



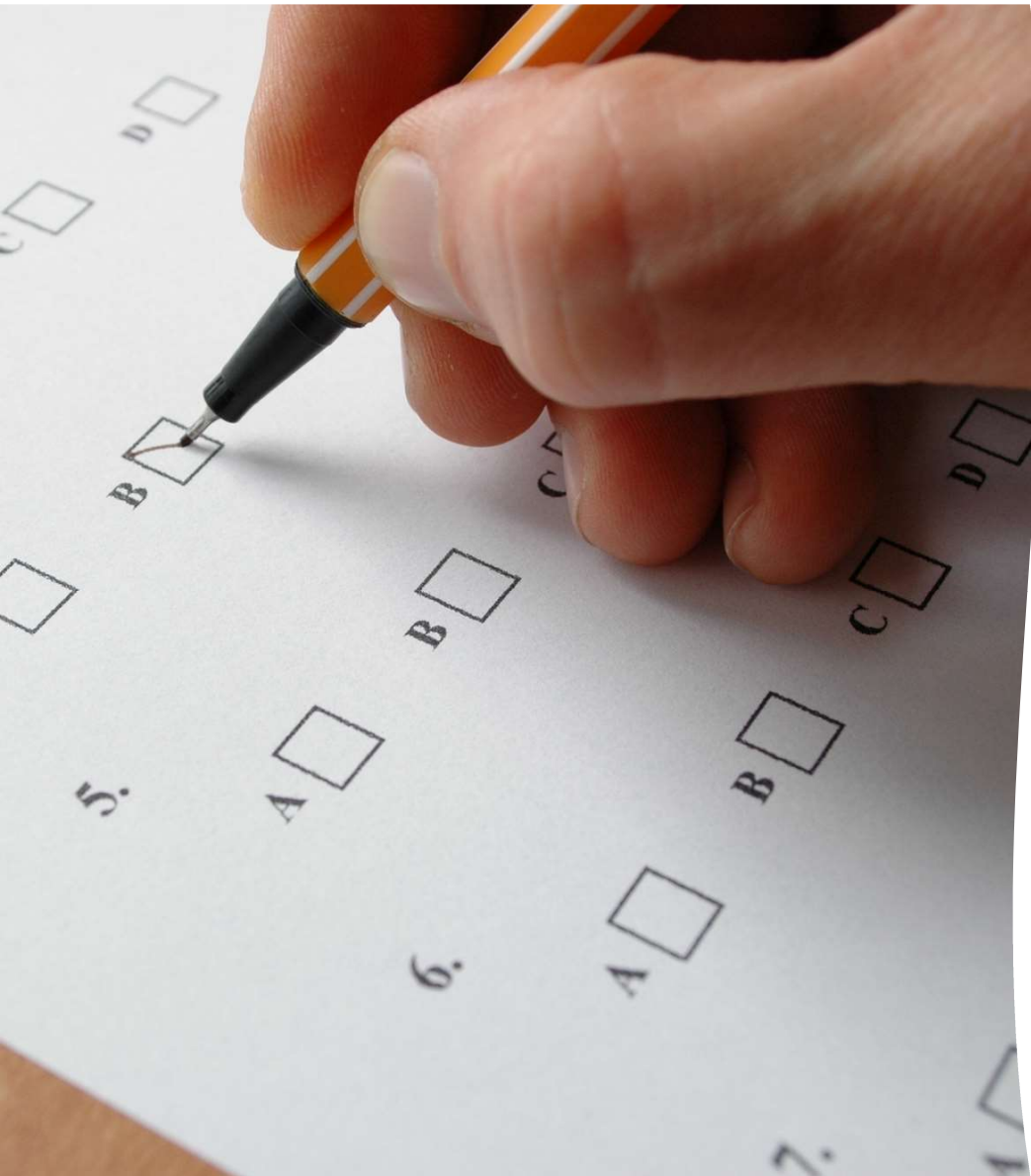
Combating Corruption

Faculty of Law, University of Latvia

Class 14

20 May 2020

Shawn N. Sullivan



Final Exam

- To be released 23 May 2020.
- Answers to be returned by 27 May 2020.
- Email answers to sullivan@sullivanlaw.net.
- Format:
 - True/false.
 - Multiple choice.
 - Discussion.



Alternative Research Paper

Deadline: 22 May 2020

Tying Up Loose Ends





Money Laundering Cases

Petrobras/ Odebrecht/ Operation Car Wash

- Brazilian prosecutors' "Operation Car Wash" became public in 2014. The multi-year investigation uncovered extensive corruption in the Brazilian government, including Petrobras, the Brazilian state-controlled oil company.
- Petrobras directors had been overpaying on contracts in order to fund kickbacks that were then deposited into a secret slush fund. This slush fund was used, in turn, to bribe politicians.
- See the Netflix series *O Mecanismo* (*The Mechanism*).
- Actions taken against Petrobras, Odebrecht, others in Brazil and in U.S. under FCPA.
- Many government officials in Latin America were disgraced when facts became known.



ABLV Bank in Latvia

- Was 3rd largest bank in Latvia.
- High risk customers.
- Focused on serving non-resident clients.
- Listed by U.S. FinCEN as foreign bank of primary money laundering concern.
 - “Institutionalized money laundering.”
 - Incl. US\$1 billion proceeds of 2014 Moldovan bank robbery.
 - Helped finance North Korean weapons of mass destruction in violation of international economic sanctions.
- European Central Bank froze payments out of ABLV.
- ABLV entered voluntary liquidation.





FinCEN Names ABLV Bank of Latvia an Institution of Primary Money Laundering Concern and Proposes Section 311 Special Measure

Contact: Steve Hudak, 703-905-3770

Immediate Release: February 13, 2018

FinCEN Finds the Bank Orchestrates Money Laundering Schemes, Obstructs Regulatory Enforcement, and Has Conducted Activity Linked to North Korea

WASHINGTON – The U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) today issued a finding and notice of proposed rulemaking (NPRM), pursuant to Section 311 of the USA PATRIOT Act, seeking to prohibit the opening or maintaining of a correspondent account in the United States for, or on behalf of, ABLV Bank. FinCEN is proposing this action based on its finding set out in the NPRM that ABLV is a foreign bank of primary money laundering concern.

"FinCEN will continue to take action against foreign banks that disregard anti-money laundering safeguards and become conduits for widespread illicit activity," said Steven T. Mnuchin, Secretary of the Treasury. "Deficient practices at banks foster a wide array of illicit conduct, including activity linked to North Korea's weapons program and corruption connected to Russia and Ukraine. FinCEN is committed to protecting the U.S. financial system from these types of risks."

As described in the finding, ABLV has institutionalized money laundering as a pillar of the bank's business practices. ABLV's management permits the bank and its employees to orchestrate money laundering schemes; solicits high-risk shell company activity that enables the bank and its customers to launder funds; maintains inadequate controls over high-risk shell company accounts; and seeks to obstruct enforcement of Latvian anti-money laundering and combating the financing of terrorism (AML/CFT) rules in order to protect these business practices.

ABLV's failure to implement, and disregard for, effective AML/CFT and sanctions policies and procedures have made the bank attractive to a range of illicit actors engaged in organized crime, weapons proliferation, corruption, and sanctions evasion. Illicit financial activity at the bank includes transactions for parties connected to UN-designated entities, some of which are involved in North Korea's procurement or export of ballistic missiles. In addition, ABLV has facilitated transactions for corrupt politically exposed persons and has funneled billions of dollars in public corruption and asset stripping proceeds through shell company accounts. ABLV failed to mitigate the risk stemming from these accounts, which involved large-scale illicit activity connected to Azerbaijan, Russia, and Ukraine.

Section 311 actions alert the U.S. financial sector to foreign institutions, such as ABLV, that are of primary concern and through the public rulemaking process, if necessary, cut them off from the U.S. financial sector.

Number of accused persons in *ABLV Bank* criminal case increases to 14

LETA

March 6, 2020

 (No Ratings Yet)

In the criminal case regarding possible laundering of at least EUR 50 million in the liquidated *ABLV Bank* the number of people with rights for defence in the case has increased to 14.

On 30 January prosecutor Dainis Šteinbergs told journalists that there are 12 persons with rights for defence in this criminal case. Six persons are currently suspects whereas five persons are considered persons part of a criminal process. Among the suspects are also four foreign citizens.

Press-secretary to the office of the prosecutor Laura Majevska announced on 6 February that a total of five foreign citizens are made suspects in the criminal process. This means the number of involved persons has increased to 13. On Saturday, 6 February, she said a total of 14 people have the right for defence in this criminal case, adding that the last involved person is a Latvian citizen.

In accordance with previous public statements and *LTV* programme *De Facto* reported information, among the people involved in the case are the bank's former shareholder and ex-board chairman Ernests Bernis, businessman Andris Putniņš, Russian citizen Vjačeslavs Ivanovs. The latter is considered the leader of the international organized group.

Apple Podcasts Preview



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Episode 5: ABLV (Latvia) Bank

Framing Money Laundering

Society & Culture

[Listen on Apple Podcasts ↗](#)



How did a small Eastern European nation become the center of a scandal that reverberated throughout Europe? ABLV Bank, Latvia's 3rd largest bank, was outed as having lax AML controls when it was discovered that billions of dirty money flowed through the bank, including money for corrupt officials and money related to North Korea's ballistic missile program.

[Episode Website ↗](#)

[More Episodes](#)

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The background of the slide is a solid orange color. On the left side, there is a stylized sun with a solid yellow circle and several short, curved yellow lines above it representing rays. A large, white, semi-circular shape is positioned on the right side of the slide, partially overlapping the orange background.

Some Themes and Concepts of this Semester

Corruption as a Global Phenomenon

What corruption is.

Where corruption
occurs.

Why corruption should
concern us.

Measuring corruption
& perceptions.

Some causes of
corruption.

- Or at least factors that
correlate with corruption.

Minimizing /
eliminating (maybe
some day) corruption
through legal, political,
and social changes.

The International Anti- Corruption Movement

- Little concern about foreign corruption until the 1970s.
- Major shift in global attitudes toward foreign bribery.
- International anti-corruption treaties.
 - OECD.
 - United Nations.
- The work of intergovernmental organizations.
 - OECD.
 - International development banks such as World Bank, European Bank for Reconstruction and Development, etc.
 - Financial Action Task Force (FATF).
- The work of individual countries and groupings of countries.
 - United States.
 - European Union.
 - United Kingdom.



Opposing Corruption in Latvia



- Nearly 30 years of rebuilding a nation governed by the rule of law after the end of Soviet occupation and recovery of independence.
- Legislation.
- KNAB – The Anti-Corruption Bureau.
- NGOs – Delna (Transparency International).
- Notorious cases of alleged corruption and external influences.
- Latvia's future.
 - Removed from FATF “grey list” of countries with serious money laundering issues to resolve.

U.S. Foreign Corrupt Practices Act



Antibribery and
accounting
provisions.



Indirect payments
through agents and
third parties.



Extraterritorial
scope.



Punishments for
violations.

Special Tools of States to Fight Corruption

- Whistleblower protection laws.
- Use of financial sanctions and travel bans (Magnitsky-style sanctions).
- Intergovernmental cooperation through mutual legal assistance and other information exchanges.
 - Countries request & provide assistance in obtaining evidence in one country to assist in criminal investigations or proceedings in another, & in enforcing forfeiture orders.
- Recovering assets that are the proceeds of embezzlement or other acts of corruption.
 - Recommendation 13 of the OECD Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions: international cooperation in “... identification, freezing, seizure, confiscation and recovery of the proceeds of bribery of foreign public officials.”
 - Art. 51 – UN Convention against Corruption: “The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.”

A Good Article on Recovery of Proceeds of Corruption

<https://www.lexology.com/library/detail.aspx?g=d56f49a8-a261-4602-aefc-02937e33f356>

Civil and criminal mechanisms to recover the proceeds of corruption laundered to foreign states: a guidance note

Locke Lord LLP



Global | May 8 2013

Overview and introduction

Corruption cases are typically international and multi-jurisdictional. Bribes for the award of public contracts or stolen public funds may be paid into foreign accounts or used to acquire foreign properties or other assets; the proceeds of corruption may be laundered through a number of countries, usually major financial centres or offshore havens.

This Guidance Note considers the broad options open to states seeking to locate, freeze and recover the proceeds of corruption laundered to foreign states, and the advantages and disadvantages of each. Procedures and remedies will, of course, vary between jurisdictions as will, in consequence, the relative importance of the advantages and disadvantages identified in this note.

The available recovery mechanisms are criminal or civil; or, in the case of non-conviction based forfeiture by law enforcement agencies, a hybrid of the two. The United Nations Convention Against Corruption (**UNCAC**) identifies all as routes to recover the proceeds of corruption.

However, one does not have to discuss asset recovery with too many practitioners to encounter polarised opinions as to which of the available mechanisms should be preferred. Some criminal practitioners are wedded to the view that it is only criminal, or perhaps non-conviction based forfeiture mechanisms, that are an appropriate response to the criminal behaviour of bribery and corruption, sometimes deriding civil mechanism as expensive and ineffective to obtain evidence. Equally, some civil practitioners assert that criminal proceedings are too slow, cumbersome and prone to failure. Supporters of competing mechanisms will usually point to individual examples said to support their contentions.

In our experience, the '*correct mechanism*' for an individual case is very much dependent on its particular facts. There are some circumstances in which the criminal route is the most likely to achieve meaningful recoveries in a sensible time-frame, and others where the civil route is more likely to do so. There are some circumstances where either criminal or civil mechanisms are unavailable, and the choice is between a particular route or no recovery at all. Consideration of what is the most '*effective*' mechanism will often also involve the need for reflection on what is meant by '*effective*' in that case: how much can actually be recovered and at what speed can a recovery be made?

An effective asset recovery strategy is likely to make use of a combination of criminal and civil mechanisms, with the flexibility in individual cases, where possible, to switch between mechanisms if changing circumstances warrant it. Careful consideration of the circumstances is required before decisions are made as to the right route for a particular case. There will always be difficult cases where reasonable people can quite properly disagree, often on incomplete information, as to which is most likely to be the most effective recovery route. But there are also plenty of cases where the correct route is reasonably obvious on open-minded analysis.

Relationship of Corruption to Money Laundering

- What money laundering is, why and how it is done.
- Notorious cases.
 - HSBC Bank.
 - Petrobras.
 - ABLV Bank.
- Detecting, preventing, and prosecuting money laundering.
 - U.S. anti-money laundering (AML) criminal statutes (18 U.S.C. §§ 1956-57).
 - U.S. Bank Secrecy Act.
 - Roles of Financial Action Task Force (FATF) and Financial Intelligence Units (FIUs).

Corporate Compliance

- Essential for companies of any significant size to have:
 - Policies.
 - Training.
 - Internal controls.
 - Monitoring & enforcement.





Parting Words

- It has been a real pleasure to work with you in this course.
- I wish you the very best.