International
Comparative
Legal Guides

Anti-Money Laundering 2020

A practical cross-border insight into anti-money laundering law

Third Edition

Featuring contributions from:

Allen & Gledhill LLP
Allen & Gledhill (Myanmar) Co., Ltd.
Anagnostopoulos
Ballard Spahr LLP
Beccar Varela
Blake, Cassels & Graydon LLP
CHR Legal
City Legal
Cohen & Gresser (UK) LLP
Delecroix-Gublin
DQ Advocates Limited
Enache Pirtea & Associates
Galicia Abogados, S.C.
Gibson, Dunn & Crutcher LLP
Herbert Smith Freehills LLP
JahaeRaymakers
Joyce Roysen Advogados
Kellerhals Carrard
King & Wood Mallesons
Linklaters LLP
Marxer & Partner Attorneys at Law
Morais Leitão, Galvão Teles, Soares da Silva & Associados
Nakasaki Law Firm
Nyman Gibson Miralis
Rahmat Lim & Partners
SMM Legal Maciak Mataczyński
Soemadipradja & Taher

ICLG.com

ISBN 978-1-83918-043-9
ISSN 2515-4192

Published by
global legal group
59 Tanner Street
London SE1 3PL
United Kingdom
+44 207 367 0720
info@glgroup.co.uk
www.iclg.com

Group Publisher
Rory Smith

Publisher
Jon Martin

Editor
Amy Norton

Senior Editor
Sam Friend

Head of Production
Suzie Levy

Chief Media Officer
Fraser Allan

CEO
Jason Byles

Printed by
Ashford Colour Press Ltd.

Cover image
www.istockphoto.com

Strategic Partners

International Comparative Legal Guides

Anti-Money Laundering 2020

Third Edition

Contributing Editors:
Joel M. Cohen & Stephanie L. Brooker
Gibson, Dunn & Crutcher LLP

©2020 Global Legal Group Limited.
All rights reserved. Unauthorised reproduction by any means, digital or analogue, in whole or in part, is strictly forbidden.

Disclaimer
This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication.
This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

© Published and reproduced with kind permission by Global Legal Group Ltd, London

Expert Chapters

Q&A Chapters

© Published and reproduced with kind permission by Global Legal Group Ltd, London

The Intersection of Money Laundering and Real Estate


Peter D. Hardy


Priya Roy


Terence M. Grugan


Mary K. Treanor

Ballard Spahr LLP

Introduction: An Increasing Focus on Money Laundering Through Real Estate

The use of real estate to launder money is a global concern. In the U.S., regulators and prosecutors steadily have warned that money launderers located both at home and abroad target U.S. real estate transactions because they are a relatively effective and anonymous means of "cleaning" dirty money. For example, in August 2017, the Financial Crimes Enforcement Network, or FinCEN, issued an "Advisory to Financial Institutions and Real Estate Firms and Professionals"[1] which asserted that the real estate industry is vulnerable to abuse by illicit actors looking to launder criminal proceeds specifically. FinCEN attributed this vulnerability to the fact that the value of high-end properties tends to appreciate over time and can shield the owner from currency fluctuations and market instability. Further, through the purchase of luxury property, illicit actors can clean large sums of money in a single transaction.

Director of FinCEN Kenneth Blanco repeatedly has remarked that a key vulnerability of the U.S. real estate industry is the use of shell companies[2] – anonymity representing the most basic and pernicious anti-money laundering ("AML") problem across the globe. Although FinCEN's relatively new Customer Due Diligence regulation,[3] which requires the collection of beneficial ownership information for legal entities when opening an account at a bank or other financial institution, has partially addressed this vulnerability in the U.S., Director Blanco also has acknowledged that the U.S. is increasingly perceived abroad as a haven for money launderers.[4]

Likewise, in its 2020 National Strategy for Combating Terrorist and Other Illicit Financing ("2020 Treasury Report"),[5] the U.S. Department of Treasury highlighted the risk that anonymous companies or straw purchasers can use real estate transactions to purchase high-value assets that maintain relatively stable value. This risk is both domestic and foreign and is especially significant for all-cash purchases, which do not require information on the source of funds or identification of a beneficial owner. According to 2020 Treasury Report, "anonymity in real estate purchases can be abused in the same way as anonymity in financial services" and a legislative solution is needed.

Concern by U.S. regulators about real estate has not occurred in a vacuum. The Financial Action Task Force ("FATF"), an international AML watchdog group, issued a 2016 report finding that U.S. regulators' failure to address and regulate real estate transactions caused it to lag behind its global partners in effective AML regulations.[6] The report highlighted the fact that U.S. real estate professionals were not required to systematically apply basic or enhanced due diligence processes to their customers, including gathering information regarding beneficial ownership information. FATF also noted that 25 per cent of the U.S. real estate market does not involve financing – particularly in high-end transactions. Although FATF acknowledged the limited role of real estate agents, it stated that they did not "appear to understand what the [money laundering] risks in relation to high-end real estate are or what the appropriate mitigation measures would be".

Despite the explicit inclusion of "persons involved in real estate closings and settlements" in the definition of a "financial institution" under the Bank Secrecy Act ("BSA"),[7] FinCEN to date has not issued regulations regarding real estate brokers, escrow agents, title insurers, and other real estate professionals.[8] Nonetheless, FinCEN has responded to the above concerns by engaging in years of *de facto* regulation as to certain businesses by issuing Geographic Targeting Orders ("GTOs"), beginning in 2016. The GTOs reflect FinCEN's increasing interest in the real estate industry, and strongly suggest that data collected through the GTOs will be used to support proposed BSA/AML law or regulation regarding the real estate industry.

As noted, concerns over money laundering and real estate are global. As an example, we will discuss the U.K., which has emerged as a perceived safe haven for money launderers looking to take advantage of a high-end real estate market, particularly in London. As in the U.S., the core problems are anonymity, the use of shell companies, and lack of beneficial ownership information.

Finally, and regardless of any AML regulatory requirements, real estate professionals – like all professionals – always are subject to the basic U.S. criminal money laundering statutes, which prohibit engaging in or aiding and abetting money laundering. The key issue in such investigations and prosecutions often is whether the professional knew that the transaction involved tainted money. Civil forfeiture of real estate properties also remains a risk for industry professionals.

Current U.S. AML Considerations for the Real Estate Industry

GTOs

Since 2016, FinCEN has issued GTOs which impose requirements on title insurance companies for transactions occurring in particular U.S. locations for transactions that are not financed by loans from financial institutions. Since then, FinCEN has extended the GTOs every six months.[9]

Specifically, U.S. title insurance companies must identify the natural persons behind legal entities used in purchases of residential real estate performed without a bank loan or similar form of external financing. Title insurance companies must file

© Published and reproduced with kind permission by Global Legal Group Ltd, London

a special Currency Transaction Report, or CTR. These records must be retained for five years from the last effective day of the most recent GTO and must be available to FinCEN and to law enforcement upon appropriate requests.

The GTOs currently apply only to "Covered Businesses", which are defined as title insurance companies and their subsidiaries. As of April 2020, a "Covered Transaction" is defined as:

- a cash transaction – including a currency, cashier's cheque, certified cheque, traveller's cheque, personal cheque, business cheque, money order in any form, funds transfer or virtual currency – including a transaction in which only a part of the purchase price was made using one of these methods of payments;
- without a bank loan or similar form of external financing;
- of residential real property;
- with a purchase price of $300,000 or more; and
- purchased by a "Legal Entity." A "Legal Entity" is broadly defined and includes a corporation, limited liability company, partnership or other similar business entity, formed under the laws of the U.S. or any foreign jurisdiction.

The filed report must include the following information:

- the legal entity making the purchase;
- the individual responsible for representing the legal entity, that is an individual authorised by the entity to enter legally binding contracts on behalf of the entity; and
- the beneficial owner(s) of the legal entity, among other detailed information about the parties involved in the all-cash transaction.

The "beneficial owner" who must be identified is defined as "each individual who, directly or indirectly, owns 25 per cent or more of the equity interests of the Legal Entity purchasing real property in the Covered Transaction". This definition tracks the Beneficial Ownership rule issued by FinCEN for customer due diligence for new legal entity accounts by focusing on 25 per cent or more ownership percentage, but it differs from the Beneficial Ownership rule by not including a "control" prong in its definition of a beneficial owner. FinCEN has stated that a Covered Business can rely on documents presented to it when investigating the beneficial owner of a legal entity.[10]

Under the GTO issued in November 2019, the following nine districts are included:

- California: San Diego; Los Angeles; San Francisco; San Mateo; and Santa Clara Counties.
- Florida: Miami-Dade; Broward; and Palm Beach Counties.
- Hawaii: City and County of Honolulu.
- Illinois: Cook County.
- Massachusetts: Suffolk and Middlesex Counties.
- Nevada: Clark County.
- New York: Boroughs of Brooklyn; Queens; Bronx; Staten Island; and Manhattan.
- Texas: Bexar; Tarrant; and Dallas Counties.
- Washington: King County.

The 2020 Treasury Report confirmed that the government regards the GTOs as valuable investigative leads and included statistics on the types of information that FinCEN has been able to gather from the GTOs.

- 6,303 transactions (35 per cent of all reported transactions) involved subjects identified in a Suspicious Activity Report ("SAR"), and of those transactions, 1,082 matched to higher-risk SARs.
- 2,002 transactions (11 per cent of all reported transactions) involved a foreign beneficial owner or purchaser representative.
- 385 of those foreign buyer-transactions (or 19 per cent) involved a foreign beneficial owner or purchaser representative who is the subject of a SAR.
- Foreign buyers are disproportionately likely to be the subject of a higher risk SAR – 206 of the 385 foreign buyer-transactions with a related SAR (or 54 per cent) involved SAR reporting high-risk activity: more than three times the rate for domestic buyers (15 per cent).

The 2020 Treasury Report also cites a study finding that all-cash purchases by legal entities declined by 70 per cent immediately following the first real estate GTO. The 2020 Treasury Report concludes that the study "suggests that transparency initiatives like the GTOs have an impact in markets where anonymity is highly valued, but also highlights the need for a more comprehensive and permanent solution".

As noted, FinCEN issued in August 2017 an Advisory on the real estate industry which indicated FinCEN's growing concern with money laundering risks in the industry. Although the Advisory created no legal obligations, it suggested practices that it expected industry members to be aware of. The Advisory urged real estate professionals to voluntarily file SARs to report suspicious transactions. It is clear from the Advisory that FinCEN believes that real estate professionals "are well-positioned to identify potentially illicit activity as they have access to a more complete view and understanding of the real estate transaction and of those involved in the transaction". FinCEN listed certain facts and circumstances that may lead to such a filing, such as when the transaction:

- lacks economic sense or has no apparent lawful business purpose. Suspicious real estate transactions may include purchases/sales that generate little to no revenue or are conducted with no regard to high fees or monetary penalties;
- is used to purchase real estate with no regard for the property's condition, location, assessed value, or sale price;
- involves funding that far exceeds the purchaser's wealth, comes from an unknown origin, or is from or goes to unrelated individuals or companies; or
- is deliberately conducted in an irregular manner. Illicit actors may attempt to purchase property under an unrelated individual's or company's name or ask for records (e.g., assessed value) to be altered.

The above potential red flags also may guide the filing of GTOs: the CTR form used for such filings contains a box to be checked when the transaction is also regarded as "suspicious".

Non-Bank Residential Mortgage Lenders and Originators ("RMLOs")

The BSA defines a "financial institution" to include, among other things, a loan or finance company.[11] This term remained undefined until 2009, when FinCEN issued a proposed rule soliciting comments on whether to include RMLOs in the definition of a "loan or finance company" for the purpose of requiring them to establish AML programmes and to report suspicious activities under the BSA.[12] In 2012, FinCEN issued a final rule providing that loan or finance companies included (only) RMLOs, and requiring RMLOs to establish AML programmes and file SARs when required.[13] When issuing this rule, FinCEN noted that its requirement was motivated in part by FinCEN's finding that "independent mortgage lenders and brokers originated many of the mortgages that were the subject of bank SAR filings". FinCEN has defined a RMLO as "[a] person who accepts a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan", but has excluded individuals financing the sale of their own property.[14] Importantly, the definition is limited to mortgage loans involving residential properties containing only one to four units.

© Published and reproduced with kind permission by Global Legal Group Ltd, London

Over 17 years ago, in April 2003, FinCEN more broadly issued an advanced notice of proposed rulemaking regarding AML programme requirements for persons involved in real estate closings and settlements[15] – but it never issued a final rule. Now, given the data from years of GTOs, coupled with the heightened global scrutiny of the real estate industry, such regulations finally may occur.

Recent Proposals to Expand BSA/AML Duties as to Real Estate Transactions

Although the GTO programme has been successful and FinCEN repeatedly has expanded its scope since 2016, the GTOs, by their very nature, leave open wide swaths of the real estate industry and uncovered the vast majority of the country. Recently, Congress has attempted to fill those gaps through legislation intended to make GTOs permanent and to expand their reach nationwide.

Under the Defending American Security from Kremlin Aggression Act ("DASKAA"), a sanctions bill targeting Russian interests[16] introduced in the U.S. Senate on February 13, 2019, title insurance companies would have to "obtain, maintain, and report to the Secretary information on the beneficial owners of entities that purchase residential real estate in high-value transactions in which the domestic title insurance company is involved".[17] "Beneficial Owner" would retain its definition in the GTO programme, applying to all 25 per cent or more interest holders in an acquiring entity.[18] Because the requirements would apply nationwide, FinCEN would be required to establish appropriate monetary thresholds based on the real estate market at issue.[19]

Additionally, legislation entitled "Improving Laundering Laws and Increasing Comprehensive Information Tracking of Criminal Activity in Shell Holdings" (the "ILLICIT CASH Act") was introduced in June 2019.[20] This legislation calls for the expansion of the GTOs by imposing reporting obligations on "any person involved in a transaction related to the purchase and sale of real estate". The scope of this expansion continues to be uncertain, including whether it would apply to both residential and commercial transactions. On October 23, 2019 the U.S. House passed H.R. 2513,[21] a two-part Act which sets forth in its initial section the Corporate Transparency Act ("CTA"). The CTA would require defined U.S. companies to report identifying information on their beneficial owners to the Treasury Department – so that such information would be available to both the government and financial institutions performing their own AML duties.

However, it is far from certain that any of the above proposals will become law, at least in the foreseeable future. In the meantime, FinCEN continues renewing its targeted GTOs.

AML Considerations for Real Estate in Europe: A U.K. Case Study

Concerns over money laundering and real estate are hardly confined to the U.S. We will discuss here the U.K., which has emerged as a perceived safe haven for money launderers looking to stash their ill-gotten gains in a reliable and expensive real estate market. The U.K.'s Treasury Department has identified real estate as a "weak link" in the U.K.'s AML regime.[22] Indeed, an estimated £4.4 billion ($5.7 billion) of investment in U.K. real estate stems from "politically exposed persons ["PEPs"] in high-corruption-risk jurisdictions".[23] Until recently, the U.K. lacked the laws and accompanying regulations to effectively address money laundering via real estate.

In April 2016, the explosive Panama Papers ("Papers") scandal underscored this vulnerability. It revealed that, among other things, 2,800 companies registered overseas were connected to over 6,000 title deeds in the U.K. worth at least £7 billion.[24] The Papers also shed light on a number of alleged high-profile money laundering schemes impacting the U.K., including one perpetrated by Pakistan's then-prime minister, Nawaz Sharif. Specifically, the Papers revealed Sharif's purchase – via his then-minor children – of a luxury London property through offshore companies in the British Virgin Islands in the mid-1990s. Following these revelations, Sharif was sentenced to 10 years in prison arising from charges that he used a complex series of transactions and shell companies to funnel the proceeds of public funds embezzled from Pakistan into assets in London.[25]

In a more recent example, separate from the Papers, the stepson of the Malaysian prime minster, Riza Aziz, allegedly used funds originally from 1Malaysia Development Bhd ("1MDB") – at the heart of a massive international money laundering scandal – to purchase a £23.25 million property in London.[26] These are just two examples out of the many that abound.[27]

Transparency International UK, a watchdog at the forefront of international money laundering, points to the following (among other) factors as indicative of the vulnerability of the U.K.'s real estate sector: (1) the use of anonymous and opaque corporate structures to purchase property – as was the case with Mr. Aziz; (2) PEPs owning luxury property; and (3) lax AML compliance in the private sector.[28] As a result of these vulnerabilities, the U.K. – and especially London – has become a haven for international money launderers. This, in turn, has driven up the price of U.K. real estate and made it increasingly less affordable for the average resident.[29]

In an effort to combat money laundering via real estate, the U.K. has sought to enact a variety of legislative reforms in recent years targeting this industry. Following the May 2016 Global Anti-Corruption Summit hosted in London, the U.K. announced it would be introducing a public beneficial ownership register of overseas companies that own U.K. land titles.[30] The bill – not yet passed – seeks to identify the true ownership of properties to better identify those properties purchased through illicit proceeds. The government intends to make the registry public by 2021 and owners who fail to comply with the directive could be sent to prison for two years and fined.[31]

In addition, since 2017, the U.K. has required real estate agents to comply with "know your customer" requirements on buyers and sellers. These requirements include collecting documents verifying a seller's or buyer's identity and address and typically requires agents to meet their clients face-to-face and assess whether their explanation for their wealth appears plausible.[32]

Moreover, in January 2018, the U.K. enacted an order – titled an "Unexplained Wealth Order" – that empowers certain enforcement agencies to investigate and seize assets over £50,000 owned by a person "who is reasonably suspected of involvement in, or of being connected to a person involved in, serious crime".[33] U.K. law enforcement has implemented this new tool and, later in 2018, used it to investigate how Zamira Hajiyeva, wife of an Azerbaijani banker, purchased a £11.5 million house in London based on her husband's government salary. Her husband was subsequently sentenced to 15 years in prison for fraud and embezzlement.[34]

Finally, in another show of the U.K.'s enhanced scrutiny of the real estate sector, Her Majesty's Revenue & Customs ("HMRC") in March 2019 launched its most high-profile crackdown to date on the sector, raiding 50 real estate agencies suspected of failing to register under AML rules and imposing fines on others.[35] These efforts appear to be working and have decreased prices in London's top-end real estate market as agents and other industry professionals increasingly comply with AML regulations.[36]

© Published and reproduced with kind permission by Global Legal Group Ltd, London

Criminal Money Laundering Exposures for Real Estate Professionals

The Money Laundering Statutes

Beyond any purely regulatory duties, professionals involved in real estate transactions cannot disregard the U.S. federal criminal money laundering statutes, which may apply in extreme cases.

Very generally, the offence of money laundering under 18 U.S.C. §§ 1956 or 1957 involves a financial transaction conducted with the proceeds of a "specified unlawful activity", or "SUA", while knowing that the proceeds were earned through illegal activity. The list of potential SUAs identified by Congress is specific but also extremely long (over 200 separate crimes).[37] As a practical matter it encompasses almost any conceivable crime. Further, Section 1956 generally also requires the defendant to act with one of four possible intents: an intent to conceal or disguise the nature, location, source, ownership or control of the SUA proceeds; to promote the underlying SUA; to avoid a transaction reporting requirement, such as a SAR; or to commit the offence of tax evasion or filing a false tax return. However, Section 1957 – the so-called "spending" money laundering statute – merely requires a transaction involving over $10,000 and knowledge that the proceeds were derived from criminal activity. Section 1957 is incredibly broad and can apply to any transaction, no matter how mundane and even in the absence of any effort at concealing the transaction – so long as SUA proceeds over $10,000 were involved, and knowledge existed.

Knowledge: the Key Element

Typically, the key element in money laundering cases focused on a third-party professional – *i.e.*, the real estate agent, lawyer, accountant, banker, merchant or other professional who had no direct involvement in committing the underlying SUA but who later assisted the person who committed the underlying SUA with subsequent financial transactions involving the resultant proceeds – is knowledge. *I.e.*, when the real estate professional helped the client acquire a property, did he or she know that the funds used to purchase the property (or pay rent) came from illegal activity?

When contesting the existence of knowledge, the professional may claim to have relied in good faith upon misinformation from others, and/or to have been so removed from events that he or she never learned the pertinent facts. As a result, the doctrine of "deliberate ignorance" or "willful blindness" has been instrumental in the government's success in many of these prosecutions. Under this doctrine, a professional may be found to have guilty knowledge (here, that the proceeds derived from an SUA) if the defendant knew of a high probability that a transaction involved tainted funds and deliberately avoided learning the truth. The doctrine of willful blindness represents a powerful tool for the government, particularly in regards to third-party professionals. Prosecutors successfully have used the willful blindness doctrine to convict real estate agents,[38] lawyers, accountants, bankers, and other professionals of assisting in financial transactions involving the proceeds of schemes performed by others, despite the fact that the professionals had no involvement in the underlying SUAs.

Of course, sometimes a real estate professional is directly involved in the SUA – not surprisingly, numerous mortgage fraud prosecutions involve defendants who are real estate professionals charged with both the underlying fraud and money laundering.[39] There, knowledge is much more clear, and the main issue usually is whether the underlying criminal scheme actually occurred.

International Real Estate Transactions

High-end real estate transactions often involve buyers, funds and activity located outside of the U.S. Simply put, the money laundering statutes are broad and often can apply to such situations, including when the alleged SUA providing the dirty money occurs entirely abroad. Section 1956 defines "SUA" in part to specifically include a range of foreign offences, including bribery and public corruption, so long as the resulting financial transaction at issue was conducted in whole or in part in the United States.[40] Moreover, Section 1956(f) extends jurisdiction over extraterritorial conduct when "the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States", and the transaction has a value exceeding $10,000.[41] Thus, Section 1956(f) applies to *financial transactions* which occur in whole or in part in the U.S.; it does not require physical presence in the U.S. Likewise, "conduct" occurring in the U.S. is not limited solely to physical activity; electronic conduct, such as a wire transfer into the U.S. from abroad, might satisfy Section 1956(f) and provide U.S. prosecutors with jurisdiction.

Finally, the international transfer of funds can itself represent money laundering. Section 1956 contains a separate prong that prohibits "international" money laundering that applies to transportations or transfers of funds in or out of the United States. This prong contains three alternative intent requirements: (i) an intent to promote an SUA; (ii) knowledge that the transaction is designed to conceal the proceeds of an SUA; or (iii) knowledge that the transaction is designed to avoid a transaction reporting requirement.[42] Although the statute is not a model of clarity, it arguably does not even require the funds involved in the transaction to be actual SUA funds.[43]

Forfeiture and Real Estate

Complementing the criminal sanctions applicable to money laundering offences, 18 U.S.C. § 981 sets forth a powerful tool for sanctioning money laundering violations by subjecting property traced to both domestic and international criminal offences to civil forfeiture to the United States.[44] Specifically as to domestic money laundering offences, it subjects to forfeiture "[a]ny property, real or personal, involved in a transaction or attempted transaction in violation of section 1956, 1957 or 1960 of this title [described above], or any property traceable to such property."[45] Concerning international offences, the statute reaches "[a]ny property, real or personal, within the jurisdiction of the United States, constituting, derived from, or traceable to, any proceeds obtained directly or indirectly from an offense against a foreign nation, or any property used to facilitate such an offense, if the offense" involves violations of the Controlled Substances Act, constitutes a felony in the foreign jurisdiction or constitutes a felony in the United States.

Civil forfeiture enables the government to achieve multiple enforcement aims through a single process. First, forfeiture enables the government to recoup potentially massive sums of illicitly laundered gains. Second, it often serves as high-profile examples of the government's enforcement reach and capabilities, contributing significantly to the government's deterrent efforts.

Recent examples illustrate the effectiveness of civil forfeiture proceedings to combat illicit laundering. In November 2019, the Justice Department settled a civil forfeiture action against assets acquired by Low Taek Jho and his family stemming from their alleged misappropriation from 1MDB, which they laundered through financial institutions around the world, including in the United States, Switzerland, Singapore and Luxembourg. As part of that settlement, Jho and the other defendants agreed

© Published and reproduced with kind permission by Global Legal Group Ltd, London

to the forfeiture of $700 million in assets, including high-end real estate in Beverly Hill, New York City and London; a luxury boutique hotel in Beverly Hills; and tens of millions of dollars in business investments.[46] In June 2017, the federal government obtained dual verdicts against 650 Park Avenue, a 36-story building in Manhattan, valued at up to $1 billion the government traced to Iranians convicted of violating American sanctions and money laundering statutes.[47]

Endnotes

1. *See* FIN-2017-A003 (Aug. 22, 2017), *available at* https://www.fincen.gov/resources/advisories/fincen-advisory-fin-2017-a003.
2. *E.g.* Kenneth Blanco, Prepared Remarks of FinCEN Director Blanco at the NYU Law Program on Corporate Compliance and Enforcement (June 12, 2019), *available at* https://www.fincen.gov/news/speeches/prepared-remarks-fincen-director-blanco-nyu-law-program-corporate-compliance-and.
3. 31 C.F.R. § 1010.230.
4. *E.g.* Beth Moskow-Schnoll, Priya Roy, and Peter D. Hardy, *Money Laundering Watch*, Senate Committee Hears from OCC, FinCEN and FBI on Risks Posed by Anonymous Corporate Structures, *available at* https://www.moneylaunderingnews.com/2019/05/senate-committee-hears-from-occ-fincen-and-fbi-on-risks-posed-by-anonymous-corporate-structures/#more-5050.
5. U.S. Department of Treasury, National Strategy for Combating Terrorist and Other Illicit Financing (Feb. 6, 2020) *available at* https://home.treasury.gov/news/press-releases/sm902.
6. FATF, Mutual Evaluation Report on the United States' Measures to Combat Money Laundering and Terrorist Financing (Dec. 1, 2016), *available at* https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-united-states-2016.html.
7. 31 U.S.C. § 5312(a)(2)(u).
8. As discussed *infra* in the text, FinCEN has issued regulations covering certain nonbank residential mortgage lenders and originators. *See* 31 C.F.R. § 1010.00(lll)(1).
9. *See* FinCEN, FinCEN Reissues Real Estate Geographic Targeting Orders for 12 Metropolitan Areas (Nov. 8, 2019), *available at* https://www.fincen.gov/news/news-releases/fincen-reissues-real-estate-geographic-targeting-orders-12-metropolitan-areas-0.
10. *Id.*
11. 31 U.S.C. § 5312(a)(2)(p).
12. 74 Fed. Reg. 35,830 (July 21, 2009).
13. 77 Fed. Reg. 8148-8160 (Feb. 14, 2012).
14. 31 C.F.R. § 1010.100(lll)(1).
15. 68 Fed. Reg. 17,569 (April 10, 2003). However, all real estate professionals must follow their reporting obligations with regards to the Form 8300: a filing required under both the BSA and Internal Revenue Code, generally when a person receives over $10,000 in currency in the course of his or her trade or business. 31 U.S.C. § 5331.
16. *See* Senate Bill S.482, *available at* https://www.congress.gov/bill/116th-congress/senate-bill/482.
17. DASKAA § 702(e)(1).
18. DASKAA § 702(e)(2)(A).
19. DASKAA § 702(e)(2)(C).
20. *See* Senate Bill S.2563, *available at* https://www.congress.gov/bill/116th-congress/senate-bill/2563?q=%7B%22search%22%3A%5B%22The+Improving+Laundering+Laws+and+Increasing+Comprehensive+Information+Tracking+of+Criminal+Activity+in+Shell+Holdings%22%5D%7D&s=6&r=1.
21. *Available at* https://www.congress.gov/bill/116th-congress/house-bill/2513.
22. *Forbes*, "British Real Estate Agents Hit By Money Laundering Crackdown" (March 11, 2019), *available at* https://www.forbes.com/sites/oliverwilliams1/2019/03/11/british-real-estate-agents-hit-by-money-laundering-crackdown/#614250463c88.
23. Transparency International UK, "Faulty Towers: Understanding the impact of overseas corruption on the London property market" (March 2017) ("Faulty Towers"), *available at* https://www.transparency.org.uk/publications/faulty-towers-understanding-the-impact-of-overseas-corruption-on-the-london-property-market/. FATF defines a PEP as an "an individual who is or has been entrusted with a prominent function". Because of their positions of power and access to large budgets, PEPs are considered high money laundering risk individuals. *Id.*
24. *Id.*
25. *Forbes*, "The London Property Deal That Brought Down Pakistan's Prime Minister" (Aug. 1, 2017), *available at* https://www.forbes.com/sites/bisnow/2017/08/01/the-london-property-deal-that-brought-down-pakistans-prime-minister/#2676fcd51942.
26. *WSJ*, "Stepson of Malaysia's Najib Razak Bought $34 Million London House With 1MDB Funds" (May 19, 2016), *available at* https://www.wsj.com/articles/stepson-of-malaysias-najib-razak-bought-34-million-london-house-with-1mdb-funds-1463634207.
27. For more examples, *see, e.g.*, National Crime Agency, Money laundering and illicit finance, *available at* https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/money-laundering-and-terrorist-financing.
28. Faulty Towers, *supra* at n. 23. A recent investigation using information obtained from freedom of information legislation revealed that the HMRC – a supervisory body for AML regulations – has conducted less than 55 investigations of real estate agents into breaches of their AML obligations. *See Wired*, "New data shows London's property boom is a money laundering horror" (April 9, 2019), *available at* https://www.wired.co.uk/article/money-laundering-hmrc-tax-update.
29. Faulty Towers, *supra* at n. 23.
30. Anti-Corruption Summit – London 2016 UK Country Statement (May 2016), *available at* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522749/United_Kingdom.pdf.
31. UK.gov, "A register of beneficial owners of overseas companies and other legal entities: potential impacts" (July 23, 2018), *available at* https://www.gov.uk/government/publications/a-register-of-beneficial-owners-of-overseas-companies-and-other-legal-entities-potential-impacts.

© Published and reproduced with kind permission by Global Legal Group Ltd, London

32. HMRC, "Estate agency guidance for money laundering supervision" (May 1, 2019), *available at* https://www.gov.uk/government/publications/money-laundering-regulations-2007-supervision-of-estate-agency-businesses/estate-agency-guidance-for-money-laundering-supervision. *See also Financial Times*, "UK estate agents hit by crackdown on money laundering" (March 9, 2019), *available at* https://www.ft.com/content/15ef0b06-40cd-11e9-b896-fe36e-c32aece.
33. Gov.uk, "Circular 003/2018: unexplained wealth orders" (Jan. 31, 2018), *available at* https://www.gov.uk/government/publications/circular-0032018-criminal-finances-act-unexplained-wealth-orders/circular-0032018-unexplained-wealth-orders?mod=article_inline.
34. *See Independent*, "Investigators probe £80m London properties linked to 'politically exposed person involved in serious crime'" (May 29, 2019), *available at* https://www.independent.co.uk/news/uk/crime/london-money-laundering-unexplained-wealth-orders-mcmafia-a8933866.html.
35. *Financial Times*, "UK estate agents hit by crackdown on money laundering" (March 9, 2019), *available at* https://www.ft.com/content/15ef0b06-40cd-11e9-b896-fe36e-c32aece.
36. *Id.* For example, a pending London home purchase for £100 million collapsed in 2018 because the lender was not satisfied about the source of the buyer's funds. *Id.*
37. 18 U.S.C. § 1956(c)(7).
38. *See United States v. Nguyen*, 493 F.3d 613, 619-22 (5th Cir. 2007); *United States v. Campbell*, 977 F.2d 854, 858-59 (4th Cir. 1992).
39. *E.g. United States v. Catarro*, 746 Fed. Appx. 110, 112-15 (3d Cir. 2018); *United States v. Cox*, 851 F.3d 113 (1st Cir. 2017).
40. 18 U.S.C. § 1957(c)(7)(B).
41. 18 U.S.C. § 1956(f).
42. 18 U.S.C. § 1957(a)(2).
43. Peter D. Hardy, Criminal Tax, Money Laundering and Bank Secrecy Act Litigation Ch. 3.III.C (BNA Bloomberg 2010).
44. 18 U.S.C. § 981(a).
45. 18 U.S.C. § 981(a)(1)(A).
46. *See* Stipulation and Request to Enter Consent Judgment of Forfeiture, *United States v. Any Rights to Profits, Royalties and Distribution Proceeds Owned by or Owed Relating to EMI Music Publishing Group* (C.D. Cal. Oct. 30, 2019), *available at* https://www.justice.gov/opa/press-release/file/1214051/download.
47. *See* Press Release No. 17-200, Acting Manhattan U.S. Attorney Announces Historic Jury Verdict Finding Forfeiture of Midtown Office Building and Other Properties (June 29, 2017), *available at* https://www.justice.gov/usao-sdny/pr/acting-manhattan-us-attorney-announces-historic-jury-verdict-finding-forfeiture-midtown.

© Published and reproduced with kind permission by Global Legal Group Ltd, London

Peter D. Hardy is a partner at Ballard Spahr LLP. He leads the firm's Anti-Money Laundering ("AML") Team, and advises financial institutions on Bank Secrecy Act ("BSA") compliance. He also defends companies and individuals against allegations of misconduct and related civil litigation. Peter co-chairs the Practising Law Institute's AML programme, and is the author of *Criminal Tax, Money Laundering, and Bank Secrecy Act Litigation*, a legal treatise published by Bloomberg BNA. Peter edits *Money Laundering Watch*, Ballard's blog on money laundering issues. Peter previously spent over a decade as a federal prosecutor.

Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
USA

Tel: +1 215 864 8838
Email: hardyp@ballardspahr.com
URL: www.ballardspahr.com

Terence M. Grugan is of counsel practising in Ballard Spahr's White Collar Defense/Internal Investigations and Securities Enforcement and Corporate Governance Litigation practice groups. As part of the firm's AML Team, he advises clients on issues arising under the BSA and defends clients in matters implicating AML compliance obligations. He also represents individuals and corporations in government investigations and securities-related investigations and litigation.

Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
USA

Tel: +1 215 864 8320
Email: grugant@ballardspahr.com
URL: www.ballardspahr.com

Priya Roy is an associate in Ballard Spahr's White Collar Defense/Internal Investigation and Securities Enforcement and Corporate Governance Litigation practice groups, and the AML Team. She focuses her practice on complex business and regulatory litigation and regularly advises clients on issues arising under the BSA. Priya specifically counsels real estate industry clients on AML and money laundering issues, and advises on civil discovery and expert testimony issues relating to the BSA. She also represents individuals and corporations in government investigations and securities-related audits and investigations.

Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
USA

Tel: +1 215 864 8336
Email: royp@ballardspahr.com
URL: www.ballardspahr.com

Mary K. Treanor is an associate in Ballard Spahr's Litigation Department, White Collar Defense/Internal Investigations group, and AML Team. She focuses her practice on white collar defence and complex commercial and regulatory litigation. She advises clients on BSA and AML matters, including government and internal investigations. She also counsels financial institutions on Suspicious Activity Report filings and confidentiality requirements.

Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
USA

Tel: +1 215 864 8131
Email: treanorm@ballardspahr.com
URL: www.ballardspahr.com

Ballard Spahr LLP is a national firm of more than 650 lawyers in 15 offices across the United States. Our attorneys provide counselling and advocacy in more than 50 areas within business and transactions, finance, intellectual property, litigation, and real estate. We represent a diverse cross-section of clients, ranging from large public companies and privately held entities to government bodies and nonprofit organisations. Our practices span the financial, industrial, real estate, private equity, retail, and other sectors that are critical to growth in today's marketplace. Ballard's AML Team advises a broad range of financial institutions – including banks, money services businesses, casinos, residential mortgage originators and lenders, and others – on BSA/AML compliance. The AML Team further represents financial institutions in government examinations, audits and enforcement proceedings, as well as civil litigation alleging underlying violations of the BSA.

www.ballardspahr.com

Ballard Spahr LLP

© Published and reproduced with kind permission by Global Legal Group Ltd, London

ICLG.com

Current titles in the ICLG series

Alternative Investment Funds
Anti-Money Laundering
Aviation Finance & Leasing
Aviation Law
Business Crime
Cartels & Leniency
Class & Group Actions
Competition Litigation
Construction & Engineering Law
Consumer Protection
Copyright
Corporate Governance
Corporate Immigration
Corporate Investigations
Corporate Recovery & Insolvency
Corporate Tax
Cybersecurity
Data Protection
Derivatives
Designs
Digital Business
Digital Health
Drug & Medical Device Litigation
Employment & Labour Law
Enforcement of Foreign Judgments
Environment & Climate Change Law
Family Law
Financial Services Disputes
Fintech
Foreign Direct Investment Regimes
Franchise
Gambling
Insurance & Reinsurance
International Arbitration
Investor-State Arbitration
Lending & Secured Finance
Litigation & Dispute Resolution
Merger Control
Mergers & Acquisitions
Mining Law
Oil & Gas Regulation
Outsourcing
Patents
Pharmaceutical Advertising
Private Client
Private Equity
Product Liability
Project Finance
Public Investment Funds
Public Procurement
Real Estate
Sanctions
Securitisation
Shipping Law
Telecoms, Media & Internet
Trade Marks
Vertical Agreements and Dominant Firms
Workplace Pensions

@ICLG_GLG

The International Comparative Legal Guides are published by:

global legal group