

**ICGN**International Corporate Governance Network  
*Inspiring good governance & stewardship*

## ICGN Viewpoint

### Anti-Money Laundering Due Diligence: A New Focus for Stewardship Teams?

30<sup>th</sup> March 2022

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#### Introduction

The Russian Federation's invasion of Ukraine has sparked global outrage and unprecedented economic measures designed to alter the behaviour of the Kremlin. Global investment institutions and public companies have been at the centre of this activity. Investors, corporate, legal, and auditing firms are exiting Russia with the aim of helping the international community end the war in Ukraine, supporting democracy and rescuing the rules-based international order.<sup>1</sup>

In this challenging context, governments are asserting their powers under anti-money laundering (AML) laws to support economic sanctions directed at Russian oligarchs. The idea is to identify and freeze the assets of elites who support and enjoy the benefits of a corrupt oligarchic state willing to violate international law and inflict violent harm on civilian populations.<sup>2</sup> Further, many governments have already or are now promising to introduce new measures to fight money laundering in all its forms.<sup>3</sup> A new wave of AML regulation is likely in the offing.<sup>4</sup>

This Viewpoint looks beyond the present conflict to provide a high-level overview of AML, describing: (1) the scope of the challenge and the rationale for bringing money laundering activities to heel; (2) the AML policy tools governments have put in place and the critical role played by financial institutions; and (3) the role that investment institutions can play in engaging policy-makers and financial institutions that are the centre of AML activity. The main audience for this Viewpoint comprises the engagement and stewardship teams in place among leading asset owners and asset managers. The objective is to enhance their awareness of AML initiatives and programmes and, where warranted, prompt engagement with the boards of directors and senior executive teams of key financial institutions.

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<sup>1</sup> Jeffrey Sonnenfeld and his research team at Yale University have maintained a list of companies that have withdrawn from Russia. See <https://som.yale.edu/story/2022/over-450-companies-have-withdrawn-russia-some-remain>, accessed 28 March 2022.

<sup>2</sup> See for example, US Department of Justice, "US Departments of Treasury and Justice Launch Multilateral Russian Oligarch Task Force, 16 March 2022, <https://home.treasury.gov/news/press-releases/jy0659>, accessed 16 March 2022. The legal power to freeze, seize and sequester assets of foreign nationals tied to human rights violations and corruption originates from "Magnitsky Laws" that have been legislated in the United States, Canada, the European Union and elsewhere. See for example, <https://www.state.gov/global-magnitsky-act/>, accessed 28 March 2022.

<sup>3</sup> See for example, [https://ec.europa.eu/info/publications/210720-anti-money-laundering-counteracting-financing-terrorism\\_en](https://ec.europa.eu/info/publications/210720-anti-money-laundering-counteracting-financing-terrorism_en), accessed 18 March 2022.

<sup>4</sup> It is noteworthy that the Russian Federation's invasion comes just as Ukraine has begun to combat its money laundering risks. See Financial Action Task Force, "FATF Public Statement on the Situation in Ukraine", <https://www.fatf-gafi.org/publications/fatfgeneral/documents/ukraine-2022.html>, accessed 14 March 2022. See also, Gillian Tett, "The World Needs to Come Clean About Dirty Money", *Financial Times Magazine*, 23 March 2022.

## Money-Laundering: The Basics

Money laundering is defined as the process of making illegally gained proceeds appear legal. It typically involves three steps: (1) illegitimate funds are introduced into the legitimate financial system (“placement”); (2) the funds are then moved around numerous accounts through a variety of channels to hide tracks and create confusion (“layering”); (3) the funds are then integrated into the financial system through additional transactions, such as co-mingling with legitimate assets or the purchase of real estate or luxury goods to provide a veil of legitimacy (“integration”).<sup>5</sup> At each stage, shell companies may be used for which ultimate beneficial ownership is unknown, unrecorded, or undisclosed publicly. In recent years, trade finance has been increasingly used for money laundering purposes. This involves a variety of techniques including (but not restricted to) over, under, and multi-invoicing for goods traded.<sup>6</sup>

## Anti-Money Laundering: The Fight

The international fight against money laundering began in 1989 when the G7<sup>7</sup> created the Financial Action Task Force (FATF). The major concern at that time was the illicit financial processing of the proceeds from drug trafficking. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory, and operational measures for combating money laundering, terrorist financing, and other related threats to the integrity of the international financial system. The FATF monitors and evaluates countries' progress in implementing its recommendations; reviews money laundering and terrorist financing techniques and countermeasures; and, promotes the adoption and implementation of the FATF recommendations globally.<sup>8</sup>

The FATF's 40 core recommendations and guidance publications have been updated on several occasions; most recently in March 2022. Because of new challenges and growing awareness of the scope of ML, the work of the FATF has expanded to include measures to address the financing of terrorism and the proliferation of weapons of mass destruction.<sup>9</sup> The FATF has also issued special guidance on the links between money laundering and environmental crime (illegal logging, illegal mining, and waste trafficking) and has initiated public consultations on money laundering and the real estate sector.<sup>10</sup> Further, the International Finance Corporation (IFC) has issued AML

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<sup>5</sup> United States Department of Treasury, “A History of Anti-Money Laundering Laws, 30 June 2015. <https://www.fincen.gov/history-anti-money-laundering-laws>, accessed 14 March 2022.

<sup>6</sup> International Finance Corporation, “Navigating Essential Anti-Money Laundering and Combating the Financing of Terrorism in Trade Finance: A Guide for Respondent Banks”, September 2018, [https://www.ifc.org/wps/wcm/connect/bde5bd94-46a9-43be-862d-379708973e9c/20180918\\_Guide-for-Respondent-Banks.pdf?MOD=AJPERES&CVID=mpuzBch](https://www.ifc.org/wps/wcm/connect/bde5bd94-46a9-43be-862d-379708973e9c/20180918_Guide-for-Respondent-Banks.pdf?MOD=AJPERES&CVID=mpuzBch), accessed 14 March 2022.

<sup>7</sup> The G7 comprises Finance Ministers and Central Bank Governors of 7 countries: Canada, France, Germany, Italy, Japan, the United Kingdom and the United States of America. [What is the G7? - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/what-is-the-g7)

<sup>8</sup> See the FATF website at: <https://www.fatf-gafi.org/about/whatwedo/>, accessed 14 March 2022.

<sup>9</sup> FATF, “International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation: The FATF Recommendations” March 2022, <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>, accessed 14 March 2022.

<sup>10</sup> FATF Report, Money Laundering from Environmental Crime, July 2021, [https://www.fatf-gafi.org/publications/environmentalcrime/documents/money-laundering-from-environmental-crime.html?hf=10&b=0&s=desc\(fatf\\_releasedate\)](https://www.fatf-gafi.org/publications/environmentalcrime/documents/money-laundering-from-environmental-crime.html?hf=10&b=0&s=desc(fatf_releasedate)), accessed 14 March 2022; FAFT, “Public Consultation on the FAFT Risk-Based Guidance to the Real Estate Sector, June 2021, <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/public-consultation-guidance-real-estate.html>, accessed 12 March 2022.

guidance for correspondent banks<sup>11</sup> and Interpol has expanded its focus to also include measures to address money laundering and human trafficking.<sup>12</sup> Money laundering and digital assets are also coming under the microscope.<sup>13</sup> Finally, the COVID-19 pandemic also increased money laundering risks, as counterfeiters have laundered proceeds from selling fake COVID-19 test kits and pharmaceuticals, and cyber-criminals have employed COVID-19 versions of popular phishing and blackmail scams, which directed victims to send virtual currency for donations and ransom payments.<sup>14</sup>

The inherently secretive nature of money laundering makes quantification difficult but studies indicate money laundering continues to grow, with estimates ranging from US\$800 million to US\$2 trillion per year.<sup>15</sup> Another source reports US\$5.8 trillion in financial crime including money laundering, fraud, and bribery.<sup>16</sup> This represents over 6% of global GDP.

Beyond these estimates, we know that money laundering advances crime in almost all its forms and has supported the creation of rogue states capable of using force to impose their will on neighbouring countries. Within those countries seeking to support a peaceful, democratic, rules-based international order, the existence and countenance of money laundering and the unwillingness to undertake AML measures energetically has had a corrosive effect, serving to undermine trust in capital markets and governments.<sup>17</sup> The repercussions of this loss of trust go beyond sectors identified, undermining all public discourse and democracy at home.

## The Role of Financial Institutions

The main contours of AML programmes are generally recognised. In effect, financial institutions<sup>18</sup> are directed to:

1. Identify, assess, and reasonably mitigate the risks resulting from illicit financial activity consistent with both the institution's risk profile and the risks communicated by relevant government authorities.
2. Assess and monitor compliance with record-keeping and reporting requirements of government agencies.
3. Provide information with a high degree of usefulness to government authorities.<sup>19</sup>

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<sup>11</sup> International Finance Corporation, "Navigating Essential Anti-Money Laundering and Combating the Financing of Terrorism in Trade Finance: A Guide for Respondent Banks", September 2018, [https://www.ifc.org/wps/wcm/connect/bde5bd94-46a9-43be-862d-379708973e9c/20180918\\_Guide-for-Respondent-Banks.pdf?MOD=AJPERES&CVID=mpuzBch](https://www.ifc.org/wps/wcm/connect/bde5bd94-46a9-43be-862d-379708973e9c/20180918_Guide-for-Respondent-Banks.pdf?MOD=AJPERES&CVID=mpuzBch), accessed 14 March 2022.

<sup>12</sup> See <https://www.interpol.int/Crimes/Financial-crime/Money-laundering>, accessed 14 March 2022.

<sup>13</sup> The White House, "Executive Order Ensuring the Responsible Development of Digital Assets", 9 March 2022, <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/09/executive-order-on-ensuring-responsible-development-of-digital-assets/>, accessed 17 March 2022.

<sup>14</sup> FINTRAC, "Special Bulletin on COVID-19: Trends in Money Laundering and Fraud", July 2020, <https://www.fintrac.gc.ca/intel/operation/covid-trend-en.pdf>, accessed 15 March 2022.

<sup>15</sup> These numbers provided by Comply Advantage an anti-money laundering consultancy and provide of AML software. See <https://complyadvantage.com/insights/what-is-money-laundering/>, accessed 15 March 2022.

<sup>16</sup> John Cusack, "Global Threat Assessment", *Financial Crime News*, June 2021, <https://thefinancialcrimenews.com/global-threat-assessment-to-download-read/>, accessed 14 March 2022.

<sup>17</sup> See for example, Bahriye Basaran-Brooks, "Money Laundering and Financial Stability: Does Adverse Publicity Matter?", *Journal of Financial Regulation and Compliance*, Volume 30 Issue 2, November 2021, available at <https://www.emerald.com/insight/content/doi/10.1108/JFRC-09-2021-0075/full/html>, accessed 28 March 2022.

<sup>18</sup> Depending on jurisdiction, AML programmes can be applicable to a range of financial institutions including banks, asset managers, securities dealers, life insurance companies, credit unions and trust companies.

<sup>19</sup> The FATF Recommendations, updated March 20022, accessed at <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html> and Wolfsberg Group, Letter to FINCEN, US

In addition, AML programmes include whistleblower systems whereby staff are provided confidential and independent channels to alert senior executives and boards to ineffective AML programmes, components of programmes, or evidence of systemic and recurring non-compliance.<sup>20</sup>

Front-line staff are the foundation of this system, required to identify and verify client identity (Know Your Client or “KYC”), maintain watch and, under specific conditions, to file suspicious activity reports (SARs) or suspicious transaction reports (STRs). The nomenclature and the criteria for reporting varies by country, but generally STRs identify transactions that do not appear to have a solid business rationale and/or which appear to be done for the purpose of hiding or obfuscating transactions.

For example, staff may be directed to be alert for: transactions that cannot be reconciled with the usual activities of the client; a large number of accounts held by the same client with frequent transfers between accounts; transactions in which assets are immediately withdrawn after deposit without plausible explanation; international fund transfers to specific high-risk countries particularly tax havens and countries associated with terrorism; the repeated transfer of funds in amounts falling under major transaction reporting thresholds (“smurfing”); or the activity of politically-exposed persons (“PEPs”): people with prominent political, regulatory, or military positions and thus potentially targets for financial crime. This is a far from exhaustive list.

Globally, millions of front-line staff are at the coal face of AML activities. In addition, major banks will have as many 3,000 to 5,000 specialists focused on AML operating on compliance teams that can number in the tens of thousands.<sup>21</sup> LexisNexis reports that worldwide spending on AML and sanctions compliance by financial institutions exceed US\$180 billion per year.<sup>22</sup> Staff may receive specialised training from organisations such as the Association of Certified Anti-Money Laundering Specialists and can be supported by a variety of AML software services to identify suspicious transactions and flag for anomalies.<sup>23</sup>

## Role of Government

The STRs collected are reported to government financial intelligence units, such as the US Department of Treasury’s FinCEN<sup>24</sup>, Canada’s FINTRAC, UK’s National Crime Agency (NCA) or France’s TRACFIN. More than 200 jurisdictions around the world maintain such facilities.<sup>25</sup>

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Department of the Treasury, 14 February 2022, <https://www.wolfsberg-principles.com/sites/default/files/wb/FinCEN%202021.0008%20Comments%20on%20RFI%20for%20modernising%20AML%20CFT%20Regulations.pdf>, accessed 15 March 2022.

<sup>20</sup> As part of the Anti-Money Laundering Act of 2020, the US Department of Treasury provides for monetary awards to whistleblowers up to 30% of monetary sanctions over US\$1 million. A concise description found here: <https://constantinecannon.com/practice/whistleblower/whistleblower-types/whistleblower-reward-laws/anti-money-laundering-bank-secrecy-act/>, accessed 15 March 2022.

<sup>21</sup> *The Economist*, “The War Against Money Laundering is Being Lost”, 17 April 2021.

<sup>22</sup> As reported in *The Economist*, “The War Against Money Laundering is Being Lost”, 17 April 2021.

<sup>23</sup> <https://www.acams.org/en>, FATF and Egmont Group, “Digital Transformation of AML/CFT for Operational Agencies: Detection of Suspicious Activity and Analysis of Financial Intelligence”, <https://www.fatf-gafi.org/media/fatf/documents/Digital-Transformation-executive-summary.pdf>, accessed 18 March 2022.

<sup>24</sup> <https://www.fincen.gov/news/news-releases/fincen-provides-financial-institutions-red-flags-potential-russian-sanctions>, March 7, 2022.

<sup>25</sup> The Egmont Group is the association of financial intelligence units. See <https://egmontgroup.org>. A list can be found at <https://aml-cft.net/library/list-financial-intelligence-units-fius/>, accessed 18 March 2022.

These units analyse STRs and other reports and alert law enforcement agencies when analysis reveals possible money laundering. Governments are expected to maintain prosecutorial expertise and proceed with prosecutions as necessary.

In effect, the global AML system is a public-private partnership involving vast numbers of people, institutions, and jurisdictions. The information management challenges are significant. To remain in compliance, financial institutions tend to report any and all suspicious activity without reference to priorities or probabilities. This contributes to a level of reporting activity that is difficult to sort.

For example, in 2020-2021, Canadian financial institutions produced 468,079 STRs. FINTRAC, also received more than 6 million large cash transaction reports, 23 million electronic transfer reports, 13 million cross border seizure reports, and 29,000 casino disbursement reports (each of these reporting categories use a C\$10,000 reporting threshold). From these data, FINTRAC made 1,812 AML disclosures to law enforcement.<sup>26</sup> Despite this activity, conviction records are low and Canada's AML performance as evaluated by FATF remains poor. In its 2021 FATF evaluation, Canada failed to reach full compliance on 29 of the 40 criteria used.<sup>27</sup>

## Challenge and Response

Despite more than three decades of concerted effort and headline-grabbing prosecutions, money laundering continues to challenge the integrity of the financial system. It is estimated that despite efforts, policy intervention has less than 0.1 per cent impact on criminal finances, compliance costs exceed recovered criminal funds more than 100 times over and banks and their customers are penalised more than criminal enterprises. Critics assert that policy design must focus more on measurable outcomes (e.g. assets seized) and less on counting STRs, AML budgets, and compliance head counts.<sup>28</sup>

In addition, there is emerging consensus that there has been a failure to establish effective registries of verified ultimate beneficial ownership: the natural persons who exercise control over a corporation.<sup>29</sup> The importance of beneficial ownership registers as key components of AML programmes has long been acknowledged. The FATF's most recent core recommendations reiterate that: "Countries should ensure that there is adequate, accurate, and up-to-date information on the beneficial ownership and control of legal persons that can be obtained or accessed rapidly and efficiently by competent authorities..."<sup>30</sup> That said, the FATF has acknowledged public policy failure on this front. In 2021, at the October G20 meeting of Finance Ministers and Central Bank Governors, FATF president Marcus Pleyer said, in reference to the use

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<sup>26</sup> Financial Transactions and Reports Analysis Centre of Canada, "Annual Report 2020-21", <https://www.fintrac-canafe.gc.ca/publications/ar/2021/ar2021-eng.pdf>, accessed 15 March 2022.

<sup>27</sup> FATF reports Canada was in full compliance on 11 criteria, largely compliant on 18, partially compliant on 6 and non-compliant on 5. FATF, "Canada: Fourth Enhanced Follow-Up Report and Technical Compliance Re-Rating", October 2021, <https://www.fatf-gafi.org/media/fatf/documents/reports/fur/Follow-Up-Report-Canada-2021.pdf>, accessed 17 March 2022.

<sup>28</sup> Ronald F. Pol, "Anti-Money Laundering: The World's Least Effective Policy Experiment? Together We Can Fix This", *Policy Design and Practice*, February 2020, Vol.3 No. 1, [https://www.researchgate.net/publication/339486326\\_Anti-money\\_laundering\\_The\\_world's\\_least\\_effective\\_policy\\_experiment\\_Together\\_we\\_can\\_fix\\_it](https://www.researchgate.net/publication/339486326_Anti-money_laundering_The_world's_least_effective_policy_experiment_Together_we_can_fix_it), accessed 15 March 2022.

<sup>29</sup> FATF, "Transparency and Beneficial Ownership", October 2014, <https://www.fatf-gafi.org/media/fatf/documents/reports/guidance-transparency-beneficial-ownership.pdf>, accessed 17 March 2022.

<sup>30</sup> The FATF Recommendations, March 2022, [https://www.fatf-gafi.org/publications/fatfrecommendations/?hf=10&b=0&s=desc\(fatf\\_releasedate\)](https://www.fatf-gafi.org/publications/fatfrecommendations/?hf=10&b=0&s=desc(fatf_releasedate)), accessed 17 March 2022.



of anonymous shell companies and trusts: “standards are not effectively implemented, and that the standards themselves need strengthening”.<sup>31</sup>

Watchdog organisations advance the view that sub-sets of ultimate beneficial ownership data should be made public. While they acknowledge that this disclosure must be balanced with data privacy rights and legislation, publicly accessible registers (already available in some countries<sup>32</sup>) would improve the overall accuracy as they would receive greater scrutiny from watchdogs, civil society organisations and the media. It would also speed investigations as foreign governmental authorities would also have quicker access to baseline information. Governments and beneficial owners would be more accountable. The complete data set of ultimate beneficial ownership would remain behind a firewall and be made available only to competent authorities.<sup>33</sup> It should also be acknowledged that in public markets companies are required to disclose publicly the names, cities of residence, age, and compensation paid to senior executives and board directors. The prevalence of this information further undermines the argument for excluding any public access to ultimate beneficial ownership identities.<sup>34</sup>

In 2018 Transparency International conducted an evaluation of G20 countries and found 11/20 ‘weak’ or ‘average’ legal frameworks for beneficial owner transparency.<sup>35</sup> In reflecting on these results Delia Ferreira Rubio, chair of Transparency International, said: “The leaders of the G20 nations need to pick up the pace. Time and again, we’ve seen how it is anonymous shell companies that make the world of corruption go round. Simply making it possible to find out who ultimately owns a legal entity should be an obvious step towards preventing abuse of the financial system by the corrupt and other criminals. Are the G20 leading the pack, or are they happy to keep lagging behind?”<sup>36</sup>

## Stewardship and AML

ICGN members have expressed their support for anti-corruption measures and whistleblowing programmes in both the Global Governance Principles and the Global Stewardship Principles.<sup>37</sup> ICGN also has related Guidance on Anti-Corruption Practices<sup>38</sup> and on Political Lobbying and Donations.<sup>39</sup>

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<sup>31</sup> FATF, “Marcus Pleyer Speaks at Fourth G20 Finance Ministers and Central Bank Governors’ Meeting, 13 October 2021, <https://www.fatf-gafi.org/publications/fatfgeneral/documents/g20-cbgfm-oct-2021.html>, accessed 15 March 2022.

<sup>32</sup> See the ranking made available by the Open Company Data Index, available at <http://registries.opencorporates.com>, supported by the World Bank Institute. Accessed 18 March 2022. See also the Basel AML Index available at <https://index.baselgovernance.org>, accessed 28 March 2022.

<sup>33</sup> See Open Ownership, The B Team and The Engine Room, “Data Protections and Privacy in Beneficial Ownership Disclosure”, May 2019, <https://www.openownership.org/uploads/oo-data-protection-and-privacy-2019-05.pdf>, accessed 17 March 2022. The authors acknowledge that disclosure exemption criteria could be deployed under specific circumstances. While FATF does not require public registers of beneficial ownership it has endorsed them as a means to increase transparency. FATF, Egmont Group, “Concealment of Beneficial Ownership”, 2018 <http://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Egmont-Concealment-beneficial-ownership.pdf>, accessed 28 March 2022.

<sup>34</sup> As early as 2013, the G8 committed to an action plan which included the principle that beneficial ownership should be made public to relevant authorities and that some information should be made publicly accessible. <https://www.gov.uk/government/publications/g8-action-plan-principles-to-prevent-the-misuse-of-companies-and-legal-arrangements/g8-action-plan-principles-to-prevent-the-misuse-of-companies-and-legal-arrangements>, accessed 28 March 2022.

<sup>35</sup> Transparency International, “G20 Leaders or Laggards: Reviewing G20 Progress on Ending Anonymous Companies”, 19 April 2018, <https://images.transparencycdn.org/images/2018-G20-Leaders-or-Laggards-EXEC-SUMMARY.pdf>, accessed 17 March 2022.

<sup>36</sup> <https://www.transparency.org/en/press/q20-countries-moving-too-slowly-to-combat-financial-crime>, accessed 17 March 2022.

<sup>37</sup> ICGN, *Global Governance Principles* and *Global Stewardship Principles*, [www.icgn.org](http://www.icgn.org), accessed 17 March 2022.

<sup>38</sup> ICGN Guidance on Anti-Corruption Practices, 2020: <https://www.icgn.org/sites/default/files/2021-06/ICGN%20Anti%20Corruption%20Guidance%202020.pdf>

<sup>39</sup> ICGN Guidance on Political Lobbying and Donations, 2017: <https://www.icgn.org/sites/default/files/2021-06/ICGN%20Political%20Lobbying%20%26%20Donations%202017.pdf>, accessed 18 March 2022.

Given these commitments, and alongside the specific risks associated with money laundering, member institutions may wish to employ more granular analysis to be applied to portfolio companies whose activities could accommodate or facilitate money laundering. The following questions may be of value for carrying out this exercise.

1. Have the board of directors and senior executives received updates on national or global regulations and the latest developments in AML programmes, including the March 2022 revisions to FATF's recommendations? Have these briefings been placed in the context of the contribution to money laundering and enhanced geopolitical risk, as well as to illegal logging, mining, waste trafficking, drug trafficking, human trafficking and the financing of terrorism? Has the board been briefed on recent developments with respect to money laundering and digital assets? Does the board understand how these threats intersect with the company's business?
2. Has the company undertaken a risk assessment (legal, financial, and reputational) to identify weaknesses in its AML programme in the context of recent developments in AML approaches, legislation and, if necessary, established a plan to repair and refurbish?
3. Does the company have clear AML policies and procedures to comply with the FATF Recommendations and the national priorities in the markets in which it operates? Has it allocated sufficient resources? Given the potential for dynamic change in this space, how does the company pivot its procedures to be more agile, forward-looking, and effective? When shifting away from low priority areas can the company defend convincingly?
4. Does the company ensure that these policies and programmes are communicated to compliance staff to demonstrate active commitment from the board and senior management?
5. Are all employees briefed on the risks of money laundering and the main features of the AML programme? How are such efforts geared to shaping a culture in which AML compliance is valued as core to the enterprise and not viewed disparagingly as a mere "cost centre"?
6. How does the company undertake "know your client" procedures and ensure verification of beneficial owner identity? Does the company have ongoing monitoring for high-risk clients and transactions? Does the company have an effective whistleblower system with separate and confidential escalation routes?
7. How are staff trained and does the company certify compliance staff to external standards? Is the company making use of leading-edge AML software? Is it looking to use artificial intelligence and machine learning to assist data management, categorisation, prioritisation, and identification of key money laundering threats?
8. Do senior compliance staff with sufficient expertise work with financial intelligence units to prioritise and identify cases that could be subject to law enforcement?
9. Does the company subject its AML programme to an external audit? While ensuring robust procedures, how does the company ensure a focus on measurable outcomes and effectiveness in addition to activity and technical compliance? Does the company publicly disclose its policies, compliance audit results and report on outcomes?

10. Is the company supporting the establishment of publicly available and verified ultimate beneficial owner registries across markets? How does it seek to balance beneficial ownership disclosure with data privacy? Does the company on its own or in association with professional organisations engage constructively with policymakers and regulators to identify national priorities and enhance global AML practices and effectiveness?<sup>40</sup>

## Conclusion

In response to money laundering, financial institutions in more than 200 jurisdictions around the world have now invested heavily on AML programmes, hiring in aggregate hundreds of thousands compliance staff, training millions of front-line staff and spending billions of dollars on programme implementation. Sadly, there is convincing evidence to suggest that progress has been less than satisfactory.

The main goal of AML programmes should not be to spend money on compliance or to generate millions of STRs; the goal, rather, is to identify and seize criminal assets and deter crime.<sup>41</sup> To achieve these goals, we need more transparency of who owns what; we need more accurate data on the extent of money laundering globally; and we need a far stronger track record for convictions and assets seizure. This will require enhancing the existing public-private partnership. We need concerted and focused financial institution, company and governmental action focused on desired outcomes.

Despite the present high profile of money laundering, for many financial institutions, there is evidence to suggest AML programmes are often viewed as obstacles to making money.<sup>42</sup> For governments, observers have made note over the years of the numerous false dawns of promises to address money laundering more vigorously. This year, 2022, will be an interesting test. We can imagine that given the war in Ukraine seizure of criminal assets this year may break records. If true, we can surmise that what has been lacking is not policies, programmes, or staff; rather, it has been political will.

ICGN has long considered money laundering to constitute a systemic risk.<sup>43</sup> The risk has built over time, it is interactive with several sectors and, now deeply embedded, it is difficult to control.<sup>44</sup> The stakes could scarcely be greater.

In the context of the Russian Federation's invasion of Ukraine, money laundering has contributed to the creation of an oligarchic state willing and able to invade a neighbouring country, target

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<sup>40</sup> These questions are derived from the analysis provided in this viewpoint as well as: Wolfsberg Group, "Demonstrating Effectiveness" June 2021, [https://www.wolfsberg-principles.com/sites/default/files/wb/Wolfsberg%20Group\\_Demonstrating\\_%20Effectiveness\\_JUN21.pdf](https://www.wolfsberg-principles.com/sites/default/files/wb/Wolfsberg%20Group_Demonstrating_%20Effectiveness_JUN21.pdf) and Deloitte, "AML/CFL Priorities: 5 Areas of Potential Impact and 5 Areas for FIs to Consider", 2021, <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/regulatory/us-aml-CFT-priorities-5-areas-of-potential-impact-and-5-kep-questions-for-FIs-to-consider-updated.pdf>, accessed 17 March 2022.

<sup>41</sup> There is a line of academic scholarship that has critically tested the performance elements of AML efforts and found them lacking. See Ronald F. Pol, *Policy Design & Practice*, "Anti-Money Laundering: The World's Least Effective Policy Experiment? Together We Can Fix It", February 2020, Vol. 3 No. 1, <https://www.tandfonline.com/doi/full/10.1080/25741292.2020.1725366>, accessed 18 March 2022.

<sup>42</sup> Financial institutions are not always enthusiastic about undertaking AML programmes. In 2020, the International Chamber of Commerce reported that 63% of surveyed institutions ranked AML requirements as the biggest obstacle to future trade and growth. International Chamber of Commerce, "2020 ICC Global Survey on Trade Finance: Securing Future Growth", <https://complyadvantage.com/insights/what-is-money-laundering/>, accessed 15 March 2022.

<sup>43</sup> See ICGN, *Global Governance Principles*, <https://www.icgn.org/icgn-global-governance-principles>, accessed 17 March 2022.

<sup>44</sup> ICGN Viewpoint, "Investor Framework for Addressing Systemic Risks", June 2019, <https://www.icgn.org/sites/default/files/2021-05/1.ICGN%20Viewpoint%20on%20Systemic%20Risk.pdf>, accessed 18 March 2022.



civilian populations with devastating weaponry, threaten the use of nuclear weapons and overturn the international rules-based order. Further, the manner in which Russian oligarchs have managed to recruit global financial institutions and members of the legal and accounting professions to assist their money laundering activities fundamentally undermines public trust in the financial services industry and our government regulators. As major capital markets leaders, we have an obligation to contemplate and address the implications of this loss. Concerted action on AML programmes as suggested in this Viewpoint present an opportunity for investment institutions and their stewardship teams to restore trust and re-assert the value of a peaceful economic order under which the prospects for a more sustainable future are possible.

## **About ICGN Viewpoints**

ICGN Viewpoints are produced by Secretariat and by our member-led Policy Committees. While not defining a formal ICGN position on the subject, they provide opinion on emerging corporate governance issues and are intended to inform and generate debate. This ICGN Viewpoint was drafted by ICGN Sustainability Manager Robert Walker, with the support of ICGN's Global Governance Committee

We welcome dialogue with the ICGN Secretariat on this Viewpoint.

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