³⁴⁶ Why its important to be compliant and to “develop effective and proportionate prevention procedures.”³⁴⁷

So long as there is a “multiplicity of players involved in AML supervision.”³⁴⁸ The UK will be able to run an effective anti-money laundering program, that involves creating internal controls which can determine suspected anti-money laundering, by using FIU’s financial intelligence units, as well as make use of SARs suspicious activity reports.³⁴⁹ Already as of January 10, 2020, a "principles-based approach" has begun to take place, "in the UK (and/or other parts of the EU) [wherein] immediat[e] review [of] their current internal procedures [have been] put into place, measures to ensure that relevant client due diligence (CDD) is conducted on any new clients.”³⁵⁰ Implementing the 5th Money Laundering Directive, which has already taken hold of intermediaries, during the sale, course and scope of transactions involving any owners and collectors, laws which should apply during the planning and execution of any sale,

³⁴⁵ Money laundering and terrorist financing, Financial Conduct Authority (17/06/2020), <https://www.fca.org.uk/firms/financial-crime/money-laundering-terrorist-financing>.

³⁴⁶ Money laundering and terrorist financing, Financial Conduct Authority (17/06/2020), <https://www.fca.org.uk/firms/financial-crime/money-laundering-terrorist-financing>.

³⁴⁷ Money laundering and terrorist financing, Financial Conduct Authority (17/06/2020), <https://www.fca.org.uk/firms/financial-crime/money-laundering-terrorist-financing>.

³⁴⁸ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies (29 March 2019), <https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

³⁴⁹ Money laundering and terrorist financing, Financial Conduct Authority (17/06/2020), <https://www.fca.org.uk/firms/financial-crime/money-laundering-terrorist-financing>.

³⁵⁰ Kenneth Mullen, Tough UK anti-money laundering law comes into force tomorrow here’s what you need to know, The Art Newspaper (January 9, 2020), <https://www.theartnewspaper.com/news/ready-or-not-tough-uk-anti-money-laundering-law-comes-into-force-tomorrow-here-s-what-you-need-to-know>.

even if they do not "actually send or receive any of the sale proceeds."³⁵¹ It is important that "due diligence" be applied during the course and scope of all transactions, to set up a "chain of responsibility for AML compliance" which keeps track of transactions, especially within "The Responsible Art Market" which should "not accept ... new clients or a transaction executed on their behalf before conducting appropriate due diligence."³⁵² In order to protect individuals who are become the subject of unauthorized sales of the use of their identify, story, and information known only to them, and to those who know of them, sanctions have been listed for "politically exposed persons (PEPs)"³⁵³ who in the event, due diligence has not been applied, and their identify misused, to generate revenue for and on behalf of other unnamed parties.

In the US, recently, amid the COVID-19 pandemic, have caused many "financial institutions to face significant AML issues ... [amid] increased fraud schemes seeking to capitalize on the pandemic [while] many BSA/AML compliance teams [have been] straining to maintain adequate amount of staff and degree of communication."³⁵⁴ Because of the COVID-19 pandemic, "the government and private sector" have been struggling to supervise, regulate, and implement policy reform necessary for international cooperation.³⁵⁵ Now in the wake of increased fears of "misuse of online financial services" or the misuse of "domestic and

³⁵¹ Kenneth Mullen, Tough UK anti-money laundering law comes into force tomorrow here's what you need to know, The Art Newspaper (January 9, 2020), <https://www.theartnewspaper.com/news/ready-or-not-tough-uk-anti-money-laundering-law-comes-into-force-tomorrow-here-s-what-you-need-to-know>.

³⁵² Kenneth Mullen, Tough UK anti-money laundering law comes into force tomorrow here's what you need to know, The Art Newspaper (January 9, 2020), <https://www.theartnewspaper.com/news/ready-or-not-tough-uk-anti-money-laundering-law-comes-into-force-tomorrow-here-s-what-you-need-to-know>.

³⁵³ Theodore S. Greenberg, Stolen Asset Recovery Politically Exposed Persons ..., <https://www.un.org/ruleoflaw/files/Politically%20Exposed%20Persons%20A%20Policy%20Paper%20on%20Strengthening%20Preventive%20Measures.pdf>.

³⁵⁴ Shauna Pierson, DEA Accused of Ongoing Missteps in Undercover Operations, (June 22, 2020), <https://www.moneylaunderingnews.com/>.

³⁵⁵ Peter D. Hardy, Terence M. Grugan & Priya Roy, FATF Issues Paper on COVID-19 Enhanced AML and Fraud Risks, (May 7, 2020), <https://www.moneylaunderingnews.com/2020/05/fatf-issues-paper-on-covid-19-enhanced-aml-and-fraud-risks/#more-5847>.

international financial aid and emergency funding,"³⁵⁶ makes it even more pressing that a "risk-based approach to customer due diligence" be taken inasmuch as each financial institution be assessed on the basis of "whether ... [they] heeded such guidance ... [and] whether financial institutions took appropriate steps to mitigate such risks, [if at] all from a post-pandemic, post hoc prism."³⁵⁷

RECOMMENDATIONS

"Increased globalization of business operations" has been met with challenges in the past, when it comes to "coordinat[ing] ... [the] effective identification and apprehension of money launderers."³⁵⁸ While the US and the UK share many similarities in terms of what "regulatory requirements [they require] for banking institutions," some have argued that between the two regimes, lies an inconsistent framework, upon which "obligations" have been imposed by the US which are "not fully consistent with UK financial sanctions."³⁵⁹ For example, there have been "differing levels of customer due diligence" programs enforced by both regimes: (1) The UK's "standard measures" abiding by a "know your customer" philosophy, "prescribed by Section 326 of the USA PATRIOT Act for US banks," whereas the US takes a "risk-based approach to

³⁵⁶ Peter D. Hardy, Terence M. Grugan & Priya Roy, FATF Issues Paper on COVID-19 Enhanced AML and Fraud Risks, (May 7, 2020), <https://www.moneylaunderingnews.com/2020/05/fatf-issues-paper-on-covid-19-enhanced-aml-and-fraud-risks/#more-5847>.

³⁵⁷ [7] Peter D. Hardy, Terence M. Grugan & Priya Roy, FATF Issues Paper on COVID-19 Enhanced AML and Fraud Risks, (May 7, 2020), <https://www.moneylaunderingnews.com/2020/05/fatf-issues-paper-on-covid-19-enhanced-aml-and-fraud-risks/#more-5847>.

³⁵⁸ Sidley Austin LLP, US and UK Anti-money Laundering Requirements Compared (September 5, 2008), <https://www.internationallawoffice.com/Newsletters/Banking/USA/Sidley-Austin-LLP/US-and-UK-Anti-money-Laundering-Requirements-Compared>.

³⁵⁹ Sidley Austin LLP, US and UK Anti-money Laundering Requirements Compared (September 5, 2008), <https://www.internationallawoffice.com/Newsletters/Banking/USA/Sidley-Austin-LLP/US-and-UK-Anti-money-Laundering-Requirements-Compared>.

customer due diligence"³⁶⁰ that also doesn't require "beneficial owners of a customer" be identified, therefore in this type of difference it would be the bank's responsibility when conducting a "risk assessment ... to obtain information about individuals with authority or control ... that includ[es] [both] authorized signatories and beneficial owners."³⁶¹ Thus putting a lot of pressure on banks to keep up with regulatory requirements, when conducting business with both regimes, which is where "federal functional regulator[s]"³⁶² come into play, because of the Bank Secrecy Act, financial institutions must enter contracts and certify annually that "the bank has implemented its anti-money laundering programme and will perform the specified requirements of the bank's customer identification programme."³⁶³

For example, "the UK's Open Banking regulation requires the country's nine big high-street banks to share customer data with authorized fintech providers."³⁶⁴ Who is fintech? Fintech is short for "financial technology," who seeks to "automate the delivery and use of financial services."³⁶⁵ There are many "fintech companies" who are responsible for "changing how the financial services ecosystem operates ... filling gaps where traditional banks and financial institutions have failed to meet customer needs."³⁶⁶ In the wake of COVID-19, FinCEN

³⁶⁰ What is Customer Due Diligence (CDD)?, <https://www.int-comp.org/careers/your-career-in-aml/what-is-customer-due-diligence-cdd/>.

³⁶¹ Sidley Austin LLP, US and UK Anti-money Laundering Requirements Compared (September 5, 2008), <https://www.internationallawoffice.com/Newsletters/Banking/USA/Sidley-Austin-LLP/US-and-UK-Anti-money-Laundering-Requirements-Compared>.

³⁶² FinCEN Proposes Rule to Require Banks Lacking a Federal Functional Regulator to Establish AML Programs, (Oct. 25, 2016), <https://www.crowell.com/NewsEvents/AlertsNewsletters/all/FinCEN-Proposes-Rule-to-Require-Banks-Lacking-a-Federal-Functional-Regulator-to-Establish-AML-Programs>.

³⁶³ Sidley Austin LLP, US and UK Anti-money Laundering Requirements Compared (September 5, 2008), <https://www.internationallawoffice.com/Newsletters/Banking/USA/Sidley-Austin-LLP/US-and-UK-Anti-money-Laundering-Requirements-Compared>.

³⁶⁴ Alastair Mitchell, US regulators need to catch up with Europe on fintech innovation, Techcrunch, (January 23, 2020), <https://techcrunch.com/2020/01/23/us-regulators-need-to-catch-up-with-europe-on-fintech-innovation/>.

³⁶⁵ Julia Kagan, Financial Technology – Fintech, Investopedia, (Jun. 25, 2019), <https://www.investopedia.com/terms/f/fintech.asp>.

³⁶⁶ Alastair Mitchell, US regulators need to catch up with Europe on fintech innovation, Techcrunch, (January 23, 2020), <https://techcrunch.com/2020/01/23/us-regulators-need-to-catch-up-with-europe-on-fintech-innovation/>.

has been particularly been met with the challenges imposed while meeting "certain BSA obligations ... for certain BSA report filings."³⁶⁷ Certain measures should be taken to prepare in advance for responding to the increased chances of "malicious or fraudulent transactions," and be "alert to related illicit financial activity."³⁶⁸ Fintech companies help aide and assist the functioning of banks, in addition to the "regulators" comprised by governmental bodies in each regime, such as "The Secretary of the Treasury," who enforces the BSA, as well as FinCEN.³⁶⁹ Whereas in the UK the "regulators" are the National Crime Agency (NCA) and the SFO "Serious Fraud Office," who enforce a number of "compliance responsibilities," this regulated sector is regulated in addition by the "Financial Conduct Authority" (FCA) and "Her Majesty's Revenue and Customs."³⁷⁰

In today's "globalised business environment," Banks ie "financial institutions" have to protect themselves "against financial crime."³⁷¹ That means staying up to date with current laws and "regulatory change[s]" no matter what "political uncertainty[es]" may arise, and with reliance on "technological innovations," gear themselves with the EU's 5th Money Laundering Directives, and Brexit in mind, continue to be compliant with a "risk based approach"³⁷² to avoid "key threats, vulnerabilities, and priorities for disrupting and preventing illicit finance activities

³⁶⁷ Alma Calcano, BSA/AML Compliance During the COVID-19 Pandemic, (Apr. 27, 2020), <https://www.nafcu.org/compliance-blog/bsaaml-compliance-during-covid-19-pandemic>.

³⁶⁸ Alma Calcano, BSA/AML Compliance During the COVID-19 Pandemic, (Apr. 27, 2020), <https://www.nafcu.org/compliance-blog/bsaaml-compliance-during-covid-19-pandemic>.

³⁶⁹ Joel Cohen, USA: Anti-Money Laundering 2020, (14/05/2020), <https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/usa>.

³⁷⁰ Anti-money laundering and fraud in the United Kingdom, BCL Solicitors LLP, (December 28, 2018), <https://www.lexology.com/library/detail.aspx?g=f0870ad8-910f-4bef-a6f3-5445c93bd94d>.

³⁷¹ Sven Stumbauer, Global anti-money laundering and sanctions compliance survey, (January 13, 2020), <https://www.regulationtomorrow.com/eu/global-anti-money-laundering-and-sanctions-compliance-survey/>.

³⁷² 3 Most Important AML Compliance Laws You Need in 2020, <https://sanctionsscanner.com/blog/3-most-important-aml-compliance-laws-you-need-in-2020-70>.

within and transiting the US Financial System."³⁷³ Which is why the US Department of Treasury issued a "roadmap to modernize" AML/CFT laws in the US to make them "more effective and efficient."³⁷⁴ A roadmap that includes "the various federal agencies" working together with "state and local authorities, particularly "where jurisdiction overlaps"³⁷⁵ would be helpful for both US and UK banks. This will help banks and financial institutions to properly enforce the "BSA statute" whenever "BSA regulatory requirements" are needed to be enforced in transactions between countries working with US financial institutions, and be able to "apply to all persons subject to US jurisdiction or to all US trades businesses," its important to understand why this pressure has been placed on banks, as a preventative measure, and also maintain accurate records in the event of oversight, that would require "monetary penalties" against US "branches and subsidiaries" or "foreign bank(s)" who do not comply and fail to "maintain books and records ... relating to their alleged BSA sanctions." Why is this important, because financial institutions whether or not "[any] financial regulator has imposed a penalty" civil penalties can still be brought and have the potential to force non-compliant banks to "surrender the license of its branch [and ability] to do business."³⁷⁶ Two agencies with the authority to impose civil penalties are the FINRA and the NFA in the US.³⁷⁷ Whereas in the UK the HMRC "subject to the Regulators Code" is responsible for taking "civil measures action on the areas of greatest risk"

³⁷³ US Treasury sets out plans to modernize AML rules, (07 February 2020), <https://www.finextra.com/pressarticle/81419/us-treasury-sets-out-plans-to-modernise-aml-rules>

³⁷⁴ US Treasury sets out plans to modernize AML rules, (07 February 2020), <https://www.finextra.com/pressarticle/81419/us-treasury-sets-out-plans-to-modernise-aml-rules>.

³⁷⁵ Joel Cohen, USA: Anti-Money Laundering 2020, (14/05/2020), <https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/usa>.

³⁷⁶ Joel Cohen, USA: Anti-Money Laundering 2020, (14/05/2020), <https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/usa>.

³⁷⁷ Joel Cohen, USA: Anti-Money Laundering 2020, (14/05/2020), <https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/usa>.

with a higher likelihood of imposing sanctions "to the minority that do not comply" weighing compliance without imposing "an unnecessary regulatory burden" and assess compliance based upon how "deliberate or persistent non-compliance" occurred.³⁷⁸

FUTURE AREAS OF RESEARCH

One of the problems where research is lacking on AML in the UK is that "there is limited evidence of how well the country investigates high-end money laundering."³⁷⁹ The FATF and NCA and two intergovernmental organizations that have developed not only policies for combatting financial crime, but have also been criticized as "not sufficiently penaliz[ing] them for turning a blind eye."³⁸⁰ One of the most common problems found recently by OPBAS is that their compliance is not sufficiently supervised, "nearly 25% of them do not perform any money laundering supervision [while] 80% failed to have the proper governance arrangements to combat it in their professions."³⁸¹

One of the the "key AML problems" facing the UK, is their inability to "hamper regulators' abilities to respond to problems."³⁸² According to PYMNTS, and The National Crime Agency (NCA) because of the "lack of enforcement" done by government agencies, this has had

³⁷⁸ Guidance Money laundering supervision: Civil measures, HM Revenue & Customs, (24 January 2019), <https://www.gov.uk/government/publications/money-laundering-supervision-enforcement-measures/money-laundering-supervision-civil-measures>.

³⁷⁹ Where the UK Fails on Anti-Money Laundering, (March 15, 2019), <https://fintechranking.com/2019/03/15/where-the-uk-fails-on-anti-money-laundering/>.

³⁸⁰ Police chief says accountants turning a blind eye to money laundering, (Nov. 22, 2019), <https://www.aatcomment.org.uk/audience/members/police-chief-says-accountants-turning-a-blind-eye-to-money-laundering/>.

³⁸¹ Anti-Money Laundering: An Often-Overlooked Cornerstone of Effective Compliance, (June 18, 2015), <https://www.sec.gov/news/speech/anti-money-laundering-an-often-overlooked-cornerstone.html>.

³⁸² Where The UK Fails On Anti-Money Laundering, (March 15, 2019), <https://www.pymnts.com/aml/2019/corruption-watch-uk-high-end-money-laundering/>.

an affect on "companies and businesses" who are required to "place strong money laundering compliance regimes" with little incentive.³⁸³ When there is "weak money laundering prosecution" this results in inadvertently fostering a philosophy where companies get penalized for non-compliance "to avoid being publicly named in many cases" yet still required to "go after individuals" when they cannot "fine banks or corporations for accepting laundered funds."³⁸⁴ Since the passing of Brexit, "the UK is no longer bound by EU law."³⁸⁵ Although the UK may not be bound by EU laws, they "already comply with the vast majority of" laws specifically "prohibiting [the] laundering of proceeds of specified predicate offences" with one exception when it comes to "vicariou[s] liab[ility] for acts of money laundering committed for their benefit by an individual in a leading position" which is why the MLD6 coming up will matter, "to see whether the government finds time to enact a new corporate offence of failing to prevent money laundering" before the MLD6 deadline.³⁸⁶ Why is this important? Whenever the UK is subjected to "equivalent jurisdiction for the purposes of due diligence obligations" many things matter to determine whether the corresponding EU state or "UK Customer" when being held to the same standards, have done a proper job of "assess[ing] the risks" and possessing the "requir[ed] documentation and information" while also accounting for "the burdens of complying with MLDs generally."³⁸⁷ Therefore more research needs to be done whether or not in alignment to EU interests, to do their best to "take back control" over fulfilling these due diligence obligations

³⁸³ [Where The UK Fails On Anti-Money Laundering](https://www.pymnts.com/aml/2019/corruption-watch-uk-high-end-money-laundering/), (March 15, 2019), <https://www.pymnts.com/aml/2019/corruption-watch-uk-high-end-money-laundering/>.

³⁸⁴ [Where The UK Fails On Anti-Money Laundering](https://www.pymnts.com/aml/2019/corruption-watch-uk-high-end-money-laundering/), (March 15, 2019), <https://www.pymnts.com/aml/2019/corruption-watch-uk-high-end-money-laundering/>.

³⁸⁵ Brett Critchley, [The UK's anti-money laundering laws post-Brexit](https://www.openaccessgovernment.org/anti-money-laundering-laws-post-brexit/72376/), (August 29, 2019), <https://www.openaccessgovernment.org/anti-money-laundering-laws-post-brexit/72376/>.

³⁸⁶ Brett Critchley, [The UK's anti-money laundering laws post-Brexit](https://www.openaccessgovernment.org/anti-money-laundering-laws-post-brexit/72376/), (August 29, 2019), <https://www.openaccessgovernment.org/anti-money-laundering-laws-post-brexit/72376/>.

³⁸⁷ Brett Critchley, [The UK's anti-money laundering laws post-Brexit](https://www.openaccessgovernment.org/anti-money-laundering-laws-post-brexit/72376/), (August 29, 2019), <https://www.openaccessgovernment.org/anti-money-laundering-laws-post-brexit/72376/>.

according to their own money laundering prevention efforts, while meeting jurisdictional requirement that both are intended to abide by.³⁸⁸

³⁸⁸ Brett Critchley, [The UK's anti-money laundering laws post-Brexit](https://www.openaccessgovernment.org/anti-money-laundering-laws-post-brexit/72376/), (August 29, 2019), <https://www.openaccessgovernment.org/anti-money-laundering-laws-post-brexit/72376/>.

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[media-brexit-coverage-sows-division-says-eu-commissioner](https://www.theguardian.com/media/2018/sep/24/british-media-brexit-coverage-sows-division-says-eu-commissioner).

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