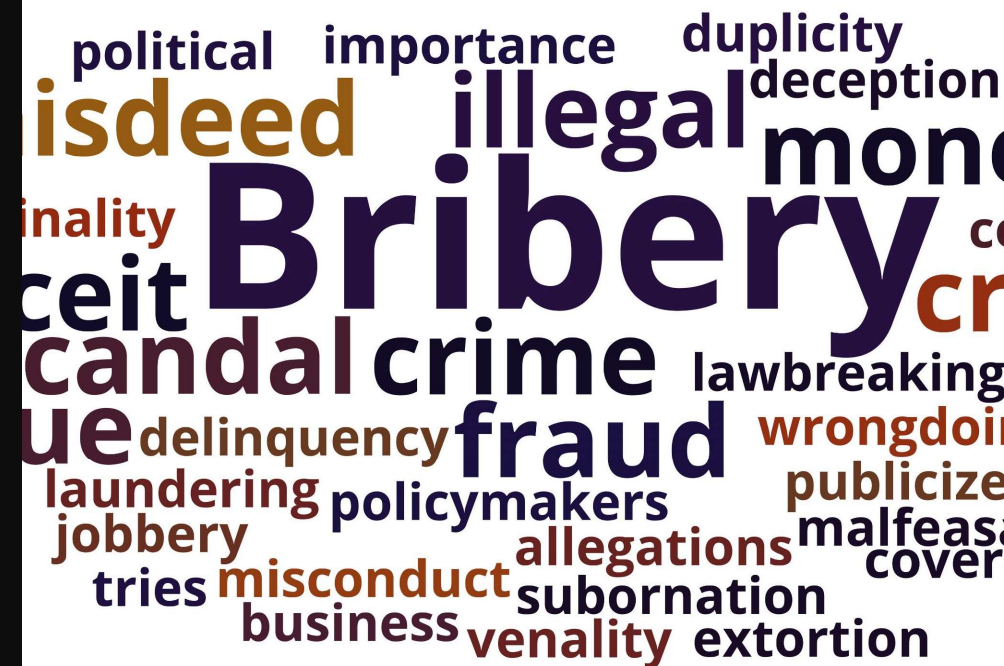

Combating Corruption

Faculty of Law, University of Latvia

Class 11

29 April 2020

Shawn N. Sullivan



A word cloud of terms related to corruption and crime. The words are arranged in a dense, overlapping manner. The most prominent word is 'Bribery' in a large, dark blue font. Other large words include 'isdeed' (in brown), 'illegal' (in dark blue), 'mon' (in dark blue), 'crime' (in dark blue), 'fraud' (in dark blue), 'candal' (in dark blue), 'ceit' (in dark blue), 'delinquency' (in brown), 'lawbreaking' (in dark blue), 'wrongdo' (in brown), 'publicize' (in dark blue), 'malfeas' (in dark blue), 'cover' (in dark blue), 'allegations' (in brown), 'subornation' (in dark blue), 'venality' (in brown), 'extortion' (in dark blue), 'business' (in dark blue), 'misconduct' (in brown), 'jobbery' (in brown), 'launders' (in brown), 'policymakers' (in dark blue), 'tries' (in brown), 'political' (in dark blue), 'importance' (in dark blue), 'duplicity' (in dark blue), 'deception' (in dark blue), 'finality' (in brown), and 'cr' (in brown). The words are set against a white background.

Today's Agenda

- Finish off the Global Magnitsky Act.
- Move on to:
 - The relationship between corruption & money laundering.
 - The international system for fighting money laundering.

The United States Magnitsky Act ---Sanctions for Corruption and Human Rights Violations--

Purpose of sanctions

- Provide leverage to diplomatic and political processes that can bring about sustainable solutions by:
 - Naming and shaming.
 - Changing a perpetrator's calculus to effect reduction in undesirable behavior.
 - Alienating perpetrators from other government and non-government actors .
 - Signaling international expectations.
 - Inducing economic shortfalls to reduce repressive capacity.

Types of sanctions

- Comprehensive: Include broad-based trade restrictions and prohibit commercial activity with an entire country
- Sectoral: Are often applied to specific sectors of an economy
- Secondary: These put pressure on third parties to stop doing business with the sanctioned country by threatening to cut-off the third party's access to the sanctioning country.
- Targeted: Directed at individuals, companies and organizations, or restrict trade with key commodities

What is the U.S. Magnitsky Act?

- The Russia and Moldova Jackson–Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012.
 - Passed by the U.S. Congress and signed into law by President Barack Obama in December 2012.
 - Original purpose was to punish Russian officials allegedly responsible for the death of Russian tax accountant Sergei Magnitsky in a Moscow prison in 2009.
 - The Act was amended in the Global Magnitsky Human Rights Accountability Act of 2016 to authorize the U.S. President to impose financial sanctions and visa restrictions on foreign persons in response to gross violations of human rights and significant acts of corruption.
-

Sergei Magnitsky

By VOA - Прокуратура призывает снять обвинения с подсудимого в деле
Магнитского, Public Domain,
<https://commons.wikimedia.org/w/index.php?curid=23326351>



Executive Order 13818, “Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption” 21 December 2017

- Draws upon the statutory authority granted to the U.S. President in 4 different laws:
 - International Economic Emergency Powers Act.
 - National Emergencies Act.
 - Immigration and Nationality Act of 1952.
 - Global Magnitsky Act.
- Declares a “national emergency” owing to “an unusual and extraordinary threat to the national security” posed by “serious human rights abuse and corruption around the world.”



Expanded Powers under the Executive Order

Global Magnitsky as enacted	EO 13818 as applied
"gross violations of internationally recognized human rights"	"serious human rights abuse " (non-state actors)
perpetrated against someone working to "obtain, exercise, defend, or promote" human rights	perpetrated by any foreign person found "to be responsible for or complicit in, or to have directly or indirectly engaged in, serious human rights abuse."
command responsibility (activity-based)	"leader or official of an entity that has engaged in..." (status-based)
"acts of significant corruption"	"corruption"
"the facilitation or transfer of the proceeds of corruption" only apply to transfers to foreign jurisdictions	No restriction on application regarding facilitation or transfer of corrupt proceeds

Source: Human Rights First

Source: Human Rights First.

Asset Blocking Under E.O. 13818

- U.S. Treasury Dept. Office of Foreign Assets Control (OFAC) is authorized to cut off from the U.S. financial system any person determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, to be, among other things, engaging in human rights abuse, or engaging in corruption.
- Sanctions can extend to those who provide goods or services to such actors, including financial institutions.

U.S. Has Imposed Magnitsky Sanctions on Individuals Around the World

The next slide shows just a few countries whose
nationals have been sanctioned





Breakdown of Sanctions to Date

Sanctions by Type	
Individual Primary Sanctions	79
Entity Primary Sanctions	2
Individual Derivative Sanctions	17
Entity Derivative Sanctions	101
Total Sanctions	199
Sanctions by Crime	
Corruption	120
Human Rights Abuse	65
Both	14

Source: Human Rights First



© fotoscool / Depositphotos.com

Application of Sanctions to Alleged Human Rights Violators



Assassination of Jamal Khashoggi

Died: October 2, 2018, İstanbul, Turkey
Sparked an international scandal &
imposition of Magnitsky sanctions.

PHOTO BY y April Brady / POMED - Mohammed bin Salman's Saudi Arabia:
A Deeper Look, CC BY 2.0,
<https://commons.wikimedia.org/w/index.php?curid=73742140>



(13 October 1958 – 2 October 2018)

Citizen of Saudi Arabia
US Permanent Resident
Journalist for the *Washington Post* newspaper

-
- Khashoggi was a dissident from a very prominent Saudi family.
 - Controversial, colorful figure.
 - Criticized Saudi intervention in Yemen.
 - Criticized publicly Saudi Arabia's crown prince, Mohammad bin Salman, and King Salman.
 - 2 October 2018: Khashoggi entered Saudi consulate in Istanbul, Turkey, to obtain documents related to his planned marriage.
 - He was never seen leaving.
 - After many inconsistent explanations by Saudi officials, Saudi Arabia's attorney general stated publicly that Khashoggi was the victim of premeditated murder.
 - It is believed that Khashoggi's body was dismembered and disposed of to hide the fact of the murder.
-





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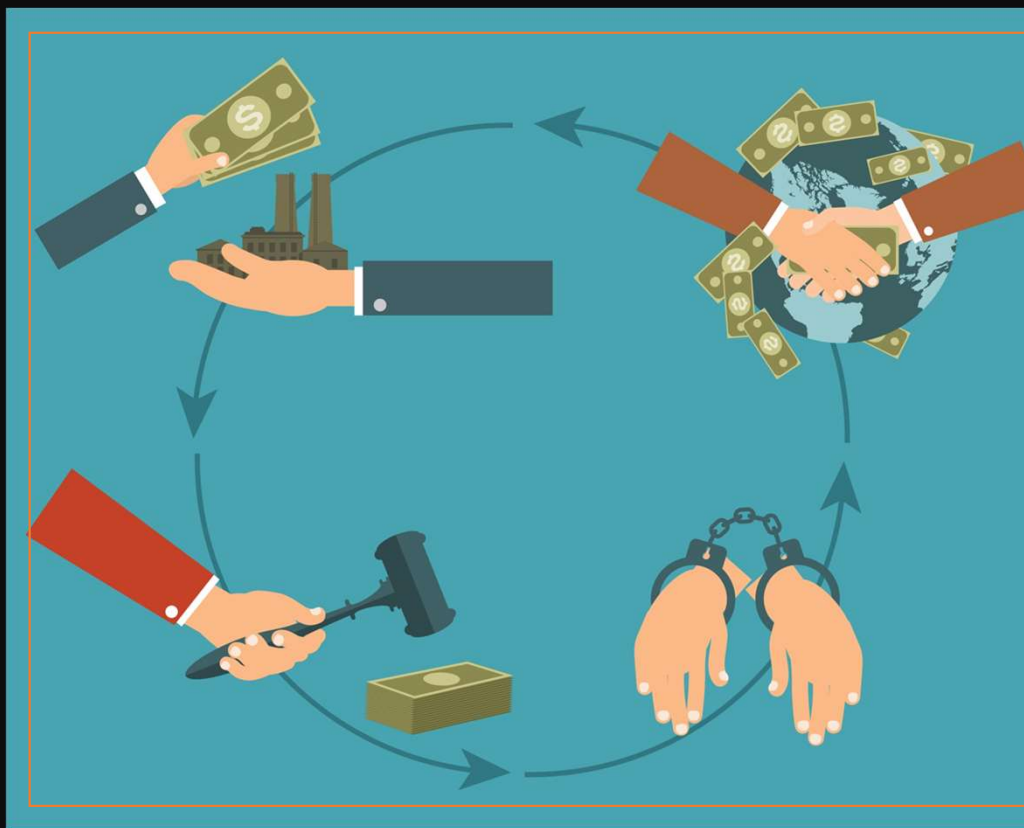
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Treasury Sanctions 17 Individuals for Their Roles in the Killing of Jamal Khashoggi



November 15, 2018

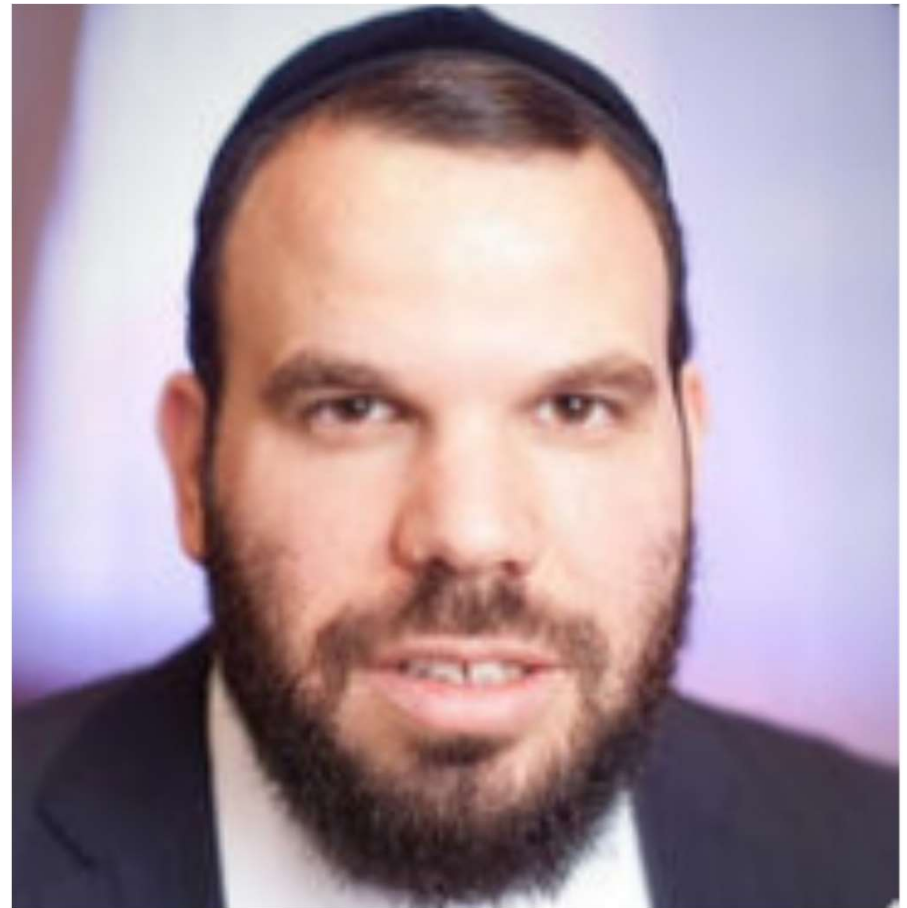


Application of Sanctions in Public Corruption Cases

DRC: Use of Tax Haven Shell Companies by Financial Facilitator of DRC President to Move and Launder Stolen Mining Revenues

On December 20, 2017, the President of the United States included Dan Gertler (Gertler) in the Annex to Executive Order (E.O.) 13818, "Blocking the Property of Persons Involved in Serious Human Rights Abuses and Corruption." In an action simultaneous to E.O. 13818, OFAC designated 19 companies and one individual affiliated with Gertler.²³ Gertler is an international businessman and billionaire who has amassed hundreds of millions of dollars through opaque and corrupt shell company-facilitated mining and oil deals in the Democratic Republic of Congo (DRC), in part, by leveraging his close friendship with DRC President Joseph Kabila. Alongside Gertler's designation, Treasury identified 19 entities owned or controlled by Gertler or his Gibraltar-registered Fleurette Properties Limited (Fleurette), which owns stakes in various Congolese mines through holding companies in offshore tax havens such as the British Virgin Islands (BVI) and the Cayman Islands. Of the companies Treasury designated, six are registered in the BVI and all known addresses correspond to P.O. Box mailing addresses, with multiple companies using the same addresses. Although Gertler does business more publicly through Fleurette, it is the names of these offshore companies that appear on contracts and agreements. The companies appear to have been created for a singular purpose and were rarely disclosed until said agreements had been completed.²⁴ Between 2010 and 2012 alone, the DRC reportedly lost over \$1.36 billion in revenues from the underpricing of mining assets that were sold to offshore companies linked to Gertler. In those instances, Gertler used his close friendship with Kabila to act as an intermediary for mining asset sales in the DRC, requiring some multinational companies to go through Gertler to do business with the Congolese state.²⁵

Source: US Dept. of Treasury FinCEN



Senator Félix Bautista (Dominican Republic)

Alleged basis for sanctions: “Bautista is a Senator from the Dominican Republic who has engaged in significant acts of corruption in both the Dominican Republic and Haiti, and who has been publicly accused of money laundering and embezzlement. Bautista has reportedly engaged in bribery in relation to his position as a Senator, and is alleged to have engaged in corruption in Haiti, where he used his connections to win public works contracts to help rebuild Haiti following several natural disasters, including one case where his company was paid over \$10 million for work it had not completed.”

Source: U.S. Embassy in Dominican Republic





Aivars Lembergs (Mayor of Ventspils, Latvia)

AIVARS LEMBERGS

Corruption has undermined the Latvian economy for years, robbing the Latvian people of funds for public services, and empowering illicit actors to harm the security of the Latvian state and the NATO Alliance. The United States has worked closely with the Government of Latvia to address corruption there and elsewhere and are committed to our common cause. This U.S. action underscores the U.S. commitment to Latvia and our determination to hold corrupt oligarchs accountable for their actions against a key European ally.

Latvian oligarch Aivars Lembergs (Lembergs) is designated for being a foreign person who is a current or former government official responsible for or complicit in, or directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

Lembergs has served as the Mayor of Ventspils, Latvia, since 1988. From that time, he has been repeatedly accused of money laundering, bribery, and abuse of office. Lembergs controls entities through political parties and corrupt politicians, and systematically exploits those entities and individuals for his own economic gain. Lembergs has used his influence over leadership of political parties to shape government personnel and place certain government officials in positions, as well as to obstruct other government officials from obtaining leadership positions. Additionally, Lembergs has leveraged and corrupted law enforcement officials to protect his interests and subvert politicians whom he otherwise was unable to control.

In addition to designating Lembergs, OFAC is designating four Latvia-based entities that are owned or controlled by him: **Ventspils Freeport Authority**, **Ventspils Attīstības Aģentūra** (also known as Ventspils Development Agency), **Biznesa Attīstības Asociācija** (also known as Business Development Association), and **Latvijas Tranzīta Biznesa Asociācija** (also known as Latvian Transit Business Association).

Source: US Dept. of Treasury FinCEN

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PRESS RELEASES

Treasury Removes Sanctions on Latvia's Ventspils Freeport Authority



December 18, 2019

Treasury removes sanctions following Latvian government action to strip ownership or control from Global Magnitsky-designated oligarch Aivars Lembergs

Washington – Today, the Department of the Treasury's Office of Foreign Assets Control (OFAC) removed sanctions imposed on the Ventspils Freeport Authority, which was designated on December 9 for being owned or controlled by Latvian oligarch Aivars Lembergs (Lembergs). Following the designation of Lembergs and the Ventspils Freeport Authority, the Latvian government passed legislation effectively ending Lembergs' control of the Ventspils Freeport Authority. According to the legislation, the port will be supervised by four representatives appointed by the Latvian government. Lembergs resigned from the Ventspils Freeport Authority on December 10, 2019, where he had previously served as the Chairman of the

How Does Someone End Up on the Magnitsky Sanctions List?

How Does Someone End Up on the Sanctions List? Executive Branch Engagement

- **199** designations made since January 2017
 - (as of January 2020)
- **16** batches
- **25** countries



Source: Human Rights First

How Does Someone End Up on the Sanctions List? Congressional Involvement.

- “In determining whether to impose sanctions under subsection (a), the President shall consider...information provided jointly by the chairperson and ranking member of each of the appropriate congressional committees.”



How Does Someone End Up on the Sanctions List? NGO Involvement.

“(c) CONSIDERATION OF CERTAIN INFORMATION IN IMPOSING SANCTIONS.—In determining whether to impose sanctions under subsection (a), the President shall consider—

- (1) information provided by the chairperson and ranking member of each of the appropriate congressional committees; and
- (2) credible information obtained by other countries and **nongovernmental organizations that monitor violations of human rights.**”

Adoption of Magnitsky Acts in Other Countries

- United Kingdom
- Russia
- Estonia
- Canada
- Lithuania
- Latvia
- Gibraltar
- Jersey
- Kosovo.

Former Liberal justice minister urges sanctions against Chinese officials who covered up early COVID-19 outbreak



STEVEN CHASE >

ROBERT FIFE > OTTAWA BUREAU CHIEF

PUBLISHED APRIL 14, 2020

UPDATED APRIL 16, 2020

566 COMMENTS SHARE



TRENDING

- 1 'Mask diplomacy': Taiwan donates half a million masks to Canada with appeal for closer ties

Former Liberal justice minister Irwin Cotler, a leading international champion of human rights, is blaming the Chinese government for the scale and spread of the COVID-19 pandemic, saying he believes transmission of the novel coronavirus could have been dramatically reduced if China had acted earlier.

He also says the world would have been far more prepared to handle the outbreak if Chinese Communist Party officials had acted sooner, alleging government authorities covered up and hid early news of the outbreak.

Mr. Cotler is urging Canada to impose Magnitsky-style sanctions on Chinese officials who mistreated or silenced whistleblowers, including medical staff and citizens, in the early days of the pandemic. The Sergei Magnitsky Law allows Canada to impose asset freezes and travel bans on human rights abusers around the world.

Saeima passes "Magnitsky act"

february 8, 2018, 14:33 | [Saeima](#) |

Authors: [eng.lsm.lv](#) (Latvian Public Broadcasting)



On February 8 the Latvian parliament asked the government to impose sanctions against the persons involved in the so-called Magnitsky case.

This means Saeima supports drawing up a "Magnitsky list" similar to those already operating in the U.S., U.K., and elsewhere.

60 MPs voted 'for' introducing a "Magnitsky list", seven were against and three 'abstained'.

The Latvian parliament says Russian authorities have not conducted an independent and objective investigation about the arrest, torture and death of Russian attorney Sergey Magnitsky, who was murdered in police custody in Russia after exposing a massive criminal fraud involving state officials.



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Latvian police seize assets under Magnitsky Act

Tuesday, March 10, 2020 1:00:22 PM



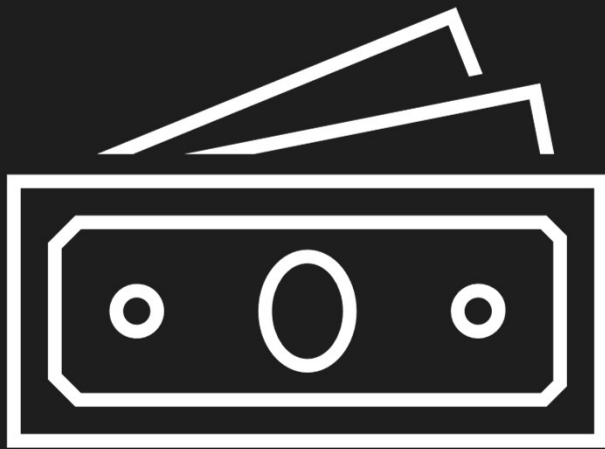
The Latvian State Police's Office for Combating Economic Crimes seized in February assets in the case of Sergei Magnitsky worth about \$500,000, [RuBaltic.ru](#) reports.

Police identified bank accounts and property in the \$230 million money laundering scheme which was exposed by Sergei Magnitsky.

"Latvian accounts were used for purchases by Russian citizens," the police said. Among the assets seized are two real estate properties in Latvia bought from Cypriot accounts. The bank account of a widow of the former Russian State Duma deputy, which was used to sell a yacht, was also frozen.

Money Laundering and its Relationship with Corruption





The practice of engaging in financial transactions in order to conceal the identity, source, and/or destination of money, and is a main operation of the underground economy.

A process whereby the origin of funds generated by illegal means is concealed (drug trafficking, gun smuggling, corruption, etc.)

Some Definitions of Money Laundering



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Money-Laundering and Globalization



Rapid developments in financial information, technology and communication allow money to move anywhere in the world with speed and ease. This makes the task of combating money-laundering more urgent than ever.

The deeper "dirty money" gets into the international banking system, the more difficult it is to identify its origin. Because of the clandestine nature of money-laundering, it is difficult to estimate the total amount of money that goes through the [laundry cycle](#).

The estimated amount of money laundered globally in one year is 2 - 5% of global GDP, or \$800 billion - \$2 trillion in current US dollars. Though the margin between those figures is huge, even the lower estimate underlines the seriousness of the problem governments have pledged to address.



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On December 11, 2012, HSBC entered into a Deferred Prosecution Agreement with the Department of Justice for violating federal laws designed to prevent drug trafficking organizations, terrorist organizations and other criminals from laundering money into the United States. HSBC agreed to pay what some have referred to as a “record \$1.92 billion” to federal and state authorities.⁵⁴ HSBC had been charged with failure to maintain an effective anti-money laundering program, failure to conduct due diligence on its foreign correspondent affiliates, and for violating sanctions and the Trading with the Enemy Act.⁵⁵ More specifically, HSBC is required to have a money laundering control monitoring system in place to detect irregularities and patterns of transactions that may be indicators of money launderers. Bank compliance officers review these reports and file Suspicious Activity Reports based on that data. HSBC had a compliance system in place but essentially turned it off for three years with respect to transactions classified as regular to medium risk. They were also incorrectly categorizing business risks. For example, transactions coming from Mexico were designated as regular risk when in actuality they should have been designated as high risk.

According to a report issued by Senator Carl Levin’s Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations, HSBC “exposed the U.S. financial system to a wide array of money laundering, drug trafficking and terrorist financing risks.”⁵⁶ According to Department of Justice press statements on the subject, HSBC had allowed over \$670 billion in wire transfers and over \$9.4 billion in physical money to enter the United States from Mexico unmonitored. At least \$881 million in Mexican drug proceeds entered the United States illegally.

Source: U.S. Senate Caucus on International Narcotics Control

**US\$
1.92
Billion
Fine**



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Source: U.S. Senate Caucus on International Narcotics Control

**US\$
1.92
Billion
Fine**



HSBC UK

Together we thrive

**But HSBC
Facilitated
Transfers of
US\$ 679.4
Billion in
Unmonitored
Funds!!!**

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THE INCESTUOUS RELATIONSHIP BETWEEN CORRUPTION AND MONEY LAUNDERING

Nadim Kyriakos-Saad, Gianluca Esposito et Nadine Schwarz

ERES | « *Revue internationale de droit pénal* »

2012/1 Vol. 83 | pages 161 à 172

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Introduction

Corruption and money laundering are closely linked. Corruption offenses, such as bribery or theft of public goods, generate significant amounts of proceeds that need to be laundered - or “cleaned” - to enter the financial system without the stigma of illegality. At the same time, corruption may facilitate money laundering: corrupt officials may influence the process by which proceeds (regardless of the asset-generating crime they derive from) are laundered, and enable launderers to escape all controls and sanctions. IMF’s staff research has shown that countries with a low level of control over corruption tend to have lower levels of compliance with the anti-money laundering and combating the financing of terrorism (AML/CFT) standards.¹

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Politically Exposed Person (PEP): A Key Term in Anti-Money Laundering Law & Regulation

- A PEP is a “politically exposed person,” meaning a person who has or has had a prominent government or quasi-public position in a country.
- The primary risk in dealing with a PEP is that the source of funds from a PEP may be from corruption.





Also often
related to
money
laundering—

- **Financing of terrorism.**
- **Tax evasion.**
- **Other financial crimes that exploit vulnerabilities in legal and financial systems to conceal money from regulators and authorities.**

The Process of Money Laundering



**Step 1 -
Placement**

**Step 2 -
Layering**

**Step 3 -
Integration**



Step 1 - Placement

- The stage at which illegal funds enter the financial system for the first time.
- Typically, this means the transformation of illicit cash into an asset that is easier to transfer or manipulate and thus more useful to the money's end use. For example:
 - Cash deposits into bank accounts, depositing cash with nonbank financial institutions, wire transfers and placement of money onto pre-paid stored value cards.
 - Commingling illegitimate funds with legitimate ones;
 - Making foreign exchange transactions with illegal funds.
- **Detection:** US financial institutions required to file Currency Transaction Reports regarding currency transaction (in or out) by or on behalf of same person involving more than US\$ 10,000 in a single day.



Step 2 - Layering

- Money is moved, disguised and converted as launderers seek to obscure the money's illegal origins and sever the evidentiary link between the crime and its proceeds.



Step 3 - Integration

Having been successfully laundered and disguised, illegitimate funds appear to be derived from legitimate economic activity.

For example, purchasing luxury assets like property, artwork, jewelry or high-end automobiles; investing in business enterprises (often shell corporations).



International Coordination of States on Anti-Money Laundering Activities & Guidance

Financial Action Task Force (FATF)

In response to mounting concern over money laundering, the Financial Action Task Force on Money Laundering (FATF) was established by the G-7 Summit that was held in Paris in 1989. Recognising the threat posed to the banking system and to financial institutions, the G-7 Heads of State or Government and President of the European Commission convened the Task Force from the G-7 member States, the European Commission and eight other countries.

FATF is the global money laundering and terrorist financing watchdog. The inter-governmental body sets international standards that aim to prevent these illegal activities and the harm they cause to society. As a policy-making body, the FATF works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.

With more than 200 countries and jurisdictions committed to implementing them. The FATF has developed the FATF Recommendations, or FATF Standards, which ensure a co-ordinated global response to prevent organised crime, corruption and terrorism. They help authorities go after the money of criminals dealing in illegal drugs, human trafficking and other crimes. The FATF also works to stop funding for weapons of mass destruction.

The FATF reviews money laundering and terrorist financing techniques and continuously strengthens its standards to address new risks, such as the regulation of virtual assets, which have spread as cryptocurrencies gain popularity. The FATF monitors countries to ensure they implement the FATF Standards fully and effectively, and holds countries to account that do not comply.

Source: Financial Action Task Force

Financial Intelligence Units

Many countries (including Latvia) have established a financial intelligence unit (FIU) that serves as a national center for the receipt and analysis of:

- suspicious transaction reports; and
- other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of that analysis

End