



GLOBAL FINANCE AND THE ENABLERS OF CORRUPTION

OCTOBER 13, 2022



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RESEARCHED AND AUTHORED BY:

NOAH ARSHINOFF

FOUNDER AND MANAGING DIRECTOR, ACT INTERNATIONAL CONSULTING;
ADJUNCT PROFESSOR OF ANTI-CORRUPTION LAW,
UNIVERSITY OF OTTAWA, CANADA

JANE HUMPHREYS

SENIOR ASSOCIATE WITH ACT INTERNATIONAL CONSULTING;
FOUNDER OF BEYOND BORDERS POLICY CONSULTING, CANADA

MARC TASSÉ

SENIOR ADVISOR, ACT INTERNATIONAL CONSULTING;
PROFESSOR, TELFER BUSINESS SCHOOL AND FACULTY OF LAW,
UNIVERSITY OF OTTAWA, CANADA

Research for this paper was conducted under the Global Integrity Anti-Corruption Evidence Programme. This document is an output from a project funded by UK Aid from the UK Government. The views expressed are not necessarily those of the UK government's official policies.

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EXECUTIVE SUMMARY

This report is about the professionals around the world, from accountants and lawyers to realtors and art dealers, who each day (wittingly or unwittingly) facilitate illicit financial flows (IFFs) of money, which in turn allows crime and corruption to flourish. To date, the global community working to combat IFFs has focused its efforts on targeting criminals: the individuals and organizations generating revenues from illicit activities (e.g., kleptocrats, drug cartels, etc.). Considerably less attention has been paid to the enabling professionals (collectively referred to as ‘enablers’), often located in the Global North, that facilitate the process of obscuring or laundering illicit funds often originating in the Global South.

In recent years, details about the massive scale of financial corruption and the pivotal role enablers play have emerged through data leaks and investigations including the Financial Crimes Enforcement Network (FinCEN) Files¹, Panama Papers², Pandora Papers³ and Paradise Papers⁴, among others. Looking at sub-Saharan Africa alone, it is estimated that a gargantuan \$88.4 billion USD is looted from the region on an annual basis⁵, most of which ends up in the institutions in the Global North. Bankers, lawyers, accountants, and a host of other intermediaries use a myriad of strategies to obscure the source of this wealth. From setting up anonymous shell companies to providing tax advice to making investments using offshore secrecy jurisdictions, these enablers provide crucial counsel to avoid the scrutiny of various authorities and to make ill-gotten funds appear legitimate.

The global framework that seeks to disrupt IFFs clearly has some deficiencies, but what can be done to address the problem of enablers facilitating IFFs? How can a framework designed to take on criminals also be applied to professional services, such as realtors and lawyers, that many citizens rely on? What evidence exists that articulates the extent of the problem? What tools are effective in countering their participation?

While there is little doubt that certain classes of enablers are an essential piece of the global money-laundering puzzle, there is scant evidence to measure the impact of various regulatory measures or other tools. This lack of evidence leaves a crucial gap whereby the most effective strategies to curb the involvement of enablers remain unknown, or at least under-studied.

In some cases, global standards such as the Financial Action Task Force (FATF) recommendations specifically target lawyers, accountants, and other professionals. However, the implementation of these standards is left to national and subnational regulatory authorities creating an asymmetrical landscape among countries with varying levels of resources and political capital dedicated to implementation. Implementation at the national or sub-national level involves balancing trade-offs related to privacy, security, and the resources needed for enforcement. In short, not all regulators are created equal, allowing enablers to facilitate IFFs in certain jurisdictions but not others.

Targeting enablers as a strategy to combat IFFs is no easy task given the complex web of players involved, the multitude of jurisdictions through which money often flows, and the varying regulatory frameworks professionals are subjected to. Further complicating things is that the work of enablers is often legal in their home jurisdiction, it is not always clear

the extent to which they must conduct due diligence on their clients, and it is less clear whether professionals are intentionally acting as enablers.

Due in part to these challenges, enablers have largely operated without serious repercussions and very few have ever faced criminal sanctions for their involvement in global money-laundering schemes. As one example, in 2022, a Panamanian judge acquitted 39 people in a money laundering case, including the namesake lawyers of law firm Mossack Fonseca that rose to prominence through the Panama Papers leaks.⁶

Concerning the state of evidence related to the participation of enablers in IFFs, our research finds that:

- Policy making is not the same as policy implementation. Governments in the United States, the United Kingdom, Canada, Switzerland, France, and others have made strides to advance policy that would make it harder for enablers to help criminals launder their money. Such measures include efforts to advance beneficial ownership transparency, expanding powers of unexplained wealth orders, creating registries of overseas owners of real estate, and increasing the responsibilities of certain enabler classes such as lawyers to prevent corruption.

While governments have been quick to announce new measures, the effectiveness of these policies largely hinges on commensurate resources dedicated to monitoring and enforcement, including ensuring the validity and quality of large amounts of data collected. Thus far there is little evidence to indicate that new policy measures have led to effectively curbing the role of enablers in IFFs.

- Significant data gaps preclude the ability to analyze which policy responses aimed at enablers are most effective. While case studies clearly show that enablers do participate in IFFs, there is much less data that shows their direct involvement. This leaves open several unanswered questions including what type of regulation is most effective, what elements are crucial to a successful beneficial ownership registry, how to avoid forum shopping, and whether global standards result in professional regulatory improvements.
- Competing priorities complicate the path to targeting enablers. Decision makers and regulatory authorities must weigh the relative costs associated with implementing a policy versus the benefits that it might return. Even when the decision is taken to focus on enablers, is it better to focus on emerging enabler groups or established enablers? Answering this requires knowing the size of the market that is ripe for abuse as well as the pool of potential enablers.

Based on these findings, we offer the following recommendations.

Additional research is required to determine what policy solutions are most effective in curbing the role of various types of enablers in IFFs and how best to allocate resources to enforcement (Recommendations 1-5).

This constitutes the most significant evidence gap in the existing literature. For policymaking to translate into effective solutions, there needs to be a greater understanding of the approach and types of regulation that are most effective (e.g., self-regulation vs. state level), the extent to which professionals must conduct customer due diligence, whether banking practices at the depositor level are sufficient to counter IFFs, and whether global standards translate into local impacts. Additionally, more needs to be understood about whether beneficial ownership registries, and the quality of their data, result in a marked decrease of dirty money flowing through a particular jurisdiction.

By addressing the above, it should be possible to determine what resources are required to target enablers and their clients efficiently and effectively, and whether authorities can capitalize on economies of scale and international cooperation in their enforcement efforts.

More data is required to scope the size of the problem (i.e., the proportion of actors within enabler professions that are likely to be involved in IFFs) (Recommendations 6-8).

There is little to no evidence that shows at what point lawyers, accountants, bankers and others may find their clients undesirable and turn them away. There is also little to no research available on what proportion of clients of any given firm have been engaged in illicit financial activity. Though enabler networks can be complex, it is not widely known how extensive and diverse these networks are or what types of regulation drive the expansion or contraction of these networks.

More data on the enablers themselves would help to determine in what priority sequence policy makers should focus their efforts to achieve optimal results. Authorities should also leverage the work of industry associations such as the International Bar Association (IBA) and the International Federation of Accountants (IFAC) who have already committed extensive resources to guarding their respective professions against being used as enablers.

Further study of the scale of IFFs and their geography, the impact of new tools, and emerging enabler sectors is required (Recommendations 9-10)

To develop practical and implementable solutions to thwart IFFs, researchers must determine how we measure the scale of IFFs and link them to geography. Studies must also be carried out that attempt to quantify the flow of IFFs that involve emerging enablers and enabling technologies, such as cryptocurrencies, crowdfunding, online gambling, and online gaming. There is an adage that “Generals always fight the last war”. When it comes to curbing the role of enablers in IFFs, policymakers will need to be forward looking and scanning for new entrants.

Communication strategies need to be developed that make large global corruption problems relatable to the average citizen in the Global North (Recommendation 11)

It is hard for people to relate to a problem that consists of staggeringly incomprehensible numbers that include billions and trillions. Coupled with the fact that those in the Global North don't typically interact with the victims of IFFs who often reside in the Global South, communication strategies need to be more relatable to avoid this problem seeming like a distant, abstract issue. Politicians won't address an issue that the population doesn't care about or doesn't understand.

1. INTRODUCTION

When criminals, kleptocrats, and other corrupt actors seek to obscure or “launder” their ill-gotten wealth, they usually require the assistance of professional intermediaries to make the funds appear legitimate. The intermediaries may be lawyers structuring corporate vehicles, accountants guiding tax planning, bankers investing the money through numbered and offshore accounts, art dealers and real estate agents handling anonymous cash transactions, or educational and charitable institutions ignoring the criminal source of the fees and donations they receive. Without the counsel and services of these “enablers”, laundering dirty money would be a far more difficult task. Despite decades of regulation and codes of conduct for many of these professionals, recent data leaks and analysis reveal shockingly high levels of involvement by enablers whose services have become essential to what are dubbed illicit financial flows (IFFs). Traditionally, regulators and enforcement agencies have gone after those committing the crimes and largely left alone the professionals who aid and advise them. Increasingly, authorities are seeking practical solutions to curb corrupt activity among an array of professionals whose services put them on the front lines of financial crime.

IFFs can have a particularly heinous impact on countries with weak democratic institutions and kleptocratic governments, especially in the Global South. A 2020 report by the United Nations Conference on Trade and Development (UNCTAD) estimated that annual outflows of illicit finance from sub-Saharan Africa were around USD \$88.6 billion. That number is almost double the amount of total foreign aid flowing into Africa, which was estimated at USD \$48 billion.⁷ Such looting depends on professionals in the Global North to move and obscure the true origin of the wealth. The money often ends up in countries with strong institutions that are considered safe havens – generally in the Global North. Yet, when officials investigate the criminal looters, the actors who assist them frequently remain unaccountable.

For example, the Zondo Commission of Inquiry into State Capture in South Africa dedicates 100 of the 5,500 pages in its final reports to describing the money laundering systems used to divert the loot of State Capture and move it outside South Africa. Yet according to observers “despite describing obvious failures of South Africa’s anti-money laundering systems, the Zondo Commission made no strong recommendations to hold the banks and regulators to account for these failures. This is one of the most significant gaps in the commission’s final reports.”⁸ While the Zondo Commission exposed in detail the public officials, or those appointed by and close to public officials, who stole from the state in sophisticated arrangements, it did not directly go after the bankers, lawyers and other professionals who were crucial to carrying out the detailed work of those laundering the money.⁹

The roles enablers play in IFFs are conceptually easy to understand. Investigators, whistleblowers, journalists, academics, and others have vividly documented their involvement. Yet, while the enablers are a widely known class of professionals practicing under an assortment of regulatory oversight, far less is known about how they become

involved in illicit activities, how to prevent them from becoming involved, and how widespread the problem is. Encouragingly, the involvement of enablers in IFFs is garnering growing levels of attention from key policy makers. The United States Financial Crimes Enforcement Network (FinCEN) announced in September 2022 new rules on beneficial ownership requiring reporting companies to file reports with FinCEN that identify two categories of individuals: (1) the beneficial owners of the entity; and (2) the company applicants of the entity. Similarly, the UK published the [Economic Crime and Corporate Transparency Bill 2022](#) on September 22, 2022, the second bill aimed at curbing IFFs this year. Among other things, it contains provisions for regulators of the legal sector to be tasked with promoting the prevention and detection of economic crime.

These examples illustrate how some governments are expanding policy efforts to make it harder for criminals to flow dirty money through their jurisdictions. In theory, enablers should be relatively straightforward to regulate as they tend to be in countries with strong legal institutions and professional bodies that provide education, certification, and sanction. Yet, criminal proceedings against identifiable groups of enablers for money laundering crimes are rare. There is also a crucial distinction that needs to be made between policy making and policy implementation. While efforts to make policy are indeed increasing, scant evidence of the effectiveness of implementation is available. Implementation requires enforcement and resources, two elements that are often lacking in governments' attempts to go after IFFs. Even in wealthy countries, resources to fund policy implementation are often lacking. In an April 2022 testimony before the U.S. Financial Services Committee, FinCEN's acting director Himamauli Das stated that although his small team is "incredibly talented," they are "outmatched" in policing cryptocurrency exchanges and behind on creating a beneficial ownership database.¹⁰

This report contributes to a growing body of research designed to curb the actions of enablers whose actions directly contribute to money laundering. Since professional intermediaries are widely considered a crucial cog in the wheel of global money laundering, we review the body of evidence that seeks to demonstrate why and how they become involved in these schemes, what instruments exist to steer them from being enablers of IFFs and how effective these instruments have been in practice. Growing international recognition and outrage over the far-reaching negative implications of IFFs, coupled with a greater focus on policy levers to curb professional enablers, offer the promise for real change.

2. FRAMEWORK AND POINT OF DEPARTURE

The analytical framework of this report is as follows:

- Overview of IFFs
- Analysis of policy responses
- Evidence by enabler type and knowledge gaps
- Emerging tools and technologies
- Gaps and Recommendations

Our point of departure is an overview of the scale and scope of IFFs, including the geography and consequences of money laundering that enablers may be facilitating in different parts of the world. While impossible to know precisely how much illegal money moves through the underground economy, estimates of IFFs reach trillions of U.S. dollars a year.¹¹ Attention on the movement of funds through western democratic countries highlights the critical roles enablers play in these illegal money flows.

We then look at the primary policy responses targeting enablers, what is known about each policy's effectiveness, and what additional research is needed to determine the effectiveness of policy responses. Policy responses to combat money-laundering are multi-faceted and include specifically targeting enablers with global standards (e.g. FATF, SARs, Beneficial Ownership) complemented by national or subnational level regulation.

Many of the regulations we discuss can apply to a variety of enabling professions and institutions, and in a variety of countries. Yet, the rules are implemented and enforced differently depending on the profession. We therefore proceed by looking at the evidence available for a wide variety of enablers ranging from highly regulated (either self-regulated or by a government body) to largely unregulated. These include bankers, lawyers, accountants, and real estate professionals, as well as some lesser-known entities such as art dealers, casino operators, and universities. Some of these institutions can serve a dual purpose of laundering both money and reputations by allowing money launderers to appear as well-meaning philanthropists or thought leaders. Though theoretically enablers represent a likely target for enforcement as they are located in countries with strong legal and financial institutions and the actors are generally professionally organized under bodies that provide education, certification and sanction, criminal proceedings against identifiable groups of enablers for money laundering crimes is rare.

Developments in the financial industry, such as cryptocurrency transactions, offer new ways to obscure sources of wealth and identities, but they may also provide avenues to facilitate tracking with blockchain and artificial intelligence. There are also promising new tools such as unexplained wealth orders, and non-conviction based asset forfeiture that we examine for their potential efficacy.

This report seeks to review the landscape of evidence regarding the scale and scope of enabler activity in IFFs, examine the effectiveness of ongoing and emerging regulatory strategies and other tools, and consider what more is needed to support implementable policy solutions. It draws on a review of the literature, interviews with anti-money laundering (AML) experts, and real-world examples from jurisdictions that have introduced AML policies that target enablers or the mechanisms that they often use¹²

We suggest two fundamental findings: 1) there is little doubt as to the involvement of these professionals in global money-laundering schemes, but 2) there is scant quantitative evidence that shows how pervasive the problem is on a global scale, whether the problem is at an industry level, or the most effective strategies to curb their involvement. Compiling the evidence, or lack thereof, we attempt to show what further work is needed to address the gaps and advance practical solutions. Additionally, with ample use of case studies and news reporting, we illustrate how regulatory frameworks do not operate in a vacuum, but within the context of distinct jurisdictions, and with real-world trade-offs related to privacy, security, and the resources needed for development and implementation. Finally, we provide practical, actionable recommendations aimed at practitioners to guide further research.

3. THE PROBLEM

Money laundering takes many forms, but it is most often global, dynamic, and veiled in anonymity, thereby complicating efforts to assess improvements in its control. Researchers estimate the annual value of money laundering activities reaches trillions of U.S. dollars,¹³ numbers staggeringly difficult to conceptualize. Data leaks and investigations in recent years have helped illuminate the scale of financial corruption and the pivotal role professional enablers play including the FinCEN Files¹⁴, Panama Papers¹⁵, Pandora Papers¹⁶ and Paradise Papers,¹⁷ along with other more localized investigations such as the Cullen Commission Report¹⁸ in British Columbia, Canada. With increased scrutiny and oversight, new cases continue to emerge. For example, following the Russian invasion of Ukraine in February 2022, evidence came to light about illicit wealth hidden by Kremlin-linked individuals and laundered through real estate and other transactions around the world. Public outcry that such practices continue have perhaps never been greater.¹⁹

The existence of corruption is clear, but regulators need research that quantifies enablers' involvement in IFFs to inform and target anti-money laundering (AML) efforts where they are most needed and measure the outcomes. Numerous models exist to estimate different aspects of IFFs and the body of research is expanding. Ferwerda et al. (2021) notes that IFF-measurement publications increased from about ten a year to more than 50 a year in the decade from 2009 to 2019. Approaches and results vary widely. After reviewing hundreds of articles, the authors single out the gravity-model based simulation used by Fewerda et al. (2020), which estimates \$2.333 trillion USD in global annual money laundering, as having particular merit, despite considerable limitations to the age and scale of their dataset.²⁰

Similar to the challenges of measuring the dollar value of money laundering are difficulties understanding who is doing it and by what means. The methods used to conceal assets are continuously evolving as criminals and enablers come up with new ways to launder funds. The very notion of money laundering is now applied beyond just financial assets to include social capital in the form of "reputation laundering."²¹

In many jurisdictions, professional service providers increasingly group themselves together in one corporate entity, blurring the lines between their roles and further limiting outside scrutiny. For example, whereas accountants and lawyers used to work primarily out of distinct firms with clearly delineated roles, they are now more often seen grouped together under the same corporate banner to provide a full suite of services to their clients. This can make it more difficult to track the flow of money, but also provides these professional enablers with a facilitated way to set up legal or quasi-legal structures to help their criminal clients hide their assets.

Case Study 1: Solicitor-Client Privilege and the Enablers Web

While lawyers in most jurisdictions benefit from the principle of solicitor-client privilege, accountants do not. For lawyers, communications with their clients can therefore be claimed to be privileged and aren't required to be disclosed to a court.

When grouped in the same firm, and the accountant acts as a representative of the client when meeting with the lawyer, then the accountant might also be able to benefit from something similar to privilege. If at the end of the day, the lawyer is communicating with the accountant based on the lawyer-client relationship, the picture is fuzzy. This allows for lawyers and accountants to work together for the same clients, know each other's files, and maintain strict confidentiality and secrecy of a client's affairs. It can be akin to extending solicitor-client privilege to accountants.

The number of lawyers now employed by the legal arm of the big four accounting firms shows how this fusion is happening at a rapid pace*:

PWC: 3,600 lawyers globally

Deloitte: 2,400 lawyers globally

EY: 2,200 lawyers globally

KPMG: 1,800 lawyers globally

*Numbers are as of November 1, 2018.

Source: [Legal Industry Disruption: The 4 Big Accounting Firms - Lawpath;](#)
[Do You Have Attorney-Client Privilege With Your Accountant? Here's A Workaround \(forbes.com\)](#)

Even within specific enabler professions, regulation is anything but uniform around the world. Widely recognized international standards have been adopted in some places, but the implementation is often left to national or sub-national jurisdictions leading to practices that are as varied as the jurisdictions themselves.

Case Study 2 – 1MDB and the flow of money

As of 2016, the scandal involving 1Malaysia Development Bhd (1MDB) was considered the largest kleptocracy case the world had seen. The sovereign wealth fund was systematically embezzled out of USD \$4 billion that ended up in the private bank accounts of Malaysia's former Prime Minister and other beneficiaries around the world.

The layering involved the flow of funds through several entities linked to fugitive financier Jho Low. Low used those funds to purchase international real estate, super-yachts and even to finance Hollywood films. Approximately USD \$700 million flowed to the personal bank account of former Prime Minister Najib Razak, who has since been sentenced to 12 years in jail for his part in the scandal. Notably, none of the top executives at the banks was prosecuted.

The IFFs generated through the 1MDB scandal are some of the most sophisticated uncovered and observers have written about the essential roles various enablers played in making it happen. Notably, the authors of the definitive account of the scandal have said: "Low's genius was he sensed that the world's largest banks, its auditors, and its lawyers would not throw up obstacles to his scheme if they smelled profits [...] None of this could have happened without the connivance of scores of senior executives in London, Geneva, New York, Los Angeles, Singapore, Hong Kong, Abu Dhabi, and elsewhere."

Source: [Bradley Hope and Tom Wright, "Billion Dollar Whale: The Man Who Fooled Wall Street, Hollywood, and the World", Hachette Books, 2018.](#)

3.1 Consequences of Geography

Strategies to regulate enablers face an inherent challenge in that the activity is rarely contained within a single jurisdiction and can shift and adapt to changing conditions. Understanding how and where actors are involved is key to targeting effective policy mechanisms, whether they be international, national, or subnational, and implemented through self-regulation by professional organizations, or through government bodies.

In an attempt to trace the patterns of financial flows, Ferwerda et al. (2020) developed the gravity model which examines country preferences of money launderers. They find that most money laundering happens in the United States and the United Kingdom, which together are responsible for 40% of all money laundering in the 38 OECD countries. Notably when corrected for country size, as a percentage of GDP, the amount of money laundering is highest in Belgium, Luxembourg, and Israel. Japan and South Korea have the smallest money laundering problem as a share of GDP.²²

Money laundered in different countries also differs in its source and ultimate destination. Relatively small countries such as Latvia, Luxembourg, Portugal, Slovakia, Turkey, and Estonia all have more than three-quarters of their money laundering challenge from throughflow. Norway, Sweden, Germany, Australia, Denmark, and the U.S. are on the other end of the spectrum with the main money laundering challenge being the laundering of domestic crime proceeds.²³

TABLE 1: Money Laundering in \$US and as a percentage of GDP²⁴

COUNTRY	LAUNDERING OF DOMESTIC CRIMINAL MONEY (A)		THROUGHFLOWS OF CRIMINAL MONEY (B)		LAUNDERING OF FOREIGN CRIMINAL MONEY (C)		TOTAL MONEY LAUNDERING (A + B + C)	
	Billion US\$	% of GDP	Billion US\$	% of GDP	Billion US\$	% of GDP	Billion US\$	% of GDP
United States	157.8	0.9	66.4	0.4	17.9	0.1	242.1	1.4
United Kingdom	37.2	1.2	74.4	2.5	17.8	0.6	129.4	4.3
France	27.9	1.0	41.3	1.4	11.2	0.4	80.4	2.8
Germany	55.5	1.4	12.6	0.3	1.4	0.0	69.6	1.8
Mexico	6.2	0.5	26.7	2.0	8.4	0.6	41.3	3.1
Canada	19.8	1.1	14.6	0.8	3.5	0.2	37.8	2.1
Australia	25.0	1.7	7.0	0.5	1.8	0.1	33.9	2.3
Belgium	8.0	1.5	22.1	4.2	2.5	0.5	32.6	6.1

3.1.1 Impacts of money laundering in the Global South

Enablers are located primarily in countries with large and sophisticated financial systems, yet the criminal activity which led to the source of funds is located elsewhere. In fragile and developing economies, the damage from such corruption can be devastating. The FATF, in characterizing the worst impacts of IFFs, has stated: "... there is a damping effect on foreign direct investment when a country's commercial and financial sectors are perceived to be subject to the control and influence of organised crime. Fighting money laundering and terrorist financing is therefore a part of creating a business-friendly environment which is a precondition for lasting economic development."²⁵ It goes on

to state that the most vulnerable victims are economies with growing or developing financial centres, but which lack adequate controls. This creates a gap where “differences between national anti-money laundering systems will be exploited by launderers, who tend to move their networks to countries and financial systems with weak or ineffective countermeasures.”²⁶

The economic and political influence of criminal organisations can also weaken the social fabric, collective ethical standards and the democratic institutions of society. Fundamentally, money laundering is inextricably linked to the underlying criminal activity that generated it. Laundering enables criminal activity to continue.²⁷

A 2021 memorandum from U.S. President Biden noted that corruption depletes global annual GDP by an estimated 2 to 5%. The memorandum identifies corruption as a national security threat and specifically calls out enablers who facilitate it through “anonymous shell companies, opaque financial systems, and professional service providers...including in the United States and other rule-of-law-based democracies.”²⁸

It is worth noting that rankings of the countries at greatest risk of money laundering, such as the FATF “grey list” and Basel Index, primarily identify places with weak regulation and limited implementation.²⁹ This often leads to countries in the Global South being ranked as being at the highest risk for money-laundering. Indeed, seven of the top ten riskiest countries are in sub-Saharan Africa, according to the Basel ranking of 110 jurisdictions.³⁰ Meanwhile the countries of the Global North continue to enjoy more favourable positions in the rankings, despite the active involvement by enabling professionals in these countries and the fact that ill-gotten wealth is often stashed in the institutions of the Global North.

Knowing the problem, geography, and consequences of money laundering and the involvement of enablers, we next look at what is in place to prevent their participation in IFFs.

4. POLICY RESPONSES

Regulation is the primary policy response for addressing the role of enablers, but regulatory frameworks and rules come in all shapes and sizes. Even a common set of standards or approaches may result in significantly different outcomes. Regulations are often industry-led with oversight and enforcement at different levels of governance, namely at the international, national, and sub-national levels. In short, regulation differs across jurisdictions and across the various enabler types (i.e., the regulatory requirements applicable to lawyers differs from that pertaining to accountants).

4.1. Global Regulation

Operating at the broadest international level, the FATF has issued 40 recommendations to combat money laundering and the financing of terrorism and proliferation which, along with implementation notes, make up the [FATF Standards](#). Endorsed by more than 200 countries, they provide an internationally recognized set of global standards for identifying and understanding money laundering and other financial risks. The FATF standards serve as a guide for countries to implement measures that mitigate these risks but they have no enforcement mechanism. This risk-based approach allows countries to tailor regulatory frameworks to their individual legal, administrative, and financial systems.³¹

Many of the recommendations apply directly to enablers by requiring them to conduct due diligence reviews of customers, investigate discrepancies, keep records, and report on suspicious activity.³² Since 2003, the FATF has updated the due diligence and record-keeping recommendations to apply to Designated non-financial Businesses and Professions (DNFBPs) including lawyers, real estate agents, casinos, art dealers and others involved in large financial transactions.³³

Along with issuing and updating Standards, FATF tracks and reports on the implementation and effectiveness of each country's AML framework with Mutual Evaluation Reports. Countries with deficiencies are put on a "grey list" with calls for increased monitoring. Financial transactions with people in these countries may face enhanced due diligence.³⁴ In the most serious cases countries are placed on a "blacklist" and subject to greater pressure and potential countermeasures through an international "Call for Action."³⁵

4.1.1 Evidence of Effectiveness

We could find no clear evidence as to whether the FATF Standards have led to a marked decrease in money laundering activity. Arguably, the FATF Standards and oversight have prompted positive international change and influenced countries to

adopt stronger AML regulations. As of February 2020, the FATF had reviewed over 100 countries and jurisdictions and publicly identified 80 of them for non-compliance with the FATF Standards. Of these, 60 have since made the necessary reforms, despite not being uniformly implemented or enforced.³⁶ This highlights the tension between policy making and policy implementation, whereby the latter is left to national or subnational authorities and is unevenly done among the FATF members.

Nevertheless, the fact that global bodies have provided so much input to updating the FATF recommendations demonstrates, that at a minimum, there is a belief in their utility, even if the Standards by themselves are not enough.³⁷ It appears that some of the utility of global guidance is to set a precedent and draw attention to problems and potential solutions.

New research provides support for the idea that international pressure can also influence the behavior of money laundering criminals. For example, Gerbrands et al. (2022) assessed the impacts of the fourth EU anti-money laundering directive of 2015 by comparing a group of network indicators from before and after. They found that “the money laundering networks became bigger (i.e., the cluster size increases) and more internationally diverse. At the individual level money launderers normally want to minimize risks by linking to the least amount of people needed. In contrast, stricter anti-money laundering (AML) policies cause them to link to more people instead (i.e., the degree centrality increases).”³⁸ More work is needed to understand what this means for regulators aiming to influence enabler behavior.

While the FATF has the capacity to determine which jurisdictions have implemented their recommendations through legislation, self-regulation of professional conduct or other means, their effectiveness is limited. There is a lack of consistency in how rules are applied, differences in how countries share information publicly and among regulatory authorities, and inconsistency in enforcement.³⁹ Such inconsistencies in implementation of FATF standards may paradoxically be both their greatest strength, allowing for adaptation, and their greatest weakness, leading to fractured policies that have tended to let enablers operate undetected. The very fact that the western democratic countries, where most enablers operate, are considered compliant raises serious questions as to their effectiveness when implemented at the national and subnational level.

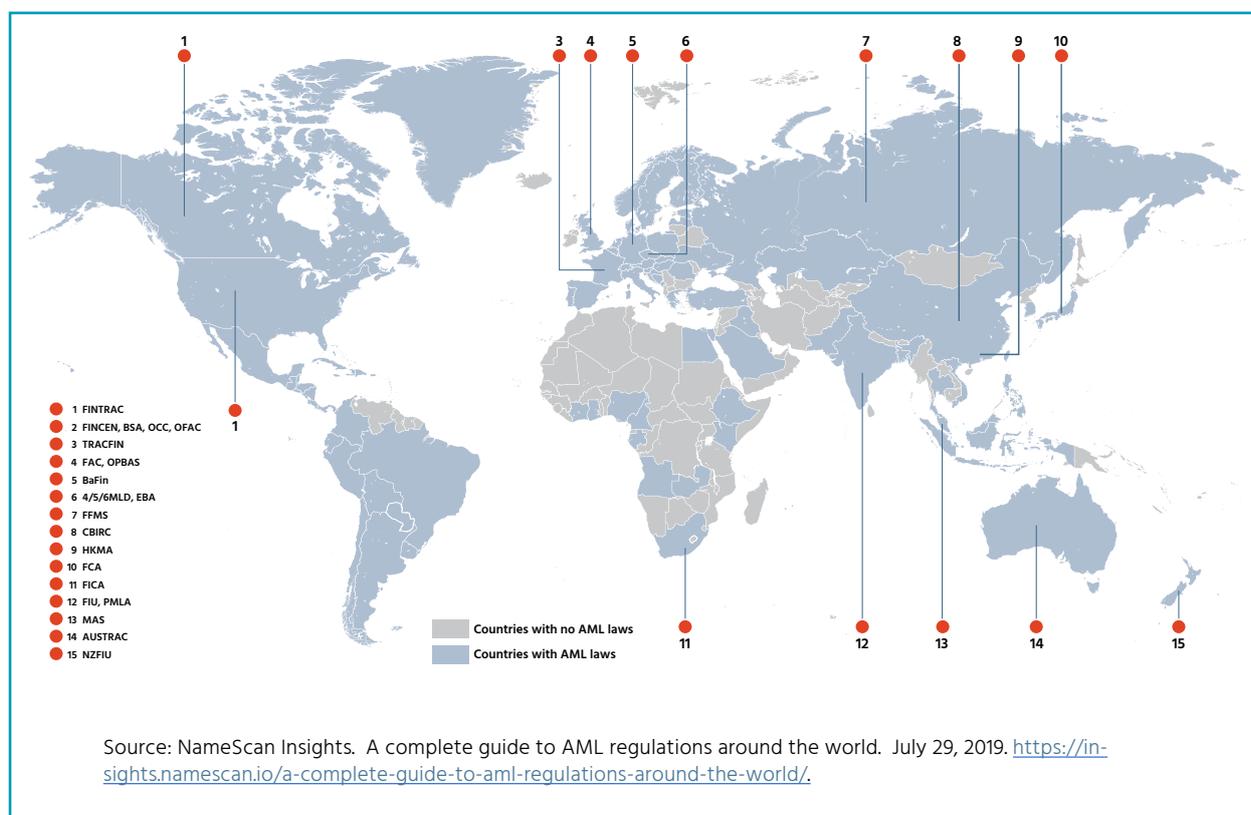
The reality is that many professionals operate solely in one jurisdiction. Global recommendations are of little value if they diverge from the rules of the local regulator that professionals are subject to. More likely, most professionals in their day-to-day lives only pay attention to the requirements of their direct regulator and are not as influenced by sweeping global regulation.

Without much evidence to support the effectiveness of global standards, we turn to the national and sub-national levels and draw comparisons between what works and what doesn't.

4.2. National Regulation

National AML regulations currently exist in much of the world, as illustrated in Figure 1, although the strategy and approach vary widely. To highlight the importance of how international guidelines are implemented in practice, we consider the example of *Beneficial Ownership* Transparency and its impact on enablers.

FIGURE 1: Map showing AML jurisdiction and major regulators



4.2.1. Beneficial Ownership

Beneficial Ownership transparency (BOT) “reveals how companies and other legal entities or arrangements, such as trusts, are owned and controlled by their true owners.”⁴⁰ Proponents believe that by disclosing the ultimate beneficial ownership of corporate entities it would remove one of the favourite places criminals go in the money laundering game of hide and seek. While BOT forms an important element in the FATF Standards, implementation is at the national level, or even the sub-national level. It remains premature to draw conclusions about its effectiveness, but we can frame questions about its efficacy by contrasting implementation strategies in different countries and point to areas ripe for future research.

The FATF standards recommend that countries assess the risks and take measures to prevent legal persons and arrangements, such as trusts, to ensure adequate, accurate and up-to-date information on the beneficial ownership and control of these structures.⁴¹ Importantly, it notes that the information should be readily accessible to authorities and the public.⁴² FATF Recommendation 10 requires that banks, financial institutions, and a range of types of businesses and professions must identify and verify the identity of their customers and take similar measures for any beneficial owners.⁴³

The international non-profit organization Open Ownership maintains a database of countries that have implemented Beneficial Ownership registries and finds 44 have central registries, 34 of which are public.⁴⁴ More than twice that number have made commitments to implementation but don’t have a registry in force yet.⁴⁵

In practice, however, not all the FATF BOT recommendations are uniformly implemented or monitored. BOT practices currently under review include 1) treatment of trusts, 2) inclusion or exemption of non-banking professionals, and 3) operational concerns related to accuracy and oversight. We highlight some of the main concerns with implementation below.

Trusts

The treatment of trusts is one of the most critical differences between countries. Some experts raise concerns about the potential for trusts to create a massive gap in transparency.⁴⁶ Concerns stem from the fact that in many jurisdictions, trusts can exist with no formal agreement or documentation of any kind. Trusts differ from other legal entities in that they “can be formed, exist and be legally valid without the knowledge and awareness of competent authorities. The conditions of the trust are often opaque and have many varying complicated control structures due to the flexibility afforded to them by the law.”⁴⁷

The problem goes further “because trusts can own assets such as company shares and bank accounts, this is an unacceptable blind spot for competent authorities.”⁴⁸ Evidence of this problem is documented through a World Bank study⁴⁹ that found that over the course of 30 years “nearly 70% of more than 200 large-scale corruption cases relied on anonymously owned companies, including the use of trusts to disguise ownership.”⁵⁰ This blatant hiding of assets undermines the FATF’s efforts related to transparency of legal ownership under Recommendation 24.

Access

Open Ownership has advocated for wider access to Beneficial Ownership registries, suggesting that amendments to FATF Recommendation 25 should prioritize a central registry whereby a trust would not be legally valid in a country where it has not been centrally registered. This would also ensure that the information relating to the trust is adequate, accurate and up-to-date. Public access is also supported by the European Union which has stated: “public access to beneficial ownership information would contribute to combating the misuse of trusts and similar legal arrangements, similar to the way public access can contribute to the prevention of the misuse of corporate and other legal entities for the purposes of money laundering and terrorist financing.”⁵¹

Designated Non-Financial Businesses and Professions (DNFBPs)

According to the Financial Accountability Transparency and Integrity (FACTI) panel report “17 percent of jurisdictions assessed in the study of supervision and enforcement of Beneficial Ownership obligations do not impose any AML/CFT obligations on DNFBPs, thus creating unregulated “back doors” into the global financial system that carry substantial risk of abuse by actors seeking to evade AML controls.”

Operational Concerns

Beneficial Ownership registries face problems related to accuracy, oversight, and enforcement, made more challenging because they frequently involve multiple layers of ownership and cross jurisdictional borders.⁵² Some countries take the position that it is better to limit the amount of information collected because “it is better to have less information that is accurate and verifiable than a lot of inaccurate, worthless or

inaccessible data.”⁵³ The question arises as to what data is most valuable and how to ensure that it is being provided and captured in a simple, easy to comply with registry.

Evidence of Effectiveness

Beneficial Ownership regulations are new and dynamic and, as a result, research on their effectiveness has been very limited. But early evidence is helping to drive their widening use and adaptations around the world and giving some support for their utility.

Kendall et al. (2022) points to qualitative economic benefits and opportunities for improved security, criminal detection, and enforcement including: reducing the incidence of illicit financial flows and facilitating sanctions on individuals with ties to hostile states, and reducing terrorism funding; reducing due diligence costs and compliance costs for businesses and regulated financial entities; improving procurement outcomes by fostering competition and improving value for money; reducing tax evasion and increasing tax revenue; and reducing political corruption or perceived corruption and increasing citizen trust in government. However, data to support these claims, they say, remains limited to specific approaches and jurisdiction.⁵⁴

Case Study 3: Evidence from Slovakia’s Beneficial Ownership Registry

Slovakia was among the first countries in the world to implement a public beneficial ownership register in 2015. The structure of Slovakia’s Beneficial Ownership Registry helps to address deficiencies in accuracy and enforcement by shifting the burden of proof and liability onto enablers. These include:

Definition of beneficial ownership, which allows for joint control and coordinated action so that even if somebody does not meet the definition and threshold of beneficial ownership on their own, they may meet it together with one or multiple other people such as a family member or shareholder who show a similar voting history.

Responsibility for registration and verification, which is delegated to a locally based ‘authorized person’ such as an attorney, notary, auditor, banker, or tax advisor. The authorized person must show how a beneficial owner was identified and validated. In other words, the ‘enabler’ is liable for verification and registrations.

Qualified claim mechanism by which the Register has independent oversight and is governed by a Registration Court with the burden of proof on the company to verify the data they submitted.

Enforced sanctions for false information including fines to the company and cancelling of current government contracts. Authorized persons and those in management positions can be fined and removal from the register means a company cannot undertake new contracts with the government.

The Registry is noted for helping to expose corruption including in a public procurement deal involving shell companies in New Zealand and Cyprus and a conflict of interest case involving the Czech Prime Minister.

Source: Kiepe, Tymon, Ponsford, Victor, Russell-Prywata, Louise “Early impacts of public registers of beneficial ownership: Slovakia” <https://www.openownership.org/en/publications/early-impacts-of-public-registers-of-beneficial-ownership-slovakia/slovakias-innovative-approach/>.

Kendall et al. conclude that “over the course of this research, we found a very limited body of existing work that specifically quantifies the economic value of Beneficial Ownership Transparency. It is widely understood to be an economically beneficial reform, and its benefits are well-documented in a qualitative sense, but research largely refrains from quantifying economic impacts in this area due to limitations regarding attribution and data availability.”⁵⁵

Without the data needed for a comprehensive review of the impact beneficial ownership registries have had on the participation of enablers in global IFF schemes, we can consider individual cases of implementation that address some (although not all) of the key concerns with implementation noted above. The case of Slovakia⁵⁶ in the text box above is one such example.

4.2.1.1. Observations on Beneficial Ownership

Based on the available evidence, we observed several problematic themes related to beneficial ownership and its impact on enablers, including:

- **lack of standardization** in how they are conceived and implemented;
- **lack of accountability** for completeness and accuracy;
- **lack of maintenance** to keep registries up-to-date; and
- **lack of access** both domestically and internationally, especially for law enforcement.

In addition, not all jurisdictions regulate enablers or corporate filings at the national level. For example, lawyers in Canada are regulated by their respective provincial law society resulting in 13 subnational regulators of the legal profession. Corporate laws are also often subnational and incorporation is possible in any one of the subnational jurisdictions. A national beneficial ownership registry in Canada would be truly useful with the sign-on and full cooperation and adherence of each sub-national authority. Similarly, U.S. entities can choose the state in which they prefer to incorporate. Therefore, implementing a Beneficial Ownership registry in certain jurisdictions will require coordination and agreement among multiple levels of government, further complicating the process. Otherwise, the data would be incomplete and only represent the portion of entities that have incorporated at the level for which there is a registry.⁵⁷

That said, access to information is expected to improve dramatically in the United States with the passage of amendments to the *Corporate Transparency Act*.⁵⁸ The act authorizes U.S. authorities to demand the full details on the true beneficial owners of companies operating domestically when there is suspicion of wrongdoing. As one famous anti-corruption campaigner put it: “no longer will kleptocrats and crooks be able to hide completely their true ownership of companies explicitly designed as vehicles to transfer their loot into investments in the west.”⁵⁹ There is optimism that this law, together with momentum around beneficial ownership transparency elsewhere, will stymie the enablers in their pursuit to ensure that investments for their crooked clients are kept secret.

Wide access to centralized and uniform information could be a powerful tool in addressing IFFs. However, the feasibility of such an enormous undertaking, especially at the international level, is questionable. Authorities would need to balance the potential benefits against the practical concerns of cost, oversight, enforcement capacity, security, and international coordination that would be required. Furthermore, differences

among countries over how to prioritize resource allocation, data privacy concerns, and cybersecurity enforcement, would be challenging to overcome. For now, beneficial ownership registries need to find a way to ensure they have accurate, up-to-date, usable data:

4.3. Key Gaps and Considerations in Policy Responses

Several questions arise from our analysis of how global, national, subnational, and self-regulation intertwine to target the role of enablers in IFFs. Global standards generally rely on national authorities to pass laws and enforce them. But the strength of institutions, political will, resources, and economic realities make for very different implementation capacities around the world.

Questions requiring further empirical study and evidence include:

1. Does corporate transparency require a centralized national or even supranational structure? Or can it be as effective when implemented on a subnational basis?
2. Have supra-national frameworks targeting money laundering, and especially professional intermediaries, been effective at concretely reducing IFFs in the jurisdictions that have implemented the standards?
3. Has the implementation of beneficial ownership registries demonstrated a marked decrease in the volume of money laundered through that jurisdiction compared to before the implementation of the registry ?
4. Are professional intermediaries who are self-regulated more or less prone to engage in money laundering than those who are regulated directly by government authorities?

In conjunction with revisions to Recommendation 24, could the FATF play a role in supporting countries seeking to track the impact of Beneficial Ownership reform by publishing guidance around collecting and analysing statistical evidence for transparency?⁶⁰

5. EVIDENCE RELATED TO ENABLERS

This section considers the individual classes of enablers that have been the subject of recent attention for their role in IFFs. Some intermediaries, namely bankers, lawyers, accountants, real estate professionals, and casino operators, are included in the FATF recommendations. They are also widely covered by national or subnational regulatory frameworks, especially in western democratic countries, albeit with notable exceptions and widely differing approaches and levels of enforcement. For this group of professions, we provide detailed reviews of their operations and offer comments on their regulatory environments.

Another set of enablers represent emerging or growing sectors for money laundering activity that are not specifically addressed under FATF recommendations, and which are only loosely regulated, if at all. For these enablers, we rely on reporting and case studies to provide an overview of their roles and associated risks. The extent to which enablers could or should be aware and accountable for their role in IFFs is a source of debate and varies by profession.

5.1. Bankers

Description

Numerous recent cases provide evidence of bankers' involvement in money laundering schemes. One of the best examples is that of French bank BNP-Paribas (BNPP), a goliath in the industry that held over €2.6 trillion in total assets in 2021.⁶¹ Between 2002 and 2007, BNPP laundered approximately USD \$9 billion for top officials in Cuba, Iran and Sudan. Since this was against both AML laws and U.S. sanctions laws against those countries, the U.S. Department of Justice (USDOJ) investigated and eventually fined BNPP USD \$8.9 billion in 2014. What was perhaps even more striking about this case is that it all happened while Sudan's Omar Hassan Ahmad Al-Bashir was being prosecuted by the International Criminal Court for crimes against humanity.⁶²

Regulation

Banks are highly regulated globally, and yet large-scale money laundering through huge multinational banks is well documented. The U.S. was early to recognize the key role banks play in most money laundering schemes and, in 1970, passed the Bank Security Act (BSA), which has subsequently been reviewed and revised.⁶³ The BSA requires bank employees to identify and report suspicious activity that suggests money laundering, tax evasion, and other criminal activities.

To date, the United States and Australia are the only two FATF member countries that have not broadened these requirements to include other enablers, but this is changing. The U.S. *Enablers Act*, approved by the House of Representatives in July 2022, would expand the BSA's AML requirements beyond banks to include a variety of other enabling professions such as investment advisors, art dealers, attorneys, accountants, and others⁶⁴ In doing so, it would close a loophole long criticized by financial crime experts and largely bring U.S. regulations in line with FATF Standards.

The FATF Recommendations including customer due diligence (CDD), recordkeeping, and reporting of suspicious transactions (SARs) are well reflected in banking regulations around the world.⁶⁵

Facilitation of IFFs

Despite banking being subject to over 30 years of AML regulation, in most western democratic countries bankers continue to be implicated in money laundering schemes. The 2020 "FinCEN files" investigation revealed trillions of dollars in transactions suspected to have ties with terrorists, kleptocrats, and other criminals.⁶⁶ Notably, criminal actions revealed in the FinCEN Files and other investigations triggered little accountability in the industry. However, the revelations have prompted mounting pressure to put more of the responsibility for AML on the banking profession, ensuring bankers serve less often as enablers and more often as a first line of defence against corruption.

In addition to the lack of accountability by individual bankers, analysts have pointed to procedural weaknesses in the industry as important reasons for continuing problems. A 2020 FACTI report notes that "often banks' due diligence procedures are designed less to detect and screen out criminal funds, and more to convince regulators that they are following the rules. The form of customer due diligence in the financial sector often becomes more important than its function, a problem of anti-money laundering policy more generally."⁶⁷

Case Study 4: The FinCEN Files

Global banks moved more than USD \$2 trillion between 1999 and 2017 in payments they believed were suspicious, and flagged bank clients in more than 170 countries who were identified as being involved in potentially illicit transactions. The figures include USD \$514 billion at JPMorgan Chase and USD \$1.3 trillion at Deutsche Bank.

The FinCEN Files provides evidence that five global banks — JPMorgan Chase, HSBC, Standard Chartered Bank, Deutsche Bank and Bank of New York Mellon — moved illicit cash for shadowy characters and criminal networks even after U.S. authorities fined these financial institutions for earlier failures to stem flows of dirty money. Despite "Know Your Customer" requirements, in half of the FinCEN Files reports, banks didn't have information about one or more entities behind the transactions.

Analysis of the FinCEN Files further revealed cases where, even years after concerns first emerged, banks continued to move money for fraudsters, drug dealers and allegedly corrupt officials, leading to cases of real harm.

Source: International Consortium of Investigative Journalists, FinCEN Files - <https://www.icij.org/investigations/fincen-files/> (Accessed September 2022)

Challenges and Opportunities

While several challenges remain in dissuading banks and bankers from accepting the profits of corruption, some opportunities do exist to encourage prevention by addressing the systemic shortcomings that help criminals avoid detection. Practical considerations include:

Too many SARs

FinCEN received more than 2 million SARs in 2019. That number has nearly doubled over the past decade, as financial institutions have faced mounting pressure to report suspicious activity, and the volume of international transactions has grown. Over the same period, FinCEN's staff has shrunk by more than 10%. Sources there say most SARs are never even read, let alone acted upon.⁶⁸ Meanwhile, experts say, some banks treat SARs as a kind of get-out-of-jail-free card, filing alerts about a huge array of transactions without moving to halt them. In some cases, banks filed numerous reports on the same clients, detailing their suspected crimes over the course of years while continuing to welcome their business.

Investigators on the FinCEN files suggest that SARs in the United States, while intended to flag potential risk, may end up perversely incentivizing enablers to continue providing services to criminals despite suspicions. Overuse of SARs can weaken their value while simultaneously providing coverage should questions arise later.⁶⁹ Under this scenario, bankers absolve themselves of their own liability to verify their clients by shifting that burden to those responsible for scrutinizing SARs.

Banks are crucial to dirty money networks

According to reporting, "the FinCEN Files expose an underlying truth of the modern era: the networks through which dirty money traverses the world have become vital arteries of the global economy. They enable a shadow financial system so wide-ranging and so unchecked that it has become inextricable from the so-called legitimate economy. Banks with household names have helped to make it so."⁷⁰

The need for reform

The U.S. Treasury's 2022 National Risk Assessments on Money Laundering raises further concerns that banking and other industries require reform. It states, "the U.S. continues to face both persistent and emerging money laundering risks related to: (1) the continuing misuse of legal entities; (2) the lack of transparency in certain real estate transactions; (3) complicit merchants and professionals that misuse their positions or businesses; and (4) pockets of weaknesses in compliance or supervision at some regulated U.S. financial institutions."⁷¹

Banks are risk-insensitive

Many western democratic countries have displayed oversight failings in the financial sector. Testimony submitted by researchers to the U.K. Parliament asserts that banks and other regulated industries "fail to properly implement the risk-based approach mandated in the anti-money laundering regulations in relation to high-risk clients, especially politically exposed persons."⁷² Furthermore, they state that until professionals in regulated industries are prosecuted or sanctioned for failing to report suspicions or knowledge of money laundering, compliance will remain low. Low levels of enforcement means that

a feeling of impunity reigns in regulated industries with no meaningful sanction against those laundering funds or turning a blind eye to suspicions of money laundering.⁷³

Commenting on the problems in the U.K., it “adopts a risk-based approach to anti-money laundering which relies on private sector professionals conducting appropriate checks. However, evidence indicates that the system is effectively risk-insensitive, with banks over-reporting suspicious activity, and thereby creating a deluge of reports for UK authorities to process. Other, non-financial service providers often under-report such activity and are inconsistent in whether they undertake effective due diligence.”⁷⁴

Banks may wish to find motivation in the Slovakia example on beneficial ownership which places the liability squarely on the “authorized person” to verify and maintain up-to-date data on their client.

5.2. Lawyers

Description

The Panama Papers, and particularly their exposure of Panama-based law firm Mossack Fonseca, shone a spotlight on a variety of ways lawyers’ services can be used to enable corruption and IFF schemes.⁷⁵ Mossack Fonseca’s business was rooted in providing secrecy services for its clients, whether setting up anonymous offshore corporations or tax structures using secrecy jurisdictions. The business model was very successful and thwarted the attempts of authorities to investigate, especially as the firm acted for its clients to ensure that “more than one secrecy jurisdiction and more than one anonymous company can be involved, adding to the frustration of authorities if they try to trace the real owners.”⁷⁶

What became apparent from the Panama Papers is that lawyers were a crucial component in the chain of professionals required for criminals to launder money. Ethics and law are not always perfectly aligned. It may be that lawyers are acting legally in the interest of their clients, even when using secrecy jurisdictions and anonymous companies. The questions then become: What should lawyers know about the clients they are serving prior to offering these services? When should lawyers turn away clients, even for services that are perfectly within the confines of the law?

Regulation

Lawyers are usually self-regulated to protect their professional independence and ensure they can serve at all times in the best interest of their clients. The state does not have an oversight function because that could lead to a conflict of interest or possible interference of the state in the lawyer-client relationship. Lawyers are generally regulated by a local bar association or law association, which provides accreditation and requires lawyers to adhere to a set of rules and a code of conduct. Irrespective of the reasons for the separation of lawyer and state regulation, lawyers have been caught in the middle of several IFF schemes. In recognition of the problem, FATF Recommendation 22 dictates that regulators (state, bar association or otherwise) should put in place due diligence and record keeping for all legal professionals around the world when acting for clients.

Few studies have looked at whether the method of legal regulation contributes to lawyers’ involvement as enablers. For example, is there a greater incidence of engagement in money laundering in jurisdictions where lawyers are regulated by the state compared

to where they are self-regulated? We suggest that to understand the impacts regulation has on the role lawyers play in IFFs, this question must be the subject of further research in order to produce empirical evidence.

Facilitation of IFFs

Lawyers are clearly integral to money laundering. However, there is little evidence that shows whether they do so intentionally, whether regulation can prevent it, and whether it is a practice ingrained in the legal profession or if it is concentrated in a specialized group within the profession. Studies point to cases when lawyers were acting on behalf of clients who were known to be laundering money through real estate transactions in the U.S., U.K. and Canada.⁷⁷ Yet, as observed by Levi (2022) there is little or no evidence that shows “whether lawyers actually suspected or had any strong reason to suspect their clients of crime at the time they undertook the work; nor what skill sets lawyers brought to the table to add to clients and their advisers, which (if any) clients they reject, or which actions proposed by clients or by colleagues they refuse to undertake.”⁷⁸ This is not to suggest that lawyers were not involved in the schemes, just that they may not have intentionally been involved. At the very least, it suggests we don’t know enough about how lawyers may have participated.

Others suggest lawyers either do, or ought to know that their actions are themselves criminal, or aiding criminals to move dirty money. For example, pooled law firm accounts – in which banks see only the name of the law firm, not the client – were used in a multibillion-dollar corruption and fraud scandal involving Malaysian sovereign wealth fund 1MDB.⁷⁹ Aside from lawyers in certain jurisdictions being able to use their pooled accounts to skirt due diligence AML requirements on their clients, there are numerous other examples of law firms being hired to establish corporate vehicles allowing the ultimate beneficial owners to be sheltered thereby helping them avoid detection in money laundering schemes.⁸⁰

In one example, Global Witness carried out undercover interviews with 13 New York law firms bluntly asking how to shelter money, as described below⁸¹

Case Study 5: Are lawyers “willing” enablers?

In 2016, Global Witness conducted an undercover simulation in which a supposed adviser to an African minister of mines wanted to deposit millions of dollars. Lawyers from 12 of the 13 law firms he visited in preliminary meetings suggested using anonymous companies or trusts to hide the minister’s assets. Eleven recommended using American companies. To move the funds, suggestions included using the law firms’ own bank accounts and having the lawyer act as a trustee of an offshore trust to open a bank account. Only two of the law firms told the investigator that they could not help. The simulation stopped before the point at which any firm took on (or rejected taking on) the fake client, so it is possible that internal controls would eventually have stopped some or all of them.

Source: Global Witness. (2016). Lowering the Bar. <https://www.globalwitness.org/en/reports/loweringthebar/>

An example from Switzerland shows how lawyers, by using legal corporate vehicles, are able to hide the assets of their clients, thereby shielding them from AML regulations or tipping off the authorities. This study points to the wide use and clear effectiveness of these arrangements in shielding criminal activity.

Case Study 6: Switzerland: An offshore paradise for shell companies

Switzerland faces increased scrutiny over secrecy protections for its banking customers since the release in October 2021 of 11.9 million leaked documents in a case known as “The Pandora Papers.” The leaks expose a shadow financial system that helps the world’s rich and powerful move money without detection, thereby serving an important function for those engaged in IFFs.

Document analysis by Public Eye analysis shows almost 33,000 so called “shell companies” in just the four regions Geneva, Zug, Fribourg and Ticino – each little more than a mailbox with someone to handle accounts and correspondence. These shell companies were found to be involved in almost half of the country’s transactions suspected of involving corruption and money laundering – a country responsible for more than a quarter of the world’s cross-border assets.

Politically exposed persons (PEPs), who are subject to stricter requirements than normal citizens with regard to anti-money laundering regulation, also like to use shell companies. In one high-profile case, Belarusian President Alexander Lukashenko is linked to a Zug shell company, and alleged to benefit from housing illegal assets there.

Even after the Pandora Paper revelations, updates to the country’s anti-money laundering laws in 2021 left intact exceptions for lawyers to advise clients with no obligation to inform authorities of any suspicion of money laundering.

Source: <https://www.publiceye.ch/en/topics/corruption/switzerland-offshore-welcome-to-shell-company-paradise/zug-an-offshore-paradise-for-shell-companies>

Challenges and Opportunities

Several factors make the legal profession especially difficult to assess for adherence to AML practices including diversity in size, jurisdiction, services offered, and privacy extended to clients.

Risk Ratings

- Most law firms have some sort of internal risk rating that determines whether they will take on a particular client. But while “some such very profitable clients are turned down by law firms, bankers, and even PR agencies as ‘outside their risk appetite’, [...] data on the extent to which this happens (or on how many Suspicious Activity Reports are made by lawyers on elites) are unavailable.”⁸²

Difficulty obtaining data

- Accessing data related to lawyers that would provide the required evidence to evaluate their true role in money laundering is hampered by a number of factors:
 1. Solicitor-client privilege often protects their clients from any sort of public exposure;
 2. Records about lawyers' clients are not always kept online, and are often still file-based where researching in physical offices would be necessary; and
 3. Variation in business structures, from sole practitioner to large multinational law firms, and the guiding regulations in the jurisdictions in which they operate, undermine comparisons.

Resistance to state supervision

Certain countries with prominent financial centres, such as Canada and Australia, have traditionally resisted including lawyers in their regulatory framework or making it a requirement that lawyers report suspicious activity to the authorities.⁸³ In Canada, the Supreme Court declared in 2015 that it would be unconstitutional to include lawyers in the AML reporting regime as it had the potential to make lawyers "agents of the state" and would render them unable to deliver service to their clients in a confidential manner.⁸⁴

In the United States, the Biden administration's anti-corruption strategy and promise to increase AML requirements for lawyers might be changing the tide of resistance.⁸⁵ Canada and Australia may indeed be outliers in their "resistance to the regulation of lawyers and to requirements for them to report suspicions of their clients to the 167 national Financial Intelligence Unit members of the Egmont Group in 2022"⁸⁶.

Key questions remain including:

- How important is it for lawyers to be subject to state regulation to ensure they don't become enablers of money laundering?
- How much should lawyers know about their clients before accepting to represent them? For example, if an Australian lawyer represents an Australian subsidiary that is six nodes removed from the United Arab Emirates based parent company controlled by a PEP on a sanctions list, should the Australian lawyer automatically refuse to represent the subsidiary? After all, the client is the subsidiary and is a distinct legal entity. The services performed would be restricted to the subsidiary in the territory of Australia.
- Has the work of the International Bar Association and local regulatory authorities to protect against lawyers participating in IFFs had the desired effect?

The answers to these questions are complex and must consider the rules and rights to legal representation in various jurisdictions. The picture of lawyers as enablers is so far only half painted.

5.3. Accountants

Description

Just as lawyers are seen to be a key ingredient in IFFs, so too are accountants. In many jurisdictions they can set up corporate vehicles, or at the very least provide the required advice on how to best structure those vehicles to minimise taxes, avoid detection by

authorities, and seamlessly move money from one jurisdiction to another. Similar to the limited empirical evidence of lawyers' involvement in IFFs, most of what has been researched regarding accountants is theoretical.

Regulation

A significant feature that sets apart the accounting profession is the distinction between professional accountants and non-professional accountants. Whereas professional accountants are often members of a regulated body, or work at a regulated financial institution, the same is not always the case for other accountants who independently provide a set of services without such attachment. The main factor that determines when an accountant is subject to a regulatory body is the service they are offering. For example, in certain jurisdictions only some functions like audit and insolvency work are restricted to professionally qualified accountants. There may be varying rules for accountants depending on the services they offer and affiliations they have.⁸⁷

The international scale of this concern is potentially large with nearly three times as many non-professional accountants as professional accountants according to the International Federation of Accountants (IFAC). IFAC represents 180 professional association organizations (PAOs) from 135 jurisdictions totalling roughly 3.5 million professional accountants worldwide.⁸⁸ The International Ethics Standards Board for Professional Accountants (IESBA) code of ethics applies to all IFAC members, and is an important tool in ensuring professional accountants around the world abide by stringent AML rules.⁸⁹ An additional 10 million accountants exist worldwide who are not subject to the code.

Even for the professional accountants who are subject to the IESBA code of ethics, there is little research into whether those standards are universally adhered to in the jurisdictions it serves. While being a member of IFAC requires individual PAOs to adhere to the code, it remains up to domestic regulatory authorities to enforce compliance of the code.

Facilitation of IFFs

Evidence from the FinCEN Files, Pandora Papers and other data leaks revealed in detail the direct involvement of accountants in money laundering scams around the world despite requirements to follow FATF-style regulations. In a joint FATF-Egmont Group report from 2018 looking at the roles various enablers play in the concealment of beneficial ownership status, accountants were heavily criticized.⁹⁰ The report found that where professional intermediaries were used to design schemes to conceal beneficial ownership, accountants "were significantly more likely to be complicit in their involvement when compared to legal professionals."⁹¹ The report also painted accountants as being creative scheme designers and stated that "accounting professionals represented the highest proportion of scheme designers and promoters in the case studies, and were more likely to promote their own scheme to prospective clients than to simply facilitate a scheme designed by their client."⁹² Most important, the report states that because accountants have a high degree of financial knowledge and acumen, it is less likely that they would be unwittingly exploited to conceal beneficial ownership as might other professionals.

The 2022 Cullen Commission Report about money laundering activities and regulatory weaknesses in British Columbia, Canada noted that while accountants may not often prepare tax plans, they do often provide tax planning advice for their clients. In so doing "accountants clearly gain knowledge about a client's financial affairs and are well placed to observe suspicious circumstances."⁹³ At the same time, the commissioner noted that

“the available evidence has limitations and that it would not be prudent to come to firm conclusions about the nature and extent of accountant involvement in money laundering in this province based on it.”⁹⁴

The lack of strong data surrounding the accounting profession’s involvement in money laundering is expanded upon in Recommendation 70 of the Cullen Commission’s Report which calls for “the Province [to] study the nature and scope of work performed by unregulated accountants in British Columbia to determine where they work, what clientele they service, what services they provide, whether those services engage a significant risk of facilitating money laundering, and, if so, what form of anti-money laundering regulation and oversight is warranted.”⁹⁵

Opportunities and Challenges

Who is regulated?

Data is currently insufficient for a detailed assessment of the impact of regulation on accountants, in part because of the difficulty distinguishing between which accountants are even covered within a single jurisdiction. Furthermore, key jurisdictions such as the United States and Australia do not include accountants and other DNFPBs in their AML regulations, so they are only guided by their professional organization or self-regulatory body.

Regulators in some jurisdictions are increasing the requirements imposed on accountants to detect and prevent the flow of dirty money. In Canada, the financial intelligence unit, FINTRAC, announced several changes in 2021 that require accountants to be more rigorous when identifying their clients and keeping records.⁹⁶ Changes include clarifying under which circumstances accountants need to verify the identity of the persons and entities with whom they are dealing, including for:

- Large cash transactions (CAD \$10,000 or more within a 24-hour period)
- Large virtual currency transactions (CAD \$10,000 or more within a 24-hour period)
- Suspicious transactions, regardless of the amount
- Receipt of funds of CAD \$3,000 or more.

In addition, FINTRAC now requires that accountants obtain beneficial ownership information and determine if they are dealing with a politically exposed person or the head of an international organization.⁹⁷

Whether these changes will yield better results is still to be determined. One of the challenges with the new requirements is that Canada still lacks a central beneficial ownership registry, though the government is said to be working towards implementation of one by the end of 2023.

Jurisdictional challenges

The challenge with gathering evidence of accountant involvement in money laundering is further punctuated by the fact that rules and guidelines for professional accountants are implemented by jurisdiction. Where FATF has attempted to create a global standard through their recommendations as well as their guidance on a risk-based approach for the accounting profession¹, they do not take into account the domestic situation and regulatory bodies which accountants must respond to in their home jurisdiction.⁹⁹

Education standards

Despite the challenges identified above, IFAC members are progressing in the adoption of global AML standards, particularly in regard to education, audit and assurance, and the code of ethics. Only a small percentage of members have, at least partially, to adopt these standards.¹⁰⁰

Improving education regarding AML is central to IFAC's efforts. A current concern is the lack of AML coverage in the typical certification curriculum, leaving accountants to gain much of the training on the job and without standardization or oversight. To combat this, IFAC has developed an anti-money laundering education program that can be used by professional accountants worldwide. It aims to fill gaps in AML knowledge and prepare accountants with tools and information in areas like company formation and virtual assets.¹⁰¹

New studies and data

Future research will have a new data source to help identify the extent of accountants' participation in IFFs with the upcoming release of the 5-year review of the 2016-2017 *Responding to Non-Compliance with Laws and Regulations*.¹⁰² The standard creates an affirmative whistleblowing requirement on auditors and professional accountants to report to authorities if they encounter, or are made aware of, non-compliance or suspected non-compliance with laws and regulations in the course of providing a professional service to a client. The results of the 5-year review could prove to be a valuable data set in the effectiveness of the profession's efforts on AML.

5.4. Real Estate

Description

The real estate sector is widely regarded as a primary vehicle through which kleptocrats and other criminals launder their money. The problem is not unique to any one jurisdiction, although high-value jurisdictions including London, New York City, and Vancouver, have been highly attractive to money launderers. As a result, high value transactions are under growing scrutiny for money laundering in these jurisdictions.

Regulation

The anonymity that real estate provides using limited liability companies (LLCs), shell companies, and land trusts - legal options designed to protect the privacy and the holdings of the wealthy¹⁰³ is a primary reason for its attractiveness to money launderers. A small step was taken to address the problem of secrecy in real estate transactions in the U.S. where wealthy landowners use LLCs to acquire property in the passing of the *Corporate Transparency Act*.¹⁰⁴ The act directs FinCEN to collect information from companies about their true ownership and keep it in a massive, confidential database that can be used by law enforcement for money laundering investigations. Essentially, it creates a requirement for certain entities to disclose their beneficial owners.

Another reason real estate appeals to money launderers is that the sector itself often requires the use of professional enablers. Legal observers have pointed to the fact that in a decentralized legal system like in the U.S. and Canada, where lawyers are regulated by individual state or provincial bar associations, the enforcement of international anti-money laundering regulations and recommendations is left to sub-national legislators or regulators, many of whom decline to act.¹⁰⁵

The U.K. has also taken steps to address the real estate sector with the recent [Register of Overseas Entities](#) that requires overseas entities that own land or property in the U.K. to declare their beneficial owners and/or managing officers. On their website, it is stated that “there will be severe sanctions for those who do not comply, including restrictions on buying, selling, transferring, leasing or charging their land or property in the U.K.”¹⁰⁶ Though promising, it is still too early to evaluate its effectiveness.

The underlying lack of empirical data showing the difference in money laundering activity depending on regulatory structure makes it very difficult to ascertain the full extent of the problem, or what regulatory structure would be more effective at addressing the problem in the real estate sector.

Facilitation of IFFs

Global Financial Integrity revealed that more than USD \$2.3 billion was laundered through U.S. real estate in cases reported between 2015 and 2020. Eighty two percent of those cases involved foreign sources of money, and more than half involved PEPs. The President and CEO of GFI Tom Cardamone noted “the U.S. remains the only G7 country that does not require real estate professionals to comply with anti-money laundering laws. This, coupled with the Treasury Secretary’s stunning admission that ‘the best place to hide and launder ill-gotten gains is actually the United States’ suggests that FinCEN’s rulemaking is coming none too soon.”¹⁰⁷

The real estate sector in Canada, the U.K. and elsewhere has also been used to facilitate IFFs. These jurisdictions have seen international students being used as “money mules” - listed buyers and owners of expensive real estate property far exceeding their income. The University of Exeter specifically warns international students about the perils of them becoming used as money mules on their website.¹⁰⁸

Evidence brought forward in the Cullen Commission of Inquiry in Canada asserted the occupation of “student” is often used to buy luxury real estate in the province of British Columbia. In one example, in August 2012, a 19-year-old student from Guangdong arrived in Montreal from the Dominican Republic with CAD \$23,800 stuffed into his backpack. Four months later, he purchased an 8,500-square-foot mansion in the province of British Columbia for CAD \$2.1 million.¹⁰⁹

The Cullen Commission also uncovered the dangers of private lending in the real estate sector and how a lack of oversight can lead to serious money laundering infractions. In one example, private cash loans were made through a shell company where the origin of the funds were linked to illicit activities before being funneled back into the legitimate economy as private loans.¹¹⁰

Opportunities and challenges

Under-Regulation

Across several jurisdictions, criminals have stashed their wealth in the real estate sector largely because of a lack of regulation preventing them from doing so. Real estate agents working off commission are generally not required to inquire deeply about their clients or how they obtained their wealth. This lack of regulation is a problem that many jurisdictions are now grappling with especially after the imposition of numerous economic sanctions on the assets of various kleptocrats.

Agent-Client Relationship

The Cullen Commission Report suggests that self-regulation in the real estate industry needs to go further to adequately combat money laundering. Recommendations 11 and 12 provide that real estate professionals should have an obligation to ask their clients about their source of funds at the outset of their relationship and that brokerages be mandated to demonstrate the existence of an anti-money laundering compliance program as a condition of licensing.¹¹¹

Licensing

Licensing requirements in many jurisdictions could be made more stringent, especially in terms of adding AML education to the curriculum and requiring knowledge exams on how IFFs use real estate.

5.5 Casinos

Description

The Basel Institute provides a detailed assessment of why casinos, and the gambling industry more generally, is a popular vehicle for money-launderers. The industry “includes a wide variety of businesses that juggle large transactions, often in cash, at a rapid scale. These include physical casinos, online casinos, bars, and clubs housing poker machines, and both physical and online sports betting services. Moreover, it’s a big industry that’s growing exponentially. In 2021, the global gambling industry generated record-breaking revenues, reaching USD \$261 billion in the U.S. and € 87.2 billion in Europe.”¹¹²

Regulation

The FATF Standards include casinos under recommendations pertaining to DNFBPs, and state: “Casinos should be subject to a comprehensive regulatory and supervisory regime that ensures that they have effectively implemented the necessary AML/CFT measures. At a minimum: casinos should be licensed; competent authorities should take the necessary legal or regulatory measures to prevent criminals or their associates from holding, or being the beneficial owner of, a significant or controlling interest, holding a management function in, or being an operator of, a casino; and competent authorities should ensure that casinos are effectively supervised for compliance with AML/CFT requirements.”¹¹³

In practice, gambling industry regulations and enforcement vary by jurisdiction. For example, effective in 2021, Canada imposed a requirement on casino patrons making cash transactions over CAD \$10,000 to provide proof of the legitimate sources of the funds, among other record keeping and reporting requirements. The value of suspicious transactions reported to Canada’s financial intelligence unit subsequently dropped by almost 90%.¹¹⁴

Some jurisdictions use other deterrence tools, such as applying civil proceedings. This was the case in Australia in 2017 where “the Federal Court of Australia ordered a record AUD \$45 million civil penalty against Australia’s largest gambling company, Tabcorp, for its inappropriate AML programme, failure to file SARs, and failure to identify a customer that won AUD \$100,000.”¹¹⁵

Irrespective of these efforts, regulation in this industry is generally a patchwork, in part reflecting its involvement in more limited sums of money and its more local players,

compared to other sectors described above. The industry's rapid growth may make it increasingly attractive to corrupt actors, as other avenues for money laundering are blocked through stronger regulatory oversight:

Facilitation of IFFs

Criminals have exploited the gambling industry to launder money for a long time, but the extent to which this occurs can still come as a shock – especially in countries with supposedly strict AML measures. For example, “the Crown Casinos in Melbourne and Perth, Australia, are facing allegations that hundreds of millions of dollars were laundered through their casinos between 2014 and 2019 via “junket” programmes in which the casino and tour operators facilitated a period of gambling by high-roller players from foreign jurisdictions.”¹¹⁶

Criminal prosecutions and enforcement actions show that illicit proceeds earned from drug trafficking, illegal gambling, and fraud are placed in casinos directly as cash. According to the U.S. Drug Enforcement Agency (DEA), casinos remain a popular way for launderers to obfuscate their drug proceeds because of their high volume of currency transactions. A trend that law enforcement has seen is “chip walking.” For example, in multiple jurisdictions, one target frequently gambled at a casino with cash from sex trafficking. The target took large sums of casino chips and left the casino in one city and drove to a casino in another city to play with those chips. The target did not cash out but left the casino again with large sums of chips which he subsequently handed off to a second target at the casino.¹¹⁷

Opportunities and Challenges

There is a clear opportunity to bring casinos under more stringent supervision and require them to adhere to various AML requirements. The example in Canada shows that enacting a requirement to prove the provenance of funds above a certain threshold can be effective. It will remain challenging to determine how those looking to funnel dirty money through casinos continue to find loopholes.

The Vancouver model uncovered in the Cullen Commission Report paints an example of how it works¹¹⁸:

1. A person in Jurisdiction X (who may or may not be involved in criminal activities) seeks to move large amounts out of the jurisdiction and potentially circumvent cash export laws.
2. The person transfers the funds to a criminal gang within Jurisdiction X, then travels to Jurisdiction Y.
3. The criminal gang in Jurisdiction X arranges for their associates located in Jurisdiction Y to deliver the equivalent amount of the original transfer to the person now in Jurisdiction Y (mostly in the form of cash derived from crime, which the criminal gang needs to launder).
4. The person enters a casino and transfers the money for chips before making several low-value bets and cashing out.
5. The person then exchanges the chips for clean cash, having now both laundered funds for the criminal group through the original transfer, and circumvented the cash export laws of their own jurisdiction for their own benefit.

Finding ways to stop these schemes is an ongoing challenge, but some progress has been made concerning effective measures to prevent them.

5.5. Art Dealers

Description

The global art market was valued at USD \$64 billion in 2019 and growing. It is largely unregulated leaving it vulnerable to money laundering abuse.¹¹⁹ Calls for tighter regulation have increased since 2016 when the Panama Papers revealed complex trails of shell companies used to obscure ownership of artwork purchases, and to bypass sanctions against Russian oligarchs.

While globalization and widening Internet access have helped to make the art market widely accessible internationally, a 2020 U.S. Senate staff report revealed that more than half the market - and its enablers - remains concentrated in the U.S. and U.K. Specifically, the United States continued to lead the market in 2019 with 44% of all sales by value, with the U.K. in second place with 20%. The report concludes that “today, the art industry is considered the largest legal, unregulated industry in the United States.”¹²⁰

Regulation

Under the current U.S. AML regime, when a piece of art is sold, there is no legal requirement for the selling party to confirm the identity of the buyer or that the buyer is not laundering money through the purchaser. One case study demonstrated that while the four biggest auction houses have voluntary AML programs, the employees who facilitated art purchases said they never asked the art advisor the identity of his client.¹²¹

The European Union and U.K. have begun implementing rules that would require knowing the purchaser for high value transactions. Specifically, the European Union’s fifth Anti-Money Laundering directive compels businesses selling art to verify the identity of customers before completing transactions of €10,000 or more. The U.K. adopted similar rules in the weeks before its exit from the EU on January 31, 2020.¹²²

Facilitation in IFFs

The reasons for art sales to be an appealing avenue for money laundering are varied but come from the industry’s opaque operations that allow for anonymity among buyers and sellers. Art sales frequently happen through intermediaries referred to as “art advisors” who can represent both purchasers and sellers. In a typical transaction, a purchaser may not ask who owns the piece of art they are purchasing, and the seller may not ask for whom it is being purchased or the origin of the money. Art advisors are generally reluctant to reveal the identity of their clients for fear of being cut out of the deal and losing the business.¹²³

Opportunities and Challenges

As long as the United States remains an unchecked pathway for criminals seeking to launder money in the art world, an assessment of the regulatory success elsewhere remains impractical. A more compelling question might be to ask how large the potential benefit to stricter oversight is relative to the cost? Despite some high-profile abuses, it is worth noting that FATF recommendations regarding DNFBPs do not discuss art dealers (although dealers in high-value precious metals and dealers in precious stones are included.)¹²⁴

The balance between opportunity and challenge in this sector is somewhat obscured by one main gap in knowledge: what percentage of the art market is ripe for abuse? Is it only the top 10% of the market where a piece of art sells for over \$1 million that is subject to abuse? If so, how large is the pool of buyers? Could the same CDD requirements be applied to art dealers as other professions to prevent these few individuals from taking advantage of the system?

Furthermore, if the structure of the art market is such where only a few wealthy individuals benefit from laundering money through it, should resources be spent to reimagine the entirety of the industry? Are more effective, targeted solutions available to address a limited problem? More importantly, is it simply more urgent to focus on other enabler sectors?

5.6. Educational Institutions

Description

Education is emerging as an area of concern among some anti-corruption analysts due to the regular transfer of large sums of cash in the sector, coupled with a lack of oversight and transparency. When it comes to their role in enabling IFFs, both public and private educational institutions are routinely overlooked.

Facilitation of IFFs

One avenue for exploitation is the students themselves, who may be offered cash payments in exchange for the ability to move money through their personal bank account for large purchases like tuition fees. Recently, The Times published a report on the results of its investigation into British universities accepting cash payments from students. The report claimed that “[a]t least 49 British universities let students use banknotes to pay £52 million in fees over the past five years, including millions from China, India, Russia and Nigeria.”¹²⁵ Since 2015, Chinese students reportedly accounted for £7.7 million in banknote payments to British universities, followed by Indian students (£1.8 million), Nigerian students (£1.5 million), and Pakistani students (£1.2 million), although some universities did not report students’ nationalities in connection with cash payments.¹²⁶ At least one British university, University of Exeter, has added cautions to its website advising students to be vigilant and avoid becoming a “money mule” for criminals seeking a way to make their dirty money appear legal.¹²⁷

Other jurisdictions seem to face similar problems. In 2019, a report commissioned by the British Columbia Attorney General took note of “the willingness of private colleges in Greater Vancouver to accept cash for tuition fees and for other purposes.”¹²⁸ Although some British Columbia post-secondary institutions did not accept cash, or accepted cash up to a defined limit, the report identified a concern with “international students paying tuition and other expenses in cash, overpaying into their student account, seeking refunds by cheque, and the use of agents.” The cash can be laundered in a variety of ways. For example, students may register in person and, after paying their fees, withdraw from the institution and receive an institutional cheque in reimbursement of their fees. They can also register from abroad and withdraw before the deadline for refunds, utilizing an agent to collect their refund cheque; or they can appoint an educational agent, a nominee, or a proxy to register on their behalf, pay their tuition, and later withdraw and collect their refund.¹²⁹

In the U.S. there is no clear guidance on the extent to which universities may be subject to federal AML regulations. Colleges and universities do not clearly fall within the definition of “financial institution” in the Bank Secrecy Act (BSA).¹³⁰

5.6.2. Reputation laundering in Education

Another possible avenue for criminals to launder social capital, as well as cash, is by direct affiliation or donation. This relatively newly recognized form of money laundering, enlists the university itself as an unwitting enabler, exploiting potential loopholes in oversight.

Studies have explored various examples of reputation laundering including endowing university programs and institutes, serving as guest speakers or lecturers, and using other forms of affiliation or philanthropy to reinforce social standing and networks for the criminals or their families. Reputation laundering occurs when wealthy individuals make philanthropic donations to universities in rule-of-law settings to boost their international reputation and offset reported controversies or malfeasance.¹³¹

In the U.S., universities are legally required to report data on donations over USD \$250,000 but this responsibility is routinely neglected. Specifically, the Chinese education ministry provided USD \$158 million to 100 colleges and universities for Confucius Institutes but nearly 70% of those receiving donations over USD \$250,000 had failed to disclose this information.¹³² In the U.K., there is no such requirement: university gift officers admit that vetting is difficult for overseas donors. One admitted that “this is a disadvantage and an advantage, because [in the case of adverse publicity repercussions] we can say that we honestly didn’t know.”¹³³

5.7. Cryptocurrencies

Description

With a rapid transformation in crimes, it becomes imperative to distinguish between new cybercrimes and those that are digitally enabled. Cybercrimes do not exist outside of the cyber domain, or at least their effect outside of the cyber domain is relatively low. Digitally-enabled crimes, on the other hand, are existing criminal acts that have flourished because of easier use with technology.¹³⁴ Therefore, criminal activities such as hacking and malware attacks would be examples of cybercrimes whereas activities such as money laundering and phishing are digitally enabled crimes. The extensive use of the online platform is an enabling factor in overcoming geographical or social barriers, and it facilitates collaboration with perpetrators across the globe, thereby increasing the opportunity to commit illicit acts.¹³⁵

Facilitation in IFFs

The pseudo-anonymity of cryptocurrency transactions and ease of access make them vulnerable to criminal exploitation. Criminals on the dark web are selling illicit goods, such as firearms or drugs, in exchange for cryptocurrency. According to reports by the Royal Canadian Mounted Police (RCMP), cryptocurrency is also used frequently in extortion crimes and fraud schemes, such as tax scams, where victims are asked to send funds in Bitcoin. Traditionally, criminals have used cash for transactions, but cryptocurrency offers a new, fast and cheap way to move value and facilitate criminal activity. In this global economy, it’s very easy to move cryptocurrency around the world in a matter of minutes, even to remote areas where individuals may not have ready access to traditional financial systems.¹³⁶

Other studies have noted that while it is difficult to pinpoint the use of e-currency in IFFs, it is possible to generalize how they tend to be used along with their impact. The impact of these new technologies on IFFs “appears to be mostly in encrypted communications, electronic funds transfers, cryptocurrencies and in the global trust and company services available to both licit entrepreneurs and full-time/part-time criminals, plus the rules prohibiting most law enforcement from keeping electronic surveillance over lawyer–client interactions unless a judge can be persuaded that the lawyer is reasonably suspected of crime. This century, hacking and insider leaks have exposed many laundering transactions to the outside world, analysis of which is facilitated by Artificial Intelligence and fast electronic searches, and by task-sharing among multi-national investigative journalists.”¹³⁷

Opportunities and Challenges

In Canada, the RCMP have claimed that once criminals attempt to convert the cryptocurrency into a traditional payment method, they can use any of the investigative techniques they’ve been using for years. New Canadian cryptocurrency regulations allow them to gather intelligence relating to suspicious transactions from FINTRAC.¹³⁸ While cryptocurrencies clearly pose a challenge for traditional enforcement agencies, there may also be some opportunities. These may come in the form of how blockchain is used and how other technologies such as artificial intelligence can help uncover illicit activity.

6. EMERGING TOOLS AND TECHNOLOGIES

6.1. Blockchain

New data tools such as blockchain are emerging to facilitate the tracing and analyzing of IFFs. Some argue that blockchain could solve many tracking and tracing challenges because every transaction leaves behind a permanent trail of records. A public blockchain ledger can supervise, validate, and record each transaction's complete history. The public ledger's readers and crypto miners get immediate notification of transactions as they occur. If any of the transaction phases are left unverified, including destination wallet, departure wallet, currency type and amount, the transaction would get immediately blocked.¹³⁹

Blockchain could also be used in AML risk analysis and reporting mechanisms since it allows for overall system analysis rather than monitoring just entry and exit points.¹⁴⁰ Security is also enhanced by its decentralized network where each user or node has to validate changes. Every node has a record of the entire ledger and can compare any modifications and detect any unauthorized changes.

One suggestion is to integrate smart contracts in a blockchain-based AML platform that automates the process of fraud detection in the system. Built-in algorithms keep a continuous check on every transaction, automatically generate an alert for a suspicious transaction and immediately block the transaction¹⁴¹ If implemented properly, it may lead to better oversight and enforcement of AML.

6.2. Artificial Intelligence

The volume of SARs received by financial intelligence units outpaces the resources available to analyze them, as described above. Artificial intelligence (AI) could provide a cost-effective solution.

AI has two primary benefits in terms of improved AML outcomes: 1) it can increase the effectiveness and efficiency of financial crime investigations, and 2) it can aid the institution's own risk management system. Additionally, it has the potential to slash costs – mainly by reducing false positives in monitoring systems and redirecting the efforts of human experts to other, more productive, areas of suspicious activity.¹⁴² The ultimate hope is that perhaps AI will come to the rescue of overburdened bank employees sifting through millions of SARs.

Another area where AI may prove useful is in validating the data obtained through Beneficial Ownership registries. A registry is only as good as the data it contains. A common criticism of the U.K. Beneficial Ownership registry, for instance, is that the quality of the data cannot be relied upon. Despite years of promise, however, AI's application to AML remains in its infancy.

6.3. Unexplained Wealth Orders

The power of unexplained wealth orders (UWOs) in fighting money laundering lies in their reverse onus principle whereby an investor can compel a person suspected of profiting from crime to show the source of their money.¹⁴³ UWOs can also pave the way for forfeiture.

The U.K. and other countries have used UWOs to target Russian oligarchs with large assets in the U.K. who were suspected of obtaining them without an obvious source of income. The law's very first target was Zamira Hajiyeva, the wife of a jailed Azerbaijani banker. A UWO was used to force her to explain how she and her husband obtained the necessary wealth to purchase two properties with a combined value in excess of £22 million.¹⁴⁴ The use of the UWO was challenged in court, but the decision was ultimately upheld paving the way for their future use.

UWOs have been recognized as effective tools outside the U.K. as well. As noted in the Cullen Commission Report, UWOs provide another tool in jurisdictions without robust beneficial ownership rules. A UWO can be sought without any civil or criminal proceedings having begun. There is no need for the subject of a UWO to have been convicted of an offence or to have had a civil law judgement against them.¹⁴⁵

There is some inspiration that banks may be able to take from UWOs in the evolution of their everyday practices as well. For example, banks could require that depositors show evidence of the provenance of their funds prior to releasing a wire payment or e-transfer into their accounts. While we did not come across research on whether such a system would reduce the likelihood of banks and bankers being used as enablers, the model of UWOs applied at the depositor level, whereby banks and depositors have liability to show and validate the source of funds, could be a valuable piece of research.

6.4. Non-Conviction Based Asset Forfeiture

Non-conviction based asset forfeiture (NCBF) is emerging as a critical tool for recovering the proceeds of corruption, particularly in cases where the proceeds are transferred abroad.¹⁴⁶

NCBFs address ongoing challenges for many countries in confiscating proceeds of corruption and returning it to victims.¹⁴⁷ An advantage to NCBF is that it can be used in situations when a criminal conviction is not possible such as in cases where suspects have died, are missing, immune from prosecution, or in cases where the statute of limitations prevents prosecution. Additionally, the threshold of evidence required for a confiscation order is lower than in a criminal case. For these reasons it is encouraged by the Basel Institute on Governance and endorsed by the UN Convention Against Corruption (UNCAC), the FATF, the OECD, the EU and many others. However, concerns remain about the impact of NCBF on property rights, as well as on the presumption of innocence and the rights to a fair trial and due process if rule of law and human rights safeguards are not in place.¹⁴⁸

At a July 2022 anti-corruption conference in Lisbon, U.S. officials noted "NCBF is a critical tool for asset recovery particularly in cases where the proceeds are transferred abroad, or attempts have been made to hide ownership. In fact, in many instances it is the only mechanism at the disposal of prosecutors and law enforcement to recover the proceeds of crime and restore justice to the victims. Enacting and using NCBF laws will provide additional opportunities to pursue justice in your countries and to build strategic alliances, cooperation, and international partnerships."¹⁴⁹

7. GAPS AND RECOMMENDATIONS

7.1 Gaps and Questions

Through our research, we have uncovered several gaps when it comes to enablers and their participation in IFFs. The largest gap is simply to do with data. There is a lot written about enablers, but there is much less data that shows their direct involvement, or even the way they were involved. This leaves open several unanswered questions:

- What are the gaps in regulation that can be addressed that will truly make a difference?
- Is global standard setting for professionals when it comes to AML worth the effort if implementation and compliance is done at the national and subnational level?
- Is there a need for a global regulatory body capable of taking enforcement action if a set of enablers are going unchecked in a specific jurisdiction? If so, who should this power target? The national or subnational government? The self-regulatory body? The supranational association representing the self-regulatory body?
- How do we ensure beneficial ownership transparency is truly effective?
 - Do the registries need to focus on being publicly transparent, or should more effort be focused on ensuring quality, up-to-date information is being recorded?
- How do we ensure that forum shopping doesn't become a result of beneficial ownership implementation in certain jurisdictions? What mechanisms can we use to ensure a global approach beyond FATF standards?

To answer any of the above, more research and more data especially is required. There are also some outstanding theoretical questions that need to be considered, including:

- How do we balance the reality of problems being local versus the exceptionally large number of policies and jurisdictions to consider?
- We need to appropriately distinguish between policy making and the challenges that exist with policy implementation. How do we ensure the capacity and resources necessary for successful implementation?
- Are there economies of scale that regulators can take advantage of in collaborating? Money launderers are well-resourced and appear to readily adapt and remain one step ahead.
- A practical consideration for many countries is how high a priority regulation of emerging enablers should be. Future research might consider such questions as:
 - What percentage of the market is ripe for abuse?

- How large is the pool of potential enablers?
- Are there basic CDD mechanisms that could be enacted to prevent individuals from taking advantage of the system?

7.2 Research limitations

The research we carried out was based on the available existing evidence on enablers and their roles in IFFs. While we believe it would be a useful exercise to examine how lawyers, accountants and bankers are regulated in various jurisdictions and determine whether the type of regulation led to higher incidents of enabling behaviour, such a project was beyond the size and scope of this research.

We were also limited by the fact that most serious studies attempting to evaluate the level of involvement of enablers are very recent or have yet to be completed. This contributes to a data gap that in several years might make things much clearer. Policy makers require this data to know where to usefully expend energy on programs that will yield results. We believe that in a bit more time, this large enabler puzzle will put many more pieces together providing for more targeted approaches.

7.3 Recommendations for further research

This report traces decades of investigations, research and regulatory reform regarding money laundering and a growing understanding of the role of enablers. What emerges, is a compelling case for strengthening data collection and research on a broad range of topics. We have broken our recommendations down into general themes, each containing several questions.

THEME 1 REGULATION

RECOMMENDATION 1 Conduct comparative research on various types of regulation aimed at enablers and measure their impact on IFFs.

Among the global, national, subnational and self-regulatory frameworks in place, which aspects of each model are most effective at thwarting moneylaundering within targeted risk categories?

Items for consideration include:

- The significance of DNFPBs under customer due diligence and record keeping rules; The impact of placing responsibility on enablers to provide beneficial ownership transparency data (as in the Slovakia example) instead of the national authority having the burden of verifying all the information. Do AML approaches that shift responsibility onto enabler professions have greater impact?
- The impact of a single entity regulator (i.e. state level) vs. multiple sub-national regulators for the same profession.
- The strengths and weaknesses of self-regulation vs. state regulation of professionals.
 - Can professionals devise and enforce self-regulatory models that are nimble and adapted to local circumstances more effectively than governments or international bodies? Or are they more easily corruptible because of the opportunity for personal influence?
 - Research should leverage the work that has already been done by, for example, the International Bar Association and the International Federation of Accountants, to ensure the legal and accountancy professions abide by a strong set of rules and obligations.

RECOMMENDATION 2 Provide clarity on the full extent to which certain professionals must probe regarding due diligence and know your client rules.

- Currently, CDD and KYC rules are left to the bankers, lawyers and accountants. But how much they need to require about their immediate client is unclear.
- Does Slovakia's experiment of reversing the burden and making the enablers themselves liable for providing accurate up-to-date information on their client when they help them with a corporate transaction or similar service provide a "best practice"?

RECOMMENDATION 3 Determine banking practices at the depositor level for both the financial intelligence unit and individual banks.

continued

Since countries in the Global South are often most impacted by IFFs, we suggest undertaking research on the procedures in different banks in the Global South to improve consistency and address currency flight. Some of the questions should include:

- What information is required before sending a wire transfer?
- What information is required before a wire transfer is deposited into your account?
- What loopholes exist to allow for money to flee undetected?
- Can additional requirements to prove the provenance of funds at the time of deposit help thwart the flight of capital?

RECOMMENDATION 4 Examine the feasibility of an international beneficial ownership registry.

Given the difficulties in establishing registries at the national and subnational level, there is little doubt this would be a Herculean effort. Could there also be offsetting efficiencies gained by a central platform that collects all the national data in an attempt to provide consistency and harmony?

Some questions include:

- Could beneficial ownership transparency alleviate the burden on professionals and curb IFFs with readily available data?
- How might policy makers address differences between jurisdictions related to concerns over privacy protection, cybersecurity breaches, and potential areas of national security?
- Is there scope for implementation to vary by jurisdiction depending on local conditions and resources?
- How would an international registry be resourced and enforced?

RECOMMENDATION 5 Determine the potential for enforcement agencies and regulators to benefit from economies of scale through supra-national collaboration.

A global problem like IFFs requires global action. Law enforcement agencies frequently encounter difficulties when more than one jurisdiction is involved. What resources are required to target enablers and their clients efficiently and effectively? What advantages can governments capitalize on in terms of scale, international cooperation, and lessons from other disciplines? What strategies can help achieve desired outcomes with recalcitrant or kleptocratic rulers?

THEME 2 DATA AND NETWORKS

RECOMMENDATION 6 Fill in the data gaps on proportions of people within the enabler professions and among their clients that are likely to be involved in IFFs to generate a more targeted approach to regulations.

For example, at what point do lawyers consider clients to be undesirable and turn them away? Is it only after they are named on a formal sanctions list?¹⁵⁰ What proportion of clients at different law firms have been engaged in illicit activity themselves? Are there patterns of clustered illegal activity?

This would help to demonstrate whether the problem is large firms taking on far too many risky clients, or risky clients spreading their work around the legal profession making it an industry-wide problem.

RECOMMENDATION 7 Understand the nature of enabler networks including their location, diversity, and consistency, as well as their choke points and constraints.

More research is needed to determine how extensive and diverse the enabler networks used by criminals are and what types of regulation drives the expansion or contraction of these networks. The nature of networks may also change depending on the size, origin, and character of IFFs. For example, are there qualitative differences between IFFs involving organized crime vs. political/high-value crime that distort the conclusions of research when lumped together? Do they have different enabler networks and needs? How quickly and easily can criminals adapt to regulatory change and reform their enabler networks?

RECOMMENDATION 8 Determine strategies for knowing what priority sequence enablers should be targeted to achieve optimal and implementable solutions under resource constraints.

Fundamental to these strategies is consideration of how far “downstream” regulators should pursue enablers to impose regulations. It is worth going after hedge funds, for example, when they can just say that they are working for their immediate client?

How might regulators balance the relative costs and benefits of specific reforms? Does enough money get laundered through universities and art dealers to make them regulatory priorities? This recommendation is also one in which new tools will help determine efficiencies. Perhaps UWOs are all that is needed in the art world. Or maybe universities should simply limit cash tuition payments to certain thresholds?

At the same time, when does inaction within one jurisdiction or profession invite greater criminal activity as money flows into the path of least resistance?

THEME 3 TOOLS

RECOMMENDATION 9 Develop frameworks for determining the ability for various regulatory tools and frameworks to reduce IFFs most cost-effectively.

Regulation that is overreaching can potentially have negative unintended consequences such as inefficient resource use, a shifting of crime from one location to another, or poor enforcement and thus an open flouting of rules.

Questions to explore include:

What measures can policymakers use to determine when the costs associated with new or additional layers of regulations outweigh the benefits?

At what point does over-regulation discourage compliance?

What framework can regulators use to decide when to begin regulating a newly emerging enabler sector, such as trade in cryptocurrency?

What baseline levels do we measure against to evaluate the effectiveness of AML tools when we can never know how much money laundering is actually occurring?

RECOMMENDATION 10 Study the use of crowdfunding, online gambling, and online gaming for evidence of money laundering.

There is already some evidence that points to the use of crowdfunding and other online activities involving money exchange for illicit enrichment. Similar to charities, there are loopholes in their governance, but little is known about how frequently such activities involve IFFs and how best to guard against criminal use without blocking more benign use. Without evidence, regulators cannot direct policy or devise well-crafted solutions.

THEME 4 COMMUNICATION

RECOMMENDATION 11 Devise strategies to communicate the benefits of AML and other anti-corruption activities to the public in ways that are relatable and compelling.

IFFs can seem like an abstract problem, especially when we are speaking about dollar values in the millions, billions, and even trillions. The full impacts of this corruption can also feel especially remote to those in the Global North, who may live far from where the victims of the profit-generating crimes reside.

We recommend undertaking research to determine how best to frame the impacts of IFFs, including the trade-offs of increased action to curb corruption aimed at hiding, laundering or re-investing IFFs. For example, it may be helpful when detailing the millions of dollars from corrupt sources funneled into the real estate market, to address potential linkages to sky-rocketing real estate prices for the average home buyer.

Impacts need to be felt and understood by those with a voice to bring forward changes.

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Design by Raúl Rodríguez, R studio T, NYC, www.rstudiot.com

Infographics by Tom Koken, R studio T

Cover photo: Andrii Yalanskyi, shutterstock.

<https://www.actconsulting.ca>

<https://ace.globalintegrity.org>
info@globalintegrity.org

Global Integrity
1100 13th Street, NW, Suite 800
(at the Open Gov Hub)
Washington, DC 20005 USA