Forensic and Valuation Services Section

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Anti-money laundering regulations for the U.S., Canada, and the European Union

Issued by the AICPA Forensic and Litigation Services (FLS) Anti-Money Laundering (AML) Task Force

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Money Laundering Control Act of 1986 - Crimes and Criminal Procedure, U.S.C. 18, Section 1956 (18 U.S.C. §1956), Laundering of Monetary Instruments uscode.house.gov/view.xhtml?req=granuleid:USC-1994-title18-section1956&num=0&edition=1994
Money laundering Control Act of 1986 - Crimes and Criminal Procedure, U.S.C. 18, Section 1957 (18 U.S.C. §1957), Engaging in Monetary Transactions in Property Derived From Specified Unlawful Activity uscode.house.gov/view.xhtml?hl=false&edition=1994&req=granuleid%3AUSC-1994-title18-section1957&num=0&saved=%7CZ3JhbnVsZWlkOlVTQy0xOTk0LXRpdGxlMTgtc2VjdGlvbjE5NTY%3D%7C%7C%7C0%7Cfalse%7C1994
USA PATRIOT Act (2001) fincen.gov/resources/statutes-regulations/usa-patriot-act
FinCEN Beneficial Ownership Rule (2018) fincen.gov/resources/statutes-and-regulations/cdd-final-rule
Anti-Money Laundering Act (AMLA) of 2020 NDAA 2021 FinCEN Alert: fincen.gov/sites/default/files/shared/20210615%20AMLA%20FinCEN%20One%20Pager_FINAL.pdf NDAA 2021: govinfo.gov/content/pkg/PLAW-116publ283/pdf/PLAW-116publ283.pdf AMLA 2020: fincen.gov/anti-money-laundering-act-2020
FinCEN Beneficial Ownership Information (BOI) Reporting Rule (2022) fincen.gov/news/news-releases/fincen-issues-final-rule-beneficial-ownership-reporting-support-law-enforcement

Regulations – Canada
Criminal Code (1985) laws-lois.justice.gc.ca/eng/acts/C-46/section-462.31.html
Proceeds of Crime (Money Laundering) and Terrorist Financing Act (2001) laws-lois.justice.gc.ca/eng/acts/P-24.501/page-1.html
Canada Business Corporations Act (1985) and Associated Regulations (2022-Proposed Amendments) ised-isde.canada.ca/site/corporations-canada/en/regulatory-proposals-register-individuals-significant-control-regime

Regulations – Europe
European Union: European Union Directives on Money Laundering (1990) finance.ec.europa.eu/financial-crime/eu-context-anti-money-laundering-and-countering-financing-terrorism_en

1 Anti-money laundering regulations for the U.S., Canada, and the European Union

Summary

According to a United Nations Report on Drugs and Crime, "The estimated amount of money laundered globally in one year is 2%–5% of global GDP, or $800 billion–$2 trillion in current US dollars."[1]

Through the manipulation of financial systems, global criminals disguise financial assets so that they appear legal to cover a wide range of illicit activities. Left unchecked, these financial crimes can cause significant and damaging consequences.

Anti-money laundering (AML) rules and regulations are measures put in place to help detect and report suspicious activity, including money laundering and terrorist financing. This resource serves as a tool for accounting professionals to understand the regulations governed by AML enforcement bodies of the United States (Financial Crimes Enforcement Network (FinCEN)), Canada (Financial Transactions and Reports Analysis Centre (FINTRAC)), and the European Union (European Commission).

According to Research and Markets, "The global AML market size is expected to grow from an estimated value of USD 2.8 billion in 2022 to USD 5.8 billion by 2027."[2] Accounting professionals are uniquely positioned to help combat money laundering, starting with the basics — understanding and complying with AML government regulations.

[1] "Money Laundering," United Nations Office on Drugs and Crime, accessed April 6, 2023, https://www.unodc.org/unodc/en/money-laundering/overview.html.

[2] "The Worldwide Anti-Money Laundering Market Industry is Expected to Reach $5.8 Billion by 2027," GlobeNewswire, accessed March 1, 2023, https://www.globenewswire.com/en/news-release/2022/07/20/2482487/28124/en/The-Worldwide-Anti-money-Laundering-Market-Industry-is-Expected-to-Reach-5-8-Billion-by-2027.html.

U.S. regulations

Listed below are applicable laws, regulations, and authoritative guidance that represent primary anti-money laundering (AML) requirements within the United States.

Bank Secrecy Act (1970)

Access the full text here: https://www.fincen.gov/resources/statutes-and-regulations/bank-secrecy-act.[3]

According to a review of the Bank Secrecy Act regulations and guidance published in the Federal Register:

> *[This is] the principal U.S. law for the prevention of money laundering, terrorist financing and proliferation, and other forms of illicit financial activity. [The U.S.] Congress has authorized the [Treasury] Secretary to administer the BSA. The [Treasury] Secretary has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the BSA and associated regulations. FinCEN is authorized to require financial institutions or nonfinancial trades or businesses to maintain procedures to ensure compliance with the BSA and the regulations promulgated thereunder and to guard against money laundering, the financing of terrorism, and other forms of illicit finance.*[4]

According to FinCEN, which is part of the U.S. Department of the Treasury:

> *Specifically, the act requires financial institutions to keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding $10,000 (daily aggregate amount), and to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities.*[5]

[3] "The Bank Secrecy Act," Financial Crimes Enforcement Network, accessed March 27, 2023, https://www.fincen.gov/resources/statutes-and-regulations/bank-secrecy-act.

[4] "Review of Bank Secrecy Act Regulations and Guidance," Federal Register, National Archives and Records Administration, accessed March 27, 2023, https://www.federalregister.gov/documents/2021/12/15/2021-27081/review-of-bank-secrecy-act-regulations-and-guidance.

[5] "The Bank Secrecy Act," Financial Crimes Enforcement Network, accessed March 27, 2023, https://www.fincen.gov/resources/statutes-and-regulations/bank-secrecy-act.

Money Laundering Control Act of 1986

The United States has two primary statutes, U.S.C. 18, Section 1956 and U.S.C. 18, Section 1957 [6], that prohibit individuals or entities from engaging in illicit financial activity (e.g., money laundering) at the federal level.

Crimes and Criminal Procedure, U.S.C. 18, Section 1956 (18 U.S.C. §1956), Laundering of Monetary Instruments

The following section presents information from the full text here: https://uscode.house.gov/view.xhtml?req=granuleid:USC-1994-title18-section1956&num=0&edition=1994.[7]

U.S.C. 18, Section 1956(a)(1): Makes it a federal crime to knowingly conduct or attempt to conduct a financial transaction with proceeds from a "specified unlawful activity" (SUA):

- with the intent to promote SUA(s); or with the intent to evade taxation;
- knowing the transaction is designed (in part or whole) to conceal/disguise the nature, location, source, ownership, or control of the proceeds; or to avoid transaction reporting requirements.

U.S.C. 18, Section 1956(a)(2): Makes it a federal crime to attempt or to successfully transport, transmit, or transfer monetary instruments/funds from or to the United States:

- with the intent to promote the SUA(s) or knowing the monetary instruments/funds involved represent SUA proceeds and knowing that the activity is designed (in part or whole) to conceal/disguise the nature, location, source, ownership, or control of the proceeds of the SUA; or to avoid transaction reporting requirements.

U.S.C. 18, Section 1956(a)(3): Makes it a federal crime to conduct or attempt to conduct a financial transaction with money or other property represented by a federal law enforcement officer (or authorized agent) to be SUA proceeds with the intent to:

- promote the SUA; to conceal/disguise the nature, location, source, ownership, or control of the proceeds of the SUA; or to avoid reporting requirements.

U.S.C. 18, Section 1956(h): Any person who conspires to commit any offense defined in U.S.C. 18, Section 1956 or U.S.C. 18, Section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy. [8]

[6] U.S.C. 18, Section 1956 and U.S.C. 18, Section 1957 are the two sections that comprise the Money Laundering Control Act of 1986.

[7] 18 U.S.C. §1956, Laundering of Monetary Instruments, accessed March 27, 2023, https://uscode.house.gov/view.xhtml?req=granuleid:USC-1994-title18-section1956&num=0&edition=1994.

[8] Ibid.

Crimes and Criminal Procedure, U.S.C. 18, Section 1957 (18 U.S.C. §1957), Engaging in Monetary Transactions in Property Derived From Specified Unlawful Activity

The following section presents information from the full text found here: https://uscode.house.gov/view.xhtml?hl=false&edition=1994&req=granuleid%3AUSC-1994-title18-section1957&num=0&saved=%7CZ3JhbnVsZWlkOlVTQy0xOTk0LXRpdGxlMTgtc2VjdGlvbjE5NTY%3D%7C%7C%7C0%7Cfalse%7C1994.[9]

U.S.C. 18, Section 1957(a): Makes it a federal crime to knowingly engage or attempt to engage in a monetary transaction with proceeds from an SUA with value greater than $10,000 involving a financial institution with a nexus to the United States (per U.S.C. 18, Section 1957(d)).

U.S.C. 18, Section 1957(c): In order to prosecute this statute, the government does not have to prove intent, but must prove the defendant knew the offense was derived from an SUA.[10]

USA PATRIOT Act (2001)

Access the full text of the sections related to AML here: https://www.fincen.gov/resources/statutes-regulations/usa-patriot-act.[11]

According to FinCEN:

> *The purpose of the USA PATRIOT Act is to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and other purposes, some of which include:*
>
> - *To strengthen U.S. measures to prevent, detect and prosecute international money laundering and financing of terrorism;*
> - *To subject to special scrutiny foreign jurisdictions, foreign financial institutions, and classes of international transactions or types of accounts that are susceptible to criminal abuse;*
> - *To require all appropriate elements of the financial services industry to report potential money laundering;*
> - *To strengthen measures to prevent use of the U.S. financial system for personal gain by corrupt foreign officials and facilitate repatriation of stolen assets to the citizens of countries to whom such assets belong.* [12]

[9] 18 U.S.C. §1957, Engaging in Monetary Transactions in Property Derived From Specified Unlawful Activity, accessed March 27, 2023, https://uscode.house.gov/view.xhtml?hl=false&edition=1994&req=granuleid%3AUSC-1994-title18-section1957&num=0&saved=%7CZ3JhbnVsZWlkOlVTQy0xOTk0LXRpdGxlMTgtc2VjdGlvbjE5NTY%3D%7C%7C%7C0%7Cfalse%7C1994.

[10] Ibid.

[11] "USA PATRIOT Act," Financial Crimes Enforcement Network, accessed March 27, 2023, https://www.fincen.gov/resources/statutes-regulations/usa-patriot-act.

[12] Ibid.

FinCEN Beneficial Ownership Rule (2018)

The full text regarding the Customer Due Diligence (CDD) Final Rule is here: https://www.fincen.gov/resources/statutes-and-regulations/cdd-final-rule.[13]

The CDD Rule has four core requirements. It requires covered financial institutions to establish and maintain written policies and procedures that are reasonably designed to:

1. *identify and verify the identity of customers*
2. *identify and verify the identity of the beneficial owners of companies opening accounts*
3. *understand the nature and purpose of customer relationships to develop customer risk profiles*
4. *conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.*

With respect to the requirement to obtain beneficial ownership information, financial institutions will have to identify and verify the identity of any individual who owns 25 percent or more of a legal entity, and an individual who controls the legal entity.[14]

Anti-Money Laundering Act (AMLA) of 2020

The full text of the NDAA 2021 FinCEN Alert is here: https://www.fincen.gov/sites/default/files/shared/20210615%20AMLA%20FinCEN%20One%20Pager_FINAL.pdf.[15]

On January 1, 2021, Congress enacted the FY2021 National Defense Authorization Act (NDAA), which included significant reforms to the U.S. anti-money laundering (AML) regime. The NDAA includes the Anti-Money Laundering Act of 2020 (AML Act) and, within the AML Act, the Corporate Transparency Act (CTA).

The AML Act seeks to strengthen, modernize, and streamline the existing AML regime by promoting innovation, regulatory reform, and industry engagement through forums, such as the Bank Secrecy Act Advisory Group (BSAAG) and FinCEN Exchange. The Act also calls for FinCEN to work closely with regulatory, national security, and law enforcement partners to identify risks and priorities and provide valuable feedback to our industry partners.

The CTA establishes uniform beneficial ownership reporting requirements for corporations, limited liability companies, and other similar entities formed or registered to do business in the United States. The CTA authorizes FinCEN to collect that information and share it with authorized government authorities and financial institutions, subject to effective safeguards and controls.

Many provisions of the AML Act and the CTA require rulemaking or periodic reporting to Congress on implementation efforts, assessments, and findings. Some key requirements include:

1. Establishing standards for the reporting of information on beneficial ownership, building an IT system to collect and secure the data, and creating access protocols;

2. Establishing national anti-money laundering and countering the financing of terrorism priorities;

3. Enhancing the whistleblower provisions to provide for a robust whistleblower program and new anti-retaliation protections;

4. Reviewing, and revising as appropriate, Currency Transaction Report (CTR) and Suspicious Activity Report (SAR) reporting requirements, and other existing Bank Secrecy Act (BSA) regulations and guidance;

5. Expanding BSA requirements and obligations to persons engaged in the trade of antiquities, and mandating a study on the potential expansion of BSA requirements to persons engaged in the art trade;

6. Codifying the FinCEN Exchange program;

7. Hosting a Financial Crimes Tech Symposium, and establishing new BSAAG subcommittees and a supervisory committee to address public-private partnerships;

8. Establishing a BSA Analytical Hub;

9. Law enforcement reporting to FinCEN on the use of BSA data, procedures for additional feedback between FinCEN and financial institutions on the usefulness of SARs, and semi-annual publication of review of SAR activity and other BSA reports, including threat patterns, trends, and typologies; and

10. Codifying a pilot program to allow financial institutions to share SARs with their foreign branches, subsidiaries, and affiliates.[16]

Full text of the law (NDAA 2021): https://www.govinfo.gov/content/pkg/PLAW-116publ283/pdf/PLAW-116publ283.pdf [17]

Synthesized version of the law (AMLA 2020): https://www.fincen.gov/anti-money-laundering-act-2020.[18]

[13] "Information on Complying With the Customer Due Diligence (CDD) Final Rule," Financial Crimes Enforcement Network, accessed March 27, 2023, https://www.fincen.gov/resources/statutes-and-regulations/cdd-final-rule.

[14] Ibid

[15] "Anti-Money Laundering Act of 2020," AMLA FinCEN One Pager, Financial Crimes Enforcement Network, accessed March 27, 2023, https://www.fincen.gov/sites/default/files/shared/20210615%20AMLA%20FinCEN%20One%20Pager_FINAL.pdf.

[16] Ibid.

[17] National Defense Authorization Act, 2021, Pub. L. No. 116–283, 134 Stat. 3388 (2021), accessed March 27, 2023, https://www.govinfo.gov/content/pkg/PLAW-116publ283/pdf/PLAW-116publ283.pdf.

[16] "The Anti-Money Laundering Act of 2020," Financial Crimes Enforcement Network, accessed March 27, 2023, https://www.fincen.gov/anti-money-laundering-act-2020.

FinCEN Beneficial Ownership Information (BOI) Reporting Rule (2022)

The full text is here: https://www.fincen.gov/news/news-releases/fincen-issues-final-rule-beneficial-ownership-reporting-support-law-enforcement.[19]

On Sept. 29, 2022, FinCEN issued a final rule establishing a beneficial ownership information (BOI) reporting requirement, pursuant to the Corporate Transparency Act (CTA) included within the Anti-Money Laundering Act (AMLA) 2020. "The rule will require most corporations, limited liability companies, and other entities created in or registered to do business in the United States to report information about their beneficial owners — the persons who ultimately own or control the company, to FinCEN."[20]

On March 24, 2023, FinCEN issued a news bulletin announcing new reporting guidance to assist in compliance with BOI reporting requirement effective January 1, 2024.[21]

The following are key elements of the BOI reporting rule:

- Establishes definition of two reporting company types (i.e., domestic reporting company and foreign reporting company);
- Enhances guidance on the definitions of beneficial owner, substantial control, and ownership interest;
- Enhances guidance on determination of ownership interest held within trusts;[22]
- Establishes the definition of 23 entity category types that are exempt from BOI reporting requirements;[23]
- Establishes definition of two company applicant types (i.e., document filer and/or person with primary responsibility or control over document filing);
- Establishes reporting information requirements (e.g., legal name, business physical address, formation jurisdiction, taxpayer identification number) for reporting companies;
- Establishes reporting information (e.g., legal name, date of birth, residential/business physical address, taxpayer identification number) combined with supporting image document (e.g., driver's license) requirements that reporting companies must provide on beneficial owners;
- Extends the BOI reporting requirement filing deadline for reporting companies created or registered before Jan. 1, 2024, to Jan. 1, 2025; and
- Establishes BOI reporting deadlines requiring reporting companies created or registered on or after Jan. 1, 2024, to file BOI reports within 30 days of receiving official notice of the creation or registration dates.[24]

[19] "FinCEN Issues Final Rule for Beneficial Ownership Reporting to Support Law Enforcement Efforts, Counter Illicit Finance, and Increase Transparency," Financial Crimes Enforcement Network, accessed March 27, 2023, https://www.fincen.gov/news/news-releases/fincen-issues-final-rule-beneficial-ownership-reporting-support-law-enforcement.

[20] Ibid.

[21] "FinCEN Issues Initial Beneficial Ownership Information Reporting Guidance," Financial Crimes Enforcement Network, accessed April 4, 2023, https://www.fincen.gov/news/news-releases/fincen-issues-initial-beneficial-ownership-information-reporting-guidance.

[22] "Beneficial Ownership Information Reporting Requirements: A Rule by the Financial Crimes Enforcement Network on 09/30/2022," Federal Register, accessed April 4, 2023, https://www.federalregister.gov/documents/2022/09/30/2022-21020/beneficial-ownership-information-reporting-requirements.

[23] "Beneficial Ownership Information Report Filing Dates," Financial Crimes Enforcement Network, accessed April 4, 2023, https://www.fincen.gov/sites/default/files/shared/BOI_Reporting_Filing_Dates-Published03.24.23_508C.pdf. Information from Footnote 2 of this source.

[24] "Beneficial Ownership Information Reporting Requirements: A Rule by the Financial Crimes Enforcement Network on 09/30/2022," Federal Register, accessed April 4, 2023, https://www.federalregister.gov/documents/2022/09/30/2022-21020/beneficial-ownership-information-reporting-requirements.

Canadian regulations

Listed below are applicable laws, regulations, and authoritative guidance which represents primary anti-money laundering (AML) requirements within Canada.

Criminal Code (1985)

Access the full text of the law here: https://laws-lois.justice.gc.ca/eng/acts/C-46/section-462.31.html.[25]

Laundering proceeds of crime

462.31 (1) Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that, or being reckless as to whether, all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of

(a) the commission in Canada of a designated offence; or

(b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.[26]

[25] Criminal Code, R.S.C., 1985, c. C-46, Consolidated Federal Laws of Canada, Department of Justice Canada, accessed March 16, 2023, https://laws-lois.justice.gc.ca/eng/acts/C-46/section-462.31.html.

[26] Ibid.

Proceeds of Crime (Money Laundering) and Terrorist Financing Act (2001) and Associated Regulations

Access the full text of the law here: https://laws-lois.justice.gc.ca/eng/acts/P-24.501/page-1.html.[27]

The Proceeds of Crime (Money Laundering) Act was amended in December 2001 to become the **Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA).**

3 The object of this Act is

(a) to implement specific measures to detect and deter money laundering and the financing of terrorist activities and to facilitate the investigation and prosecution of money laundering offences and terrorist activity financing offences, including

(i) establishing record keeping and client identification requirements for financial services providers and other persons or entities that engage in businesses, professions or activities that are susceptible to being used for money laundering or the financing of terrorist activities,

(ii) requiring the reporting of suspicious financial transactions and of cross-border movements of currency and monetary instruments, and

(iii) establishing an agency that is responsible for ensuring compliance with Parts 1 and 1.1 and for dealing with reported and other information[.][28]

[27] Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c. 17, Consolidated Federal Laws of Canada, Department of Justice Canada, accessed March 16, 2023, https://laws-lois.justice.gc.ca/eng/acts/P-24.501/page-1.html.

[28] Ibid.

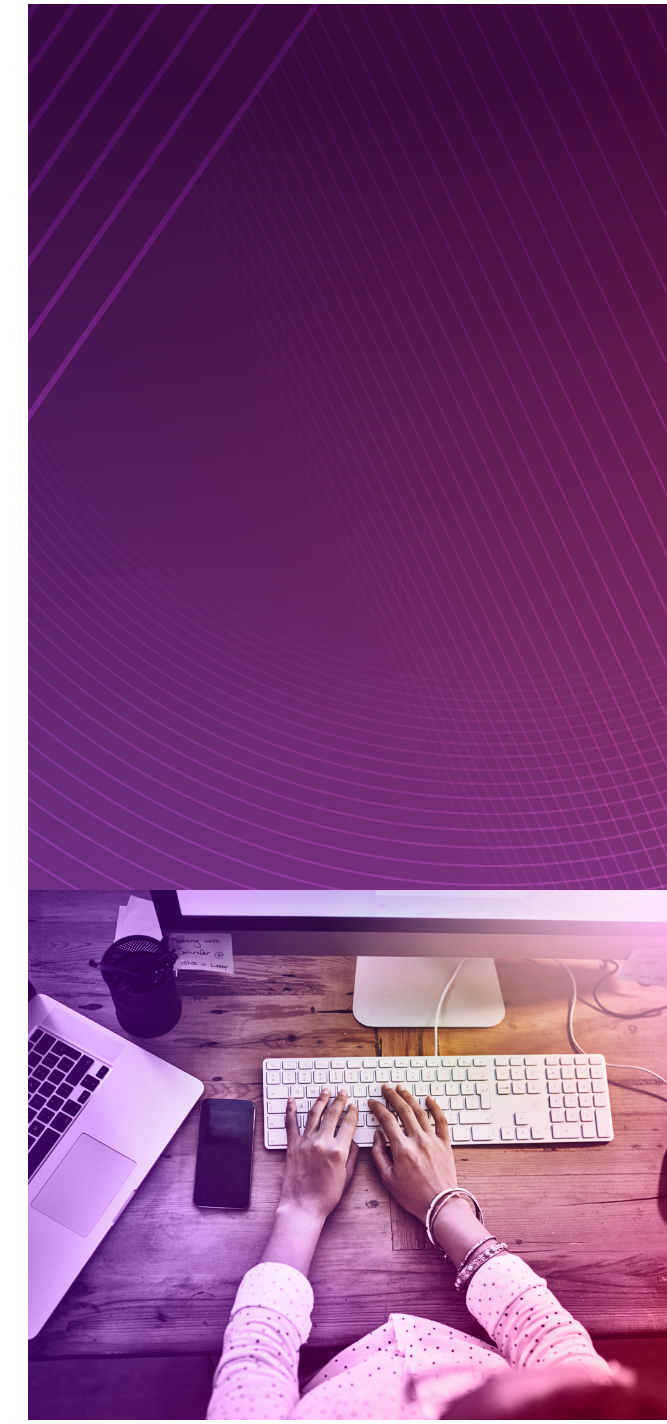
Canada Business Corporations Act (1985) and Associated Regulations (2022-Proposed Amendments)

Access the full text of the proposals here: https://ised-isde.canada.ca/site/corporations-canada/en/notices/regulatory-proposals-register-individuals-significant-control-regime.[29]

The Bill C-86 amendments to the Canada Business Corporations Act (CBCA) to increase corporate transparency came into force on June 13, 2019. As of that date, most corporations governed by the CBCA must keep a register of individuals with significant control (ISC Register).[30] *The ISC Register provides greater transparency about who owns and controls Canadian corporations, and helps law enforcement agencies expose activities like money laundering and tax evasion.*[31]

On Oct. 29, 2022, proposed regulatory amendments to the register of individuals with significant control were tabled for consultation.

Additional information can be found here: https://www.canada.ca/en/innovation-science-economic-development/news/2023/03/government-of-canada-tables-new-legislation-to-create-a-beneficial-ownership-registry.html.[32]



[29] "Regulatory Proposals for the Register of Individuals With Significant Control Regime," Corporations Canada, Innovation, Science and Economic Development Canada, Government of Canada, October 4, 2022, https://ised-isde.canada.ca/site/corporations-canada/en/notices/regulatory-proposals-register-individuals-significant-control-regime.

[30] Businesses in Canada may incorporate federally or provincially. Each province has enacted legislation similar to federal regulations that require provincially incorporated businesses to maintain a transparent shareholder registry.

[31] "Regulatory Proposals for the Register of Individuals With Significant Control Regime," Corporations Canada, Innovation, Science and Economic Development Canada, Government of Canada, October 4, 2022, https://ised-isde.canada.ca/site/corporations-canada/en/notices/regulatory-proposals-register-individuals-significant-control-regime.

[32] "Government of Canada Tables New Legislation to Create a Beneficial Ownership Registry," Innovation, Science and Economic Development Canada, Government of Canada, March 22, 2023, https://www.canada.ca/en/innovation-science-economic-development/news/2023/03/government-of-canada-tables-new-legislation-to-create-a-beneficial-ownership-registry.html.

European Union regulations

Listed below is applicable law which represents primary anti-money laundering (AML) requirements within the European Union.

European Union Directives on Money Laundering (1990)

The European Union adopted the first anti-money laundering Directive in 1990 in order to prevent the misuse of the financial system for the purpose of money laundering. It provides that obliged entities shall apply customer due diligence requirements when entering into a business relationship (i.e. identify and verify the identity of clients, monitor transactions and report suspicious transactions).

This legislation has been constantly revised in order to mitigate risks relating to money laundering and terrorist financing.[33]

The European Commission proposed legislation in 2021 with the goal of strengthening rules related to anti-money laundering and countering the financing of terrorism (AML/CFT) and is currently working to implement the 6th Directive on AML/CFT (AMLD 6). "The Commission is hopeful for a speedy legislative process. The AML authority should be operational in 2024 and will start the work of direct supervision slightly later, once the directive has been transposed and the new rules start to apply."[34]

More information on these next steps is available here: https://ec.europa.eu/info/publications/210720-anti-money-laundering-countering-financing-terrorism_en.[35]

[33] "EU Context of Anti-Money Laundering and Countering the Financing of Terrorism," Finance, European Commission, accessed March 28, 2023, https://finance.ec.europa.eu/financial-crime/eu-context-anti-money-laundering-and-countering-financing-terrorism_en.

[34] "Anti-Money Laundering and Countering the Financing of Terrorism Legislative Package," Finance, European Commission, July 20, 2021, https://finance.ec.europa.eu/publications/anti-money-laundering-and-countering-financing-terrorism-legislative-package_en.

[35] Ibid.

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