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Book

Doors wide open : corruption and real estate in four key markets

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TRANSPARENCY INTERNATIONAL
the global coalition against corruption

DOORS WIDE OPEN

Corruption and Real Estate in Four Key Markets

Transparency International is a global movement with one vision: a world in which government, business, civil society and the daily lives of people are free of corruption. With more than 100 chapters worldwide and an international secretariat in Berlin, we are leading the fight against corruption to turn this vision into reality.

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CONTENTS

ABBREVIATIONS

AML/CTF	Anti-Money Laundering / Counter Terrorist Financing
FATF	Financial Action Task Force
FINTRAC	Financial Transactions and Reports Analysis Centre of Canada
FinCEN	Financial Crimes Enforcement Network (US)
GTO	Geographic Targeting Orders
G20	Group of 20
HMRC	Her Majesty's Revenue and Customs
OECD	Organisation for Economic Co-operation and Development
PEP	Politically exposed person
STR	Suspicious Transaction Report
SAR	Suspicious Activity Report
UNODC	UN Office on Drugs and Crime

EXECUTIVE SUMMARY

The real estate market has long provided a way for individuals to secretly launder or invest stolen money and other illicitly gained funds. Not only do expensive apartments in New York, London or Paris raise the social status of their owners and enhance their luxurious lifestyles, but they are also an easy and convenient place to hide hundreds of millions of dollars from criminal investigators, tax authorities or others tracking criminal behaviour and the proceeds of crime. According to the Financial Action Task Force (FATF), real estate accounted for up to 30 per cent of criminal assets confiscated worldwide between 2011 and 2013.[1]

Several cases that have come to light in the past year, including the trial of Teodoro Obiang, son of the president of Equatorial Guinea;[2] Malaysia's 1MDB scandal;[3] the Brazilian Car Wash Operation;[4] and the Panama Papers' revelations,[5] offer examples of how high-end property in key markets may have been used to launder money. In many such cases, property is purchased through anonymous shell companies or trusts without undergoing proper due diligence by the professionals involved in the deal.

The ease with which such anonymous companies or trusts can acquire property and launder money is directly related to the insufficient rules and enforcement practices in attractive markets. The countries analysed in this study – Australia, Canada, the United Kingdom and the United States – have committed in different forums, such as through the FATF and the Group of 20 (G20), to do more to prevent and curb money laundering and terrorist-financing, including by regulating gatekeepers, such as real estate agents, lawyers and accountants, who may act as facilitators in transactions that can enable money laundering.

This report identifies the main problems related to real estate and money laundering in these four countries and finds that, despite international commitments, current rules and practices are inadequate to mitigate the risks and detect money laundering in the real estate sector.

1. FATF, *Money laundering and terrorist financing vulnerabilities of legal professionals*, Paris: FATF, 2013. www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20vulnerabilities%20legal%20professionals.pdf
2. United States Senate Permanent Subcommittee on Investigation, *Keeping foreign corruption out of the United States: Four case histories*, 4 February 2010. www.hsgac.senate.gov/download/report-psi-staff-report-keeping-foreign-corruption-out-of-the-united-states-four-case-histories
3. United States Department of Justice, Press Release, 20 July 2016. www.justice.gov/opa/pr/united-states-seeks-recover-more-1-billion-obtained-corruption-involving-malaysian-sovereign; also see: www.justice.gov/archives/opa/page/file/877166/download
4. Schoenburg, T., J. Brice and E. Larson, 'Brazil' 'Carwash' probe yields largest-ever corruption penalty', *Bloomberg*, 21 December 2016. www.bloomberg.com/news/articles/2016-12-21/odebrecht-braskem-agree-to-carwash-penalty-of-3-5-billion
5. International Consortium of investigative Journalists, *Panama Papers.* https://panamapapers.icij.org/

KEY FINDINGS

This assessment identifies the following 10 main problems that have enabled corrupt individuals and other criminals to easily purchase luxurious properties anonymously and hide their stolen money in Australia, Canada, the UK and the US.

1 Inadequate coverage of anti-money laundering provisions

None of the countries analysed – Australia, Canada, the UK or the US – is fully compliant with their international commitments on anti-money laundering. They all fail to extend due diligence requirements to the full range of non-financial professionals and businesses that might be involved in the buying and selling of real estate.

2 Identification of the beneficial owners of legal entities, trusts and other legal arrangements is still not the norm

Only in the UK are professionals involved in real estate closings required to identify the true, actual person who is the beneficial owner of the property as part of their due diligence process. In Australia, Canada and the US the law does not require real estate agents, lawyers, accountants, notaries or any other person involved in real estate closings to identify the beneficial owner of customers.

3 Foreign companies have access to the real estate market with few requirements or checks

There are few requirements and checks on foreign companies and individuals wishing to purchase property. In all the four countries, foreign companies do not need to provide information on their real owners to any sort of company registry in order to purchase property or to the land registry upon registration. Australia is the only country that has any checks on foreign investment, but these are not designed to prevent money laundering. The UK has committed to adopt legislation to establish a register disclosing information on the beneficial owners of foreign companies owning or seeking to purchase property by April 2018.

4 Over-reliance on due diligence checks by financial institutions leads to cash transactions going unnoticed

Three of the four countries do not require a sufficient range of professionals to conduct the necessary due diligence checks on real estate transactions. They rely heavily on checks by financial institutions alone, which may lead to cash transactions going unnoticed. In Australia and the US, only financial institutions have anti-money laundering obligations in the real estate sector. In Canada, the anti-money laundering framework includes other relevant actors, but fails to cover categories that play important roles in the sector, such as lawyers and Quebec notaries. The UK obliges a wider range of professionals operating in the sector to conduct due diligence.

5 Insufficient rules on suspicious transaction reports and weak implementation

In Australia and the US, professionals involved in real estate closings are not required to submit suspicious transaction reports (STRs). In Canada, real estate agents and developers, accountants and British Columbia notaries are required to submit an STR to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) if they have reasonable grounds to suspect that the transaction is related to a money laundering offence or a terrorist activity financing offence, but lawyers and Quebec notaries are not subject to this requirement. In the UK, real estate agents, accountants and lawyers are required to submit an STR if they suspect money laundering.

6 Weak or no checks on politically exposed persons and their associates

In Australia, Canada and the US, professionals involved in real estate closings are not required to verify whether customers are politically exposed persons (PEPs), or family members or close associates of PEPs. This means that they do not have to conduct enhanced due diligence in these cases. In the UK, enhanced due diligence must be applied in the case of foreign PEPs, but not domestic PEPs.

7 Limited control over professionals who can engage in real estate transactions: no "fit and proper" test

None of the countries analysed have "fit and proper tests" for professionals working in the real estate sector, in order to assess whether they are aware of their anti-money laundering obligations. Only the UK requires real estate businesses to register with Her Majesty's Revenue and Customs (HMRC) for anti-money laundering supervision, but compliance with this obligation is low.

8 Limited understanding of and action on money laundering risks in the sector

National money laundering risk assessments have been conducted in Canada, the UK and the US and in all cases high risks of money laundering have been reported in the real estate sector. In Australia, while no risk assessment has been conducted in the past six years, current government documents highlight high risks of money laundering in the real estate sector. Despite these assessments, governments have been slow to adopt mitigation measures against the vulnerabilities identified.

9 Inconsistent supervision

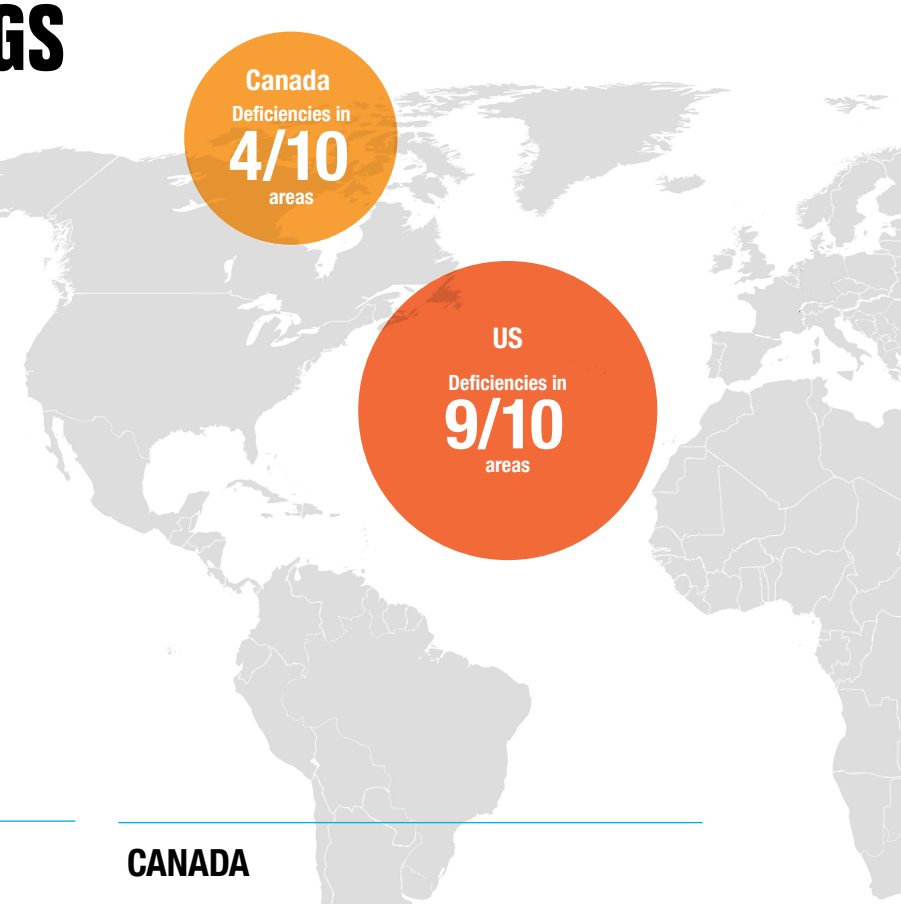
In Australia and the US, professionals involved in real estate closings are not subject to anti-money laundering obligations, and therefore are not monitored by competent authorities or self-regulated bodies. In the UK, the supervisory regime is inconsistent, with different supervisory bodies tasked with regulating or supervising different professions connected to the real estate sector, not all of which take a risk-based approach to supervision. In Canada, FINTRAC is the sole supervisory body for compliance with the anti-money laundering and terrorist financing legislation and takes a risk-based approach to supervision, but enforcement of the rules in the real estate sector is still limited.

10 Lack of sanctions

In all four countries, supervisory bodies publish very limited information on their enforcement efforts in the real estate sector. Both administrative sanctions for non-compliance with anti-money laundering obligations and criminal sanctions for involvement in money laundering schemes and predicate offences seem to be rare. While several financial institutions have been sanctioned for their involvement in money laundering in recent years, very little is known about the sanctions incurred by real estate agents, lawyers, accountants and notaries for facilitating money laundering into the real estate sector.

COUNTRY FINDINGS

Our analysis identified 10 main areas where legal loopholes or weak implementation/enforcement enable the corrupt and other criminals to launder money through the real estate sector. All the countries analysed have deficiencies, which vary from an absence of anti-money laundering regulations in the sector, to weak legal frameworks and a lack of enforcement.



AUSTRALIA

Australia has severe deficiencies under all 10 areas identified in the research and is therefore not in line with any of the commitments to tackle corruption and money laundering in real estate made in international forums.

In Australia, real estate agents are not subject to the provisions of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006. Other professionals such as lawyers and accountants who may also play a role in the sector are not covered either. This means that properties can be bought and sold without any due diligence on the parties. Currently there are no requirements for real estate agents or any professional involved in real estate deals to submit STRs, even if they suspect illegal activity is taking place, and there are no requirements or rules for verifying whether customers are PEPs or their close associates.

Of the countries analysed, only Australia has a check on foreigners wishing to purchase residential properties, but there is no requirement to disclose the identity of individuals (or beneficial owners) behind foreign companies purchasing property.

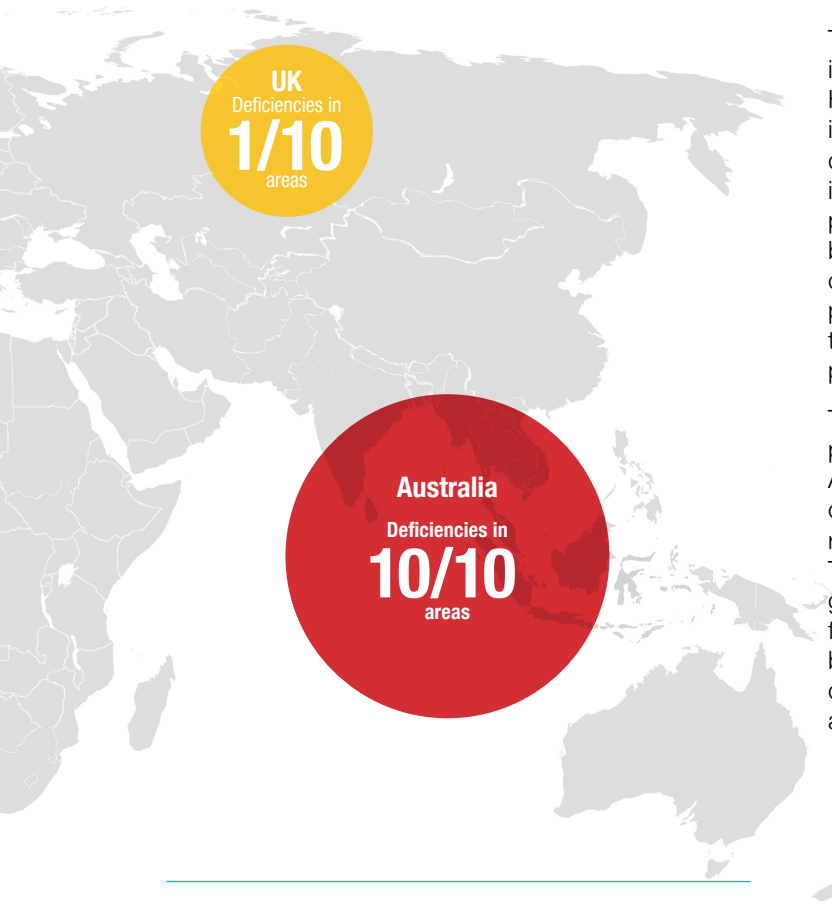
CANADA

Canada's legal framework has severe deficiencies under four of the 10 identified areas. In the other six, there are either significant loopholes that increase risks of money laundering through the real estate sector or severe problems in implementation and enforcement of the law.

While anti-money laundering provisions cover real estate agents, brokers and developers, notaries from British Columbia and accountants, they do not cover other professions such as lawyers, law firms and Quebec notaries. Given their roles in real estate closings, this is a major loophole. Real estate professionals are not required to identify the beneficial owners of customers when conducting due diligence.

Transparency International Canada's analysis of land title records found that nearly a half of the 100 most valuable residential properties in Greater Vancouver are held through structures that hide their beneficial owners. Nearly one-third of the properties are owned through shell companies, while at least 11 per cent have a nominee listed on title.[6]

6. Transparency International Canada, *No reason to hide: Unmasking the anonymous owners of Canadian companies and trusts*, Toronto: TI Canada, 2016. www.transparencycanada.ca/wp-content/uploads/2016/08/TIC-BeneficialOwnershipReport-Interactive.pdf



UK

The UK's legal framework is mostly in line with international standards and recommendations. However, there remain loopholes and weaknesses in implementation and enforcement of the rules and deficiencies under each of the identified areas. For instance, current rules allow foreign companies to buy property without revealing the identity of their real or beneficial owner. Foreign companies do not need to operate or be registered in the UK in order to acquire property, nor are they required to disclose the name of the company's beneficial owners upon registering the property with the land registry.

Transparency International UK found the London property market highly vulnerable to corrupt wealth. Analysis of open source material found that individuals or companies representing a high money laundering risk own over £4.2 billion worth of property in London.[7] The UK government has committed to introducing greater transparency on the purchase of properties by foreign companies and will introduce a public register of beneficial ownership for foreign companies with property or wishing to buy property in the UK. Legislation is anticipated in 2018.

US

The US has severe deficiencies in nine of the 10 identified areas. The current legal framework is not in line with any of its commitments made at international forums and it is not sufficient to effectively tackle corruption and money laundering in real estate.

In the US, professionals involved in real estate closings do not have any anti-money laundering obligations. The USA PATRIOT Act 2001 originally contained provisions requiring those involved in real estate closings to perform due diligence on their customers, but they were granted a temporary exemption from that requirement by the Treasury Department, which has never been lifted. There are no restrictions or checks on foreign individuals or companies wishing to purchase property.

Within this framework, cash purchases in the US pose particular risks. A 2015 report by the US National Association of Realtors found that 59 per cent of purchases by international clients are made in cash. In New York, 62 per cent of purchases made by international clients costing more than US$2million are made in cash.[8]

Since January 2016, the Financial Crimes Enforcement Network (FinCEN)[9] has issued Geographic Targeting Orders (GTO), which require title companies in select metropolitan areas to report information on the beneficial owners of high-value real estate purchased in cash (non-mortgage) transactions. The coverage of GTOs has been extended to new locations and for longer timescales. In a February 2017 statement extending the GTOs once again, FinCEN reported that about 30 per cent of the transactions covered by the GTOs involved an owner or purchaser that had been identified in a previous STR.

7. Transparency International UK, *Faulty towers: Understanding the impact of overseas corruption on the London property market,* London: TI UK, March 2017. www.transparency.org.uk/publications/faulty-towers-understanding-the-impact-of-overseas-corruption-on-the-london-property-market/
8. 'Fewer buyers are bringing all cash to close', *Daily Real Estate News*, 5 February 2016. http://realtormag.realtor.org/daily-news/2016/02/05/fewer-buyers-are-bringing-all-cash-close
9. FinCEN is an anti-money laundering agency of the US Department of Treasury seeking to combat money laundering on a domestic and international level through collaboration and sharing of information with law enforcement and other partners. It serves as the US financial intelligence unit.

KEY RECOMMENDATIONS

- Governments should require all gatekeepers to identify and keep records of the beneficial owners of legal entities, trusts and other legal arrangements in real estate transactions.

- Governments should require that both domestic and foreign PEPs, their family members and close associates be automatically identified as high-risk clients when purchasing property. Additional preventive measures such as enhanced due diligence should be implemented.

- Governments should require foreign companies that wish to purchase property to provide beneficial ownership information. Preferably, this information should be kept in a beneficial ownership registry and made available to competent authorities and the public in open data format.

- Governments should require real estate agents to register with a designated public authority for anti-money laundering supervision and submit to a “fit and proper” test, in order to operate in the real estate sector. Anti-money laundering training should be made compulsory upon registration.

- Governments and professional associations should introduce rules prohibiting lawyers, accountants and other professionals who are not registered with the relevant anti-money laundering supervisory body from engaging in real estate transactions.

METHODOLOGY

In 2015, an analysis conducted by Transparency International on the strength of the beneficial ownership transparency framework in G20 countries[10] revealed that many G20 countries do not adequately regulate non-financial businesses and professionals involved in the buying and selling of real estate. These so-called gatekeepers include real estate agents and developers, notaries, lawyers and accountants. Among the G20 countries identified as having these weaknesses were countries that are currently highly attractive for real estate investment, including Australia, Canada, the UK and the US.

Drawing on this 2015 assessment, this report seeks to understand what enables the corrupt to launder money through the real estate sector in these four countries.

We first analysed the countries' adherence to international anti-money laundering standards (Annex 1) as well as their specific commitments. As part of the analysis we reviewed the legal framework of each country and its track record of implementing and enforcing anti-money laundering rules in the real estate sector. We also reviewed relevant anti-money laundering cases in real estate to investigate common patterns that have facilitated it.

Through this analysis, we found 10 main problem areas where inadequate legislation or weak implementation of the rules has facilitated money laundering in the real estate sector. The main weaknesses and strengths of the countries analysed are described under each of the 10 problems identified.

The study also suggests a set of recommendations relevant to all governments on how to improve the legal framework, as well as implementation and enforcement of the law.

10. Martini, M. and M. Murphy, *Just for show? Reviewing G20 promises on beneficial ownership*, Berlin: Transparency International, 2015. www.transparency.org/whatwedo/publication/just_for_show_g20_promises

INTRODUCTION

The real estate market has long provided a way for individuals to launder or invest illicitly gained funds anonymously. According to the Financial Action Task Force (FATF), real estate accounted for up to 30 per cent of criminal assets confiscated worldwide between 2011 and 2013, demonstrating that this sector is a clear area of vulnerability.[11]

Back in 2010, a report issued by the US Senate Permanent Subcommittee on Investigations highlighted how perpetrators of grand corruption used US lawyers, real estate agents and bankers – the so-called gatekeepers – to hide and launder their ill-gotten gains in the US. The report shows for instance how the son of the president of Equatorial Guinea, Teodoro Niguema Obiang, managed to buy and sell properties in California with the support of two real estate agents, without being obliged to explain the source of his funds because there was no legal obligation to do so.[12]

Five years later, in 2015, a series of articles published by the New York Times[13] revealed the consistent lack of due diligence by the real estate sector in the US, including failure to identify buyers or their sources of income. Shell companies have shielded the identities of buyers of high-end buildings in New York. While many of these companies may be engaged in legitimate business, many are also used to launder illicit funds and hide the identities of corrupt politicians, businesses, and organised criminal groups. For instance, an investigation found that the extremely opaque ownership and control structure of a company in possession of a US$15.6 million condominium in the Time Warner Center conceals its links to the family of the former Russian Senator and banker Vitaly Malkin. Malkin has been under investigation in a number of countries due to his involvement in a deal to restructure Angola's $5 billion debt to Russia, for which he is alleged to have received kickbacks.[14]

In the same year, opacity in real estate ownership in London was revealed by Transparency International UK[15] and later by a Channel 4 TV documentary that showed how real estate agents in the UK may act as enablers for corrupt officials wanting to acquire property using illegal money.[16]

In 2016, the release of the Panama Papers once more shed light on suspicious property ownership all over the world. The Miami Herald Panama Papers investigation, for instance, uncovered 19 foreign nationals who had purchased high-end property in Miami using offshore companies. According to the investigation, eight of them had been linked to corruption, embezzlement and tax evasion in their home countries.[17]

A 2016 report by the Sentry Group also revealed that the South Sudanese General James Hoth Mai Nguoth had purchased a US$1.5 million property in Australia in the name of his son, despite never earning a salary that exceeded about US$45,000 per year.[18] And late last year the FATF's Mutual Evaluation Report of Canada noted that cases had been identified of corrupt officials from China laundering the proceeds of crime through the real estate sector in Vancouver.[19]

11. FATF, *Money laundering and terrorist financing vulnerabilities of legal professionals*, Paris: FATF, 2013. www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20vulnerabilities%20legal%20professionals.pdf
12. United States Senate Permanent Subcommittee on Investigation, 2010, p.73.
13. Storey, L., 'Inside the towers of secrecy', *New York Times*, 19 February 2015. www.nytimes.com/times-insider/2015/02/19/inside-the-towers-of-secrecy/?_r=0
14. Storey, L. and S. Saul, 'Stream of foreign wealth flows to elite New York real estate', *New York Times*, 7 February 2015. www.nytimes.com/2015/02/08/nyregion/stream-of-foreign-wealth-flows-to-time-warner-condos.html
15. Transparency International UK, *Corruption on your doorstep. How corrupt capital is used to buy property in the UK,* London: TI UK, 2015. www.transparency.org.uk/publications/corruption-on-your-doorstep/
16. Channel 4, 'From Russia with cash', 8 July 2015. www.channel4.com/programmes/from-russia-with-cash
17. See: www.miamiherald.com/news/local/article70347537.html
18. The Sentry Group, *War crimes shouldn't pay: Stopping the looting and destruction in South Sudan*, September 2016. https://thesentry.org/wp-content/uploads/2016/08/Sentry_WCSP_Final.pdf
19. FATF, *Anti-money laundering and counter-terrorist financing measures, Canada*, Paris: FATF, September 2016. www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Canada-2016.pdf

All these cases share some commonalities: high-end real estate properties in key markets are purchased by shell companies or trusts without undergoing adequate due diligence or scrutiny by the professionals involved in the deal.

Laundering dirty money in the real estate sector is very attractive as large amounts of money can be legitimised at once, maintaining or increasing its value. Investments in real estate are seen as an alternative for those who fear having offshore accounts frozen.[30]

Transparency International UK's research shows that 75 per cent of UK properties under investigation for corruption between 2004 and 2015 were registered with offshore companies incorporated in secrecy jurisdictions, such as the British Virgin Islands, where details about company beneficial ownership are not available.[31] Shell companies and trusts face little to no scrutiny when purchasing high-end properties. Even in cases where a series of red flags are present – such as company incorporation in a tax haven, full payment in cash or through law firms' pooled accounts and closure of a deal through an intermediary – real estate agents and other professionals facilitating the transaction are unlikely to report suspicious transactions or cancel the deal.

The ease with which such anonymous companies or trusts can acquire properties and launder money is directly related to the rules and enforcement practices in attractive markets. A 2014 OECD assessment demonstrates that almost a half of OECD countries do not adequately regulate gatekeepers: in 44 per cent of OECD countries, they are not required to conduct due diligence or keep records of transactions.[32] Transparency International's analysis of the beneficial ownership transparency framework in G20 countries also revealed that in key markets such as Australia, Canada, the UK and the US,[33] not all gatekeepers are required to identify the beneficial owner of their clients who are buying and selling properties.[34]

How "anonymous" companies disguise their identities

Many jurisdictions, such as the UK's Overseas Territories and Crown Dependencies, or US states such as Delaware and Nevada, operate legal systems that make it easy to set up companies that obscure the identity of those establishing them – usually for the benefit and use of people or companies that are not resident there. These companies can then freely do business or buy properties in places like New York, London, Vancouver or Sydney with few checks or requirements to identify the beneficial owner.

The use of these "anonymous" companies disguises the identity and source of funds of the owners of those companies, and constitutes a serious obstacle to investigating money laundering.

An adequate legal framework followed up with effective implementation and enforcement is essential to curb corruption in the real estate market. This report analyses the main problems related to real estate and money laundering in attractive markets in Australia, Canada, the UK and the US.

30. FATF, *Money laundering and terrorist financing through the real estate sector*, Paris: FATF, 2007. www.fatf-gafi.org/publications/methodsandtrends/documents/moneylaunderingandterroristfinancingthroughtherealestatesector.html
31. TI UK, Corruption on your doorstep, 2015.
32. OECD, *Illicit financial flows from developing countries: Measuring OECD responses*, Paris: OECD, 2014. www.oecd.org/publications/measuring-oecd-responses-to-illicit-financial-flows-from-developing-countries-9789264203501-en.htm
33. In the UK, real estate agents are only required to identify the beneficial owner when conducting due diligence on sellers, not on buyers.
34. Martini and Murphy 2015.

Luxury US real estate bought with money from 1MDB

In one of Asia's most notorious scandals, between 2008 and 2009, Jho Low, a 27-year old Malaysian who allegedly became friends with the stepson of the Malaysian prime minister during his studies at an elite school in the UK,[20] helped to set up what soon became 1MDB – an investment fund owned by the Malaysian Ministry of Finance, with the Malaysian prime minister chairing the advisory board.[21] 1MDB borrowed money from private investors for joint ventures with companies from Abu Dhabi and Saudi Arabia. According to a civil lawsuit filed by the US Department of Justice in July 2016, Jho Low and others allegedly diverted more than US$3.5 billion to buy luxury US real estate, art, a private jet, and even a Hollywood movie.[22] The detailed description of the transactions, even including phone calls and emails from compliance managers, accountants and realtors contained in this law suit, suggests how anti-money laundering rules may have been circumvented and the beneficial owners may have remained hidden behind a complex web of accounts and companies.

According to the court documents Jho Low and his allies allegedly redirected several transfers of up to US$700million each, initially meant for investments of 1MDB, to their own bank accounts.[23] They reportedly hid their beneficial ownership by using companies in the Seychelles and the British Virgin Islands combined with accounts at small Swiss banks, including one that was owned by their Abu Dhabi business partner. When asked by compliance officers or members of 1MDB's board they reportedly lied about the real beneficial owners.[24] It is reported that they then allegedly transferred hundreds of millions from their accounts to a pooled account of a top tier US law firm, and that they used money from the law firm's pooled account to buy luxury real estate, including a mansion in Beverly Hills that was bought by a Nevada registered company using an attorney from the law firm as a signatory. The Nevada company is thought to be owned by another company registered in the Seychelles owned by Low and later transferred to the stepson of the Malaysian prime minister with the help of another US law firm.[25]

Interest on lawyers accounts (IOLA),[26] like the one allegedly used by Shearman & Sterling, pool funds held for different clients and these funds can be used for nearly any purpose. While US lawyers using this kind of account have to keep records of client funds and turn them over to investigators on request, they are exempt from new rules requiring them to identify the beneficial owners behind the money in their account and have to investigate client conduct or report illegal activity in only a limited set of cases. As a consequence, no charges have been brought against the law firm in the case. The Wall Street Journal estimates that up to US$400 billion run through these accounts every year, often linked to luxury real estate purchases.[27]

As a result of international investigations, Singapore has so far handed prison sentences and fines to three bankers[28] and closed down the Singapore branches of two banks for having shown persistent and severe lack of understanding of the country's anti-money laundering regulations.[29] With the July 2016 lawsuit, the US Kleptocracy Asset Recovery Initiative is seeking to seize assets worth US$1billion. According to the Wall Street Journal, so far neither the US law firms nor other big US banks involved in the transfers have been accused of any wrongdoing.

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20. Plaintiffs (Matthias Chang and Husam Musa) complaint in a class action against various people connected to 1MDB; Filed at US District Court Southern District of New York on 8 November 2016. Accessed at: https://assets.documentcloud.org/documents/3011346/Granite.pdf
21. Ibid.
22. United States Department of Justice, Press Release, 20 July 2016. www.justice.gov/opa/pr/united-states-seeks-recover-more-1-billion-obtained-corruption-involving-malaysian-sovereign; also see Attorneys for Plaintiff UNITED STATES OF AMERICA UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. CV 16-16-5362, 20 July 2016. www.justice.gov/archives/opa/page/file/877166/download
23. See: www.justice.gov/archives/opa/page/file/877166/download
24. Ibid.
25. Ibid.
26. Interest on lawyers' accounts (IOLA) programmes are mandatory in several US states. A lawyer who receives funds that belong to a client must place those funds in an account separate from the lawyer's own money. The IOLA programme establishes that the interest received on the money helps to cover legal costs of people with low income.
27. Ensign, R.L. and S. Ng, 'Lawyers accounts pose money-laundering risk', *Wall Street Journal*, 26 December 2016. www.wsj.com/articles/law-firms-accounts-pose-money-laundering-risk-1482765003
28. Leong, G., '1MDB scandal: Former BSI banker Yeo Jiawei gets 30 months' jail in witness tampering case', *The Straits Times*, 22 December 2016. www.straitstimes.com/business/1mdb-scandal-former-bsi-banker-yeo-jiawei-gets-30-months-jail-in-witness-tampering-case; and 'Ex-BSI banker Yvonne Seah gets 2 weeks' jail, S$10,000 fine', *The Business Times*, 17 December 2016. www.btinvest.com.sg/dailyfree/ex-bsi-banker-yvonne-seah-gets-2-weeks-jail-s10000-fine/
29. Daga, A. and J. Franklin, 'Singapore shuts Falcon bank unit, fines DBS and UBS over 1MDB', *Reuters*, 11 October 2016. www.reuters.com/article/us-malaysia-scandal-falcon-idUSKCN12B03Y


PROBLEM

HOW THE CORRUPT PURCHASE LUXURY REAL ESTATE IN KEY MARKETS

Despite commitments at the international level, our research shows that systems in Australia, Canada, the UK and the US are all vulnerable to enabling the corrupt and other criminals to launder money in the real estate sector. We found 10 major problems that help to explain why the real estate sector in these countries attracts money launderers from across the globe.

Here we outline the 10 major problems that increase the risk of corruption and money laundering through real estate and indicate some of the specific strengths and weaknesses in the approaches taken by the four countries to address those problems.

PROBLEM 1. INADEQUATE COVERAGE OF ANTI-MONEY LAUNDERING PROVISIONS

STRENGTHS AND WEAKNESSES IN-COUNTRY:

AUSTRALIA

- Real estate agents and developers, lawyers, accountants and others involved in the buying and selling of real estate are not covered by anti-money laundering rules.

CANADA

- Real estate agents and developers, notaries from British Columbia and accountants are covered by the anti-money laundering provisions.
- Lawyers, law firms and Quebec notaries are not covered by the anti-money laundering law and therefore not obliged to conduct due diligence.

UK

- Real estate agents, lawyers, notaries and accountants are covered by the anti-money laundering law and therefore are required to conduct due diligence on customers.
- Real estate agents only have anti-money laundering obligations with respect to sellers, not buyers.

US

- Real estate agents, brokers and developers, lawyers and accountants and others involved in the buying and selling of real estate are not covered by anti-money laundering laws, and therefore are not required to conduct due diligence on customers.

None of the four countries analysed comply with international commitments related to the coverage of anti-money laundering provisions.

In **Australia,** real estate agents are not subject to the provisions of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006. Other professionals such as lawyers and accountants, who may also play a role in the sector are not covered either. This means that properties can be bought and sold without any due diligence on the parties.

In **Canada,** anti-money laundering provisions cover real estate agents, brokers and developers, notaries from British Columbia and accountants. However, other professions such as lawyers, law firms[35] and Quebec notaries are not obliged to conduct due diligence or submit suspicious or large cash transaction reports.

In the case of lawyers, while the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) 2000 includes them as a designated non-financial business and profession, the Supreme Court of Canada ruled this provision unconstitutional, on the basis that it interferes with the lawyer's duty to keep client information confidential.[36] Provincial self-governing law societies have published rules that include "Know Your Customer" requirements for lawyers and firms, but given their role in real estate closings, the lack of an anti-money laundering obligation is a major loophole.

In the **UK,** real estate agents, solicitors, and accountants are covered by the Money laundering Regulations 2007 and required to conduct checks. In the case of real estate agents, these requirements only apply to the individual or company selling a property. Checks on those buying the property are the responsibility of solicitors, not estate agents, but there is a concern that solicitors may not report suspicious activity alleging, "privileged circumstances".

In the **US,** professionals involved in real estate closings do not have any anti-money laundering obligations. The USA PATRIOT Act 2001 originally contained provisions that required those involved in real estate closings to perform due diligence on their customers, but they were granted a temporary exemption from that requirement by the Treasury Department, which has never been lifted.[37]

35. Lawyers are not obliged to conduct due diligence as per the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and regulations due to a Supreme Court decision, but may have their own self-regulatory rules to know their clients. However, they are not obliged to report any suspicions to the financial intelligence unit.
36. Murphy and Martini 2015.
37. Transparency International US 2015.

PROBLEM 2. IDENTIFICATION OF THE BENEFICIAL OWNER OF LEGAL ENTITIES, TRUSTS AND OTHER LEGAL ARRANGEMENTS IS STILL NOT THE NORM

STRENGTHS AND WEAKNESSES IN-COUNTRY:

AUSTRALIA

- There are no requirements for any person involved in real estate closings to identify the beneficial owner of customers.

CANADA

- There are no requirements for any person involved in real estate closings to identify the beneficial owner of customers.

UK

- Real estate agents, lawyers, notaries and accountants are required to identify the beneficial owner of customers as part of the due diligence process.
- Real estate agents only have anti-money laundering obligations in relation to the seller.

In spite of the international commitments made, and at a time when there is an increasing use of shell companies to purchase high-end real estate,[38] in three of the four countries it is not the norm for professionals to identify the beneficial owners of customers in real estate closings.

This is particularly problematic if the customer is an anonymous offshore company or a domestic company in a country that permits nominee shareholders. Very often anonymous companies invest in real estate in a foreign country without having to register with the company register or disclose any data regarding their ownership and control structure to either the company or land registry. If in the country where the company was incorporated such data are also not collected or recorded (for example in Delaware, US) or not made available (such as in Jersey), it becomes nearly impossible to know who the real owner of a company is and consequently who the owner of a given property is, whether or not the source of their funds is licit.[39]

In **Australia,** the AML/CTF Act does not require due diligence or the identification of beneficial owners of customers in real estate closings.

In **Canada,** the law and guidelines do not require non-financial professionals involved in real estate closings to identify beneficial owners when conducting due diligence on customers. Transparency International Canada's analysis of land title records found that nearly a half of the 100 most valuable residential properties in Greater Vancouver are held through structures that hide their beneficial owners. Nearly one-third of the properties are owned through shell companies, while at least 11 per cent have a nominee listed on title.[40]

In the **UK,** real estate agents and other professionals involved in real estate closings are required to identify the beneficial owner of customers as part of their due diligence process. The failure to identify a beneficial owner should, according to the law, impede the transaction and be reason to submit a suspicious transaction report (STR),[41] if there is also suspicion of money laundering. As described above, this requirement does not apply to real estate agents when dealing with the purchaser.

38. Across the US, nearly a half of the residential purchases of over US$5million were made by shell companies. Considering the Time Warner Complex, part of the New York Times investigation, by 2014, 80 per cent of units had been purchased by shell companies; see Storey and Saul 2015. In Canada, new research by TI Canada shows that nearly one third of the 100 most valuable residential properties in Greater Vancouver are owned through shell companies; see TI Canada 2016.
39. Offshore companies purchasing properties in a foreign country may be required to declare it to tax authorities and in some cases report the name of the beneficial owner. However, tax authorities usually do not share this information with law enforcement authorities automatically; a motivated request or a court order is usually needed, which makes it difficult to investigate and detect wrongdoing without any previous knowledge of the case.
40. TI Canada 2016.
41. UK law refers to Suspicious Transaction Reports as Suspicious Activity Reports (SARs).

US

Title insurance companies are subject to a temporary geographic targeting order that requires the beneficial owner of customers in certain real estate transactions to be identified and reported to FinCEN.

There are no requirements for real estate agents, brokers and developers, accountants and lawyers involved in real estate closings to identify the beneficial owner of customers.

In the **US,** real estate agents, lawyers and accountants involved in real estate closings are not required to identify the beneficial owner of customers. Since March 2016, title insurance companies are required to identify the beneficial owner in real estate transactions that are made in cash and are above a certain threshold in some places in the US (see box). This requirement only applies to transactions when the purchaser is a legal person and buys the property with title insurance. Other professionals involved in the transaction, such as real estate agents, accountants and lawyers are still neither obliged to identify the beneficial ownership of customers nor to conduct any other due diligence.

US Geographic Targeting Orders

In response to scandals involving property ownership and pressure from civil society organisations to close the real estate loophole, FinCEN issued Geographic Targeting Orders (GTO) in January 2016,[42] requiring title companies in Manhattan and Miami-Dade County to identify and report to FinCEN any information on the beneficial owners of high-value real estate purchased in a cash (non-mortgage) transaction for a period of six months beginning on 1 March 2016.

GTOs are temporary orders put in place to achieve a specific objective. These GTOs were put in place for the maximum allowable six-month period in order to provide information to help FinCEN to "better understand [the] vulnerability" of the real estate sector to money laundering and to determine whether there was a need for the real estate sector to have money laundering compliance programmes in place.

FinCEN's initial GTOs provided useful information, and so they decided to issue additional GTOs[43] in July 2016 on similar terms covering all of New York City; the two counties north of Miami-Dade (Broward and Palm Beach), Florida; Los Angeles County, San Francisco, San Mateo and Santa Clarita, California; and the county that includes San Antonio, Texas (Bexar County). The second set of GTOs came into force on the day after the first GTOs expired, on 28 August 2016.

It was announced in February 2017 that the GTOs would be extended for an additional six months in six major metropolitan areas. In a statement, FinCEN stated that, "about 30 percent of the transactions covered by the GTOs involve a beneficial owner or purchaser representative that is also the subject of a previous suspicious activity report. This corroborates FinCEN's concerns about the use of shell companies to buy luxury real estate in 'all-cash' transactions".[44]

Based on the information gathered from the GTO exercise, which likely includes information not only with respect to beneficial owners, but also the effect of these GTOs on the high-end real estate market in these locations before, during, and after the GTOs were in place, FinCEN could propose to remove "persons involved in real estate closings and settlements" from the list of "financial institutions" exempted from the need to establish anti-money laundering programmes.[45] Alternatively, they could choose to regulate the real estate sector in a different way, or not at all.

42. FinCEN, Press Release, 13 January 2016. www.fincen.gov/news/news-releases/fincen-takes-aim-real-estate-secrecy-manhattan-and-miami
43. FinCEN, Press Release, 27 July 2016. www.fincen.gov/news/news-releases/fincen-expands-reach-real-estate-geographic-targeting-orders-beyond-manhattan
44. FinCEN, Press Release, 23 February 2017. www.fincen.gov/news/news-releases/fincen-renews-real-estate-geographic-targeting-orders-identify-high-end-cash
45. See:www.law.cornell.edu/cfr/text/31/1010.205

PROBLEM 3. FOREIGN COMPANIES HAVE ACCESS TO THE REAL ESTATE MARKET WITH FEW REQUIREMENTS OR CHECKS

STRENGTHS AND WEAKNESSES IN-COUNTRY:

AUSTRALIA

- Foreign investment approval by the Foreign Investment Review Board is required for foreign individuals and companies wishing to purchase property, but information disclosed in the application is not systematically used to mitigate the risks of money laundering.
- Beneficial ownership information is not systematically disclosed in order to apply for such approval.
- Foreign companies are allowed to purchase property without having to provide information on their real owners to any sort of title registry.

CANADA

- Foreign companies are allowed to purchase property without having to provide information on their real owners to any sort of registry.

UK

- Foreign companies are allowed to purchase property without having to provide information on their real owners to any sort of registry.
- Legislation aimed at addressing this issue in anticipated in April 2018.

Real estate purchases by foreign companies and individuals represent a significant proportion of the overall purchases of high-end properties in the four countries. Yet, there are few requirements and checks on foreign companies and individuals wishing to purchase property. In all the countries, foreign companies do not need to provide information on their corporate structure and control (i.e. beneficial ownership information) to any sort of company registry in order to purchase a property or to the land registry upon registration.

Moreover, there are inadequate checks on the source of funds and the identity of owners. In many cases, the buyer does not even need to appear in person, but can simply hire an intermediary in the country to perform the deal.

Some countries have adopted measures to control foreign ownership, such as imposing higher taxes,[46] limiting the number and type of properties or the amount of time a foreign purchaser may reside in the country. Nevertheless, these control measures are not aimed at preventing money laundering and therefore the information collected is often inadequate to prevent and detect cases where properties are being purchased with dirty money. Of the countries analysed, only the UK has committed to introducing restrictions aimed at preventing money laundering and corruption in this area.

In **Australia,** foreign individuals, corporations, trusts and limited liability companies need to apply for and receive foreign investment approval before purchasing residential property. The Foreign Investment Review Board is responsible for reviewing the applications and granting permission. In the case of companies, the application form requests information on all shareholders with more than 5 per cent interest in the purchase. However, there is no requirement to disclose the real people who own or control the shares, making it difficult to assess the identity of the actual individuals wishing to purchase property in Australia. According to professionals operating in the sector, the FIRB might follow up on applications to request beneficial ownership information of applicants, but this is not done on a systematic basis. Moreover, subsequent ownership changes after approval are usually not recorded.

The information disclosed during the application process is not made public, but can be shared with the Department of Immigration and Border Protection, the Australian Taxation Office and law enforcement agencies.[47] The current rules also offer exceptions that could be misused by those wishing to skip the application process. Developers of new-build properties may gain approval to sell up to 50 per cent to foreigners without the foreigner having to request government permission before purchasing.[48]

While the requirements were not designed to tackle money laundering, if the information gathered by the Foreign Investment Review Board systematically included data on beneficial ownership and was shared with the financial intelligence unit and other law enforcement authorities on a regular basis it could be an efficient tool to detect foreign buyers potentially involved in wrongdoing and attempting to launder funds through Australia.

In **Canada,** there are no registration requirements for foreign companies when purchasing property. Moreover, Canadian land title offices do not hold

46. Department of Finance Canada, *Assessment of inherent risks of money laundering and terrorist financing in Canada*, Ottawa: Dept. Finance, 2015. www.fin.gc.ca/pub/mltf-rpcfat/index-eng.asp
47. Foreign Investment Review Board. https://firb.gov.au/
48. Foreign Investment Review Board Exemptions. https://firb.gov.au/exemption-thresholds/exemptions/

US

Foreign companies are allowed to purchase property without having to provide information on their real owners to any sort of registry.

information on the beneficial owners of property. Only information about the title holder – which can be a shell company, a trust or a nominee – is recorded.

In the **UK,** there are no restrictions or requirements on foreign companies and individuals purchasing property. In the case of foreign companies, they do not need to operate or be registered in the UK in order to acquire property. Nor are they required to disclose the name of the company's beneficial owners upon registering the property with the land registry.

As mentioned in the introduction, as a response to the scandals revealed by the media and non-governmental organisations, the British government has committed to implementing changes specifically aiming to tackle money laundering conducted through the purchase of property by foreign companies. At the London Anti-Corruption Summit in May 2016, former Prime Minister David Cameron announced that the UK would introduce a public register of beneficial ownership for foreign companies with property or wishing to buy property in the UK. Legislation is anticipated in 2018.

In the **US,** there are no restrictions or checks being carried out on foreign individuals or companies wishing to purchase property. They are also not required to disclose beneficial ownership to any registry.

Scale of real estate markets dominated by foreign companies

In Canada, the latest money laundering risk assessment acknowledges that illicit foreign funds have been used to purchase Canadian real estate.[49] While the national housing agency (Canada Mortgage and Housing Corporation) does not have reliable data on the number of properties owned by foreigners, data collected by the real estate agency Royal LePage identified that foreign buyers on average purchase 25 per cent or more of luxury properties.[50] In Vancouver alone, 70 per cent of clients who paid over Can$3 million for homes last year were from China.[51] A recent FATF evaluation reported cases of unnamed Chinese officials laundering the proceeds of crime through the real estate sector in Vancouver, and noted that the Chinese government has identified Canada as a country from which it intends to recover funds taken by corrupt officials.[52]

Research by Transparency International UK shows that in London alone more than 39,000 properties have offshore owners. It is impossible to know who owns them or where the money comes from.[53] These legal entities could be legitimate businesses, but they could also be used to launder the proceeds of crime by kleptocrats, drug dealers, dictators, terrorists and others. New research by Transparency International UK shows that the London property market is highly vulnerable to corrupt wealth: analysis of open source material found that over £4.2 billion worth of property owned in London has been bought by individuals and companies representing a high money laundering risk. [54]

In the US, in the Time Warner Complex, investigated by the New York Times,[55] 26 per cent of original sales were to people from other countries. In recent years, more than a half of the sales in the complex have been to foreigners.

49. Royalle LePage, Press Release, 12 May 2016. www.royallepage.ca/realestate/news/one-in-four-real-estate-advisors-believe-that-25-per-cent-or-more-of-luxury-properties-are-purchased-by-foreign-buyers/
50. Tomlinson, K., 'Canadian banks helping clients bend rules to move money out of China', *The Globe and Mail*, 8 September 2015. www.theglobeandmail.com/report-on-business/industry-news/the-law-page/canadian-banks-helping-clients-bend-rules-to-move-money-out-of-china/article26246404/
51. FATF, Canada, 2015.
52. Transparency International UK and Thompson Reuters, *London property: A top destination for money launderers*, London: TI UK/Thompson Reuters, 2016.www.transparency.org.uk/publications/london-property-tr-ti-uk/
53. TI UK, 2017.
54. Storey 2015.
55. Vancouver in Canada has for instance introduced a 15 per cent tax on foreign buyers of Vancouver property, but this type of measure is not specifically aimed at preventing money laundering into the real estate sector.

PROBLEM 4. OVER-RELIANCE ON DUE DILIGENCE CHECKS BY FINANCIAL INSTITUTIONS LEADS TO CASH TRANSACTIONS GOING UNNOTICED

STRENGTHS AND WEAKNESSES IN-COUNTRY:

AUSTRALIA

- Customer due diligence on real estate-related transactions is only performed by financial institutions; there are no checks on cash transactions.

CANADA

- Customer due diligence on real estate-related transactions is expected to be performed by financial institutions, real estate agents and developers, notaries from British Columbia and accountants, but they are not obliged to identify the beneficial owner.
- Lawyers, law firms and Quebec notaries are not obliged to conduct due diligence or to identify the beneficial owner of the customer.

UK

- Customer due diligence on real estate-related transactions has to be performed by financial institutions, real estate agents, lawyers, accountants and notaries, as appropriate

US

- The identification of the beneficial owners of customers is only a requirement for some financial institutions and for title insurance companies under certain circumstances.
- Customer due diligence on real estate transactions is only performed by financial institutions as other professionals are exempt from anti-money laundering requirements.

In **Australia, Canada** and the **US**, the current anti-money laundering framework shows a tendency to rely on financial institutions[56] to conduct the necessary background checks on real estate transactions.

A more comprehensive control system would include checks and balances on other industries and professionals who would also have anti-money laundering obligations and be required to conduct appropriate due diligence and identify the beneficial owner of customers.

Data from the four countries show that a large proportion of real estate purchases use cash and so do not require the involvement of a financial institution. This is particularly the case in purchases of high-end property by foreigners, which represent a significant percentage of the overall high-end properties purchased. These transactions may represent an increased risk of money laundering where foreign buyers come from countries with high levels of illicit financial outflows.[57]

In **Australia,** 70 per cent of Chinese buyers pay in cash and they represent the largest proportion of foreign purchases in the country.[58]

In **Canada**, according to a money-laundering risk assessment published by the government in 2015, cash purchases or large cash down payments are two of the several methods commonly used to launder money through property.[59]

In the **UK**, over £100 billion of hidden inflows from Russia alone have entered the UK since 2006 and in 14 landmark London developments almost 50 per cent of buyers came from high corruption risk jurisdictions.[60]

In the **US**, the 2015 report by the US National Association of Realtors found that 59 per cent of purchases by international clients were made in cash. In New York, 58 per cent of overall purchases in 2015 were made in cash rather than mortgages. When considering only purchases above US$2million, this percentage increases to 62 per cent.[61] In Miami-Dade, Florida, 56 per cent of sales were made in cash, rising to 67 per cent of sales of properties worth over US$2million.[62]

FinCEN has already recognised that "all cash purchases i.e. without banking financing, may be conducted by individuals attempting to hide their assets and identity, purchasing residential properties though limited liability companies or other structures".[63] The geographic orders in the US discussed above are intended to provide the evidence needed to inform appropriate steps to address this issue.

56. In the US, "financial institution" is a broad term that includes a wide range of sectors from commercial banks to dealers in precious metals and stones (31 USC 5312). Currently, certain sectors considered financial institutions, such as persons involved in real estate closings and settlements, are under a temporary exemption from the need to establish anti-money laundering programs (31 CFR 1010.205). In this report, we use the term "financial institution" as defined by FATF to refer to natural or legal persons who conduct business activities such as money or value transfer services, lending, issuing and managing means of payment, financial guarantees and commitments, mortgage credit, among others. See: www.fatf-gafi.org/glossary/d-i/
57. According to Global Financial Integrity, between 2004 and 2013, China led the world with US$1.39 trillion in illicit outflows, followed by Russia, Mexico, India and Malaysia. China also had the largest illicit outflows of any country in 2013, amounting to US$258.64 billion in just that one year. Kar, D. and J. Spanjers, *Illicit financial flows from developing countries: 2004-2013*, Washington: Global Financial Integrity, 2015. www.gfintegrity.org/report/illicit-financial-flows-from-developing-countries-2004-2013/
58. Goncalves, R., 'Australian banks may have restricted borrowings to international property investors, but that has hardly proven an obstacle to foreign buyers', *SBS*, 27 September 2016. www.sbs.com.au/news/article/2016/09/27/majority-chinese-property-investors-buying-homes-cash
59. Department of Finance Canada 2015.
60. TI UK 2017.
61. 'Fewer buyers are bringing all cash to close', *Daily Real Estate News*, 5 February 2016. http://realtormag.realtor.org/daily-news/2016/02/05/fewer-buyers-are-bringing-all-cash-close
62. 'Miami cash buyers double national average at 59 percent', *World Property Journal*, 23 March 2015. www.worldpropertyjournal.com/real-estate-news/united-states/miami-home-sales-february-2015-miami-condo-sales-condos-for-sale-in-miami-beach-south-beach-condo-sales-new-condo-projects-in-miami-2015-cash-buyers-in-miami-foreign-real-estate-investors-8955.php
63. FinCEN 27 July 2016.

PROBLEM 5. INSUFFICIENT RULES ON SUSPICIOUS TRANSACTION REPORTS AND WEAK IMPLEMENTATION

STRENGTHS AND WEAKNESSES IN-COUNTRY:

AUSTRALIA

- Professionals involved in real estate closings are not required to submit STRs when there are suspicions of money laundering.

CANADA

- Real estate representatives and developers, British Columbia notaries and accountants, are required to submit a STR for every financial transaction that occurs or is attempted, if they have reasonable grounds to suspect that the transaction is related to a money laundering or terrorist activity financing offence.
- Lawyers and Quebec notaries are not required to submit STRs.

UK

- Real estate agents, lawyers, accountants and others involved in real estate closings are required to submit STRs if they suspect that another person is engaged in money laundering.

Given the overall number of financial transactions, suspicious transaction reports (STRs) are particularly important to financial intelligence units for developing financial intelligence and providing that intelligence to investigative authorities, which can use their resources more effectively to investigate wrongdoing. It is therefore the responsibility of those with anti-money laundering obligations to monitor the transactions they are involved in and report any suspicions to the responsible authority.

All the countries assessed have such rules in place for financial institutions, but not all of them make it mandatory for real estate agents and other professionals involved in real estate closings to submit STRs, even though those professionals are in a good position to detect schemes aimed at hiding the real owner or the source of funds.

In **Australia,** current anti-money laundering rules, including the requirement to submit an STR, do not apply to real estate agents or to any professional involved in real estate deals. Even if a real estate agent suspects illegal activity, there is no requirement to report it.

In **Canada**, all reporting entities, including real estate representatives and developers, British Columbia notaries and accountants, are required to submit an STR for every financial transaction that occurs or is attempted, if they have reasonable grounds to suspect that the transaction is related to money laundering or a terrorist financing offence.[64] Lawyers and Quebec notaries, however, are not subject to any requirements under the country's anti-money and terrorist financing Act.

In reality, the reporting of STRs related to real estate transactions is extremely low. Data from FINTRAC, Canada's financial intelligence unit, shows "minimal" filing of STRs in Canadian real estate, with 127 reports filed by real estate brokers over 10 years, and 152 by other entities involved in real estate closings, such as banks and securities dealers. To put these figures in context, over Can$9 trillion in mortgage credits were negotiated and approximately 5 million real estate sales took place in this period (2003-2013).[65]

64. In addition to submitting STRs, real estate brokers and agents, British Columbia notaries and accountants are also required to record every amount of cash of $10,000 or more received from a client in a single transaction, or aggregate transactions within a 24-hour period amounting to $10,000 or more and to submit a report (Large Cash Transaction Report (LCTR)) to FINTRAC. The following information should be recorded among other data: amount and currency of the cash received, name, and the date of birth and address of the individual making the payment. There is no need to record the name of the beneficial owner.

65. Fumano, D., 'Money-laundering watchdog cites 'significant' deficiencies at 100-plus BC real estate firms', *The Province*, 17 November 2016. www.theprovince.com/news/local+news/money+laundering+watchdog+cites+98significant+deficiencies/12400710/story.html; and Financial Transactions and Reports Analysis Centre of Canada, *Indicators of money laundering in financial transactions related to real estate*, Ottawa: FINTRAC, 2016.www.fintrac-canafe.gc.ca/publications/operation/real-eng.pdf

US

Professionals involved in real estate closings are not required to submit STRs in case of suspicions of money laundering.

In the **UK,** real estate agents,[66] independent legal professionals, accountants and corporate service providers are required to submit STRs (the law in the UK calls these suspicious activity reports, SARs), if they suspect or have reasonable grounds for knowing or suspecting money laundering, regardless of whether or not the transaction takes place.

In 2014, there were 1,219,000 residential property transactions in the **UK,** worth over £303 billion,[67] and data from the 2014/2015 UK financial year state that 355 STRs were submitted by real estate agents – equivalent to just 0.09 per cent of total STRs submitted from all relevant sectors. STRs submitted by estate agents nearly doubled compared to 2013, when 179 reports were submitted. There was also an increase in the total amount of STRs submitted by solicitors, from 3,328 in 2014 to 3,461 in 2015.[68] STR figures for solicitors are not all in relation to property transactions, as this is just one area for which the legal sector is responsible. Therefore, the STR figures listed here significantly overstate the number related to property.

According to the UK National Crime Agency 2014 annual report, the STRs regime in the UK continues to face problems. Measures to amend the regime are currently being discussed in parliament.[69] While the total number of STRs received continues to increase, law enforcement capacity to respond has not expanded. There is a need to explore different approaches to improve supervision of those who report and the quality of the information received. According to Transparency International UK, STRs are not adequately followed up; only a small number relating to grand corruption[70] are acted upon by law enforcement agencies.[71]

In the **US**, current rules do not require real estate agents and others involved in real estate closings to submit STRs. However, real estate title and escrow companies are subject to other FinCEN reporting requirements, such as reporting currency transactions greater than US$10,000 (Form 8300).[72]

The low number of STR submissions makes the analysis of patterns and trends more difficult, which in turn impacts on the quality of policies and rules in the sector, as well as the effectiveness of enforcement efforts.

66. SARs are only submitted regarding sellers not buyers.
67. HMRC, *Annual UK property transaction statistics*, London, HMRC, 2015. www.gov.uk/government/uploads/system/uploads/attachment_data/file/438425/2015_AUKPTS_circ.pdf
68. National Crime Agency, *Suspicious Activity Reports (SARs) Annual Report 2015*, London: NCA, 2016. www.nationalcrimeagency.gov.uk/publications/677-sars-annual-report-2015/file
69. Criminal Finances Bill. http://services.parliament.uk/bills/2016-17/criminalfinances/documents.html
70. Grand corruption is defined by Transparency International as the abuse of high-level power that benefits the few at the expense of the many, and causes serious and widespread harm to individuals and society. It often goes unpunished. See: www.transparency.org/news/feature/what_is_grand_corruption_and_how_can_we_stop_it
71. Transparency International UK, Written evidence. See: http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/proceeds-of-crime/written/32365.html
72. Financial Crimes Enforcement Network, *Real estate title and escrow companies: A BSA filing study*, July 2012. www.fincen.gov/news_room/rp/files/Title_and_Escrow_508.pdf

PROBLEM 6. WEAK OR NO CHECKS ON POLITICALLY EXPOSED PERSONS AND THEIR ASSOCIATES

STRENGTHS AND WEAKNESSES IN-COUNTRY:

AUSTRALIA

- Real estate agents and developers, lawyers, accountants and others involved in real estate transactions are not required to verify whether customers are PEPs or close associates or conduct enhanced due diligence.

CANADA

- Real estate agents and developers, notaries, lawyers and accountants are not required to verify whether customers are PEPs or close associates or conduct enhanced due diligence.

UK

- Real estate agents and developers, lawyers, accountants and others involved in real estate transactions are required to verify whether customers are foreign PEPs or associates and conduct enhanced due diligence.
- Domestic PEPs are not covered by the law.

US

- Real estate agents, brokers and developers, lawyers, accountants and others involved in real estate transactions are not required to verify whether customers are PEPs or close associates or conduct enhanced due diligence.

Recent high profile international corruption cases have demonstrated that corrupt politically exposed persons (PEPs) have obtained property around the world. Yet, of the four countries analysed here, only the UK requires professionals involved in the buying and selling of real estate to identify whether a customer is a foreign PEP (or a close associate of a PEP) and conduct enhanced due diligence.

In **Australia,** real estate agents, lawyers and accountants are not subject to anti-money laundering rules and consequently there are no rules requiring enhanced due diligence on customers who are PEPs, or their associates.

In **Canada**, real estate agents and developers, notaries, lawyers and accountants are not required to conduct enhanced due diligence in the case of PEPs and associates.

In the **UK,** the anti-money laundering regulation requires real estate agents and others involved in real estate deals to conduct enhanced due diligence in the case of PEPs or a close associate of the PEP. In these cases they should take adequate measures to establish the origin of the customer's wealth and funds and carry out stricter on going monitoring of the business relationship. Moreover, senior management approval for a new business relationship with a PEP is required.[73] The law does not extend such obligations to domestic PEPs.

In the **US,** real estate agents and other professionals engaged in real estate closings are not required to identify whether a customer is a PEP or a close associate and conduct enhanced due diligence.

73. Transparency International, UK Beneficial Ownership Transparency as part Martini and Murphy 2015.

PROBLEM 7. LIMITED CONTROL OVER PROFESSIONALS WHO CAN ENGAGE IN REAL ESTATE TRANSACTIONS: NO "FIT AND PROPER" TEST

STRENGTHS AND WEAKNESSES IN-COUNTRY:

AUSTRALIA

- The entry standards differ across the various professionals, but there is no requirement for those involved in real estate transactions to register with the supervisory body for anti-money laundering supervision or to undertake "fit and proper" tests.

CANADA

- The entry standards differ across the various professionals, but there is no requirement for those involved in real estate transactions to register with the supervisory body for anti-money laundering supervision or to undertake "fit and proper" tests.

UK

- Real estate agency businesses are required by law to register with the HMRC for anti-money laundering supervision and failure to register is an offence.
- Real estate agents do not need a license in order to operate.
- There is no fit and proper test to verify whether professionals are fit to operate in the sector and aware of their anti-money laundering obligations.

In recent years as the responsibilities of real estate agents have extended to include the prevention of money laundering and terrorist financing; it is important that professionals who operate in the sector have adequate knowledge of their obligations. In addition to the licensing requirements, policy-makers should also consider introducing mandatory registration systems for anti-money laundering supervision with a supervisory body, accompanied by a "fit and proper" test for those involved in the real estate sector.

The "fit and proper" test would check that real estate agents and others operating in the sector meet the requirements of anti-money laundering regulations and are able to understand and fulfil their obligations under the law.

In the majority of countries assessed, real estate agents and others engaged in the buying and selling of real estate are not required to register with a supervisory body or the national financial intelligence unit in order to operate. In none of them does a "fit and proper" test take place.

In **Australia,** real estate agents are required to have a licence to open a company or act on their own, but requirements to register as a real estate agent vary across different states.[74] As they do not have anti-money laundering responsibility under the current legal framework, there is no requirement to register with the supervisory body for anti-money laundering supervision. There is also no "fit and proper" test for money laundering.

In **Canada,** real estate agents require a license in the province where they wish to operate. Requirements vary and may include completing a full real estate education programme or course, or taking a test.[75] Licensing or registration is provided by regulators or by self-regulatory bodies and criminal checks are often conducted. Knowledge of anti-money laundering is often included in the mandatory training to obtain a licence. Provincial regulators also perform on going monitoring and licences and registration may be withdrawn for criminal violations. Other professionals, such as legal counsel and their law firms may in some provinces perform real estate transactions without obtaining a realtor licence.[76]

Real estate brokers and others engaged in real estate closings are not required to register with any supervisory body for anti-money laundering supervision.[77]

74. See Real Estate Institute of Australia. https://reia.asn.au/agents/legislation
75. FATF, Canada, 2016.
76. FATF, Canada, 2016. .
77. Proceeds of Crime (Money Laundering) and Terrorist Financing Act 2000. http://laws-lois.justice.gc.ca/eng/acts/p-24.501/FullText.html

US

The entry standards differ across the various professionals, but there is no requirement for those involved in real estate transactions to register with supervisory bodies for anti-money laundering supervision or to undertake "fit and proper" tests.

In the **UK,** there is no legal requirement for licencing real estate agents and anyone can open a real estate company or work as a real estate agent. While there is no licensing requirement, real estate agency businesses are only allowed to carry on business if they register with HMRC.[78] It is an offence to trade as a real estate agent unless registered with HMRC for anti-money laundering supervision, but firms do not always register or otherwise identify themselves for supervision, presenting challenges for effective oversight. According to the most recent risk assessment, it is expected that there is a shortfall of estate agents on the register.[79]

Another problem is that although registration with HMRC is required, there is no "fit and proper" test to verify whether agents are in fact fit to operate in the sector and aware of their anti-money laundering obligations. According to HMRC and law enforcement agencies, there is a lack of understanding among registered estate agencies of what is required under the law, including regarding the application of due diligence and submission of STRs.[80]

Other professionals who may also be involved in real estate transactions in the UK may be submitted to a "fit and proper" test by their supervisory body.[81]

In the **US**, licensing courses are required in the whole country; other requirements vary from state to state. Real estate agents must join an agency or office to get licensed and it is necessary to pass national and state exams. In some places a criminal background check is needed. In order to work independently a real estate agent needs to do further training to apply for a broker licence. However, there is no requirement for real estate agents or other professionals operating in the sector to register with FinCEN or undergo any "fit and proper" test.

78. Money Laundering Regulations: Estate Agency Business registration. www.gov.uk/guidance/registration-guide-for-estate-agency-businesses
79. HM Treasury and Home Office, *UK national risk assessment of money laundering and terrorist financing*, London: HM-T and HO, 2015. www.gov.uk/government/publications/uk-national-risk-assessment-of-money-laundering-and-terrorist-financing
80. Ibid.
81. Transparency International UK, *Don't Look, Won't Find: Weaknesses in the supervision of the UK's anti-money laundering rules*, London, TI UK, 2015. www.transparency.org.uk/publications/dont-look-wont-find-weaknesses-in-the-supervision-of-the-uks-anti-money-laundering-rules/

PROBLEM 8. LIMITED UNDERSTANDING OF AND ACTION ON MONEY LAUNDERING RISKS IN THE SECTOR

STRENGTHS AND WEAKNESSES IN-COUNTRY:

AUSTRALIA

- No money laundering risk assessment has been conducted in recent years.
- Lack of mitigation measures against vulnerabilities of real estate agents, developers, lawyers, and accountants identified in previous assessments and studies, but not acted upon.

CANADA

- National money laundering risk assessment undertaken in 2015.
- Findings of the assessment not fully acted upon.
- Lack of mitigation measures against vulnerabilities of real estate agents, lawyers, accountants and British Columbia and Quebec notaries identified in the assessment.

UK

- National money laundering risk assessment undertaken in 2015.
- Findings of the assessment not yet fully acted on. Improvements on the scope of the anti-money laundering regulation and supervision needed according to risks identified.

Adequate policies, rules and supervision of the real estate sector require a full understanding of the money laundering risks in the sector in each country. As such, risk assessments should be used as the basis for anti-money laundering regimes, informing the design of policies, operation, mitigation measures and enforcement efforts, as well as the allocation of resources. Real estate sector professionals should also use these reports to understand how and where they may be most vulnerable and exposed to money laundering.

Within this framework, it is essential that each country conducts an assessment of money laundering risks related to legal persons and arrangements and also of the different mechanisms and sectors frequently used to hide and launder money. Equally important is that the assessment is conducted with the support and involvement of all law enforcement, supervisory bodies and relevant stakeholders and that the findings are used to establish prevention measures, reform legal frameworks and improve operations and enforcement.

Australia has not conducted an assessment of money laundering risks in recent years. An assessment was conducted in 2011, but there is no information on whether another assessment is planned. However, in April 2016 the Australian government published the findings of comprehensive review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006. According to the review, Australia's regime remains relevant, but measures need to be taken to better respond to new and emerging threats. The report concludes that Australian real estate is made attractive by its failure to adequately regulate professionals that facilitate real estate transactions, "which lowers the risk that the identity of the client or the source of the funds will be questioned, and eliminates the risk that the transaction will be reported to AUSTRAC".[82]

In **Canada,** the latest government anti-money laundering risk assessment was conducted in 2015.[83] The assessment highlights the use of shell companies by criminal groups and individuals to launder money, and identifies real estate agents and developers as being exposed to high or very high money laundering risk. Despite that risk, the current legal framework does not include adequate mitigation measures, such as making it mandatory for these professionals to identify customers' beneficial owners. Until now, the findings of the risk assessment do not seem to have been used to inform the adoption of new rules and guidelines by supervisory agencies.

Moreover, the risk assessment acknowledges that real estate transactions in Canada usually involve lawyers and their trust accounts. According to the report, "(T)hese lawyers can knowingly or unknowingly provide legitimacy and/or obscure the source of illegally sourced funds".[84] Yet, lawyers and their firms in Canada are not obliged to establish anti-money laundering programmes or conduct due diligence on their clients when involved in real estate transactions.

82. Australian Attorney General's Department, *Report on the statutory review of the Anti-money Laundering and Counter Terrorism Financing Act 2006 and associated rules and regulations*, Canberra: Attorney General's Department, 2016. www.ag.gov.au/Consultations/Documents/StatutoryReviewAnti-MoneyLaunderingAndCounter-TerrorismFinancingActCth200/report-on-the-statutory-review-of-the-anti-money-laundering.pdf

83. Department of Finance Canada 2015.

US

National money laundering risk assessment undertaken in 2015.

Findings of the assessment not fully acted on. Lack of mitigation measures against vulnerabilities of high-end real estate agents, lawyers, and accountants identified in the assessment.

Current exemptions not supported by assessed risks.

Information obtained by the Canadian press in 2016 shows that over 60 per cent of 800 real estate companies visited and audited by FINTRAC over four years had "significant" or "very significant" deficiencies in their readiness to prevent money-laundering.[85] A separate access to information request by the media in British Columbia found that 112 out of 220 real estate companies had "significant" levels of non-compliance, and five had "very significant" non-compliance.[86]

The **UK** conducted its first national risk assessment of money laundering and terrorist financing in 2014 and 2015.[87] The final report acknowledges there is an "intelligence gap" in relation to high-end money laundering, which is particularly relevant to serious corruption, where proceeds are often held in bank accounts, real estate or other investments rather than cash. The assessment recognises that the real estate sector is attractive for money laundering, but considers real estate agents at medium risk due to their limited capacity to be used to launder money on their own, as they do not handle funds. However, the other professionals that may be involved in such transactions, such as legal professionals and financial institutions, are assessed as high-risk.

- According to the assessment, the following risks are present in the real estate sector:
- Criminal use of estate agency professionals and complicit professional gatekeepers to buy or sell property
- Complicit estate agents facilitate sale or purchase of property by criminals, sometimes working in conjunction with other complicit professionals
- Perceived low understanding of money laundering/ terrorist financing impact and risks in the sector, and the need to strengthen compliance with regulations

The assessment concludes that the different supervisory bodies in the UK do not have a sound understanding of the anti-money laundering risks posed by the sectors they supervise.[88]

The **US** conducted an assessment of the national money laundering risks in 2015.[89] The assessment does not look at the specific risks in the real estate sector, but it provides some examples of cases where money laundering into real estate took place, particularly involving drug traffickers.

Nevertheless, the assessment finds that the money laundering methods identified usually exploit vulnerabilities such as (i) the use of cash and monetary instruments in amounts under regulatory recordkeeping and reporting thresholds; (ii) opening bank and brokerage accounts in the names of businesses and nominees to disguise the identity of the individuals who control the accounts; (iii) deficient compliance with anti-money laundering regulations; (iv) creating legal entities without accurate information about the identity of the beneficial owner; and (v) merchants and financial institutions willingly facilitating illicit activity.[90]

These vulnerabilities are also relevant in the real estate sector and should be taken into account in the design of policies to curb money laundering through real estate.

84. Ibid.
85. Posadzki, A., 'Fintrac finds 'very significant' deficiencies at realtors in money laundering probe', *CBC News*, 14 September 2016. www.cbc.ca/news/business/fintrac-real-estate-money-laundering-1.3761343
86. Fumano 2016.
87. HM Treasury and Home Office 2015.
88. Ibid.
89. Department of the Treasury, *National money laundering risk assessment*, Washington DC: Treasury, 2015. www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/National%20Money%20Laundering%20Risk%20Assessment%20%E2%80%93%2006-12-2015.pdf
90. Ibid.

PROBLEM 9. INCONSISTENT SUPERVISION

STRENGTHS AND WEAKNESSES IN-COUNTRY:

AUSTRALIA

- Professionals involved in real estate transactions are not subject to anti-money laundering obligations, and therefore are not monitored by competent authorities or self-regulated bodies.

CANADA

- Supervision of different professionals involved in real estate transactions is the responsibility of FINTRAC, which in theory makes guidance, supervision and enforcement more coherent.
- Risk-based approach to supervision..
- Number of FINTRAC examinations of the real estate sector still low.

UK

- Inconsistent supervisory regime, with different supervisors tasked with regulating/supervising professionals that may operate in the real estate sector.
- High risk of conflict of interest.
- Risk-based approach to supervision not taken by all supervisors.

Existing international recommendations and principles call for the establishment of a set of regulatory and supervisory measures to designated non-financial businesses and professionals. Appropriate self-regulatory bodies or other supervisory bodies should be responsible for providing detailed regulations, guidelines and training. These bodies should ensure compliance with the anti-money laundering regime.

In the case of the real estate sector, efficient supervision is challenged by the fact that a wide range of professions and businesses may take part in real estate transactions, including real estate agents, brokers and developers, lawyers, accountants, notaries, banks, and credit unions, among others. If supervision is the responsibility of different bodies, oversight might be compromised, particularly if efforts are not coordinated and information is not shared on a systematic basis. Moreover, there is a risk that self-regulatory bodies lack incentives to supervise and scrutinise their members.

Canada has the best model with FINTRAC, the country's financial intelligence unit, supervising financial institutions and designated non-financial businesses and professionals such as accountants, notaries, and real estate agents for money laundering. The Office of the Superintendent of Financial Institutions (OSFI) is also responsible for regulating and supervising financial institutions. Nevertheless, according to the FATF, FINTRAC and OSFI "need to improve their coordination to share expertise, maximise the use of the supervisory resources available and avoid duplication of efforts".[91]

Supervisory measures are generally in line with money laundering risks. FINTRAC has increased its resources and the level of sophistication of its compliance and enforcement programme in recent years. FINTRAC increased examinations by 33 per cent in 2015-2016 in the real estate sector for the whole of Canada, and almost quadrupled examinations in British Columbia.[92] However, there is still a need to strengthen FINTRAC's sector expertise and increase supervision of the real estate sector.[93]

In the **UK,** the supervisory regime of professionals and businesses operating in the real estate sector is inconsistent.[94] Different supervisors are responsible for regulating professionals with the highest risk of money laundering who may be involved in property transactions, such as real estate agents, solicitors, and accountants, which leads to incoherence and inconsistencies in approach.[95]

HMRC is the supervisor of Estate Agency Businesses under the Money Laundering Regulations 2007, supervising approximately 8,500 estate agents, applying a risk-based approach. Professional bodies supervise accountants: over 23,000 accountancy service providers might be supervised by any of 14 professional bodies, or by HMRC. The Solicitors Regulation Authority supervises solicitors and the Financial Conduct Authority supervises banks involved in property transactions.[96]

In addition to different approaches to supervision, information and data are not shared between supervisors on a systemic and regular basis, which is particularly problematic for the real estate sector once there are overlaps in supervision.[97] The risk-based approach to supervision also does not seem to be taken by all supervisory bodies, which may have an impact on effective regulatory enforcement.

In **Australia** and the **US,** the current legal framework does not include anti-money laundering obligations for businesses and professions operating in the real estate sector. According to the FATF, in the case of the US, for example, "this has a significant impact on the effectiveness of the system given the roles of these sectors in relation to a number of high risk situations set out in the NMLRA [National Money Laundering Risk Assessment] involving real estate transactions".[98]

91. FATF, Canada, 2016.
92. Fumano 2016.
93. FATF, Canada, 2016.
94. HM Treasury and Home Office 2015.
95. TI UK, Don't look won't find, 2015.
96. Ibid.
97. Ibid.
98. FATF, *Anti-money laundering and counter terrorist financing measures United States*, Paris: FATF, 2016. www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf

PROBLEM 10. LACK OF SANCTIONS

STRENGTHS AND WEAKNESSES IN-COUNTRY:

AUSTRALIA

- Professionals involved in real estate transactions are not subject to anti-money laundering obligations, and therefore there are no sanctions for non-compliance with reporting requirements.
- The involvement of professionals in money laundering schemes is punishable, but criminal prosecution against real estate agents, developers, accountants and lawyers seems limited.

CANADA

- Non-compliance with the PCMLTFA may result in criminal or administrative penalties.
- Breaches have not been systematically punished.
- Sanctions are underused and are an insufficient deterrent.
- There are no data on prosecutions against real estate agents or other professionals for facilitating money laundering.

In recent years, there have been several high-profile cases of financial institutions being punished for their involvement in facilitating money laundering,[99] but very little is known of the punishment meted out to gatekeepers such as real estate agents, lawyers and accountants for their role in money laundering.

Supervisory bodies in general publish very little information on their enforcement efforts in the real estate sector, but there is evidence of weak enforcement against non-compliance with anti-money laundering rules. Both administrative sanctions for non-compliance with anti-money laundering obligations and criminal sanctions for involvement in money laundering schemes and predicate offences seem to be rare. There is a need to enhance enforcement to create a deterrent effect and demonstrate that bad behaviour in the real estate sector will not be tolerated.

Sanctions should range from warnings and training to withdrawing professional licences, administrative fines and criminal prosecution and should be applied to both companies and senior executives.

In **Canada,** non-compliance with the Proceeds of Crime (Money Laundering) Terrorist Financing Act (PCMLTFA) and its related regulations may result in criminal or administrative penalties. Criminal penalties may include fines and/or imprisonment.[100] There are no reports of any criminal penalties being issued against a real estate agent.

FINTRAC can also apply administrative monetary sanctions on all reporting entities.[101] However, between 2010 and March 2015, only seven administrative monetary penalties were applied to real estate agents, totalling Can$197,310, with two agents being publicly named.[102] There are no data available on whether prosecutions have been sought against real estate agents or other professionals for facilitating money laundering.

The fines for non-compliance have typically been in the thousands of dollars, which is lower than a commission on a single sale. According to the latest FATF report, the sanctioning regime for breaches of the PCMLTFA has not been applied in a proportionate and/or sufficiently dissuasive manner.[103]

99. For example see: Standard Bank South Africa's London Branch was fined £7.6 million for anti-money laundering failings in 2014. Financial Conduct Authority, Press Release, 23 January 2014. www.fca.org.uk/news/press-releases/standard-bank-plc-fined-%C2%A376m-failures-its-anti-money-laundering-controls; Coutts bank was fined by Swiss regulators for violating anti-money laundering rules in 2017. Katz, A. and H. Miller, 'Queen's bank Coutts fined by Swiss financial regulators over money laundering', *Independent*, 2 February 2017. www.independent.co.uk/news/business/news/coutts-ban-fines-queen-swiss-financial-regulators-money-laundering-switzerland-illegal-profitting-a7559716.html; Standard Chartered is said to have paid US$330 million in fines for violating US sanctions on Iran and for insufficient oversight of its anti-money laundering requirements. Mustoe, H., 'Standard Chartered pays US$327M fine over allegations it breached U.S. sanctions on Iran', *Financial Post*, 10 December 2012. http://business.financialpost.com/news/fp-street/standard-chartered-pays-us327m-fine-over-allegations-it-breached-u-s-sanctions-on-iran
100. For example, the failure to report suspicious transactions may incur a fine up to Can$2 million and/or five years imprisonment; the failure to report a large cash transaction or an electronic funds transfer can incur up to Can$500,000 for the first offence and $1 million for subsequent offences; failure to meet record keeping requirements can incur up to Can$500,000 and/or five years imprisonment; and failure to provide assistance or provide information during compliance examination can incur up to Can$500,000 and/or 5 years imprisonment. See: FINTRAC. www.fintrac.gc.ca/pen/1-eng.asp
101. Ibid.
102. International Monetary Fund, *Canada, Detailed Assessment Report on anti-money laundering and combating the financing of terrorism*, Washington D.C.: IMF, September 2016, https://www.imf.org/external/pubs/ft/scr/2016/cr16294.pdf
103. FATF, Canada, 2016.

UK

- Non-compliance with the money laundering regulations may result in criminal or administrative penalties.
- Breaches have not been systematically punished.
- Sanctions are not sufficient to have a deterrent effect.

US

- Professionals involved in real estate transactions are not subject to anti-money laundering obligations, and therefore there are no sanctions for non-compliance with reporting requirements.
- The involvement of professionals in money laundering schemes is punishable, but criminal prosecution against real estate agents, developers, accountants and lawyers seems limited.

In the **UK,** penalties for real estate agents include fines of up to £20,000 for individuals and £100,000 for companies, and up to two years' imprisonment, but there has been little to no action by supervisory bodies. Until March 2014, supervision of estate agents was the responsibility of the UK's Office of Fair Trading, which issued fines against only three real estate agents for almost £250,000 (US$384,593).[104]

Under the supervision of the HMRC, enforcement against estate agents has not improved much. In 2014/1015, of the seven HMRC regulated sectors, including real estate agents, the total fines applied amounted to just £768,000, with an average fine of £1,134.[105] These fines are unlikely to have a deterrent effect when compared to the amounts being laundered through the real estate sector and the amounts received by estate agents in commission, which is around 2 per cent.

In **Australia** and the **US,** the anti-money laundering framework does not provide for sanctions against real estate agents and others operating in the real estate sector with regard to reporting requirements. Nevertheless, in both countries professionals involved in real estate transactions who knowingly further money laundering are subject to criminal sanctions.[106]

104. Transparency International, UK Beneficial Ownership Framework in Martini and Murphy 2015.
105. TI UK, Don't look won't find, 2015.
106. Office of the United States Attorneys. www.justice.gov/usam/criminal-resource-manual-2101-money-laundering-overview

RECOMMENDATIONS

We recommend the following set of reforms and measures to establish an effective system to detect and prevent money laundering through real estate and to comply with international commitments such as the FATF Recommendations and the G20 High Level Principles on Beneficial Ownership Transparency:

Coverage of anti-money laundering provisions should be adequate

» Governments should amend the rules to require all reporting entities involved in real estate transactions to conduct due diligence on customers. These would include real estate agents and other relevant individuals or entities, such as lawyers and law firms, accountants, notaries, mortgage lenders and other corporate service providers who engage in the buying and selling of real estate.

The identification of the beneficial owners of legal entities, trusts and other legal arrangements should become the norm

» Governments should require that real estate agents and other individuals or entities who engage in the buying and selling of real estate identify and keep records on the beneficial owners of customers before proceeding with the sale or purchase.

Checks on foreign and domestic politically exposed persons and their associates should be enhanced

» Governments should require all reporting entities who engage in the buying and selling of real estate to identify whether a customer is a PEP, a family member or an associate of a PEP – and conduct enhanced due diligence.

- The law should cover foreign and domestic PEPs, as well as heads of international organisations.

» Governments should adopt legislation to require all foreign PEPs, their family members and close associates, to automatically be treated as high-risk clients when purchasing property. Additional preventive measures should be implemented such as enhanced due diligence.

Foreign companies should only gain access to the real estate market upon providing information on their real owners

» Governments should require foreign companies that wish to purchase property in a country to provide information on their beneficial owners, including the name, nationality, date of birth, address, and how control is exercised.

» This information should be available to law enforcement and preferably made available in open data format in a public beneficial ownership registry.

Suspicious transaction report rules are adequate and implemented

» Governments should require real estate agents and others engaged in real estate closings to identify and report suspicious transactions to the financial intelligence unit.

- Failure to report suspicious transactions should be sanctioned.

» Governments should amend the rules to ensure that law enforcement agencies have direct access to STRs.

» Professional associations or supervisory bodies should provide guidance on the identification of “red flags” and submission of STRs to professionals operating in the sector to increase both the quantity and quality of STRs submitted.

Professionals who can engage in real estate transactions should be regulated and submit to "fit and proper" tests.

» Governments should require real estate agents to register with a designated public authority and take a "fit and proper" test, in order to operate in the real estate sector. Anti-money laundering training should be made compulsory upon registration.
  - Governments should amend existing rules to prohibit lawyers, accountants and other professionals who are not registered with the relevant anti-money laundering supervisor from engaging in real estate transactions. They should also be submitted to a "fit and proper" test.

» Licensing bodies should include knowledge of anti-money laundering obligations among the requirements to acquire a licence.

» Professional associations should support anti-money laundering efforts in the sector by including anti-money laundering in their professional certification programmes, requiring members to register for anti-money laundering supervision with the supervisory body and punishing bad behaviour by withdrawing professional licences.

Money laundering risks in the sector should be understood and fully acted upon

» Governments should use the findings of regular risk assessments to improve the legal framework as well as supervision and enforcement efforts.

» Reporting entities should conduct their own assessments of risks and also use the findings of the national risk assessment to design their compliance systems and provide anti-money laundering training to staff.

Supervision of the sector should be consistent and effective

» Governments should determine a single independent supervisory body to oversee reporting entities' compliance with anti-money laundering and terrorist financing legislation and regulations, using a risk-based approach.

» In situations where self-regulatory bodies are responsible for supervision of anti-money laundering rules, they should demonstrate the highest level of independence and integrity, by having an arm's length separate authority within the self-regulatory agency, and not combine commercial and regulatory functions so as to avoid a real or perceived risk of conflict of interest.

» Supervisory bodies and the country's financial intelligence unit should be independent and resourced to conduct their tasks.

» Supervisory bodies and the country's financial intelligence unit should have powers to request information, search premises and documents and conduct on-site checks.

Sanctions in the sector should be effective and dissuasive

» Governments should make available a wide range of administrative and criminal sanctions against natural and legal persons to punish non-compliance with the law. Sanctions should range from withdrawing professional licences, to administrative fines and criminal prosecution and apply to both legal entities and senior executives. Warning and training could also be considered in some cases.

» Supervisory bodies should apply sanctions so as to create a deterrent effect in the sector.

» Supervisory bodies should be required to publish detailed data on their enforcement activity on an annual basis.

ANNEX

Existing standards and requirements

The countries analysed in this study – Australia, Canada, the UK and the US – have committed in different forums to do more to prevent and curb money laundering and terrorist-financing, including by regulating gatekeepers.

The Financial Action Task Force (FATF) sets the current global standards for tackling money laundering. As members of the FATF they are committed to implementing the FATF Recommendations to curb money laundering.[107] Also, as G20 members they have committed to the G20 High-Level Principles on Beneficial Ownership Transparency, which include measures to regulate the activity of gatekeepers and requirements to introduce know your customer policies and understand the money laundering risks posed by their activities.[108]

These international commitments establish the following obligations on their members to ensure the corrupt can no longer use real estate properties as a tool to hide and launder dirty money:

1. GATEKEEPERS ARE SUBJECT TO ANTI-MONEY LAUNDERING RULES AND REQUIRED TO CONDUCT CUSTOMER DUE DILIGENCE AND IDENTIFY THE BENEFICIAL OWNER OF CUSTOMERS

Commitments under the FATF Recommendations (Recommendation 22) and the G20 High Level Principles on Beneficial Ownership Transparency (Principle 7) require professionals involved in real estate closings – such as real estate agents, brokers and developers, lawyers, notaries and accountants – to be covered by anti-money laundering rules and have in place anti-money laundering compliance programmes which include a requirement to conduct due diligence on their customers. They should also identify the beneficial owner of customers – that is, the natural, not legal, person(s) who exercises de facto control over a company or legal arrangement.

According to the FATF Recommendations, customer due diligence should be conducted when establishing a business relationship and on an on going basis if the agent has doubts about the veracity of the information previously obtained or suspicion of money laundering.[109]

The measures to be taken in accordance to the FATF include:

- Customer identification through reliable sources.
- Beneficial ownership identification and in the cases of legal persons, trusts, or other legal arrangements this should include that the agent understands the ownership and control structure of the customer.
- Understanding of the purpose and intended nature of the business relationship.
- On going due diligence on existent customers to ensure the transactions being conducted are consistent with the institution's knowledge of the customer.

In addition to the above, measures should be adapted considering the context and the money laundering risks arising from the real estate sector in the country. Enhanced due diligence should be applied where the risk of money laundering is considered to be higher: for example, when payments are in cash, transactions are not face to face, payment is carried out by unknown / third parties, there are complex loan structures, there is a significant geographical distance between the customer and the property, among others.

Enhanced due diligence often involves seeking a better understanding of the source of funds, requiring the payment to be carried out through an account in the customer's name with a bank subject to customer due diligence measures and senior-management approval, among other measures.

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107. FATF, *International standards on combating money laundering and the financing of terrorism and proliferation: The FATF Recommendations*, Paris: FATF, 2012. Recommendations 22 and 23 deal with designated non-financial business and professions (DNBPS), which include real estate agents, and other professions when involved in real estate transactions. Recommendation 22 states that "customer due diligence and record-keeping requirements set out in Recommendations 1, 11, 12, 15, and 17, apply to designated non-financial businesses and professions (DNFBPs)… including the buying and selling of real estate". Meanwhile Recommendation 20 states that real estate agents are another gatekeeper in terms assessing risk and carrying out due diligence. www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html

108. G20 High Level Principles on Beneficial Ownership Transparency. Principle 7 states that. "7. Countries should require financial institutions and DNFBPs, including trust and company service providers, to identify and take reasonable measures, including taking into account country risks, to verify the beneficial ownership of their customers. a. Countries should consider facilitating access to beneficial ownership information by financial institutions and DNFBPs. b. Countries should ensure effective supervision of these obligations, including the establishment and enforcement of effective, proportionate and dissuasive sanctions for non-compliance". http://star.worldbank.org/star/sites/star/files/g20_high-level_principles_beneficial_ownership_transparency.pdf

2. POLITICALLY EXPOSED PERSONS ARE SUBJECT TO ENHANCED DUE DILIGENCE

Politically exposed persons (PEPs) are individuals who are, or have been, entrusted with high-level positions in public service, such as heads of state and senior politicians as well as high-ranking officials from government, the military and state-owned companies. The PEP classification may extend from the person to his or her family members and close associates.

Because PEPs represent a high risk, the FATF recommends (Recommendation 12) financial institutions and other businesses and professions such as real estate agents conduct an assessment of whether or not an individual client is a domestic or a foreign PEP or an associate, or whether the beneficial owner of a client who is a legal entity is a PEP or an associate. If a PEP is identified, international standards recommend that enhanced due diligence is conducted. Enhanced due diligence includes obtaining information on a customer's source of funds or wealth, the intended nature of the business relationship and senior management approval to take on or continue with a customer, in addition to submitting a STR if there is suspicion of irregularities.[110]

Real estate agents and other professionals need to establish the necessary mechanisms to be able to recognise whether a customer or its beneficial owner is a PEP or a close associate.

3. INTERNAL CONTROL MEASURES ARE ADOPTED

Real estate agents and others operating in the sector, should be required to establish internal control mechanisms (FATF Recommendation 18), such as a compliance management system, adequate screening in the hiring of employees, and on going training programmes to employees, including on how to identify red flags in real estate closings.

4. SUSPICIOUS TRANSACTION REPORTS ARE SUBMITTED AND FOLLOWED THROUGH

Suspicious transaction reports (STRs) are designed to assist financial intelligence units and the police in identifying financial transactions that are suspected to be related to a money laundering or terrorist financing offence, assisting authorities as they combat the flow of proceeds from corruption and other criminal offences.

Real estate agents and others involved in real estate closings should be aware of the money laundering risks the sector they operate in poses and of how to identify red flags or signs of illegal activity. Any suspicion that funds used in the transaction are the proceeds of criminal activity should be reported to the financial intelligence unit (FATF Recommendation 20).

The financial intelligence unit should also ensure that STRs are followed through and that the responsible body conducts the investigations. Moreover, compiling and publicising data on overall submissions and prosecutions could help to improve policies and enforcement efforts, as well as serve as a deterrent to professionals operating in the sector.

5. REGULATION AND SUPERVISION ARE EFFECTIVE

Sectors with money laundering risks – including real estate – should have oversight by a well-resourced regulator, with sufficient powers to monitor and ensure compliance with anti-money laundering requirements. According to the FATF standards, for non-financial sectors this oversight may be carried out by a supervisor or by an appropriate self-regulatory body, as long this arrangement ensures members of the professions are compliant.

According to FATF Recommendation 28, the supervisor or self-regulatory body should also "(a) take the necessary measures to prevent criminals or their associates from being professionally accredited, or holding or being the beneficial owner of a significant or controlling interest or holding a management function, e.g. through evaluating persons on the basis of a "fit and proper" test; and (b) have effective, proportionate, and dissuasive sanctions in line with Recommendation 35 available to deal with failure to comply with AML/CTF requirements."

Indicators of effective supervision include: the number of off-site (desk based) and on-site monitoring and analysis visits to individual businesses carried out by the supervisor; the number of regulatory breaches identified; the total number of sanctions applied, and their financial value; and the number of suspicious transaction reports received by the supervisor.

109. FATF 2012.

110. Transparency International, 'Closing banks to the corrupt: The role of due diligence and PEPs', Policy Brief #5/2014. www.transparency.org/whatwedo/publication/policy_brief_05_2014_closing_banks_to_the_corrupt_the_role_of_due_diligence

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