StreamHouse

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Prepared for

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Executive Summary

This Opinion is authored by Stefan D. Cassella on behalf of Stream House AG at the request of Herbert Smith Freehills LLP. It is based on the Expert Report of PricewaterhouseCoopers dated July 29, 2020 (the "PwC Report"), bank records provided by Rietumu Bank in Latvia, and facts disclosed in the litigation between the Republic of Kazakhstan ("Kazakhstan") and Anatolie Stati, Gabriel Stati, Ascom Group S.A. and Terra Raf Trans Trading Ltd. (the "Stati Parties"). The author has no personal knowledge of those facts but, for purposes of this Opinion, assumes those facts to be true and to be supported by the documents cited in the PwC Report and the record in the referenced litigation.

This Opinion summarizes a few of the fraud schemes perpetrated by the Stati Parties in violation of U.S. and Kazakh law, and discusses how they would constitute predicate offenses for money laundering violations that occurred in both the United States and Latvia when financial transactions in furtherance of the fraud schemes occurred in those countries. It also discusses the fraud upon the arbitral tribunal (the "Tribunal") that occurred when the Stati Parties initiated arbitral proceedings under the Energy Charter Treaty (the "ECT Arbitration"), and the possibility that collecting the arbitral award granted to the Stati Parties in that proceeding (the "ECT Award") would itself constitute a money laundering offense in any country where a financial transaction involving the proceeds of the ECT Award occurs.

While we reserve the right to amend, alter and update this Opinion should further documentation or other evidence become available, it is apparent from our analysis that the Stati Parties engaged in extensive international money laundering activity involving the proceeds of crimes committed in the United States and Kazakhstan, and that the Tribunal in the ECT Arbitration was not informed of the scope of this criminal activity prior to the issuance of the ECT Award on 19 December 2013.

About the Expert: Stefan Cassella

Stefan D. Cassella is a former federal prosecutor who served for 30 years in the U.S. Department of Justice, specializing in money laundering and asset forfeiture matters. He was a Deputy Chief of the Justice Department's Asset Forfeiture and Money Laundering Section in Washington, DC for many years, and retired in 2015 as the Chief of the Asset Forfeiture and Money Laundering Section in the U.S. Attorney's Office in Baltimore, Maryland.

Mr. Cassella is now a consultant on money laundering and asset forfeiture issues, providing training to judges and law enforcement agencies in the United States and in numerous other countries, including most recently, Latvia and other countries in Eastern Europe, Peru, Brazil and other countries in South America, and Israel, Jordan, Qatar and the UAE in the Middle East. He also consults with private law firms engaged in litigation.

Mr. Cassella is the author of two treatises – *Federal Money Laundering: Crimes and Forfeitures* (2d ed.) (Juris, New York 2020) and *Asset Forfeiture Law in the United States* (2d ed.) (Juris, New York 2013) – and of more than 50 law review articles on money laundering and forfeiture. He is also an annual presenter at the Cambridge International Symposium on Economic Crime, regularly speaks as a guest lecturer at other academic institutions and conferences and has served as an expert witness in international money laundering and asset forfeiture cases.

Overview

- The Stati Parties perpetrated a series of schemes to loot two Kazakh oil and gas companies (the "Kazakh Companies") of hundreds of millions of dollars, to the detriment of the companies' creditors (including U.S. investors in notes issued in the United States to fund oil and gas exploration by the companies), and the Government of Kazakhstan (which was held liable for the Kazakh Companies' financial collapse in the ECT Arbitration proceeding initiated by the Stati Parties under the Energy Charter Treaty).

- In large part, the schemes were perpetrated by engaging in transactions with entities (including shell companies) incorporated in jurisdictions that do not require the identification of the actual or "beneficial owners" of the entities or their assets. In this way, the Stati Parties were able to transfer millions of dollars from or belonging to the Kazakh Companies, which they owned, to seemingly unrelated entities that the Stati Parties secretly owned or controlled as well. As a result, the Kazakh Companies suffered a financial collapse that caused underfinancing of contractual obligations of the Kazakh Companies under their respective subsoil use contracts.

- As a result of these schemes, the Stati Parties were able to retain hundreds of millions of dollars of fraudulently obtained funds in the names of the seemingly unrelated entities. They proceeded to use those funds, which were held in numerous bank accounts controlled by the Stati Parties at Rietumu Bank in Latvia, to pay bribes to public officials in countries where the Stati Parties had economic interests, to acquire luxury items, and to finance a luxurious lifestyle, including the construction of a castle in Moldova, while concealing the ownership of those funds, their location, and their connection to the scheme to defraud from the Kazakh Government and other victims.

- The transactions involving the fraudulently obtained funds constitute criminal violations of Latvian money laundering laws. Moreover, because one part of the scheme involved investors in the United States whose funds were transferred overseas, and because virtually every aspect of the scheme involved dollar-denominated transactions that passed through

correspondent bank accounts in the United States, the transactions constituted criminal violations of US money laundering laws as well.

- With respect to any money laundering offense that occurred between 2006 and 2015, the statute of limitations has likely expired on charges that could have been brought in the United States (the statute of limitations for money laundering in the United States is five years from the date of the financial transaction); but the statute of limitations has *not* expired with respect to the money laundering charges that could be brought in Latvia. (The limitations period in Latvia is 15 year under Section 56 of the Criminal Law.) Thus, the Stati Parties remain subject to criminal prosecution for money laundering in that country.

- Finally, it appears that the Stati Parties may have perpetrated a fraud upon the Tribunal in the ECT Arbitration that resulted in an arbitral award of nearly $500 million in their favor. If so, that ECT Award would constitute the proceeds of crime (i.e. fraud), and any attempt by the Stati Parties to collect on the Award could constitute a money laundering offense under US law or the law of any other country where the collection occurred. There would be no statute of limitations with respect to such money laundering charges.

The Fraud Schemes

- The Kazakh Companies that the Stati Parties owned and controlled were known as Tolkynneftegaz LLP ("TNG") and Kazpolmunay LLP ("KPM"). The Stati Parties extracted funds from those oil and gas companies, causing their financial collapse, in three ways.

1. The Tristan Notes

- The Stati Parties formed a company known as Tristan Oil Ltd. ("Tristan") in the British Virgin Islands ("BVI") for the sole purpose of issuing notes to investors whose funds were ostensibly to be used exclusively to finance the operations of TNG and KPM in

Kazakhstan.[1] In fact, as detailed in the PwC Report, the Stati Parties defrauded the investors by using the funds for purposes other than the operation of TNG and KPM, and by engaging in transactions with related parties that falsely inflated the costs of the oil and gas operations.[2] Thus, the funds raised from the investors, most of whom were in the United States, constitute the proceeds of a scheme to defraud in violation of US law.

- Specifically, between December 2006 and June 2007, Tristan raised $420 million by issuing promissory notes to investors in the United States (the "Tristan Notes"). The investors (the "Noteholders") were promised 10.5% interest on the Notes and were told that the money would be used exclusively for oil and gas exploration in Kazakhstan by TNG and KPM, and that the money would not be used in any major transactions with related parties without disclosure to the Noteholders.[3]

- In 2006 and 2007, Tristan used the Noteholder's money to loan $325 million to TNG and KPM at 16% interest or more,[4] and another $76 million to Terra Raf, at zero interest.[5] Terra Raf is another Stati company that owns TNG. The differential in the interest rates between what Tristan charged TNG and KPM and what it promised to pay the Noteholders resulted in Tristan's draining approximately $62 million from the Kazakh Companies, while providing the related entity, Terra Raf, with an interest-free loan.[6]

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[1] *See* Attachment SC-1, PwC Report (July 29, 2020) at § 3.9.

[2] *See* Attachment SC-1, PwC Report (July 29, 2020) at pp. 11-40.

[3] *See* Attachment SC-1, PwC Report (July 29, 2020) at §§ 3.2-3.9.

[4] $211 million was loaned at 17.65% and the balance at 16%. *See* Attachment SC-1, PwC Report (July 29, 2020) at § 4.7.

[5] *See* Attachment SC-1, PwC Report (July 29, 2020) at § 4.9.

[6] *See* Attachment SC-1, PwC Report (July 29, 2020) at §§ 4.28-4.31.

- Moreover, Terra Raf used the Noteholders' money, at least in part, to fund activities that had nothing to do with oil and gas exploration in Kazakhstan, and to funnel money through other related entities in violation of the representations made to the Noteholders. For example, between 2006 and 2009, another Stati company, Jepson Corporation Ltd. ("Jepson"), received at least $19.2 million directly from Terra Raf or from yet another Stati company called Hayden Intervest Ltd. ("Hayden"), to pay for an estate in Moldova known as the "Stati Castle".[7] Hayden, in turn, derived the money that it transferred to Jepson from Terra Raf as well as from the fraudulent related-party transactions discussed below involving the sale of oil and gas to Vitol FSU B.V. ("Vitol") and the fictitious equipment purchases from Perkwood Investment Ltd. ("Perkwood").

- The accounts used by Tristan, Terra Raf, Hayden and Jepson to conduct these transactions were all held at Rietumu Bank in Latvia.

2. The Sale of Oil and Gas to Vitol

- TNG and KPM extracted petroleum products from oil and gas fields in Kazakhstan and sold them to Vitol, a large Dutch-Swiss materials trading company that trades in petrol, natural gas and other products. But the sales were conducted in such a way that the Stati Parties were able to divert a substantial portion of the oil and gas revenue to a related, secretly held company, and not to TNG and KPM.

- According to the PwC Report,[8] the scheme worked like this: TNG and KPM sold crude oil and gas condensate not to Vitol directly but to two companies, General Affinity Ltd.

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[7] The bank statements for the Jepson account provided by Rietumu Bank show the flow of money from Terra Raf and Hayden through Jepson to an entity in Moldova called Vila Demetra which, according to the Republic of Kazakhstan, owns the Stati Castle. *See* Attachment SC-2, Bank statements for the Jepson account at Rietumu Bank August 3, 2007 - December 10, 2009.

[8] *See* Attachment SC-1, PwC Report (July 29, 2020) at §§ 5.10-5.15.

("General Affinity") and Stadoil Ltd. ("Stadoil") respectively, shell companies registered in the UK that were owned or controlled by Anatolie Stati and Gabriel Stati and associates of the Stati Parties. Stadoil and General Affinity, in turn, sold the oil and gas first to Terra Raf, and from July 2007 to Montvale Ltd. ("Montvale"), a shell company registered in the BVI and controlled by Anatolie Stati through a power of attorney.

- Terra Raf and later on Montvale sold the oil and gas to Vitol, but instead of forwarding all revenue that they received from Vitol to Stadoil and General Affinity, so that they, in turn, could pay the Kazakh Companies, Montvale diverted at least $158 million to Hayden, yet another BVI shell company secretly controlled by Anatolie Stati and Gabriel Stati.[9] In this way, TNG and KPM were deprived of the full value of the oil and gas that they sold to Vitol, leading to their financial collapse, while the Stati Parties secretly retained the diverted funds in Hayden's account at Rietumu Bank in Latvia.[10]

3. Fictitious Equipment Purchases from Perkwood

- Azalia Ltd. ("Azalia"), a company registered in the Russian Federation that was controlled by three of Anatolie Stati's closest co-workers at Ascom Group S.A. (wholly owned by Anatolie Stati), purchased the components of a liquefied petroleum gas production facility to be operated by TNG in Kazakhstan from TGE Gas Engineering GmbH ("TGE"), a German company, for approximately $34 million.[11] This appears to have been a legitimate transaction. Shortly thereafter, however, the Stati Parties "re-sold" this equipment from Azalia to Perkwood at a much higher price. The Stati Parties then caused TNG to ostensibly "purchase" the same equipment from Perkwood, which was registered in the

[9] *See* Attachment SC-1, PwC Report (July 29, 2020) at § 5.21.

[10] *See* Attachment SC-1, PwC Report (July 29, 2020) at §§ 5.18-5.22.

[11] *See* Attachment SC-1, PwC Report (July 29, 2020) at § 4.36.

UK and yet another entity secretly controlled by the Stati Parties through straw owners. Perkwood conducted no business, but instead produced fictitious invoices that allowed TNG to justify sending millions of dollars to Perkwood's account at Rietumu Bank in Latvia. Perkwood, in turn, transferred the illicitly obtained funds to Azalia's account at Rietumu Bank from where funds were transferred to the Hayden account at the same bank.[12] Altogether, according to the PwC Report, Perkwood overcharged TNG by at least $80 million.[13]

The Money Laundering Offenses

- For the purposes of the ensuing discussion of money laundering, it is assumed that the Sale of Oil and Gas to Vitol scheme and the Perkwood scheme described above constituted violations of the criminal laws of Kazakhstan relating to fraud and other financial crimes, and that the money obtained or retained by the Stati Parties as a consequence of those schemes were the "proceeds" of those crimes. This assumption is supported by the legal opinion of Mukhit Yeleuov, a lawyer specialized in Kazakh law, who has opined that he has reviewed the same materials as I have reviewed in reference to each of these schemes, and has concluded that each of them constituted a violation of Kazakh criminal law.[14]

- The Tristan Note scheme, on the other hand, involved violations of the federal mail and wire fraud statutes in the United States, which means that the money raised from the Tristan Noteholders was the proceeds of those federal offenses.

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[12] *See* Attachment SC-1, PwC Report (July 29, 2020) at §§ 4.34-4.40.

[13] *See* Attachment SC-1, PwC Report (July 29, 2020) at § 4.37.

[14] *See* Attachment SC-3, Legal Opinion of Mukhit Yeleuov (July 30, 2020).

1. Latvia

- Most if not all of the financial transactions involved in the aforementioned fraud schemes (*e.g.,* the payments by Terra Raf to Jepson and by Jepson to the entity in Moldova that paid for the Stati Castle; the payments by Vitol to Montvale and by Montvale to Hayden; and the payments by TNG to Perkwood and from Perkwood via Azalia to Hayden) involved the accounts held by the various Stati-controlled entities at Rietumu Bank in Latvia.[15] Likewise, the eventual disbursement of those funds by Hayden, which are discussed below, also occurred at Rietumu Bank. Accordingly, it is appropriate to look to Latvian law to determine if any of those transactions constituted criminal money laundering offenses.[16]

- I have served as an advisor to the Government of Latvia and have provided training on two occasions to the judges, prosecutors, law enforcement officers and members of the Financial Intelligence Unit ("FIU") in Latvia with respect to Latvia's money laundering and asset forfeiture laws. Accordingly, I am familiar with those laws and their application.

- In Latvia, the Law on the Prevention of Money Laundering and Terrorism Financing contains three provisions that are applicable to the movement of illicit funds in this case.[17]

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[15] *See* Attachment SC-1, PwC Report (July 29, 2020), Appendix 4.1.

[16] The Latvian money laundering statutes were based on the recommendations of the 2004 United Nations Convention on Corruption ("UNCAC"), which is the international standard for enacting criminal provisions relating to money laundering.

[17] The Law on the Prevention of Money Laundering and Terrorism Financing came into effect on January 1, 2009. Some of the transactions involving the proceeds of the fraud in violation of Kazakh law, as well as some of the transactions involving the proceeds of US law in connection with the Tristan Note scheme, will have occurred before the effective date of the statute. But all of those transactions were part of a conspiracy that continued after January 1, 2009. Assuming that conspiracy law in Latvia is similar to the law in other jurisdictions, a conspiracy that begins before the effective date of a statute, and continues after that date, constitutes an offense that occurred after the effective date of the statute. *See United States v. Tokars*, 95 F.3d 1520, 1539 (11th Cir. 1996) (rejecting the argument that the conspiracy statute for money laundering offenses applies only to conspiracies that began after the effective date of the statute). In all events, at least some transactions in violation of Latvian law did occur after the 2009 effective date of the statute.

Under § 5(1)(1), it is a money laundering offense for any person, being aware that the money in question is the "proceeds of crime," to change the ownership or location of the money for the purpose of concealing or disguising the illicit ownership of the funds.

- Under § 5(1)(2), it is a money laundering offense for any person, being aware that the money in question is the "proceeds of crime," to conceal or disguise the nature, origin, location, disposition, movement or ownership of the funds by any means.

- Finally, under § 5(1)(3), it is an offense for any person, being aware that the money in question is the "proceeds of crime," to acquire, possess, use or dispose of money owned by another person for any purpose.

- Importantly, Latvian law defines "proceeds of crime" to include both property obtained as a result of a domestic crime, as well as property obtained as a result of foreign crime – *i.e.,* an offense "committed outside the territory of the Republic of Latvia [if] criminal liability is intended for such criminal offence at the place of its commitment." § 5(2). *See also* § 4(1) (defining "proceeds of crime" as property that has "come into the ownership or possession of a person as a direct or indirect result of a criminal offence").

- In this case, the payments for the oil and gas sold by the Kazakh Companies to Vitol became the proceeds of crime when those funds were diverted by Montvale to Hayden at Rietumu Bank in Latvia. Assuming those transactions constituted violations of Kazakh law, any subsequent disbursement of those funds by Hayden would have been transactions involving the "proceeds of crime" by persons – the Stati Parties – who were aware that the money was criminally derived.

- Similarly, assuming the transactions involving Perkwood constituted violations of Kazakh law, the payments from TNG to Perkwood based on the fictitious invoices became the proceeds of crime when the money was received in Perkwood's accounts at Rietumu Bank in Latvia. Any subsequent disbursement of those funds by Perkwood to Azalia at Rietumu Bank, by Azalia to the Hayden account at the same bank, and by Hayden to other

recipients, would have been transactions involving the "proceeds of crime" by persons – the Stati Parties – who were aware that the money was criminally derived.

- In addition, the proceeds of the Tristan Notes constituted the proceeds of violations of federal law in the United States – *viz.* the mail and wire fraud statutes, 18 U.S.C. §§ 1341 and 1343, respectively. Each of the transfers of those funds from Terra Raf or Hayden to the Jepson account at Rietumu Bank in Latvia, and from Jepson to the account in Moldova of the entity that paid for the Stati Castle would have been a transaction involving the "proceeds of crime" by persons – the Stati Parties – who were aware that the money was criminally derived.

- In all likelihood, a Latvian court would consider the transfer of the criminal proceeds from Perkwood to Hayden, two shell companies held surreptitiously by the Stati Parties and formed for the purpose of concealing the Stati Parties' ownership of the funds, or from Terra Raf through Jepson to the Moldovan bank, to have been transactions involving the proceeds of crime that concealed or disguised "the nature origin, location, disposition movement or ownership" of those funds, in violation of § 5(1)(2), and quite likely of the other money laundering statutes as well.

- Moreover, the documentary evidence indicates that once Hayden was in possession of the criminal proceeds from the Tristan Notes, Sale of Oil and Gas and Perkwood schemes in its account at Rietumu Bank, it disbursed those funds to parties in Kurdistan, where the Stati Parties have business interests, to politicians ("politically exposed persons" or "PEPs") in Kazakhstan, Moldova, Romania, South Sudan and the Democratic Republic of Congo, and to buy luxury items and to finance a luxurious lifestyle. The latter payments included the purchase of at least five Mercedes and BMW automobiles, payments for trips

by private jet, and the purchase of jewelry at Harrods' department store in London, totaling all together more than $1.1 million.[18]

- In all likelihood, a Latvian court would consider the disbursements by Hayden, a shell company formed in the BVI without disclosing the ownership of the Stati Parties, but over which the Stati Parties exercised control through a general power of attorney,[19] to have been transactions involving the proceeds of crime that concealed or disguised "the nature origin, location, disposition, movement or ownership" of those funds, in violation of § 5(1)(2), and quite likely of the other money laundering statutes as well.

- It is worth noting that the Stati Parties had almost three dozen shell companies engaging in obscure business transactions the purpose of which is unclear, and that the vast majority of these companies held bank accounts at the Rietumu Bank,[20] which was ordered to pay a €80 million fine by the French authorities for aiding and abetting money laundering.[21] The Latvian courts would likely take this into account in determining whether the transactions involving the Jepson, Perkwood, Azalia and Hayden accounts at Rietumu Bank were designed to conceal or disguise the nature, origin, location, disposition, movement or ownership of the funds involved in the transactions.

2. The United States

- The transfers of the proceeds of the Tristan Notes by Tristan to Terra Raf were transfers of funds from the United States to a place outside of the United States (*i.e.,* Latvia) that

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[18] *See* Attachment SC-4, PwC Report on Money Laundering (July 29, 2020) at §§ 3.8-3.13.

[19] *See* Attachment SC-5, Powers of Attorney concerning Hayden (October 5, 2005 - October 5, 2016).

[20] *See* Attachment SC-1, PwC Report (July 29, 2020), Appendix 4.1.

[21] *See* Attachment SC-6, The Baltic Times, "Rietumu Banka hit with heavy fine over laundering scheme in France" (July 6, 2017).

involved the proceeds of mail and wire fraud in the United States and that promoted the mail and wire fraud offenses. As such, each of those transactions constituted a violation of the US federal money laundering statutes, including 18 U.S.C. § 1956(a)(1)(B)(i) (concealment money laundering), 1956(a)(2)(A) (international promotion money laundering), and 1957 (transaction involving more than $10,000 in criminal proceeds), which could be prosecuted in the United States but for the expiration of the statute of limitations. If there is evidence that those events were part of a conspiracy that has continued to within the five-year limitations period, they could be included in a prosecution for money laundering conspiracy today.

- In addition to the money laundering offenses based on the US violations that were part of the Tristan Notes scheme, there may be US money laundering violations based on the US dollar-denominated transactions that occurred between foreign banks in Latvia, Moldova and elsewhere.

- It appears that all of the transactions involving the movement of funds to, between, and from the accounts at Rietumu Bank were denominated in US dollars. From the provided documents, it is unclear how these transfers were effected. It is well-known, however, that US dollar-denominated transfers between accounts at foreign banks generally must pass through correspondent bank accounts in the United States – specifically, accounts at banks in the Southern District of New York (New York City). Accordingly, it is highly likely that at least some if not all of the transactions to and from the Jepson, Montvale, Perkwood and Hayden accounts involved the transfer of money, however briefly, into and out of the United States.

- It is a violation of US money laundering law to transfer *any funds* – whether or not the proceeds of crime – into or out of the United States for the purpose of promoting certain violations of foreign law, including bank fraud and public corruption. 18 U.S.C. § 1956(a)(2)(A). *See BCCI, S.A. v. Khalil,* 56 F. Supp. 2d 14, 54 (D.D.C. 1999) (§ 1956(a)(2)(A) has no proceeds requirement; it was an offense to send money into the United States to commit a bank fraud offense), aff'd in part, rev'd in part and remanded, 214 F.3d 168, 174

(D.D.C. 2000). *See also United States v. Moreland,* 622 F.3d 1147, 1166-67 (9th Cir. 2010); *United States v. Krasinski,* 545 F.3d 546, 551 (7th Cir. 2008).

- Moreover, courts in the United States have asserted jurisdiction over such transactions when the transaction involved nothing more that the instantaneous movement of money between accounts at foreign banks through a correspondent account in New York. *See, e.g., United States v. Prevezon Holdings, Ltd.,* 251 F.Supp.3d 684 (S.D.N.Y. 2017) (holding that the transfer of proceeds of foreign crime between foreign banks in foreign country can be a money laundering offense if the money passed through a correspondent account in the US; and noting that in international transactions such use of a US bank is essential, not trivial; defendant need not have known transaction would go through the US); *United States v. All Assets Held at Bank Julius Baer & Co.,* 251 F. Supp.3d 82, 94 (D.D.C. 2017) (same).

- If, as evidence suggests, the payments by Jepson to the account in Moldova were in furtherance of the Tristan Notes scheme, or if the payments to and by Hayden to PEPs in Kurdistan, Kazakhstan, Moldova, Romania, South Sudan and the Democratic Republic of Congo were intended to be bribes, a court in the Southern District of New York would, in all likelihood, regard such payments as violations of § 1956(a)(2)(A).

- Moreover, it is a violation of US money laundering law to transfer more than $10,000 in criminally-derived funds into or out of the United States *for any purpose.* 18 U.S.C. § 1957. *United States v. Kratt*, 579 F.3d 558, 561 (6th Cir. 2009) ("Section 1956 criminalizes classic money laundering, while section 1957 criminalizes moving around at least $10,000 in criminal proceeds for any purpose through a financial institution"); *United States v. Huber*, 404 F.3d 1407, 1057 (8th Cir. 2005) (section 1956 differs from section 1957 with respect to the specific intent element; "no intent to promote or knowledge of a design to conceal is required, but the transaction must consist of property with a value greater than $10,000").

- US law does not define "proceeds of crime" as broadly as Latvian law; not all foreign crimes are predicates for money laundering in the United States. But bank fraud – *i.e.,* a scheme to defraud a foreign bank – is such a predicate. 18 U.S.C. § 1956(c)(7)(B). *See*

United States v. Chao Fan Xu, 706 F.3d 965 (9th Cir. 2013) (alleging fraud committed in China against Chinese bank in violation of Chinese law as the SUA for § 1957). Accordingly, if any of the schemes discussed above were deemed to have implicated the interests of a foreign bank – such as an investment bank that acquired the notes issued by Tristan – and if the borrowed funds that were not forwarded to the Kazakh Companies were transferred between foreign banks as US dollars, in all likelihood a court in the Southern District of New York would regard such transfers as violations of § 1957. *See United States v. Prevezon Holdings, Ltd.,* 251 F. Supp.3d 684 (S.D.N.Y. 2017) (to show that money was proceeds of bank fraud, it is only necessary to show that deceiving a bank was part of a scheme that resulted in obtaining money; it is not necessary to show that the bank was the intended victim or that the bank lost money).

- As mentioned earlier, unlike in the case of the Stati Parties' criminal liability under Latvian money laundering laws, the statute of limitations for criminal prosecutions of these offenses in the United States is likely to have expired. Nevertheless, the transactions show that a large-scale international criminal money laundering operation implicating the United States did take place and would be subject to criminal prosecution but for the expiration of the statute of limitations.

3. The ECT Award

- In 2010, the Stati Parties initiated an international arbitration against Kazakhstan under the Energy Charter Treaty and the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce. The oral hearing of the ECT Arbitration took place

entirely in Paris, France. At the conclusion of the proceedings, on December 19, 2013, the Tribunal awarded nearly $500 million to the Stati Parties.[22]

- It later became apparent that the ECT Award was obtained by fraud. For example, in a proceeding in the High Court of Justice in London regarding the enforcement of the Award, the court recited the facts of the Perkwood fraud scheme and the evidence that was presented to the Arbitral Tribunal in that regard and held that "there is a sufficient prima facie case that the Award was obtained by fraud" and that "there was a fraud on the Tribunal."[23] The English court further held that the interests of justice required Kazakhstan's fraud allegations to be "examined at a trial and decided on their merits."[24] In February 2018, however, the Stati Parties filed a notice seeking to voluntarily discontinue the enforcement of the ECT Award in England so as to avoid the trial on the merits of the fraud. This discontinuance was rejected by the High Court, but the Stati Parties appealed and were eventually allowed to discontinue the case, but only on the condition that they never again institute any proceedings in England and Wales to enforce the ECT Award.[25]

- On August 13, 2019, Kazakhstan filed a criminal complaint against the Stati Parties with the Public Prosecutor at the Paris High Court in Paris, alleging *inter alia*, that the Stati Parties obtained the ECT Award by concealing the Perkwood fraud scheme and the relationship between Perkwood and the Stati Parties, and by submitting false documents.

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[22] Unless otherwise noted, the facts relating to the arbitral proceeding and ensuing award are taken from the complaint filed against the Stati Parties by the Deputy Minister for Justice of Kazakhstan with the Public Prosecutor in the Paris High Court on August 13, 2019.

[23] Attachment SC-7, *Stati v. Republic of Kazakhstan,* Case No: CL-2014-000070*,* 2017 EWHC 1348 (Judgment of Justice Knowles) (June 6, 2017) at §§ 48 and 92.

[24] Attachment SC-7, *Stati v. Republic of Kazakhstan,* Case No: CL-2014-000070*,* 2017 EWHC 1348 (Judgment of Justice Knowles) (June 6, 2017) at § 93.

[25] *See* Attachment SC-8, *Stati v. Republic of Kazakhstan,* Case No: A4/2018/1309, 2018 EWCA Civ 1896 (Judgment of Justice Patter, Justice Richards and Justice Leggatt) (August 10, 2018) at §§ 33 and 67.

- On December 11, 2019, the Public Prosecutor issued a decision advising that the facts alleged in Kazakhstan's complaint, which included the allegation that the Stati Parties procured the ECT Award by fraud on the Tribunal,[26] "constitute an offence" under French law, but that "criminal proceedings will not be brought [because] the legal deadline to be able to rule on them has passed."[27]

- For the purposes of a money laundering prosecution, it is necessary to determine only that the property involved in the alleged financial transaction was the proceeds of a criminal offense that can serve as a predicate offense for money laundering under local law. It is not necessary to show that the underlying criminal offense has resulted in a conviction. Nor is it necessary to show that the underlying offence occurred within the statute of limitations for money laundering. To the contrary, as long as the underlying offense is a predicate offense for money laundering under local law, the money laundering offense may result in a criminal prosecution regardless of how long ago the predicate offense occurred, or whether it was ever charged as a criminal offense in the jurisdiction where it occurred. *See* exemplarily for the United States: *United States v. Thiam*, 934 F.3d 89 (2nd Cir. 2019) (describing what the Government must prove when the underlying predicate is a foreign offense that was never charged and where no conviction was obtained); *United States v. Silver,* 948 F.3d 538 (2nd Cir. 2020) (the statute of limitations for money laundering runs from the date of the financial transaction, which is the *actus reus* of the crime, not from the date of the underlying predicate offence; thus, a money laundering conviction may be based

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[26] *See* Attachment SC-9, *Republic of Kazakhstan v. Anatolie Stati, Gabriel Stati, Ascom Group SA, Terra Raf Trans Traiding Ltd.*, Criminal Complaint filed with the Public Prosecutor at the Paris High Court (August 13, 2019) at pp. 19-22 and 24-25.

[27] *See* Attachment SC-10, *Messrs Anatolie Stati and Gabriel Stati Ascom Group SA, Terra Raf Trans Traiding Ltd.*, Public Prosecutor's Office No.: 19225000576, Judicial ID: 1904331555D (Decision of the Public Prosecutor) (December 11, 2019) at p. 1.

on transactions involving proceeds of an offence that occurred outside the 5-year limitations period for money laundering).

- The proceeds of a criminal offense include any property that would not have been obtained "but for" the criminal offense. Moreover, such proceeds may include intangible property such as an award issued by an arbitral tribunal.

- If as the evidence suggests, the Award in the ECT Arbitration was obtained by means of a fraud perpetrated on the Tribunal, the Award would constitute the proceeds of that criminal offense in violation of French law, and any later financial transaction involving the ECT Award could constitute a money laundering offense.

- Accordingly, any financial transaction involving the $500 million Award that occurs in any country that recognizes the perpetration of fraud upon the Tribunal in the ECT Arbitration in violation of French law as a predicate offense for money laundering could be prosecuted as a money laundering offense in such country, assuming the *mens rea* elements of the offense are satisfied. In particular, any collection of the ECT Award by the Stati Parties could constitute a money laundering offense because the Stati Parties are aware that the Award was obtained by fraud.

4. The Sharing Agreement

- The Noteholders who invested in the Tristan Notes and did not receive payment on the interest, which constituted an "Event of Default", subsequently entered into a Sharing and Assignment of Rights Agreement (the "Sharing Agreement") whereby they agreed to accept a portion of the ECT Award in satisfaction of the rights as Noteholders.[28] The

[28] *See* Attachment SC-11, Sharing Agreement and Assignments of Rights dated December 17, 2012 among (i) Tristan Oil Ltd., (ii) Anatolie Stati, (iii) Gabriel Stati, (iv) Ascom Group, S.A., (v) Terra Raf Trans Traiding Ltd.,

Sharing Agreement is managed by Wilmington Trust National Association in the United States.

- For the reasons set forth above, distribution of the ECT Award proceeds to the Noteholders under the Sharing Agreement could constitute a money laundering offense if any part of that distribution occurred in a country that recognized the fraud on the Tribunal in the ECT Arbitration in violation of French law as a predicate offense for money laundering.

- Unlike many EU countries, the United States recognizes only a few categories of foreign crimes as predicate offences for money laundering.[29] Fraud in obtaining a judicial judgment does not appear to fall into any of those categories. The distribution of the proceeds of the ECT Award from a place outside of the United States to a place within the United States would constitute a money laundering offense in the United States under 18 U.S.C. § 1956(a)(2)(A), however, if the distribution of the Award proceeds were viewed as an act in furtherance of the Tristan Notes scheme, which as mentioned earlier, constituted a violation of US federal mail and wire fraud statutes.

Conclusion

- For all of these reasons, it appears that the Stati Parties could be prosecuted criminally in Latvia for money laundering offenses involving the proceeds of the Tristan Notes scheme, the Sales of Oil and Gas scheme, and the Perkwood scheme, and in the United States and

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(vi) the parties listed under the heading "Majority Noteholders" on the signature pages hereto and (vii) those Noteholders who subsequently become bound by the terms of this Agreement at p. 1.

[29] *See* 18 U.S.C. § 1956(c)(7)(B) (listing six categories of foreign offences and one catch-all category regarding offenses for which extradition is authorized under a multi-lateral treaty).

in other jurisdictions for conducting any future financial transaction involving the Award from the Tribunal in the ECT Arbitration.

Respectfully submitted,

Stefan D. Cassella

July 30, 2020

List of Attachments

No.	Description	Date
Attachment SC-1	PwC Expert Report: Review of the application of TNG and KPM funds by the Stati Parties ("PwC Report")	July 29, 2020
Attachment SC-2	Bank statements for the Jepson account at Rietumu Bank	August 3, 2007 - December 10, 2009
Attachment SC-3	Legal Opinion Mukhit Yeleuov	July 30, 2020
Attachment SC-4	PwC Expert Report: Review of transactions by the Stati Parties for characteristics of money laundering risks on money laundering ("PwC Report on Money Laundering")	July 29, 2020
Attachment SC-5	Powers of Attorney concerning Hayden	October 5, 2005 - October 5, 2016
Attachment SC-6	The Baltic Times, "Rietumu Banka hit with heavy fine over laundering scheme in France"	July 6, 2017
Attachment SC-7	*Stati v. Republic of Kazakhstan,* Case No: CL-2014-000070*,* 2017 EWHC 1348 (Judgment of Justice Knowles)	June 6, 2017
Attachment SC-8	*Stati v. Republic of Kazakhstan,* Case No: A4/2018/1309, 2018 EWCA Civ 1896 (Judgment of Justice Patter, Justice Richards and Justice Leggatt)	August 10, 2018
Attachment SC-9	*Republic of Kazakhstan v. Anatolie Stati, Gabriel Stati, Ascom Group SA, Terra Raf Trans Traiding Ltd.*, Criminal Complaint filed with the Public Prosecutor at the Paris High Court	August 13, 2019
Attachment SC-10	*Messrs Anatolie Stati and Gabriel Stati Ascom Group SA, Terra Raf Trans Traiding Ltd.*, Public Prosecutor's Office No.: 19225000576, Judicial ID: 1904331555D (Decision of the Public Prosecutor)	December 11, 2019
Attachment SC-11	Sharing Agreement and Assignments of Rights among (i) Tristan Oil Ltd., (ii) Anatolie Stati, (iii) Gabriel Stati, (iv)	December 17, 2012

	Ascom Group, S.A., (v) Terra Raf Trans Traiding Ltd., (vi) the parties listed under the heading "Majority Noteholders" on the signature pages hereto and (vii) those Noteholders who subsequently become bound by the terms of this Agreement	