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ANNUAL FINANCIAL CRIME REVIEW

2017

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ANNUAL FINANCIAL CRIME REVIEW - 2017

Welcome to the 2017 Aperio Intelligence annual financial crime review, which provides a look back at some of the key financial crime developments over the course of the last year.

Financial crime issues have continued to take centre-stage in 2017, following significant political changes such as the inauguration of President Trump in the United States, whose views on countries such as Russia and Iran are at odds with the previous Administration. To date, President Trump has faced significant challenges in unwinding economic sanctions against Russia, and despite tough rhetoric, has not yet overturned the US commitment to the nuclear deal with Iran. The US has however increased its use of sanctions as a foreign policy instrument in efforts to control North Korea's aggressive posturing. In Southern Africa, a series of elections and a coup in Zimbabwe came against a backdrop of allegations of state capture, cronyism and corruption. Foreign states such as France finally took action on kleptocracy by the elite in Equatorial Guinea. In France itself, the Sapin II anti-corruption law, introduced in late 2016 and is akin to i the UK Bribery Act and US FCPA, took effect. Failure to comply with the law may result in civil penalties for corporations and criminal liability for individuals. Saudi Arabia too has taken measures to curb corruption among the elite. Riding on popular support for anti-corruption measures, Crown Prince Mohammed bin Salman used the crackdown to consolidate his own power base and stifle potential rivals. In the UK, the Government introduced the Criminal Finances Act 2017, incorporating a range of measures including the introduction of a corporate offence of failing to prevent tax evasion, the introduction of "unexplained wealth orders" and measures to tackle human rights abuses.

At Aperio Intelligence, we provide corporate intelligence solutions designed to help our clients manage a wide range of financial crime risks including money laundering, sanctions, bribery and corruption. We support our clients manage integrity and reputation risks, and to maximise the benefit of their investments. For further information on how we can help you, please contact us at **info@aperio-intelligence.com** or by calling us in London +44 (0)20 3146 8900 or in Paris at +33 (0)1 46 37 85 14. In the meantime, we wish you every success and prosperity in 2018.

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SPECIAL **FEATURE**

The UK Criminal Finances Act 2017

estimated expense of
USD 5.52 bn
by politicians on
UK property every year

In April 2016, the UK Government published its Action Plan for anti-money laundering (AML) and counter-terrorist financing (CTF) and subsequently, in October 2016, the Government announced a number of changes to strengthen the UK's AML and CTF regime.

The key legislative changes were included in the Criminal Finances Act 2017 (CFA 2017), certain provisions of which entered into force on 30 September 2017. Among the new measures introduced by the CFA 2017 are:

- Two new corporate criminal offences of failing to prevent tax evasion;
- Introduction of "Unexplained Wealth Orders" (UWOs);
- Measures targeting human rights abuses.

Corporate offences of "failing to prevent" tax evasion

The CFA 2017 provides extensive powers to UK law enforcement authorities to tackle tax evasion. The new law does not substantially alter what is considered to be a criminal offence, but instead focuses on who is held to account for acts contrary to the current criminal law. The CFA 2017 introduces two new criminal offences – one applying to the evasion of UK taxes and another applying to the evasion of foreign taxes. Only a "relevant body", meaning only incorporated bodies (usually companies) and partnerships, can commit the new offences – a natural person cannot.

Relevant bodies are now liable for failing to prevent employees or agents from facilitating tax evasion. The CFA 2017 recognises that in the past, it was often difficult to hold large corporations to account for the actions of their staff, given the fact that decision-making is frequently decentralised and the Board of Directors is often not involved in day-to-day operational decisions.

In addition to the offence of failing to prevent the evasion of UK taxes, the CFA 2017 also includes extraterritorial provisions relating to the facilitation of tax evasion, worldwide. There is however a stricter interpretation for cases involving foreign tax evasion offences. In particular, there must be a UK connection and the legislation also requires establishment of "dual criminality"; that is, the overseas jurisdiction must have an equivalent tax evasion offence at the taxpayer level and it must also be an offence in the UK. Additionally, there must be an equivalent offence covering the associated person's criminal act of facilitation overseas and it must be the case that the actions of the associated person would constitute a crime if they took place in the UK.

In order for a corporate offence to occur under the new provisions of the CFA 2017, it must fulfil three tests:

- Firstly, **the offence must be predicated by a criminal offence at the taxpayer level.** As such, non-fraudulent non-compliance at a taxpayer level does not give rise to the corporate criminal offence. However, a conviction at the taxpayer level is not a pre-requisite for bringing a prosecution against the relevant body under the legislation.
- Secondly, **an "associated person" of the relevant body must engage in criminal facilitation of the taxpayer evasion for the corporate offence to be committed.** If it is established that the associated person facilitated tax evasion accidentally, ignorantly or even negligently, then the new corporate offence is not committed. The test requires that the associated person must deliberately and dishonestly facilitate tax evasion.
- Thirdly, **the relevant body must have failed to prevent its representative from committing the criminal facilitation act.** In this regard, if the relevant body has put in place "reasonable preventive procedures" to prevent the criminal facilitation of tax evasion by an associated person, then the relevant body shall have a defence.

The Government recognises that any regime is risk-based and proportionate, and there cannot be a zero-failure regime, hence there is a defence to have "reasonable prevention procedures" in place. "Reasonable prevention procedures" are similar in nature to the "adequate procedures" defences available under Section 7 of the 2010 UK Bribery Act (UKBA). HM Revenue & Customs (HMRC) has issued guidance on the 6 guiding principles of what may constitute "reasonable prevention procedures". These are:

- **Risk assessment.** The HMRC guidance references the UKBA guidance as a source of information on how to assess external risks, considered from a tax perspective, such as country risk, sectoral risk, transaction risk, business opportunity risk, business partnership risk, product risk or customer risks. It also references the Joint Money Laundering Steering Group (JMLSG) guidance on high risk factors including customer risk, country or geographic risk factors, product, service, transaction or delivery channel risks. The guidance also suggests a risk assessment should cover the extent to which internal structures or procedures may themselves contribute to the level of risk.
- **Proportionality of risk-based prevention procedures.** The HMRC guidance emphasises that reasonable procedures will depend on the nature, scale and complexity of the relevant body's activities, and on the level of control and supervision an organisation can exert over a particular person acting on its behalf. The relevant organisation is not expected to adopt overly burdensome procedures, but it is expected to do more than paying mere lip-service to preventing the criminal facilitation of tax evasion. When considering the proportionality of reasonable prevention procedures, the guidance suggests considering a number of risk factors, including the opportunity to facilitate tax evasion, the motive and the means. Procedures to address the risk

The key legislative changes were included in the Criminal Finances Act 2017 (CFA 2017), certain provisions of which entered into force on 30 September 2017.

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SPECIAL **FEATURE** THE UK CRIMINAL FINANCES ACT 2017

Photo: Sergei Magnitsky. Wikipedia/VOA

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of tax evasion may be incorporated into AML or anti-bribery and corruption (ABC) procedures, provided they properly address the risk of facilitating tax evasion.

- Top level commitment is required by those at the most senior level to foster a culture where actions intended to facilitate tax evasion are considered unacceptable. It is also intended to encourage senior management involvement in the decision-making process in relation to the assessment of risk, where this is appropriate.
- Due diligence procedures should be determined by the risk based approach and should focus on persons who perform or will perform services on behalf of the organisation. Those organisations exposed to the highest levels of risks are generally those that will already be undertaking due diligence for money laundering or bribery and corruption compliance, and it is envisaged that due diligence procedures developed for these purposes should be sufficient to identify the risk of criminal facilitation of tax evasion by associated persons. However, simply taking old procedures developed for a different type of risk will not necessarily be adequate for dealing with the risks of tax evasion. Organisations may choose to conduct their due diligence internally, or externally, for example by consultants.
- **Communication** (including training) seeks to ensure that the relevant body's prevention policies and procedures are communicated, embedded and understood throughout the organisation, through internal and external communication, including training. This should also be proportionate to the risk to which the organisation assesses that it is exposed.
- **Monitoring and review.** A relevant body should monitor and review its preventive procedures and make improvements where necessary. This may be based on internal feedback, through formalised periodic review or through working with other organisations, including representative bodies facing similar risks.
- Like the UKBA, the onus will be on the relevant organisation to demonstrate it had **reasonable prevention procedures in place** (or that it was unreasonable to expect it to have such procedures). Determination of what might constitute "reasonable prevention procedures" is a matter for the courts.

Unexplained wealth orders

A second important component of the CFA 2017 is the concept of "unexplained wealth orders" (UWO), which were introduced following lobbying by anti-corruption NGOs in particular - Transparency International, for example, estimates that politicians buy USD 5.52 billion worth of property they should not be able to afford in the UK every year. The CFA introduces new sections in the Proceeds of Crime Act 2002 (POCA), allowing law enforcement authorities to apply to the High Court to make an UWO in certain circumstances. In cases where UK law enforcement authorities suspect criminal misappropriation of assets, the new powers under the CFA 2017 allow them to apply to the High Court for an UWO, without notice to the subject of the Order. The subject of the

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UWO is required to explain – within a defined timeframe – the source of their assets, or risk confiscation of those assets, through existing civil recovery powers.

There are a number of prerequisites to obtaining an UWO from the High Court. The Enforcement Authority will need to demonstrate that:

- There is reasonable cause to believe that the individual holds the property in question, and the value of the property is greater than GBP 50,000; and
- The individual is a "politically exposed person"; or
- There are reasonable grounds for suspecting that the individual is or has been involved in serious crime, or a person connected with the individual is connected with serious crime.

Measures targeting human rights abuses

Section 13 of the CFA was adopted to expand the scope of the existing civil asset recovery regime under Part 5 of POCA, in particular to capture the assets of those implicated in certain gross human rights abuses. POCA already allows prosecutors to recover assets in the UK that are deemed to be the proceeds of unlawful conduct. The CFA 2017 allows UK prosecuting authorities to pursue businesses that gained a benefit from, or inadvertently contributed to, gross human rights violations. The imposition of a strict liability standard means that companies could be exposed to significant liability even where they unknowingly benefit from or assist such high rights violations.

Under the CFA 2017, the property has to have been obtained through conduct which constitutes or is connected with the commission of a gross human rights abuse. It must also have taken place abroad, and have constituted a criminal offence, had it been conducted in the UK. It must also be carried out by a public official or with their consent or acquiescence – in other words, it targets the conduct of foreign public officials.

The amendments target assets linked to abuses against two categories of people – whistle-blowers, and the suppression of those seeking to assert human rights and fundamental freedoms. Section 13 of the CFA 2017 follows the implementation in 2012 by the United States of the Magnitsky Act, which denies visas and freezes assets of those on the "Magnitsky list", named after Russian lawyer and auditor Sergei Magnitsky who was arrested in 2007 after claiming to have uncovered evidence of a multi-million-dollar fraud perpetrated by Russian officials. He was imprisoned without trial the following year, tortured, and died in prison having been denied access to medical attention.

The US implemented the Magnitsky Act following lobbying by Bill Browder of Hermitage Capital who had hired Magnitsky to investigate the alleged fraud. Browder has persuaded a number of countries including the US, Canada and the UK to implement versions of the Magnitsky Act, targeting foreign assets of officials implicated in human rights abuses, recognising that such officials may hold significant overseas assets, particularly in locations such as London.

Implication of the Criminal Finances Act 2017 measures

The anti-tax evasion measures of the CFA 2017 are particularly relevant to professional service providers, such as financial advisers, tax advisers, private banks and lawyers, as well as any business involved in transactions that could facilitate tax evasion.

Contravention of the CFA 2017 may result in unlimited fines, as well as ancillary orders such as confiscation orders or serious crime prevention orders. Publication of offences may also require disclosure to relevant regulators in the UK and overseas, and prevent the relevant body being awarded public contracts. The Government has said that it may seek to make use of Deferred Prosecution Agreements, as have been applied previously in a number of bribery and corruption-related cases.

In its guidance, HMRC stresses that organisations should not rely on unaltered AML and ABC procedures, given that higher risk situations may also require further risk assessment and due diligence of specific tax evasion risks. It would however be prudent to ensure that human rights compliance measures are integrated with other existing compliance programmes, such as AML and ABC, including measures to identify and if necessary remediate possible business relationships connected with gross human rights abuses, including conducting effective third-party due diligence. ■

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SPECIAL **FEATURE**

Sapin II anti-corruption law ushers France into a new era

On 9 December 2016, the outgoing president of France, François Hollande, signed into law Bill No. 2016-1691 relating to transparency, the fight against corruption and the modernisation of economic life.

This new piece of legislation quickly came to be known as the Sapin II Law, referring to the then economy minister Michel Sapin whose staff had been working on a sweeping legislative reform in the field of anticorruption for a number of years. Back in 1993, Michel Sapin had already attached his name to another law aptly named Sapin I and relating, according to its full title, "to the prevention of corruption and the transparency of economic life and pubic policies". The initial bill introduced a series of changes, including tighter control of the funding of political parties (despite which former President Nicolas Sarkozy's Union pour le Mouvement Populaire or UMP was still embroiled in a scandal over the financing of his 2012 presidential campaign) and better regulation of real estate activities. Yet, it did very little to address the problem of corruption, which has remained to date one of the most sizeable challenges to sustained socioeconomic development in many of the world's emerging markets.

During the 1990s, France had been very active in the promotion of various multilateral initiatives aimed at combating corruption at the international level, which culminated in the adoption, in 1997, of the OECD Anti-Bribery Convention (in force since 1999). French legislators then transposed this document with a succession of amendments to the Criminal Code and other laws in the 2000s. A decade and a half later, the OECD still sounded critical of France, namely due to the lack of proper enforcement. In its December 2014 report on the implementation of the convention, the Paris-based organisation singled out the second-largest economy of continental Europe for inadequate action through French courts against individuals and entities who had engaged in corruption abroad. In the meantime, foreign governments had filled the regulatory void by enforcing their own rules and policies against French persons.

Between 2010 and 2014, the US Department of Justice imposed a flurry of fines against leading French corporates, such as Technip (USD 338 million in 2010), Total (USD 398 million in 2013) and Alstom (USD 772 million in 2014), for violations of the 1977 Foreign Corrupt Practices Act (FCPA). In parallel, the American authorities fined French entities with operations in the US, in particular the leading banks BNP Paribas and Crédit Agricole, for prior violations of the sanctions regimes in place against Iran, Cuba and Sudan. The multimillion-dollar provisions for losses booked by those companies resulted in shareholder pushback against the reckless behaviour of senior executives in international markets with high exposure to corruption, money laundering and sanctions risks. Unlike the US and UK, which have become global leaders in the enforcement of anticorruption norms, respectively via the FCPA and the 2010 Bribery Act, France had largely failed by the second half of this decade to outlaw corruption from the corporate domain.

The Sapin II Law was designed to render France compliant with international standards

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and best practices, after years of near-inaction on the anticorruption front. The main corruption-related provisions are contained in article 17, which entered into force more than six months after the publication of the law, on 1 June 2017.

They include (art. 17-II):

- The publication of a code of conduct detailing various types of forbidden behaviour falling under the definition of corruption or influence peddling;
- A whistleblowing tool enabling rank-and-file employees to flag any ethical concerns to their management without fear of reprisals;
- A risk map in the form of regularly updated documentation identifying, analysing and prioritising corruption risks based on geographic areas and sectors of activity;
- Third-party risk assessments applying to clients, first-tier suppliers and intermediaries, on the basis of the risk map;

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SPECIAL **FEATURE**

SAPIN II ANTI-CORRUPTION LAW USHERS FRANCE INTO A NEW ERA

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- Internal and external accounting audits to make sure that company books are not being misused for the purpose of masking instances of corruption or influence peddling;
- Anticorruption training;
- A disciplinary regime to punish employees who have deliberately breached their company's code of conduct;
- A set of measures to control and assess the enforcement of the above requirements.

The Sapin II Law instituted a new national body, which is simultaneously placed under the tutelage of the Ministry of Justice and the Ministry of Public Action and Accounts (as it has been known since the formation of the Edouard Philippe government, following Emmanuel Macron's victory in the 2017 presidential race). The French Anticorruption Agency (AFA) thereby replaced the Service central de prévention de la corruption and is tasked with ensuring the compliance of some 1,600 French companies with the new law.

AFA is headed by Charles Duchaine, a former magistrate in Marseille who became famous for launching an investigation against Senator Jean-Noël Guérini and his associates on suspicions of embezzlement, abuse of power and money laundering. While the agency is not legally entitled to opening an inquiry for a violation of the Sapin II Law, it is responsible for making a case to the Parquet national financier (PNF).

Once found guilty, a company may be forced to pay up to 30% of its average gross revenue over the last three years in fines to the state budget, in addition to individual criminal responsibility extending to senior management. This limitation notwithstanding, AFA can still control the implementation of anticorruption programmes and impose its own financial sanctions for a failure to do so.

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Charles Duchaine. Photo: lexpress.fr

Since taking office, Mr Duchaine has repeatedly put forward the need for France to take care of its national economic sovereignty, using this term as an undisguised reference to US unilateralism when it comes to the extraterritorial nature of the FCPA. AFA's job therefore consists not only in making sure that the law is strictly followed by those concerned, but also in defending, to the best of its ability, French corporates potentially guilty of corruption from prosecution in foreign jurisdictions. France has historically sought to pursue an independent foreign policy and has viewed with suspicion any attempts by foreign powers, if when those are partners and allies, to impose their will on its government. General Charles de Gaulle's 1966 decision to withdraw from NATO's military command and to oust the military bloc's headquarters from the outskirts of Paris is emblematic. France's closer integration into the Euro-Atlantic framework, its subsequent reintegration into NATO's military command and the desire of post-1991 leaders to show commitment to Trans-Atlantic unity have somewhat diminished this tendency. The raison d'être of the Sapin II Law and AFA is a potent reminder of France's long-standing wish to do on its own.

However, for the Sapin II Law to be a success, the government's politically motivated prodding is clearly not enough. Compliance has never succeeded in places without robust anticorruption culture, both at the top of the pyramid and at its bottom. The law itself seems to have all that is needed to carry out a transformative change. In its recent recommendations about the implementation of the article 17 provisions, AFA specifically insisted on the necessity of enlarging the scope of third-party risk assessments beyond clients, first-rate suppliers and intermediaries.

In spite of the well-known French preference for legal prescriptions, the regulators likely understand that it is impossible to combat corruption effectively by following a narrow set of rather rigid requirements, no more no less.Yet, the law also has internal weakness. For instance, as AFA elaborates in its latest explanatory note, it can only oversee companies with at least 500 employees AND annual gross revenue of at least EUR 100 million AND if their head office is based on French territory.

The US Department of Justice is able to sanction foreign entities regardless of the location of their headquarters, provided they somehow fall under its jurisdiction (the definition of "US person" in American law is famously wide). Therefore, should there be strong corruption-related evidence against a foreign company with operations in France but the head office abroad, AFA would be incapable of initiating any action.

This belies the underlying and so far largely unadmitted logic of the bill, which is to shield French companies from prosecution in foreign countries and, if corruption has, indeed, been committed, rather prosecute them at home. Thus, the extraterritorial reach of the Sapin II law is rather illusory. Still, this is an important step forward for a key country of the EU, a large European economy and a state historically committed to the respect of law. Only time will tell whether France can actually transform itself. ■

SPECIAL **FEATURE**

The development of US sanctions policy under President Trump

The use of economic sanctions as foreign policy tools featured prominently in Donald Trump's presidential campaign, and have continued to make headlines since his election.

In many cases, the Trump administration has sought to reverse his predecessor's policies and its use of economic sanctions, with promises of both easing and further enforcing existing US sanctions policy. President Trump has, for instance, been a vocal critic of President Obama's use of sanctions against Russia, but has so far largely failed to soften measures against the Kremlin in the face of resistance from Congress. He has, however, succeeded in imposing new sanctions on North Korea, Cuba, and Venezuela, and has continued President Obama's policy in Sudan by lifting some of the existing restrictions. In July, the US Senate adopted three separate sanctions measures targeting Iran, Russia, and North Korea, demonstrating the US Senate's ongoing support for the application of sanctions.

North Korea

Over recent years, the UN Security Council has imposed sanctions against North Korea to pressure the regime to abandon the development of its nuclear weapons programme. In August, it adopted a resolution to impose the most punishing sanctions yet against North Korea over its repeated defiance of a ban on testing missiles and nuclear weapons, whilst President Trump has been trying to persuade governments around the world to impose additional economic pressure on Pyongyang.

In November, in a largely symbolic gesture,

> In October this year, President Trump declined to certify that Iran was complying with the 2015 nuclear agreement (the JCPOA)

President Trump re-included North Korea in a US list of state sponsors of terrorism after almost a decade. One day later, the Trump administration sanctioned one Chinese businessman, 13 companies and 20 vessels that have engaged in trade with North Korea. By the end of the month, President Trump vowed to impose further sanctions against the country, after North Korea tested a missile that was claimed to be capable of reaching Washington. Possible future targets for sanctions include the North Korean shipping industry, business between Chinese banks and North Korean companies and individuals, and the supply of oil.

China has already promised to reduce some oil shipments to North Korea, but it has been reluctant to cut off the supplies completely, fearing the total collapse of the regime, a refugee crisis and the potential loss of a strategic buffer zone. Meanwhile in December, President Trump criticised Vladimir Putin of failing to pressure Kim Jong Un to abandon his nuclear ambitions, following a call between the Russian and US presidents focusing on North Korea. Russia has supported UN economic sanctions against Pyongyang, but also has continued trade with North Korea, as has China. According to a recent study by the Institute for Science and International security, nearly 50 countries are suspected of violating international sanctions against North Korea, including both Russia and China. Unless stricter enforcement of the sanctions is ensured, their impact on North Korea's economy remains uncertain.

Iran

US economic sanctions on Iran were first imposed after the Iranian Revolution of 1979, and were followed by the United Nations Security Council sanctions imposed in 2006, after the government refused to end its uranium enrichment programme. In 2015, Iran, the US, UK, Russia, France, China, Germany, and the EU signed the Iran nuclear framework under which Iran agreed to reduce or its stockpile of uranium and to lower the number of gas centrifuges.

In October this year, President Trump declined to certify that Iran was complying with the 2015 nuclear agreement (the Joint Comprehensive Plan of Action - JCPOA). The decision triggered a 60-day window within which the Congress was to decide whether to reintroduce sanctions on Iran. However, Congress has missed the deadline, effectively returning the decision back to President Trump, who will have to decide by mid-January 2018 whether or not to re-impose sanctions. It would have been relatively easy for Congress to impose new restrictions on Iran, withdrawing US support for the nuclear deal that Trump has been fiercely criticising. However, as the deadline has passed, the re-imposition of sanctions will require support of the Democrats, which may prove difficult to achieve. Iran has repeatedly claimed that its nuclear programme is intended for peaceful purposes, but has threatened that it will stop complying with the accord if the US violates the nuclear deal. The Trump administration faces two major deadlines early next year. The first concerns

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SPECIAL **FEATURE**

THE DEVELOPMENT OF US SANCTIONS POLICY UNDER PRESIDENT TRUMP

Although Congress passed the bill on the Countering Russian Influence in Europe and Eurasia Act ("CRIEEA") in July 2017, President Trump delayed its implementation until October

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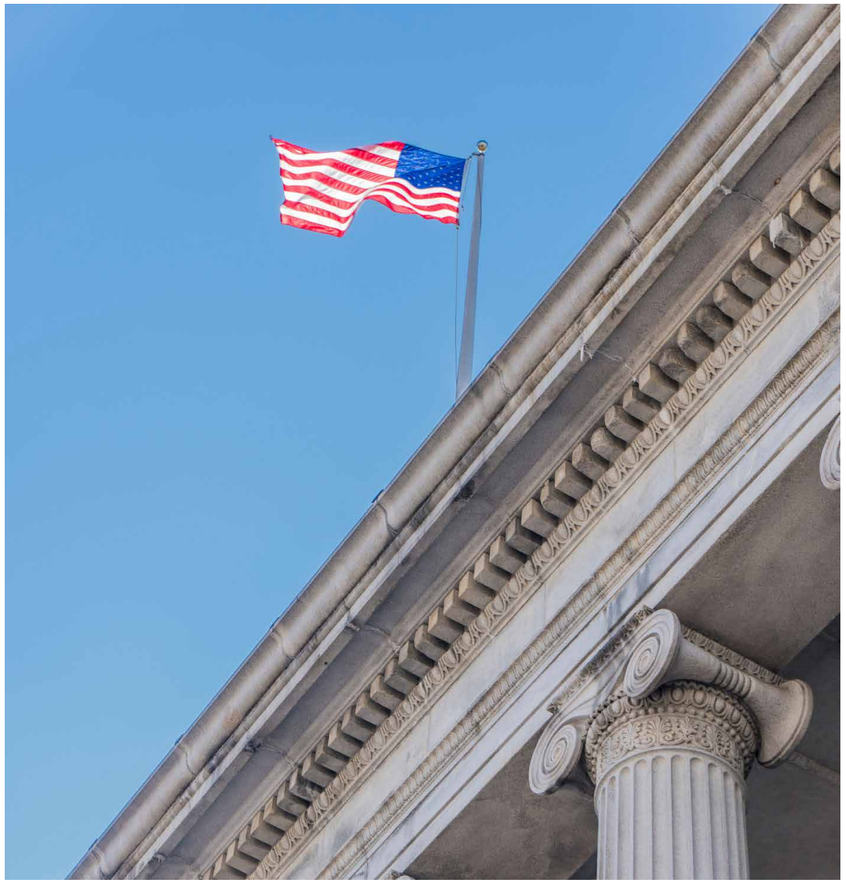
President Trump's ability to issue a waiver which would prevent sanctions from being re-imposed. Secondly, President Trump will also have to decide again whether to certify Iran is complying with the nuclear deal. If he does not make this decision, another 60-day window will be opened during which Congress can re-impose sanctions on Iran. The promise to overturn the nuclear deal was an important part of President Trump's campaign, and despite his tough rhetoric, it remains uncertain whether he will achieve this objective, not least since other signatories to the agreement remain fully committed.



Russia

The most recent episode in the US-Russian diplomatic relations has been dominated by sanctions since the introduction of the Magnitsky Act in 2012, and the number of Russian individuals and entities sanctioned by the US has grown every year. Almost 600 individuals and entities have been sanctioned since the Russian annexation of Crimea in 2014, and even in his last days in office, in December 2016, President Obama imposed sanctions on Russia for malicious cyber activity, and seized control of two Russian compounds in the US. Most recently, the fragile relations between the two countries were threatened further still, by accusations that the Russian government intervened in the US presidential election in 2016. The White House has repeatedly denied any Russian involvement, but the situation has become more problematic since several members of Trump's election team, including Donald Trump Jr. and his brother-in-law Jared Kushner, were implicated in the ongoing investigation.

President Trump has been a strong critic of the sanctions imposed by the Obama administration. Although Congress passed the bill on the Countering Russian Influence in Europe and Eurasia Act ("CRIEEA") in July 2017, President Trump delayed its implementation until October. The CRIEEA aims to punish Russia for its interference in the 2016 US election, its human rights violations, its annexation of Crimea and its military operations in eastern Ukraine. Importantly, it also allows Congress to review and disapprove of attempts by the President to terminate or waive Russia-related sanctions. Additionally, in early December, the Trump administration approved sanctions on Russia, in an attempt to force the country to comply with the 1987 Intermediate Nuclear Forces Treaty it has violated by deploying a banned cruise missile.

The new sanctions are likely to negatively impact US-Russian relations as they played against President Trump's efforts to restore amicable diplomatic relations between the two countries amidst accusation that members of his administration have been involved in controversies linked to the Russian government and its possible meddling with the US presidential election.

Cuba

In June this year, President Trump announced that he intended to reverse some of the changes related to Cuba made by the second Obama administration that sought to improve the US-Cuban diplomatic relations, claiming that he wanted to punish the communist government of Havana. As a result, the US announced additional sanctions and travel restrictions on Cuba in November, tightening the economic embargo on Cuba and restricting Americans from access to hotels, stores and other businesses tied to the Cuban military. The State Department published a list of 180 entities and an economic development zone at the Port of Mariel, which are believed to financially benefit the Cuban military, intelligence and security services and which US citizens will no longer be permitted to visit. Meanwhile, Cuban officials stated that the measures would not succeed in pressuring the island's government to make concessions.

Sudan

In October this year, the US lifted sanctions originally imposed on Sudan 20 years ago. The sanctions included a trade embargo, a freeze of government assets, and restrictions for financial institutions dealing with Sudan. The decision to lift the sanctions was partly made since the punitive efforts had done little to encourage reforms or resolve the internal conflicts in Sudan. It is also one of the few policies of the Obama administration, announced at the end of his term, which President Trump has been willing to continue.

The State Department highlighted that although the Sudanese government still has a long way to go, there had been enough signs of progress to partially normalise relations between the two countries. Sudan still features on a list of countries that are considered sponsors of terrorism, and a separate review is expected to determine whether it should be removed from this list. For the time being, the terror designation means that restrictions remain on foreign assistance and defence sales. The decision to lift the sanctions has been criticised for its potential to add legitimacy to the Sudanese regime, which has a long track record of human rights abuses, and to make it complicated to reach a peaceful solution to the armed conflicts within the country.

Venezuela

The sanctions on Venezuela were imposed in June, after President Nicolás Maduro stated that he intended to rewrite the constitution in yet another attempt to tighten his grip on power. In response, the US sanctioned 13 current and former Venezuelan officials thought to be close to Maduro. In addition, President Trump has signed a proclamation as part of a wider travel ban, forbidding officials of the Maduro regime from travelling to the United States. In August, an executive order was issued imposing sanctions on members of Maduro's inner circle. The US assets of 30 officials were frozen to prevent Venezuela from selling them to raise money for the regime. As part of the sanctions, the ability of the country and the state-owned oil company PDVSA to issue new debts or stock in US dollars was restricted, and the measures also prevented the company from engaging in financial dealings with US citizens.Venezuela's economy has been struggling since late 2016 due to low oil prices, government mismanagement, and what has been described as the world's worst hyperinflation.

The situation resulted in widespread food and medicine shortages, accompanied by violent repression of frequent protests. The sanctions against Venezuela, perhaps understandably, do not target oil trade, which means that Maduro was allowed to hold on to his main source of income, with the US itself buying approximately 40% of Venezuela's daily production of oil. However, oil might become the next target of the sanctions, which has prompted Venezuela to cultivate its relations with new potential buyers, including Russia and China, and close ties with such important allies may undermine US sanctions. ■

Conclusion

US sanctions policies have their supporters as well as critics. Sanctions on Cuba, for instance, which came after two years of restored diplomatic ties, have been criticised as being counterproductive and unlikely to have a significant impact on the Cuban regime. Similarly, the restrictions imposed on Venezuela do not seem to target areas crucial to the regime, as this would have negative countereffects for the US as well. Sanctions imposed against North Korea appear to have been violated by North Korea's main allies, including Russia and China. The sanctions on Russia, though considered relatively harsh, came too late and were adopted rather unwillingly, whilst the attempt to re-introduce the Iranian sanctions has been criticised as an empty political gesture which, however, returned to President Trump in a perhaps unplanned manner and might have far-reaching consequences. The new policy towards Sudan, launched by President Obama, appears to have been broadly accepted, although it has been noted that it may add legitimacy to the Sudanese regime.

It is certainly likely that US sanctions policy will continue to feature heavily throughout 2018 as it has done this year. ■

SPECIAL **FEATURE**

The rise of **cryptocurrencies:** new horizons for financial crime?

Virtual currencies have become a market that can no longer be ignored by most major governments. The global combined value of all virtual currencies reached an all-time high of more than USD 400 million in December 2017. Bitcoin, which accounts for more than half of this amount, has soared in value from less than GBP 1,000 at the start of the year to more than GBP 14,000 (and counting). In light of such trends, many central banks are still assimilating the legal and fiscal implications tied to virtual currencies, and the emerging risks tied to financial crime.

A crucial concern revolves around the apparent appeal of borderless and concealed transactions to criminal cohorts. Virtual currencies offer rapid international transaction settlement and a greater degree of anonymity around users' identities than many other established electronic payment methods; and they do so in a decentralised manner, bypassing the involvement of banks or other financial intermediaries.

Current v. prospective threats

Indeed, virtual currencies such as Bitcoin have been exploited by fraudsters and used as a means to skirt international sanctions in certain countries. In July 2017, a US jury indicted Russian national Alexander Vinnik as the operator of a BTC-e, a digital currency exchange house that he allegedly used to launder more than USD 4 billion for people involved in crimes ranging from computer hacking to drug trafficking. A number of cybersecurity firms have also reported that cryptocurrency exchanges were hacked by North Koreans in order to steal Bitcoin and circumvent international sanctions. Venezuela recently announced the creation its own digital currency called "el petro", backed by oil reserves and designed counter financial sanctions and inflation in the country.

> Tokyo's decision to regulate bitcoin came in the aftermath of the 2014 bankruptcy of Mt Gox, the world's largest virtual currency exchange. About 850,000 bitcoins from Mt Gox disappeared before its collapse, worth more than USD 4 billion at today's price.

Initial Coin Offerings (ICOs), an unregulated means by which funds are raised for a new cryptocurrency venture, are also exposed to high risks for the ease with which they can defraud investors. Both the founder of Ethereum – the second largest virtual currency behind Bitcoin – and the head of the Securities and Exchange Commission (SEC) have issued warnings regarding the accuracy of information or the value of assets.

Despite instances of abuse and the obvious attractions behind cryptocurrencies as a new platform for financial crime, there is no accurate indication to suggest that the emergence of virtual currencies have been used as a preferred vehicle for financial crimes. The threat appears to be more prospective than it is existent.

According to a European Commission working paper from June 2017, money laundering and terrorist financing cases continue to be anecdotal due a number of characteristics that limit cryptocurrencies' use for financial crime. Their prices are frequently volatile, they are still a relatively small part of the global financial system and they require a technological adeptness that some criminal organisations are only starting to assimilate. More importantly, cryptocurrencies are not uniformly anonymous, a common misconception. For instance, Bitcoin relies on blockchain technology, which in essence is a secure, unalterable digital record of a transaction. Those with access to a particular blockchain, recorded through a ledger system, can see any changes and updates in real-time. Blockchain technology allows public bodies, regulators, banks or law enforcement agencies to instantaneously verify the credentials of parties involved in a transaction and identify any discrepancies in the information.

The issue with virtual currencies arises around the degree of anonymity that they can offer. As a paper published by the Royal United Services Institute (RUSI) explains: "Bitcoin is 'pseudonymous'. Users are identifiable throughout the network by their alphanumeric keys and they can choose to use a single public key for all transactions, but they may also create a new public key for each individual transaction they undertake".

The possibility to create a potentially infinite number of pseudonymous identities when transacting with other users is in direct confrontation with the Know Your Customer (KYC) principles at the heart of the global anti-money laundering/counter-terrorist financing (AML/CTF) regime.

global combined value

of all virtual currencies reached in December 2017 an all-time high of more than

USD 400 million

Regulation rowing in different directions

Clearly, developing effective safeguards against the new and increasing threats involved in dealing with virtual currencies are required. Governments have so far adopted widely different positions towards cryptocurrencies ranging from apprehension and fear, to full-scale acceptance.

Under the EU's proposed Fifth Money Laundering Regulations (5MLD), virtual currency exchanges and digital wallet providers (broadly equivalent to a conventional bank account) will be regarded as obliged entities, meaning that they will fall under the same customer due diligence requirements as financial entities. The exact provisions in 5MLD relating to virtual currencies, which are currently being negotiated by the European Parliament, are driven by concerns that transactions involving cryptocurrencies can be quasi-anonymous. According to a proposal issued in March 2017 by the European Parliament, suspicious transactions using virtual currencies are not sufficiently monitored by the competent authorities, which are unable to link identities and transactions.

According to the proposal in the 5MLD, wallet providers and virtual currency exchanges would be overseen be national competent authorities. It remains to be seen what transactions thresholds or conditions will

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SPECIAL **FEATURE**

THE RISE OF CRYPTOCURRENCIES: NEW HORIZONS FOR FINANCIAL CRIME?

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warrant the need for enhanced due diligence checks. While the UK Treasury has welcomed EU's drive to push virtual currencies under the remit of future AML/CFT provisions, the UK's Financial Conduct Authority recently issued a statement announcing that it did not envisage regulating bitcoin because it is not "prevalent enough at the moment to be a systemic threat".

The United States has pledged to be more vigilant about the risks that virtual currencies can pose, although there is no specific legislation in place safeguarding from financial crime risks. The US Congress recently held a hearing to modernise AML/CFT rules, which would include cryptocurrencies as reporting entities. The bill, titled "Modernizing AML Laws to Combat Money Laundering and Terrorist Financing" has received some criticism by the cryptocurrency industry, claiming that the definition of cryptocurrencies should be limited to digital currency exchanges.

In its defence, the industry states that applying the provisions to issuers of digital currency is misguided and the burden of compliance would be greater than the benefit from developing the technology in the US.

The United States Securities Exchange Commission (SEC) has not yet claimed the right to regulate cryptocurrencies exclusively, with the exception of making ICO tokens subject to federal security laws. Legislation and acceptance of virtual currencies are currently left to the discretion of federal states. California became the first American state to fully legalise the use of digital currencies as a form of viable payment. So far, New York, Arizona, Maine, Nevada, Vermont, and others have introduced bills to their state senates, mostly dealing with the acceptable use of blockchain ledgers and smart contracts for record keeping and other tasks.

> The United States Securities Exchange Commission (SEC) has not yet claimed the right to regulate cryptocurrencies exclusively, with the exception of making ICO tokens subject to federal security laws.

Japan was the first country to officially recognise virtual currencies as a legal method of payment. As of October 2017, all virtual currency exchanges fall under the remit regulatory supervision of the Japan Financial Services Agency, being subject to both annual audits and KYC/AML regulations. The country currently has eleven regulated Bitcoin exchanges controlling over 60% of the global Bitcoin market. Tokyo's decision to regulate bitcoin came in the aftermath of the 2014 bankruptcy of Mt Gox, the world's largest virtual currency exchange. About 850,000 bitcoins from Mt Gox disappeared before its collapse, worth more than USD 4 billion at today's price.In August 2017, Australia followed in Japan's footsteps, expanding its AML/CFT provisions to include virtual currencies. Austrac, Australia's financial intelligence unit, will oversee transactions involving virtual currency exchanges.

Bitcoin traders and investors are not subject to taxes for purchasing and selling Bitcoin through regulated exchanges and trading platforms. In recognising the value of virtual currencies as a viable means for start-up financing, Australia has struck a balanced approach towards regulating virtual currencies, ensuring that combatting its potential threats does not hinder its legitimate uses.

The most significant detractor of virtual currencies is China. In September, the government ordered the closure of all virtual currency exchange houses and an outright ban on all forms of trading with cryptocurrencies.

In the absence of any regulation, China became an early adopter of bitcoin trading and mining, but reversed its stance on virtual currencies amid reports that bitcoin was exacerbating capital flight trends in China. The clampdown is proving more challenging than initially envisaged, with reports from fintech experts arguing that Chinese investors are still trading bitcoin and buying initial coin offerings. In the Middle East, Saudi Arabia and the Kingdom of Jordan have actively discouraged the use of bitcoin due to the inherent dangers involved in dealing with an uncontrolled entity for the purposes of AML/CFT.

These positions may shift in the future depending on neighbouring states' positions and guidelines on best-practices in dealing with virtual currencies. Other countries such as Russia have adopted mixed - and somewhat contradicting - positions towards virtual currencies.

After announcing in 2016 that the Kremlin was considering jailing individuals up to seven years for using or owning bitcoins, Russia's narrative on the matter has taken a drastic turn. In October 2017, Vladimir Putin announced plans to plans to tax cryptocurrency miners, regulate ICOs, sandbox legislation for newly developed blockchain technologies, and an order that outlines the formation of a single payment space.

Russia's acceptance of virtual currencies is a genuine concern given that it could be used as another means to skirt sanctions if certain Russian officials decide to electronically send and receive funds out of the country. ■

Conclusion

With the exception of some notable cases, the trend among governments appears to be that of vigilance. More time is required to fully explore the nexus between introducing regulation that will offset the inherent financial crime risks in cryptocurrencies without compromising the potential benefits of virtual currencies.

Beyond acting as a more efficient and cost-reducing method of payment, blockchain technology and virtual currencies can save money for entire industries through inter-company shared business process simplification. Virtual currencies and related technology could also help to deliver dynamic, mobile financial services to a greater number of people – such as those in developing countries who have limited or no access to banks. Blockchain can also facilitate banks' KYC processes by readily providing verified proof of identity, source of funds, business interests and history, while enabling encrypted updates to be distributed to other reporting entities in real-time. Over-regulating may ultimately hinder the financial innovations that blockchain technology can bring. Similarly, adopting measures targeted against tackling its vulnerability to financial crime must be carefully weighed, as current AML/CFT regimes may be inefficiently equipped to counter such risks. The international community should also envisage adopting a harmonised AML/CFT approach for virtual currencies so as to prevent its potential illicit uses, notably for evading sanctions. ■

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SPECIAL FEATURE

Saudi Arabia's anti-corruption drive

On Saturday 4 November 2017, Saudi Arabia and the wider world recoiled at the news that 11 members of the Saudi Royal Family, in addition to dozens of senior officials and prominent businessmen, had been arrested as part of an anti-corruption probe by a new Saudi anti-corruption committee. The committee, created earlier that day by royal decree from King Salman and chaired by his son, Crown Prince Mohammed bin Salman (MbS), was given the power to investigate, arrest, ban from travel, freeze accounts and portfolios, and track funds and assets of individuals involved in corruption practices. The new body effectively side-lined an existing and ineffectual anti-corruption committee – Nazaha – which focused on alleged public-sector abuses.

Background

The high-profile arrests reportedly included Prince Walid bin Talal, a multi-billionaire and Chairman of Kingdom Holding who has major stakes in News Corp, Citigroup and Twitter; Prince Miteb bin Abdallah, former head of Saudi Arabia's National Guard; Prince Turki bin Abdullah, a former governor of Riyadh; Saleh Kamel, owner of Arab Radio and Television Network; Ibrahim al-Assaf, a former finance minister; Adel Fakieh, an economy minister; Bakr bin Laden, chairman of the large Saudi Binladin construction group; Nasser Bin Aqeel Al Tayyar, board member of Al Tayyar Travel; and Alwaleed al-Ibrahim, owner of the MBC television network. Some of those arrested have now been freed.

The man behind the arrests – Crown Prince and heir apparent Mohammed bin Salman (MbS) – has been behind the most dramatic shake-up of Saudi politics in recent times. Until his appointment as Deputy Crown Prince in April 2015, MbS was a relatively unknown advisor to his father - albeit a known face in the Defence Ministry when Salman became minister, and before that in his father's Riyadh Governorate HQ.

> Mohammed bin Salman (MbS) will be the first of a new generation of Saudi princes to accede to the Arab throne

However, since his father acceded to the throne in January 2015, MbS has steadily consolidated control over the key levers of power, becoming Defence Minister and chair of the Council for Economic and Development Affairs that year.

Then, in June 2017, MbS replaced his cousin and long-time security Tzar Muhammed bin Nayef as Crown Prince, reportedly due to ill health, all but confirming that MbS would be the next King. In doing so, MbS will be the first of a new generation of Saudi princes to accede to the throne, with rule having been passed to date between the sons of Abdelaziz Ibn Saud, the founder of modern Saudi Arabia, via the principle of agniatic seniority.

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SPECIAL **FEATURE** SAUDI ARABIA'S ANTI-CORRUPTION DRIVE

> MbS has steadily consolidated control over the key levers of power, becoming Defence Minister and chair of the Council for Economic and Development Affairs that year

> Popular support for the anti-corruption arrests in Saudi Arabia reflects anger with decades of alleged kickbacks and bribery schemes seen to have lined the pockets of the Al Saud princes

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Power grab?

In an exclusive interview with US journalist Thomas Friedman, MbS dismissed as 'ludicrous' the notion that the events had been a power grab. MbS explained that the arrests targeted those individuals who had taken money from the government through kickbacks and overpayments.

For two years, MbS claimed, a team of investigators had been amassing evidence to present to the princes and billionaires. Then, "we show them all the files that we have and as soon as they see those about 95 percent agree to a settlement". Yet for many observers, the latest arrests can be interpreted as the denouement of a bold and radical plan, with tacit support from the Saudi public at large, to radically undermine the traditional bases of power in the country – that is to say, the various 'fiefdoms' of the sons and grandsons of Abdulaziz Ibn Saud (MbS' uncles and cousins). By targeting and replacing rivals such as Miteb bin Abdallah, Head of the National Guard (the only security force outside of MbS' control), MbS has turned decades of delicate inter-family negotiations and rule by consensus on its head. His attacks on the religious establishment and his intervention in sensitive moral issues – overturning the ban on female drivers, and opening up cinemas – also reflects his drive to change the very texture of Saudi society. Although arguably, given the ease in which MbS has been able to take on the clerics, Saudi society has already undergone a quiet revolution.

Popular support for the anti-corruption arrests in Saudi Arabia reflects anger with decades of alleged kickbacks and bribery schemes seen to have lined the pockets of the Al Saud princes. In one of the most notorious example - the 1985 Al-Yamamah arms deal with the UK, worth at least USD 43 billion - individuals close to the Defence Minister allegedly received large bribes to facilitate the deal. The UK Serious Fraud Office opened an investigation into the contract in 2003, but this was discontinued in December 2006 on the grounds of public interest. No party was convicted of bribery in any jurisdiction.

Vision 2030

The arrests come against the back-drop of an ambitious domestic economic project – Vision 2030 – spearheaded by MbS to diversify Saudi Arabia away from oil, develop the public sector and address unemployment. Ten days before the arrests, MbS launched a new USD 500 billion development – NEOM – which would take the form of a industrial and business zone in the north of the country extending into Jordan and Egypt. History tells us that Saudi mega-projects, announced with great pomp and circumstance, can be slow to materialise as a result of bureaucratic, technical and investment hurdles. For NEOM to succeed, MbS will certainly hope that any contributions from the recent patrons of the Ritz-Carlton will not be undermined by capital flight out of the country, or nervousness from overseas speculators over the rule of law. Alongside NEOM, the part-IPO of Saudi Aramco is a key cornerstone of Saudi 2030. Yet a date or venue for the listing is yet to be decided.

Regional politics

Layered on top of the recent arrests is the volatile regional situation, in particular escalating tensions between Saudi Arabia and Iran. Trump's accession to the US Presidency was greeted with open arms by Saudi Arabia, having felt severely bruised by the Iran nuclear deal under Obama. An anti-Iranian White House, and personal support from POTUS' Twitter account for the anti-corruption drive, strengthens MbS' hand domestically. Yet MbS' foreign policy remains puzzling to many. The under-reported Yemen war, launched by MbS in 2015 to signal a Saudi shift away from its non-interventionist foreign policy, has been a costly and intractable affair. The severing of ties with Qatar earlier this year along with several other Arab states was also a questionable move, pushing the Gulf state towards Iran and receiving muted support in international circles. It certainly hasn't prevented Qatar from concluding bilateral deals with the West, as the UK's USD 5 billion typhoon deal has shown. The resignation statement from Riyadh by Lebanese PM Saad Hariri, on the same weekend as the anti-corruption arrests, was also a bizarre episode, ostensibly designed to humiliate Iran and its Lebanese ally Hizballah. Yet, as was the case with the arrests, politics and business cannot be easily separated in the Kingdom.

The Hariri family have been a key business family in Saudi Arabia since the 1970s, principally through the construction company founded by Saad's father Rafik – Saudi Oger. Over the past two years, Saudi Oger has collapsed in Saudi due to the non-payment of Saudi government contracts (a result of the oil price glut), leading to the embarrassing situation of foreign and Saudi workers suing the company for non-payment of wages. One wonders, therefore, what financial leverage MbS may have wielded, or retains, over Hariri. ■

Conclusion

For foreign businesses, the anti-corruption measures, albeit coated with a political veneer and legislative opacity, provides a strong signal that the state is serious about tackling the well-documented culture of corruption in public procurement. In light of US, UK and French bribery laws, this is surely to be welcomed. And so far, there is no real indication that MbS would wish to re-open corruption investigations which would cause embarrassment to foreign allies – this is, after all, about setting the Kingdom on a future path of prosperity.

Yet by dragging the rug from underneath the Saudi business elite, foreign investors will undoubtedly be nervous about how to navigate the post-4 November landscape. Moreover, the risk of a back-lash from opponents, in a country where political and commercial stability has generally been guaranteed through quiet negotiation behind closed doors, is higher than ever. ■

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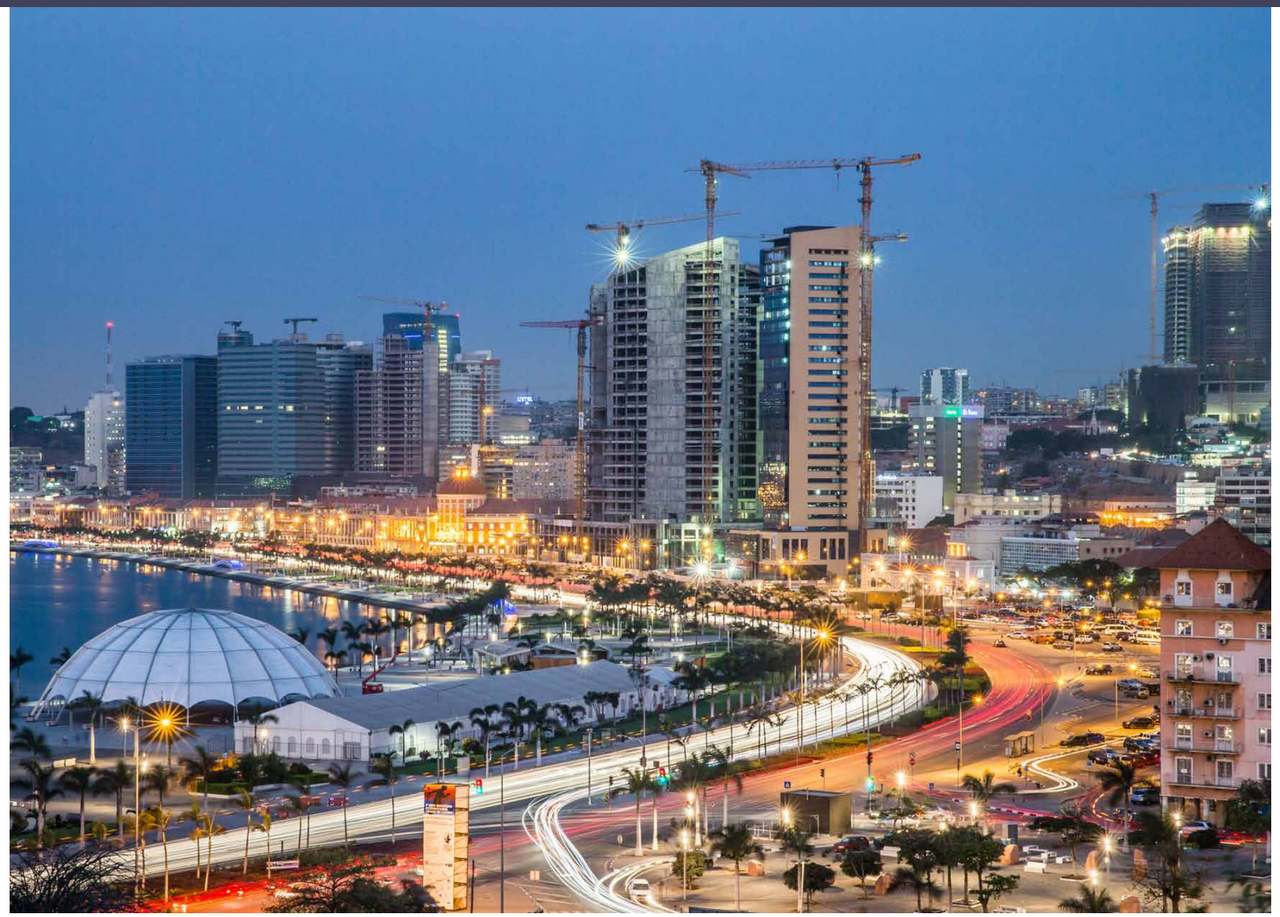
SPECIAL **FEATURE**

Corruption, state capture, and transition in Southern Africa

Southern Africa witnessed a number of significant political developments in 2017 that are likely to have long-lasting repercussions for the countries involved, the region in general, and for foreign investors.

Elections in Angola in August resulted in success for the ruling MPLA (Movimento Popular de Libertação de Angola) party and the consequent instalment of João Lourenço, the former Minister of Defence, as the designated replacement for José Eduardo dos Santos, who stepped down after having served as president since 1979. Meanwhile, President Zuma of South Africa has been buffeted by allegations of corruption and state capture involving the Gupta brothers, which implicated multinational companies including Bell Pottinger, McKinsey, KPMG, HSBC, and SAP. Campaigning on a platform of anti-corruption, Cyril Ramaphosa was recently elected as the new head of the ruling ANC (African National Congress) party which might potentially result in actions to remove President Zuma himself from office before the end of his term in 2019.



In Zimbabwe, Robert Mugabe's term as president came to an abrupt end after 30 years, following a coup instigated by his first vice-president Emmerson Mnangagwa amid concerns that Robert Mugabe intended to install his wife Grace as his successor. Mugabe's later period in office was characterised by international isolation, hyperinflation and a collapse of the economy following land seizures, rampant corruption, and the imposition of international sanctions. President Mnangagwa has signalled an interest in taking measures to restore international relations, although it remains to be seen how effectively he is able to root out corruption and support democratic processes, given a raft of allegations against him personally. Evidence of international action to tackle corruption in Africa was however evident in the case of Theodorin Obiang, son of the longstanding president of Equatorial Guinea, Teodoro Obiang-Nguema. A French criminal court imposed a suspended three-year prison sentence and a suspended fine of EUR 30 million against Obiang, considered by commentators such as anti-corruption NGOs to represent one of the most egregious cases of embezzlement of state funds.

Angola

"No one is so rich and powerful that they cannot be punished and no one is so poor that they cannot be protected," said João Lourenço, Angola's new president, at his inauguration ceremony. The new president took over in September 2017, after the health-related resignation of 75-year-old José Eduardo dos Santos, who led oil-rich Angola for 38 years. Yet it has been unclear whether dos Santos' successor, who was carefully selected by the ruling MPLA party, was merely paying lip service to anti-corruption and inequality reduction.

In November 2017, Lourenço – who has a reputation for relative probity – demonstrated indications of intent about curbing larceny. He dismissed Isabel dos Santos, the daughter of the former president and richest woman in Africa with an estimated net worth of USD 3.4 billion, along with the entire board of the state-owned oil company, Sonangol. He further terminated contracts for collaboration between the state television station and two of dos Santos' younger children. The new president also dismissed the governor of the central bank, the head of the state diamond company, Endiama, and the boards of all three state-owned media companies. Furthermore, in defiance of a presidential decree by dos Santos which locked in his appointments for at least two years, Lourenço fired the police chief and the head of the intelligence agency.

Currently, Isabel's brother, Zenu dos Santos, remains as head of the sovereign wealth fund, but pressure against him built up following revelations in the Paradise Papers. The latest leak by the International Consortium of Investigative Journalists appears to indicate that Zenu transferred USD 3 billion of state funds to offshore accounts in Mauritius, in which some of the public money was sent to a wealth management company controlled by his close associate, Jean Claude Bastos de Morais. Zenu may be the next target of "The Relentless Remover", as Lourenço has been dubbed by the Angolan public.

If the new president is serious about eliminating graft and restoring economic growth, he may soon seek cooperation with the international financial institutions. Although the World Bank and IMF are likely to demand rigorous auditing standards, Lourenço already indicated that he would be open to such an option. His wife Ana Dias Lourenço, who was an executive director at the World Bank and is now a member of parliament, could play an important role in arranging a deal with the international financial institutions.

After all, it was she who helped negotiate Angola's USD 1.4 billion rescue loan from the IMF in 2009. With Washington's "seal of approval" global investors may soon return to Angola. The well-known Angolan human rights activist, Rafael Marques de Morais, remains sceptical about his country's future, but many of his fellow citizens and international observers are encouraged by Lourenço's promising beginnings.

> Robert Mugabe's term as president came to an end after 30 years, following a coup instigated by his first vice-president Emmerson Mnangagwa amid concerns that he intended to install his wife as his successor.

South Africa

In South Africa, the ruling ANC party recently elected Cyril Ramaphosa as its new leader in South Africa and thereby its de-facto candidate for the presidential race in 2019. The incumbent Jacob Zuma cannot re-run as he has reached his 10-year term limit. Ramaphosa has been particularly critical of corruption in South Africa, and has severely criticised state capture epitomised by the revelations surrounding the Gupta brothers.

President Zuma faces 783 counts of corruption and fraud in relation to a USD 5 billion arms deal concluded in the 1990s with French and British defence contractors. More recently, his relationship with the Gupta brothers has given way to a political crisis in South Africa. A broad coalition ranging from union leaders to business figures is clamouring for President Zuma's immediate resignation, which may be accelerated by Ramaphosa's election. Zuma, who became president in 2007, had a long-standing reputation for corruption, but the present crisis is unprecedented in magnitude and severity. It started with an investigation by the Public Ombudsman into his links

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SPECIAL **FEATURE** CORRUPTION, STATE CAPTURE, AND TRANSITION IN SOUTHERN AFRICA

Photo: Newsweek.com

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with the Gupta brothers, three Indian-born businessmen who made their fortune in the computer distribution business. The politically well-connected brothers allegedly conspired with Zuma to remove a sitting finance minister because he opposed a Russian nuclear deal, which would greatly have benefited the Zumas and Guptas through kickbacks. The ensuing investigation unveiled alarming levels of state capture, involving the systematic use of public means and government policy to promote private interests. Zuma's family has been on the Guptas' payroll since 2005. They hired his son Duduzane as an IT specialist, appointed Duduzane's twin sister, Duduzile, as a company director at one of their firms, and employed one of Zuma's wives as a communications officer. In exchange, the Guptas, who regularly accompanied South African officials on trade visits abroad, enjoyed pervasive influence over government policy and even individual ministerial appointments. Multinational companies including Bell Pottinger, McKinsey, KPMG, HSBC, and SAP have also been tainted by association with enterprises controlled by the Gupta brothers.

Despite the ongoing crisis, Zuma continues to enjoy the backing of the ANC's rank and file. Although Ramaphosa campaigned on an anti-corruption platform, he himself was a major beneficiary of ill-executed "black empowerment" policies, whereby - following the end of apartheid - ANC leaders without any business expertise were transferred large stakes in white-owned enterprises. Still, a Ramaphosa presidency appears South Africa's best hope for a full legal prosecution against the Gupta-Zuma's system of state capture.

Zimbabwe

Robert Mugabe's removal from office in November 2017 followed 30 years as head of state of Zimbabwe, during which time the country experienced land seizure policies, hyperinflation, high levels of corruption implicating the ruling Zanu-PF party, international isolation and the imposition of sanctions. Emmerson Mnangagwa, removed in early November as first vice president, secured a "soft coup" against Mugabe, using his established connections to the Zimbabwe military and playing on concerns that Mugabe intended to install his wife Grace as his successor in the face of public criticism of her ostentatious displays of wealth.

Although Robert Mugabe's removal from power was greeted with jubilation by many in Zimbabwe, it remains to be seen what measures President Mnangagwa intends to take. National elections are scheduled to take place in 2018, and Mnangagwa has voiced his support for democratic processes. Yet he personally, as a long-term associated of Mugabe, has been heavily implicated in allegations of corruption such as the embezzlement of assets through organisations such as ZIDCO whilst serving as Zanu-PF's Secretary for Finance. ZIDCO remains sanctioned by the US Office of Foreign Assets Control (OFAC).

Mnangagwa has spoken of his interest in exploiting Zimbabwe's natural resources for the national good, and his finance minister Patrick Chinamasa, during a recent budget speech, announced that the Government intended to repeal the indigenisation legislation, except where it applies to diamonds and platinum. In place of indigenisation policies, it appears likely that Zimbabwe may seek to adopt measures closer to South Africa's empowerment regulations. Indications are that even on the hyper-sensitive question of land, former white farmers are being privately invited back from neighbouring countries such as Zambia. Although these indications are positive, policy inconsistency and significant levels of corruption will remain issues for investors.

Other political shocks, such as the retention of sanctions or a contested election may reduce Zimbabwean appetite for reengagement with the international community. Furthermore, the increasing influence of the military in Zimbabwe politics may be felt in the economic sphere, possibly through the enlargement of Chinese-style military-owned businesses. This may explain why diamonds were excluded from plans to lift indigenisation requirements.

Equatorial Guinea

In October 2017, a French criminal court convicted Teodorin Obiang, the son of Equatorial Guinea's longtime president, Teodoro Obiang-Nguema (1979-present), for using the proceeds from embezzlement to buy assets worth more than EUR 100 million in France. The judge ordered a suspended three-year prison sentence and a suspended fine of EUR 30 million. Teodorin's belongings, including a 100-room mansion in central Paris and a fleet of luxury cars, were seized by the police in 2012 and remain under government forfeiture. Teodorin, who claims he enjoys immunity as vice-president of Equatorial Guinea, was tried in absentia.

His lawyers have announced that they would seek to appeal the judgment. US and Swiss authorities are also currently investigating similar allegations against Teodorin.

Teodorin is widely thought to have obtained his wealth by siphoning off money from state funds. Equatorial Guinea discovered offshore oil reserves in 1996 and as the third-largest exporter of the commodity in sub-Saharan Africa nominally classifies as a middle-income country. Due to rampant corruption by the Obiang clan, however, 75% of the population toil as subsistence farmers with incomes below the World Bank poverty line.

Photo: AP Photo/Frank Franklin II

The judgment in Teodorin's case was widely hailed as indicating a change in the French attitude vis-à-vis dubious African dictators, who spend illicitly obtained gains from their home countries in France with impunity. This new stance is also reflected in the new Sapin II legislation. The two French NGOs, Sherpa and Transparency International, which initiated the legal proceedings against Teodorin in 2008 are now hopeful that two other cases they filed against the presidents of the Republic of Congo and Gabon will also result in convictions. Nevertheless, critics note that because Teodorin was only given a suspended sentence, the court seems to have passed merely a moral judgement. The magistrate also criticised a French commercial bank and France's central bank for their involvement in transferring Teodorin's funds, although neither of the financial intermediaries has faced any charges. Furthermore, while France may be closing the door on kleptocrats, the prospects for immediate change in Equatorial Guinea are bleak.

The next legislative elections, due in 2018, are unlikely to bring reforms, as decades of Obiang rule have effectively eliminated any credible opposition. Equatorial Guinea has been ruled by the same family since the littoral West African state gained independence from Spain in 1968. In 1979, Teodorin's father, Teodoro, deposed his uncle, Francisco Macia Nguema, in a coup and has been in power ever since, making him the longest-sitting head of state. Teodorin's status as heir apparent was formalised with his appointment to vice-president in 2012. ■

Conclusion

Southern Africa has witnessed a series of upheavals in 2017 with changes, and prospective changes, to the existing order. Vested interests have been challenged, and politicians – mindful of a public weariness of high levels of corruption – have campaigned on promises to address the status-quo. Yet it remains to be seen whether the new political leaders will carry through with their promises, or whether those vested interests will re-emerge under a new order. ■

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SPECIAL **FEATURE**

2017: technical developments round-up

JANUARY

- **President Obama lifts economic sanctions on Sudan,** prolongs sanctions against Russia
- **The UK Department for Business, Energy & Industrial Strategy** initiates a review of how Limited Partnerships incorporated in Scotland are used amid allegations they are being exploited by criminals
- **MEPs reject** a proposed EU Commission blacklist of countries at risk of money laundering, terrorist financing
- **The US Treasury issues** guidance clarifying authorised sanctions compliance

FEBRUARY

- **The Clearing House recommends** steps to overhaul US AML and CFT practices
- **The Conference of State Banking Supervisors (CSBS), t**he US nationwide organisation of state financial regulators, developes a voluntary self-assessment tool to help banks and non-depositary financial institutions to identify, monitor and communicate Bank Secrecy Act/Anti-Money Laundering (BSA/AML) risks
- **The Criminal Division of the US Department of Justice issues** guidance on the "Evaluation of Corporate Compliance Programs"
- **Hong Kong Financial Services** and the Treasury Bureau proposes new AML measures
- **European Supervisory Authorities issue** Joint Opinion to the European Commission on ML/ TF risks affecting the EU financial sector

MARCH

- **HM Treasury issues** its response to the consultation on the transposition of the EU Fourth Money Laundering Directive (4MLD), which closed in November 2016, and a draft of the Money Laundering Regulations 2017 (2017 MLRs)
- **The UK Government has announced** the creation of a new anti-money laundering (AML) watchdog, the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) as part of its work to update the AML supervisory regime.
- **The Financial Conduct Authority (FCA) issues** a consultation on new guidance for how financial services firms should treat customers who are politically exposed persons (PEPs) when meeting their anti-money laundering (AML) obligations.
- **The UK Joint Money Laundering Steering Group (JMLSG)** issues proposed revisions to Part 1 of its guidance on the prevention of money laundering and the financing of terrorism for the UK financial services industry.
- **Europol issues** its 2017 Serious and Organised Crime Threat Assessment report
- **The German Federal Government Cabinet approves** the draft for a revised law on combating money laundering and terrorist financing
- **The EU Parliament Committee for Economic and Monetary Affairs** and the Committee on Civil Liberties, Justice and Home Affairs issues a report proposing amendments to the text of **the Fourth EU Money Laundering Directive (4MLD).**
- **The US issues** its 2017 International Narcotics Control Strategy Report (INCSR)
- **FATF issues** Consolidated Processes and Procedures for Mutual Evaluations and Follow-Up

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SPECIAL **FEATURE**

2017: TECHNICAL DEVELOPMENTS ROUND-UP

APRIL

- **ESAs launch** consultation on guidelines to prevent terrorist financing and money laundering in electronic fund transfers
- **The UK Financial Conduct Authority (FCA) issues** its 2017/2018 business plan, the first under its new Chief Executive.
- **The Financial Action Task Force (FATF) issues** a table consolidating the results of the fourth-round mutual evaluations undertaken through its nine FATF-style regional bodies
- **OFAC issues** guidance on sanctions de-listing

MAY

- **The UK Criminal Finances Bill** receives Royal Assent, becoming an Act of Parliament.
- **The OECD lists** jurisdictions agreeing to country-bycountry reporting
- **The Department for Business, Energy & Industrial Strategy (BEIS) closes** a consultation on proposals to deliver the world's first public register of the beneficial owners of overseas companies (and other legal entities) that own property in the UK.
- **EU Committees call** for a more expansive and wide-ranging approach to blacklisting
- **The proposed revisions by the Joint Money Laundering Steering Group (JMLSG) reflect** the provisions of the proposed new Money Laundering, Terrorist Financing and Transfer of Funds Regulations, published by HM Treasury in March 2017.
- **The Financial Action Task Force (FATF) releases** its fourth round mutual evaluation of Sweden.
- **South Africa's President Jacob Zuma signs** AML/CFT bill into law

JUNE

- **The Financial Action Task Force (FATF) announces** an extension of its existing suspension of countermeasures against Iran.
- **The European Commission proposes** new set of rules against intermediaries facilitating tax avoidance
- **The deadline for implementation of the EU Fourth Money Laundering Directive (4MLD)** by member states into national law is reached
- **A new law is passed in the UK** forcing Scottish Limited Partnerships (SLPs) to disclose ownership and control information.
- **Interpol recommends** that law enforcement agencies enhance strategies against corporate crime in the forestry sector.
- **The Basel Commission on Banking Supervision (Basel Committee) issues** updated revisions to the annex on correspondent banking.
- **EU Council's Committee of Permanent Representatives agrees** controls on cash entering and leaving EU

JULY

- **The Wolfsberg Group publishes** updated guidance on Anti-Bribery and Corruption Compliance Programmes.
- **The Financial Conduct Authority sets out** guidance for new anti-money laundering unit; issues guidance on Politically Exposed Persons
- **The UK extends** sanctions reporting requirements.
- **A number of the UK's Overseas Territories (OTs) and Crown Dependencies (CDs) pledge to** announce central registers of beneficial ownership information by 30 June 2017
- **The European Parliament approves** rule targeting tax avoidance in multinationals

AUGUST

- **FinCEN announces measures** to address beneficial ownership disclosure in the US real estate sector
- **The UK significantly extends** the duty to report alleged breaches of international sanctions.
- **The Financial Action Task Force's** mutual evaluation report on the Kingdom of Denmark
- **The European Commision publishes a** roadmap on the access to centralised bank account registries as a means to prevent money laundering and terrorist financing

SEPTEMBER

- **FATF publishes** its assessment of Ireland's AML/CFT regime
- **The Joint Committee of the three European Supervisory Authorities (EBA, EIOPA and ESMA – ESAs) publish** guidelines to prevent the abuse of funds transfers for terrorists financing and money laundering purposes.
- **FinCEN issues** an advisory on public corruption in Venezuela
- **The UK Criminal Finances Act takes effect**

OCTOBER

- **The French Anticorruption Agency issues** draft recommendations relating to Sapin II
- **The UK publishes** its 2017 National Risk Assessment of money laundering and terrorist financing
- **20 EU Member States approve** the draft Council regulation implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (EPPO).
- **EC consults on broadening law enforcement access** to centralised bank account registries
- **The Hong Kong Monetary Authority removes** AML/CFT address verification requirements


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NOVEMBER

- **A political agreement** on the fifth update to the EU Anti-Money Laundering Directive fails to materialise during the last scheduled trilogue.
- **The US Department of Treasury issues** advisory on North Korean use of international financial system and final rule on Bank of Dandong
- **The EU adopts** Delegated Regulation listing third countries with strategic AML/CFT deficiencies
- **FINRA provides** additional guidance to member firms following FinCEN CDD rule
- **FATF issues** final Guidance for Private Sector Information Sharing

DECEMBER

- **EU authorities reach agreement on Fifth Money Laundering Directive,** including caps on pre-paid cards, and regulation of virtual currencies
- **UK issues anti-corruption strategy 2017 – 2022,** including provision for register of beneficial owners of foreign companies buying UK property or participating in central government contracts
- **UK Home Secretary** announces new economic crime centre
- **HSBC agrees** end to deferred prosecution agreement with US SEC
- **EU publishes** list of non-cooperative jurisdictions for **tax purposes**

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