Module 1

Corruption and Money Laundering: Concepts and Practical Applications

(incorporating peer reviewers comments)
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Overview

This module covers issues related to the connection between money laundering and corruption. It uses practical cases that have been adjudicated upon by the courts in several jurisdictions to illustrate the concepts of money laundering, corruption and the interconnection between the two. The module highlights practical issues related to money laundering that should be addressed by investigators and prosecutors in corruption cases in order to capture the financial dimension of corruption and “following the money”. As will be observed in this module, all the corruption cases referred to have a money laundering dimension to them.

This module is not a recitation of the international standards on money laundering nor is it an analysis of the implementation of the United Nations International Convention against Corruption. References may be made to these matters but overall, the module is intended to elucidate the corruption-money laundering nexus.

At the end of the study of this module, practitioners are expected to:

- Identify corruption offences as defined by the United Nations Convention against Corruption;
- Describe the material elements that constitute the offence of money laundering;
- Understand how certain professionals such as banks, lawyers, real estate agents and corporate vehicles are used as intermediaries in facilitating corruption;
- Describe what the authorities need to consider in following the money trail in any corruption-money laundering investigation;
- Be able to understand the painstaking effort that is required in investigating and ultimately prosecuting complex and/or cross border financial crime cases.
**Interconnection between money laundering and corruption**

**Introduction**
Much has been written about the relationship between money laundering and corruption. However, only in recent times has the discussion centered on translating the growing intellectual awareness to actual operational practice between money laundering and corruption.¹ There is recognition that corruption and money laundering are interrelated. Corruption generates huge profits/proceeds that need to be laundered in order to be given an appearance of legality. Therefore, the occurrence of corruption will incidentally lead to money laundering activities. It is this interrelation between the two phenomena that this module intends to explain and illustrate. By looking into the financial aspects of corruption activities, anti-money laundering tools can and should be used as a powerful vehicle to deprive criminal of their ill-gotten assets and ultimately contribute to deterring acts of corruption.

The cases that have been reviewed in this module are based on typologies conducted by the Financial Action Task Force (FATF) but also those that have been adjudicated in the courts of law in several jurisdictions over the last several years. They provide invaluable insight into the practical issues that officials in anti-corruption agencies or similar type of units need to take into consideration.

**The Concept of Corruption**
There is no comprehensive and universally accepted definition of corruption. The common definition that has achieved consensus among scholars and practitioners is that, “corruption is the use or misuse of public office for private gain.”² In recent decades, this type of misuse of the public office has manifested itself in “state capture”, “patronage and nepotism”, and “administrative corruption.”³

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³ Id, p.9
During the negotiations of the United Nations Convention against Corruption (UNCAC), an agreement was achieved by the state parties to define corruption by simply listing a whole series of specific types or acts of corruption. As a result, reference to corruption in the Convention is captured by providing for numerous acts of what would constitute as corruption⁴.

**Corruption Offences as defined under the United Nations Convention against Corruption**

Based on the Convention, the various manifestations of corruption include:

* **Bribery – passive and active**
  The active or passive bribery of domestic or foreign public officials, including staff of international organizations, which involves an exchange that improperly affects the actions or decisions of a public official. Offering or soliciting bribes, even where no actual exchange has taken place or advances are rejected also amounts to corruption according to the UNCAC. According to the UNCAC, which criminalizes active and passive bribery, of domestic or foreign public officials, both the act of offering or making the payment and the act of soliciting or receiving that payment, would count as corruption and would engage the authors’ criminal liability.

* **Embezzlement and misappropriation**
  The embezzlement and misappropriation or other diversion of property by a public official, which criminalizes the fraudulent conversion of public money or property or any other thing of value by a person who had a lawful possession of it. The author of the criminal conduct in this case is entrusted with authority and control over the property by virtue of his or her position as a public official and “used/converted/misappropriate” this property in violation of the terms of his or her mandate.

* **Obstruction of Justice**
  The Obstruction of Justice offence involves the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or production of evidence in a proceeding; or interfering with the exercise of official duties by a justice or law enforcement official in relation to a corruption case.

The obligation under the UNCAC is to criminalize the use of both corrupt means such as bribery, and of coercive means such as use or threat of violence to pervert the administration of justice. Examples of obstruction of justice would be the use of force, threats or inducements for false testimony at any time before the commencement of the trial; or threatening a person who is cooperating with the anti-corruption agency or police in a corruption investigation; and hiding or destroying evidence related to a corruption investigation.

Trading in influence

The Trading in influence offence of the UNCAC criminalizes the fact for an individual (public official or not) to act as an intermediary between an “original instigator” and a public official in order to obtain from an administration or public authority an undue advantage for the original instigator. The convention also criminalizes passive trading in influence, that is the solicitation or acceptance by an individual (public official or not) of an undue advantage so that a public official use his influence to obtain an undue advantage from an administration or public authority.

Abuse of functions and illicit enrichment

The UNCAC also provides for an “abuse of functions” offence covering situations where public officials abuse their function by acting or failing to act in violation of laws to obtain an undue advantage. This offence encompasses various types of conduct such as improper disclosure by a public official of classified or privileged information. Illicit enrichment has also been added within the definition of corruption to include situations where the assets of a public official increase significantly and where the public official cannot reasonably explain in relation to his or her lawful income.

An important innovation from the UNCAC compared to many other international instruments concerns the introduction of active and passive bribery and embezzlement of property in the
private sector, which brings out the importance of requiring integrity and honesty in economic, financial or commercial activities.\textsuperscript{5}

\textbf{Identifying corrupt actions}

Have a look at the hypothetical fact patterns below and see if you can identify the offences, if any, that are provided for in the convention against corruption.

\begin{center}
\textbf{Can you identify the type of corrupt acts in the three fact patterns below?}
\end{center}

A customs official receiving a sum of money in order to ignore legal or illegal imports or exports.

Building of a primary government school using funds allocated for in the national budget and supplemented by a bilateral donor is not done because the funds have gone missing. After some investigations, the funds are discovered to have been used in building a private school.

The trial of a prominent political figure is set to start on May 17, 2010. Two key witnesses indicate that they will not testify against this figure due to some unexplained reason. Further, it is discovered that key documents have gone missing.

Several corruption cases adjudicated upon provide examples of the nature and scope of corruption. The fact pattern below arises out of a corruption case involving Mr. William Jefferson, former United States Congressman, who was indicted by a federal grand jury in June 2007. In 2009, Mr. Jefferson was found guilty on various counts of corruption.

\begin{center}
\end{center}

Mr. Jefferson is an elected member of the United States House of Representative. He offered to provide official assistance to constituent companies in order to help them obtain and conduct business in West Africa. He did this in part through a family controlled company, ANJ, a company incorporated under the laws of the State of Louisiana. Moreover, among the constituent companies was iGate, a company that developed a technology that enables audio, video and data to be transmitted over copper-wire.

\textsuperscript{5} However, one of the few international instruments to address corruption in the private sector, is the Criminal law Convention on Corruption of the Council of Europe #173 (1/27/1999) criminalizes active and passive bribery in the Private Sector (art. 7 and 8)
In 2001 after initially assisting iGate, Jefferson informed Jackson, executive in iGate that he would not continue to use his official position as Congressman to promote iGate’s business unless Jackson agreed to pay ANJ (a Jefferson family controlled company incorporated under the laws of the State of Louisiana). A “professional services agreement” was signed between Jackson, on behalf of iGate and Family member 1, on behalf of ANJ for purposes of paying professional fees, including monthly payments of $7,500.00; 5% of iGate’s gross sales and options for up to one million shares of iGate stock over a five-year period.

In July 2003, on a trip to Nigeria, Jefferson met with a Nigerian Company A, who were pursuing a telecommunication venture in Nigeria and elsewhere in Africa, and advised them that iGate could provide the good and services desired by the Nigerian company. Later that month in London, Jefferson introduced Jackson to the Nigerian Company A executives, including business person A, who preliminarily agreed to purchase iGate products and services.

On August 2003 iGate entered into a business agreement whereby Nigerian Company A agreed to pay iGate a total of $44 million for products and services.

Further to iGate receiving of $1.5 million pursuant to its business with the Nigerian Company A, family member 1 submitted an invoice to Jackson seeking $240,000.00 stating “currently due to ANJ as compensation under the “professional services agreement”.

In January 2004, iGate made 2 wire transfers of $200,000.00 and $30,000.00) from iGate’s bank account in Indiana to ANJ bank account in Louisiana. In addition, additional shares of iGate stock were issued to ANJ, increasing ANJ’s ownership in iGate to 15% (100,000.00 were initially issued).

On February 2004, Jefferson, Jackson, a congressional staff member, and others departed from Washington DC on an iGate co-sponsored trip to several West African nations, including Nigeria, to promote iGate and other business ventures to government officials in these nations. During this trip Jefferson, in his capacity as a Congressman met with government officials in Nigeria and Cameroun and promoted iGate and its business ventures without disclosing his and his family’s financial interests in such ventures.

In June 2004, following the Nigerian Company A withdrawal from its business agreement with iGate, Jefferson introduced a Cooperating Witness (CW) to Jackson in order to convince CW to finance a venture using iGate products and services in Nigeria. In July 2004, iGate sold to CW exclusive right to use iGate technology for a telecommunication venture in Nigeria.

In June 2005, Jefferson knowingly participated in the transfer of $25,015 by check, from the ANJ bank account at Dryades Savings Bank to Jefferson Committee account at Liberty Bank and Trust. Further, in June 2005, Jefferson knowingly participated in the wire transfer of $25,000 from the ANJ bank account at Dryades Savings Bank to iGate account at Bank of America. And in July 2005, Jefferson knowingly participated in the transfer of $25,000 by check from the ANJ bank account at Dryades Savings Bank payable to a family member, which was deposited to a Dryades Savings Bank bank account in the name of Jefferson and the family member.

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6 In or about March 2005, a McLean, Virginia businessperson reported a suspected fraud involving iGate, Jackson and defendant Jefferson to the Federal Bureau of Investigations (FBI). After contacting the FBI, that businessperson became a cooperating witness for the government.

7 Certain relatives of defendant Jefferson by birth or by marriage
In July 2005 Jefferson met with Nigerian Official A in the United States and offered to pay a bribe to induce him to use his position to assist in obtaining commitments from the Nigerian Telecommunications Limited (NITEL) –to allow use of NITEL’s telephone lines- for the benefit of the Nigerian Joint venture. Payment for the bribe was provided by CW.

Questions:

1) Which conducts are illegal in this fact pattern?

2) Would these conducts be covered under the definition of corruption in your jurisdiction?

3) How would you qualify these material acts according to the UNCAC as discussed above?

4) What other offense could you use in your jurisdiction for this fact pattern?

**Corruption = Financial Gain + Other Benefits**

As we have seen in the case above, corruption, like any other types of crime, is triggered by the **prospect of a financial gain or other benefits**. Financial gains acquired will be used to buy goods (cars, real estate, luxury items such as jewelry and paintings) and services, invested to generate additional profit or employed to finance further crime, with the challenge that the utilization of proceeds does not alert the authorities on their origin. If one is to deprive criminals from illegal proceeds and instrumentalities of their crimes, one removes the rationale for crime and deters criminal activity. In this context, the test for corrupt officials will be to enjoy the proceeds of corruption without arousing suspicion on the origin of their wealth. **Recourse to mechanisms that dissimulate the origin of ill-gotten wealth** and reintroduce these moneys into the legitimate economy, hence “giving it the appearance of legality” them, is an essential component of the corruption act itself. Thus, acts of corruption as defined in the UNCAC, and conduct aimed at hiding the illegal origin of these gains are intrinsically connected and incidental.

If we look at the fact pattern on the Jefferson case more closely, several questions arise: Where are the proceeds of corruption? Why was ANJ created, what role did this business play in the

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8 One practitioner has suggested that in some settings, the gain is used to acquire weapons or maintain combatant groups (e.g. Charles Taylor, or the Khmer Rouge); fund a political campaign (e.g. Fujimori); defend from extradition (e.g. Pinochet); or even overturn a post-transition government (e.g. Thaksin, Estrada) – the ‘classic’ examples of financing extravagance may still be true but because of developments in prosecuting war crimes and human rights violations, it has forced public officials to invest in political and legal protection.
corruption scheme? What was the purpose of the “professional services agreement”? How would you qualify these acts?

The Concept of Money Laundering

The concept of money laundering refers precisely to the act of disguising the illicit origins of money derived from crime, and corruption more specifically. The need for money laundering arises out of the desire on the part of the perpetrators of the original crime to conceal that a financial gain (in any form such as money, real estate or luxury items, etc.)—was obtained as a result of a criminal activity. The desire to ensure that such financial gain appears to have been obtained through legal means is an overriding concern. In so doing, the perpetrators are able to avoid attracting untoward attention.

Billy Steel quoting Jeffrey Robinson sums up the meaning of money laundering as follows: “Money laundering is called what it is because that perfectly describes what takes place – illegal or dirty money, is out through a cycle of transactions or washed, so that it comes out on the other end as legal, or clean money. In other words, the source of illegally obtained funds is obscured through a succession of transfers and deals in order that those same funds can eventually be made to appear as legitimate income.”

Consequently, creating an autonomous offence that would capture this type of conduct has been the concern of the international community since the 1990s, when the Financial Action Task Force against Money laundering (FATF) first issued a set of recommendations encouraging countries to criminalize this conduct. This approach was the one adopted by the UNCAC, which includes money laundering as an act that states parties to the convention must criminalize. Most states around the world have now adopted laws and procedures to fight money laundering, with the objective of grasping the financial dimension of crime. Such an objective would perhaps need developing a more system wide approach to money laundering that involves law enforcement, prosecution, the judiciary as well as vulnerable sectors. The prosecution of money laundering in the context of corruption will allow authorities to “follow the money” generated

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9 Billy Steel, Money Laundering – A Brief History (1997), at http://www.laundryman.u-net.com/page1_hist.html
by this crime and provide for confiscation of proceeds and instrumentalities, hence depriving criminals of the financial gains obtained through crime. We will look in more details at how anti-money laundering systems function in Module 2, but let’s focus now on the offence of money laundering.

The elements of the Money Laundering Offence

Material acts (Actus Reus)
The UNCAC provides a legal definition as to which material acts (i.e. actus reus) constitute money laundering. Indeed, money laundering is defined as the occurrence of one of the three conducts:

The conversion or transfer of property knowing that such property is the proceeds of crime for the purpose of concealing or disguising the illicit origin of the property, or helping any person who is involved in the commission of a predicate offence to evade the legal consequences of his or her action; or

The concealing or disguising of the true nature, source, location, disposition, movement or ownership of or rights with respect to property knowing that such property is the proceeds of crime; or

The acquisition, possession or use of property, knowing at the time of receipt that such property is the proceeds of crime.\(^{10}\) With “property”, being defined to include assets of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, and legal documents or instruments, evidencing title to or interest in such assets."\(^{11}\)

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\(^{10}\) Article 23 of the United Nations Convention against Corruption (2003)

\(^{11}\) Article 2 of the UNCAC
In a country recognized as one of the most corrupt governments in the world by Transparency International at the time, one of the more prominent corruption cases of the country was uncovered as a result of analysis of financial records and interviews, e.g. it was revealed that the son of the president received bribes from several companies, in most cases he was paid "protection money" to ensure that he did not use his influence to obstruct the award process in the bidding process of high value government projects.

In one of the cases two business consultants (X and Y) where hired by the company to facilitate the bribes. A review of bank records revealed that between November 2004 and August 2006, X received incoming wire transfers into his account via three accounts with transfers totalling more than $1.800.000 from the company via intermediary accounts in Austria, Cyprus and Zurich.

Y received incoming wire transfers into his account via three accounts with transfers totalling more than $1.400.000 from the company via intermediary accounts in Austria and Cyprus.

Both X and Y admitted that the money was used to pay them for their help in facilitating the scheme as well as funding bribe payments to officials and their family members in the country including an identified transfer of almost $200.000 to the president’s son.

**Questions:**

1) Which conducts would amount to money laundering in this illustrative fact pattern? (a) conversion or transfer, (b) concealment or disguise, or (3) use or possession?

2) How would you qualify these conducts under your domestic criminal law? Which parties could be prosecuted for money laundering in your jurisdiction?

In addition to the three elements covered above, the UNCAC, and the AML International standards also call for the criminalization of ancillary offences to the offence of money laundering. These include the association with or the conspiracy to commit, the attempt, aiding and abetting, facilitating, and counselling the commission of a money laundering offence.

**Criminal Intent**

In addition to establishing the material elements of money laundering, the prosecution has the burden of also proving the ‘state of mind’ of the money launderer (i.e. criminal intent). What was the intent of the accused person when committing the material acts as described above. Was the intent to conceal the illicit origins of the proceeds of crime? Or was the acquisition of the proceeds made with the knowledge that they originated from criminal conduct? In determining the mental element for the money laundering offence, the UNCAC states that judges should be able to rely on objective factual circumstances and to infer the mental element from these
circumstances\textsuperscript{12}. Ultimately, determining the state of mind is subject to each jurisdiction’s legal jurisprudence, but as part of efforts to transpose the UNCAC and comply with AML/CFT international standards, many jurisdictions have adopted a provision in their AML laws providing that the \textit{criminal intent} for money laundering could be inferred from objective factual circumstances.

The Montesinos case below offers an illustration of a scheme developed in order to receive kickbacks from foreign military equipment contractors. This scheme would involve the payment and subsequent transfer of kickbacks to corporate vehicles controlled by Montesinos.

\begin{table}[h]
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\textbf{Case Exercise 3: VLADIMIR MONTESINOS CASE (2000)}\textsuperscript{13} \\
\hline
\textbf{The Peruvian intelligence chief Vladimir Montesinos, was a key advisor to Peruvian President Alberto Fujimori and the de facto head of Peru’s Secret Service during the Fujimori government from 1990 to 2000. It is believed that more than US$2 billion was stolen during the Fujimori administration; a Peruvian congressional committee identified US$782 million of illicit monies generated by more than two hundred persons during this period.}
\hline
Montesinos began a scheme to receive kickbacks from foreign military equipment contractors. While Montesinos was the person in charge of the scheme, as it grew other individuals created their own sub-corruption schemes. Under the direction of Montesinos, the Peruvian government agreed to purchase military equipment from Hightech Technology LTD, an Israeli military supplier run by Rony Lerner. Public funds to pay for the purchases were transferred first to Hawkeye Management LTD, a holding company located in the Bahamas. Hawkeye then transferred funds to Rosvooruzhenie Armament, a Russian military supplier. This supplier would then ship the military equipment to Peru and pay a commission to Hawkeye for the sale. This commission would either be paid to Hightech Technology, who would then transfer the funds to Organdy or Sutex S.A, military suppliers linked to Hightech Technology or directly to Rony Lerner. At this point, the three would transfer the kickback to either Del Mar Services or Cross International (front companies incorporated in Lugano Switzerland), corporate vehicles controlled by Montesinos. While Montesinos disguised his control by listing other legal persons as shareholders and directors, he left an instruction with the Swiss Bank Corporation at its branch in Lugano, where companies held their accounts, which if Montesinos should die the funds should be paid to his wife and two daughters. Del Mar Services would pay its part of the kickback to Ranger LTD, another Bahamas company controlled by Montesinos, to its account at the New York branch of Swiss Bank. This money would then be transferred to a Swiss Bank account in the Lugano Branch. Cross International funds held in a Swiss Bank account in New York were also eventually transferred to a Cross International account located in Lugano. The funds would remained there until Montesinos would transfer the money, either by wire or physically by means of a courier, into the accounts of either the CEECI in Mexico or the Institute of Specialized International Studies in Bolivia, actual companies engaged in strategic consulting services that
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\textsuperscript{12} Article 28 of the United Nations Convention against Corruption (2003)
\textsuperscript{13} Source: David Chaikin and J.C. Sharman, Corruption and Money Laundering, p. 141-144 (2009)
were controlled by Monestinos associates. These companies would then transfer funds to Montesinos as payments for consulting services.

On October 5, 2000, following the filing of five suspect transaction reports by three banks in Zurich, the Swiss authorities opened up a criminal investigation into Montesinos for suspected money laundering. The Swiss banks automatically froze US$49.5 million in accounts controlled by corporations linked to Montesinos and his business associates. The accounts were in the names of corporations that were beneficially owned by associates of Montesinos, including General Nicolas de Bari Hermoza Rios, the former chief of the joint command of the armed forces of Peru, Alberto Venero Garrido, a Peruvian arms dealer, and Victor Joy Wang, former congressional speaker and finance minister of Peru.

The Montesinos funds were derived from corruption through the above mentioned and the following mechanism: Since 1990 Montesinos received “commissions” on arms deliveries to Peru and had this bribe money paid to his bank accounts in Luxembourg, the USA and Switzerland. Montesinos received bribes for at least 32 transactions, each worth 18 percent of the purchase price. Montesinos also collected US$10.9 million in “commissions” on the purchase of three MIG 29 planes, bought by the Peruvian air force from the state-owned Russian arms factory “Rosvooruzhenie”. In return, Montesinos used his position to ensure that certain arms dealers were given preference when these orders were issued.

Ultimately, US$175 million was recovered from Switzerland, the USA and the Cayman Islands. There is about US$33 million still frozen in Zurich as there are subject to continuing legal disputes.

Questions:

1) Which conducts would amount to money laundering in this case? (a) Conversion or transfer, (b) concealment or (c) use or possession? Explain.

2) Discuss proof of the mental element in this case as it would be established in your jurisdiction.

3) Which parties in this corruption scheme could be prosecuted for money laundering, why and where? Knowing the nature of your criminal justice system and procedures, is there any requirement to link the charge of money laundering to the underlying offence? Or do you need to just establish that there was criminal conduct?

4) Assuming the proceeds of this corruption scheme were used by Mr. Montesinos’s wife to purchase of jewelry, could she be prosecuted for money laundering and under what conditions? If not, what charges, if any, can be brought against her if she was in your jurisdiction? Would it be different if say cars, properties had been put under the name of Montesinos’ mother?
Below is a flow chart that illustrates the fact pattern in the Montesinos case.

1. Agreement to purchase military equipment
2. Payment for the purchases
3. Transferred funds
4. Commission for the sale
5. Transfer of commission for the sale
6. Transfer of commission
7. Transfer of commission
8. Transfer of commission
9. Wire or physical transfer of commission
10. Payments for consulting services - commission

Hightech Technology LTD (Rony Lerner)

Peruvian Government

Hawkeye Management LTD (Bahamas)

Rosvoruzheniye Armament, who Ship the military equipment to the government

Organdy (Hightech Technology LTD)
Sutex S.A (Hightech)
Rony Lerner

Del Mar Services in Lugano (Montesinos)

Cross International a Swiss Bank account in New York (Montesinos)

CxEECI in Mexico (Montesinos associates)

Institute of Specialized International Studies in Bolivia (Montesinos associates)

Montesinos
In the Montesino case, the funds that were laundered (in the flow chart above, beginning with transactions 4, 5 and 6) originated from the offence of corruption, or corrupt acts, i.e. payment of commissions. In the context of money laundering, the corrupt acts (as discussed under the section dealing with the concept of corruption) are referred to by different terms, depending on the countries’ tradition, as ‘predicate offence” or “underlying offence” or “criminal conduct” or “unlawful activity” or “infraction sous-jacente”. All these terms relate to acts as a result of which proceeds have been generated that may become the subject of a money laundering offence.

**Money laundering as an autonomous offence**

As mentioned, the money laundering offence should be an autonomous offence, meaning that while it can be part of a criminal investigation based on acts of corruption as an additional charge to a charge of corruption; it can also be the basis of an independent investigation and prosecution by itself. Indeed, the autonomous character of this offence is strengthened by having a non conviction based approach as an option available to the prosecutors especially in proving the laundering of the proceeds of the underlying corruption act.

Not having to secure a conviction on the predicate offence can lighten the burden on the prosecution. However, as a practical matter, when investigating and prosecuting a money laundering case, prosecutors will still have to prove that criminal conduct was involved - that is (1) proving the existence of a predicate offence, and (2) establishing a link between the property being laundered and a criminal conduct. With regard the criminal conduct, some jurisdictions require that proof that a specific predicate offence was committed be brought forward, while others only require that the illicit origin of property be established, without having to link it to a specific precipitate offence. .. It should also be noted that if the prosecution did not have jurisdiction to prosecute the predicate offence, then the burden will still be a heavy one.

**Laundered property**

Further, when considering the type of property that may be laundered, the UNCAC and other international instruments call for a broad definition of “property”, to include assets of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, and legal
documents or instruments, evidencing title to or interest in such assets\textsuperscript{14}. For example in the Jefferson case, the property being laundered included two checks and wire transfer of a total of $75,015 from the ANJ bank account at Dryades Savings Bank to Jefferson Committee account at Liberty Bank and Trust; the iGate account at Bank of America; and the check deposited at a Dryades Savings Bank account in the name of Jefferson and a family member.\textsuperscript{15}

To further understand the nature of the property that can constitute proceeds of crime, let’s look at the case below:

\begin{table}[h]
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\textbf{Case Exercise 4: Paris Court of Appeals, March 18, 2009 - Etete Dan Dauzia (Etete case)}
\hline
On March 18, 2009, A French appeal court in Paris condemned to a $10.5 million Euros fine Dan Etete, Nigeria's former petroleum minister under the presidency of General Abacha for his participation in transactions of placement, dissimulation or conversion of proceeds of passive and active corruption committed in Nigeria, by representatives of a ADDAX, a company involved in the exploitation, production and trading of oil, that was at the time of the facts, one of the main actors in the oil sector in West Africa.

Mr. Etete was considered guilty for having through a complex financial scheme, helped by Richard Granier-Deferre, then one of ADDAX’s executives, used the proceeds of corruption in the form of cash (to cover personal expenses), real estate investments undertaken in France, in particular the acquisition of an apartment in Paris, a house in Paris suburb of Neuilly-Sur-Seine and a castle in the French country; investments in art, antiques, 2 yachts, and other investments undertaken through the creation of a company NOUR DEVELOPMENT.

The financial scheme in this case consisted in transferring the proceeds of corruption to Swiss Bank accounts, either held under fake identities, or held on behalf of off shore companies. The money was then wired to Paris as swift transfers and made available to Etete directly or indirectly as cash, checks.

Questions:

1) What is the property being laundered in this case?

2) Is the property required to be directly linked to the underlying offence for it to be considered laundered property?

3) To what extent can the property of the person involved in the laundering scheme be considered laundered property? Can the property of the person be part of commingled assets?

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\textsuperscript{14} Article 2 of the UNCAC

\textsuperscript{15} These transfers formed Count 12-14 of the money laundering charge in Jefferson’s indictment on which he was subsequently convicted.
Extraterritoriality
An additional important aspect when looking at the money laundering offence is that a jurisdiction should be in a position to investigate and prosecute, as well as hear and try a money laundering case, when the underlying offence, that is the corrupt acts, has taken place in a foreign jurisdiction; in other words, when the proceeds of a predicate offence committed abroad are laundered in the domestic jurisdiction. For example, take the case of a public official from country A, traveling to country B to meet with private companies from country B interested in investing in country A. In order to secure contracts in country A, public official solicits and received bribes for this purpose. Assume further that the public official then uses such proceeds (the bribe) to purchase real estate in country A. Can the prosecutors in country A prosecute the public official for the laundering of the proceeds (the bribes) of a criminal act that occurred in country B? In such a case they should be able to prosecute the public official, so long as the money laundering offence took place in country A and that the underlying conduct is criminalized in both jurisdictions. This however, would obviously depend on internal legislation and jurisprudence of a jurisdiction.

Following up with our fact pattern, assume that the solicitation and reception of bribes is not criminalized in country B. Could the prosecutor in country A prosecute the laundering of the proceeds of an act that did not constitute an offence in the country where it was committed, but would have constituted a predicate offence if committed in country A? The solution to this problem is of significance, especially in the context of the lack of a universally accepted definition of corruption, and would require looking into a country’s specific legal jurisprudence. How would it work in your jurisdiction? And what if it did constitute an offence in country B, but was under statute of limitation by the time the money laundering prosecution starts in country A?

Utility of anti-money laundering laws and regulations
Anti-money laundering laws and regulations play an important part in the fight against corruption since they criminalize a type of conduct that is incidental to the corrupt act itself. Indeed, this is illustrated in the William Jefferson and Montesinos cases, laundering of the proceeds of corruption has been facilitated by the usage of professional intermediaries (whether legal persons, corporate entities, etc.). The next sections of this module will provide greater
discussion on the role and uses of various professional intermediaries in corruption cases and will explore how these professionals have had to factor in their vulnerabilities to money laundering schemes in carrying on their activities. As a result of the use of professional intermediaries, a key contribution made by having anti-money laundering regimes is expanding the category of persons and entities that can become liable for money laundering.

The role of intermediaries, non-financial actors
As seen above, the laundering of corruption proceeds can be undertaken by the author of the corrupt act himself or herself; however, in most cases under review in this module, the laundering of proceeds includes the services of a whole array of professionals, whether individuals or legal entities\(^\text{16}\), that are not necessarily linked to the underlying criminal act.

Who are the traditional intermediaries?
Depending on the scheme utilized, professionals used to launder proceeds of corruption are traditionally financial institutions (banks, securities brokers, mortgage brokers, insurance brokers, bureau de change). As a matter of fact, an obvious laundering scheme is to place proceeds of corruption into a bank account, this way funds are easily accessible, secured and transferable by the author of the corrupt act or others. Financial institutions are particularly vulnerable to money laundering given the variety of services they provide, the rapidity and accessibility of these services and the global dimension of their operations can easily facilitate the movement of illicit flows of money from one jurisdiction to another. In some cases however, they can be complicit in the money laundering scheme. Considering the cases that have been examined so far in this module, please describe how financial institutions were utilized for money laundering purposes. Aside from banks, can you think of other financial services that are vulnerable to money laundering? Give examples.

Who are the non-financial actors?
Against this background however, experience gained by the international community in tackling money laundering mechanisms has demonstrated that other actors, in the nonfinancial sector, are also wittingly or unwittingly exploited for money laundering purposes. This is illustrated in the

\(^{16}\) International standards call for countries to extend criminal liability to legal entities.
cases looked at so far, where funds were laundered through financial institutions albeit utilizing corporate vehicles as conduits (Jefferson and Montesinos cases); real estate (Etete case); and the purchase of jewelry (questions on the Montesinos case) or accounting firms. These money laundering cases required the involvement of non-financial businesses and professions, that is, lawyers, accountants, trust and company service providers, real estate agents, but one can also find notaries, dealers in precious stones and metals and casinos (please refer to Case Exercise 6 Bank of China for a more information on the use of casinos for money laundering purposes). In this section we will focus in comprehending how these actors, as authors or facilitators, participate in money laundering, i.e. they are money launderers! Indeed, in most cases transactions often go through multiple institutions and jurisdictions which add to the difficulties of following the money trail.

In large scale corruption cases, there will rarely be any bank accounts held simply by persons A and B, who have committed the corrupt act. These criminals will look to place their illegal funds in accounts held by other individuals or legal persons, to add opacity and distance themselves from the underlying crime. The case below, Attorney General of Zambia against Meer Care & Desai (a Law Firm) & others (2006), illustrates an example of how the services of non-financial actors can be used in money laundering schemes. The case centered on monies diverted from the Ministry of Finance into an account held at the London branch of the Zambian national Commercial Bank (Zamptrop account), a state owned bank. Some US$52 million was alleged to have been transferred from Government funds into this account, ostensibly, so that it could be expended for national security purposes, but the Zambian government claimed that it was used to meet the former President’s and his associate’s private and personal expenses.

Case Exercise 5: ATTORNEY GENERAL OF ZAMBIA V. MEER CARE & DESAI (A LAW FIRM) & OTHERS (2007) England & Wales High Court 952 (Ch)17

17 Source: Attorney General of Zambia v. Meer Care & Desai (a law firm) & others EWHC 952 (2007)
In this action, the Attorney General of Zambia (“AGZ”) for and on behalf of the Republic of Zambia claims to recover sums which were transferred by the Ministry of Finance (“MOF”) between 1995 and 2001. The money in question was transferred on the basis that it was required to pay debts owed by the Government. It is acknowledged by the Claimant (“AGZ”) that some money was used in that way but most of it was not.

In one of the claims in this case - “Zamtrop conspiracy”, US$52 million were transferred from Zambia to a bank account, called the “Zamtrop account”, held at the Zambia National Commercial Bank Limited (“ZANACO”) in London. Money was paid on from this account to various places, including ledger accounts of 2 firms of solicitors, one of those being Meer Care & Desai (MCD), from which they were applied for the private benefit of Zambia’s former president, Dr. Frederick Chiluba and other former Zambian Government Ministers and Officials (primary defendants in this case).

The Court of first instance found the defendants liable for conspiring to defraud the Republic of Zambia. The two English firms of solicitors and their respective partners were also judged to be liable for dishonestly assisting in the misappropriation of funds. The details of one of the law firms’ (MCD) involvement in this case is as follows:

Mr. Meer is a South African born UK solicitor, who worked in Zambia for part of his life. Mr. Meer is a partner with MCD and his practice relates primarily to commercial and business affairs, often with an international aspect.

Mr. Kabwe is a Zambian accountant and associate of the former President whom Mr. Meer had known for a long time and trusted to be honest and reputable man. In 1992, MCD acted for Mr. Kabwe on a property transaction in London, in respect of which MCD has a ledger account. In 1995, as Mr. Kabwe set up AFSL, a Zambian company licensed to carry on financial services, he asked MCD to act as AFSL’s London solicitors on various matters arising from its business.

In the autumn of 1995, Mr. Meer met with Mr. Kabwe, and Mr. Chungu, Permanent Secretary of the office of the President of Zambia (aka Zambian Security Intelligence Services - ZSIS) and was informed that AFSL would be performing services for ZSIS and that money remitted to MCD from the Zamtrop account, would be for the credit of AFSL in respect for such services. Mr. Meer agreed to assist AFSL in dealing with remittances for the credit of AFSL. Mr. Meer did not inquire about the nature of the services between ZSIS and AFSL.

Following that meeting, a series of transactions in and out of ledgers related to Mr. Kabwe took place. Indeed, between May 1996 and April 2001, about 50 payments were received from the Zamtrop account, amounting in all to above US $9 million, and numerous payments were made out of the ledgers to other accounts. Some of these payments included tuitions for schools and universities, automobiles, cash payments to Mr. Kabwe directly or members of Mr. Kabwe’s family, etc… In each case of payment out, Mr. Meer acted in the same way – by implementing Mr. Kabwe’s instructions without question. These payments were not associated to any legal work undertaken by MCD for the benefit of Mr. Kabwe or AFSL. Mr. Meer did not act upon the warnings issued to the legal profession on been used in money laundering schemes by inquiring into the rational for transactions being processed through the ledgers.

For the trial judge, Mr. Meer’s responsibility for payments attributable to the Zamtrop conspiracy is a “classic blind eye dishonestly”. According to the judge, no honest solicitor would have simply implemented the instructions received from Mr. Kabwe without question; “the conduct of Mr. Meer was dishonest as soon as he failed to question the very first instructions to disburse the funds […]” and he became a conspirator because he was aware that money was being improperly applied and chose not to question that activity. To
avoid becoming a conspirator he should have refused to act unless satisfied that the transactions had a genuine purpose.  

Questions:

1) What is the money laundering scheme in this case and for what purpose were the services of the lawyer used?

2) The AML law was passed in 2001 Zambia, which means that none of the defendants in this case could be charged for money laundering. Given what you know of the ML offence, what conduct in this case would have constituted money laundering, who were the authors and discuss the elements of the offence? On the other hand, even assuming that the AML law existed prior to 2001, would Zambia have had the jurisdiction to prosecute the defendants for money laundering?

3) What legal and practical challenges would you expect in obtaining information from the law firm? How would you mitigate against such challenges?

**Lawyers as intermediaries**

Legal services are vulnerable to money laundering schemes. Mr. Kabwe in this case used MCD’s ledger to be able to show a receipt from a firm of lawyers, as an apparent genuine and honest source; hence hiding the real identity of the source of the funds, that is government funds held in the Zamtro account. With that receipt, it will be much easier for a criminal to introduce his funds into the legal economy, banking sector for instance, without raising suspicions.

There is a whole array of services provided by lawyers that are of great use for criminals in laundering illicit proceeds. Lawyers can knowingly provide very useful information as to how to avoid leaving a money trail that can be followed or how to set up mechanisms such as corporate vehicles that will avoid raising suspicion in institutions (banks and others) through which funds

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18 On Appeal, the judge rejected the reasoning of the trial judge and considered the fact that Mr. Meer did not obtain financial gains from his involvement in the Zamtro conspiracy and the fact that his involvement in this activity would have jeopardized a successful international career and a notable status as being the trusted lawyer of Mr. Nelson Mandela to exclude his liability in the conspiracy. The Appeal Judge stated that to answer the question on Mr. Meer’s dishonesty, the material before the Trial Judge showed that the more probable explanation for Mr. Meer’s conduct was that he was honest, albeit foolish and far from competent in his understanding, as well as his application and observance, of relevant professional duties, above all the need to comply with the warning about money laundering. Mr. Meer failure to question the instruction of Mr. Kabwe did not show for the Judge that he knew or suspected what was going on. Consequently, Mr. Meer was acquitted.
pass. In this perspective, corporate vehicles and trusts\textsuperscript{19} are important tools to confuse the links between the proceeds of crime and the perpetrator of the underlying crime that is, the corrupt act, and are frequently used in grand corruption cases. The Bank of China case below provides a good illustration of the use of corporate vehicles in money laundering arrangements.

\textbf{Box 6: Bank of China (2004)}

\textsuperscript{19} Advice in setting up these legal entities that can be used for money laundering purposes is often provided by lawyers but can also include other types of professionals. The international standards refer to “trust and company services providers – TCSP - to include any persons or businesses, which as a business, provide any of the following services to third parties: (1) acting as a formation agent of legal persons; (2) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons; (3) providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement; (4) acting as (or arranging for another person to act as) a trustee of an express trust; (5) acting as (or arranging for another person to act as) a nominee shareholder for another person. Most national AML laws include TCSPs within the scope of the law.

20. U.S. v. Xu Chaofan, Xu Guojun, Kuang Wan Fang, Yu Ying Yi and Kwong Wa Po, Second Superseding Indictment, 2:02-CR-0674-PMP (LRL) filed in United States District Court, District of Nevada (January 31, 2006); HK Court Documents: Court of First Instance, Action No. 2841 of 2006 bet. Bank of China and Ever Joint Properties Limited and 19 other companies and individuals, (Decision 12 October 2007); civil action for recovery filed by Bank of China; Court of Appeal Criminal Appeal No. 29 of 2007 (On Appeal from DCCC No. 660 of 2005) between HKSAR and Hui Yat Sing and Wong Suet Mui (Date of Judgment 3 June 2008) (Frontmen for Xu and Xu, money laundering through Ever Joint Properties Limited, Yau Hip Trading Company Limited and other
As executive managers at the government-owned Bank of China (BOC), Xu Chaofan (XC), Yu Zhendong (YZ) and Xu Guojon (XG) succeeded between 1991 and 2004 in embezzling close to US$ 485 million in public funds from a Kaiping, China branch. The three were assisted by other associates in attempts to launder the funds through multiple channels. The strategy devised by the perpetrators included the use of multiple corporate entities established in mainland China and Hong Kong with associated bank accounts, personal bank accounts in China and the US, casino accounts in Asia and the US and the resort to cross-border cash smuggling to the United States.

According to Hong Kong prosecutors, a large proportion of the embezzled funds were channeled through two corporate vehicles: Ever Joint Properties Limited (EJP) and Yau Hip Trading Limited (Yau Hip), EJP’s trading arm (see Fig. 3). The first company had been formed in Hong Kong in 1992. Two relatives and associates of XC acted as directors of the company and signatories of its bank account. The three managers funneled a total of US$ 212 million in BOC funds to EJP across the 1992-2001 period via 244 transactions, mainly through complicit mainland companies and direct loans approved by the three managers. EJP was effectively a “conduit for funds movement with no commercial basis.”

A key role was played by professional intermediary Liang Shuxiang (LS), a former BOC manager in Hong Kong and connected to several manufacturing companies, which received BOC funds as loans and later disbursed them to EJP. The resort to false EJP intermediaries as recipient of loans to remit money to Hong Kong was a typical feature in the perpetrators’ strategy. Liang was later found guilty of accepting around US$ 380,000 in bribes, transited through two other Corporate Vehicles created by XC in Hong Kong (including Youxie Trade, Co.).

Part of the embezzled funds was then returned to the three managers through bank drafts requested by corporate entities (e.g. Va Mei Mao Iek Gong Si) that had received the money from Hong Kong. Even more daringly, an account was set up in the name of a corporate vehicle (Land Galaxy Ltd.) – of which XC, YZ and XG were beneficial owners - at the very same BOC branch where the three worked. The Land Galaxy account was used to receive funds from EJP.

Figure of corporate vehicles involved in Bank of China case, 1991-2004

unnamed companies; Court denied their appeal on sentencing); In the High Court of the Hong Kong SAR Court of First Instance, Action No. 5291 of 2001 between Bank of China and Kwong Wa-Po, Ching Fo-Chu, and Xu Xia-Li, (18 July 2005).

21 US Department of Justice, Former Bank of China managers and their wives convicted for stealing more than US$ 485 million, laundering money through Las Vegas casinos.
22 Yu Zhendong pleaded guilty to engaging in racketeering and returned to China, where he is being prosecuted for bribery and embezzlement. Xu Xhaofan, Hu Guojon and their wives were convicted in September 2008 by a US Court on charges of racketeering, money laundering and other offences.
23 Criminal Appeal No. 29/2007, Between HKSAR and Huy Yat Sing, Wong Suet Mui (CACC 29/2007)
*Parts of the proceeds were later transferred to the US: around US$ 3.7 mil were sent by Yu to bank accounts in San Francisco between January and October 2001. In addition, the perpetrators transferred around US$ 2 mil from a Hong Kong bank account to Ceasar’s Palace in Las Vegas.

It should be noted that the money laundering scheme used in this case was the subject of a prosecution in the United State (Las Vegas) for using casinos for money laundering purposes. In this regard, casinos and gambling establishments have long been recognized as particularly attractive to money launderers. As a matter of fact, cash can be deposited with a casino in exchange for chips or tokens. After a few turns at the table the player can cash in the remainder for a cashier’s check which can be deposited in their account. The money launder will then be able to act as if the money is legally obtain via gambling.

Another area where lawyers, or notaries in civil law jurisdictions, can be implicated in money laundering arrangements relates to the purchase or sale of property. Illegal proceeds can be invested into property, the sale of which provides criminals with a genuine justification for the source of the funds. In a French case cited below from the Cour de Cassation, a notary was condemned to one year in prison and a fine of 100,000.00 Francs for the laundering of proceeds of drug trafficking.

Case exercice 7: Cass.crim. 7 décembre 1995 (Gaz.Pal. 1996 I Chr. crim. 56)
Mr. Marcel Z, notary, receives the visit of Mr. Vittorio X in order to work on the authentication of a deed for the purchase of an apartment. Subsequently, Mr. Marcel is informed by the real estate agent working on this real estate transaction that Mr. Vittorio X is in fact Vittorio Y, an international drug trafficker that was arrested for drug trafficking. Mr. Marcel Z performs the authentication of the deed for the benefit of Mrs. Maria Linda X, concubine of Mr. Vittorio Y, advising her that the payments for the apartment should be made through international wire transfers, rather than currency transfers, in order to make the transaction more transparent.

Questions:

1) How would you qualify the conduct of Mr. Marcel and why?

2) Should the notary have been alerted by the use of a fake name from the purchaser of the apartment?

3) What should he have done in your jurisdiction to comply with your domestic Anti-Money Laundering legislation?

**Legal professional privilege**

The confidential and privileged nature of the lawyer-client relationship is yet another strong incentive for any launderer to use the services of lawyers. The legal professional privilege protects all communications between a professional legal adviser (a solicitor, barrister or attorney) and his or her clients from being disclosed without the permission of the client. The “sanctity” of the legal privilege has for years been used by money launderers in using the services of legal professionals for money laundering purposes. The recognition of this situation has led to the extension of anti-money laundering obligations applicable to financial institutions (customer due diligence, record keeping and reporting of suspicious transactions) to non-financial actors, including lawyers. Indeed, the majority of anti-money laundering laws that have been passed by many countries impose on lawyers the obligation to inform the financial intelligence unit (FIU) when they suspect or have reasonable grounds to suspect that funds of a client are the proceeds of a criminal activity.

This reporting obligation is applicable only in circumstances where the lawyer is acting outside of its traditional sphere of competence that is, when he is ascertaining the legal position of a client, or in performing his task of defending or representing that client in, or concerning judicial, administrative, arbitration or mediation proceedings. This is an acknowledgement that lawyers
often act as financial advisers in circumstances that are highly vulnerable to money laundering. Therefore, the lawyers (and other non-financial actors) involved in the money laundering arrangements, as seen in the cases in this module, should have filed suspicious transaction reports to their domestic FIUs when they suspected that funds were the proceeds of corruption or some criminal conduct.

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24 Recommendation 16 of the FATF International standards states that lawyers, notaries, other independent legal professionals and accountants should be required to report suspicious transactions when, on behalf of or for a client, they engage in a financial transaction in relation to the following activities: (1) buying and selling of real estate; (2) managing of client money, securities or other assets; (3) management of bank, savings or securities accounts; (4) organization of contributions for the creation, operation or management of companies; (5) creation, operation or management of legal persons or arrangements, and buying and selling of business entities.
Summary and Review of Module 1

In this module we discussed the concepts of corruption and money laundering and the relationship between the two. By way of illustrative cases, we observed that wherever there is an act of grand corruption, the proceeds are invariably laundered to conceal their illicit origin.

Generally, as demonstrated by the cases presented, we established that money laundering schemes are created to facilitate the corruption activities and the legitimization of illicit money; that is the ability of the accused persons to obscure the origin of the funds and distance themselves from the corrupt act that generates the proceeds.

We then observed again through cases that have been adjudicated in the courts, that financial institutions (primarily banks) and professional intermediaries (especially lawyers) are key conduits for the laundering of the proceeds of corruption. In many other numerous cases, the use of intermediaries is the primary mechanism for obscuring the link between the origins of the corrupt proceeds and the ultimate beneficiary.

We ended the module by looking at the issue of legal privilege yet another strong incentive for any launderer to use the services of lawyers. However, we noted that The recognition of this situation has led to the extension of anti-money laundering obligations applicable to financial institutions (customer due diligence, record keeping and reporting of suspicious transactions) to non-financial actors, including lawyers.

One commentator puts it this way: “All acts of corruption exhibit the following characteristic: they involve more than one person, on the whole they involve secrecy except in situations where they have become so rampant and deep rooted that some powerful individuals or those under their protection would not bother to hide their activities; they involve an element of mutual obligation and mutual benefit; those who engage in them usually attempt to camouflage their activities by resorting to some sort of lawful justification.”

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