



**ASSETS TRACING**

**COUNTRY PROFILES**

**Anti-Corruption Working Group**

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## Table of contents

ARGENTINA .....	3
AUSTRALIA .....	8
BRAZIL .....	12
CANADA .....	16
CHINA .....	20
FRANCE.....	24
GERMANY .....	28
INDIA .....	32
INDONESIA.....	34
ITALY .....	38
JAPAN.....	42
MEXICO.....	46
RUSSIA .....	49
SAUDI ARABIA .....	52
SINGAPORE .....	55
SOUTH AFRICA.....	59
REPUBLIC OF KOREA .....	63
SPAIN .....	68
TURKEY .....	72
UNITED KINGDOM .....	76
UNITED STATES .....	80

## ARGENTINA

### **1. How to find out if a natural or legal person has bank accounts in the country?**

Upon the Section 1.7 of the Central Bank (BCRA) Compilation of AML measures (BCRA communication “A” N° 5162), banking and foreign exchange institutions are required to maintain several databases on a wide range of operations that individually or through a series of related transactions exceed ARS 30 000 (near than USD 6,600), including transactions related to cash deposits, purchase of sale of foreign currency, deposits of securities, depositions of negotiable instruments, etc. The database must include the transactions made in the last five years and must be at the disposal of the BCRA within 48 hours.

According with Law 21.526, Argentina has a bank secrecy system for the operations where the banks take deposits from the public (passive operations). For that reason financial institutions must lift financial secrecy only in the context of a suspicious transaction report (STR), in which case the bank secrecy is not opposed to the Financial Intelligence Unit.

Without an STR, apart from BCRA and the Tax Agency (AFIP), the secrecy may be lifted by a court order in case another institution from the State wants to access the financial information detained by banks.

Operations in which banks place money (active operations) are not covered by the bank secrecy. Through the Central Bank of Argentina, the FIU has access to financial system debtors (natural or legal persons) with the Argentinean financial system, rejected checks, checks reported as stolen or lost as well as information about outstanding tax provincial debts. This information may be available as well to other institutions of Argentina even without a court order.

There is no central registry of bank accounts in Argentina. If an authority wants to find out if a natural or legal person holds a bank account in the country, there is no immediate tool. A court order sent to all financial institutions through the BCRA seems to be the only way to find out.

### **2. How to find out if a natural or legal person owns real estate in the country?**

There is no centralized register of properties in Argentina. Each of the 24 jurisdictions in Argentina maintains its own real property registry. The National Registry of Real Property, depending on the Ministry of Justice and Human Rights, provides information for public agencies and the public, regarding with properties located in Buenos Aires City. Nevertheless the National Ministry of Justice is promoting a system to exchange information between local registries. By June 2012, 17 jurisdictions had joined this system and 11 of them are already interconnected. As this system is in a development stage, it is not available yet.

The transfer of real property is taxed in the country. For that reason the Tax Agency (AFIP) is notified about each transaction of transference. Moreover, as a result of information exchange agreements with the Provinces, AFIP unifies the 24 separate real estate registries from the City

of Buenos Aires (to which the FIU has direct access) and the 23 other Provinces (to which the FIU does not). These provincial registries are however bound to report suspicious transactions to the FIU.

The FIU maintains an internal database with information periodically sent by notaries public (pursuant to FIU Resolution 10/2004).

The AFIP database (from the tax authority) collects the all information related to a person (natural or legal), such as: incomes; companies where he/she is a shareholder or director; and real estate properties. AFIP's databases are covered by tax secrecy which may be lifted in favor of the FIU, without a court order, where a suspicious transaction report was filed.

### **3. How to find out if a natural or legal person owns a company / business registered in the country?**

All legal persons must be registered in the Public Registry of Commerce pertaining to the jurisdiction in which is does business. All articles of incorporation must include detailed information about the natural and legal persons involved. If the member/partner is a natural person: name, age, nationality, address, marital status, profession, and national ID; if the member/partner is a legal person: corporate name, address, registration data, and information about the person who was made available to appear before the notary public (personal data, competence, faculties) number of the members or partners, company name main office, and purpose, equity capital and contributions made by each member/partner, expiration of the original term, organization of the supervisory management, and of the members' meetings, clauses specifying the rights and liabilities of members/partners, rules to distribute profits and losses, and clauses about the operation, dissolution and liquidation of the company.

All legal persons which are limited liability companies or companies divided by shares, except general and limited partnerships, must also publish this information, and the data about the company's authorities (directors or senior officers and statutory auditors, if applicable), specifying the names of its members, elected domicile, and term of office (with the exception of specifying contributions made by each member/partner to the capital stock, their rights and liabilities and clauses about the operation, dissolution and liquidation of the company) as well as the date of the articles of incorporation, for one day in the Official Gazette. The same publicity is required whenever this information is changed; otherwise the modification may not be inscribed in the Public Registry of Commerce.

All articles of incorporation and any changes of them (such as any change in the companies' purpose or name) must be registered or their enforceability is limited – it could be enforced between members or partners but not before third parties, however, third parties can enforce them against the company and its partners/members, except in the cases of companies divided by shares or limited liability companies (Law 19 550, section 12). This exception is not absolute, and is subject to rebuttal.

This information can be obtained publicly at the jurisdiction's Public Registry of Commerce.

Members of a “*Sociedad de responsabilidad limitada*” (SRL) are registered in the Public Registry of Commerce of each jurisdiction. Each change in the percentage of ownership has to be equally registered. Members of a “*Sociedad Anónima*” (SA) are registered in the Public Registry of Commerce of each jurisdiction at the initial inscription of the company. Each change in the stock ownership has to be registered by the company. This registry has to be available in headquarters for state control.

Ability to gain timely access to adequate, accurate, and current information on the beneficial ownership and control of legal persons under law 19 550 is further limited by the lack of a centralized registration system, as each of the 24 jurisdictions maintains its own registry. An attempt to unify and centralize all data on legal persons throughout the country began with Law 26 047 (National Register of Companies) of 7 July 2005. This law empowers the *Inspección General de Justicia* (IGJ) to organize and operate national registries of shareholding companies (the National Registry of Companies Divided by Shares), created by section 2 of Law 19 550 and incorporated into the operational structure of IGJ by Executive Order 1755/2008), non-shareholding companies, foreign companies, civil associations and foundations. These functions and faculties are regulated by IGJ Resolution 7/IGJ/05. IGJ, within the Ministry of Justice and Human Rights, manages the Public Registry of Commerce in the City of Buenos Aires and the other registers for the city. However, in order to implement the registries at a national level as envisioned in Law 26 047, each of the 23 provinces must pass a provincial law in order to be part of this system. So far ten provinces: Chaco, La Pampa, La Rioja, Mendoza, Jujuy, Rio Negro, Salta, Santa Cruz, Tierra del Fuego and Tucuman, plus the City of Buenos Aires (11 jurisdictions), have done so and are now participating in the centralized registries. The Provinces of Buenos Aires, Entre Ríos and Santa Fe, are planning to adhere soon. The National Registry is in a development stage.

Moreover, in March 2012, the AFIP set a new regulation (RG N° 3293) in order to obtain annual information about the holding of shares in legal persons in all the country.

Legal persons in Argentina are defined by its National Civil Code. Although the national law with requirements for all commercial companies applies throughout the country, registering and oversight of legal persons is set out by each of the 24 jurisdictions. A centralized registry is being developed<sup>1</sup>, in order to enable competent authorities to have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal persons.

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<sup>1</sup> Information given by Argentine authorities in June 2012.

Trust can be registered in Argentina and competent authorities do not have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of these legal arrangements<sup>2</sup>.

**4. How to find out if a natural or legal person has non banking financial interests (life insurance portfolio where applicable, securities) in the country?**

In the securities sector, the *Caja de Valores* is a compensation and liquidation entity. It is not subject to the AML legislation. *Caja de Valores S.A.* is a corporation, totally private, which acts as central depository of public bonds and private securities. It was established in 1974 by Act 20,643, and it is supervised by the *Comisión Nacional de Valores*. Those authorized to make deposits of securities with the *Caja de Valores S.A.* are stockbrokers, banking financial institutions, and mutual funds.

Some FIU resolutions also provide that financial institutions should maintain electronic databases. For example, pursuant to FIU Resolution 50/2008, insurance companies and intermediaries shall maintain a database containing information on the customers, on transactions equal or over ARS 30 000 – USD 6 600 (premiums, supplementary contributions, partial or total withdrawals, payment of claims, cancellation of policies). Upon request, this information shall be made available to the FIU within 48 hours.

The FIU has direct access to the following databases: Office of the Superintendent of Insurance of the Nation (SSN—<https://seguro.ssn.gov.ar/antilavado/>): life and/or retirement policies (restricted information).

**5. How to find out if a natural person or legal person owns luxury goods such as boats or planes registered in the country?**

**Planes**

The *Dirección de Aeronavegabilidad* (Airworthiness Direction) is maintaining a register of all registered planes in Argentina. The register is searchable by the name of the owner of the plane. It is publicly available.

<http://www.dna.org.ar>

**Boats**

<http://www.prefectura naval.gov.ar/institucional/castellano/mision4.php>

The *Prefectura Naval de Argentina* (National Coast Guard) maintains a national register of boats that are under the National Flag.

**Automobiles**

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<sup>2</sup> Source : FATF MER 2010. However, according to the authorities, competent authorities may have access to this information, depending on the requested jurisdiction as well as on the ability of the requesting authority to properly present the request. In the jurisdiction with most inscribed legal persons, 36 000 information requests were responded in 2010.

The Nacional Directorate of Nacional Registries of Automobile and Securities has a centralized database with information from the entire country.

<http://www.dnrpa.gov.ar/>

## AUSTRALIA

### **1. How to find out if a natural or legal person has bank accounts in the country?**

The Reserve Bank of Australia is Australia's central bank. It conducts monetary policy, works to maintain a strong financial system and issues the nation's currency. As well as being a policy-making body, the Reserve Bank provides selected banking and registry services to a range of Australian government agencies and to a number of overseas central banks and official institutions.

It also manages Australia's gold and foreign exchange reserves. However it does not keep record of each and every account opened in Australia. The information is kept by individual banks.

Discovering the existence of an account or a signatory to an account can be undertaken by a range of processes including written requests pursuant to the Privacy Act 1988, National Privacy Principles for the enforcement of laws relating to the confiscation of the proceeds of crime. There has to be shown a linkage of the suspected crime to the account holder. The FIU cannot issue a freezing order, it must be issued by a magistrate, since March, 2010 Federal Police and Custom officers can apply to the magistrate for freezing orders. Access to the account or freezing of bank accounts is done under s.19 Of the Proceeds of Crime Act, 2002 and is also undertaken by the Federal Police since 2010.

Other tools include compulsory notices that compel financial institutions, casinos and betting agencies to disclose customer accounts and transaction details. These notices require the authorization of a senior executive officer of an authorized agency such as the Australian Federal Police and do not need to be issued by a court.

It is not necessary to know the details of the account or financial institution where the account is held to send out a request seeking to locate an account or signatory authority. There are identical provisions in the Mutual Assistance in Criminal Matters Act 1987 for foreign requests seeking assistance in locating accounts in Australia.

### **2. How to find out if a natural or legal person owns real estate in the country?**

Registration of real estate in Australia is undertaken by State government agencies in data systems which are not linked across States.

Information on ownership can be accessed from the land registries in each state/territory. These are:

Australian Capital Territory – Office of Regulatory Services, Land Titles Public Register, website <http://www.ors.act.gov.au/>

New South Wales – Land and Property Information, website <http://www.lpi.nsw.gov.au/>

Northern Territory – Department of Justice, Land Titles Office (LTO), [http://www.nt.gov.au/justice/bdm/land\\_title\\_office/](http://www.nt.gov.au/justice/bdm/land_title_office/)

Queensland - Department of Environment and Heritage Protection <http://www.derm.qld.gov.au/>

South Australia – Department of Planning, Transport and Infrastructure, Property Assist  
<https://www.propertyassist.sa.gov.au/pa/>

Tasmania – Department of Primary Industries, Parks, Water and Environment, Land Titles Office, <http://www.dpiw.tas.gov.au/inter.nsf/ThemeNodes/JGAY-53CUVH?open>

Victoria - Department of Sustainability and Environment, Land Information Centre,  
<http://www.dse.vic.gov.au/property-titles-and-maps/property-information/land-information-centre>

Western Australia - Landgate

<http://www.landgate.wa.gov.au/corporate.nsf/web/Conveyancing+Channel>

There are however second tier companies who purchase access to this data and on-sell it creating their own centralized networks in which property ownership can be searched. These companies sell access to their data systems which are accessible by subscription or fee per search requests. Law enforcement agencies generally subscribe to one or more of these data retailers in the same manner as other users of the system such as real estate agents. Certified property extracts are generally obtained from the relevant State government land registry.

Data retailers include [www.rpdata.net.au](http://www.rpdata.net.au) and [www.abr.com.au](http://www.abr.com.au)

Any document required for legal process should be verified or sourced directly from the relevant State Land Titles office however the identification of the key reference numbers from discovery through the data retailers will greatly assist that process.

The information will not readily disclose the beneficial owner and if it is a company, then a search would have to be conducted on the company to ascertain the Directors and shareholders/beneficiaries. One can also do this search on the website [www.abr.com.au](http://www.abr.com.au) as corporations data is also sold to data retailers. The information is open source and can be accessed by any person interested.

### **3. How to find out if a natural or legal person owns a company / business registered in the country?**

Registration of business names is maintained by the Office of Fair Trading and Business Affairs (or similarly titled Government agency) in each State.

Some searches can also be done on the ASIC website in respect to registered Australian Business Names. The *Australian Securities and Investments Commission Act 2001* (ASIC Act) establishes 'ASIC' an independent Commonwealth Government body, and carries out most of its work under the *Corporations Act*:

- maintain, facilitate and improve the performance of the financial system and entities
- promote confident and informed participation by investors and consumers in the financial system
- administer the law effectively and with minimal procedural requirements
- enforce and give effect to the law
- receive, process and store, efficiently and quickly, information that is given to ASIC

- make information about companies and other bodies available to the public as soon as practicable.

ASIC administers the following legislation (or relevant parts of it), as well as relevant regulations made under it:

- *Corporations Act 2001*
- *Australian Securities and Investments Commission Act 2001*
- *Insurance Contracts Act 1984*
- *Superannuation (Resolution of Complaints) Act 1993*
- *Superannuation Industry (Supervision) Act 1993*
- *Retirement Savings Accounts Act 1997*
- *Life Insurance Act 1995*
- *National Consumer Credit Protection Act 2009*
- *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003.*

Other regulators also administer some parts of these Acts. For example, parts of the last four Acts dealing with prudential regulation are administered by the Australian Prudential Regulation Authority.

**4. How to find out if a natural or legal person has non banking financial interests (life insurance portfolio where applicable, securities) in the country?**

There is no central data system for the identification of securities in Australia. Information on Life insurance or securities would have to be traced from individual companies. This information can only be obtained from individual security or insurance companies or stock broker's registry. Normally one would get to know about ownership while undertaking investigations or gathering intelligence from bank statements which may show entries payable to these companies or through documents obtained from the suspects premises. This information is not available from open sources, so court orders are required for access by the beneficiaries and law enforcement agencies.

**5. How to find out if a natural person or legal person owns luxury goods such as boats or planes registered in the country?**

Motor vehicle and registered vessels are recorded with each State and require that for full current and historical extracts a request is sent to that State's registry. This may be called the Department of Transport or Maritime Agency or similarly titled Government agency. State law enforcement agencies can access their State's records for boats and vehicles through direct online access to the State's transport data base.

Federal law enforcement agencies can generally access these records through their direct access to State Police data systems or through their central records department which can search all States. It should be noted that most states can search on the registered owner and discover any vehicles or vessels they currently or previously owned or they can search on the registered number, chassis number or vehicle identification number to locate the registered owner. Vehicle ownership is linked to drivers licence records and drivers licence records as a primary form of identification require full identification to be obtained.

A record of planes in Australia is maintained by the Civil Aviation Authority established under the Civil Aviation Act, 1998. The data information on aircraft registration is centrally maintained in the Civil Aircraft Register and can be obtained online on <http://www.casa.gov.au/> by any interested person. The search can be by name, mode, engine number or date of manufacture. Regulation CASR Part 47 requires that to be a registration holder you must be a legal entity and be able to supply proof of this. However, you will only need to supply documentary proof of identity if notified to do so by CASA.

A legal entity is an individual, an incorporated body, a corporation with an ACN, or a government or government agency. An example of the proof required for an individual is a certified true copy of a current driver's license or one that expired in the last two years. An organization would need to supply their ACN or a certified true copy of a Certificate of Incorporation. To identify the beneficial owner where a company is the registered owner, a search of the company would have to be undertaken to find out the shareholders.

## BRAZIL

### 1. How to find out if a natural or legal person has bank accounts in the country?

The most efficient tool to find out if a person has bank accounts in Brazil is the Current Accounts National Database (CCS) maintained by BACEN which allows the tracking of all financial institutions in which customers of the financial system have relationships represented by assets, rights and values, such as deposits in savings or checking accounts, among other products. CCS holds information on banking relationships with institutions in the system, maintained by customers directly or through their legal representatives or attorneys. The CCS was created by article 10-A of the AML Law and is accessible by Prosecutors and Judges, upon on-line requests to BACEN<sup>3</sup>.

In March 1998, Brazil established the Brazilian financial intelligence unit (FIU), the Council for Financial Activities Control or *Conselho de Controle de Atividades Financeiras* (COAF). Although financial secrecy is inviolable, except by court order<sup>4</sup> in criminal or civil cases, financial institutions shall report suspicious transactions to the competent authorities<sup>5</sup>. *Banco Central do Brasil* (BACEN) and Comissão de Valores Mobiliários (CVM) are permitted to share confidential information with no need for judicial authorization, and such information may be forwarded to the Public Prosecutor's Office in such cases<sup>6</sup>.

Access to detailed banking information is facilitated by BACEN's SISBACEN system<sup>7</sup>. SISBACEN collects data on transactions on cash deposits, cash withdrawals and order of provision for withdrawals, and absence of cash deposits, cash withdrawals, and order of provision for withdrawals for a period of one calendar month<sup>8</sup>. In particular, SISBACEN centralizes the following information regarding deposit in cash, or request for withdrawal for an amount equal or higher than BRL 100,000.00.

The centralized information system of BACEN also allows the mutual legal assistance requests to be served anywhere in Brazil with only the name or identity number of a person. This means that it may not be necessary for the Central Authority to provide further information concerning the identity of the owner or location of the bank account before proceeding with the mutual legal assistance request.

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<sup>3</sup> Brazil MER, FATF June 2010, point 171

<sup>4</sup> Constitution art.5 (X) and (XII)

<sup>5</sup> Complementary Law 105/2001 art.1(3)

<sup>6</sup> Law 8249/1992

<sup>7</sup> For more information as to the information that must be entered into SISBACEN, *ibid.*, §549, p.134 and BACEN Circular 3461/2009 art.7-9

<sup>8</sup> COAF Circular No. 3098, OF 11 JUNE, 2003

## **2. How to find out if a natural or legal person owns real estate in the country?**

The authorities have access to a number of public registries and government databases that contain information which is useful for the purpose of tracing the ownership of real estate. The Council for Financial Activities Control (COAF) has developed its own database, SISCOAF, which provides with a direct connection to several authorities' databases. This includes access to the Declaration of Real Estate Operations<sup>9</sup>. COAF has also access to a few non-government held databases.

## **3. How to find out if a natural or legal person owns a company / business registered in the country?**

The authorities have access to a number of public registries and government databases that contain information which is useful for the purpose of tracing the ownership of companies<sup>10</sup>. All legal entities doing business in Brazil are required to register with the federal tax authority (the RFB). Upon registration, the RFB issues, at the national level, a unique tax identification number - the Number Identifier of Business Register (NIRE) – which is stored in the National Register of Legal Persons (*Cadastro Nacional da Pessoa Jurídica*) (CNPJ).

All commercial companies are required to register at the Trade Board located in the state where they are doing business. The Trade Boards (located in each of Brazil's 27 states) are administratively subordinate to the National Department of Corporate Registration (DNRC). Each Trade Board collects and maintains information relating to the legal ownership and control of companies. However, the Trade Boards do not collect and maintain information on the beneficial ownership and control of companies.

The information held by the Trade Boards is publicly available for a small fee, and freely available to the competent authorities through the National Database of Enterprises (*Cadastro Nacional de Empresas*) (CNE) which was launched in December 2008. The CNE is a web-based database containing information on all legal persons registered in Brazil and their representatives, thereby centralizing access to information on the legal ownership and control of legal persons. Competent authorities can access this database without prior judicial authorization. However, as the CNE is recent, the DNRC continues to receive a lot of paper requests for company registration information.

Domestic and foreign companies are required to maintain a record of their shareholders at their registered office in Brazil. The shareholder register must be updated whenever there is a change in ownership, address, number of shares, capital and shareholders. These events must be registered with the Registrar of Companies. Any changes must also be communicated to the RFB by the time of the delivery of the annual Income Tax Declaration, which contains all information

<sup>9</sup> For more information, see FATF Federative Republic of Brazil's Mutual Evaluation, 25 June 2010, §237, p. 63

<sup>10</sup> Law 8934/1994 Commercial Boards

in the CNPJ register, including the legal entity's corporate structure. The information held by the Secretariat of Federal Taxes and Revenue (RFB) in the customer's tax registration number (CNPJ/CPF) database is available to several entities. Access is direct (through a search system, under identification and password, to access individual files) or indirect (usually to obtain information concerning several CNPJ numbers at the same time). For the FIU, access to the CNPJ/CPF database is immediate and has been integrated into COAF's database<sup>11</sup> to ensure that beneficial ownership information is available to the competent authorities.

Foreign legal persons who wish to invest in a publicly-traded Brazilian company must obtain a CNPJ number, even if they have no physical presence in Brazil, and must also appoint, as their representative, a natural person in Brazil who has a CPF number. However, the same requirements do not apply to legal persons who are the owners of the investing foreign legal person. The beneficial owner may be identified, provided that all parties in the chain of ownership have CNPJ and CPF numbers. In practice, this means that the beneficial owner may always be identified in the following circumstances: the legal person is owned by other legal persons which have been issued CNPJ numbers; the legal person is owned by natural persons who were issued CPF numbers.

<b>4. How to find out if a natural or legal person has non banking financial interests (life insurance portfolio where applicable, securities) in the country?</b>
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Accountable financial institutions report all cash transactions above a fixed threshold to the COAF with a computerized database<sup>12</sup>. The applicable threshold varies, depending on the type of FI. For instance, commercial banks, the *Caixa Econômica Federal*, banks with commercial or real estate portfolios, real estate credit companies, savings and loans companies, and credit co-operatives are required to report in the SISBACEN system the following types of transactions where the amount involved is equal to or exceeding BRL 100 000 (EUR 39 000/USD 58 000)<sup>13</sup>.

In the securities sector, the *Comissão de Valores Mobiliários (CVM)* must keep details of the type of orders, time of delivery, issuing form, term of validity, procedures of refusal, registration, compliance, distribution and cancellation. In the insurance sector, insurance companies (SUSEP) are required to keep records with respect to customers, beneficiaries, third parties and other related parties, and business transactions<sup>14</sup>. As to the closed pension fund sector, the Secretariat of Complementary Social Security (SPC) [now PREVIC] is required to maintain records of identification documents of all natural persons or legal entities with which they have any business relationship<sup>15</sup>.

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<sup>11</sup> FATF Republic of Brazil's Mutual Evaluation, 25 June 2010, §933, p. 210

<sup>12</sup> AML Law, art.11(II)

<sup>13</sup> BACEN Circular 3461/2009 art.9 and 12(II)

<sup>14</sup> SUSEP Circular 277/2004; SUSEP Circular 380/2008 art.12

<sup>15</sup> SPC Instruction 26/2008 art.5

**5. How to find out if a natural person or legal person owns luxury goods such as boats or planes registered in the country?**

The authorities have access to a number of public registries and government databases that contain information which is useful for the purpose of tracing the ownership of aircraft<sup>16</sup> and maritime vessels<sup>17</sup>. Particularly, authorities have access to the Register of Aircrafts and the National Register of Vessels via batch request.

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<sup>16</sup> Law 7565/1986 Brazilian Aeronautics Code

<sup>17</sup> Law 7652/1988 Maritime Property Registry

## CANADA

### 1. How to find out if a natural or legal person has bank accounts in the country?

Under the Canadian Charter of Rights and Freedoms<sup>18</sup>, law enforcement's ability to seize information requires prior judicial authorization. However, an organization may be authorized to disclose personal information to government institutions without judicial authorization<sup>19</sup>. The Criminal Code<sup>20</sup> provides authority for law enforcement to obtain essential information confirming the existence of an account relationship from any financial institution<sup>21</sup>.

The Canadian FIU FINTRAC<sup>22</sup> has authority to collect information from two major national police databases. The first database is a computerized system that links criminal justice and law enforcement partners across Canada and internationally. This system has four data banks, Investigative, Identification, Intelligence and Ancillary, which includes files and information such as: vehicles, persons and property. The second database is the Royal Canadian Mounted Police's automated information management system used to store, update and retrieve information on operational case records. This database captures data on individuals who have been involved in investigations under the Criminal Code, federal and provincial statutes, municipal by-laws and territorial ordinances<sup>23</sup>.

Law enforcement could inform FINTRAC of a particular sum of money believed to be proceeds of crime which has been transferred to a bank account in another country through the submission of a Voluntary Information Report (VIR). Civil Law in Canada also allows for private investigation and search of public domain databases where relevant information may be located.

Canada does not have a central register of bank accounts. If an authority wants to find out if a natural or legal person holds a bank account in the country, there is no immediate tool. A court order sent to all financial institutions (fishing expedition) seems to be the only way to find out.

Current legislation on customer identification measures in Canada does not impose a requirement for financial institutions to conduct Customer Due Diligence (CDD) and to understand the ownership and control structure of the customer nor oblige to determine the natural persons that ultimately own or control the customer<sup>24</sup>.

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<sup>18</sup> Section 8

<sup>19</sup> Personal Information Protection and Electronic Document Act (PIPEDA), Section 7(3)(c.1)

<sup>20</sup> Section 487.013

<sup>21</sup> As defined in section 2 of the Bank Act

<sup>22</sup> Under the PCMLTFA

<sup>23</sup> For further information on access to law enforcement databases, see *Ibid.*, p.79

<sup>24</sup> Canada's Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism, 29 February 2008, §27, p. 10.

## **2. How to find out if a natural or legal person owns real estate in the country?**

The PCMLTFA applies to real estate broker or sales representative when they act as agent regarding the purchase or sale of real estate. In addition, it applies to real estate developers. Under this regime, and in order to enable tracing of real estate, they must report suspicious transactions, terrorist property, large cash transactions involving amounts of CAN 10,000 or more received in cash.

Real Estate ownership in Canada is registered with the respective Provincial or Territorial Property /Land Title Registry Office in which the Real Estate property is located. These Registries are considered Public Records and no court authorizations are required to conduct the searches. A small fee is usually required to complete the search.

## **3. How to find out if a natural or legal person owns a company / business registered in the country?**

The principle federal law is the Canada Business Corporations Act (CBCA). When a corporation is created, the record that is used to confirm a corporation's existence includes the corporation's registration number<sup>25</sup>. Information on registered corporations is stored in several databases including the Registries of companies, and Business Profiles.

The Criminal Code<sup>26</sup> provides a specific process to properly obtain the production of income tax information in a criminal investigation. Such production is not available to trace assets pre-indictment in cases that do not involve organized crime, drug or terrorism charges. The importance of a Criminal Code production order for tax information in any investigation<sup>27</sup> is that the tax authorities are otherwise immune from criminal search warrants<sup>28</sup>.

There is no requirement to list identifying information relating to shareholders when filing incorporation documentation. No information on the beneficial owners of the company being established is collected<sup>29</sup>. However, law enforcement authorities (including Police, CRA, FINTRAC and securities regulatory authorities) have a variety of powers that enable them to secure information about the control and ownership of legal persons in Canada both from publicly available sources and through a variety of coercive measures. Regulatory and supervisory authorities also maintain records on persons who are the beneficial owners of their regulated institutions. For example, information is obtained by the Director of Corporations

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<sup>25</sup> Under section 65(2) of the PCMLTF Regulations

<sup>26</sup> Section 462.48

<sup>27</sup> For the offences set out in subparagraph 462.48(1.1)

<sup>28</sup> Pursuant to section 241 of the Income Tax Act

<sup>29</sup> However, PCMLTF Regulations<sup>29</sup> provides that financial institutions should to take reasonable measures to obtain information on the beneficial owners of corporations, including keeping a record of the name, address and occupation of any person who owns or controls 25 per cent or more of the shares of the corporation.

Canada and securities regulators obtain information on persons that hold 10% or more of the shares in listed companies<sup>30</sup>.

**4. How to find out if a natural or legal person has non banking financial interests (life insurance portfolio where applicable, securities) in the country?**

Life insurance companies, agents or brokers who receive CAD 10 000 or more for an annuity or life insurance policy over the duration of the product, must keep a client identification record<sup>31</sup>. When the transaction is conducted on behalf of an entity, the insurance company, broker and agent must also confirm the existence of every entity.

There are a number of registries of securities (Legal Registries) which are provincially regulated. Law enforcement can access the information access as long as it is located in a database considered to be a public domain or dealing with a publicly traded company<sup>32</sup>.

Under the Constitution of Canada, property is a matter of provincial legislative jurisdiction. Except for the province of Quebec, all provinces are common law jurisdictions. Under this regime, the trust property can be any form of property whether real or personal, tangible or intangible.

When opening an initial account for a trust, an Investment Dealers Association of *Canada* (IDA) Member must ascertain the identity of the settlor of the trust and of any known beneficiaries of more than 10% of the trust<sup>33</sup>. This does not apply to a testamentary trust or a trust whose units are publicly traded<sup>34</sup>. Trust companies must also confirm the existence of any entity that is the settlor of an institutional trust.

The only public and accessible Trusts Registry in Canada is the Superintendent of Bankruptcy. These Registries are in each Provinces and Territories (Civil Court Registry).

**5. How to find out if a natural person or legal person owns luxury goods such as boats or planes registered in the country?**

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<sup>30</sup> Canada's Third Mutual Evaluation on Anti-Money Laundering and combating the financing of terrorism, 29 February 2008, §1385, p. 248

<sup>31</sup> Section 56 of the PCMLTF Regulations and FINTRAC Guideline 6A "Record Keeping and Client Identification for Financial Entities"

<sup>32</sup> Project outcomes and recommendations, Action: JLS/2009/ISEC/AG/017 30-CE-0281275/00-38 "Camden Assets Recovery Inter-Agency Network Conference in 2010", p. 69

<sup>33</sup> Ibid., §681, p. 129

<sup>34</sup> In its Notice of June 7, 2004, IDA provides further guidance to securities dealers on beneficial ownership identification, see Ibid., §681 and §682, p.130

Vessels are registered in accordance with the relevant provisions<sup>35</sup>: registration is required if it is not a pleasure craft; it is wholly owned by qualified persons; and is not registered in a foreign state. Registration has to be approved by the Chief Registrar, through the Registrar of Vessels at any Port of Registry. As to aircraft registration, the Canadian Civil Aircraft Register centralizes information about the registration process and owners identification. Law enforcement agencies have access to several databases. This includes the Canadian Civil Aircraft Register Computer System (CCARCS), which is an automated system for registering aircraft and maintaining the Canadian Civil Aviation Aircraft Register, and the NAPA Issued Certificates Online (NICO), which is a query application that allows the general public to view NAPA certificates and approval information on-line via the internet<sup>36</sup>.

Searches for an aircraft can be conducted via a National database. Registration information is easier to obtain when utilizing an Aircraft Registration Number than a natural or legal person's name. Although Water Crafts are federally registered, the search of the registry has to be conducted at the Provincial or Territorial level in which the craft was registered.

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<sup>35</sup> Section 46 of the Canada Shipping Act, 2001

<sup>36</sup> Information available at <http://www.wapps2.tc.gc.ca/Saf-Sec-Sur/2/ccarcs/aspscripts/en/menu.asp>

## CHINA

### 1. How to find out if a natural or legal person has bank accounts in the country?

Under secrecy provisions<sup>37</sup>, commercial banks have the right to refuse to answer the inquiries into, or to freeze, deduct or transfer deposits. Pursuant to the Anti-Money Laundering Law<sup>38</sup>, all customer identification material and transactions information shall be confidential, unless otherwise specified by law. In addition, a financial institution must create and maintain a depositor's database to record information of holders of bank settlement accounts, including in the case of a an individual or corporate customer<sup>39</sup>.

China's FIU is located in the People's bank of China (PBC). The PBC can obtain information pertaining to suspicious transactions<sup>40</sup> and is authorized to perform an administrative investigation on relevant accounts<sup>41</sup>. Financial institutions are required to cooperate with the investigation and provide relevant documents and material.

All of law enforcement agencies, including the courts, public prosecutors, state security and the customs that are entitled to seize or freeze have powers to identify and trace criminal proceeds and instrumentalities<sup>42</sup>. Other administrative authorities, such as the People's Bank of China (PBC) and the tax authorities also have similar powers. The competent authorities' ability to obtain information is based on several laws<sup>43</sup> and may be implemented by judicial authorities, investigation agencies, administrative agencies and regulatory institutions<sup>44</sup>. The domestic procedures for identifying and tracing property<sup>45</sup> also apply in the context of mutual legal assistance requests to that effect. Law enforcement and state security organs<sup>46</sup>, are empowered to seize and obtain transaction records, identification data obtained through the customer due

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<sup>37</sup> Articles 29 and 30 of the Law on Commercial Banks

<sup>38</sup> Article 5 of the 2007 of the Anti-Money Laundering Law of the People's Republic of China, 2007

<sup>39</sup> People's Republic of China's First Mutual Evaluation Report on AML/CFT, 29 June 2007, §375, p. 84. See also Article 10 RMB-LVT/STR Rules

<sup>40</sup> Article 11 of the AML Law

<sup>41</sup> Articles 23-24 AML Law

<sup>42</sup> Articles 114, 117, 158 and 119 of the Criminal Procedure Code

<sup>43</sup> The Civil Procedure Law, Law on Administrative Penalties, Criminal Procedure Law, Law of the PBC (article 35), Law on Banking Supervision and Administration (articles 33-36), Securities Law, Insurance Law and the AML Rules (articles 6, 13, 14, 17 and 18)

<sup>44</sup> People's Republic of China's First Mutual Evaluation Report on AML/CFT, 29 June 2007, §370, p. 83

<sup>45</sup> Under Articles 109 to 118 of the CPC

<sup>46</sup> Pursuant to Article 26 AML Law; article 32 of the Law on the PBC; Article 6 of the Customs Law; Articles 37-40 and 54-58 of the Law on the Administration of Tax Collection; and Chapter 4 of the Law on Administrative Supervision

diligence process, account files and business correspondence, and other records, documents or information held or maintained by financial institutions and other businesses or persons<sup>47</sup>.

Competent authorities and institutions may share the information obtained. The PBC, the China Banking Regulatory Commission (CBRC), the China Securities Regulatory Commission (CSRC) and the China Insurance Regulatory Commission (CIRC) are required<sup>48</sup> to establish an information-sharing mechanism<sup>49</sup>. Financial institutions are required to cooperate with an investigation being undertaken by a competent authority, and to provide relevant documents and specific provisions describe the process by which documents and records may be accessed<sup>50</sup>.

To summarize, if a competent Chinese authority wants to find out if a natural or legal person holds a bank account in the country, there is no immediate tool. A court order sent to all financial institutions (fishing expedition) seems to be the only way to find out.

## **2. How to find out if a natural or legal person owns real estate in the country?**

Private ownership of land is unknown in China. The real estate industry focuses its business on the buying and selling of rights to use land. The land in urban districts is owned by the state. Land in the rural areas is collectively owned by the people. Land owned by the state or collectively owned by the people may be allocated for use by units or individuals according to the Land Administration Law<sup>51</sup>. There are two ways to acquire rights to use land: for public interest purposes or the government may sign a contract with a natural or legal person allowing particular uses of land in return for a fee.

Real estate development enterprises must be registered with the State Administration of Industry and Commerce (SAIC). When applying to register an urban real estate transfer, the agent must submit the applicant's identity card (in the case of a natural person) or certificates (in the case of a legal person)<sup>52</sup>. Real estate development enterprises are required to keep transaction records on the sale of commercial houses or the service provided for the real estate transactions.

## **3. How to find out if a natural or legal person owns a company / business registered in the country?**

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<sup>47</sup> Article 34 of the Law on Banking Supervision and Administration; Article 180 of the Securities Law; Article 109 of the Insurance Law; and Article 2 of the Regulations on the Management of Foreign Exchanges

<sup>48</sup> Article 6 of the Law on Banking Supervision and Administration

<sup>49</sup> People's Republic of China's First Mutual Evaluation Report on AML/CFT, 29 June 2007, §372, p. 84

<sup>50</sup> Under articles 23-25 of the AML Law and Article 21 of the AML Rules

<sup>51</sup> People's Republic of China's First Mutual Evaluation Report on AML/CFT, 29 June 2007, §39, p. 16

<sup>52</sup> Article 13 of the Measures on the Administration of the Registration of Urban House Title and the Provisions on the Administration of Urban Real Estate Transfer

All legal persons are required to apply to the State Administration of Industry and Commerce (SAIC) for registration. Additionally, to obtain authorization to conduct business, a legal person must obtain a business license before the incorporation process is complete. The SAIC is responsible for registering legal persons authorized to do business (LPABs) and maintaining the corresponding registry system (one registry for every province). All registries keep records of every LPAB within their jurisdiction<sup>53</sup>.

The public security and prosecutorial organs have the ability to access the Company Registry which is maintained by the SAIC or to obtain information from the legal person itself, using their general powers to collect evidence from relevant entities and individuals<sup>54</sup>. Access to files by any public security agency is subject to the approval of the person in charge of that agency at or above the county level.

Likewise, the tax authorities can get the registry information of LPABs<sup>55</sup>. Additionally, the SAIC has the right to obtain registry information concerning persons who are applying to incorporate a foreign invested enterprise, so as to obtain a preliminary understanding of the ownership and control information of legal persons. Members of the general public may also obtain registry information<sup>56</sup>.

A shareholder may be a domestic or foreign natural person, a legal person, a legal arrangement, or a beneficial owner. Every foreign natural, or legal person or arrangement who holds shares of a LPAB must be approved by the competent authority<sup>57</sup>. Chinese authorities can collect foreign investors' names, the countries of registration, the legal address, business licenses, registration documents and capital credibility reports. If a foreign investor is a foreign natural person, the authorities can also request identification information. However, none of this data is directed towards determining beneficial ownership and there is no requirement for legal persons to keep a record of beneficial ownership information<sup>58</sup>.

<p><b>4. How to find out if a natural or legal person has non banking financial interests (life insurance portfolio where applicable, securities) in the country?</b></p>
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<sup>53</sup> For further information regarding the registration system, see People's Republic of China's First Mutual Evaluation Report on AML/CFT, 29 June 2007, §572, p. 127

<sup>54</sup> Pursuant to the Criminal Procedure Law and Provisions on Procedures of the Public Security Organs in Handling Criminal Cases

<sup>55</sup> Under the Law on the Administration of Tax Collection

<sup>56</sup> People's Republic of China's First Mutual Evaluation Report on AML/CFT, 29 June 2007, §576, p. 128

<sup>57</sup> Regulations on the Administration of Company Registration; Measures on the Administration of Foreign Enterprises' Permanent Representatives Offices Registration; and the Measures on the Administration of Foreign Enterprises' Operation in Chinese Territory Registration

<sup>58</sup> People's Republic of China's First Mutual Evaluation Report on AML/CFT, 29 June 2007, §574, p. 128

The administrative rules and regulations of the China Securities Regulatory Commission (CSRC) require securities to be recorded in the securities account of the securities holder and in the securities account of a nominal holder. In such cases, the securities registration and settlement institution may require the nominal holder to provide information concerning the person who has the rights to and interest in the securities<sup>59</sup>. However, this provision is not to be seen as a compulsory requirement for the securities institutions to identify the beneficial owner and to verify its identity.

The concept of the trust is new in Chinese law and very few such arrangements have been established. In practice, where trust investment corporations were to act as trustees, they would be bound by the same regulations as the banking system with respect to customer identification, record-keeping and other preventive measures but would not be required to establish the beneficial ownership of legal persons that are beneficiaries of trusts<sup>60</sup>. It is not clear if there is a registry of trusts in China that is easily accessible to the authorities.

**5. How to find out if a natural person or legal person owns luxury goods such as boats or planes registered in the country?**

The General Administration of Civil Aviation of China (CAA) is in charge of aircraft registration.

According to the Regulations on ship registration, a vessel's port of registry should be chosen by a ship owner depending on the proximity of the port of registry to its place of registration or principal place of business. The MSA (China Maritime Safety Administration) at the vessel's port of registry will handle registration.

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<sup>59</sup> Article 18 of the Measures for the Administration of Securities Registration and Clearing (SRC Measures)

<sup>60</sup> People's Republic of China's First Mutual Evaluation Report on AML/CFT, 29 June 2007, §587, p. 130

## FRANCE

### 1. How to find out if a natural or legal person has bank accounts in the country?

FICOBA is a centralized bank accounts register, set up in 1982. This register is managed by the Directorate General for Public Finance. It lists all accounts opened in France by natural and legal persons, including foreign ones. All types of account are included (bank accounts, postal accounts, savings accounts, stock portfolios, etc.).

The database is accessible to competent authorities such as tax administration, customs administration, judicial authorities and law enforcement agencies acting under their authority, and the French FIU TRACFIN.

Account opening, closure or modification declarations contain the following information: (a) name and address of the institution managing the account; (b) account number, nature, type and characteristics – date and nature of the declared operation (opening, closure, modification); (c) surname, first name, date and place of birth, and address of the account holder, plus the SIRET number of self-employed people. The name, legal form, SIRET number and address are given for legal persons.

FICOBA data are kept for three full years following the recorded account closure, for accounts held by a natural person, and for ten full years following the recorded account closure for accounts held by a legal person<sup>61</sup>.

The French FIU TRACFIN can access this central database directly and immediately without court order.

The database does not include the list of safe-deposit boxes a person holds or any non-banking financial products such as life insurance policies either. Nor does it include a history of the operations recorded for an account. To obtain such a history, the judge or investigator must apply direct to the banking or postal institution. FICOBA contains information from tax declarations that have to be provided by organizations which manage accounts (banking and financial institutions, postal cheque centres, stock brokers, etc.).

<http://www.cnif.fr/en-savoir-plus/fichiers-en-fiche/fichier/article/ficoba-fichier-national-des-comptes-bancaires-et-assimiles/>

### 2. How to find out if a natural or legal person owns real estate in the country?

<sup>61</sup> FATF Mutual Evaluation Report - France, FATF/ME(2011)1, point 364, page 106

National Asset Database (BNDP): this file contains key information about assets held by persons known to the tax administration through their various tax declarations. It consists mainly of extracts of deeds of transfer of ownership in exchange for payment (sales of buildings and land), or free of charge (gifts and inheritances), and the identities and addresses of the persons and properties concerned. TRACFIN has access to it upon request (no need of a court order)

The database allows authorized officials of the Directorate General for Public Finance to access, via a secure intranet, information contained in heritage documents filed by taxpayers or their representatives in income taxes or conservation mortgage (*Conservation des Hypotheques*). It also ensures the supply of automated updates of cadastral information (MAJIC 2).

The categories of information processed are: name and address of the editor of the document, its nature and date, zone "comment" which only receives tax information in relation to the objective purpose of treatment, the identity of parties: names, additional names, dates and places of birth, SPI tax for individuals, corporate name, legal nature, SIREN number for legal persons, addresses of the parties; if it is a building: registry references, description of the property (address, area, rental value, number and type of parts for buildings built) if it is a piece of furniture: description and value of the property, Identity of the lessor for transactions involving a business, identity of the corporation whose social rights are subject to a transaction, the transaction itself: legal provision of the property, details of the transaction according to its nature.<sup>62</sup>

TRACFIN has also access to this database.

- The wealth tax register (fichier de l'impôt de solidarité sur la fortune) can be used to find out the movable and immovable assets of natural persons where these are worth more than EUR 760 000.
- Useful information such as the known addresses of a person may be obtained from the "Simplified tax procedures" (Simplification des procédures d'imposition - SPI) file.
- Other files consulted: the land registry file of developed land (buildings) and undeveloped land. This can be used to find out the identity of owners of premises or land, and where they live if they do not live at the property. The furnished accommodation tax file can be used to find out the identity of the occupiers of particular premises (the tenant or non-rent-paying occupier) and whether the property is a first or second home.

Beside TRACFIN's access for performing its core functions, all these databases are accessible by law enforcement agencies acting under the supervision of the prosecutor or the investigative magistrate.

<b>3. How to find out if a natural or legal person owns a company / business registered in the country?</b>
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<sup>62</sup> <http://droit.org/jo/20050505/BUDL0500053A.html>

All of the legal information appearing in the “Registre du Commerce et des Societes” (RCS) is accessible via the website <http://www.Infogreffe.fr>. That website makes it possible to consult all of the registers of commercial businesses and to obtain copies of and extracts from entries therein, and any documents and acts that are filed therewith. The website is managed by a GIE bringing together all of the registrars of the commercial courts. Consultation and issue of copies, of extracts, or of certificates are pay services except when judicial authorities use them, the rates of the services being set by decree (Annex 7-5 to Article R. 743-139 of the Commercial Code)<sup>63</sup>.

Among the information appearing in the RCS is information on the management bodies of the company and on its partners. Although the information on the beneficial owners does not appear therein as such, various details useful for identifying them are available as regards certain types of legal persons:

- as regards SAs, when the shareholders are legal persons, the list of subscribers indicating the number of shares subscribed to and paid up by each of them is available; and
- if either of the duties of management or of direction, or if the power to commit the company on a usual basis is exercised by legal persons governed by French law and registered in the register (except for foundations), their “SIREN” national business number and the indication “RCS” followed by the name of the city of location of the registry in which they are registered are recorded in the registry. Thus, traceability of the information is possible in a “chain of companies” scenario, at least for companies registered in France.

This information is publicly available.

#### **4. How to find out if a natural or legal person has non banking financial interests (life insurance portfolio where applicable, securities) in the country?**

Securities portfolios are disclosed in the FICOPA database. The AMF (Autorite des Marches Financiers) maintains information on beneficial owners and shareholders of listed companies.

Regarding life insurance contracts, no centralized tool to identify a life insurance contract by the name of its holder exists. However, as many banking institutions in France also provide life insurance contracts as financial products (*bancassurance*), once a bank account is identified in one financial entity, the entity is able to identify if it holds a life insurance contracts on the client’s name.

There is also a national registry of trusts<sup>64</sup>, established by Decree of 2 March 2010 and managed by the tax authorities, which centralizes information relating to the trust agreement. It identifies, for each trust agreement, information regarding the identification of the constituents, trustees and beneficiaries, the date and registration number of the contract and its amendments with the tax and, where appropriate, information formalities relating to land registration.

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<sup>63</sup> FATF Mutual Evaluation Report - France, FATF/ME(2011)1, point 1991, page 472

<sup>64</sup> In French : fiducies

**5. How to find out if a natural person or legal person owns luxury goods such as boats or planes registered in the country?**

The Direction Generale de l'Aviation Civile maintains a register for all the airplanes registered in France. The register is searchable by name of the owner. The French Customs are responsible for maintaining a register that ensures the publicity of the ownership of registered boats in France. The record of vehicle registrations (Ministry of Interior) enables competent authorities to detect the possession of luxury cars by a person or entity.

The Registre International Francais is a EU registry, which guarantees to the vessels registered in it access to national European Union members states waters cabotage provided they are not solely exploited on national cabotage. Such a registry allows search by names of the owner of the vessels.

Moreover, the personal data related to the solidarity tax on wealth (this tax applies where the assets value exceed EUR 1,300,000) allow the identification of real estate possessions and luxury goods, like artworks for instance, for persons who are taxable in France under this regime.

## GERMANY

### 1. How to find out if a natural or legal person has bank accounts in the country?

Germany has set up an automated account access system controlled by the BaFin. The system is designed to allow the authorities to determine whether a particular person (natural or legal) has a bank account or a safe custody account (collectively, “accounts”) with a German credit institution or a foreign credit institution with a branch in Germany. Banks and investment companies are required to record core data on each account (not transaction data, such as account balance, account volumes, etc.), and must ensure that the BaFin has automated access to these core data at all times.

Core data is defined in Section 24c (1) of the Banking Act to mean:

- The account number;
- The dates on which the account was opened and closed;
- The names and dates of birth of account holders and persons authorized to dispose of an account;
- The name of a legal person that is an account holder or authorized to dispose of an account; and
- *The name and, if possible, the address of any other beneficial owner* as defined in Section 1 (6) of the AML Act.

The data has to be updated on a daily basis.

The automated account access system enables the BaFin to speedily identify accounts which might be subject to freezing or other requirements under Section 6a of the Banking Act, to provide support for international pre-notification and notification of terrorist lists (nationally coordinated by the Federal Ministry of Economics and Technology) and the determination of accounts held by those under investigation for ML or TF offenses and to detect accounts that could be used for unauthorized money remittance activity. Under Section 24c of the Banking Act, the BaFin is responsible for managing the system and ensuring that all financial institutions create and record the necessary master files containing prescribed information.

System access is limited to the BaFin, other financial market supervisory authorities, authorities responsible for mutual legal assistance, the authority responsible for enforcing the Foreign Trade and Payments Act, the FIU and – in cases of criminal proceedings – several law enforcement agencies (*e.g.* police, public prosecutors, tax investigation units, customs authorities, and courts).

### 2. How to find out if a natural or legal person owns real estate in the country?

The constitution of the Federal Republic of Germany accords responsibility for legislation around the land register to the Federal Republic whereas the states make the laws concerning the property cadastre. Interstate bodies (working group of state survey agencies) ensure uniformity of the property cadastre. The cadastre fulfills all legal demands and demands of administration and the private sector. It is a basic Land Information System (LIS) of great variety and *flexibility* in planning, environmental protection etc. Maps and cadastral records in most parts of Germany are stored in computer systems. Although cadastre in Germany is in the responsibility of the 16 states the computerized systems are unique with some small exceptions. These systems are the automated cadastral map (ALK) and the automated property register (ALB). They are easily accessible by the German authorities.

### **3. How to find out if a natural or legal person owns a company / business registered in the country?**

The commercial register (*Handelsregister*) is a public register, which holds the essential details on the legal status of registered companies and merchants, *i.e.* the type of legal entity, the subject of its business activity, its registered offices and, if applicable, the registered capital. The exact content of specific entry in the commercial register depends largely on the type of legal entity to be entered. In all cases, however, the register displays the power of representation of the respective managing partners or directors<sup>65</sup>.

All limited liability companies and stock companies must be entered in the commercial register regardless of the size and nature of their business undertaking, since registration is the condition for their existence from a legal point of view. The shareholders of a limited liability company are not entered into the commercial register itself, but into a list of shareholders that has to be filed with the commercial register and can be inspected by anyone electronically.

The shareholders of a stock corporation are not entered into the commercial register itself either, only the founders are; but in case the stock corporation issues registered shares, the shareholders may want to be entered into the company's share register to be able to have their claims towards the corporation.

Information on non-commercial legal entities is available at various publicly-accessible registers, which have for historical reasons different names but are all accessible also under the cited webpage. All registered foundations are under supervision by the Länder (the 16 States). Information about their structures and assets are can be inquired at these supervisory agencies (Stiftungsaufsicht). The information in the registers does not necessarily include information on

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<sup>65</sup> [www.handelsregister.de](http://www.handelsregister.de)

the beneficial ownership of the legal persons due to the nature of the legal institute of beneficial ownership<sup>66</sup>.

**4. How to find out if a natural or legal person has non banking financial interests (life insurance portfolio where applicable, securities) in the country?**

Germany does not have a database of securities<sup>67</sup>. However, deducing ownership of all securities to be held and owned in Germany can be done on the level of credit institutions. Each institute would be able to find out their clients' securities accounts. The central depository in Frankfurt, moreover, would be in the same way able to know those individuals or institutions which hold securities directly with the central depository. Nevertheless there is a legal restraint due to basic principles under the rule of law. It is legally prohibited for the central depository or the credit institution to hand out information of their clients without any reason and without any legal basis to just an outsider coming along. But if someone has achieved a legal title based on a civil law claim or a criminal procedure it is certainly possible to collect information about someone's assets in a securities account.

**5. How to find out if a natural person or legal person owns luxury goods such as boats or planes registered in the country?**

The German Luftfahrt-Bundesamt, the civil aviation authority, is responsible for maintaining the aircraft register, which is searchable by name of owner and must register any owners' change.  
[http://www.lba.de/cln\\_008/DE/Home/homepage\\_node.html](http://www.lba.de/cln_008/DE/Home/homepage_node.html)

<http://www.dsv.org/> : To register a boat in Germany, one must apply to the German Sailing Association (*Deutscher Segler Verband*, **DSV**) using the standard application form. The international boat registration document (*Internationaler Bootsschein*, **IBS**) is valid for two years as long as no boat measurements are changed within this time period. Boats must be re-registered after this time. The following documents are required when registering a boat in Germany: completed IBS application form, proof of vessel ownership (contract, invoice), confirmation from a sailing club concerning any changes in boat measurements, copy of passport, copy of German proof of residency.

Upon request, law enforcement authorities will obtain information on data or documents stored with the aforementioned institutions.

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<sup>66</sup> Comments from the German authorities : unlike in other countries beneficial ownership in Germany is not used by typical legal transactions, since it tends to be more fragile than a legal ownership position

<sup>67</sup> reply to CARIN survey JLS/2009/ISEC/AG/017 30-CE-0281275/00-38



## INDIA

### **1. How to find out if a natural or legal person has bank accounts in the country?**

Law enforcement agencies, whether at the Federal level or state level, are equipped with statutory powers to access information from the banking companies in respect of the person under investigation. The Financial Intelligence Unit –India (FIU-IND) also has powers under PMLA to obtain information from reporting entities.

FIU-IND also maintains a centralized database of Cash Transaction Reports (CTRs) and Suspicious transaction Reports (STRs) which can be used to find out if a natural or legal person has bank accounts in the country in which large cash transactions or suspicious transactions have taken place. This information can be searched on name, address, Date of Birth/Incorporation, ID etc.

### **2. How to find out if a natural or legal person owns real estate in the country?**

Real Estate related records are maintained in the local revenue administrative units in respect of Rural Properties and at sub-registrar's office in respect of urban properties. Each state maintains its own registry where records of ownership can be provided to any interested party.

Law Enforcement Agencies can find out if a natural or legal person owns real estate in India by making a reference to the relevant registrar.

The Income Tax Department also receives details of transactions of purchase or sale by any person of immovable property valued at three million rupees or more under the Annual Information Return (AIR) Scheme which can also be used to find out if a natural or legal person has been involved in purchase or sale of real estate.

### **3. How to find out if a natural or legal person owns a company / business registered in the country?**

Registrars of Companies (ROCs) appointed under Section 609 of the Companies Act, 1956 covering various States and Union Territories are vested with the primary duty of registering companies and ensuring that such companies comply with statutory requirements under the Act.

Company records can be obtained by any interested party on payment of prescribed fee. Section 151—153B of the Indian Companies Act 1956 contains provisions relating to register of members, index of members, debenture holders, beneficial owners, declaration as to shares and debentures held in trust.

Regulatory, supervisory and law enforcement authorities (including Police, Income Tax authorities, FIU and securities regulators) have adequate powers that enable them to access information about the control and ownership of legal persons in India.

Since foreign companies are not required to keep a copy of their shareholder register in India, access to the shareholder register of foreign companies is available only through a formal mutual legal assistance process. This means that such information is not available to the Indian authorities on a timely basis.

**4. How to find out if a natural or legal person has non banking financial interests (life insurance portfolio where applicable, securities) in the country?**

Law enforcement agencies are equipped with statutory powers to collect information about non banking financial interests from the financial institutions in respect of person under investigation. The Financial Intelligence Unit –India (FIU-IND) also has powers under PMLA to obtain additional information from reporting entities.

Under section 11 of the SEBI Act and respective regulations governing the functioning of securities markets intermediaries, the SEBI is authorized to call for any information from any of its stock exchanges, mutual funds, and other persons associated with securities market intermediaries and self-regulatory organizations. Additionally, they are able to access any information of publicly listed companies and share this information for financial investigation purposes.

The IRDA is empowered under section 14(2)(h) of the IRDA Act to call for information from insurers, intermediaries, insurance intermediaries and other organizations connected with the insurance business.

**5. How to find out if a natural person or legal person owns luxury goods such as boats or planes registered in the country?**

The Motor Vehicle Act, 1998 requires registration of motor vehicles. Information on the ownership can be obtained online through website of the Ministry of Transport at <https://vahan.nic.in>. All planes are registered in India under the Aircraft Act 1934 and the rules made hereunder as amended in 2007. Registration information is held by the Director General of Civil Aviation and information can be obtained online through their website <http://dgca.nic.in/>.

Law enforcement agencies are adequately equipped with statutory powers to collect information from the state registration authorities and the Director General of Civil Aviation in respect of person under investigation.

## INDONESIA

### 1. How to find out if a natural or legal person has bank accounts in the country?

The new AML Law<sup>68</sup> requires banks and other reporting entities to apply know-your-customer (KYC) principles set out by their respective supervising and regulating agencies<sup>69</sup>. The reporting entities are required by the law to identify that the service user is carrying out a transaction for himself/herself or for and on behalf of another person<sup>70</sup>. The law also requires any person or corporation who engages a business relationship with the reporting entities to provide its/his/identity<sup>71</sup>. In the event that a transaction is performed on behalf of another party, persons or corporations engaged in the business relationship must provide information regarding the other party's personal identity, the source of funds, and purpose of the transaction.

The current central bank regulations (BI) specify what requirement the new AML law sets in concern with the identification of customer, underlying relationships, and beneficial owner in banking industry. The BI regulation also requires banks to have information system that would enable banks to undertake effective identification, analysis, monitoring, and reporting<sup>72</sup>.

Since 2004, the Financial Transactions Reports and Analysis Center (PPATK)<sup>73</sup> was using a reporting application named TRACeS<sup>74</sup> which has been recently replaced by a new reporting tool to cope with a growing number of reporting entities. PPATK/INTRAC is given the authority to obtain information from financial service providers (FSP) and other reporting entities as well.

In 2011, Indonesia enacted an Asset Forfeiture Bill (new AML Law)<sup>75</sup>, which gives powers to investigators from the Attorney General's office, Anti Corruption Commission, National Drugs Agency, Directorate General of Tax, and Directorate General of Customs and Excise to investigate money laundering. In addition, the AML Law allows investigators, including the National Police (POLRI) to request information concerning the suspect's wealth from Providers

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<sup>68</sup> Law No. 8 of 2010 the concerning Prevention and Eradication of Money Laundering replacing the Law No. 15 of 2002 on Money Laundering as amended by Law No. 25 of 2003

<sup>69</sup> Ibid., Article 18

<sup>70</sup> Ibid., Article 20

<sup>71</sup> Ibid., Article 19. Information shall at least comprise its/his/her personal identity, source of funds and purpose of the transaction

<sup>72</sup> Article 41, BI Regulation No. 11/28/PBI/2009 concerning Implementation of Anti Money Laundering and Combating the Financing of Terrorism Program for Commercial Bank dated on 1 July 2009 that amends BI Regulation No. 3/10/PBI/2001 and BI Regulation No. 5/21/PBI/2003 on Know Your Customer Principles

<sup>73</sup> The Indonesian Financial Intelligence Unit

<sup>74</sup> APG 2<sup>nd</sup> Mutual Evaluation Report on Indonesia 9 July 2008, §301, p. 62

<sup>75</sup> Planned revisions to the 2001 Anticorruption Law. The new AML Law extends the scope of Reporting Parties which include Financial Service Providers (FSPs) and Designated Non-Financial Businesses.

of Financial Services (PFS). In requesting such information, the law on bank secrecy and other financial transactions secrecy provisions are not applicable<sup>76</sup>. In addition, the Criminal Code confers investigators the authority to issue a subpoena, block bank accounts, request hard copies of transaction documentation from bank accounts. In collecting bank records, the provisions on bank secrecy are not applicable<sup>77</sup>.

## **2. How to find out if a natural or legal person owns real estate in the country?**

In Indonesia, real estate salespeople are not required to hold a license in order to conduct a real estate transaction. Lands must be registered to the National Land Agency. In the absence of an MOU, PPATK can request land titles information from the State Land Agency. PPATK is currently negotiating with the State Land Agency to have access to information on property records.

## **3. How to find out if a natural or legal person owns a company / business registered in the country?**

Two main types of legal person are in existence: companies formed by notarial deed and businesses<sup>78</sup>. Both must register<sup>79</sup> to the Companies Registry. The law 40/2007 created a list of company information for the first time. That data can be accessed by the public, but only by request.

All companies must keep records certain transactions<sup>80</sup>. On the basis of MOUs, the Financial Transactions Reports and Analysis Center (PPATK) may obtain information data in relation with corporate ownership<sup>81</sup>. The PPATK may also exchange information obtained from the National Registration Department database for particulars on identity of natural persons and registration of legal Persons<sup>82</sup>.

Legal persons are not required to maintain a record of beneficial owners or whether company shareholdings are held beneficially. There is a requirement in law to notify the company registry of changes to directors and shareholders, the competent authorities are yet to issue implementing

<sup>76</sup> Otherwise applicable under Article 40 of Law 7/ 1997 as amended by Law 10/ 1998 (Banking Act)

<sup>77</sup> APG 2<sup>nd</sup> Mutual Evaluation Report on Indonesia, 9 July 2008, §354, p. 72

<sup>78</sup> Ibid., §773, p. 159

<sup>79</sup> Pursuant to Law 3/1982

<sup>80</sup> In accordance with the law on Corporate Documents Law 8/1997

<sup>81</sup> APG 2<sup>nd</sup> Mutual Evaluation Report on Indonesia, 9 July 2008, §315, p. 64. Under the new AML Law, PPATK is authorized to obtain data and information from government institutions, including Directorate General of Taxation (tax office) and the Accounting Supervisory Center and Appraisal Service (state audit office) of the Ministry of Finance, Directorate General of General Legal Administration Affairs (company registry office) of the Ministry of Law and Human Rights, National Land Agency. Submission of such data and information do not require anyone's permission. The implementation of this power however is pending—to be stipulated further in a government regulation.

<sup>82</sup> Ibid., §998, p. 193

regulations and provide a support structure to receive such reports. While law enforcement and regulatory agencies have some powers to obtain information on beneficial ownership, the timeliness and adequacy of such information is questionable<sup>83</sup>.

**4. How to find out if a natural or legal person has non banking financial interests (life insurance portfolio where applicable, securities) in the country?**

Securities companies, investment managers, and custodian banks are required to apply Know Your Client Principles<sup>84</sup>. PPATK/INTRAC is authorized to obtain information from financial service providers (FSP) and other reporting entities as well.

In the context of doing activity as Securities Company, the FSP shall possess information system to identify, analyze, control and provide reports effectively on characteristic of transaction conducted by capital market customers. The information system have to enable the FSP in capital market area to trace each transaction whenever it is needed, including to trace ability on identity of customer, form of transaction, date of transaction, amount and denomination of transaction, as well as origin of fund used for transaction. Information has also been provided for the concerned areas of FSP in order to detect high risk countries on money laundering and terrorist financing activities. In case a prospective customer coming from one of these areas are representing Beneficial Owner, the FSP on Capital Market and NBFIs thus shall request document or proof of identity and/or other information related to the Beneficial Owner.

Indonesia has a civil law system therefore express trusts and other legal arrangements are not recognized. Where a foreign trust is a customer of an Indonesian financial institution, the financial institutions are required to perform customer due diligence (CDD) under the AML Law<sup>85</sup>.

**5. How to find out if a natural person or legal person owns luxury goods such as boats or planes registered in the country?**

Based on MOUs, the Financial Transactions Reports and Analysis Center (PPATK) may obtain information data in relation with title ownership of vehicles and wealth reports of senior state officials<sup>86</sup>.

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<sup>83</sup> See APG 2<sup>nd</sup> Mutual Evaluation Report on Indonesia, p161

<sup>84</sup> Bapepam-LK (Capital Market and Financial Institutions Supervisory Board) Rule Number V.D.10. See also amendment of previous Rule No. V.D.10 by issuing the Chairman of Capital Market and Financial Institution Supervisory Board Regulation No. 476/BL/2009 on 23 December 2009 regarding KYC Principle in Capital Market Sector, and the previous Minister of Finance Regulation No. 74/PMK/2006 by the Minister of Finance Regulation No. 30/PMK.010/2010 on 9 February 2010 regarding KYC for Non-Bank Financial Institution

<sup>85</sup> APG 2<sup>nd</sup> Mutual Evaluation Report on Indonesia , §787, p. 161.

<sup>86</sup> Ibid., §315, p. 64

Registered vessels must be owned by Indonesian citizens or by a company existing under the Law of Indonesia, and must be manned by Indonesian nationals<sup>87</sup>.

As to civil aircraft registration requirements<sup>88</sup>, the Register of Civil Aircraft shall be established and maintained by the Director General of the Ministry of Transportation. An aircraft may be registered only by and in the legal name of its owner. Certificate of registration is not evidence of ownership of aircraft in any proceeding in which ownership by a particular person is in issue. The Director General does not issue any certificate of ownership or endorse any information with respect to the ownership on a Certificate of Registration. The Director General issues a Certificate of Registration to the person who appears to be the owner on the basis of the evidence of ownership submitted with the application for aircraft registration, or record at the Civil Aircraft Register<sup>89</sup>.

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<sup>87</sup> Promoting Efficient and Competitive Intra-ASEAN Shipping Services – Indonesia Country Report, REPSF Project No. 04/001, Final Report March 2005, p.1

<sup>88</sup> Under Article 25 of the Aviation Act No. 1 year 2009

<sup>89</sup> Republic of Indonesia, Ministry of Transportation, Civil Aviation Safety Regulations (CASR), Part 47, Aircraft Registration, p. A1 and B1

## ITALY

### 1. How to find out if a natural or legal person has bank accounts in the country?

Banking secrecy is not provided for in the Italian legislation. Therefore, it cannot be invoked before the Bank of Italy, the *Unità di Informazione Finanziaria* (Italy's FIU), the *Commissione Nazionale per le Società e la Borsa* (Consob, Italy's Stock Exchange Commission ) or the *Nucleo Speciale di Polizia Valutaria of the Guardia di Finanza* (NSPV).

By law<sup>90</sup>, all financial intermediaries are required to maintain a single computerized and standardized database (*Archivio Unico Informatico*, AUI)<sup>91</sup>, where substantial information on all business relationships and transactions over €15,000 or its equivalent are recorded and stored for ten years. A code is provided for each type of transaction, and data is captured about the client, any representative or principal involved, the counterpart for wire transfers, the branch involved, and other transaction details. The FIU, as well as law-enforcement bodies and judicial authorities may request data on the underlying transactions for analytical purposes, even without an STR having been filed.

In accordance with Law n. 248 of 2006, financial intermediaries shall also report to the *Anagrafe dei Rapporti Finanziari*, namely Italy's Register of Financial Operations:

- a) Personal data of customers having any business relation with the bank or performing any financial operation on their or third person's behalf, as well as the nature of such relation and/or operation; and
- b) In the event of occasional transactions, the nature of such operation and the customer's personal data.

The Register can be directly accessed by the FIU, law enforcement bodies and judicial authorities. Each financial intermediary is further required to monthly transmit aggregated information pertaining to transactions carried out for an amount above €15,000 to the *Unità di Informazione Finanziaria*<sup>92</sup>.

In case of financing of terrorism investigations, law-enforcement agencies can also identify and trace assets<sup>93</sup>. Italy's Penal Procedure Code empowers law-enforcement agencies and Prosecutors to trace and identify assets during the course of criminal investigations. The Anti-Mafia Investigative Directorate (*Direzione Investigativa Antimafia*, DIA) and the *Nucleo Speciale di Polizia Valutaria of the Guardia di Finanza* (NSPV) are entitled to have access and copy - without judicial proceeding - of CDD and transaction records from registered financial

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<sup>90</sup> Legislative Decree 231/2007 is the legal milestone of the Italian AML/CFT system, assessed in 2005 (see Italy's Mutual Evaluation Report on AML/CFT, 28 February 2006) and, in 2008, following the approval of the Third Follow-Up Report, the FATF assessed Italy had made significant progress. [http://www.fatf-gafi.org/document/9/0,3746,en\\_32250379\\_32236963\\_42257865\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/document/9/0,3746,en_32250379_32236963_42257865_1_1_1_1,00.html)

<sup>91</sup> AML/CFT Legislative Decree 231/2007, Art. 37. For further information on data to be filled, p. 52 (such provision was also included in former legislation)

<sup>92</sup> Article 40 of Legislative Decree 231 of 2007

<sup>93</sup> For further information, see Decree-Law No. 374 of 18 October 2001

institutions<sup>94</sup>. As judicial police, Italy's law-enforcement agencies can execute a search warrant (court order) and seize any evidence and proceeds of crime.

Italy's AML/CFT Law requires financial institutions to identify any person (and verify the identity thereof) on whose behalf the transaction is carried out; specific requirements apply to detect the ownership and control structure of a customer being a legal person, or to determine the natural persons that ultimately own or control the customer. Financial institutions may accept as customers also trusts under foreign legislation. Specific requirements apply as to the identification of the settlor, trustee and beneficiaries<sup>95</sup>. Should financial institutions fail to identify and verify the identity of their customer or that of the beneficial owner of any transaction they are required to perform or of any business relationship they entertain, they are required to refrain from finalizing the transaction or to establish or continue the relationship and may consider filing a STR.<sup>96</sup>

## **2. How to find out if a natural or legal person owns real estate in the country?**

Real estate agents are registered at the Special Register instituted at Italy's Chamber of Commerce, Industry, Crafts and Agriculture<sup>97</sup>. Official records of all property transactions are maintained by the Italian Government's real estate registry (*Conservatoria dei Registri Immobiliari*), having a central office in Rome and several regional offices.

When a property is registered, it is given an official date and time of registration, known as the *data certa*. In order to ensure their ownership interest, obtain such registration date is strictly required. The government property register, so called the *Catasto*, managed by the *Conservatoria* (registry), contains detailed information on properties.

## **3. How to find out if a natural or legal person owns a company / business registered in the country?**

With regard to companies, the acquisition of legal personality is based on their registration in the Public Register of Companies (*Registro delle Imprese*<sup>98</sup>). Companies with legal personality may be: a *società per azioni-Spa* (joint stock company), or a *società a responsabilità limitata-Srl* (limited company), or a *società in accomandita per azioni*, (limited partnership company<sup>99</sup>). Italy's FIU has direct access to public and commercial databases such as the Register of Companies<sup>100</sup>.

Joint stock companies are required to publish lists of their shareholders and lists of persons who hold rights on securities. Such information is available to the relevant authorities and, upon request, the public at large, also on line. Listed joint stock companies may issue both nominative

<sup>94</sup> Italy's Mutual Evaluation Report on AML/CFT, 28 February 2006, p. 40

<sup>95</sup> Italy's Third Mutual Evaluation Follow-Up Report, 27 February 2009

<sup>96</sup> Article 23 of Legislative Decree 231 of 2007

<sup>97</sup> Pursuant to Law 39/1989. See also Italy's Third Mutual Evaluation Follow-Up Report on AML/CFT, p. 37

<sup>98</sup> Italy's Mutual Evaluation Report on AML/CFT, 28 February 2006, p.17

<sup>99</sup> *Ibid.*, §42, p. 8

<sup>100</sup> *Ibid.*, p. 37

and bearer shares. However, the use of bearer shares is limited to specific circumstances. They are therefore not anonymous, which facilitates the identification of the beneficial ownership and control of legal entities<sup>101</sup>.

Shareholder companies are constituted through a public act drawn up by a Notary and have to be registered in the above Register of Companies (*Registro delle imprese*), managed by the relevant local Chambers of Commerce under the supervision of a Judge<sup>102</sup>. This Register is available online at national level via the *InfoCamere Network*, and includes relevant information, including details on the company's managers<sup>103</sup>. All information on the nominee shareholders (and consequently on national beneficial owners) is available to the authorities, including the *Unità di Informazione Finanziaria* - Italy's FIU and Guardia di Finanza.

**4. How to find out if a natural or legal person has non banking financial interests (life insurance portfolio where applicable, securities) in the country?**

*Borsa Italiana* is the main Stock Exchange based in Milan and operates the central register of securities<sup>104</sup>.

Italian legislation does not specifically provide for the constitution of legal arrangements such as trusts. However, in respect of trusts, Italy has ratified<sup>105</sup> the Hague Convention on the law applicable to trusts and their recognition. It therefore recognizes that a trust subject to foreign governing law has legal effect within the Italian system. Trusts may be created in Italy under a foreign law, and trust funds may be held or administered by Italian financial intermediaries<sup>106</sup>.

The AML/CFT Legislative Decree provides for specific requirements in respect of the information to be collected by the financial intermediaries and professions dealing with foreign trusts. Consequently, through such channel, authorities have access to adequate, accurate and timely information on the beneficial ownership and control of trusts handled in Italy.

**5. How to find out if a natural person or legal person owns luxury goods such as boats or planes registered in the country?**

With regard to vehicles registration, the Auto e-Counter<sup>107</sup> is a gateway enabling access to services and information relating to car registration and ownership. It can dialogue simultaneously with the Ministry of Infrastructure and Transport and the *Automobile Club Italia*, ACI. ACI provincial offices (*Uffici Provinciali*, ACI), Central Civil Motoring Authority (*Uffici Provinciali*, M.C.T.C.) provincial offices, and commercial agencies operating as e-counters can

<sup>101</sup> Ibid., §43, p. 9

<sup>102</sup> Following a reform of company incorporation by Law n. 5803 of 1993

<sup>103</sup> Italy's Mutual Evaluation Report on AML/CFT, 28 February 2006, p. 90

<sup>104</sup> Project outcomes and recommendations, Action: JLS/2009/ISEC/AG/017 30-CE-0281275/00-38 "Camden Assets Recovery Inter-Agency Network Conference in 2010", p. 70

<sup>105</sup> Through Law n. 364 of 16 October 1989

<sup>106</sup> Italy's Mutual Evaluation Report on AML/CFT, 28 February 2006, p. 91

<sup>107</sup> D.P.R. n. 358 of 6 December 2000

establish a direct link with either the ACI e-System or with the e-System back-office of the Ministry of Infrastructure and Transport. The system allows for immediate processing of any request and real-time delivery of the relevant final certification.

*Registro Aeronautico Italiano* (RAI) is the civil aviation registry. Aircrafts are sorted by the number of their Certificate of Airworthiness (CofA) issued by *Ente Nazionale per l'Aviazione Civile* (Italian Civil Aviation Authority, ENAC). The information stored in the database includes the name of the aircraft owner and the name of the aircraft operator, whereby they are different entities.

## JAPAN

### 1. How to find out if a natural or legal person has bank accounts in the country?

While the Act on the Protection of Personal Information prohibits financial institutions from providing personal data to third parties without prior consent of the customer, the Act contains exemptions<sup>108</sup> under which, the requirement for financial institutions to share information with government agencies<sup>109</sup> would trigger the existing waivers.

Since 2003, financial institutions are obligated to verify the customer identity when opening an account or conducting transactions above a prescribed amount<sup>110</sup>. In January 2007, the threshold which requires customer identification in wire transfer was reduced to JPY 100 000<sup>111</sup>. In addition, the scope of business operators obligated to undertake customer identification, record keeping, and suspicious transactions reporting was expanded in 2008 to include DNFBPs<sup>112</sup>.

Japan's Code of Criminal Procedure provides the police and public prosecutor with all the required authority to trace and identify instrumentalities and proceeds of crime<sup>113</sup>. Chapter 9 of the Code of Criminal Procedure provides for broad and effective search and seizure authority<sup>114</sup>. Moreover, specific authority to trace is conferred to public prosecutors and judicial police officers, who investigate offenders and seek evidence of a crime, by enabling them to ask a suspect to appear and answer questions<sup>115</sup>.

The Customer Due Diligence (CDD) framework did not fully address the issue of authorized persons, representatives and beneficiaries or of beneficial ownership. There was no requirement for financial institutions to gather information on the purpose and intended nature of the business relationship or to conduct ongoing due diligence on these relationships<sup>116</sup>. However, the Act to revise a part of the Act on Prevention of Transfer of Criminal Proceeds was promulgated on April 28, 2011, which stipulates that 1) financial institutions should, upon conducting a transaction, verify the purpose of transaction, customer's occupation, the business substance,

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<sup>108</sup> Article 23

<sup>109</sup> Under Article 9 of the Act on the Prevention of the Transfer of Criminal Proceeds

<sup>110</sup> Pursuant to the Customer Identification Act

<sup>111</sup> Japan's Third Mutual Evaluation on Anti-Money Laundering and Combating the Financing of Terrorism, 17 October 2008, §331, p.66

<sup>112</sup> Pursuant to the Act on the Prevention of Transfer of Criminal Proceeds which came into force on 1 April 2007. As to suspicious transactions reporting, certain kinds of DNFBP (attorney, judicial scrivener, administrative scrivener, certified public accountant and licensed tax accountant etc.) are exempt from this obligation.

<sup>113</sup> *Ibid.*, §250-252, p.51-52

<sup>114</sup> Japan's Third Mutual Evaluation on Anti-Money Laundering and Combating the Financing of Terrorism, 17 October 2008, §252, page 52

<sup>115</sup> Article 198 of the Code of Criminal Procedure

<sup>116</sup> *Ibid.*, §20, p.9

identity of beneficial owner, 2) financial institutions should take measures to keep customer identification record up to date<sup>117</sup>.

## **2. How to find out if a natural or legal person owns real estate in the country?**

Legal title registration of the property is performed by judicial scriveners and the financial aspect by financial institutions<sup>118</sup>. Judicial scriveners are not currently subject to AML/CFT supervision. The Ministry of Justice, however, has general powers under the Act on the Prevention of Transfer of Criminal Proceeds to request reports, conduct onsite inspections and issue orders for rectification.<sup>119</sup>

Information on the ownership of real property in Japan can be found at the area land registry. In 1999, the Japanese government passed a bill that will allow Internet access to real property registers beginning in April 2000. Registration requires the presentation of a document that contains the name of the owner, the identification number and location of the property, and any particular rights or encumbrances specific to the property.

## **3. How to find out if a natural or legal person owns a company / business registered in the country?**

There are four types of companies authorized under the Japanese Companies Act: *i*) stock companies; *ii*) general partnership companies; *iii*) limited partnership companies and *iv*) limited liability companies. All companies must be registered to be legally formed<sup>120</sup>. Any persons can obtain the extract of the registered matters<sup>121</sup>.

While there is no obligation to gather information on the beneficial ownership and control of a legal person, general partnership companies and limited partnership companies must register the names and addresses of the partners. Also, limited liability companies must register the names of the executive partners as well as the names and addresses of the representative partners. Any person can obtain the extract of the registered matters, but there is no specific provision granting access by the competent authorities to the shareholders' registers, which have to rely on the Code of Criminal Procedure in order to do so.

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<sup>117</sup> This Act shall come into force as from the date specified by a Cabinet Order within a period not exceeding 2 years from the day of promulgation.

<sup>118</sup> Japan's Third Mutual Evaluation on AML/CFT, 17 October 2008, §769, p.169

<sup>119</sup> Articles 13, 14 and 16

<sup>120</sup> Japan's Third Mutual Evaluation on Anti-Money Laundering and Combating the Financing of Terrorism, 17 October 2008, §33, p.11

<sup>121</sup> Pursuant to the provisions of Article 11 of the Commercial Registration Act

Stock companies are required to prepare the shareholders registry and record the names and addresses of shareholders; the number of shares held and the day of acquisition of the shares<sup>122</sup>. Access to the shareholders registry is limited to shareholders and creditors of the company as well as shareholders of the parent company<sup>123</sup>. Competent authorities have to rely on the police powers<sup>124</sup> to access this registry and in case of a refusal to grant access to it the authorities would need a court order.

There was no requirement for financial institutions to understand the ownership and control structure of a legal person customer nor was there an obligation to determine who was the natural person who ultimately owned or controlled the legal person<sup>125</sup>. There were specific instances in which identification of beneficial ownership was called for. For example, financial institutions were required to conduct Customer Due Diligence (CDD) on both the settler and beneficiary of a trust and on the beneficiary of an insurance contract<sup>126</sup>. These provisions were not a general requirement for financial institutions to identify beneficial ownership prior to establishing a business relationship.

However, the Act to revise a part of the Act on Prevention of Transfer of Criminal Proceeds which was promulgated on April 28, 2011 stipulates that financial institutions etc. should verify the purpose of transaction, the business substance, identity of beneficial owner, and should take measures to keep customer identification record up to date.

#### **4. How to find out if a natural or legal person has non banking financial interests (life insurance portfolio where applicable, securities) in the country?**

Trust companies are supervised by the relevant administrative agencies under the Trust Business Act. In case a license for trust business is not required, this type of trust business may be conducted only by business corporations that should be registered by the Prime Minister<sup>127</sup>.

Trust companies that are non-financial institutions are registered and supervised by staff in Local Finance Bureaus under the Ministry of Finance who have been delegated supervision powers from the FSA (Financial Services Agency)<sup>128</sup>. Self-trusts also require registration under the Trust Business Act if the trust has more than 50 beneficiaries<sup>129</sup>.

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<sup>122</sup> Pursuant to Article 121 of the Companies Act

<sup>123</sup> Ibid., Article 125, §2 and §4

<sup>124</sup> Under the Code of Criminal Procedure

<sup>125</sup> Ibid., §514, p. 101

<sup>126</sup> Order, Article 8, paragraph 1, item (i), (c)(d)(g)

<sup>127</sup> Article 7 of the Trust Business Act

<sup>128</sup> Ibid., §775, p. 171

<sup>129</sup> Article 50-2 of Trust Business Act, Article 15-2 of Ordinance for Enforcement of the Trust Business Act

National public employees at the rank equivalent to a deputy director general or higher at the headquarters of the Cabinet Office and each Ministry are required to submit a report on purchase and sales of stocks<sup>130</sup>, if not the entire amount of non banking financial interests they have.

**5. How to find out if a natural person or legal person owns luxury goods such as boats or planes registered in the country?**

The Maritime Bureau and the Civil Aviation Bureau of the Ministry of Land, Infrastructure, Transport and Tourism are responsible for registration of boats and planes, respectively.

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<sup>130</sup> Pursuant to Article 7, paragraph1 of the National Public Service Ethics Act

## MEXICO

### **1. How to find out if a natural or legal person has bank accounts in the country?**

A peculiar feature of the Mexican system is that all the authorities allowed to have access to information protected by banking secrecy (except judges in limited cases) are prevented from requesting the information directly from financial institutions. Instead, they must send their requests to the appropriate supervisory agency (in practice the CNBV is most commonly used, though there are other as the CNSF, CONSAR, SAT and the SHCP for their respective competences), which in turn sends out requests to the supervised institutions, collects the responses and forwards them to the requesting authority (Article 180 of the Federal Code of Criminal Procedures. A similar procedure is foreseen in article 9 of the Federal Law against Organized Crime).

The obtained information and documents may only be used for criminal processes and investigations purposes, keeping strict confidentiality.

Article 117 of the Credit Institutions Law requires credit institutions to provide information on transactions and services as appropriate to identify the movement of funds, without violating banking and fiduciary secrecy, when requested by the Office of the Attorney General, state level and federal district level prosecutor's offices, the Office of the Attorney General for Military Justice, the Financial Intelligence Unit, federal finance authorities, and foreign finance authorities, among others.

For the case of protected information exchanges by confidentiality provisions, there must be a signed agreement of information exchange with the respective finance authorities, which must include the reciprocity principle. The CNBV may refrain from providing the required information or to ask for the devolution of the provided information when the intended use may be different to that which it was requested for, if it may go against public order, national security or the terms established in the respective agreement of information exchange.

In accordance with the provisions under Article 15, Section VII of the Internal Regulations of the Ministry of Finance and Public Credit, the FIU can request and obtain from reporting entities information and documentation related to actions, transactions, and services that could be linked to the crimes of money laundering and terrorist financing. This must be done through the reporting entities' corresponding supervisory body. The reporting entities are in turn obliged to provide to the FIU, through the appropriate supervisory body, any additional information and documentation it may require relative to transaction reports.

Competent administrative, law enforcement, prosecutorial and judicial authorities are allowed to obtain any information and documentation kept by banking institutions. An apparent limitation could exist in the arrangements where the prosecution (PGR) must channel all requests for information from banking institutions through the banking supervisor (CNBV). Judges (unlike prosecutors and law enforcement authorities) have direct access to information from financial institutions, but in practice they have preferred to request it through the CNBV.

Interagency cooperation has been materialized by the implementation of auxiliary instruments of Law Enforcement in criminal procedures, such as the Agreement of Interagency Collaboration held between PGR and the CNBV on April 30, 2009. This document establishes the lineaments for obtaining fast and accurate information and financial documentation related to criminal investigations; and also the use that this information may have once it has been obtained.

Moreover, as a result of this collaboration, the CNBV implemented a computer system designated as Authority's Requirement Attention System, which allows several public administration units, including PGR and state attorneys, to formulate by electronic ways the requirements for information and financial documentation, as well as the implementation of precautionary actions on bank accounts or financial instruments, which is in due time informed to the regulatory authority, which in turn will forward it to the recipient financial institution for its attention, which allows to reduce times in execution and response, compared with the previously used mechanisms and allowing a more effective capital identification.

According to PGR officials the system has improved markedly since 2006 and a response now may take as low as three to five business days when they clearly identify the person prior to sending the request through the CNBV. Even when the identification data is limited, the entire process of obtaining information from financial institutions does not take more than one month, down from up to six months a couple of years ago<sup>131</sup>.

## **2. How to find out if a natural or legal person owns real estate in the country?**

The Land Registry [*Catastro*] is held by each of the federative States of Mexico. It is not computerized and therefore not easily accessible. No indication on official websites and other public sources on the way to search land registration: by parcel, by owner's name.

## **3. How to find out if a natural or legal person owns a company / business registered in the country?**

Mexico has a Federal Public Registry of Commerce (the Registry) governed by the Commercial Code, the Regulations of the Public Registry of Commerce, the relevant commercial and business laws (such as the Law of Commercial Companies, the Law of Credit Institutions, etc.) and supplementary by the Federal Civil Code.

[http://www.indaabin.gob.mx/directorios/registros/registros\\_publicos.htm](http://www.indaabin.gob.mx/directorios/registros/registros_publicos.htm)

However, it does not seem that all the federative states of Mexico already incorporated their own local registers into a federal one. Any search of a company of Mexico would therefore have to be done in all the States in order to have a comprehensive view of the existing companies. It is not

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<sup>131</sup> Source : FATF MER, 2008

clear if the registers are online in each Mexican State, nor if a search by name of the owner is possible.<sup>132</sup>

<http://www.siger.gob.mx/#>

<http://www.siger.gob.mx/siger/registro.pdf> ; list of the address of each Register of Commerce

The Registry is a system of central registration which records ownership and control details when a constitutive act, such as the establishment of a company, is registered for the first time. However, given that transfers of ownership rights do not require mandatory registration, the Registry does not keep the changes in ownership, and control information up to date.

The Registry has no legal powers to compel a legal person to provide information or to register an act that does not require mandatory registration under applicable laws. As a result, upon a request from a third party (whether a private person or a public institution) concerning information regarding a legal person, the Registry would only be capable of furnishing the information that it holds in its files. In this regard, since transfers of ownership rights do not require mandatory registration, the Registry may not be holding, and may therefore not be able to provide in all cases, adequate, accurate and current information on the ownership, beneficial ownership or control of the legal person in question.<sup>133</sup>

**4. How to find out if a natural or legal person has non banking financial interests (life insurance portfolio where applicable, securities) in the country?**

The Mexican FIU signed MOUs with the National Banking and Securities Commission (CNBV), the National Insurance and Bonds Commission, and the National Retirement Savings System Commission. No indication on the type of data the CNBV holds regarding securities ownership nor on the existence of a register that is accessible to the authorities and under which circumstances.

**5. How to find out if a natural person or legal person owns luxury goods such as boats or planes registered in the country?**

DGAC is the authority in charge of civil aviation, within the Ministry of Communications and Transportation. No mention on the website of a register that would be accessible to search the owner of a private plane in Mexico. However, registration of planes is mandatory, so the data regarding owners may be available to the authorities. <http://www.repuve.gob.mx/> : public register for motor vehicles.

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<sup>132</sup> La Secretaría de Economía, en coordinación con los Gobiernos de las 32 entidades federativas, están operando el Registro Público de Comercio por medio del Sistema Integral de Gestión Registral (SIGER), programa informático desarrollado por esta Dependencia para modernizar y unificar la prestación del servicio en todo el País.

<sup>133</sup> Source, FATF MER, 2008

## RUSSIA

### **1. How to find out if a natural or legal person has bank accounts in the country?**

Federal tax service (FTS) possesses information on bank accounts. Under the article 86 of the Tax codex credit institutions are required to inform FTS within three days about opening, closing, changing of requisites of accounts of legal entities (individual enterprisers). As for natural persons the appropriate information is provided by them in the income statement to the FTS.

This system is therefore close to a central register of bank accounts. However, it does not seem to contain information on bank accounts held by natural persons who are not taxable (non-residents for instance).

In case of the seizure of subjects and documents containing information on deposits and accounts in banks and other credit institutions, if the information is protected by confidentiality and secrecy provisions, the law enforcement authorities need a court order to process.

The FIU has the right to request additional information from the reporting entity, in order to verify the accuracy of the information obtained and to detect ML/FT transactions or activities. Rosfinmonitoring sends written requests to reporting entities and asks for more information on the transaction or requests duly notarized copies of specific documents. Reporting entities are required to answer Rosfinmonitoring within five working days after receiving the request, but Rosfinmonitoring may change this deadline if necessary.

### **2. How to find out if a natural or legal person owns real estate in the country?**

Real estate includes land and everything that is closely connected with land. Air and sea vehicles subject to state registration, inland water vessels and space objects are also considered to be real estate according to the law. All real estate objects must be registered; all information in this register is available to every person.

The Federal Registration Service (ROSREG – [www.rosregister.ru](http://www.rosregister.ru)) is the executive body responsible for registration of real estate ownership (land registry). The land registry is a government authority, which presents to Rosfinmonitoring (the FIU) all the information contained in its database in accordance with Government Regulation 425.

### **3. How to find out if a natural or legal person owns a company / business registered in the country?**

All legal entities and individual businesses are required to register or update their registration at the moment of their establishment, reorganization and liquidation as well as when any changes to the constituent documents are introduced.

The law describes the data that have to be submitted to the registry (the Unified State Register of Legal Entities, USRLE) – which is maintained by the Federal Tax Service. Information is publicly available, except for certain types of information that is only available to the state authorities (article 6, State Registration Act). Information about the market share of a natural or moral person in the authorized capital stock and subsequently about the level of control over it can be identified on the basis of data of the USRLE.

Banking and personal information is available to state authorities, including law enforcement bodies and courts (for legal cases), local authorities, bodies of state extra budgetary funds and persons determined by federal law and regulation.

**4. How to find out if a natural or legal person has non banking financial interests (life insurance portfolio where applicable, securities) in the country?**

Russia has no database of securities. Russia cannot provide information on who are securities' holders.

**- How to find out if a natural person or legal person owns luxury goods such as boats or planes registered in the country?**

**Planes :**

The Federal Air Transport Agency (Russian acronym Rosaviatsiya) is a part of the Russian government structure on the level of the Federation. Its responsibilities includes rendering governmental services and managing governmental property in the sphere of air transport (civil aviation), usage of air space over the Russian Federation, means of rescue on aviation and space platforms, rendering governmental services in the sphere of safety and security on transport, putting aircraft into **Russian register** and foreseeing deals involving aircraft sales. The Federal Air Transport Agency reports to the Ministry of Transportation.

**Boats**

<http://www.rs-head.spb.ru/en/index.php>

Register of Ships is published biennially in January. It contains data of sea-going self-propelled ships of 100 gross tonnage and above, classed with Russian Maritime Register of Shipping. This publication also includes **information on the owners of ships**. In parallel with the hard version of the Register, a version in electronic format is prepared which includes all additions and amendments incorporated after the hard version publication. Information to be found in the hard and the electronic version of the Register is obtained from sources that may be considered

reliable. However, Russian Maritime Register of Shipping is not in a position to warrant that the information is authentic in every detail.

## SAUDI ARABIA

### **1. How to find out if a natural or legal person has bank accounts in the country?**

In 2008, the Saudi Arabia Monetary Agency (SAMA) issued rules governing the opening of accounts and general operation guidelines in Saudi Arabia which provides for all the different interest groups in the country including legal persons/companies.

Article 8-2 of the AML IRs requires that all documents, records, and information be submitted to the competent authorities promptly upon request. The timeframe is not given in this regard.

Requests for information by the judicial authorities, BIP, or FIU have to be channeled through supervisory authorities (SAMA, MOCI, CMA, and MOJ). Pursuant to an agreement between the FIU and SAMA (circulated to all banks), any request coming from SAMA has to be answered by the banks within 10 days.

### **2. How to find out if a natural or legal person owns real estate in the country?**

In late 2005, the Real Property Registration Law came into effect, this was the country's first property registry. To date, there is no central registration system of real estate in the Kingdom of Saudi Arabia. In 2007, Riyadh introduced a computerized registration system under the new law making it possible to register property in two days without the need for repeated examinations of voluminous public records.

The rest of the First Notaries Public in the Kingdom, however, still adopt the manual method making the recording process slightly more time consuming. Now in Riyadh, an individual who wishes to purchase a piece of land commissions a title search, which involves examining a list of successive conveyances, from original owner to the present holder that affect a parcel of land. The clerk at the First Notary Public conducting the title examination prints out a report summarizing the chain of title and listing any charges, court judgments or liabilities to which the land may be subject. The report is basically evidence of the marketability of the record title.

In other cities, which still use the manual recording system, it is uncommon for a purchaser or creditor to search the Index of Deeds for the root of title or for verifying whether there are any judgments against the seller and his/her property or encumbrances (mortgages, leases, usufruct rights environmental hazards, easements, other sale purchase agreement and so on).

The information is public and can be obtained by any interested party. However, the absence of computerized and centralized system makes it uneasy to access by the authorities if they have to search if a natural or legal person owns properties in the Kingdom.

### **3. How to find out if a natural or legal person owns a company / business registered in the country?**

Corporations are regulated by way of the Law of Professional Companies (the Companies Law) and the Commercial Register Law (CRL). A company register is maintained by the Ministry of Commerce and Industry (MOCI), whereby all company forms are required to register. Article 1 of the CRL provides that the MOCI shall maintain a register containing the names of Saudi merchants and companies. Article 3 CRL further provides that it is up to the company management to submit an application for registration within 30 days from the notarization of the company formation contract. The Registration Department has about 40 branches in all regions (emirates) of KSA, and all branches are all linked through a centralized electronic database.

Article 11 CRL provides that anybody, including the competent authorities, may obtain a copy of the information held at the commercial register with respect to registered entities. With the exception of judgments or bankruptcy notifications in cases where reparation has been adjudicated and judgments concerning interdictions or attachments that have been lifted, all information held at the register as outlined above is freely accessible. In the absence of a registration record, a certificate evidencing such absence can be issued.

In addition, for joint stock companies and partnerships limited by shares, the MOCI publishes the company formation contract and the company by-laws in the Official Gazette. Information and documentation held at the registry is maintained indefinitely.

Pursuant to Article 102 of the Companies Law, shares issued to registered holders are transferred by means of an entry in the shareholder register that is kept by the company. The register contains the shareholder names, nationalities, residence addresses and occupations, the number of shares held by each shareholder, and the amounts paid up on such shares. A transfer of title to any registered share is only considered effective from the date of its entry into the shareholder register.

### **4. How to find out if a natural or legal person has non banking financial interests (life insurance portfolio where applicable, securities) in the country?**

Life insurance may be considered haram (forbidden) by some section of the citizenry in Saudi Arabia. No express information is readily available on how to access information on a natural person's ownership of such interest.

SAFIU can request information from the Capital Market Authority to access the securities' information database. The access is granted on a case by case basis and the request has to refer to a specific case, person or entity.

Pursuant to Article 27 CML, ownerships of securities traded on the stock exchange shall be registered with the Securities Depository Centre, which is the sole entity to register all property rights in securities traded on the stock exchange. Information obtained by the Depository Centre includes a copy of the investor's ID as well as the portfolio number, which in turn is linked to information obtained in the course of the investor's application to trade on the stock exchange,

such as the nationality, date of birth, bank account number, and a copy of the passport as well as the address.

**5. How to find out if a natural person or legal person owns luxury goods such as boats or planes registered in the country?**

Aircraft Registration with the Aviation Authority is mandatory as well as display of nationality and registration marks. Details of registration are kept with the Saudi National Aircraft Register. The Authority may grant others access to data contained in said Register in accordance with conditions set thereby.

Registration of vessels and boats is regulated under the maritime Regulation of the Kingdom. Article 169 provides the procedures for the registration. Once all documents have been approved and before registration, the report is placed in the 2 local dailies for any objections. Once there is none, then a provisional certificate is issued and finally the final certificate is issued. The information is public and can be obtained by any interested party.

## SINGAPORE

### 1. How to find out if a natural or legal person has bank accounts in the country?

Singapore authorities do not maintain a central register of bank accounts. The FIU (STRO)<sup>134</sup> can access financial information from the reporting entities, including banks, when investigating cases of money laundering or financing of terrorism. According to authorities, the high level of cooperation between it and the reporting entities (particularly the financial institutions) is such that requests for further information are frequently provided in a timely manner: within a day for urgent cases and around two weeks for routine cases.

Section 30 of the CDSA<sup>135</sup> permits police officers investigating criminal conduct, including corruption, to directly obtain from “a court” material that may be of substantial value to the investigation. Section 35(2) clarifies that “court” means High Court and District Court. However, section 30 expressly does not permit the same procedure with regard to material maintained by a financial institution.

Section 31 provides that only the Public Prosecutor (or any person duly authorized by him) may apply to the High Court for information that is needed for an investigation and which is in the possession of a financial institution, and such information must be produced to the Public Prosecutor (not to the police). This added layer of required approvals and restrictions surrounding the obtaining of bank information (as opposed to *any other* relevant information), though not exactly a bank secrecy provision may, at times, prove dilatory and onerous to an investigation.

The Public Prosecutor may also seek an order from the High Court permitting disclosure of information held by public bodies for investigative purposes (s.42 CDSA).

According to Singapore law enforcement agencies and the AGC (Attorney General’s Chambers), the police often uses section 58 of the CPC<sup>136</sup> and section 20 of the new CPC 2010 to obtain information relevant to their investigations. The provisions authorize officers to directly obtain the production of the relevant evidence. Again, bank information is treated differently, requiring the participation of an officer of inspector level or higher.

According to Singapore authorities, these powers can be used to compel the production of customer identification materials and account opening records to identify and trace property that is subject to confiscation or is of suspect origin<sup>137</sup>. Under the new CPC 2010, the police further has the power to require the financial institution to monitor the account of its customers for a period of time and to provide such information relating to the transactions carried out in that account during the period.

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<sup>134</sup> Suspicious Transactions Reporting Office

<sup>135</sup> Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act

<sup>136</sup> Criminal Procedure Code

<sup>137</sup> These paras are extracted from the Singapore Mutual Evaluation Report on AML/CFT, 2008

## **2. How to find out if a natural or legal person owns real estate in the country?**

The Land Titles Registry<sup>138</sup>, which comes under the Singapore Land Authority umbrella, handles the registration of property transactions in Singapore. These transactions cover all legal transactions affecting land, including:

- landed properties, such as bungalows, terrace houses and semi-detached houses;
- flats, whether private or HDB; and
- commercial and industrial properties.

The land register shows who owns the land and whether there are encumbrances, such as mortgages or charges affecting the land. A search of the land register may be made via the property address or lot number. Two land registers co-exist, namely:

- The Register of Deeds for Common Law land under the Registration of Deeds Act; and
- The Land Titles Register for titles land under the Land Titles Act.

Under common law, interest in land is passed by the act of the parties, that is, when a deed is signed, sealed and delivered. Registration of Deeds is not mandatory. The Land Titles Act was introduced in 1960. Under the Land Titles System, a Land Titles Register is maintained. Under this system, registration is mandatory to effect the transfer of an estate or interest in land.

## **3. How to find out if a natural or legal person owns a company / business registered in the country?**

The Accounting and Corporate Regulatory Authority (ACRA) is the central registration authority in Singapore for business entities<sup>139</sup>. ACRA maintains a register containing information on companies, limited liability partnerships, limited partnerships, partnerships and sole proprietors. A member of the public can perform a search of the register upon payment of a fee to find out the registered owner, partner, shareholder or director of a business entity.

Companies are required to maintain a register of its directors, managers, secretaries, auditors and shareholders which are open for inspection.

Foreign companies are not required to keep information on shareholders at their registered Singapore office unless one or more of the shareholders resident in Singapore apply to have their shares registered in the branch register<sup>140</sup>.

<sup>138</sup> <http://www.sla.gov.sg/htm/ser/ser03.htm>

<sup>139</sup> MER Singapore, p.163

<sup>140</sup> Section 379 of the Companies Act

**4. How to find out if a natural or legal person has non banking financial interests (life insurance portfolio where applicable, securities) in the country?**

In the context of whether a natural or legal person has non-banking financial interests in the form of shares, a public listed company is required to keep a register of substantial shareholders at the registered office and the register must be open for inspection by a member of the company without charge and by any other person on payment of a fee<sup>141</sup>. A substantial shareholder holds an interest in not less than 5% of the total votes attached to all the voting shares of the same class, in the company<sup>142</sup>.

To ensure that the register of substantial shareholders is kept up to date:

- Any person who becomes or ceases to be a substantial shareholder, or whose substantial interests changes, must report that fact to the company within two business days<sup>143</sup>.
- Public listed companies are empowered to request members to disclose if they hold shares as beneficial owner or as a trustee and must include that information in the company register<sup>144</sup>.

Companies publicly listed on a stock exchange in Singapore need not furnish the particulars of their shareholders to ACRA<sup>145</sup> because such companies are subject to separate regulatory disclosure requirements, i.e., compliance with the listing rules issued by the Singapore Exchange (SGX).

Much of the information relating to public companies is made available publicly and/or independently checked by exchanges and external auditors. When shares are issued for non-cash consideration, further information or evidence of the consideration are reported to ACRA<sup>146</sup>.

**5. How to find out if a natural person or legal person owns luxury goods such as boats or planes registered in the country?**

Planes and boats owners have to register them to Singaporean public authorities like the Civil Aviation Authority of Singapore (CAAS) and the Maritime and Port Authority (MPA) respectively. For example, aircraft registration is governed by the Air Navigation Order which

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<sup>141</sup> Section 88(2) of the Companies Act

<sup>142</sup> Section 81 of the Companies Act

<sup>143</sup> Sections 82 and 83 of the Companies Act

<sup>144</sup> Section 92 of the Companies Act

<sup>145</sup> Section 63(1A) of the Companies Act

<sup>146</sup> Sections 63(4) and (6) of the Companies Act

implements Annex 7 to the Convention on International Civil Aviation (Chicago Convention). In the registration application form, the applicant has to declare and provide information on the aircraft and its ownership and chartering. In addition, the following supporting documents must also be provided:

- Letter of Authorization issued to the applicant (if applicable),
- Lease Agreement (if applicable),
- Photocopy of Import Permit,
- Photocopy of Insurance of Cover Note,
- Original Export Certificate of Airworthiness (from the last State of Registry),
- Notification of de-registration from foreign airworthiness authority (from the last State of Registry),
- Aircraft and Engine data plates,
- Owner nameplate.

## SOUTH AFRICA

### 1. How to find out if a natural or legal person has bank accounts in the country?

Section 26 of the Financial Intelligence Centre Act (FIC Act) of 2001 empowers any officer of the FIU (the Centre) to access any banking records kept by a financial institution. The FIC Act enables the Centre to gather customer identification and transaction information. The Centre has the power to access and take copies of any records kept by a reporting institution in terms of Sections 22 or 24 of the FIC Act. This power can only be exercised during ordinary working hours on the authority of a warrant issued in chambers by a magistrate, regional magistrate or judge (s.26 (1)-(2)). In terms of s. 26 (3) of the FIC Act a warrant may only be issued if it appears to the judge, magistrate or regional magistrate from information on oath or affirmation that there are reasonable grounds to believe that the records referred to in subsection (1) may assist the Centre to identify the proceeds of unlawful activities or to combat money laundering activities.

In addition to these sources of information, the FIC Act also enables the Centre to gather customer identification and transaction information at its discretion without any further requirements for a warrant. Section 27 allows the Centre to request a reporting institution whether: (a) a specific person is or has been a client of that institution; (b) a specific person is acting or has acted on behalf of any client of that institution; or (c) a client of the accountable institution is acting or has acted for a specific person, and the accountable institution must inform the Centre accordingly. In terms of s. 50, an accountable institution that fails to inform the Centre in accordance with section 27, is guilty of an offence.

The Centre is also authorised to obtain additional information relating to a report received, which it may reasonably require to perform its functions (s.32, FIC Act). Obtaining such additional information from the accountable institution, person or entity that had submitted the suspicious transaction report (STR) is done by mere request without any requirements for a warrant. When a financial institution or person receives such a request, the Centre must be furnished with the additional information without delay. In terms of s. 57 an accountable institution, reporting institution or any other person that fails to comply with a request made by the Centre or an investigating authority acting under the authority of an authorised officer in terms of section 32 (2), is guilty of an offence.

In terms of s. 40 of the FIC Act, *inter alia* the following entities are entitled to information held by the Centre:

(a) an investigating authority inside the Republic, the South African Revenue Service and the intelligence services, which may be provided with such information (i) on the written authority of an authorised officer if the authorised officer reasonably believes such information is required to investigate suspected unlawful activity; or (ii) at the initiative of the Centre, if the Centre reasonably believes such information is required to investigate suspected unlawful activity;

(b) an entity outside the Republic performing similar functions to those of the Centre, or an investigating authority outside the Republic which may, at the initiative of the Centre or on written request, obtain information which the Centre reasonably believes is relevant to the identification of the proceeds of unlawful activities or the combating of money laundering activities or similar offences in the country in which that entity is established.

General provisions of the Criminal Procedure Act allow a Director of Public Prosecutions (DPP) to subpoena persons to supply information in connection with the commission of any criminal offence (s.205, CPA). In terms of this provision a judge of the supreme court, a regional court magistrate or a magistrate may upon the request of a Director of Public Prosecutions (DPP) or a public prosecutor authorised thereto in writing by the DPP, require the attendance before him or any other judge, regional court magistrate or magistrate, for examination by the DPP or the public prosecutor authorised thereto in writing by the DPP, of any person who is likely to give material or relevant information as to any alleged offence, whether or not it is known by whom the offence was committed: Provided that if such person furnishes that information to the satisfaction of the DPP or public prosecutor concerned prior to the date on which he is required to appear before a judge, regional court magistrate or magistrate, he shall be under no further obligation to appear before a judge, regional court magistrate or magistrate.

This power is most often used to access financial records and other confidential information. It may be used after having locating the relevant assets, which seems to be done only by sending circular requests to all banks in South Africa.

## **2. How to find out if a natural or legal person owns real estate in the country?**

Ownership of real estate property is recorded in Deeds Registries which are Government run offices. There are Deeds Offices in most provinces. The full name, identity number and marital status of a natural person, the full name and registered numbers of a company, close corporation and trusts have to be disclosed for all parties to a real estate transaction. Ownership records are public information and anyone may approach the Deeds Registries for information about ownership, mortgagees and servitudes. Most law firms and real estate agents have online access to search the records of the Deeds Registries.

All transactions relating to the purchase and sale of real estate must be recorded on the property deed which is registered electronically in one of South Africa's nine deeds offices. The property registry is maintained by the Department of Land Affairs and is accessible to the authorities.

## **3. How to find out if a natural or legal person owns a company / business registered in the country?**

All companies doing business in South Africa, including foreign companies, must be registered in the national company registry, CIPC (Companies and Intellectual Property Commission). It resorts under the Dept of Trade and Industry. From 1 May 2011, close corporations are no longer being registered, but information can still be obtained for previously registered close corporations . The 426 public companies that are listed have additional disclosure and reporting obligations. They must comply with the JSE listings requirements on an on-going basis. These deal mainly with the disclosure and timing of financial information (3.15 to 3.25 and 3.86 and 8.64 of the JSE Rules). There is the general obligation to issue announcements where there is information which cannot be kept confidential and the knowledge thereof may lead to movements in the company's share price *i.e.* trading statements and cautionary announcements (3.4 to 3.10). They must announce the dealings of directors and certain other parties when trading in the listed company's securities.

For legal persons generally, CIPC is a good depository of information concerning legal control and, in the case of close corporations and cooperatives, legal ownership. However, the Registry does not collect information on beneficial ownership and control. Another overarching problem in relation to all of the information contained in the Registry is that none of it is verified, so it cannot be said to be accurate.

There are no impediments to accessing the information available. The Company Register is publically available. Any person who pays a nominal fee may obtain the information contained in the CIPC register.

Company registers of directors and shareholders, and close corporation registers of members are also open to public inspection by any person (s.113 Companies Act). These provisions provide easy and timely access to investigative and supervisory authorities for any purpose. The available information does not capture accurate and current information on the beneficial ownership and control of legal persons. In particular, the information in CIPC is not verified, and the provisions relating to nominee shareholders may obscure beneficial ownership in the company's share registry. Share warrants to the bearer may also obscure beneficial ownership and control.<sup>147</sup>

The administration of trusts is regulated by the Trust Property Control Act, 1988 (TPC Act). There are basically two types of trust in South Africa: (a) an inter-vivos trust created between living persons; and (b) a testamentary trust which derives from a valid will of a deceased person. All inter-vivos trusts involving property that is located in South Africa must be registered, regardless of where the settler, trustee or beneficiaries are located. Trusts are usually registered in the jurisdiction where the trust assets are located. Where a legal person is a founder, trustee or beneficiary, there is no obligation to obtain information on the beneficial owner of the legal person. The identification information on the founder and beneficiary is not verified by the trust register. No records exist of the 2 000 trusts that were created prior to 1987 when the TPC Act came into effect.

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<sup>147</sup> Source : FATF MER, 2009

**4. How to find out if a natural or legal person has non banking financial interests (life insurance portfolio where applicable, securities) in the country?**

South Africa has the Stock Market Act, 1985, the Securities Services Act, 2004 and the Insurance Laws legislation which regulate life insurance and securities. The records are kept by the respective institutions and except for the life insurance information are readily accessible. Access to life insurance information by any person is not clearly regulated; however the law enforcement agencies would get direct access the procedure stipulated in s 205 of the CPA.

**5. How to find out if a natural person or legal person owns luxury goods such as boats or planes registered in the country?**

All planes and aircrafts are registered and regulated by the South African Civil Aviation Authority. Any information on records kept by them can be obtained online through their website <http://www.caa.co.za/>. Such information however is unlikely to disclose the beneficial ownership.

Information pertaining to boats can be obtained from the Marine Safety Authority.

## REPUBLIC OF KOREA

### 1. How to find out if a natural or legal person has bank accounts in the country?

Financial institutions are obliged to identify and verify the identification of customers as part of CDD measures<sup>148</sup>. With the enactment of the AML/CFT Regulation in July 2010, financial institutions are obliged to take necessary measures to identify the beneficial owner depending on the degree of ML/TF risks involved. Financial institutions are obliged to keep financial information confidential.<sup>149</sup> However, they are required to provide financial transaction information when competent authorities request the information, including the FIU when analyzing STRs. One provision limits sharing of information between financial institutions<sup>150</sup>: it allows general information to be provided to other financial institutions except customer identification information unless consent is obtained from the customer<sup>151</sup>.

Since 2006, financial supervisory authorities can exchange information with foreign financial supervisory authorities<sup>152</sup>. This includes information on the identity of the person placing orders for securities transactions, location where the orders are placed, and the identity of the party making the payment.

The Commissioner of KoFIU may access financial, administrative and law enforcement information<sup>153</sup> such as family register; information on resident registration; and basic information on business. Investigations are also conducted by the Ministry of Justice, Public Prosecutors' Office (PPO), National Police Agency (NPA), Korea Customs Service (KCS), National Tax Service (NTS), National Election Commission (NEC) and the Financial Services Commission (FSC)<sup>154</sup>. Public prosecutors and judicial police officers have the authority to seize, search or inspect evidence in order to identify and track properties subject to confiscation or other criminal proceeds<sup>155</sup>. Search warrants are required<sup>156</sup> for investigations conducted by the PPO and they are issued by the District Court.

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<sup>148</sup> Pursuant to the Financial Transaction Reports Act

<sup>149</sup> Pursuant to Article 4-3(1) of the Real Name Financial Transactions Act (guarantee of secrecy of financial transactions), Article 22 of the FETA (guarantee of secrecy of foreign exchange transactions), Article 23 of the Use and Protection of Credit Information Act (consent regarding provision and use of personal credit information), and Article 27 of the same act (prohibition of disclosure of secrets for non-business purposes)

<sup>150</sup> Article 4(1) of the Real Name Financial Transactions Act

<sup>151</sup> Korea's Mutual Evaluation Report on AML/CFT, 26 June 2009, §432, p. 110

<sup>152</sup> Amendment to the Real Name Financial Transactions Act, Article 4(1)(6)

<sup>153</sup> Pursuant to Article 10 of the Financial Transaction Reports Act (FTRA, 2006) and Article 14 of the Presidential Enforcement Decree of the FTRA

<sup>154</sup> For further details, see Korea's Mutual Evaluation Report on AML/CFT, 26 June 2009, §232-236, p. 68

<sup>155</sup> Articles 195 and 196 of the Criminal Procedure Act

<sup>156</sup> *Ibid.*, Article 215

## **2. How to find out if a natural or legal person owns real estate in the country?**

Although there is no explicit requirement<sup>157</sup> for customer due diligence measures to be conducted in real estate brokerage business, real estate agents do carry out identification of customers, both individuals and legal entities, when conducting transactions<sup>158</sup>. All real estate agents certified or not, are subject to the Code of Ethics<sup>159</sup> under which they must report the actual transaction cost to the mayor, county governor or head of the district where the transaction takes place when entering into a real estate contract<sup>160</sup>. In addition, in order to obtain the land registration for real estate transfers, the prescribed form for registration must be completed and a original document or certified copy of a written contract for the sale of property that proves the grounds of registration must be submitted with the application for registration.

In conducting real estate transactions, real estate agents are not required to identify beneficial ownership of customers or the source of funds involved in the transactions. Real estate trust companies should deposit trust deeds establishing the arrangements with the District Court in the county where the land subject to the trust is located. The original register on trusted real estate submitted to the district court where property is located is computerized and disclosed to the public as part of a register of properties.

The Land registration Department is maintaining a register of properties acquired by non-resident Koreans. Regardless of nationality, those who acquire real estate shall apply for registering a transfer of ownership on property<sup>161</sup> within 60 days of the validity of a contract. In addition, acquisition, loss or change of the rights of real estate takes effect when registered. Given that title registration under a third party's name and abbreviated registration are strictly prohibited except a few cases and are subject to a criminal penalty, real estate registration is mandatory in Korea.

## **3. How to find out if a natural or legal person owns a company / business registered in the country?**

Relevant legislation requires certain information in order to approve registration of incorporation<sup>162</sup>. A company comes into existence on registration of its incorporation at the place

<sup>157</sup> Under the Act on Real Estate Agents

<sup>158</sup> Korea's Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism, 26 June 2009, §650, p. 159

<sup>159</sup> Under the Act on Certified Real Estate Agents

<sup>160</sup> Pursuant to article 27 of Business Affairs of Licensed Real Estate Agents and Report of Real Estate Transaction Act

<sup>161</sup> Pursuant to the relevant provisions of Act on Special Measures for the Registration of Real Estate

<sup>162</sup> Pursuant to the Commercial Act and the Commercial Registration Act. For more information on the common

of its principal office<sup>163</sup>. The Commercial Registration Office must be notified of changes to registration information after incorporation but that office is not required to verify the accuracy of any information provided or to cross reference personal information produced by those forming companies<sup>164</sup>. Some basic information on corporations is publicly available, such as registration number and stockholder fluctuations in public companies. Regulatory, taxation, supervisory and law enforcement authorities have a variety of statutory powers to secure information about the ownership and control of legal persons, both from publicly available sources. But the scope of beneficial ownership information is limited to what is recorded in corporate shareholder registers<sup>165</sup>.

Every business owners including corporations and individuals subject to national taxes are required to register their businesses to the National Tax Services (NTS). For corporations, especially, they are also required to submit a stockholders' list. However, taxpayers' information which the NTS owns are confidential<sup>166</sup>. Such information can only be released under special circumstances such as when a governmental institution requests one to file charges against a tax criminal, or with a court order or warrant.

On incorporation, a company must keep a general shareholder register at its principal office which must contain names of individual shareholders<sup>167</sup>. The stockholder registry must also include information on names of foreign shareholders including their passport numbers<sup>168</sup>. In cases where stockholders are legal persons, the requirement only extends to the names of the legal persons, the locations of the headquarters of those legal persons, and their business registration number. There is no requirement to determine and disclose the names of the natural persons standing behind the shareholder company.

No information is required information in relation to beneficial ownership beyond the registered shareholder. The shareholder register is available to shareholders and creditors of the legal person at any time.

With respect to share transfers, the Commercial Act, the Corporate Tax Act and the Presidential Enforcement Decree of the Corporate Tax Act provide that share transfers must be recorded in the shareholder register. Beyond, a corporation with changes in stock during the business year shall submit a detailed statement of those changes to the chief of the District Tax Office. That report is subject to tax secrecy laws and is not available for inspection by government agencies

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registration information required for each type of company, see *Ibid.*, §688, p. 166

<sup>163</sup> Article 172 of the Commercial Act

<sup>164</sup> *Ibid.*, Article 183, 269, 317, and 549

<sup>165</sup> Korea's Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism, 26 June 2009, §697, p. 168

<sup>166</sup> According to the Framework Act on National Taxes

<sup>167</sup> Article 396 of the Commercial Act

<sup>168</sup> Article 118 of the Corporate Tax Act. Other identification information is required pursuant to Article 160 of the Presidential Enforcement Decree of the Corporate Tax Act

except in relation to the investigation of tax offences<sup>169</sup>.

The AML/CFT Regulation requires financial institutions to take necessary measures to identify the beneficial owner of the corporate customer when there is suspicion or concern that the customer might be involved in money laundering. With respect to high-risk customers, financial institutions are required to identify the purpose of the transaction and source of the funds for the transaction.

**4. How to find out if a natural or legal person has non banking financial interests (life insurance portfolio where applicable, securities) in the country?**

Trustees of personal trusts must maintain information as to the management of the accounts<sup>170</sup> and personal information collected is limited to the trustee. As to business trusts, trust companies must be licensed under the *Financial Investment Services and Capital Markets Act* and they are required to include identification information when entering in trust contract<sup>171</sup>. Trust companies are regulated by the Financial Supervisory Service (FSS) which has administrative powers of access to information held by trust companies and may request trust companies to submit relevant documents<sup>172</sup>.

Law enforcement agencies have powers to obtain information on both personal and business trusts, including the settlor, and to some extent beneficiaries. Given the absence of a central registry for personal trusts, the information is limited to what is required under the *Trust Act*<sup>173</sup>. And while personal trusts are obliged to file tax returns, given the laws on tax secrecy, the information is not available to other agencies except for a criminal investigation in relation to tax matters or pursuant to a court order<sup>174</sup>.

Trust companies are regulated by the Financial Supervisory Service (FSS) and are subject to AML/CFT obligations therefore they are required to identify beneficiaries of trusts. However, transparency concerning beneficial ownership and control of trusts is limited. Law enforcement authorities have the authority to obtain or access available information on beneficial ownership on trusts in these trust companies only in case of criminal investigations or pursuant to a court order.

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<sup>169</sup> Article 119 of the Corporate Tax Act

<sup>170</sup> Article 33 of the Trust Act

<sup>171</sup> Article 109 of the Financial Investment Services and Capital Markets Act

<sup>172</sup> *Ibid.*, Article 419

<sup>173</sup> Article 33 of the Trust Act

<sup>174</sup> Korea's Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism, 26 June 2009, §714, p. 171

**5. How to find out if a natural person or legal person owns luxury goods such as boats or planes registered in the country?**

Vessels must be registered with the Ministry of Land, Transport and Maritime Affairs or local government<sup>175</sup> as well as aircraft owned or leased by individuals<sup>176</sup>.

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<sup>175</sup> In accordance with SHIP ACT and Water-Related Leisure Activities Safety Act

<sup>176</sup> Article 3, 5 of the Aviation Act

## SPAIN

### 1. How to find out if a natural or legal person has bank accounts in the country?

SEPBLAC (Servicio Ejecutivo de la Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias) has direct and immediate access to statistical information on movement of capital and overseas financial transactions from the Bank of Spain (balance of payments, Article 48.2 Law 10/2010<sup>177</sup>).

In addition, identification of bank accounts' holders will be possible in Spain through a central database detained by the Spaniard FIU. SEPBLAC may pass on any information it has to the police, provided an application to do so is made in accordance with article 43 of Law 10/2010, which creates a new instrument called "Financial Ownership File":

"1. In order to forestall and prevent money laundering and terrorist financing, credit institutions shall report to the Executive Service, at intervals determined in the regulations, on the opening or cancellation of current accounts, savings accounts, securities accounts and term deposits.

The statement shall, in any event, contain the data identifying the holders, representatives or authorised persons, together with all other persons with withdrawal powers, the date of opening or cancellation, the type of account or deposit and the information identifying the reporting credit institution.

2. The reported data shall be included in a publicly owned file, called a Financial Ownership File, for which the Secretariat of State for the Economy will be responsible.

The Executive Service, as processor, shall, in accordance with Organic Act 15/1999, determine the technical characteristics of the database and approve the appropriate instructions.

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<sup>177</sup> Ley 10/2010, de 28 de abril, de prevención del blanqueo de capitales y financiación del terrorismo. *"In the exercise of its functions in respect of financial institutions covered by special legislation, the Executive Service may obtain from the Bank of Spain, the National Securities Market Commission or the Directorate-General for Insurance and Pension Funds, as appropriate, all of the information and cooperation it requires for the performance of said functions. Without prejudice to the previous subparagraph, the Executive Service shall have direct access to statistical information on capital movements and foreign economic transactions reported to the Bank of Spain in accordance with the provisions of the legislation applicable to such transactions. Likewise, the managing bodies and the Treasury General of Social Security shall transfer the personal data and information they may have obtained in the exercise of their functions to the Commission for the Prevention of Money Laundering and Monetary Offences, at the request of its Executive in the exercise of the powers conferred on it by this Act".*

3. When investigating crimes related to money laundering or terrorist financing, the examining judges, the Public Prosecutor's Office and, upon judicial authorisation or that of the Public Prosecutor, the law enforcement agents may obtain information reported to the Financial Ownership File. The Executive Service may obtain the above data in the exercise of its powers. The State Tax Administration Agency may obtain the above data as laid down in General Tax Act 58/2003 of 17 December.

Any request for access to the data of the Financial Ownership File shall be adequately reasoned by the requesting body, which shall be responsible for the correct form of the demand. In no case may access to the File be demanded for any purpose other than the prevention or suppression of money laundering or terrorist financing.

4. Without prejudice to the powers that correspond to the Spanish Data Protection Agency, a member of the Public Prosecutor's Office appointed by the Attorney General in accordance with the procedures set forth in the Organic Statute of the Public Prosecutor's Office, who, in the exercise of this activity, is not carrying out his/her duties in any of the bodies of the Public Prosecutor's Office responsible for prosecuting crimes of money laundering or terrorist financing, shall ensure correct use of the file, for which purpose he/she may request full justification of the reasons for any access”.

## **2. How to find out if a natural or legal person owns real estate in the country?**

SEPBLAC has direct and immediate access to the Notarial Records and the Tax authority (Article 48 Law 10/2010).

Besides that, pursuant to article 10 of the Ministerial Order 114/2008, notaries are required to record in a database the information of the acts that they undertake. The Notaries Self Regulatory Organisation (SRO) maintains a database with the information recorded by all notaries. Law enforcement authorities can access automatically on-line all the information contained in the database. SEPBLAC has also immediate access.

Any further request from competent authorities (e.g. copies of the acts of incorporation, etc.) is immediately provided by the SRO. From 2007 to 2009, the SRO received almost 25 000 requests of information from law enforcement authorities and a considerable number of requests for documents. After the enactment of the Act 10/2010, the SRO is now planning to develop a database of beneficial owners which will be equally accessible to competent authorities.

There is a Land Registry in Spain (Registro de la Propiedad), which is accessible by public authorities.

**3. How to find out if a natural or legal person owns a company / business registered in the country?**

SEPBLAC has direct and immediate access to Business Registry (Registro Mercantil Central). Search by name of owner / administrator is permitted and the register is publicly available ([www.rmc.es](http://www.rmc.es)).

In addition, the incorporation of legal companies requires a notarial deed which must be afterwards registered in the Business Register. A wide range of other acts also subject to the intervention of notaries (i.e, transmission of participations of limited liability companies...). Information on founders, acquirers, etc... are recorded in the database maintained by the Notaries SROs. The data can be accessed by SEPBLAC and law enforcement agencies (LEAs) as explained above. Pursuant to article 4.2 of the Act 10/2010, notaries must also identify the beneficial owner of the legal persons participating in such acts. A specific database on beneficial owners has been created and will be soon<sup>178</sup> ready for consultation by SEPBLAC and LEAs.

**4. How to find out if a natural or legal person has non banking financial interests (life insurance portfolio where applicable, securities) in the country?**

The SEPBLAC has direct and immediate access to the National Commission for Stock Market (CNMV) and to the Directorate General of Insurance and Pension Funds (DGSFP) (Article 48 of Law 10/2010).

Iberclear and the databases of the National Tax authority may provide some information on securities holders. IBERCLEAR is the Spanish Central Securities Depository which is in charge of both the Register of Securities.

The Ministry of Justice keeps a Registry of whole life assurance policies (Registro de contratos de seguros de cobertura de fallecimiento).

**5. How to find out if a natural person or legal person owns luxury goods such as boats or planes registered in the country?**

This information is available through Registries kept by two Ministerial departments.

The Ministry of Developments keeps Registries for both boats (Registro Maritimo) and planes (Registro de Matrícula de Aeronaves) for administrative purposes in which registration is mandatory.

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<sup>178</sup> Information given by the authorities of Spain on May 2012.

The Registry for personal (movable) property (Registro de Bienes Muebles) within the Ministry of Justice also includes a section on planes and boats.

## TURKEY

### **1. How to find out if a natural or legal person has bank accounts in the country?**

There is specific administrative body that is responsible for tracing suspicious financial transactions and financing of terrorism, namely Financial Crimes Investigation Board (MASAK). A court order is not necessary in accessing bank information as MASAK has statutory authority to make request for the same. However, in order to find out if a person holds a bank account in a financial institution settled in the country, MASAK has to contact all financial institutions (31 Banks+4 Participation Banks) separately.

In addition, Turkey has a conviction based confiscation system with no extended confiscation provisions. Assets subject to confiscation (in this respect to be identified, traced and seized) are exclusively counted in Criminal Law (Law number: 5237) Article 55, where asset confiscation is regulated: (i) material benefits obtained through the commission of an offence, or constituting the subject of an offence or provided for the commission of an offence, (ii) economic proceeds obtained by the investment or conversion of the material benefits mentioned above.

There is no specific legal provision for tracing these assets; general principles of criminal investigation (Criminal Procedure Law, Law number: 5271) apply. If, during a criminal investigation, it is determined that a crime has been committed and material benefits have been obtained through the commission of it, or constitute the subject of it or have been provided for the commission of it, these material benefits are identified and traced by the police unit which conducts the investigation.

During this process, certain information and documentation about the ownership, concealment, transfer, consumption, investment and conversion of material benefits might be needed. In this case, the Public Prosecutor who is in charge of the investigation prepares & signs a disclosure order asking the relevant person or institution to provide the investigative police unit with applicable information and documents. With the exception of motor vehicle records and trade registry, the Police has neither statutory power to compel persons or institutions to provide information and documentation that might be helpful for asset tracing, nor has authorization to access databases where this kind of information & documentation is kept.

On corruption matters, there are administrative bodies which have a legal duty to carry out investigation through bank accounts. The law No.3628 on “Asset Declaration and Fight against Bribery and corruption” gives Inspection Boards which are structured under the Prime Ministry and other ministries the authority to request information regarding the assets of anyone who is alleged to acquire illicit assets.

### **2. How to find out if a natural or legal person owns real estate in the country?**

<http://tkgm.gov.tr/tkgm/index.php> : website of the Cadastre and Land Registry in Turkey.

Although the Directorate of Land Register is not an obliged party in the scope of STR under the AML provisions, there is no obstacle for reporting to MASAK any information relevant to its duty to MASAK. Furthermore, The Turkish FIU may access the data it holds, while performing its function of analysis of an STR.

As of now, there is no national registry for real estate ownership. To be able to find out if a natural or legal person has real estate, Regional Land Registry Divisions (22) should be contacted separately. There is an ongoing project by the Ministry of Environment and Urbanization -General Directorate of Cadastre and Land Registry, to integrate the registrations of land registry divisions in one national electronic database.

### **3. How to find out if a natural or legal person owns a company / business registered in the country?**

Currently, there is not a central registry system in Turkey. The local registry offices, where titles, Articles of Association, starting capital, shareholders, and directors of companies are registered are established in 238 locations within the chamber of commerce and industry. To be able to find out if a natural person owns a company/business, local trade registry offices (or through Ministry of Customs and Trade) or Ministry of Finance should be contacted directly

Commercial companies and companies are registered in the Trade Registry Office in the location where their company's head office is established. Registry and announcement requirements differ depending on the legal structure of the concerned entity. The types of notices include; establishment, authorized representatives, increase in capital, change of legal status, branch opening or closure, change of address, change of shareholders, reports of general meetings, and court decisions.

The subjects requiring registry include information on the founders of the legal person, partners (share holders), address of founders and business, registration date, range of activities, representatives (directors) and transfer of shares.

The focus of the registration system is the identification of the persons who are authorized to carry out transactions on behalf of the legal person. Under this system it is possible to have a cascade of ownership of one legal person by another legal person or arrangement with no information on the beneficial ownership or control of the legal persons involved in establishing, owning or controlling another legal person.

While Turkey has a Trade Registry system for legal persons, there is no requirement to disclose information on beneficial ownership to the Trade Registry or to other government authorities.

The Ministry of Industry and Trade is carrying out a project for the establishment of a central and electronic registration system called MERSIS. Pilot application has been initiated started in

the Mersin Commercial Registry in May 2010. Though the project was expected to be fully operational by the end of 2012, it is now expected to be implemented throughout Turkey in February 2013.

It is expected to be fully operational with its database by the end of 2012.

Until the Trade Registry database is fully operational it is not possible to have rapid access to information of the owners or directors of a company (Except for legal entities registered in the Mersin Commercial Registry). Inquiries and investigations may be conducted into the ownership of legal persons and through government authorities' powers to compel production of information by following a trail of ownership through a series of legal persons back to the actual persons owning or controlling the entities.

**4. How to find out if a natural or legal person has non banking financial interests (life insurance portfolio where applicable, securities) in the country?**

There is no national registry for life insurance. Each life insurance company should be contacted separately. A project to create a centralized database within the Insurance Information Center is already underway and expected to be completed by the end of 2011. Individual pension products are more common and account information can be easily accessed through the Pension Monitoring Center's database which is updated daily.

There is a national registry for securities including equities, corporate debt securities, warrants, exchange traded funds and mutual funds. To be able to find out if a natural or legal person has non-banking financial interests, the Central Records Administration should be contacted.

The provisions of the Capital Market Law (CML) and other laws related to the capital market are supervised and enforced by the Capital Market Board (CMB). Natural and legal persons from whom information is requested are not able to refuse to provide information by claiming confidentiality and secrecy provisions. According to Article 22 of the CML, collaborating in any way and exchanging information regarding the capital market with equivalent foreign authorities is allowed.

Intermediary institutions are required to register accounting records related with securities transactions within one day. The intermediary institutions are obliged to keep all kinds of correspondence, contracts, commitments, guarantees, documents, promissory notes and court announcements that were received or made due to the activities of capital market, and the documents received or arranged as part of identification procedures. They must also notify changes in address information of account holder customers to the ISE Settlement and Custody Bank Inc. within two days. When required, identity and address information of customers must be submitted to the Board and those charged by the Board.

**5. How to find out if a natural person or legal person owns luxury goods such as boats or planes registered in the country?**

All aircrafts and planes are registered under the Turkish Civil Aviation Act No.2920 of 1983. The registration records are kept by the Turkish Aircraft Register; in addition foreign aircrafts are required to obtain authorization from the Ministry of Transport, Maritime Affairs and Communications to fly on Turkish airspace. Article 20 states that conditions for registration and licensing for operations for individuals and companies by the Ministry of Transport, Maritime Affairs and Communications shall be as prescribed by the Ministry. This gives discretion and it is not automatic that the beneficial owner can easily be identified. The records are held by a public body and can be accessed without a court order.

There is a national registry for maritime vessels. To be able to find out if a natural or legal person has a maritime vessel Ministry of Transport, Maritime Affairs and Communication should be contacted.

## UNITED KINGDOM

### **1. How to find out if a natural or legal person has bank accounts in the country?**

Information on bank records is in the custody of individual banks. In order to locate a bank account, the authorities have to send circulatory letters to all financial institutions requesting them to disclose if they detain a bank account on the name of a suspect. Account details are considered closed sources of information and access by third parties can only be given to the law enforcement agencies and only through court orders.

Different agencies have different legislation provisions for obtaining court orders for this. In case of asset recovery, The Serious Organized Crime Agency –SOCA, uses the Proceeds of Crime Act 2002 (PoCA) and the Serious Organised Crime and Police Act 2005 (SOCPA) to obtain court orders to access the account details and when necessary to get freezing orders. Such orders can be served across a range of institutions depending on the circumstances. Access for evidential purpose can also be achieved through service of production orders under s.345 of Proceeds of Crimes Act.

Under the Proceeds of Crime Act 2002 (S363) there is provision for an appropriate officer to make application before a judge for the granting of a 'customer information order'. The effect of such an order is to make the financial institutions (upon which served) disclose all relevant details of the subject and his/her accounts. Such an order can be served upon a whole range of institutions. The scope of the order can be on a limited number of institutions or on a much wider range of banks/institutions dependent upon the circumstances. Each application and the institutions upon which it is intended to serve the orders are assessed on a case by case basis.

In the case of financial intelligence the United Kingdom Financial Intelligence Unit-UKFIU has the national responsibility for receiving, analysing and disseminating financial intelligence submitted through the Suspicious Activity Reports (SARs) Regime. SARs provide pieces of information which alert law enforcement that certain client/customer activity, for example, the cash purchase of a high-value asset or a series of large out-of-character deposits - is in some way suspicious and might indicate money laundering or terrorist financing. The UKFIU would then move to court where necessary to obtain a court order to lift the bank records.

The existence of accounts might also be identified through closed sources such as the credit rating agencies. However, such searches would not identify savings accounts and may not encompass all accounts' holders in the UK.

### **2. How to find out if a natural or legal person owns real estate in the country?**

There is centralized database on real estate for all the registered land in England and Wales, Scotland and Northern Ireland that can be obtained from the Lands registry physically or from its

website [www.landregistry.gov.uk/wps/portal/Property](http://www.landregistry.gov.uk/wps/portal/Property). Information regarding real estate is classified as open source and does not require any court order in order to access the information.

Information can be obtained using names, title of the property, postal address or through generic search by areas. The search certificate provided will show the current ownership details and the previous owner since 2000 as well as the price or value of the property and particulars of the address. Some real estate titles may show the beneficial owners while some only the registered owners and in case of a company, again a search would have to be undertaken at the Company House to know the Directors and shareholders. A property inquiry can be made daily between 7 am and 12 midnight from Monday to Saturday. Since the information is regarded as open source, it can be accessed by the law enforcement agencies and any interested person.

Not all businesses are required to be registered with the Company House for example limited liability partnerships and sole traders. There is a closed source which can be accessed to determine whether a natural or legal entity owns a company or business for example Dun and Bradstreet.

<b>3. How to find out if a natural or legal person owns a company / business registered in the country?</b>
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This information is also considered open source. UK has a centralized data on companies kept and managed at the Companies House and can be accessed online on their website at <http://www.companieshouse.gov.uk>. the main functions of the Company House is to incorporate and dissolve limited companies, examine and store company information delivered under the Companies Act,2006 and make information available to the public. Not all businesses are required to register with Companies House. Limited Liability Partnerships and Sole traders are two examples of business entities that can, but are not obliged, to be registered.

Information can be obtained on companies and Trusts registered in England and Wales, Scotland and Northern Ireland from this source. These documents include constitutional information about the company and details of those involved in its formation (notably its first directors and members).

All Companies are required to keep an up to date register of the names and addresses of its members (section 352 of the 1985 Act, section 113 of the 2006 Act), which is to be kept available for inspection by the public. The register is to be kept (or at least made available) at the company's registered office or some other place in the part of the UK where it is registered (i.e. England and Wales, Scotland or Northern Ireland) which has been notified to the registrar of companies.

The UK's approach to preventing the unlawful use of legal persons and legal arrangements for ML and FT relies on the investigative and other powers of law enforcement, regulatory, supervisory, and other competent authorities to obtain or get access to information. With very

few exceptions, all the information disclosed to the registrar of companies is available to the public.

There are alternative closed sources which can be accessed to determine whether a natural or legal entity owns a company or business - for example, Dun & Bradstreet.

**4. How to find out if a natural or legal person has non banking financial interests (life insurance portfolio where applicable, securities) in the country?**

The United Kingdom has no centralized database for securities or insurances. It is not easy to obtain information on who holds securities or life insurance portfolios or who are the beneficial owners. This information can only be obtained from individual security or insurance companies or stock broker's registry.

Normally one would get to know about ownership while undertaking investigations or gathering intelligence from bank statements which may show entries payable to these companies or through documents obtained from the suspects premises.

It is not clear whether this information is considered open source or whether court orders are required but access is limited to the beneficiaries and law enforcement agencies (in this case SOCA, UKFIU, Police or the TAX Man). This industry is also regulated under the Financial Services Agency created under the Financial Services and Market Act, 2007 which regulates the financial institutions including insurances and provides information when requested under the Freedom of Information Act, 2000.

The 2007 FATF MER noted that supervision for certain entities currently categorized as "small firms" should be strengthened, especially small banks (even if they are supervised more closely than the other small firms), securities brokers/investment managers, and insurance firms which are Core Principles institutions.

**5. How to find out if a natural person or legal person owns luxury goods such as boats or planes registered in the country?**

All pleasure craft (like yachts) can be registered on Part I or Part III of the UK Ship Register and information about pleasure craft like registration/renewal, changing port/name or transferring ownership of your boat can be obtained through applying for a Transcript of Registry. Past entries, such as an historic transcript (full history of the boat) will also be available on this transcript. The records are kept at the Registry of Shipping and Seamen –RSS.

The motor vehicle registration has a centralized data system. Data on vehicles and registration marks are collected by the Driver and Vehicle Licensing Agency (DVLA) on first registration in the UK, when keepers provide updated information on the vehicle, and when vehicles are licensed or relicensed.

The database is used by the DVLA for operational monitoring of vehicles, checking for vehicle excise duty (VED) evasion and tracking vehicles to keepers.

An anonymous version of the database can be provided to other users. These include DVLA's business agents. The business agents can provide aggregated data to users ahead of formal publication. There are times when the Driver and Vehicle Licensing Agency (DVLA) can provide information from its records. You can get information online, over the phone or in writing, depending on what you need to know on the website <http://www.dvla.gov.uk/>. Driver information can be found in the government website Directgov.

Data on aircraft can be obtained from the UK Civil Aviation Authority and from their website, <http://www.caa.co.uk/> through the GINFO Database search. The search can be conducted by name of the owners or aircraft or aircraft type name or even by address. Since it can be done online, it is accessible to all persons; whoever sometimes one will need more than internet search as information may not be all forthcoming or sometimes not detailed through this type of investigations.

Again here the beneficiaries may not be quickly identified and more searches/inquiry will need to be employed.

## UNITED STATES

### 1. How to find out if a natural or legal person has bank accounts in the country?

#### - Where the location of bank or financial accounts are unknown

U.S. law enforcement can query whether any U.S. financial institution that reports to FinCEN has any financial information relevant to specific investigative targets.

FinCEN's regulations<sup>179</sup> enable Federal, state, local, and certain foreign law enforcement agencies, through FinCEN, to query more than 44,000 points of contact at more than 22,000 U.S. financial institutions to locate accounts and transactions of persons or entities involved in investigations where there is credible evidence of terrorist financing or significant money laundering activity. As a general practice, this authority is used after more traditional investigative measures have been exhausted.

Financial institutions have 2 weeks from the posting date of the request to respond with any positive matches. If their search does not uncover any matching of accounts or transactions, the financial institution is instructed not to reply to the 314(a) request.

FinCEN receives requests from law enforcement and, upon review and approval, provides the 314(a) subject information to designated points of contact within financial institutions across the United States every 2 weeks via a secure website. The subject information contains as much identifying information as possible to assist the financial institutions in searching their records. The financial institutions must query their records for data matches for any accounts maintained by the named subject during the preceding 12 months and any transactions conducted within the last 6 months.

Additionally, as the U.S. Financial Intelligence Unit, FinCEN maintains a searchable database of all reports filed by U.S. financial institutions, businesses, and the public. Appropriate law enforcement can query this database for information on cash transactions exceeding \$10,000 (CTR),<sup>180</sup> suspicious activity (SAR),<sup>181</sup> receipt of currency exceeding \$10,000 reported by a trade or business (8300),<sup>182</sup> declarations of physical cross-border transportation of currency exceeding \$10,000 (CMIR),<sup>183</sup> and financial interest or signatory authority in a foreign bank account exceeding \$10,000 in value (FBAR).<sup>184</sup> Although not a comprehensive database of assets, such database contains records of hundreds of millions of financial transactions that could serve as lead information for the identification of assets.

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<sup>179</sup> Section 314(a) of the USA PATRIOT Act of 2001 (P.L. 107-56)

<sup>180</sup> 31 CFR 1010.310

<sup>181</sup> 31 CFR 1010.320

<sup>182</sup> 31 CFR 1010.330

<sup>183</sup> 31 CFR 1010.340

<sup>184</sup> 31 CFR 1010.350

With respect to SARs, FinCEN has deemed the documentation supporting the SAR filing to be part of the SAR. While kept in custody by the filing institution, these supporting documents must be produced by an institution at the request of FinCEN or appropriate law enforcement or regulatory agencies.

- **Law enforcement tools to trace *identified* bank and financial accounts**

Generally speaking, law enforcement can obtain financial records through various coercive measures, including grand jury subpoenas<sup>185</sup>, administrative subpoenas<sup>186</sup>, and search warrants<sup>187</sup>, as well as information obtained under general or case-specific information sharing agreements with regulatory agencies. A law enforcement agency, if it has statutorily been given such authority, can, without prosecutorial or judicial authorization, issue an administrative subpoena or summons in investigations of offenses over which they have jurisdiction. However, notification to the customer of a financial institution is required if an administrative subpoena is used unless the agency obtains a court order which delays such notification.

When law enforcement uses a grand jury subpoena to obtain the financial records of a customer, no notification to the customer is required. Grand jury investigations are treated as confidential therefore, disclosure of such information obtained by the grand jury is strictly limited as set forth in Rule 6 of the Federal Rules of Criminal Procedure.<sup>188</sup> A federal court may authorize disclosure of matters disclosed to the grand jury upon the U.S. prosecutor's request when such information is sought by a foreign court or prosecutor for use in an official criminal investigation occurring in the foreign country.

The United States can also obtain financial records for foreign investigations pursuant to 18 U.S.C. § 3512 and 28 U.S.C. § 1782. In a U.S. judicial proceeding for forfeiture *in rem* where a verified complaint has been filed, a prosecutor can issue a trial subpoena for bank records through the Clerk of the Court<sup>189</sup>. Assistance in tracing and identifying assets may not necessitate formal proceedings and can be done in an informal way via police-to-police communication (e.g., via foreign law enforcement attachés and CARIN contacts). Law enforcement can ask FinCEN to transmit information to a foreign FIU at any time and for any criminal offence that is a predicate offence for money laundering.

**2. How to find out if a natural or legal person owns real estate in the country?**

<sup>185</sup> See, generally, Fed. R. Crim. Pro. 6. The power to subpoena records and testimony is an inherent function of the grand jury. See *United States v. R. Enterprises* 498 U.S. 292, 296 (1991); *Costello v. United States*, 359, 362 (1956)

<sup>186</sup> 18 U.S.C. § 3486, 21 U.S.C. § 876 and 31 U.S.C. § 5318(a)(4)

<sup>187</sup> Fed. R. Crim. Pro. 41(c)(1); Supp. Rule G of the Supplemental Rules for Admiralty and Maritime Claims, and 21 U.S.C. §881(b) and 18 U.S.C. § 981(b)(2).

<sup>188</sup> Fed. R. Crim. Pro. 6

<sup>189</sup> 18 U.S.C. §986

All real estate recording systems in the U.S. are administered differently by each state, district or territory of the United States. Real estate records, including land ownership, are generally maintained at a county, borough, parish or municipal level and many, if not all, property records are available online and, if not, are otherwise publically available and “hand searchable.” Generally speaking, law enforcement has access to all of this information via commercial databases made available to law enforcement for a fee.

**3. How to find out if a natural or legal person owns a company / business registered in the country?**

The formation, operation and dissolution of U.S. corporations are governed by state, district or territorial law. In order to form a corporation, every state, district or territory requires the filing of articles or a certificate of incorporation<sup>190</sup> together with the payment of a filing fee. All states require that every corporation maintain a registered office within the state or an agent for service of process. Basic information regarding the formation of a corporate entity may be obtained through the Secretary of State’s office in which the entity of interest is believed to be located or incorporated.

Some states also maintain publicly accessible databases through which limited corporate identifying information such as date of incorporation, identification of corporate officers and directors, corporate addresses, and the identification of a corporate agents may be found, often for a fee, but sometimes free of charge.

The databases do not contain information about the beneficial ownership of corporations

The Internal Revenue Service (IRS) uses an Employer Identification Number (EIN) as an information tool to identify taxpayers that are required to file various business tax returns. Any person other than an individual - which includes corporations - must use an EIN. Information contained in the application forms for EINs is used as a tool to identify potential taxable accounts of employers, sole proprietors, corporations, partnerships, estates, trusts, and other entities. U.S. law enforcement entities may also use this as a resource for obtaining relevant corporate data.

**4. How to find out if a natural or legal person has non banking financial interests (life insurance portfolio where applicable, securities) in the country?**

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<sup>190</sup> United States of America’s Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism, 23 June 2006, §1020, p. 230

There are no centralized ownership registers of publicly traded shares. Individual dealer-brokers would know what shares their clients hold and maintain records of that. There are certain filings requirements under the U.S. Securities laws that would require the public disclosure of beneficial ownership interests for certain publicly traded companies and for certain stock ownership levels.

**5. How to find out if a natural person or legal person owns luxury goods such as boats or planes registered in the country?**

Aircraft are registered with the Federal Aviation Administration (FAA) Registry under relevant legislation.<sup>191</sup> Access to aircraft data and most individual aircraft records is routine for law enforcement and security agencies.

As to vessels, they must be documented with the US Coast Guard under relevant legislation.<sup>192</sup> Pursuant to the legislation, states are required to assign numbers to all vessels that are used in waters under federal jurisdiction. The way numbers are assigned to vessels by states is either through a title or registration system. Information concerning ownership is kept by the National Vessel Documentation Center. This information is readily available to law enforcement and security agencies.

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<sup>191</sup> 14 CFR Parts 13, 47, and 91 [Docket No. FAA-2008-0188; Amendment Nos. 13-34, 47-29, 91-318]

<sup>192</sup> *Federal Motorboat Act of 1910*; the *Federal Numbering Act of 1918*; the *Federal Boating Act of 1958*; and the *Federal Boating Safety Act of 1971*

