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CRIMINALIZING MONEY LAUNDERING AS A METHOD AND MEANS OF CURBING CORRUPTION, ORGANIZED CRIME, AND CAPITAL FLIGHT IN RUSSIA

Sam Chung[†]

Abstract: In the wake of the post-Soviet privatization in the Russian Federation, corruption and organized crime have flourished, contributing to capital flight, economic instability, and the collapse of Russia's financial system. Over the same period, Russian legislators have worked to reform the legal system in order to facilitate their country's transition to democracy and the rule of law. In 1997, legislative efforts led to the enactment of a new criminal code that emphasizes the rights of the individual as opposed to the power of the government. More recently, several draft bills targeting money laundering activities and banking reform have been introduced in the Russian Parliament in an effort to confront Russia's economic crisis. Government corruption and the close connection between organized crime and the banking industry, however, have led to fierce opposition to the enactment of such reform measures. Consequently, these measures have been stalled. To confront the problems of crime and economic crisis, Russia should enact a comprehensive anti-money laundering system that incorporates provisions similar to those contained in the recent draft bills. In light of the success of the U.S. anti-money laundering regime, the enactment of a similar system in Russia would be a significant step towards confronting organized crime, government corruption, and an ailing economy.

I. INTRODUCTION

Events in 1998 and 1999 involving Boris Berezovsky, a Russian banking tycoon, media mogul, and former Commonwealth of Independent States Executive Secretary, provide insight into Russia's post-privatization problems with corruption, money laundering, and capital flight. In late 1998, former FBI and CIA administrator William Webster linked Berezovsky to money laundering activities when he indicated that Berezovsky had diverted privatized funds to offshore accounts.¹

In early 1999, in part because of his connections with high-ranking members of the government (including President Boris Yeltsin), Berezovsky became the focus of an investigation into Kremlin corruption led by Russian

[†] The author would like to thank Jim Lord for the unique help he provided with this research project. The author would also like to give his deepest gratitude to his mother, father, and sister Moon for a lifetime of love and support.

¹ *The Duma Needs Berezovsky's Millions*, WHAT THE PAPERS SAY, Nov. 13, 1998, available in 1998 WL 17741694. While Berezovsky declared a salary of \$43,000 in 1997, the value of his assets has been estimated at \$3 billion. *Russia, a Superpower Falls Apart*, EUROMONEY, Sept. 10, 1998, available in 1998 WL 10017968.

procurator² Yuri Skuratov.³ In April, Skuratov issued an arrest warrant for Berezovsky. The warrant accused Berezovsky of using a Swiss-based company to divert hundreds of millions of dollars from the Russian Aeroflot Corporation.⁴ The Kremlin responded to Skuratov's investigation by releasing a video allegedly showing the prosecutor engaged in illicit conduct with two prostitutes.⁵ Yeltsin used this video to declare Skuratov unfit to perform his official duties.⁶ Although Yeltsin was successful in obtaining Skuratov's suspension, attempts to remove the prosecutor were twice blocked by the Russian Federation Council.⁷ Commentators in Russia have suggested that Yeltsin's actions were intended to prevent the exposure of high-level crime and corruption.⁸

The controversy involving Berezovsky is typical of a post-Soviet Russia that is plagued by the influence and effects of political corruption and organized crime. For the past decade, Russian lawmakers have struggled to control the pervasive problems of crime, corruption, and economic instability by overhauling Russia's criminal laws. As part of this effort, the Russian Federation enacted a new criminal code that criminalized many activities such as money laundering.⁹ More recently, Russian legislators have attempted to address capital flight, corruption, and crime by proposing the enactment of aggressive anti-money laundering legislation. Political constituents connected to Russia's banking industry have consistently blocked the passage of such legislation.

This Comment discusses and evaluates the Russian Federation's efforts to combat corruption, crime, and capital flight and compares Russia's recently proposed money laundering legislation with the U.S. anti-money laundering regime. Part II provides a description of the post-Soviet economy and the rise of corruption and organized crime in Russia. Part III describes current efforts by Russian legislators to curb money laundering activities and compares the pending Russian legislation to similar legislation

² A Russian procurator is similar in function to a prosecutor. In addition to carrying out prosecutorial functions, however, Russian procurators carry out policing and adjudicative functions such as granting warrants for searches, seizures, and arrests. STEPHEN HANDELMAN, *COMRADE CRIMINAL: RUSSIA'S NEW MAFIYA* 280-81 (1995). Unless otherwise stated, the term "prosecutor" will hereinafter be used in reference to a Russian "procurator."

³ *Yeltsin Lashes out at Prosecutor*, *MOSCOW TIMES*, Apr. 10, 1999, available in 1999 WL 6806841.

⁴ Owen Matthews, *Warrant out for Arrest of Berezovsky. After Raids*, *SCOTSMAN*, Apr. 7, 1999, available in 1999 WL 15108704.

⁵ Sharon LaFraniere, *Yeltsin Loses Second Bid to Oust Top Prosecutor, Legislators Say Kremlin Lacked Facts*, *WASH. POST*, Apr. 22, 1999, at A18.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ See *infra* notes 75-82.

in the United States. Part IV examines barriers to effective money laundering prosecution in the Russian Federation and argues that the proposed laws, if passed, will have a limited effect in the short-term given the limitations of the post-Soviet legal system. Changes in Russian society and the Russian legal system, such as the development of an independent judiciary, the establishment of systems for political accountability, and the reform of Russia's banking system, must be effectuated if the proposed laws are to have a significant effect. Part V offers recommendations for the Russian anti-money laundering regime.

The need for changes in Russian society and its legal system should not delay the immediate enactment of a comprehensive anti-money laundering regime that more effectively deals with Russia's problems of organized crime and financial collapse. To achieve this goal, international pressure in the form of conditional economic relief is necessary to counter efforts to thwart reform. Only through the implementation of an anti-money laundering system will Russia be able to trace the illicit activities of the Mafiya¹⁰ and stem the flow of capital out of Russia. To achieve the goals of economic and legal reform, organizations and nations interested in Russia's transition to democracy must exert pressure on Russian lawmakers to enact laws that will prevent money laundering.

II. ORGANIZED CRIME AND CORRUPTION IN RUSSIA

Following the Soviet Communist Party's fall from power and the subsequent breakup of the Soviet Union in 1991, Russia experienced a drastic increase in crime. The Office of the Russian Procurator reported a 33% rise in criminal activity from 1991 to 1992.¹¹ Murder and aggravated assault accounted for more than one-half of the 2.7 million crimes recorded.¹² In 1993, the murder rate jumped 27%, and crimes committed with firearms climbed by 250%.¹³ More recently, Procurator Yury Skuratov reported a 10% increase in severe crimes and a 15% increase in economic crimes for 1998.¹⁴ In that same year, there were over 30,000 premeditated murders and murder attempts and 599 contract killings in Russia.¹⁵

¹⁰ The terms "Mafiya" and "Mafia" are both commonly used to refer to Russian organized crime groups. HANDELMAN, *supra* note 2, at 381-82. This paper will use "Mafiya."

¹¹ *Id.* at 3.

¹² *Id.*

¹³ *Id.*

¹⁴ *Russia's 1998 Crime Rate Rose by 7.7 Percent*, J. COM., Jan. 13, 1999, available in 1999 WL 6370070.

¹⁵ *6th Arrest Made in Kholodov Killing*, MOSCOW TIMES, Jan. 12, 1999, available in 1999 WL 6805518.

A. *Privatization and the Criminalization of Business in Russia*

With *perestroika*,¹⁶ *demokratiya*,¹⁷ and the massive privatization of post-Soviet Russia, organized crime groups that had thrived underground since the 1960s emerged from the shadows.¹⁸ The Mafiya was one of the main beneficiaries of the new Russia.¹⁹ "The Mafiosi became investors, and black and gray money flowed into the newly created 'stock exchanges, joint ventures, cooperatives, banks, and joint stock companies that were otherwise celebrated as harbingers of economic reform.'"²⁰

By 1992, the Mafiya had invested in and taken control of an estimated eighty percent of small and large businesses in Moscow.²¹ These businesses often provide a legitimate front for illicit Mafiya activities such as extortion, prostitution, gambling, drug trafficking, contract killings, auto theft, and the smuggling of consumer goods, natural resources, nuclear weapons, and human beings.²² In early 1998, Russia's Ministry of Internal Affairs estimated that more than 40,000 domestic businesses (1500 of which were state-owned enterprises), 4000 joint-stock companies, 700 wholesale and retail companies, and 550 banks were criminally influenced or controlled.²³

Perhaps more disturbing and indicative of the complexities facing Russia's efforts to control crime is the unique composition of criminal elements in post-Soviet Russia. Under the concept of illegality inherited from the Soviet era, criminal activity is construed as any conduct that challenges state authority.²⁴ Under the Soviet justice system, the Communist Party, as the sole ruling authority, not only suppressed organized crime, but itself held a monopoly over theft, embezzlement, and corruption.²⁵ In the post-Soviet era, many former bureaucrats of the

¹⁶ *Perestroika* refers to the "restructuring" campaign launched by Mikhail Gorbachev in 1986. HANDELMAN, *supra* note 2, at 4.

¹⁷ *Demokratiya* literally means "democratization." *Id.* at 3.

¹⁸ Shoshanah V. Asnis, *Controlling the Russian Mafia: Russian Legal Confusion and U.S. Jurisdictional Power-Play*, 11 CONN. J. INT'L L. 299, 303 (1996).

¹⁹ *Id.*

²⁰ *Id.* (quoting Stephen Handelman, *The Russian "Mafiya,"* FOR. AFF., Mar.-Apr., 1994, at 87, 87).

²¹ *Id.*

²² Louise Shelley, *Post-Soviet Organized Crime and the Rule of Law*, 28 J. MARSHALL L. REV. 827, 829 (1995).

²³ *How the U.S. State Department Views Money Laundering in Select Countries*, MONEY LAUNDERING ALERT, Apr. 1998, at 11.

²⁴ HANDELMAN, *supra* note 2, at 275.

²⁵ Mike Cormaney, *RICO in Russia: Effective Control of Organized Crime or Another Empty Promise?*, 7 TRANSNAT'L L. & CONTEMP. PROBS. 261, 269 (1997).

Communist Party, including those of the *nomenklatura*²⁶ party elite, have capitalized on their unique relationship with state institutions and regulatory bodies to participate in organized crime and “to [use] the institutions of state power to protect their political and economic interests.”²⁷ *Perestroika* and the rapid privatization of post-Soviet Russia has acted as a vehicle for former bureaucrats and officials of the Communist Party to channel state funds into banks, corporations, real estate development projects, and other “legitimate” areas in the private sector.²⁸

B. *Corruption in the Russian Federation*

Corruption continues to pervade Russia’s governing and policing bodies. President Boris Yeltsin’s announcement in 1993 of a “full head-on assault on crime, bribery, and corruption” at a government and law enforcement conference in Moscow indicated the extent of Russia’s problems with government corruption.²⁹ For example, according to then-acting procurator Aleksei Ilyushenko, more than 46,000 officials from all levels of government in Russia were tried on charges related to corruption and abuse of office in 1993.³⁰ In 1996, Interior Minister Anatoly Kulikov reported that more than 2000 Russian policemen had been charged with crimes in that year.³¹ By October of 1996, 960 officers in Moscow alone had been dismissed for misconduct.³² In 1998, Interior Minister Sergei Stepashin stated that 5500 officials were under investigation for taking bribes.³³

It is generally believed that the influence of organized crime extends to Russia’s parliament, which includes the State Duma (“Duma”) and the

²⁶ *Nomenklatura* refers to the “elite membership of the Soviet governing system, so called because their names appeared on the list of names of the most loyal Party officials eligible for senior posts at home and abroad.” HANDELMAN, *supra* note 2, at 382.

²⁷ Shelley, *supra* note 22, at 828-30.

²⁸ See HANDELMAN, *supra* note 2, at 152-60.

[W]hat we see is a different kind of criminal who has one foot in the old black market world, the old criminal world, and another foot in the official world, the world of politics and the old structure of the Party. And this new type of criminal, this new type of thief, is what people are now regarding as the mafia.

Cornaney, *supra* note 25, at 270-71 (quoting COMMISSION ON SECURITY AND COOPERATION IN EUROPE, CRIME AND CORRUPTION IN RUSSIA 13 (1994) [remarks by Stephen Handelman]).

²⁹ HANDELMAN, *supra* note 2, at 285-95.

³⁰ *Id.* at 285.

³¹ *Review and Outlook: Murder in Moscow*, WALL ST. J. EUR., Feb. 8, 1996, at 6.

³² *Id.*

³³ *News*, CHI. SUN-TIMES, Nov. 3, 1998, available in 1998 WL 5605447.

Federation Council.³⁴ One Duma committee report estimated that twenty-five to thirty percent of the political candidates in the December 1995 elections "represent[ed] influence of the criminal structures either openly or covertly."³⁵

C. Money Laundering in Russia

The laundering of government and privatized funds in offshore areas by organized crime groups and the former Soviet ruling elite permits these groups to evade both criminal and tax liability under Russian law.³⁶ The purpose of this laundering is to fund illicit activities in other countries,³⁷ to generate income in a more favorable environment,³⁸ or simply to hide capital obtained unlawfully.³⁹ Deputies of the Duma have referred to such offshore zones as "black holes where state funds disappear."⁴⁰ The creation of such "black holes" has both contributed to and prolonged financial instability in the Russian economy.

In the absence of an effective anti-money laundering system, laundering of illegally derived income within and outside of Russia has been

³⁴ Cormany, *supra* note 25, at 271. Russia's parliament is comprised of a lower house (the State Duma) and an upper house (the Federation Council).

³⁵ *Id.* at 271.

³⁶ *The Duma Needs Berezovsky's Millions*, *supra* note 1.

³⁷ FBI Director Louis Freeh estimates that organized crime groups in Russia have expanded their activities to more than 50 countries. Ross Mackenzie, *For Beleaguered Russia, Some Proposals for Genuine Reconstruction*, RICHMOND-TIMES DISP., Oct. 15, 1998, at A15.

³⁸ For example, many companies in the Russian fishing industry have established U.S. subsidiaries to manage foreign bank accounts in locales such as England or Cyprus. E-mail correspondence from Vlad Kaczynski, Russian Marine Affairs Specialist, University of Washington, to Sam Chung, Comment Author, *Pacific Rim Law and Policy Journal* 1 (Jan. 22, 1999) (on file with the author). The proceeds from exports of seafood are diverted through the U.S. subsidiaries of such companies in order to avoid legal requirements in Russia. *Id.* Many of these corporations are located in the Pacific Northwest region of the United States. One such company, along with its Russian parent, was the subject of a Justice Department investigation in which the author participated as a clerk at the Office of the United States Attorney. In that case, the government was investigating the head of a Russian fishing corporation (who resided in the Seattle area) on charges of wire and money fraud, tax evasion, and money laundering. The government alleged that the Russian corporation had diverted illicitly generated income through its Washington subsidiary and into a bank account in Cyprus.

³⁹ The scandal involving Boris Berezovsky's alleged offshore assets serves to reinforce the common suspicion that former members of the Soviet ruling elite have used the privatization of Russia to divert questionable funds elsewhere. This scandal erupted when William Webster, a former CIA and FBI administrator, told a Duma delegation visiting the United States that Berezovsky once spent \$72 million on real estate in Antigua. *The Duma Needs Berezovsky's Millions*, *supra* note 1. While Berezovsky declared a salary of \$43,000 in 1997, the value of his assets has been estimated to be \$3 billion. *Russia, a Superpower Falls Apart*, *supra* note 1.

⁴⁰ *The Duma Needs Berezovsky's Millions*, *supra* note 1.

accomplished with relative ease.⁴¹ Russia's inability to detect and to prosecute money laundering activities has permitted former members of the Soviet governmental apparatus to legitimize their embezzled funds.⁴² It has also allowed organized crime groups to thrive in an environment in which large-scale financial transactions remain unmonitored.⁴³ Following the decentralization of Russia's financial system in the post-Soviet era, and as a result of weak banking regulations, criminal groups with significant amounts of capital were able to take control of Russia's banks and even to create their own banks.⁴⁴

D. *Global Interests in the Russian Crisis*

The reform of Russia's financial, political, and legal systems holds significance both for the United States and for the development of a democratic world order governed by the rule of law.⁴⁵ Russia's current inability to control its financial system and the prevalence of money laundering activities within that system have had repercussions of a global nature, including political and economic instability in Eurasia and the injection of criminal proceeds into foreign markets.⁴⁶

The U.S. Federal Bureau of Investigation estimates that nearly half of Russia's banks are now controlled by organized crime groups that are using the banks to launder illegally obtained revenues.⁴⁷ Such criminal groups

⁴¹ Bill Gertz, *Mobsters Run Banks in Russia, Money Laundering Common, FBI Says*, WASH. TIMES, Oct. 22, 1998, at A1.

⁴² See Jamestown Foundation, *Mixed Prospects for Russian Tax Crackdown*, MONITOR, (June 11, 1998) <http://www.jamestown.org/pubs/view /mon/004/112_001.htm> (discussing a proposed law which would require the reporting of large scale transactions).

⁴³ *Id.*

⁴⁴ Until recently, any Russian with \$100,000 could open a banking institution. HANDELMAN, *supra* note 2, at 197. The required starting capital was later raised to about \$1.2 million, but by then drug profits provided enough funds to get around this obstacle. *Id.*

⁴⁵ Lawrence Summers, U.S. Relations with Russia and Economic Crisis, Testimony Before the House International Committee (Sept. 17 1998), available in WESTLAW, CONGTMY file. Summers notes:

A prolonged crisis [in Russia] would call into question the spread of open market policies in other emerging nations . . . [and] would raise important concerns for our broader national security, given Russia's pivotal and continuing role with respect to nuclear security, the battle against terrorism, the stability of Eurasia, and conflict resolution in global hot spots like the Balkans.

Id.

⁴⁶ *Id.*

⁴⁷ Gertz, *supra* note 41. Further evidence of organized crime's hold on the Russian banking system can be found in the "significant lack of bank robberies among the crime statistics and the high rate of murder of bank officials in Russia." Cormaney, *supra* note 25, at 275.

“have played the dominant role in channeling much of the \$200 billion in capital flight from the Russian Federation in the last decade.”⁴⁸ The inadequate regulation of the Russian banking industry⁴⁹ and the influence of organized crime on that sector led the U.S. State Department’s Bureau of International Narcotics Matters to conclude in 1994 that Russia is a “dream location” for the money laundering post-Cold War global criminal.⁵⁰ Capital flight occurring in the absence of anti-money laundering laws contributed to the collapse of Russia’s financial system in the early 1990s and continues to afflict the post-Soviet economy.⁵¹

The pervasiveness of organized crime in Russia and the instability of Russia’s financial system have created a lack of investment confidence in Russian markets. In 1997, Russia received a mere \$4.5 billion in foreign direct investment, which equals roughly one percent of its gross domestic product.⁵² It has received a total of only \$10 billion in foreign investment since 1991.⁵³ Foreign investors choosing to enter Russian markets are confronted with significant financial and physical risks. Deposits that are placed in Russian banks are subject to the risk of irrevocable loss due to the banking sector’s instability.⁵⁴ Moreover, the costs of extortion at the hands of organized crime are high for those businesses that choose to locate in Russia.⁵⁵

The Clinton administration has emphasized the importance of reforming Russia’s economic and legal institutions for U.S. national security

⁴⁸ Gertz, *supra* note 41.

⁴⁹ Another problem caused by the privatization of the Russian economy was that the few banking regulatory agencies in Russia were overwhelmed by the proliferation of private banks during the early 1990s. Abraham Abramovsky, *Prosecuting the “Russian Mafia”: Recent Russian Legislation and Increased Bilateral Cooperation May Provide the Means*, 37 VA. J. INT’L L. 191, 205 (1996).

⁵⁰ HANDELMAN, *supra* note 2, at 197. The Bureau of International Narcotics Matters, in a report published in 1994, concluded that Russia fulfilled 17 of the 22 conditions on a hypothetical “money launderer’s shopping list.” *Id.* These “ideal” conditions include, among others, the lack of monitoring of currency movements inside and outside of the country, easy evasion of exchange controls, weak banking regulations, no requirement for reporting suspicious transactions, and a significant trade in precious gems. *Id.*

⁵¹ Marie-Josée Kravis, *National Viewpoint: Wishful Thinking Alone Won’t Help Russia’s Economy*, FIN. POST, Aug. 19, 1998, at 11.

⁵² *Russia, a Superpower Falls Apart*, *supra* note 1. In comparison, for the year 1997, Brazil received nearly \$18 billion, and China received more than \$45 billion. *Id.*

⁵³ *Id.*

⁵⁴ John Helmer, *Russian Banks Send Depositors to the Wall*, BUS. REV. WKLY., Oct. 19, 1998, available in 1998 WL 11773222 (describing the risk of lost deposits caused by defaulting Russian banks).

⁵⁵ HANDELMAN, *supra* note 2, at 157-60. Ironically, one reason that is often given by businessmen in Russia who fail to report income to the authorities is that they fear that such financial information will end up in the hands of the Mafiya, the members of which will then pay them a visit seeking “protection money.” *Id.*

and economic interests both at home and abroad.⁵⁶ In response to political and economic crisis in Russia, the U.S., the International Monetary Fund (“IMF”), and the World Bank instituted several relief programs there, including a two-year, \$22.6 billion package to provide the Russian Federation with “financial breathing space to press on with reform.”⁵⁷ Such relief may, as a result of non-competitive connections between business and government,⁵⁸ be filling the pockets of the post-Soviet elite and may ultimately be diverted to offshore accounts.⁵⁹ Because the capital flight associated with the activities of organized crime groups and the post-Soviet ruling elite undermines Russia’s reform efforts by diverting badly needed capital away from government programs, the United States has urged the Russian Federation to curb money laundering activities by passing anti-money laundering legislation.⁶⁰

III. MONEY LAUNDERING REGULATIONS AND LEGAL REFORM IN THE RUSSIAN FEDERATION

Legislation in the United States has proven to be an effective means of curbing money laundering and tracing the illicit activities of organized crime groups in the United States.⁶¹ Such laws have not yet been passed in Russia because Russia’s well-developed network of corruption and organized crime has frustrated efforts to reform the legal system there.⁶² However, recent legal reforms in Russia, including proposals for the enactment of a comprehensive anti-money laundering regime,⁶³ give hope to those interested in reforming the system.

⁵⁶ Summers, *supra* note 45.

⁵⁷ *Id.* The International Monetary Fund (“IMF”) instituted this relief package in July 1997. *Id.*

⁵⁸ “Non-competitive connections” refer to a corrupt government official’s ability to offer inside breaks to businesses in which the official has a vested interest.

⁵⁹ Summers, *supra* note 45. According to Venyamin Sokolov, head of Russia’s Chamber of Accounts, of the \$2.3 billion allocated to Moscow for the reconstruction of Chechnya, “just over half was carelessly accounted for and the rest disappeared.” *Russia, a Superpower Falls Apart*, *supra* note 1. In addition, “[s]ome \$2 billion [in relief money] disappeared without explanation from the central bank’s hard currency reserve accounts in 1995.” *Id.* Of the \$500 million allocated by the World Bank to Russia’s deficient mining industry, “[a]t least \$240 million has disappeared.” *Id.*

⁶⁰ Summers, *supra* note 45.

⁶¹ 1996-1997 FIN. ACTION TASK FORCE ON MONEY LAUNDERING ANN. REP. 14 (1997) [hereinafter FIN. ACTION TASK FORCE ON MONEY LAUNDERING].

⁶² See *infra* notes 178-182 and accompanying text.

⁶³ See *infra* Part III.B-D.

A. *The Rationale of Money Laundering Prosecution: A Look at the U.S. Model*

The development of comprehensive anti-money laundering legislation in the United States was a response to the growing need to control narcotics trafficking.⁶⁴ United States legislation in this area brought about several substantive changes in the law that were designed to combat money laundering activities, including the criminalization of the act of money laundering and the structuring of transactions to avoid reporting requirements; the creation of a requirement that financial institutions play an active role in reporting suspicious transactions; the enactment of strict criminal and/or civil penalties for both the money launderer and the non-compliant financial institution; and the enactment of provisions for the forfeiture of property in appropriate circumstances.⁶⁵

The premise behind the U.S. prosecution of money laundering is that if the government traces a criminal's proceeds from illegal activities, it will discourage criminals from engaging in such activities by cutting off the criminal's lifeblood capital.⁶⁶ During the act of laundering money, the criminal is most vulnerable to detection at the point of "placement," which is the initial stage at which the money launderer attempts to (1) convert the cash for purposes of exchange to another medium that is more convenient or less suspicious, such as property, cashier's checks, or money orders,⁶⁷ or (2) deposit the funds into a financial institution account for subsequent disbursement.⁶⁸ Because placement is one of the most difficult steps for

⁶⁴ Kavita Natarajan, *Combatting India's Heroin Trade Through Anti-Money Laundering Legislation*, 21 *FORDHAM INT'L L.J.* 2013, 2043 (1998).

⁶⁵ Anti-money laundering laws in the United States include the Bank Secrecy Act of 1970 ("BSA"), 31 U.S.C. §§ 5311-42 (1995); the Money Laundering Control Act of 1986 ("MLCA"), Subtitle H of Title I of the Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, §§ 1351-67, 100 Stat. 3207-39 (codified as amended at 18 U.S.C. §§ 1956-57, 31 U.S.C. §§ 5324-26); the Annunzio-Wylie Anti-Money Laundering Act, Pub. L. No. 102-550, 106 Stat. 4044 (1992) (codified as amended in scattered sections of 12, 18, 22, and 31 U.S.C.); and the Money Laundering Suppression Act of 1994, 31 U.S.C. § 5330 (1999).

⁶⁶ See UNITED STATES GENERAL ACCOUNTING OFFICE, MONEY LAUNDERING: NEEDED IMPROVEMENTS FOR REPORTING SUSPICIOUS TRANSACTIONS ARE PLANNED, REPORT TO THE RANKING MINORITY MEMBER, PERMANENT SUBCOMM. ON INVESTIGATIONS, SENATE COMM. ON GOVERNMENTAL AFFAIRS 10 (1995) [hereinafter GAO REPORT]. In the MLCA's legislative history, Senator Joseph Biden notes, "[m]oney laundering is a crucial financial underpinning of organized crime and narcotics trafficking. Without money laundering, drug traffickers would literally drown in cash. Drug traffickers need money laundering to conceal the billions of dollars in cash generated annually in drug sales and to convert [the] cash into manageable form." S. REP. No. 99-433, at 4 (1986).

⁶⁷ GAO REPORT, *supra* note 66.

⁶⁸ *Id.* This description is a generalization of several discrete forms of placement, which include: (1) physical disposal of bulk cash proceeds (by deposit or purchase of financial instruments); (2) the structuring of cash transactions to avoid reporting requirements; (3) bank complicity (when bank personnel are corrupted, intimidated, or controlled); (4) misuse of exemptions (exemptions may be given to a business

the money launderer to accomplish, the inclusion of financial institutions in the investigation of money laundering activities has had a significant positive impact on the detection of organized crime activities in the United States.⁶⁹

In order to detect the placement of criminal proceeds into legitimate financial channels, U.S. Treasury Department regulations promulgated under the authority of the U.S. Bank Secrecy Act ("BSA") require financial institutions to maintain exhaustive records and to report various domestic financial transactions meeting the requisite \$10,000 threshold.⁷⁰ In addition, these institutions must report both the transport of monetary instruments worth more than \$10,000 into or out of the United States⁷¹ and transactions between a U.S. citizen and a foreign financial institution involving \$10,000 or more.⁷²

Russia could use a comprehensive anti-money laundering system like the one in effect in the United States to prosecute organized crime and control the financial collapse caused by capital flight. Such a system should require the reporting of suspicious financial transactions at the "placement" stage in order to cutoff or deter money laundering activities. Legislators in Moscow such as Victor Ilyukhin⁷³ are working to enact laws similar to those in the United States.⁷⁴

well-known to a financial institution when the business has a known reason to engage in otherwise suspicious financial transactions); (5) commingling of licit and illicit funds in established front companies; (6) asset purchases in cash (autos, aircraft, boats, precious stones, and metals, etc.); and (7) cross-border currency smuggling. Ernesto U. Savona & Michael A. De Feo, *International Money Laundering Trends and Prevention/Control Policies*, in RESPONDING TO MONEY LAUNDERING: INTERNATIONAL PERSPECTIVES 9, 23-24 (Ernesto U. Savona ed., 1997).

⁶⁹ GAO Report, *supra* note 66. Particularly in narcotics trafficking, the criminal is often faced with massive amounts of cash which must either be concealed or converted into legitimate income. As an example, \$1 billion in \$100 bills weighs over 11 tons. Ronald K. Noble & Court E. Golumbic, *A New Anti-Crime Framework for the World: Merging the Objective and Subjective Models for Fighting Money Laundering*, 30 N.Y.U. J. INT'L L. & POL. 79, 85 n.5 (1998).

⁷⁰ 31 C.F.R. § 103 (1995)

⁷¹ *Id.*

⁷² *Id.* See generally Raymond Banoun, *Money Laundering and Currency Reporting Laws and Their Applicability to Gaming Businesses*, 1998 A.B.A. CENTER CONTINUING LEGAL EDUC., available in WESTLAW, N98GENB ABALGLED B-1.

⁷³ Viktor Ilyukhin is the current head of the Duma's security committee. Jamestown Foundation, *Duma Veers Far to Government's Left*, MONITOR, (Oct. 22, 1998) <http://www.jamestown.org/pubs/view/mon/004/195_001.htm>.

⁷⁴ See *infra* notes 90-137 and accompanying text.

B. *Legal Reform and the New Criminal Code*

By any account, Russia's new Criminal Code⁷⁵ ("CCRF") is a great improvement over its predecessor, the Code of the Russian Soviet Federated Socialist Republic, a relic of the 1960s which carried all of the ideological baggage of the Soviet regime.⁷⁶ The CCRF, enacted on January 1, 1997, was a product of both the need to address the changing social, political, and economic conditions of contemporary Russian society and the need to confront the drastic increase in post-Soviet crime.⁷⁷ The CCRF complements previous legal reforms, including the enactment in 1989 of a statute criminalizing disrespect for the judicial system and the enactment of the Constitution of the Russian Federation in 1993.⁷⁸ A new criminal procedure code is still pending before the Russian Parliament and is expected to be adopted after 1999.⁷⁹

⁷⁵ Ugolovnyi Kodeks Rossiskoi Federatsii [The Criminal Code of the Russian Federation] (adopted June 13, 1996) [hereinafter CCRF] No. 63-FZ, translated in LEXIS, Intlaw Library, Rflaw File. While a thorough examination of the CCRF's provisions, especially those dealing with economic crimes, is warranted, such an analysis is beyond the scope of this Comment. This discussion will focus on the Russian Federation's efforts to draft effective legislation to address the problems of money laundering and associated offenses. Under the CCRF, economic crimes include the following: interference with lawful entrepreneurial activity; registration of unlawful real estate agreements; illegal entrepreneurial activity; fraudulent entrepreneurial activity; illegal procurement of credit; monopolization and unfair competition; use of coercion in negotiating an agreement; unlawful use of trademarks or the state hallmark; violation of manufacturing rules; advertising in a knowingly false manner; illegal acquisition and dissemination of information constituting commercial and banking secrets; bribery of participants and organizers of professional sports and commercial events; securities issuance violations; manufacture and distribution of fraudulent credit or debit cards and other negotiable instruments; illegal export of technology, scientific information, and services used in the production of weapons of mass destruction and other military equipment; unlawful trade in precious metals, gems, or pearls; flight of foreign currency; evasion of customs payments; illegal bankruptcy activities; deliberate or false bankruptcy; income tax evasion; corporate tax evasion; and consumer fraud. *Id.*

⁷⁶ Among the obsolete provisions the new Criminal Code abolishes are those related to punishment for failure to report the activities of others to police, participation in anti-Soviet organizations, wrecking activities and the sale and purchase of fur-bearing animals, and participation in entrepreneurial activities. *Congratulations on the New Code!*, RUSSIAN PRESS DIG., Jan. 6, 1997, available in WESTLAW, RUSSPD Database.

⁷⁷ See Anatolyi V. Naumov, *The New Russian Criminal Code as a Reflection of Ongoing Reforms*, 8 CRIM. L.F. 191, 191 (1997).

⁷⁸ *Id.* at 194-96.

⁷⁹ Stanislaw Pomorski, *Reflections on the First Criminal Code of Post-Communist Russia*, 46 AM. J. COMP. L. 375, 376 (1998). Much like the outdated criminal code that preceded the CCRF, Russia's Code of Criminal Procedure has been subject to the criticism that its provisions have little practical force in light of the recent structural changes in Russian society. *Id.* Partially because the enactment of the new Code of Criminal Procedure is expected to both clarify and give legal force to police and prosecutorial practices, lobbying interests in Moscow have effectively stalled its enactment. Telephone Interview with Scott Boylan, Office of Overseas Prosecutorial Development and Training ("OPDAT"), Department of Justice, Criminal Division (Jan. 11, 1999) [hereinafter Boylan].

C. *Money Laundering: Article 174 of the CCRF*

Article 174 of the CCRF, entitled *Legalization of Money (Money-Laundering) or of Any Other Assets Acquired Illegally*,⁸⁰ is the current CCRF money laundering provision. Article 174 contains only rudimentary provisions for the criminalization of money laundering activities. It states:

1. The completion of financial transactions and other deals with money or any other assets acquired in an obviously illegal way, and also the use of said money for business or any other economic activity, shall be punishable by fine in the amount of 500 to 700 minimum wages⁸¹ income of the convicted person for a period of five to seven months, or by deprivation of liberty for a term of up to four years with the fine the amount of 100 minimum wages or salaries or in the amount of the wage or salary, or any other income of the convicted person for a period of one month or without such fine.
2. The same deed committed:
 - a) by a group of persons in a preliminary conspiracy;
 - b) repeatedly; or
 - c) by a person using his official position;shall be punishable by deprivation of liberty [for] eight years with confiscation of property or without such confiscation.
3. The acts, envisaged by the first or second part of this Article and committed by an organized group or on a large scale, shall be punishable by deprivation of liberty for a term of seven to ten years with confiscation of property or without such confiscation.⁸²

⁸⁰ CCRF, *supra* note 75, art. 174.

⁸¹ As of January 1999, one minimum wage was equivalent to 87 rubles per month, and 23 rubles were roughly equivalent to one dollar. Boylan, *supra* note 79.

⁸² CCRF, *supra* note 75, art. 174. Article 174 is little more than a skeletal provision purporting to criminalize money laundering activities. This is so in part because the provisions contained in the CCRF are merely a first step in the legal reform process. *Id.* Stated in another way, "[the CCRF's] primary importance is as a theoretical normative statement . . . the new code announces the principles under which Russians one day hope to live." Suzanne Posschl, *Russia Is Fighting Thugs and Con Artists with New*

Unlike the U.S. anti-money laundering legislation,⁸³ Article 174 does not specify what constitutes a “financial transaction” or “other deals with money.” Moreover, Article 174 does not specify what types of conduct are covered by the phrase “obviously illegal way.” In order to cover the expansive channels a criminal may use to launder illegal funds, the U.S. anti-money laundering laws provide broad definitions for both a “financial institution”⁸⁴ (which is required to report financial transactions under U.S. law) and a “financial transaction.”⁸⁵ Article 174’s vague provisions do not necessarily cover the wide range of money laundering activities possible.

Sections 2 and 3 of Article 6 appear strong because they provide for increased penalties and property forfeitures for group activity, repeat conduct, or the abuse of an official position.⁸⁶ The merits of Article 6 however, fail to compensate for its lack of specificity. This deficiency is of great consequence given the Russian Federation’s civil law tradition.⁸⁷ Unlike in the common law system of the United States, *stare decisis*, or adherence to decided cases, is not a principle of Russian jurisprudence and judicial decisions have limited precedential weight.⁸⁸ Consequently,

Laws, but Is That Enough?, 82 A.B.A. J., Nov. 1996, at 72, 73 (1996) (quoting Peter H. Solomon Jr.) (internal quotations omitted).

⁸³ See *supra* notes 64-72.

⁸⁴ 31 U.S.C. § 5312(a)(2); 31 C.F.R. § 103.11(i). The Treasury Department has interpreted “financial institution” broadly to include banks (including foreign banks in the United States), federally regulated securities brokers, currency exchange houses, investment banking companies, telegraph companies, check cashing businesses, funds transmitters, casinos, insurance companies, operators of credit card systems, pawnbrokers, dealers in precious stones or metals, travel agencies, real estate brokers, the United States Postal Service in the sale of money orders, and automobile dealerships. *Id.*

⁸⁵ The legislative history of the MLCA notes:

Section 1956(c)(4) defines the term “financial transaction” very broadly [to include not only transactions involving financial institutions, but] all forms of commercial activity. The only requirement is that the transaction must “affect interstate or foreign commerce” or be conducted through or by a financial institution which is engaged in or the activities of which affect interstate or foreign commerce “in any way or degree.

S. REP. NO. 99-433, at 13. “Transaction” thus includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other broad disposition of property between private parties. With respect to a financial institution, it includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected. UNITED STATES DEPARTMENT OF JUSTICE, MONEY LAUNDERING: FEDERAL PROSECUTION MANUAL R5 (1994) [hereinafter DOJ MANUAL].

⁸⁶ CCRF, *supra* note 75, art. 174.

⁸⁷ Scott P. Boylan, *The Status of Judicial Reform in Russia*, 13 AM. U. INT’L L. REV. 1327, 1341-42 (1998).

⁸⁸ *Id.* In addition, Russia does not have a system for reporting judicial decisions. *Id.* See also ALAN WATSON, *THE MAKING OF THE CIVIL LAW* 168-78 (1981), reprinted in *THE CIVIL LAW TRADITION: EUROPE, LATIN AMERICA, AND EAST ASIA* 938-43 (John H. Merryman et al. eds., 1994) (describing the “derivative” legal nature of judicial decisions in civil law traditions).

Russia's criminal and civil codes must be comprehensive in breadth and precise in definition in order to provide guidance and authority to law enforcement bodies.⁸⁹

D. Pending Legislation

Following the enactment of the CCRF, the Russian Federation attempted to cure Article 174's inadequate enforcement mechanisms and lack of comprehensiveness by introducing several noteworthy draft laws for debate. These include draft amendments to the CCRF,⁹⁰ a draft law on money laundering prosecution ("Money Laundering Draft"),⁹¹ and a draft law on expenditure verification requirements to be used to track large property acquisitions.⁹²

1. Draft Law on Money Laundering Prosecution

a. Purpose and scope

The stated purpose of the Money Laundering Draft is to "protect [the] rights and lawful interests of citizens, society, and the government . . . [and] to establish a system of measures to counteract legalization of [criminal] proceeds through illegal means."⁹³ This bill applies to Russian citizens, foreign nationals, permanent aliens, and legal entities with an interest in the Russian Federation.⁹⁴ The Money Laundering Draft provides a broad definition of financial organizations as "organizations conducting

⁸⁹ WATSON, *supra* note 88.

⁹⁰ *On Introduction of Amendments and Additions into Legislative Acts of the Russian Federation Related to the Passage of the Federal Law "On Combating Legalization (Laundering) of Illegal Proceeds"* [hereinafter *CCRF Draft*], in MATERIALS FOR AMERICAN PARTICIPANTS OF PROSECUTORIAL TRAINING WORKSHOP ON ORGANIZED CRIME ISSUES IN VLADIVOSTOK, RUSSIA sec. 1 (1998) (on file with author) [hereinafter *PROSECUTORIAL MATERIALS*].

⁹¹ Draft Russian Federal Law "On Combating Legalization (Laundering) of Illegal Proceeds" [hereinafter *Money Laundering Draft*], in *PROSECUTORIAL MATERIALS*, *supra* note 90, at sec. 4.

⁹² Draft Russian Federal Law "On State Measures to Verify that Large Expenditures for Consumer Goods Are Consistent with the Income Actually Obtained by Natural Persons" [hereinafter *Verification Draft*], in *PROSECUTORIAL MATERIALS*, *supra* note 90, at sec. 5.

⁹³ Money Laundering Draft, *supra* note 91, art. 1(2).

⁹⁴ *Id.* art. 2(1)-(2). The bill also applies to (1) citizens of the Russian Federation and permanent aliens who conduct unlawful activities under Russian laws against other nations, provided that such violations are also considered unlawful in the country where conducted and that such persons have not already been held liable in the foreign nation, and (2) foreign nationals and permanent or temporary aliens who conduct unlawful activities outside of the Russian Federation that are directed against the interests of the Russian Federation or its citizens, if such persons have not already been held liable for such activities in the foreign nation. *Id.*

transactions with monetary resources or other property" ("Financial Organization"),⁹⁵ much like the U.S. Treasury Department's definition of a "financial institution."⁹⁶

Under the Money Laundering Draft, the proposed definition of "illegal proceeds" is "possessions or other subject matter of civil law acquired by illegal means—things, money, securities and other property, including rights to property, that are acquired as a result of a crime or another violation of the law."⁹⁷ This provision would be the triggering mechanism for the activity to constitute money laundering, and is similar in function to the specified unlawful activities ("SUA") provisions of the U.S. Money Laundering Control Act ("MLCA").⁹⁸ Unlike the SUA provisions, however, the phrase "crime or another violation of the law" is vague and has been the subject of great criticism in Russian lobbying circles.⁹⁹

The Money Laundering Draft does not have a provision similar to Section 1957 of the MLCA, which requires that an individual or entity under investigation for money laundering know that the funds are derived from some kind of criminal activity.¹⁰⁰ Instead, a money laundering violation is defined as the "intentional imparting [of] a legal appearance to the usage, possession, or control of items, monetary resources, securities, or other

⁹⁵ This definition includes credit institutions, commodity and currency exchanges, investment funds, insurance organizations and insurance associations, trust companies, dealerships and brokerages, postal services, technical inventory offices, casinos and other gambling enterprises, bookmaking offices, backers or organizers of lotteries, pawnshops, discount offices, notary offices, and other organizations performing receipt, alienation, payment, transfer, transport, exchange, or storage of monetary resources and other property, as well as organizations performing notary certification or governmental registration of transactions of citizens and legal entities. *Id.* art. 3(5).

⁹⁶ See discussion *supra* note 84.

⁹⁷ Money Laundering Draft, *supra* note 91, art. 3(1).

⁹⁸ Under nearly all provisions of the MLCA, the prosecution is required to show that the suspect financial transaction involved proceeds of a specified unlawful activity ("SUA"). SUAs are outlined in 18 U.S.C. § 1956(c)(7) (1995) and include such offenses as fraud, espionage, embezzlement of funds, illegal arms sales, smuggling, bribery, environmental crimes, obstruction of justice, and an exhaustive list of other offenses associated with organized crime, narcotics trafficking, and financial misconduct. SUA's also include all of the Racketeer Influenced and Corrupt Organizations Act ("RICO") predicate offenses listed in 18 U.S.C. § 1961(1) (1994), with the exception of Title 31 violations (transaction reporting requirements).

⁹⁹ In the view of many, including banking interests and their allies, the language "or another violation of the law" defines illegal proceeds too broadly by including a host of non-criminal or administrative violations. Memorandum from Andrew Levchuk, Resident Legal Advisor, United States Department of Justice, Criminal Division, to Abelardo A. Arias, Law Enforcement Section, United States Department of Justice, Criminal Division 1 (Nov. 13, 1998) (on file with author) [hereinafter Levchuk]. For a discussion of this issue, see *infra* notes 178-182.

¹⁰⁰ Section 1957 replaces the specific intent requirements of Section 1956 with the requirement that the transaction involve \$10,000 and a financial institution. 18 U.S.C. § 1957(a) (1995). Section 1957's knowledge provision requires that the individual know that the funds involved are derived from some kind of criminal activity but does not require that the funds be used for any additional criminal purpose. DOJ MANUAL, *supra* note 85, at R81.

property, including rights to property acquired through clearly illegal means."¹⁰¹ With the pervasiveness of crime and corruption in the Russian Federation, such a provision may apply to a majority of Russia's financial community and could thus be too broad.

b. Article 4: Recording requirements

Similar to the requirement of filing financial transaction reports under the U.S. Bank Secrecy Act,¹⁰² the Money Laundering Draft requires financial organizations to "make a record of transactions . . . for every single transaction with monetary resources or other property equal to or exceeding . . . 2000 minimum wages¹⁰³ for any cash or non-cash transaction by a physical person, and 20,000 minimum wages for any transaction by a legal entity."¹⁰⁴ Records of domestic transactions are presented to the State Tax Inspectorate upon request, while transactions involving foreign currency are presented to the Russian Federal Service for Currency and Export Control upon request.¹⁰⁵ Article 4 gives authority to judges, prosecutors, investigative agencies, agencies conducting inquiries, and offices of the Federal Tax Police to request records of transactions that are subject to mandatory verification "in accordance with the procedure determined by federal legislation."¹⁰⁶

c. Article 6: Reporting requirements

Under Article 6 of the Money Laundering Draft, transactions involving monetary resources and other property that meet the monetary thresholds for the recording requirements would be subject to mandatory

¹⁰¹ Money Laundering Draft, *supra* note 91, art. 3(2).

¹⁰² As promulgated by the Secretary of the Treasury, the BSA requires financial institutions to maintain specific records for possible use by the government in criminal, tax, and regulatory investigations and to file a Currency Transaction Report ("CTR") for domestic transactions or a Report of International Transportation of Currency or Monetary Instruments ("CMIR") for foreign transactions in currency or monetary instruments of \$10,000 or more. 31 C.F.R. §§ 103.22(a)(1), 103.23. The CTR and CMIR are also known as IRS Form 4789 and Customs Form 4790, respectively. *Id.*

¹⁰³ As of January 1999, one minimum wage was equivalent to 87 rubles per month, and 23 rubles were roughly equal to one dollar. Boylan, *supra* note 79.

¹⁰⁴ Money Laundering Draft, *supra* note 91, art. 4(1). "Physical person" means a natural person.

¹⁰⁵ *Id.* art. 4(2). The State Tax Inspectorate, in conjunction with the Federal Tax Police, is responsible for regulating domestic financial activity, while the Federal Service for Currency and Export Control has jurisdiction over currency entering and leaving the Russian Federation. *Id.* art. 4(3). For the purposes of this Comment, these agencies will be considered analogous to the U.S. Treasury Department and the Customs Service, respectively.

¹⁰⁶ *Id.* art. 4(4).

verification with either the State Tax Inspectorate or Russian Federal Service for Currency and Export Control if such transactions fall into any of the following categories: (1) cash transactions performed by physical persons or legal entities; (2) bank account transactions by physical persons and legal entities; (3) credit transactions by legal entities and physical persons; (4) transactions by legal entities and physical persons involving securities; or (5) transactions with real and personal property.¹⁰⁷

Article 6 is comprehensive in nature. It covers activities commonly associated with money laundering such as money structuring; wire transfers of funds to or from foreign banks, offshore accounts, or to regions known for the illegal production of drugs; deposits in the name of third parties; contract, credit, and securities fraud; and transactions made with bank checks, traveler's checks, foreign currency, precious metals and gems, or other personal property.¹⁰⁸

Although functionally similar to the BSA's "suspicious activity" reporting requirements and the Treasury Department's "know your customer" policy,¹⁰⁹ Article 6 would divest a financial organization of much of its discretion in determining what constitutes suspicious financial activity that qualifies for mandatory verification with federal authorities. Instead, this determination would be made in large part based on the language in Article 6 itself.¹¹⁰ Through the objective criteria of Article 6, a financial organization or its employee would be required to determine whether certain financial activities qualify for mandatory verification according to the objective criteria laid down in Article 6.¹¹¹ This determination would involve some degree of subjective judgment on the part of the financial

¹⁰⁷ *Id.* art. 6(1)-(5). The separate categories, with all of the enumerated criteria, are listed in Article 6 of the Money Laundering Draft. *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ According to regulations promulgated by the Treasury Department under the Annunzio-Wylie Act, a financial institution is required to file a suspicious activity report ("SAR") if the financial institution "knows, suspects, or has reason to suspect" that the financial transaction (1) involves or is an attempt to disguise proceeds from illegal activity, (2) is designed to evade the requirements of the BSA, or (3) appears to have no business or apparent lawful purpose. 31 C.F.R. § 103.21(a)(2). The Annunzio-Wylie Act's SAR requirements both prohibit the financial institution from notifying the customers on whom they have filed an SAR and provide a "safe harbor" provision that protects the institution and its employees from possible civil liability arising out of the SAR activity. Annunzio-Wylie Act, §§ 5318(g)(2), (3). The Annunzio-Wylie Act also encourages financial institutions to establish "know-your-customer" programs that facilitate a financial institution's ability to recognize suspicious transaction activities. *Id.* § 5318(a)(2).

¹¹⁰ Money Laundering Draft, *supra* note 91, art. 6.

¹¹¹ As an example, a provision of Article 6 mandates the verification of cash transactions performed by physical persons or legal entities when the cash sum is deposited into or withdrawn from a bank account and cannot be explained by the nature of the business. *Id.* art. 6(2).

institution, however, as it would have to decide whether a transaction "cannot be explained by the nature of the business."¹¹²

The mandatory guidelines in Article 6 would clearly benefit federal policies of fighting money laundering and other financial crimes in Russia by removing discretion and consequently promoting compliance within the poorly regulated and unstable Russian financial sector. Such a regulatory scheme could also be of use in the United States, where a common criticism of the mandatory reporting requirements of Currency Transaction Reports ("CTR") for domestic transactions and Reports of International Transportation of Currency or Monetary Instruments ("CMIR") for foreign transactions is that the requirements are too onerous and that the flood of information that is produced by CTRs and CMIRs obstructs the ability of government to analyze suspicious activity data.¹¹³

d. Article 7: Protection of banking and commercial information

Under the "safe harbor" provisions of the Annunzio-Wylie Anti-Money Laundering Act ("Annunzio-Wylie Act"), which serves to target financial institutions involved in money laundering activities, a financial organization (or its employee) complying with BSA reporting requirements is shielded from civil liability.¹¹⁴ Similarly, Article 7 of the Money Laundering Draft would provide safeguards for the financial organization (or employees) required to report suspicious transactions. Article 7 states that the dissemination of financial transaction information to lawfully authorized bodies "does not constitute a violation of commercial or official confidentiality."¹¹⁵ It further notes that financial organizations "shall not be held liable for damages or harm suffered by legal entities or physical persons as a result of lawful fulfillment of their duty to report" suspicious financial transactions.¹¹⁶ Moreover, in response to corruption in law enforcement and regulatory agencies, Article 7 would require that government bodies and other agencies authorized to receive such financial information "shall be held liable under federal legislation for unlawful disclosure of information received in the course of their official duties that constitute commercial, banking, or official secret[s]."¹¹⁷ This provision would guard against the

¹¹² *Id.*

¹¹³ Noble & Golumbic, *supra* note 69, at 132 n.247.

¹¹⁴ Annunzio-Wylie Act §5318(g)(3).

¹¹⁵ Money Laundering Draft, *supra* note 91, art. 7(1).

¹¹⁶ *Id.* art. 7(5).

¹¹⁷ *Id.* art. 7(4).

abuse of authority by government bodies that may leak such financial information to organized crime groups for purposes of extortion.¹¹⁸

2. *Draft Amendments to the CCRF*

In 1996, members of the Security Committee¹¹⁹ of the Duma and a member of the Committee on Industry, Construction, Transportation and Energetics¹²⁰ introduced Article 156 as a proposed amendment to the CCRF. Article 156 would allow penalties to be assessed against financial organizations that fail to comply with recording and reporting requirements.¹²¹ Unlawful refusal by an official performing managerial functions in a financial organization to provide financial information to authorized bodies would amount to a penalty ranging from twenty to fifty minimum wages.¹²² The violation of established accounting rules designed to ensure that information on transactions involving monetary resources and other property is complete and correct would result in the same fine.¹²³

Article 156 would guard against the destruction or falsification of financial records by criminals associated with financial organizations. Under Article 6, violations of rules and procedures for storing financial documents, as well as the negligent loss of such documents, would be penalized.¹²⁴ In addition, Article 156 contains a provision on violations of cash-registering rules (i.e., the accumulation of cash in cash registers beyond established limits).¹²⁵

The penalties prescribed by the proposed Article 156, in conjunction with the CCRF's provision on abuse of authority (Article 201),¹²⁶ would help prevent the use of financial institutions as fronts for organized crime money laundering activities. Article 201 provides penalties for the use of authority by a person discharging managerial functions in a profit-making organization or any other organization to further unlawful interests against the lawful interests of the organization "for the purpose of deriving benefits and advantages for himself or for other persons or for the purpose of

¹¹⁸ HANDELMAN, *supra* note 2, at 59-72.

¹¹⁹ S. Boskholov, V. Vorotnikov, V. Ilyukhin, G. Raikov, and V. Rozhkov were the named members. *CCRF Draft*, *supra* note 90, at 1.

¹²⁰ Y. Ten was the named member. *Id.*

¹²¹ *Id.* at 2-3.

¹²² *Id.* at 2.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.* at 2-3.

¹²⁶ CCRF, *supra* note 75, art. 201.

inflicting harm on other persons.”¹²⁷ The penalties are significantly increased if the misdeed results in “grave consequences.”¹²⁸ Such a provision would benefit prosecutorial efforts to dismantle financial organizations that act as havens for organized crime.

3. *The Draft Law on Verification of Expenditures*

The Draft Law on Verification of Expenditures (“Verification Draft”) was incorporated into the Russian Parliament’s session calendar in 1997.¹²⁹ The bill passed three readings in the Duma, only to be rejected by the Federation Council in December 1997.¹³⁰ The bill contains provisions that would enable the Russian government to detect suspicious “placement” activities that are undertaken by converting currency into real and personal property.¹³¹ The Verification Draft would require purchases of items in several categories meeting a 1000 minimum wages threshold to be reported to the tax authorities in a special declaration that lists the income sources and amounts used to acquire the property.¹³² The categories of property would include (1) real estate; (2) aircraft, ocean-going vessels, vessels for use in internal waters, and ground transportation resources; (3) stock, shares in base capital ownership of businesses, and investment capital in business partnerships, state and municipal securities, and savings certificates; (4) cultural valuables; and (5) gold ingots.¹³³ In addition, a special declaration would be required for acquisitions¹³⁴ of the listed items in the amount of more than 3,000 minimum wages.¹³⁵

The penalty for failing to provide a special declaration within sixty days from the date of receipt of a written demand from tax authorities would be a 100 minimum wages fine.¹³⁶ For a delinquency exceeding ninety days, the penalty would increase to 1,000 minimum wages.¹³⁷

The Verification Draft expands upon the mandatory reporting requirements for transactions in real and personal property contained in

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Verification Draft, *supra* note 92.

¹³⁰ *Id.*

¹³¹ See *supra* notes 66-69 and accompanying text.

¹³² Verification Draft, *supra* note 92, art.4.

¹³³ *Id.* art. 3(1).

¹³⁴ “Acquisition” is defined as a purchase, barter, new construction, or reconstruction of real estate.

Id. art 2.

¹³⁵ *Id.* art. 3(2).

¹³⁶ *Id.* art. 8(1).

¹³⁷ *Id.*

Article 6 of the Money Laundering Draft.¹³⁸ The United States covers such transactions through the Treasury Department's broad definition of a "financial transaction," which includes such transactions in movable property as the purchase of precious stones, metals, and automobiles.¹³⁹ The monetary discrepancy between the 2,000 minimum wages threshold of Article 6 for personal transactions and the 1,000 minimum wages threshold of the Verification Draft may require reconciliation in order to prevent disparate application. The Verification Draft, in conjunction with Article 6 of the Money Laundering Draft, would be a useful law enforcement tool because it would cover the myriad financial transactions a money launderer often undertakes to hide evidence of crime.

4. *Towards a Uniform Anti-Money Laundering Bill*

The preceding discussion illustrates that momentum towards a comprehensive anti-money laundering system like the one that has been enacted in the United States is building in Russia. Collectively, the proposed laws contain two important elements of an anti-money laundering regime: reporting and recording requirements to track suspicious financial activity at the "placement" stage and significant penalties to deter the evasion of financial laws.¹⁴⁰ In addition to the proposed laws, the Russian Federation should promulgate asset forfeiture provisions. Such a law enforcement tool would not only provide a powerful disincentive for activities such as money laundering¹⁴¹ but would also alleviate the deficient resources of Russian law enforcement by generating revenues from forfeited property.¹⁴²

To promote uniformity in the application of its anti-money laundering system, the Russian Federation should enact a collective anti-money laundering law that incorporates the aforementioned proposed articles as well as asset forfeiture provisions. The passage of such a comprehensive law would provide the Russian Federation with elementary anti-money laundering provisions similar to those found in the United States.¹⁴³ and would constitute a first significant step towards confronting Russia's difficulties with money laundering, capital flight, and financial collapse.¹⁴⁴

¹³⁸ See *supra* notes 107-113. See also Money Laundering Draft, *supra* note 91, art. 6.

¹³⁹ See *supra* note 85.

¹⁴⁰ See *supra* notes 64-72.

¹⁴¹ See *infra* notes 184-188 and accompanying text.

¹⁴² See *infra* notes 169-173 and accompanying text.

¹⁴³ See *supra* notes 64-72 and accompanying text.

¹⁴⁴ See *supra* notes 41-44 and accompanying text.

IV. INSTITUTIONAL BARRIERS TO THE EFFECTIVE IMPLEMENTATION OF RUSSIA'S ANTI-MONEY LAUNDERING LEGISLATION

Substantively, Russia's proposed anti-money laundering legislation is similar in purpose and scope to the anti-money laundering laws found in the United States.¹⁴⁵ However, assuming the proposed legislation is passed, there is little reason to believe that Russia will achieve the same positive results enjoyed by the United States. The success of the U.S. anti-money laundering laws is based primarily on underlying institutions and patterns of civic responsibility that do not exist in Russia. Limitations on the effectiveness of Russia's proposed legislation include the absence of an independent judiciary and the consequent lack of confidence and respect for the rule of law, the limited political accountability of Moscow's ruling elite, deficiencies in Russia's law enforcement system, and an unstable banking system with questionable ties to organized crime and Russia's present ruling elite.

A. *The Need for an Independent Judiciary*

For a society to achieve compliance with the law, it must first develop respect for law. In Russia, the concept of law established by Lenin and employed by the Communist Party was that of law as a political instrument.¹⁴⁶ According to Kathryn Hendley, a scholar of Russia's legal reforms, "[l]aw became a tool for maintaining social order and consolidating political power, to be used at the discretion of the Bolsheviks."¹⁴⁷ The Communist Party thus used the judicial system as a means of promoting its policies and achieving its political objectives.¹⁴⁸ Under this system, the Party influenced a judge's behavior through its control of judicial selection, tenure, promotion, and salaries.¹⁴⁹ The inadequate funding provided by the government to judges and courthouses was a reflection of the Party's, and of society's, disrespect for the judiciary.¹⁵⁰

¹⁴⁵ See *supra* Part III.

¹⁴⁶ KATHRYN HENDLEY, TRYING TO MAKE LAW MATTER: LEGAL REFORM AND LABOR LAW IN THE SOVIET UNION 18-19 (1996).

¹⁴⁷ *Id.* at 19.

¹⁴⁸ *Id.* at 123-24.

¹⁴⁹ *Id.* at 124-26.

¹⁵⁰ *Id.* at 125-26. "In contrast to the gleaming marble edifices that housed Party officials, Soviet trial courts were housed in old wooden buildings that were dingy, dark, poorly heated and maintained, and difficult to find." *Id.* at 125.

A necessary predicate to social compliance with and government enforcement of laws like Russia's proposed anti-money laundering law is an independent judicial system.¹⁵¹ For compliance to occur, Russian society must learn to trust and respect its courts. Such trust will not come about if the judicial system continues to be a tool of the ruling elite. As Hendley concludes, "[t]he core element of the rule of law is that law applies in equal measure to the powerful and the non-powerful and that legal institutions have sufficient authority and independence to make meaningful the remedies imposed against the powerful."¹⁵²

Although Russia has moved away from the Leninist model of the judicial system since the collapse of the Soviet Union, "[m]uch of the former structure that enabled the Soviet government to control [a] judge's decisions still exists, and Russians remain very suspicious of the judiciary."¹⁵³ Significant steps are thus needed in order to reform the judicial system. These include extending the tenure of judicial appointments,¹⁵⁴ providing adequate funds for judges and the court system, establishing mechanisms to ensure that the provision of such funds is not tied to political power,¹⁵⁵ and instilling the concept of impartiality and social activism in the Russian judiciary.¹⁵⁶ In short, without the assurance that Russian judges will oversee money laundering prosecutions with impartiality and independence from political and criminal organizations, the passage of an anti-money laundering system will do little to confront Russia's crime epidemic.

B. *The Limited Political Accountability of Russia's Ruling Elite*

In addition to an independent judiciary, a law-based society needs political accountability from ruling elites.¹⁵⁷ In Russia, the system of government passed down from the Soviet era was based on the *nomenklatura* system, under which officials of the Communist Party were immune from legal accountability.¹⁵⁸ According to Anatoly Sobchak, a former Russian law professor who became a prominent Soviet official

¹⁵¹ *Id.* at 14.

¹⁵² *Id.*

¹⁵³ Boylan, *supra* note 87, at 1328.

¹⁵⁴ *Id.* at 1332-34.

¹⁵⁵ *Id.* at 1334-36.

¹⁵⁶ HENDLEY, *supra* note 146, at 122-23.

¹⁵⁷ *Id.* at 37-38.

¹⁵⁸ *Id.* at 37.

during the Gorbachev years, “[t]he nomenklatura parasitized our society. Its strength lay in a collective freedom from accountability.”¹⁵⁹

Russian Procurator Yuri Skuratov’s investigation into Kremlin corruption offers an example of the difficulties of attempting to hold high government officials accountable for illicit conduct.¹⁶⁰ Some Russian commentators argue that the Kremlin’s response to Skuratov’s investigation was an attempt to prevent the exposure of high-level corruption.¹⁶¹ Others, including Berezovsky, a target of the investigation, maintain that Skuratov’s investigation was frivolous and that it was orchestrated by the Communist Party-dominated Federation Council to punish Berezovsky’s for his openly anti-Communist views.¹⁶² Either possibility is unpalatable. Either the Russian prosecutor was used as a political instrument of high-level officials or severe barriers stand in the way of the Russian prosecutor’s attempts to make high-level officials accountable for illicit activity.

The Russian government’s limited accountability is reinforced by its established laws. Under Russia’s current constitution, legislators in the Federation Council and State Duma enjoy broad parliamentary immunity while in office.¹⁶³ “The practical result of Russia’s parliamentary immunity regime is that unless they have been caught red-handed, [have] engaged in public libel or slander, or [have] placed the safety of another in danger, Russian legislators stand above the law.”¹⁶⁴ This expansive privilege explains why members of Russia’s wealthy oligarchy like Berezovsky take pains to curry favor and build close connections with politicians in Moscow or wish to become politicians themselves.¹⁶⁵

Limited political accountability and Russia’s parliamentary immunity laws provide government officials in Russia with an incentive not to comply with the law.¹⁶⁶ These factors will make both the passage and enforcement of the proposed anti-money laundering legislation difficult. The proposed legislation is unlikely to be successful unless Russia takes steps to hold its ruling elite accountable for unlawful activities. Reforming or eliminating parliamentary immunity¹⁶⁷ and informing the Russian public of the illicit

¹⁵⁹ *Id.* (quoting ANATOLY SOBCHAK, FOR A NEW RUSSIA 21 (1992)).

¹⁶⁰ See *supra* notes 1-8 and accompanying text.

¹⁶¹ LaFraniere, *supra* note 5.

¹⁶² Paul Quinn-Judge, *The Fall of an Oligarch*, TIME INT’L, Apr. 19, 1999, at 42.

¹⁶³ Scott J. Boylan & Catherine L. Newcombe, *Parliamentary Immunity: A Comparison Between Established Democracies and Russia*, 3 J. INT’L LEGAL STUD. 205, 238-41 (1997).

¹⁶⁴ *Id.* at 244.

¹⁶⁵ *Id.* at 240-41. “Russia’s parliamentary privilege laws attract those trying to hide from the law to the Russian Parliament and worse, promote crime and corruption at the highest level of public service.” *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 249-50.

activities of government officials are two actions that could help create such accountability.¹⁶⁸

C. *Deficiencies in the Russian Law Enforcement System*

Russia's post-Soviet law enforcement apparatus possesses neither the resources nor the expertise to handle its crime epidemic.¹⁶⁹ Because of the Communist Party's monopoly on crime in Soviet Russia, the Soviet government did not officially recognize the existence of organized crime.¹⁷⁰ Consequently, few law enforcement officers of the post-Soviet era completely grasp the intricacies of white collar and organized crime, let alone possess the training to prosecute such crimes.¹⁷¹ Moreover, because of a lack of state resources, Russian Federation police officers are "tragically underequipped" and poorly compensated,¹⁷² while members of criminal organizations often have the benefit and expertise associated with the Soviet-era KGB.¹⁷³ Thus, even assuming the passage of an anti-money laundering regime in Russia, law enforcement will find itself at a disadvantage in seeking to prosecute criminals under the proposed laws.

D. *Instability in Russia's Banking System*

Money laundering prosecution is greatly handicapped without active assistance from the financial sector. In the United States, this has been demonstrated by the effectiveness of the financial activity reporting

¹⁶⁸ *Id.* at 251-52. Unfortunately, those interested in maintaining the status quo in Russian government, such as bankers like Berezovsky, control much of Russia's media empire. Juliet Johnson, *Commentary Perspectives on Russia*, L.A. TIMES, Aug. 31, 1998, at B5.

¹⁶⁹ Andrei Shleifer, World Economic Crisis, Testimony to the U.S. House of Representatives Banking Committee (Sept. 15, 1998), available in 1998 WL 18088399 (discussing how the underfinanced and poorly organized state police's inability to protect business contributed to the rise of organized crime in Russia).

¹⁷⁰ HANDELMAN, *supra* note 2, at 284. The Soviet justice system defined criminal behavior as any conduct that was considered "socially dangerous," a phrase that "in Soviet-speak generally meant anything construed as a challenge to state authority." *Id.* at 275.

¹⁷¹ *Id.* at 284.

¹⁷² *Id.* at 282-83. Russian Federation police lack adequate firepower and work with outdated arms and other equipment that cannot match what is readily available on the black market. In 1993, a Russian militiaman earned 30,000 rubles per month (about \$30 U.S.), which was less than what many factory workers received. *Id.*

¹⁷³ *Id.* at 294. After the breakup of the Communist Party, the KGB lost much of its influence and many of its members took part in the privatization crime wave by joining front organizations, banks, and commercial enterprises. Former KGB members may also have acted as mercenaries and instructors for organized crime groups. *Id.*

requirements.¹⁷⁴ The United States obtains effective results in prosecuting money laundering activities largely because of the banking industry's compliance with requirements for recording and reporting financial transactions.¹⁷⁵ By working with financial institutions in the investigation of money laundering activities, the United States has created a direct channel to crucial information at the financial source for investigators and has transferred a large administrative burden to private entities.¹⁷⁶

In Russia, the instability of the banking industry provides a significant barrier to effective money laundering investigation. This instability is due to insufficient regulation of the banking industry and the industry's intimate connections with organized crime and members of Russia's corrupt oligarchy.¹⁷⁷ Indeed, one of the greatest obstacles to enactment of the proposed legislation is the banking lobby.¹⁷⁸ Mixed into the ranks of this lobby are the post-Soviet politicians and bureaucrats who fear that enactment of the proposed legislation would allow investigators to uncover funds that they diverted during the Russian privatization process.¹⁷⁹

Banking interests and their allies have challenged the proposed legislation by arguing that the statutory term "illegal proceeds" should be amended to read "criminal proceeds."¹⁸⁰ Such a change in the law would limit its reach "to the likes of drug dealers and traditional organized crime elements whose ill-gotten gains are the proceeds of easily identifiable crimes such as narcotics trafficking, extortion, prostitution, and loan sharking."¹⁸¹ Even the term "illegal proceeds" would not include the misuse and conversion of illegal proceeds and other white-collar fraud schemes that have contributed to the collapse of the Russian banking system.¹⁸² Russia's recalcitrant banking sector, with its intimate

¹⁷⁴ See *supra* notes 66-72 and accompanying text.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ See *supra* notes 21-49 and accompanying text. Skuratov's investigation into government corruption also led to charges that Central Bank officials laundered money out of government coffers through a shell corporation set up in the Channel Islands, a locale internationally known as a money laundering haven. Igor Semenko & Jeanne Whalen, *What is FIMACO?*, MOSCOW TIMES, Feb. 23, 1999, available in 1999 WL 6806156.

¹⁷⁸ Levchuk, *supra* note 99. See also *Duma Veers Far to Government's Left*, *supra* note 73 (discussing Central Bank chief Viktor Gerashchenko's opposition to proposed measures dealing with money laundering activities).

¹⁷⁹ Boylan, *supra* note 79.

¹⁸⁰ Levchuk, *supra* note 99.

¹⁸¹ *Id.*

¹⁸² *Id.*

connections to money laundering activities, stands as a challenge not only to the enforcement, but also to the enactment, of the proposed legislation.

V. RECOMMENDATIONS FOR THE RUSSIAN ANTI-MONEY LAUNDERING REGIME

A. *Forfeiture Provisions*

As a supplement to penalties under its money laundering legislation, the Russian Federation must promulgate effective asset forfeiture provisions. Such a law enforcement tool would not only provide a powerful disincentive for criminal activities such as money laundering, but would also alleviate the problem of inadequate resources in Russian law enforcement.¹⁸³ Properly seized assets could be used to fund law enforcement activities,¹⁸⁴ leveling the playing field between criminal and police officer.¹⁸⁵

Although the CCRF contains an asset forfeiture provision,¹⁸⁶ this provision suffers from problems similar to those of Article 174.¹⁸⁷ While it is a part of the Russian Federation's new criminal laws, the CCRF asset forfeiture provision lacks adequate enforcement mechanisms, and the U.S. State Department has noted that the implementation of the provision has been weak.¹⁸⁸

B. *The Need for a List of Specified Unlawful Activities*

Because vaguely drafted provisions may lead to both constitutional difficulties and an abuse of discretion by law enforcement and judicial

¹⁸³ See *supra* notes 169-173.

¹⁸⁴ If the Russian Federation channeled criminal forfeitures directly into law enforcement projects, it would be following the example of seven members of the Financial Action Task Force ("FATF"): Australia, Canada, Italy, Luxembourg, Spain, the United Kingdom, and the United States. FIN. ACTION TASK FORCE ON MONEY LAUNDERING, *supra* note 61, at 10. Other countries that do not have such a fund hold that such placement of income is contrary to the principle that all monies raised by government are put into a general revenue fund and all disbursements are then made from this fund. *Id.* The FATF was established by the 1989 G-7 Summit in Paris to examine measures to combat money laundering. Members of the FATF include Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. *Id.* at 5.

¹⁸⁵ See *supra* notes 169-173.

¹⁸⁶ CCRF, *supra* note 75, art. 52.

¹⁸⁷ See *supra* notes 80-82 and accompanying text.

¹⁸⁸ U.S. Report Paints Bleak Picture of Laundering in Russia, MONEY LAUNDERING ALERT, May 1993, at 8.

authorities, the Russian Federation should list the requisite unlawful activities in its money laundering laws. The broad definition of a financial organization¹⁸⁹ and the expansive list of suspicious financial transactions¹⁹⁰ in the Money Laundering Draft are examples of the specificity that is necessary in a civil law system.¹⁹¹ Activities specified as unlawful in Russia's money laundering laws should include not only those crimes that are commonly associated with organized crime, such as drug trafficking and extortion, but also white-collar criminal activities such as fraud, tax evasion, and other forms of financial mischief that are more closely related to the collapse of Russia's financial system.

C. *Crackdown on Illegitimate Banks*

Because of the significant role that detection of the act of "placement" plays in the prosecution of money laundering offenses,¹⁹² the Russian Federation must promulgate stricter banking regulations that will both weed out illegitimate financial organizations and require that financial organizations play an active role in detecting unlawful activities. If organized crime is permitted to maintain a connection to Russia's financial sector, there is little reason to believe that banking institutions will not continue to channel illicit revenues out of the country.¹⁹³ Reining in control of its financial industry would be a first significant step in confronting Russia's capital flight and economic instability. The Russian Federation should enact provisions like the bank "death penalty" in U.S. anti-money laundering statutes, which provides the government with the authority to terminate the operations of suspect or delinquent financial organizations.¹⁹⁴

¹⁸⁹ See *supra* note 95.

¹⁹⁰ See Money Laundering Draft, *supra* note 91, art. 6.

¹⁹¹ See WATSON, *supra* note 88.

¹⁹² See *supra* notes 66-69.

¹⁹³ See Boylan, *supra* note 79. The money laundering scandal involving the Bank of New York is a prime example of Russia's continuing money laundering problem. In late 1999, the U.S. Justice Department initiated an investigation into allegations that the Bank of New York was being used by Russian businesses and individuals to funnel illegal proceeds out of Russia. John Tagliabue, *Inquiry Shows Russians Laundered Monet [sic] Through U.S.*, N.Y. TIMES, Sept. 28, 1999. These Russian groups are suspected of funneling as much as \$10 billion through the bank, which is the fifteenth largest financial institution in the United States. Marcy Gordon, *Launderers Find New Ways to Make Dirty Money Look Clean*, MILWAUKEE J. & SENTINEL, Sept. 26, 1999, available in 1999 WL 21538981.

¹⁹⁴ In 1992, Congress through the Annunzio-Wylie Act created a "death penalty" for banks and other financial institutions that engage in violations of the MLCA or criminal violations of the BSA. Under the death penalty provision, if a financial institution is convicted for violations of the MLCA, the government is required to initiate termination proceedings against the offending institution. The government also has the option of instituting such proceedings for criminal violations of the BSA. Annunzio-Wylie Act, 12 U.S.C. §§ 93(c); 131; 1464(w); 1786(h)(1)(c); 1821(c)(4)(M). Factors to be taken into account include:

D. *The Need for an International Response: Conditional Aid to the Russian Federation*

Russia's problems with crime, corruption, and economic instability have created a vicious cycle. Capital flight in Russia results in financial crisis.¹⁹⁵ Russia's inability to generate sufficient tax revenues¹⁹⁶ makes it difficult for the government to fund health, education, culture, infrastructure, and law enforcement services.¹⁹⁷ The lack of adequate funding for law enforcement agencies allows criminal activities, especially the activities of powerful figures in Russia's parliament or of individuals associated with the Mafiya, to go unchecked.¹⁹⁸ In turn, Russia's powerful figures thwart tax and criminal laws by channeling capital out of the country.¹⁹⁹ This occurs because Russia does not have a working anti-money laundering system.²⁰⁰ Clearly, it is in Russia's economic and political interest to break this cycle by passing an effective anti-money laundering system in the Duma and the Federation Council.

Because partisan politics, government corruption, and the influence of organized crime could effectively delay the enactment of needed legal reform measures indefinitely, the United States and global organizations such as the IMF and the World Bank should require Russia to undertake economic and legal reforms as a condition of financial relief. Although the IMF has made conditional aid part of its policy in Russia,²⁰¹ its requirements

(1) the extent to which directors or senior executive officers of the institution in question knew of, or were involved in, the commission of the offenses at issue; (2) the extent to which the offense occurred despite the existence of policies and procedures designed to prevent the occurrence of any such offense; (3) the extent to which the institution has fully cooperated with law enforcement authorities in the investigation; (4) the extent to which the institution has implemented additional controls since the commission of the offense to prevent the recurrence of violations; and (5) the extent to which the interest of the local community in having adequate deposit and credit services would be threatened by the forfeiture of the franchise. *Id.* 12 U.S.C. §§ 93(c)(2)(A)-(E).

¹⁹⁵ Kravis, *supra* note 51.

¹⁹⁶ In 1998, Russia generated an average of \$1 billion per month in tax revenues, an amount less than the tax revenues generated by New York City. *Russia in Default: Money Can't Buy Me Love*, ECONOMIST, Feb. 6, 1999, at 23 [hereinafter *Russia in Default*].

¹⁹⁷ Kravis, *supra* note 51.

¹⁹⁸ Shleifer, *supra* note 169.

¹⁹⁹ *Russia in Default*, *supra* note 196, at 25.

²⁰⁰ See *supra* notes 34-57 and accompanying text.

²⁰¹ As part of the disbursement plan of July 1997, the IMF required the Russian Federation to streamline the tax code and reduce tax rates, reform tax administration procedures and a budget code, have a more uniform application of the value added tax, and reduce federal subsidies. Summers, *supra* note 45. In addition, the IMF urged Russia to make the privatization process more transparent and open, cut substantially the number of "strategic firms" exempted from privatization, accelerate reform of the banking and energy sectors, eliminate non-cash payments for utilities and infrastructure, increase capital market transparency, strengthen measures to enforce minority shareholder rights, and improve bankruptcy legislation and enforcement. *Id.*

should focus more on factors related to capital flight, which is largely responsible for Russia's financial crisis.

In 1998, the United States sent \$611 million in aid to Russia.²⁰² However, there is reason to believe that the generous stance of the United States is shifting.²⁰³ Without a guarantee that relief funds will be used to reform basic economic and legal institutions in Russia and will not be channeled into the pockets of corrupt politicians, the United States, other nations, and international organizations inclined to provide support should reconsider their Russian aid programs. Aid should only be provided if it is conditioned upon economic and legal reform and the implementation of an anti-money laundering regime.

VI. CONCLUSION

Russia's post-Soviet history offers much to be commended. Over the past decade, the Russian Federation has made the onerous transition from a Communist command economy to a market-based democracy. As a watershed event, post-Soviet Russia presided over the enactment of a new criminal code, providing a drastic break from its Soviet past. The enactment of this code marks the new predominance of private or individual rights over those of the Russian State.

Through the growing pains of Russia's privatization era, however, many individuals with less than noble intentions abused their prior positions in the Soviet bureaucracy to pilfer government-owned property. Moreover, organized crime proliferated in the wake of the country's anemic law enforcement apparatus. Corrupt politicians, in conjunction with organized crime, are responsible for the present-day financial crisis in Russia.

Until the Russian Federation has the vision to understand the source of its ailment, long-term economic progress and legal reform will not be achieved. As a significant step along that road, the Russian Federation should enact a comprehensive anti-money laundering system that incorporates laws similar in purpose and scope to those found in the United States. To confront political opposition to the passage of anti-money laundering laws, foreign donors should condition aid on economic and legal

²⁰² *Western Man's Burden*, ECONOMIST, Dec. 12, 1998, at 49. Comparatively, aid from other groups and nations included (in millions of dollars): the European Union (188), the Soros Foundation (183), Britain (50.8), Germany (30), Finland (13.6), and Norway (8). *Id.*

²⁰³ *Id.* See also Clifford G. Gaddy & Barry W. Ickes, *Russia's Virtual Economy*, FOR. AFF., Sept.-Oct. 1998, at 53 (arguing that bailout programs have not stimulated economic and legal reform in Russia but rather have fostered an unhealthy dependence on artificial support structures).

reforms. Such reforms should include the enactment of money laundering enforcement legislation, an accounting of the Russian Federation's expenditure of aid received, tighter controls over the banking industry, and more exacting requirements for bank formation.

Appendix A—Draft Law on Money Laundering Prosecution, Article 6²⁰⁴

1. Cash transactions performed by physical persons or legal entities involving:
 - a. deposit or withdrawal of cash to/from a bank account of a legal entity, when such deposit or withdrawal cannot be explained by the nature of the business;
 - b. purchase and/or sale of foreign currency in cash;
 - c. purchase of securities by physical persons in cash;
 - d. receipt of monetary resources upon a check to a bearer from a non-resident, or upon a check that identifies itself as winnings;
 - e. exchange of bank notes of one value to bank notes of another value; or
 - f. deposit of cash, packed and sealed by another bank, to the bank account.
2. Bank account transactions by physical persons and legal entities involving:
 - a. multiple deposits of monetary resources to the bank account by a physical person or legal entity within the same banking day through different banks (branches);
 - b. accumulation of monetary resources into a bank account with processing of documents specifying such account as accessible to a bearer;
 - c. deposit of monetary resources into a bank account that has been involved in no transactions or insignificant transactions in the past, accompanied by the request to make payment in cash;
 - d. opening an account using cash, with third persons as beneficiaries;
 - e. opening an account using paid bank checks and traveler's checks;
 - f. transfer of monetary resources to a bank account abroad that belongs to an anonymous owner;
 - g. big transactions by a newly-formed legal entity, or legal entity whose past account activity was insignificant;
 - h. transfer of foreign currency to an account of a legal entity based on international trade contracts as a credit for carrying out obligations that are not being carried out by such legal entity;
 - i. receipt of monetary resources from a legal entity or a physical person, located (residing) and/or having an account in a bank registered in off-shore areas or free economic zones, as well as in regions known for illegal production of drugs; or
 - j. transfer of monetary resources to a legal entity or physical person located (residing) and/or having an account in a bank registered in off-shore areas, as well as regions known for illegal production of drugs.
3. Credit transactions by legal entities and physical persons involving:
 - a. request for a credit secured by a deposit certificate;
 - b. granting or receiving credit secured with a document that identifies the borrower as having a deposit in a foreign bank; or
 - c. granting or receiving credit with an interest rate much higher or much lower than an average interest rate on the domestic market.
4. Transactions by legal entities and physical persons of securities involving:
 - a. offer of a large commission for mediation in a transaction with securities;
 - b. simultaneous purchase and sale of securities at prices significantly deviating from current market prices on similar transactions, as well as other transactions involving manipulating prices on securities market; or
 - c. multiple transactions with the same financial instrument being sold and then purchased back by the same party.
5. Transactions in movable property or real estate involving:
 - a. characteristics of void transactions as defined by federal law;
 - b. violations of the appropriate procedures for their registration and requirements for notarization or state registration, as provided by law;
 - c. storage of securities, precious metals and stones or other valuables in a bank or pawn shop in circumstances that suggest a lack of congruity between such transactions and transactions normally expected of the person considering his/her occupation, income, and property ownership status; or
 - d. storage of property while relinquishing personal ownership when such conduct is not explained by conditions of storage or characteristics of such property.

²⁰⁴ Money Laundering Draft, *supra* note 91, art. 6.

