

International Criminal Law Protection of Capital Markets: A Comprehensive Guide to Ensuring Financial Integrity and Global Stability

Capital markets, the backbone of global economic growth and development, serve as a platform for raising capital, facilitating trade, and enabling investment. However, the increasing sophistication and cross-border nature of financial transactions have made capital markets vulnerable to a range of criminal activities, posing a significant threat to financial integrity and global stability.



Regulating Fraud Across Borders: Internationalised Criminal Law Protection of Capital Markets

by Edgardo Rotman

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Recognizing the transnational nature of financial crimes, the international community has developed a robust framework of international criminal law to effectively address these threats. This article provides a comprehensive overview of the international criminal law protection of capital markets,

examining key legal frameworks, relevant conventions, and case studies that demonstrate the critical role of criminalization in deterring misconduct and safeguarding investors.

International Legal Frameworks

1. **United Nations Convention against Transnational Organized Crime (UNTOC):** UNTOC, ratified by over 190 countries, provides a comprehensive framework for addressing transnational organized crime, including financial crimes such as money laundering and corruption. Its provisions obligate states to criminalize and establish measures to prevent and combat these offenses.
2. **United Nations Convention against Corruption (UNCAC):** UNCAC, adopted in 2003, is the leading international treaty focusing specifically on combating corruption. It criminalizes a wide range of corrupt practices, including bribery, trading in influence, and money laundering, and requires states to establish effective legal, administrative, and law enforcement mechanisms to prevent and punish such offenses.
3. **International Monetary Fund (IMF) Code of Conduct on Fiscal Transparency:** The IMF Code of Conduct promotes transparency and accountability in fiscal management, aiming to prevent corruption and misuse of public funds. It includes provisions on disclosing budget information, accounting and auditing standards, and mechanisms for combating financial crimes.
4. **Financial Action Task Force (FATF) Recommendations:** The FATF, an intergovernmental body, develops and promotes policies to combat money laundering and terrorist financing. Its 40 Recommendations

provide guidance on criminalizing money laundering and terrorist financing, enhancing customer due diligence, and strengthening law enforcement cooperation.

Relevant Conventions and Treaties

- **Convention on International Bribery:** This convention criminalizes the bribery of foreign public officials and establishes mechanisms for international cooperation in investigations and prosecutions.
- **Convention on Combating Counterfeiting of Monetary Instruments:** This convention aims to prevent and combat counterfeiting of currency and other monetary instruments, including through criminalization of such offenses.
- **Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention):** This convention provides for the arbitration of investment disputes between states and foreign investors, promoting certainty and stability in international investment and deterring corrupt practices.
- **Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention):** This convention facilitates the recognition and enforcement of arbitral awards in different jurisdictions, enhancing the effectiveness of international arbitration in resolving commercial disputes, including those related to financial crimes.

Case Studies

Numerous case studies illustrate the effective application of international criminal law in combating financial crimes and protecting capital markets:

- In 2015, the United Kingdom's Serious Fraud Office successfully prosecuted a former trader for insider trading, resulting in a nine-year prison sentence. The prosecution relied on international cooperation and evidence obtained from overseas regulators.
- In 2016, the United States Department of Justice secured a \$1.3 billion settlement with a major Swiss bank for its role in facilitating tax evasion by US citizens. The settlement included criminal charges against the bank's employees for conspiracy to commit wire fraud and tax fraud.
- In 2017, the Brazilian Federal Police dismantled a criminal organization involved in a Ponzi scheme that defrauded over 100,000 investors. The investigation and prosecution were based on international cooperation and the application of anti-money laundering laws.

International criminal law plays a critical role in protecting capital markets from financial crimes and ensuring financial integrity and global stability. By providing a robust framework for criminalizing misconduct, fostering international cooperation, and facilitating the investigation and prosecution of financial offenses, international criminal law effectively deters wrongdoing, protects investors, and maintains confidence in the global financial system.

As capital markets continue to evolve and new threats emerge, the international community must remain vigilant in strengthening and adapting international criminal law frameworks to effectively combat financial crimes and safeguard the integrity and stability of global markets.

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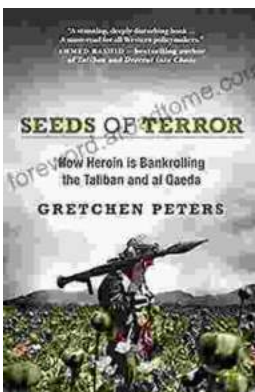
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