The Role of Financial Intelligence Units in Fighting Corruption and Recovering Stolen Assets

An Egmont Group White Paper

EXECUTIVE SUMMARY

Corruption is a global plague that seriously undermines development, diverting resources that could be harnessed to finance development, damaging the quality of governance institutions, and threatening human security. Increasingly, corruption related crimes appear in the statistics of FIUs and of law enforcement agencies, as a major category of predicate offences.

Effective anti-money laundering systems have the potential to pose a significant barrier to the possibility of perpetrators of corruption-related offences enjoying the proceeds of corruption, or indeed laundering the bribe itself. The FIU is an important element in the AML regime, particularly in the early, pre-investigative or intelligence gathering stage, where the FIU acts as an interface between the private sector and law enforcement agencies, assisting with the flow of relevant financial information.

Fighting cross-border corruption requires close and timely international cooperation. FIUs can bring added value to this process from the advantages of existing and well-established information exchange mechanisms developed by the Egmont Group.

FIUs can add value to the overall multi-stakeholder anti-corruption efforts in different sectors:

- Analytical function of the FIUs (operational and strategic analysis)
- Exchange of information, domestically and internationally
- Supervision, guidance and contribution to a national anti-corruption policy

FIUs receive significant amounts of information that potentially relate to corruption – yet too little has been accomplished to turn this intelligence into evidence and to allow for a detection and confiscation of proceeds of corruption. This study aims to increase awareness of corruption and asset recovery among FIUs; present case scenarios, good practices and parameters for FIUs to the fight against corruption; and describe the position and role of the FIU in the asset recovery process.

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1. Introduction

1.1. The devastating effects of corruption

Corruption remains rife in many countries and financial centres all around the world recognise the danger of the abuse of their financial systems by proceeds of corruption. Studies indicate that the least developed countries do not benefit fully from development aid because as much as 30% of development disbursements may be siphoned off by corrupt actors and criminal organisations. Where such funds come from a multilateral bank loan arrangement, the country will still have to repay the full amount even though it has benefited from none, or only a fraction, of the aid intended[1].

While a certain portion of the proceeds of corruption typically remain in the country where the corrupt act has occurred[2], the known cases show that often, significant assets are laundered abroad. These outflows of capital mean that money is diverted away from building infrastructure, financing social sectors, re-paying debt or paying decent salaries to public servants[3]. The effects of corruption leads to wrong investments and a waste of resources, but also increasingly a threat to democratic structures and the rule of law[4].

Corruption is a global plague that seriously undermines development, diverting resources that could be harnessed to finance development, damaging the quality of governance institutions, and threatening human security. It often fuels crime and illicit goods, and contributes to conflict and fragility[5]. Also, many countries face severe challenges today on account of an alarmingly high prevalence of grand corruption.

The international AML/CFT community has started to realize the international dimensions of corruption: The FATF attaches a great importance to the fight against corruption: corruption has the potential to bring catastrophic harm to economic development, the fight against organized crime, and respect for the law and effective governance[6]. Implementation of the FATF recommendations is key to improving the fight against corruption.

1.2. Definition of Corruption

The relevant international Anti-Corruption (AC) Conventions[7] do not define "corruption". Instead, they establish the offences for a range of corrupt behaviour[8]. This paper follows the approach of the Conventions to define international standards on the criminalisation of corruption by prescribing specific offences, rather than through a generic definition. The

[1] Development Assistance, Asset Recovery and Money Laundering: Making the Connection, Basel Institute on Governance, Basel, 2010, page 24
[2] Corruption – Money Laundering: An Analysis of Risks and Control Measures in West Africa, page 8, GIABA, May 2010
[3] Anne Lugon Moulin, Asset Recovery: Concrete Challenges for Development Assistance, in: Recovering Stolen Assets , Peter Lang, Bern 2008
[4] Pieth/Eigen, Corruption in international business transactions ("Korruption im internationalen Geschäftsverkehr"), page 1
[5] Busan HLF4 Outcome Document (TBC)
[6] Link from FATF website: http://www.fatf-gafi.org/document/9/0,3746,en_32250379_32235720_47413385_1_1_1_1,00.html
[7] OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; the Council of Europe Criminal Law Convention on Corruption; the Inter-American Convention against Corruption and the UN Convention against Corruption
[8] Corruption: A Glossary of International Standards in Criminal Law, OECD 2008

most recent Convention, that has the most outreach, with currently 158 state parties[9], is the UN Convention against Corruption (UNCAC). It encompasses the following mandatory offences:

- Bribery of national public officials
- Bribery of foreign public officials
- Bribery of officials of public international organisations
- Embezzlement and misappropriation of property by a public official
- Obstruction of justice
- Laundering the proceeds of corruption

Under FATF and UNCAC standards, countries are required to criminalise these offences and to consider them as predicate offences to money laundering[10].

1.5. Corruption as a main predicate offence

Increasingly, corruption related crimes appear in the statistics of FIUs and of law enforcement agencies, as a major category of predicate offences. The US Department of State 2011 Money Laundering and Financial Crime Report names corruption as a "major predicate offence" or as a serious obstacle to fighting money laundering, in 98 countries and jurisdictions[11]. This report covers 200 jurisdictions.

Many developing countries, and countries in transition, report that corruption is the most frequent source of predicate offences in their money laundering investigations. But also financial centres, often not subject to corrupt conduct by their own public officials, note that a significant portion of their STRs relate to bribery and other corruption related offences, mostly from international cases (often the bribe giver in one, the bribe taker in another country). In contrast, few cases have been identified where the supply side of corruption manifests itself as a predicate offence although the international standard requires that bribe taking (passive side of corruption) as well as bribe giving (supply side) must be covered equally.

A number of Egmont FIUs report that they are receiving STRs / SARs relating to corruption, identifying the proceeds of corruption, exchanging information with other FIUs and disseminating information for investigation in relation to corruption. The table below illustrates some examples:

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[9] As of 4 January 2012, see http://www.unodc.org/unodc/en/treaties/CAC/signatories.html

[10] Art. 23 Paragraph 2 (b) UNCAC; Definition of "designated category of offences" in the FATF Glossary

[11] Afghanistan, Albania, Angola, Argentina, Armenia, Aruba, Austria, Azerbaijan, Bangladesh, Belarus, Benin, Bolivia, Bosnia & Herzegovina, Brazil, Bulgaria, Burkina Faso, Burma, Burundi, Cambodia, Cameroon, Chad, China (PRC), Comoros, Costa Rica, Djibouti, Dominican Republic, Ecuador, Equatorial Guinea, Ethiopia, Gabon, Georgia, Ghana, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hong Kong, India, Indonesia, Iran, Iraq, Israel, Jamaica, Jersey, Kazakhstan, Kenya, Republic of Korea, Kosovo, Kyrgyz Republic, Laos, Latvia, Lebanon, Liberia, Macedonia, Madagascar, Malawi, Mauritania, Mauritius, Micronesia, Moldova, Montenegro, Mozambique, Nepal, Nicaragua, Nigeria, Pakistan, Palau, Peru, Philippines, Portugal, Russia, Senegal, Serbia, Sierra Leone, Singapore, Solomon Islands, Somalia, South Africa, St. Kitts and Nevis, St. Lucia, Switzerland, Serbia, Taiwan, Tajikistan, Tanzania, Thailand, Togo, Turkmenistan, Uganda, Ukraine, Uzbekistan, Venezuela, Vietnam, Zambia, Zimbabwe

Country examples (from FIU annual reports):

In Switzerland, over the last 10 years, 574 STRs had a suspected link to acts of corruption. This figure represents over 7% of the total number of Swiss STRs for the period covered. The vast majority of these reports provide a link to potential foreign bribery, indicating that the act occurred in another country, while the proceeds of the suspected bribery were laundered in the financial centre.

In 2006, 5% of the SARs in Liechtenstein were filed in connection with a suspicion of bribery or acceptance of gifts by a public official.

In 2010/2011, 4 % of the SARs were filed on the suspicion of corruption in the Cayman Islands.

In Lebanon, 0.5% of the SAR's received related to embezzlement of public funds.

In 2005, the FIU of Germany reported that 2% of the exchanges of information between FIUs were based on suspicions of corruption.

In 2010, UKFIU reviewed 7,156 SARs which indicated possible corrupt PEP activity and disseminated 240 intelligence packages as a result.

In Belgium, in 2010, 9 files reported to the Public Prosecutor's Office were reported because of a suspicion of corruption.

In Canada's Phase 3 evaluation by the Working Group on Bribery, FINTRAC was reported to refer one or two leads per month to the RCMP on suspected domestic and foreign corruption offences.

In Korea's evaluation, from 2004 to the end of 2010 the Korea Financial Intelligence Unit (KoFIU) reportedly received 2279 STRs related to bribery offences, and of these 434 were analysed in-depth. None of the analysed information involved foreign bribery offences, and therefore was not disseminated to the law enforcement authorities.

In the case of Luxembourg, bribery as a predicate offence was noted in 45 STRs analysed by the FIU in 2004, 17 in 2005, 24 in 2006, 13 in 2008, 16 in 2009 and 40 in 2010.

In Mexico's evaluation, the UIF stated that it had referred to the Mexican Office of the Attorney General (PGR) three STRs involving suspected laundering of the proceeds of foreign bribery.

In the US Phase 3 Report it is noted that from 2003 to 16 September 2010, 54 natural persons have been charged with money laundering in foreign bribery cases and 19 have been convicted.

In general, FIUs are unable to provide data on the specific corruption offences to which the STRs relate[12]

In addition, the Egmont Biennial Census 2011 has indicated that a number of Egmont FIUs have an explicit AC mandate. In the Egmont biennial census, 37 FIUs reported to have an AC mandate. About the same number of FIUs considers corruption as a significant predicate offence within their jurisdiction.

[12] More information available on the OECD website: www.oecd.org/corruption.

1.6. Corruption as a crime without (direct) victim

Corruption rarely has direct victims. The effects of corruption are usually only visible in terms of insufficient infrastructure, inefficient public services and a non-functional rule of law system. Corruption offenders – typically a bribe giver and a bribe taker, the former often a company, the latter usually being a public official – have an interest in keeping their dealings secret. The same is true for other forms of corruption: Abuse of office and embezzlement of public funds in particular. Institutional frameworks that allow whistleblowers to report possible acts of corruption are still insufficient in many countries. However, corruption will likely leave traces in the financial transactions. They may be detected and determined to be suspicious by financial institutions who then report this information to FIUs. Through this mechanism, a criminal investigation can be launched which would otherwise never occur.

Case scenario (FIU, Fiji)

The Fijian FIU received an STR on a clerk at a local government department who was colluding with an employee of a commercial bank to commit fraud by "pocketing' local government revenue. A member of the public would pay a service fee for a government database service report to the local government department. The employee of the bank would collect the service fee from the customer and deposit it into the clerk's personal bank account. The clerk would provide the database service report to the bank employee and immediately withdraw the service fee from his personal bank account and use the money personally. Between January 2006 and May 2010, 440 transactions totalling over $25,000.00 were fraudulently credited to the clerk's personal bank account for the payment of a service fee for database checks at the government department.

1.7. Demand and supply side corruption

To date, the work on corruption has focused on what the recipient of a bribe, typically the public official that has abused his powers, has done with the money once it has been received. The OECD notes there are two other aspects which need to be addressed, in order to fully address the problem.

i. The first occurs upstream in the bribe transaction. Bribes paid to public officials are often hidden, and it is the companies and the individuals who are paying the bribes that are responsible for ensuring that they are not detected at the outset. This is where we see the use of intermediaries, for example, to hide corrupt transactions (see: OECD Typologies on the Role of Intermediaries in Business Transactions[13]), or the transfer of funds through financial centres. Bribes are also often paid to employees of State-owned and State-controlled Enterprises (SOEs) who are considered public officials for the purpose of the Anti-Bribery Convention and related national legislation establishing a foreign bribery offence, and these may not always be picked up by reporting entities as PEPs.

[13] http://www.oecd.org/dataoecd/40/17/43879503.pdf

Case scenario (anonymous example provided by OECD)

An FIU reported to its national law enforcement agency, a withdrawal of €100,000 in cash, with an indication to the bank that the funds were to 'facilitate the conclusion of contracts'. The funds were, in fact, handed over to a foreign public official and shortly afterwards the contract in question was concluded. The client was subsequently convicted of bribery of foreign public officials for the purpose of obtaining an undue advantage in international business. This is an example of how banks and FIUs can pick up possible corrupt payments by monitoring transaction descriptions.

ii. The second occurs in relation to the proceeds for the company or individual who bribed the public official, arising from the corrupt transaction. These can include, for example, the price of a contract or the revenues from a sale[14]. Bribes that are paid to public officials need to come from somewhere. Often they come from companies or individuals from the largest exporting countries with the greatest amounts of outward foreign direct investment. A specific aspect are so called "slush funds" – an auxiliary monetary account or fund that a company has established to fund bribe payments, usually financed by monies from legitimate activity. Here, it is important to note that the offering or promising of a bribe is a predicate offence, according to the international standard, even if the bribe is not accepted by the public official. In that regard, the establishment of such a "slush fund" may already constitute a suspicious transaction. Monitoring such accounts may provide very useful leads for launching a new or supporting an ongoing investigation.

Case scenario (Belgium)

An account of a Belgian consultancy company was credited with transfers for more than three million EUR from the European Commission. These were followed by transfers to a range of companies in the European Union, Eastern Europe and various African countries. Substantial transfers to private individuals were carried out without any legitimate reason. Research showed that some of these individuals were probably able to influence the assignment of contracts to the consultancy company. Moreover, various investigations into corruption had been opened against the consultancy company and the manager when granting a project for European development aid and assistance programmes.

1.8. Corruption in the public and in the private sector

Corruption typically refers to behaviour on the part of officials in the public sector, whether politicians or civil servants, in which they unlawfully enrich themselves, and/or those close to them, by misusing the position in which they are placed. But, it also includes the abuse of private office for improper personal gain – corruption in the private sector. The findings of this study, while speaking mainly of examples of corruption in the public sector, equally relate to corruption in the private sector.

[14] OECD/StAR Typology on the Identification and Quantification of the Proceeds of Bribery

Case scenario (FIU, Cayman Islands)

A foreign national resident in the Cayman Islands set up a personal account with a local bank with the stated purpose of receiving his salary. He worked for a local company in a position which made him responsible for procuring goods and services as well as hiring. Without the knowledge of his employer he formed a local company of which he was the beneficial owner. The individual began using his inside knowledge of bids to illegally allow his personal company to win contracts from his employer. Analysis of his personal bank account subsequently showed that he had been receiving numerous weekly third party deposits from individuals who were employees he was responsible for hiring for his employer. The FRA made an onward disclosure to the local police who initiated an investigation. The person was convicted of fraud and receiving kickbacks from employees in return for being hired.

2. Methodology

2.1. Purpose and structure of the study

The purpose of the paper is to:

- **increase awareness of corruption, AC and asset recovery among FIUs;**
- **present case scenarios, good practices and parameters for FIUs to the fight against corruption;**
- **describe the position and role of the FIU in the asset recovery process**.

After describing the methodology, this paper makes a few introductory remarks on the phenomenon of corruption and its relationship with and relevance to Anti-Money Laundering (AML). The core content of this paper is Chapter 3 on the role of the FIU to contribute to the fight against corruption. Two chapters will cover the cooperation issues and the need for FIUs to ensure the integrity of its employees and prevent corruption among its own ranks. After discussing the role of the private sector to fight corruption, the paper will propose follow up action for consideration of the Operational Working Group (OpWG) and FIUs. The report includes a large number of practical examples and case scenarios, derived from FIUs that participated in the study, open source research and published FIU annual reports.

2.2. Anti-Corruption: Relevant AML/CFT stakeholders

This study does not aim to give a comprehensive overview of the roles and responsibilities of the stakeholders needed to combat corruption and to recover proceeds of corruption. It will concentrate on the role and responsibilities of an FIU and how the FIU can contribute to fighting corruption within a national and international AML/CFT and AC structure. There is no need to change the current approaches how FIUs work in general. However, the following stakeholders will have to cooperate closely to achieve results in fighting corruption effectively, identifying and assisting in the recovery of corrupt proceeds:

- **Reporting entities:** Financial institutions, Designated Non-Financial Businesses and Professions (DNFBPs), government agencies and other obliged persons that suspect or have reasonable ground to suspect that funds are proceeds of a criminal activity that relates to corruption.

- **FIUs: Financial Intelligence Units** are the national centres for the receipt and request (as permitted), of financial information disclosures, as well as for the analysis and dissemination of financial information[15], which may have a link to possible proceeds of criminal activity related to corruption.

- **Anti-Corruption Agencies ("AC Agency"):** The Law Enforcement Agency designated to investigate corruption: The AC Agency investigates (and, in some jurisdictions, prosecutes) criminal cases of bribery and other corruption related offenses.

- **Supervisors:** The designated competent authority responsible for ensuring that financial institutions and DNFBPs apply enhanced Customer Due Diligence (CDD) requirements when dealing with PEPs.

2.3. Contributions and Review process

This study is a product of the Egmont OpWG, led by the FIU Liechtenstein. The study benefited significantly from contributions from the OECD, the World Bank, the FIU of Ukraine (to be confirmed), the International Centre for Asset Recovery, from support from the Egmont Secretariat and guidance from the members of the Egmont Anti-Corruption project group OpWG (IMPA, Israel; FIU, India; UIF, Italy; FIC, South Africa; SOCA, UK) and all FIUs that participated in the process of collecting information for this study via a questionnaire and reviewing this paper.

A draft report of this study was presented by the FIU of Liechtenstein in January 2012 and discussed in the OpWG meeting in Manila on 31 January 2012. A revised draft was sent for review to all members of the Egmont Operational Working Group in April 2012. Comments were received from SOCA (UK), CTIF-CFI (Belgium), AMLP (Serbia), and UIF (Argentina). The final version was discussed and adopted at the Egmont Operational Working Group meeting in St. Petersburg on 10 July 2012. It was approved by the Heads of FIUs through an out of session procedure in September 2012.

2.4. Focus on large & international cases

The Egmont Group was established to facilitate international cooperation between FIUs. For this reason, the study will focus on cases that have an international dimension. This can mean that bribe giver and bribe taker are located in different locations; or that the bribe or the proceeds of a corrupt activity have been transferred abroad; or that foreign corporate vehicles have been used to launder the proceeds of corruption.

[15] Egmont Group FIU definition 1995 (amended 2004)

For the benefit of an efficient use of given resources, this study will concentrate on large corruption cases. Smaller payments, typically involved in petty corruption, will only be detected occasionally by reporting entities and reported to FIUs, if at all[16].

2.5. Focus on Asset Recovery

As noted above, bribery and other corruption related offences with an international character often generate huge amounts of proceeds - $ 1 trillion globally every year[17] and financial centres all around the world recognise the danger of the abuse of their financial systems to launder the proceeds of corruption. While a part of these proceeds will be consumed by the offenders, significant amounts of assets will be accumulated and are subject to a more sophisticated money laundering process. In the context of this study, asset recovery refers to the process that ultimately leads to the repatriation (return) of proceeds of corruption to the victims of the crime[18]. This process is enhanced when there are measures to detect and analyse financial transactions where there is a suspicion that they are linked to corruption. In this regard, FIUs play a pivotal role in the tracing and location of assets[19].

FIUs are a vital source of information for prosecutorial authorities in bribery cases. Along with whistleblower reports, FIU information has the potential to launch a corruption investigation.

3. How Financial Intelligence Units might add value

Effective anti-money laundering systems have the potential to pose a significant barrier to the possibility of perpetrators of corruption-related offences enjoying the proceeds of corruption, or indeed laundering the bribe itself. The FIU is an important element in the AML regime, particularly in the early, pre-investigative or intelligence gathering stage, where the FIU acts as an interface between the private sector and law enforcement agencies, assisting with the flow of relevant financial information. The UN Convention against Corruption (UNCAC) calls on state parties to establish an FIU as a "national centre for the collection, analysis and dissemination of information regarding possible money laundering[20]".

Fighting cross-border corruption requires close and timely international cooperation. FIUs can bring added value to this process from the advantages of existing and well-established information exchange mechanisms developed by the Egmont Group. These mechanisms have an advantage over the formal mutual legal assistance mechanisms in criminal matters in terms of efficiency and speed. While gathered, analysed and exchanged pieces of information often will not be used as evidence, they have the potential to locate and freeze potential proceeds of corruption and so prepare the grounds for relevant formal co-operation not only within relevant state agencies, but also across jurisdictions. Both

[16] This approach does of course not mean that "petty" corruption should be tolerated.
[17] Daniel Kaufmann, Corruption and the Global Financial Crises, Forbes.com, 27.1.2009
[18] These may be countries that have become victim of corrupt political office holders, often in developing countries or countries in transition, or companies that have become victims of private corruption.
[19] Daniel Thelesklaf, Using the Anti-Money Laundering Framework to Trace Assets, in: Recovering stolen Assets: A Practitioner's Handbook, ICAR, 2009
[20] Art. 14 Paragraph 1 (a) UNCAC

methods, formal and informal, are complimentary; the informal exchange of information should precede the other. The informal exchange of financial information is important in that it confirms, for a requestor, that assets or proceeds of crime exist and, therefore, justifies the submission of formal mutual legal assistance through International Letters of Request. Without prior knowledge the competent authority of a requested state might view a request as a `fishing exercise'.

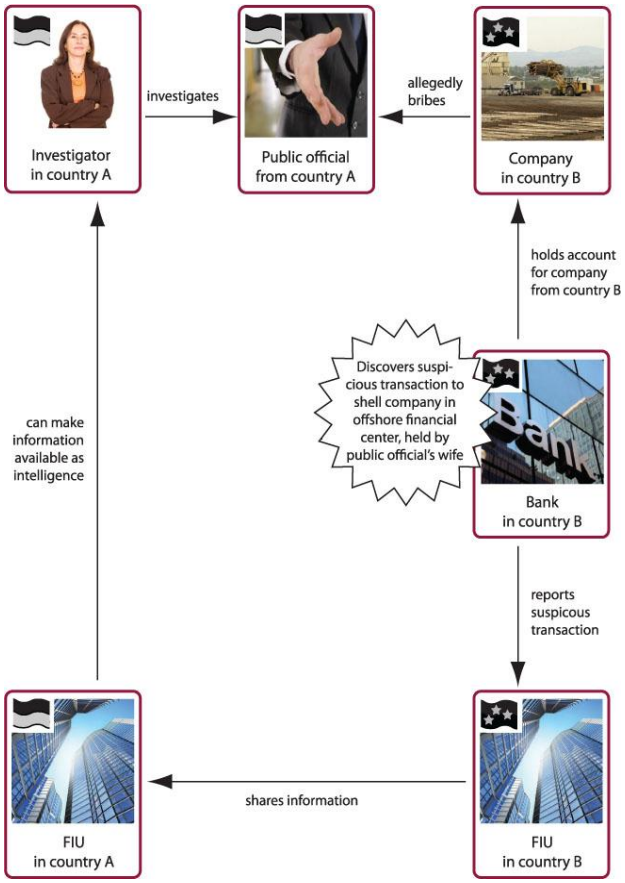
Corruption can be combated more successfully if a multi-stakeholder, comprehensive approach is chosen. This approach will be successful if a mechanism can be provided where the relevant stakeholders, namely the FIUs and the specialised agencies which investigate corruption can exchange relevant data in a trusted way (see below in more detail, Chapter 3).

Results of the Anti-Corruption Project Questionnaire

22 FIUs responded to the questionnaire of the OpWG. Some reported that they received STRs with a link to PEPs. It is unclear if those that reported zero or very low amounts of PEP related STRs have a system in place to properly identify PEP activity in an STR. Interestingly, in total, 5525 STRs were submitted to these 22 FIUs in the previous three years. Of these 5525 STRs, 3884 STRs (over 70%) were reported by three large (G-20) FIUs. Nearly 700 STRs with a link to corruption have been disseminated to the competent law enforcement agency, but very few FIUs can provide for feedback whether or not these STRs have led to concrete results (often because FIUs do not receive feedback from law enforcement). The FIU of Indonesia (PPATK), for example, said, that they reported over 661 officials to the AC authorities since 2003. PPATK is planning to regularly query the relevant government institutions about the progress of the cases reported among their ranks. The potential seems to be high but the effectiveness of the process can obviously be improved.

Ideally, a major international corruption case could be identified through the reporting of STRs and the operations of an FIU as follows[21]:

[21] Daniel Thelesklaf, Using the Anti-Money Laundering Framework to Trace Assets, in: Recovering stolen Assets: A Practitioner's Handbook, ICAR, 2009



1. A senior public official from country A receives a series of payments from a company located in country B.
2. The financial institution that holds the account for this company detects that the payments are made for a senior foreign public official and, as suspicion arises, reports these transactions to its FIU.
3. The FIU in country B requests information from its counterpart FIU in country A.
4. The FIU in country A requests additional information from the domestic AC Agency. The AC Agency reports that an investigation for abuse of office has been launched against the public official in question.
5. The FIU in country A informs the FIU in country B of these facts. FIU in country B disseminates the SAR to its own law enforcement agency and informs this agency of the ongoing investigation in country A.
6. The law enforcement agency in country A informs its counterpart agency in country B ("spontaneous" mutual legal assistance, see Art 56 of UNCAC) of the assets held in the bank account. This information will allow the AC Agency to pursue its investigation, and confiscate the proceeds of crime.

An alternative scenario could be the launch of an investigation by a specialised AC Agency which acts upon a whistleblower report. In this case, the AC Agency would seek assistance from the local FIU. The FIU may have financial intelligence on the suspect and can make this available to their domestic counterpart. Subject to meeting the Egmont principles for information exchange, the FIU channel can also be used for information exchange regarding international financial flows.

Case scenario (FinCEN[22], US):

In a case where a corrupt politician extorted money from his constituents, investigators examining his financial records found numerous instances of structuring. In fact, three different banks filed SARs on the defendant detailing unusual transactions. Prosecutors charged the official with multiple counts of structuring and other crimes. The official extorted three individuals in his district to pay him nearly USD 100,000 in exchange for his support of zoning variances on properties. The jury also found that the defendant structured certain financial transactions in order to evade reporting requirements on several occasions. When the defendant demanded extortion money from victims, he claimed that he needed to share the money with his fellow elected officials to ensure the measures passed. Over the course of several years, SARs were filed on the defendant. One bank filed a SAR for transactions that appeared to be structured while the defendant was in office. Bank personnel became concerned after discovering deposits that aggregated to several hundred thousand dollars. No single deposit exceeded $10,000. A second bank filed a SAR on check cashing activity that aggregated to $15,000 over successive days in an apparent attempt to avoid a Currency Transaction Report. A third bank filed several SARs based on transactions the defendant and a business associate conducted over 3 months, totalling over $400,000. The elected official was convicted of extortion, wire fraud, failure to file income tax returns, and multiple counts of structuring financial transactions.

The areas where FIUs might add value to the overall multi-stakeholder AC efforts can be grouped into different sectors:

- Analytical function of the FIUs (sections 3.1. and 3.2.)
- Exchange of information, domestically and internationally (sections 3.3. through 3.5.)
- Supervision and guidance (sections 3.6 through 3.8)
- Other areas (sections 3.9 through 3.11)

3.1. Analysing SARs/STRs, and detecting possible links to corruption

A core function of every FIU is to receive, (and as permitted, request), analyse and disseminate to the competent authorities, disclosures of financial information[23]. Linking financial information to possible underlying forms of crime is one of the key challenges in this process.

Typically, in large corruption cases, the location of the predicate offence (bribery or another corruption related offence) is different from the place where the proceeds of corruption are laundered. Simply checking national databases will therefore not necessarily lead to any result – the FIU will depend on information gathered abroad.

For that reason, the exchange of information at the pre-investigative or intelligence stage at an international level is indispensable[24].

[22] The SAR Activity Review - Trends, Tips & Issues, Issue 19, May 2011
[23] Egmont Group definition 2001 (amended 2004)
[24] See below, chapter 3.3.

Example (Belgium):

The OECD Phase 2 evaluation report on Belgium appreciated the important role that the FIU plays in bringing to light cases of laundering, including those relating to corruption of foreign public officials[25]. The FIU of Belgium has forwarded 48 files linked to corruption to the judicial authorities in the period from 1 December 1993 to 1 May 2007. 22 out of these 48 files involved politically exposed persons (PEP). Only 1 file concerned a Belgium PEP, the rest was related to foreign public officials, mainly African countries and countries in Central and Eastern Europe.

A recent World Bank/UNODC study showed that corporate vehicles play a pivotal role in large international corruption cases[26]. The study asked jurisdictions to increase transparency in companies and legal arrangements. FIUs will have an important function to provide each other with relevant information on beneficial ownership in companies and legal arrangements, if possible beyond the information that is publicly available.

In large and international corruption cases, the individual corrupt PEP or the companies that are willing to give bribes rarely act alone. In the analytical process, detecting networks of family members, close business associates and gatekeepers is essential. The FIUs are ideally placed to conduct such analysis[27].

Many FIUs have access to and frequently use PEP (commercial) databases. This allows them to detect name matches of reported entities and individuals. Many vendors will make their databases available to FIUs free of charge.

Case scenario (Liechtenstein, FIU annual report, 2006)

The government of State A, which has large reserves of natural resources, decides to order a ready-to-use copper smelter from a private plant construction group domiciled in State B. The payment is to be made via the central bank of State A. The personal assistant of the minister of industry of State A informs the plant construction group that, in order for the contract to be concluded successfully, the costs for the copper smelter must be overstated by 20 % and paid against falsefied invoices issued by the foreign companies C and D. The minister of State A will instruct the central bank to pay the invoices issued by the plant construction company. Of this amount, 80 % will be used to pay the actual subcontractor invoices for the copper smelter, while 20 % are paid into the accounts of companies C and D. The beneficial owner (BO) of these companies is the lawyer of the minister. The lawyer of the minister has founded the companies E, F, and G for his client. Gradually, funds from companies C and D are transferred to these new companies. The sons and brother of the minister are the beneficial owners of companies E, F, and G. Although the warrantors do their best to conceal their connections to office holders from the financial intermediary, the actual close relationship with influential persons and the associated public interest generally entail that traces of these connections can be found in press reports and on the Internet, for instance.

[25] OECD, report on Phase 2 for Belgium, 21 July 2005, p. 46

[26] The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It", World Bank (StAR), 2011

[27] The OpWG, jointly with the International centre for Asset Recovery (ICAR), have developed the Asset Recovery Intelligence System, a tool for FIUs to identify networks of suspected individuals or entities.

Case scenario (Kuwait)

According to a newspaper article[28], two of the largest banks in Kuwait submitted STRs when about USD 92 million was transferred into accounts of two members of the country's Parliament. The FIU, located in the National bank, notified the public prosecutor who decided to open an investigation.

Case scenario (Belgium)

In one year and a half the Belgian account of a company from Central Africa was credited with four international transfers for a total amount of over 2.2 million USD by order of a company in electronics in Asia. The account of this African company was opened two year prior at request of an accountancy fiduciary as the company wanted to do business with companies in Belgium and Europe and wanted to place orders and pay suppliers using this account. The manager did not reside in Belgium but in Africa. These four international transfers were followed by transfers to South Korea, Cyprus and also to France.

The transactions on these accounts clearly did not correspond to the anticipated nature of the business relationship, i.e. paying suppliers in Europe. According to press articles an individual whose identity was almost identical to the person involved was the adviser of a minister of defence of a country in Central Africa. Other articles on the Internet mentioned development projects involving a South Korean company and donations from this company to the army of this Central African country to close the deal. This case clearly involved payments to a powerful person.

Case scenario (UK)

A banking sector SAR led to an investigation which identified a solicitor as an active facilitator for three organized crime groups engaged in drug and people trafficking, political corruption and money laundering. At court the subject was found guilty of fraud, converting criminal property in relation to mortgage fraud and subsequent disbursements of funds, and perverting the course of justice in relation to immigration applications. The subject was sentenced to five years imprisonment. A confiscation hearing assessed that the subject had benefited by £1.2 million and had available assets of £267,000. The judge ordered that the confiscation should be paid by way of compensation to the Law Society who would ensure it would be paid back to the financial institutions that had lost out financially due to the mortgage frauds.

The detective inspector for the investigating police force said: "This case was one of the most significant we have investigated concerning a corrupt professional and all born from a SAR."

Case scenarios (Switzerland)

A large number of cases have been provided in the annual reports of the Swiss FIU (MROS). They can be found in Annex 2.

[28] New York Times, 22 September 2011, Page A8

3.2. Performing strategic analysis on patterns for corruption[29]

Many FIUs that have been operational for a number of years have collected substantial amounts of tactical and operational intelligence. The databases of the FIUs can be made available for strategic analysis to allow the acquisition of knowledge in the area of corruption, to shape and further improve the work of an FIU.

In this regard, the FIU can first collect relevant information related to potential instances of corruption, stemming from:

- Reports provided by the reporting entities (STR and/or CTRs)
- The FIU's own operational intelligence
- Public sources
- Commercial databases
- AC Law Enforcement Agencies
- Other AC bodies
- Specialised and trusted NGOs

In a first step, it may make sense to focus on a specific area, e.g. high level cases (starting from a certain threshold), or cases related to a specific risk sector e.g. defence, pharmaceutical or extractive industries.

The product of this strategic analysis can be

- a typology analysis (schemes to launder the proceeds of corruption that appear to be constructed in a similar fashion)
- a geographic/region analysis
- a behaviour analysis (operations used by a group of persons, e.g. how companies establish and use slush funds)
- an activity analysis (e.g. weaknesses in a specific sector)

3.3. Exchanging information, domestically and internationally

Through the receipt of STR and other information the FIU is a repository of vital financial information that could prove critical in assisting law enforcement agencies such as the AC agency in initiating or enhancing corruption related investigations. Moreover, the FIU can assist the corruption investigators trace the proceeds of corruption. Information received from reporting entities can be enhanced where the FIU has the possibility to access databases, whether held by reporting entities or government agencies (tax, customs, police, etc.) to undertake its core functions, notably the operational analysis of STRs and related data. The FIU is uniquely positioned and uniquely trained to assist corruption investigators regarding financial investigations.

It is important to ensure that intelligence can flow internationally. So-called "foreign" corruption (e.g. bribery of a public official in a foreign country or the laundering of proceeds

[29] Coordinated with the ongoing TWG Egmont project on strategic analysis

of foreign corruption through one's own financial system) is often not regarded as a priority. This view omits that bribery always has two sides, a bribe taker and a bribe giver. Giving a bribe is an equally serious crime. FIUs should therefore consider, whenever possible, to share sensitive information on payments that possibly relate to corruption with their foreign counterparts spontaneously and on request.

The FIU-FIU information exchange can work if the Egmont Principles of Information Exchange are applied. It is of utmost importance that sensitive or confidential information is not improperly disclosed or disseminated. A number of FIUs reported that they experienced unauthorised disclosure of FIU information provided to some FIUs in support of foreign corruption cases**.** This is a serious violation of the Egmont principles of information exchange that require that FIUs should protect the confidentiality requirements of information received from other FIUs and cannot be left without consequences. Other FIUs reported back that their experience in sharing sensitive information with other FIUs was positive and did not lead to any complaints.

3.4. Sharing relevant information spontaneously with foreign counterparts

STRs are often the starting point of an investigation. FIUs should use their powers as widely as possible to spontaneously share information with counterpart FIUs, especially with FIUs in developing countries that depend on receiving such information to initiate an AC investigation. However, counterpart FIUs must provide for a safe and trustworthy environment to keep the content of this sensitive information confidential.

Case scenario (Lebanon, 2009)

The Lebanon FIU (SIC) received a request of assistance (ROA) from another FIU in the region seeking information on a Lebanese national detained on charges of embezzlement, fraud and bribery. The requesting FIU revealed that funds were transferred to several destinations among which were the suspect's personal bank accounts held at a Lebanese bank. The SIC investigation revealed among other things the presence of the above mentioned accounts and also revealed that they were mainly credited with transfers that reflected the requesting FIU claims. Upon concluding its investigation, the SIC decided to lift bank secrecy off the said accounts, freeze their balances and forward its findings to both the requesting FIU and the General Prosecutor.

3.5. Providing reporting entities with intelligence relating to specific PEPs

Some FIUs can proactively share intelligence by providing reporting entities with intelligence relating to PEPs, with the aim of using the reporting requirements to trigger STRs.

Notwithstanding the Egmont Principles on Information Exchange, the UKFIU has wide ranging `gateway' legislation which allows it to share intelligence, or request intelligence, from a wide range of domestic and international agencies / bodies. Frequently the problem that UKFIU faces is that it does not know whether there is a relationship of trust between an overseas AC Commission and it's national FIU and for that reason it is not known whether sensitive information on corrupt political entities can be safely shared on FIU – FIU exchange. UKFIU may seek to disseminate such information (under its gateway provisions) directly to the ACC. UKFIU regularly spontaneously shares financial intelligence with other FIUs on corruption issues.

In many countries to prompt an STR, the reporting entity must have an idea about the predicate offence in the country of origin of the crime in some way. Financial institutions will not regularly access news from developing or transition countries. Only a few major banks' compliance offices would systematically read newspapers and screen them for potential allegations against clients. So, the information on an ongoing investigation must somehow be spread and reach the financial institutions in financial centres. There are various mechanisms for ensuring this information can be spread - either by using existing contacts in the financial centre (this route may carry a risk that erroneous messages are shared or messages delivered will not be uniform across the sector) or by making the information available to the international media in cases of high profile investigations. Or else specialists can be found in financial centres that target major financial institutions and provide them with case related information that is not confidential but sufficient for the financial institution to consider filing an STR.

This section does not suggest that law enforcement or prosecuting agencies will be willing to share tactical operational information with reporting entities. It is only at the overt stage of an investigation that information can be more freely exchanged.

3.6. Supervising reporting entities

Supervisors are responsible for ensuring prudential oversight of their relevant sectors. They also require the financial institutions and DNFBPs have AML/CFT preventative measures in place.

Some FIUs have supervisory powers, either for all reporting entities with regard to their AML/CFT obligations, or for a specific sub sector, often DNFBPs. Even where FIUs have no supervisory powers, they will often support the activities of the prudential supervisors through bilateral cooperation arrangements and/or AML/CFT working groups or committees.

Key requirements in enhancing the fight against corruption in this regard are:

- Implementation of FATF Recommendation 12relating to PEP's.
- Implementation of FATF Recommendations relating to beneficial ownership (FATF Recommendations 10 and 24/25)

- Ensuring that Directors and Compliance Officers of reporting entities do not have a criminal record relating to corruption (fit and proper tests)
- Implementation of requirements to submit and verify asset and income declarations for public officials, where applicable
- Issuing of domestic PEP lists, and/or information on restrictions on domestic PEPs[30], where applicable
- Reducing the risk of corruption in the licensing and inspection process (4 eyes principle, enhanced transparency for inspection frameworks, etc.)

A core element of an effective supervisory regime is the implementation of FATF Recommendation 12 (and, for DNFBPs, 22) on PEPs. As of 2010, only 16% of jurisdictions are largely or fully compliant with FATF Recommendation 6[31].

Case scenario (UK)

A case involving a former president was concluded in the English civil courts in May 2007. It broadly illustrates the particular risk raised by PEPs. An ex-President was accused of abusing a facility established to support his country's state security agencies by siphoning up to $52 million from the ministry of finance to an account held in a London bank. The account also held funds for the use of the country's security agents. The director of security intelligence was the sole signatory to the London account. Part of the money was subsequently transferred to a company registered in the country from where the funds came in the first place, which company was run by the former President's associates. The court found that the main participants in the fraud were the former President; the director of security intelligence; the director of loans and investments in the Ministry of Finance; and the country's ambassador to the United States. The account was not operated in the name of any of them, but they all benefited, with the president being the main beneficiary.

3.7. Training reporting entities to detect activities relating to corruption / training

It is important that competent authorities raise awareness and provide training to reporting entities to assist them to detect suspicious activity with regard to the possible proceeds of corruption.

FIUs should contribute to this process. This can include:

- Issuing of and training on red flags/indicators for corruption (see below, Chapter 3.8.)
- Guidance on practical implementation of enhanced risk/PEP requirements (e.g. demonstration of databases; and/or indicators for corruption risks)
- Provision of national PEP lists, if applicable.

[30] e.g. when a country prevents its PEP from holding overseas directorships or share ownership or overseas bank accounts

[31] Politically Exposed Persons, Preventive Measures for the Banking Sector, World Bank, 2010.

Example:

On 17 April 2008, the US FIU (FinCEN) issued guidance[32] to financial institutions so that they may better assist law enforcement when filing Suspicious Activity Reports (SAR) regarding financial transactions that may involve senior foreign political figures, acting individually or through government agencies and associated front companies, seeking to move the proceeds of foreign corruption to or through the U.S. financial system.

In addition, the FIUs may suggest the use of commercial PEP databases (without needing to promote a specific vendor) as one possible tool to assess risk. As long as neither Governments nor international organisations issue official PEP lists, it is hard to imagine how financial institutions can properly implement PEP requirements without having access to such databases. If cost is an issue, reporting entities can use their professional associations as a platform for the licence, if so agreed with the relevant vendor.

3.8. Enhancing the reporting system by providing for red flag indicators

There is a need for developing red flag indicators for reporting entities. The answers to the questionnaire showed that so far, very few FIUs have developed such indicators that would support reporting entities in the detection of possible typical transactions and patterns of laundering the proceeds of corruption.

The FATF has published a document that provides for assistance to reporting institutions on specific risk factors in the laundering of proceeds of corruption in June 2012. Though the document concludes that corruption-related money laundering typically uses many of the same techniques as other types of money laundering, the added value of this report is that it combines the various risk factors into a holistic picture. The discussion also makes clear that certain characteristics — customer types, countries and regions, and product/services — when taken together and in the context of corruption-related money laundering, should also be considered higher risk, regardless of whether a PEP has been identified. The report also provides references to a number of additional sources of relevant information that could be useful for reporting entities when designing their risk management policies.

3.9. Postponing or suspending transactions that may be linked to corruption

Often, the suspicious nature of an activity will only become evident once a country has started to initiate an enquiry or an investigation. This may be connected with a regime change in the country in question, or with the introduction of more stringent anti-corruption requirements for companies, including the protection of whistleblowers. In these situations, the customer may be alerted and will try to further conceal his assets. A timely execution of the power to postpone a suspicious transaction, where applicable, can prevent criminals moving their assets and help competent authorities to take timely provisional/confiscation measures[33], with the aim to freeze all assets involved. According to the Egmont 2009

[32] FIN-2008-G005

[33] Concept Note, Joint World Bank/Egmont Group Study on FIU Power to Postpone a Suspicious Transaction

Biennial Census 54% FIUs had the power to freeze or suspend transactions [potential link to LWG / World Bank work on freezing and suspending transactions]. In international cases, it is of utmost importance that the FIUs of the countries involved will coordinate their activities closely. However, the postponement of a transaction has a high risk to tip off the client and should therefore only be used in situations where the client is already alerted or when tipping off does not cause any damage. In addition, there are open questions how such a regime can be implemented without violation of human rights protection and how to pays for legal costs and other potential damages, if the freezing powers have not been properly dealt with. FIUs that don't have powers to suspend/postpone should nonetheless work with their LEAs who perform this role.

3.10. Implementing international sanctions in the area of anti-corruption

In particular high-level cases, for example when the people of Tunisia, Egypt or Libya changed their regimes in 2011, coordinated international action is necessary to simultaneously and timely freeze assets potentially belonging to such figures and their entourage.

The European Union has frozen assets belonging to the entourage of the regime, and so has the UN on a global level in the case of Libya. The implementation on national level of such coordinated international sanctions may often involve FIUs (see practical example below).

Examples

On 17 January 2011, shortly after former Tunisian President Ben Ali, was forced to leave the country, the French FIU (Tracfin) alerted all reporting entities of the events in Tunisia and reminded them of their obligations to conduct enhanced due diligence with regard to PEPs with a link to Tunisia and to report all suspicious activities to Tracfin.

On 16 February 2011, a few days after former President of Egypt Mubarak resigned, the US FIU (FinCEN) issued a guidance document[34] to remind U.S. financial institutions of their requirement to apply enhanced scrutiny for private banking accounts held by or on behalf of senior foreign political figures and to monitor transactions that could potentially represent misappropriated or diverted state assets, proceeds of bribery or other illegal payments, or other public corruption proceeds." In other words, with the departure of the Mubarak government from power and potentially into exile outside of Egypt, FinCEN has highlighted the risk that "Senior Foreign Political Figures" or "Politically Exposed Persons" in possession of funds misappropriated from the Egyptian treasury may attempt to divert those funds in an effort to evade the jurisdiction of Egyptian law enforcement

[34] FIN-2011-A002

3.11. Enhancing Anti-Corruption work in national anti-corruption operational working groups and strategies

One of the obstacles found in many countries for more effective combating of corruption and money laundering is the lack of a comprehensive strategic framework[35]. Countries may have AML/CFT strategies and/or AC strategies, but they are often developed in isolation. Relevant mechanisms, e.g. steering committees have been set up, but they sometimes lack coordination and do not work coherently. As a minimum, FIUs should be properly represented in the work of relevant AC mechanisms. This would help to more systematically and more effectively use financial intelligence in corruption cases.

The UK does not have an AC Commission or single agency which addresses international corruption issues. However the UK does have a strategic AC action plan which involves multi agency delivery by key stakeholders across a number of government departments, law enforcement agencies and prosecutors. The UK's AC activities are ministerial led with the Secretary of State for the Justice Department being appointed the UK AC Champion. Other government departments such as the Home Office, Her Majesty's Treasury, Foreign and Commonwealth Office and the Department for International Development (DfID) are key partners. DfID funds specialist investigation, intelligence and prosecution units within UK law enforcement to investigate and prosecute bribery by UK companies and money laundering by corrupt PEPs. The UKFIU (part of the Serious Organised Crime Agency) hosts a specialist AC intelligence cell which coordinates AC investigations by law enforcement. Strategic oversight of the investigations and prosecutions is delivered by a group of senior practitioners (drawn from within the aforementioned stakeholders) and reporting back to the AC champion. As such, the multi-disciplinary approach of the UK has delivered positive results in both bribery and money laundering convictions through the UK courts. A positive indicator of the UK model is the high number of requests for tactical and technical guidance from international partners.

On November 2011, Argentina's FIU entered into an agreement with the Permanent Forum of Administrative Investigations Prosecutors and AC Provincial Offices. This agreement established concrete work links and promotion of activities in order to comply with the International Standards and Conventions against Corruption. Furthermore, Argentina's FIU and the National AC Office have signed a Framework Agreement to coordinate AML and AC policies in the context of their legal authority.

[35] "Why is it so difficult for developing countries to pursue money laundering investigations? , Draft study ICAR/U4, publication planned in 2012

Australia has a domestic co-ordination forum called the AML Legislative and Policy Forum. (AMLLAP). It is a forum chaired by the Attorney General's Department that includes relevant agencies in the AML space - with the objective of helping to co-ordinate and prioritise key policy and legislative work to help maintain and improve the effectiveness and efficiency of Australia's AML /CTF regime. At the moment, its membership does not include state based agencies (and hence does not include the state based AC agencies or the Australian Commission for Law Enforcement Integrity). Given the increasing importance and focus of the revised FATF standards on PEPS and effectiveness and calls by the G20 and others outreach to AC agencies should be considered and strengthened including efforts to leverage where possible on existing AML/CTF measures.

4. Domestic Cooperation

FIUs and AC Agencies work on related processes and both can impact corruption in the countries where they are active; there are synergies to be extracted from more effective co-operation between them. This would allow each institution to benefit from the other's work in pursuing the common goal of holding accountable corrupt figures and contribute to efforts to reduce corruption[36]. There are two types of AC Agencies: ¨

a) Those that have investigative powers and therefore part of the law enforcement community. Some of them are autonomous institutions; others are part of a larger organisation (such as the AC Department of a General Prosecutor's Office).

b) Those that have a mandate to prevent corruption without law enforcement powers.

The answers to the questionnaire showed that most FIUs that participated in the survey, have no obstacles to share information with their domestic AC Agencies.

4.1. Financial Intelligence Unit and Investigative Anti-Corruption Agency Cooperation[37]

AC Agencies and other competent law enforcement authorities mandated to investigate corruption are worthy recipients of FIU reports if such reports involve money laundering and the suspected predicate offense is corruption and there are examples (e.g. the Montesinos case) where this approach has borne fruit. However, the flow of information should be upstream as well as downstream; AC Agencies should feed information into FIUs as well as receive intelligence reports and other financial intelligence of possible money laundering violations with a nexus to corruption. AC Agency bodies and other competent authorities mandated to investigate corruption should consider proactively sharing information with the FIU on cases involving corruption offenses. If such information is shared with the FIU, this will allow the FIU to integrate information on possible corruption offences into their

[36] "Why is it so difficult for developing countries to pursue money laundering investigations? , Draft study ICAR/U4, publication planned in 2012

[37] This chapter has been drafted with support from World Bank and OECD

database allowing them as a source of information in furtherance of operational and strategic analysis. Such analysis by the FIU could be found significant to ongoing or future corruption investigations. In addition, FIUs should also be informed of the outcome of investigations or prosecutions that originate in STRs from FIUs. This not only helps increase awareness of the broader importance of the FIU in the AC enforcement framework, but could provide a useful opportunity to identify ways in which to improve information exchanges in future cases.

In terms of international cooperation, FIUs can be a bridge on behalf of AC bodies in obtaining information from another jurisdiction through FIU to FIU cooperation. If corruption activities involve assets with international aspects, FIUs typically are able to exchange information with their foreign counterparts considering corruption as a predicate offense for money laundering. An FIU's membership in the Egmont Group will facilitate FIU to FIU cooperation and provide opportunities to share knowledge and expertise in a secure manner through the Egmont Secure Web.

FIUs should be involved in the early stages of an investigation in order to help AC Agencies to trace and seize assets belonging to suspects. Against this background, the FIU's assistance in corruption cases should be regarded as a strategic part of domestic cooperation. Consequently, it is important to develop a strategy for more effective cooperation between the FIU and all agencies responsible for combating corruption. There are a few options available for countries to consider when striving for better cooperation between their FIU and corruption investigatory bodies.

Different countries may have different institutional and legal set ups and arrangements facilitating better flow and use of information from/to FIUs. Some may opt to define working relations in the legal framework; memorandums of understanding (MOU); secondment agreements; some may want to set up working groups or task forces sharing common objectives; some may plan to improve communications by appointing designated officers; organizing regular meetings; or exchanging reports. Regardless of the arrangement it is important that the relationship between the FIU and AC Agency be an upstream/downstream flow of financial intelligence.

A comprehensive strategy or policy should aim at improving effectiveness of corruption investigations by improving exchange of (secure) information from FIUs to AC Agencies and vice versa.

Given the nature of financial crime and the investigative challenge it poses, there is a strong need to explore and develop practical ways to foster cooperation and coordination beyond the traditional approaches to addressing financial crimes.

Example of multi-agency collaboration to include AC Agency and FIU (non-Egmont member FIU; example provided by World Bank)

The organized crime investigate group (OCG) receives information from an informant that a casino operating in the jurisdiction is doing so illegally. Also, media reports have indicated that the same casino has not adhered to all the requirements to operate legally in the jurisdiction. One media report claims that the casino has not posted the required $3 million bond with the government allowing it to receive a license to operate. However, the Minister in charge of the ministry with regulatory authority over casinos has publicly announced that the casino is operating legally and has posted the $3 million bond.

The OCG develops enough information to secure a search warrant to be executed on the casino. During the course of the search, OCG discovers that the casino is operating using "two" sets of books. One set is given to regulators (book #1) while the other (book #2) is the actual money flow of the casino. Concurrently, the OCG had requested assistance from the local FIU to help determine if the bond of $3 million had been paid as claimed by the minister. The local FIU is a "Hybrid" style FIU having more powers than the traditional administrative FIUs and had adopted a multi-disciplinary task force concept – meaning it had personnel assigned to it from other agencies and regulatory bodies (Tax, Customs, Police, Central Bank, and AC Agency). The OCG requested the FIU to determine if the $3 million bond had been paid. The FIU determined that the $3 million bond should have been paid to the competent ministry and recorded and maintained at the Central Bank. By having a task force concept, the FIU was able to determine, quickly, that the $3 million bond had not been paid meaning the public statement of the Minister was inaccurate. This information was conveyed to the Director of the AC Agency and a joint investigation by the AC Agency and OCG was initiated with support provided by the FIU.

The results of the search of the casino resulted in discovering a journal entry of a suspicious payment ($200,000) from the casino (book #2) to the highest-ranking member of one of the most prominent political parties in the jurisdiction. This amount was wire transferred from the casino account to an account linked to the aforementioned politician, but controlled by other persons. The OCG and AC Agency obtained subpoenas to retrieve bank records of all accounts identified during the course of the investigation. The OCG and AC Agency requested the assistance of the FIU in examining the financial records because of the FIUs mandate to combat money laundering and terrorism financing and keen expertise in financial analysis.

The analysis of the financial records identified hundreds of suspicious cash transactions in one local bank that had not been reported to the FIU by the financial institution. The cash deposits were allegedly made by individuals linked to the aforementioned politician's political party. However, evidence indicated that one man – "the bag man" actually affected the cash deposits in the bank and he was also a member of the same political party and a close relative of a local wealthy businessman. Intelligence reports held by the FIU and OCG had linked this wealthy businessman to suspected criminal activity.

The OCG and AC Agency continued their investigation into the casino, the Minister and the political party and some of its members. The FIU and Central Bank conducted joint compliance inspections of the local bank that had failed to report the suspicious activity. All agencies involved worked closely together and coordinated efforts and shared information.

The OCG was able to close the casino, the AC Agency was able to develop enough support to force the Minister to resign, the bank was fined and some bank managers and employees and the "bag man" were charged with criminal offenses. The AC Agency was able to develop closer ties to the FIU and OCG. The FIU and Central Bank further enhanced their close working relationship and the FIU exhibited its importance and effectiveness by providing support to the AC Agency and OCG.

Example (AUSTRAC, Australia):

In the fiscal year 2009/10, of 2422 STRs in total, AUSTRAC transmitted 7 to the Independent Commission against Corruption (0.29%) and 61 (2.51%) to the Corruption and Crime Commission.

4.2. Financial Intelligence Unit and Preventive Anti-Corruption Agency Cooperation

Many preventive AC Agencies do not conduct investigations, but still have valuable expertise or information that can be useful to the FIU. Some receive reports on income and assets declarations by public officials. These declarations are a very useful source of information to which the FIU should have access (in many countries, such declarations have to be submitted to the tax administration or to the civil service bureau – in these cases, the FIU could liaise with the competent authorities). In Serbia, the FIU is a receiver of these declarations. Preventive AC Agencies often also receive complaints from individuals or companies that witnessed acts of corruption. While one has to be careful to accurately assess the value of such complaints, they still may be useful additional pieces of information in the analytical process of an FIU. In addition, AC Agencies have technical expertise that may be useful for FIUs in analysing a specific situation.

In addition, the existing networks dealing with asset recovery[38] may add value also to FIUs.

5. Securing an FIU from Internal Corruption

It is obvious that there is a need to have an FIU, staffed by personnel of high integrity. The assumption for this paper is that such a secure unit exists and, therefore, the contribution it makes to the overall AC fight is accepted .The effectiveness of an FIU fully depends on the integrity of its staff.

However, corruption is a risk / threat that affect FIUs directly. FIU staff, especially staff with access to sensitive data, may become a target for corrupt offenders. Such criminals may want to illegally access the database, change or suppress relevant data, or unduly hinder the FIU to disseminate relevant information to law enforcement.

[38] e.g. ARINSA, CARIN, EU Asset Recovery Offices, Interpol/StAR Asset Recovery Focal Points Group

The combined effects of corruption and weak governance can and do blunt the effective operation of AML systems[39]. However, many surveys and studies show that law enforcement and the judiciary, essential for investigating and prosecuting money laundering and terrorist financing, is often perceived to be the sector most affected by corruption in many countries[40]. This study does not aim to address this issue in depth, but it is evident that FIUs need to have a high level of integrity to balance the risk of high levels of corruption in law enforcement.

FIUs, as any branch of Government, are at risk to be affected by corruption themselves. Law Enforcement Agencies and licensing authorities are often perceived to be the most corrupt parts of the public service. However, there are reasons to believe that FIUs may be less affected: On the one hand, it may be assumed that FIUs that are relatively young have not yet become part of a system suffering from a far reaching tradition of corrupt practices so there is a potential for FIUs to act in an environment that is not negatively affected by corruption. On the other hand, many FIUs can pay higher salaries to their employees and therefore reduce the risk of illegal payments[41].

One often neglected dimension of political corruption is "state capture," or just "capture." In this scenario, powerful companies or individuals bend the regulatory, policy and legal institutions of the nation for their private benefit. This is typically done through high-level bribery, lobbying or influence peddling[42]. State Capture has a detrimental impact on trust in the framework of an FIU-FIU exchange relating to sensitive information.

Measures to reduce the risk of corruption within an FIU could encompass:

- Establishing and implementing a Code of Conduct for FIU staff
- Security measures to avoid the leaking of information and to detect possible leakages[43]
- Implementing “revolving door” regulation that reduces the risk that departing FIU staff can unduly abuse their knowledge to the favour of a reporting entity
- Implementation of a stringent regime for managing conflicts of interest of FIU management (e.g. declaration of all interests in any reporting entity)
- Ensuring that the FIU management is autonomous and free from undue political influence

While some issues are already being taken care of by other Egmont projects, the OpWG should take a decision if it is useful to follow up on the other ones, in the framework of a follow up project (see below, Chapter 7).

[39] Corruption – Money Laundering: An Analysis of Risks and Control Measures in West Africa, page 23, GIABA, May 2010
[40] See for example: Transparency International Global Corruption Barometer, 2010: www.transparency.org
[41] See chapter 5 for measures how to reduce corruption in an FIU
[42] Daniel Kaufmann, Corruption and the Global Financial Crises, Forbes.com, 27.1.2009
[43] See „Securing the FIU“ project, lead by IMPA and FinCEN

6. Role of the private sector

If corruption can be detected through the STR system, it is required firstly that a reporting entity is able to detect transactions that are related to corruption, and to report them to the FIU.

In August 2011 the Wolfsberg Group replaced its 2007 Wolfsberg Statement against Corruption with a revised, expanded and renamed version of the paper: Wolfsberg AC Guidance. This Guidance takes into account a number of recent developments and gives tailored advice to international financial institutions in support of their efforts to develop appropriate AC programmes, to combat and mitigate bribery risks associated with clients or transactions and also to prevent internal bribery.

The impetus for this review includes the legal and regulatory developments and anti-bribery enforcement actions over recent years, particularly under the US Foreign Corrupt Practices Act. This, combined with increased regulatory scrutiny of financial institutions in the wake of the financial crisis, the increasing implementation across the world of the United Nations Convention Against Corruption, as well as new laws enacted to implement the OECD Convention Against Bribery in International Business Transactions and, finally, the coming into law of the UK Bribery Act, which introduces a wide reaching corporate offence of failing to prevent bribery as a result of not having implemented "adequate procedures" to address bribery and corruption risks, has resulted in a revised paper.

The opening six sections are largely taken from the previous paper, i.e. the definition of a bribe, the scope of the new guidance, FI's internal measures/AC programme, the misuse of the financial system, the application of the risk based approach and multi-stakeholders' roles and responsibilities, whereas Appendix 1 is entirely new and sets out the elements for an internal AC framework, suitable for an international financial institution.

There are sections on roles and responsibilities, reporting, policies and the programme framework. The latter includes risk assessments, due diligence in relation to third parties (including the use of intermediaries), political and charitable contributions, gifts and entertainment, whistleblowing, as well as controls (e.g. monitoring and surveillance), communication, training & awareness.

While the Guidance has greatly expanded the scope of the original paper, the risk focus for financial institutions remains as before: namely client risks continue to present the greatest risks for banks. The original guidance in this area, now Appendix 2, has been updated but essentially remains as valid today as it did when the paper was originally written and focuses on the risks that FIs may also be misused by persons paying and receiving bribes. It describes in more detail how financial institutions may mitigate the risks of such misuse, noting that many of the measures put in place by FIs to mitigate money laundering risk are relevant to the prevention and detection of client related corruption, specifically highlighting client, country and services risks, their red flags and mitigants.

Case scenario (Senegal)

George is the sole member of a Unique Public Limited Company and holder of an account opened in the books of a local bank B. He appoints Ngoor as co-manager with a proxy on that account until the dismissal of the latter by express decision.

A few months after its creation, the Unique Public Limited Company S is awarded a contract to supply election materials and receives as payment, a transfer of about CFA 1.081 billion (approx USD 2 million) in his account.

Forty eight (48) hours before, company S had issued two checks of 230 million payable to the co manager Ngoor before his personal account opened in the books of the bank B, is credited with the amount referred to above. The contracting authority comes to bank B to request quickness in putting money in Ngoor account. Once done, Ngoor withdraws immediately all the money and then his proxy were revoked for good.

These transactions contrary to the rules of good governance seem to be the consequence of corruption related to a public contract. That is the reason why the reporting entity sent a STR to CENTIF.

Annex 1: Practical issues Checklist

1. Does your FIU have access to income and asset declarations (where applicable)?
2. Does your FIU have access to complaints of individuals or companies relating to corruption (where a mechanism exists for such complaints)?
3. In a situation when a regime change that reveals corruption occurs in a country relevant for your FIU, is your FIU prepared to react in a timely matter?
4. Does your FIU have access to a commercial PEP database and is the database used as a standard resource in the operation analysis? Has your FIU considered querying your existing database with a PEP list, in order to detect PEP related transactions that have not been detected at the moment when the STR was submitted to the FIU?
5. Can you / do spontaneously exchange information on suspicious foreign PEPs with counterpart FIUs?
6. Do you maintain statistics on STRs that relate to PEPs?
7. Do you have a mechanism in place that you can use to follow up on disseminated STRs with a link to corruption (e.g. regular meetings with the competent LEA to discuss the follow up of these cases)?

Annex 2: Cases reported by the Swiss FIU (MROS):

1 A bank official employed by the Swiss subsidiary of a foreign bank is informed by the bank's head office that the manager of a branch in a South American country has heard that one of his customers is under investigation for embezzlement offences in that country and has been taken into custody. The individual in question is a senior official in his country's public service. The account manager immediately decides to make a suspicious transaction report to the MROS. Following consultations, the foreign bank attempts to procure copies of press reports on the matter from South America and these are soon obtained. Meanwhile the MROS carries out a search of its own database and finds press reports corroborating the suspicions of misappropriation of funds. The suspicious transaction report together with the additional information obtained is passed on to the competent cantonal prosecution authorities.

2 A commercial bank maintained a business relationship with an engineering firm since 1971. The proprietor of this company, an Italian citizen, lived in Rome. The business accounts were opened in the names of various companies controlled by the engineer. The engineering firm did business primarily in Africa and was among other things active in railroad construction. Early in 2000, the engineer notified his bank of an impending transfer to his account for 96.475 million German Marks. The money was to come from the government of an African country. Upon the bank's request the engineer presented contracts with the African state for railroad construction. The total cost of construction came to about two billion US Dollars. The transferred funds in German Marks were supposedly intended as partial payment of professional fees. The amount paid was less than that contracted because the authorities of the African state assumed that the engineer had to relinquish part of the fees to influential persons close to the government. In view of the unusually high amount of money involved compared with the normal account transactions and the statements of the engineer who admitted having bribed key government officials before, the bank blocked the assets valued at 76.7 million Francs and reported the incident to MROS. Based on this information and the fact that the particular African country had already caused negative headlines in connection with money laundering, MROS passed the case on to the proper judicial authorities who confirmed the freezing of the assets.

3 A foreign national, who did not reside in Switzerland, rented a safety deposit box at a major Swiss bank in November 2000. At the same time, he opened an account under an alias. He listed his occupation as fashion designer. When asked about the purpose of the account and the origin of the USD 25 million that were to be transferred from another Swiss bank, he explained that a part of the money was from the sale of family real estate abroad. He claimed that another part of the money stemmed from earnings from the import and export of petrol and computer parts. He purportedly wanted to close the account at the other bank because the profitability was lower than expected. He offered no further information. Over the following four months, the money was transferred from the former bank to the newly opened account in several payments. The account balance reached CHF 150 million, which was considerably more than the initially mentioned USD 25 million. In light of this difference, the bank requested documentation regarding the origin of the money. Upset by the questions, the client threatened to close his account and to return to his previous bank. Due to the suspicious circumstances and the fierce reaction of the client, the bank decided to look further into this matter. It turned out that the father of the client was involved in both a transnational corruption affair and a murder case. Reportedly, he had received substantial amounts of money for the brokering of military goods. With this money, he purportedly paid other middlemen. In the light of this information, the suspicion arose that the funds, which had been transferred to the son's account, could be of criminal origin. After the bank reported their suspicions to MROS, additional evidence concerning the same instance became known. The case has been passed on to law enforcement.

4 In August of 2000, at the advice of a third person, the client entered a contract with a Swiss art dealer to buy and sell a well-known piece of art. The art dealer obtained the painting from a renowned European gallery for USD 10 million. The Swiss art dealer then sold the painting to an overseas company for USD 11, 8 million. This company was acting as the exclusive agent of yet another overseas company. The two end buyers of the painting were the beneficial owners of that company. For their services rendered, the persons involved in the deal were to share the difference between the purchase price and the sales price. The terms stipulated that the client should receive USD 1, 5 million, the third person USD 250'000, and the art dealer USD 100'000. Those involved in the deal did not know each other, nor were they aware of how much money each would receive. A few days after it had been bought, the painting was turned over to an auction house for further sale. Meanwhile, a new account had been opened in the name of one of the end-buyers. In May 2001, the Swiss art dealer learned that this person was allegedly entangled in an international corruption and money-laundering scheme. A high-ranking dignitary and fellow countryman of the person was reportedly also involved in this affair. Considering these circumstances, it was likely that the money used to buy this painting was of criminal origin. The Swiss art dealer notified MROS about his suspicions. The case has been passed on to law enforcement.

5 For several years, a private bank had held business and private relations with foreign clients who were beneficial owners of several foreign-based companies and who were also account holders at this private bank. These clients, who lived abroad, would buy medical equipment on behalf of a company based in their country of residence to supply public hospitals in an important region. Over time, the beneficial owners and various companies had accumulated more than USD 40 million in their accounts at the bank. At this point it should be explained that the bank did not initiate this relationship, but took it over in a buy-out of another establishment. Applying mandatory due diligence, the bank observed that funds corresponding to the payments by the hospitals always went through the accounts of one particular company before being paid into the individual accounts of the beneficial owners. The bank decided to dig deeper into the background of the transactions and requested that the clients provide records relating to the business transactions between the hospitals and their suppliers as well as between the suppliers and the companies with accounts in Switzerland. The bank then learned at a meeting with the clients that the accumulated funds represented commissions of up to 50% of the value of the equipment sold to the hospitals. Requests for further information were turned down by the clients who then told the banks that they were terminating all relations and submitted a request to have their funds transferred to a number of other establishments. The refusal by the clients and their attitude prompted the bank to freeze the accounts and report the case to MROS. In its analysis, MROS said that on the basis of the professions indicated by the clients as well as their domicile, it could be concluded that they were members of the boards of directors of the hospitals and that corruption could not be excluded. The case was forwarded to law enforcement – but the competent agency declined to follow up on the basis of the results of an initial inquiry.

6 Two Swiss banks notified MROS about three business connections involving an important corruption case relating to the production of natural gas in the Persian Gulf. A European oil company approached X, a consultant in the oil trade, who was supposed to help the company to obtain oil concessions in the Arab country concerned. So the company and X's consulting firm, which was based in an offshore country, signed a contract. Staff members at the oil company had doubts about the legality of the contract, according to which a consultancy commission of more than USD 10 million - USD 5 million of which were to be transferred in advance – was to be paid over the period of several years. It just so happened that the affair became public knowledge and caused a scandal. It is likely that X concluded the contract with the oil company on behalf of Y, a close relative of an influential politician in the Arab country concerned. The scandal came to the attention of the two Swiss banks, which then reported to MROS about its business dealings with the offshore companies of whose assets X was a beneficial owner. The advance payment of USD 5 million agreed to in the contract had been transferred to one of the accounts reported by the bank. Because the frozen

assets had very likely come from a criminal source (corruption), MROS passed the suspicious activity report to the Office of the Attorney General, which began investigations and has already conducted various searches and interrogations. As a result of the investigations in Switzerland and other European countries, most of the capital flows have been traced. Preliminary investigations are still going on and criminal proceedings on charges of money laundering will probably be opened soon.

7 MROS received several reports from a Swiss fiduciary about a possible money laundering case relating to corruption in the crude oil sector. The fiduciary was also involved in the case because she had been given the mandate to manage several offshore companies. The actual administration of the offshore companies, however, was in the hands of a Swiss lawyer who had unlimited power of attorney. The beneficial owners of the assets of the offshore companies were a large oil company and a close adviser of an African leader. A number of accounts were opened at various banking institutes in Switzerland in the names of the offshore companies. The fiduciary was doubtful about the legality of the transactions that went through the accounts of the companies because, according to various media reports, the beneficial owners were facing prosecution for corruption. The fiduciary contacted the lawyer to clarify the situation under her obligations to exercise due diligence. The lawyer's information was incomplete and only given reluctantly so the fiduciary decided to withdraw the lawyer's power of attorney on the accounts of the offshore companies. The fiduciary demanded that the lawyer hand over all bank statements and inform her about the activities of the companies and the origin of the assets. Because of insufficient information, the fiduciary decided to report the business relationship to MROS which analysed the case and passed the report on to the law enforcement agency. MROS frequently deals with reports involving the crude oil sector. Corruption and, consequently money laundering in the crude oil branch occurs more frequently than in other sectors due to the enormous sums that must be invested to purchase oil concessions.

8 Regular payments of money amounting to millions were credited to an account of a West African company at a private Swiss bank and shortly afterwards transferred. The most recent deposit of €6 million came from West Africa and was immediately transferred to a firm in Eastern Europe. The beneficial owner of the assets of the account holder was an individual from the Middle East domiciled in Western Europe. Because the company account was obviously meant as an interim account, the bank requested the beneficial owners to provide records of the transactions. Invoices and bills of lading for equipping a radio station in a West African country were presented to the bank. The radio equipment had been produced in Eastern Europe. The bank was very impressed by the documents because they had a great number of stamps and official-looking seals. In short, they were too good to be true! The bank suspected that the frozen CHF 16 million may have originated from the embezzlement of the country's national wealth or may have been the proceeds of corruption. Following its analysis, MROS forwarded the report, together with the results of international inquiries by several Egmont members, to the law enforcement authorities.

9 MROS received a report from an asset manager concerning an account opened in the name of two French citizens, a husband and wife, living in a country in North Africa. At the time the account was opened, the wife was introduced to the asset manager by a banker to settle the matter of the international inheritance of her father. A numbered bank account was opened at a major bank to which the wife gave a mandate to manage EUR 140 000. This numbered account was later closed, and a joint account in the names of the husband and wife was opened. After reading a newspaper article, the financial intermediary learned that his client had been questioned by the police and placed under custody. The client, a municipal councillor responsible for transport in a large city, was alleged to be connected with a corruption affair and in possession of stolen property. He was said to have received "an envelope" containing around CHF 135 000 to grant certain companies the right to take part in a public transport construction project in this European city. This amount was said to have been paid into the account cited in the report. After inquiries with our counterparts abroad, and after checking the movements in the account, MROS decided to pass the report to the law

enforcement agencies. However, the prosecutor handling the case declared it to be closed without giving his reasons. It is likely that the source of the money in the account could be traced back only to the wife, hence the decision to drop any charges.

10 On behalf of a foreign client, a fiduciary administered assets amounting to almost CHF 7 million deposited at a bank abroad. The client, who was domiciled abroad, stated on opening the accounts that his work consisted of placing loans with investors, in particular government loans from his country of residence. He held accounts at this bank in the names of various companies belonging to him as well as personal accounts. The opening documents established that the client would receive commissions amounting to CHF 10 million following the placing with investors of a government loan amounting to approximately CHF 200 million. On receipt of the commissions, the money had first been credited to the accounts of the companies and then to the client's personal accounts. From there, payments had been effected in favour of the client's partners with accounts at the same bank. Investigations conducted by the financial intermediary's compliance service and the client's statements led to the conclusion that these transfers corresponded to services performed by the partners and were consequently not illegal. Nevertheless, the fiduciary entrusted an agent with the task of verifying the client's activities in his country of residence. The investigation revealed that the client had corrupted government officials in his country of residence with the objective of persuading them to invest the loan with various pension funds for which they were responsible. Thus the client had awarded himself a commission in excess of the norm by investing the loan on disproportionate terms. It is significant that this operation was facilitated by the fact that the pension funds in the country concerned are only allowed to underwrite loans to national debtors. The fiduciary therefore immediately sent a report to MROS. The investigations as well as the information received from the FIU of the country in question confirmed the suspicions of corrupting government officials, a predicate offence to money laundering. This case was referred to the Office of the Attorney General of Switzerland, which blocked the client's assets at the bank and instituted proceedings.

11 A life insurance company reported to MROS its business relationship with a PEP. In 2004 the contracting partner concluded a fund-linked life insurance for a period of 14 years; the annual premiums were fixed at approximately USD 70,000. In 2004 and 2005 these premiums were paid as foreseen in the contract. The premium for 2006, however, was not paid, and the policy was released from the premiums. At the time of the report, the value of the insurance amounted to the current value of the fund unit, or at least to USD 165,000. As the policy holder was a PEP, the business relationship was regularly monitored by the life insurance company. The last investigations showed that the insured person was probably involved in acts of bribery in his native country and that he could be the subject of investigations in Europe on suspicion of money laundering. It could therefore not be ruled out that the assets deposited in the life insurance company were the proceeds of a crime. MROS investigations revealed that a European country had contacted the Swiss authorities in connection with investigations against the insured person on charges of embezzlement and money laundering. The Swiss authorities were informed that the insured person had transferred assets from an account in his native country to Swiss accounts. The beneficiaries were two companies belonging to the policy holder. A total of over USD 500,000 had been shifted. This money probably represented assets that the insured person had embezzled in his native country and laundered via Swiss accounts. Within the scope of their criminal proceedings, the investigating foreign authorities have already filed a request to Switzerland for international mutual assistance. As the insured person is a foreign PEP, MROS passed on the report to the OAG for further examination. Only a few days later the latter initiated criminal proceedings against the policy holder on suspicion of money laundering.

12 For several years a bank had maintained business relations with a foreign company operating in the consulting sector. Two years ago one of the three beneficial owners modified the company name, indicating that he had become the sole beneficial owner. Several articles that appeared recently in the media mentioned the provisional detention of two ministers from a European country

as well as two external consultants of a renowned bank, including the beneficial owner of the above-mentioned account. The latter was accused of having set up and overseen a network of officials and consultants, from whom he was said to have obtained secret financial information that he then passed on to foreign multinationals interested in the privatization of government agencies in that country. A report was sent to MROS. Subsequent examination of the company's accounts revealed transfers from abroad during the period corresponding to the facts mentioned above. These amounts represented the fees related to the privatization of companies in that country and amounted to a total of USD 7 million. An MROS analysis was not able to rule out the possibility that the consulting company had been used by its beneficial owner for the purpose of laundering money arising from illegal activities which affected the interests and security of the country concerned. Although the articles appearing in the Swiss and international press primarily referred to economic espionage, the implication of functionaries led to the assumption that there were acts of corrupting government officials, considered as a predicate offence to money laundering. MROS decided to pass on this report to the OAG, which is the competent authority under Art. 340bis para.1 letter a SCC. The OAG subsequently instituted money laundering proceedings.

13 A financial intermediary's attention was attracted by the account of a company domiciled in the Middle East which, within a very short period, was credited with two payments amounting to a two-digit million US dollar sum. According to the account's opening documents, a businessman with Asian roots living in the Middle East was said to be a beneficial owner of the account-holder's assets. The party commissioning the suspicious transfer was a West African government, or rather an oil company under government control. The financial intermediary subsequently asked the beneficial owner to submit documentation substantiating the origin of the money. Allegedly, the beneficial owner had sold his patrol boats worth several million US dollars to the oil company. However, the financial intermediary was not satisfied with this answer as the total price of the boats constituted only two-thirds of the amount transferred to the account. The beneficial owner explained that the difference amounting to a two-digit million US dollar sum represented the import taxes charged by the West African government as well as commission. He further explained to the financial intermediary that his company had not manufactured the boats itself. On the premises of the West African oil company, he claimed to have accidentally met a business partner who had offered him the two patrol boats. These boats had allegedly been produced for another African country but were now no longer needed. The boats were then adapted to the requirements of the oil company and sold to the latter. The financial intermediary doubted the truth of this information. In particular, the exaggerated commission, the high import taxes charged by the West African government on goods destined for the Government itself, the allegedly accidental meeting between the beneficial owner and his business partner as well as the equally accidental existence of the two patrol boats all seemed extremely questionable. The financial intermediary suspected that this could possibly be a case of misconduct in public office under Article 314 SCC. MROS investigations revealed that the person who had signed the purchase contract for the African oil company had already been involved in an international case of corruption and was suspected of passive bribery. It cannot be ruled out that this boat sale might, in addition to the charge of misconduct in a public office suspected by the financial intermediary, also be a case of corruption. Possibly the difference between the purchase price of the patrol boats and the amount transferred was shared between the beneficial owner and the representative of the oil company, to the detriment of the West African state.

Annex 3 Abbreviations

ACA	Anti-Corruption Agency
AML	Anti Money Laundering
ARINSA	Asset Recovery Inter-Agency. Network of Southern Africa
BO	Beneficial Owner
CARIN	Camden Asset Recovery Inter-Agency Network
CDD	Customer Due Diligence
CFT	Combating the Financing of Terrorism
CTR	Currency Transaction Report
DNFBPs	Designated Non-Financial Businesses and Professions
EU	European Union
FI	Financial Institution
FinCEN	Financial Crimes Enforcement Network (U.S. Department of Treasury)
FIU	Financial Intelligence Unit
ICAR	International Centre for Asset Recovery
LEA	Law Enforcement Agency
OAG	Office of the Attorney General
OCG	Organised Crime Investigative Group
OECD	Organisation for Economic Co-Operation and Development
OpWG	Operational Working Group
PEP	Politically Exposed Person
MROS	Money Laundering Reporting Office Switzerland (Swiss FIU)
SAR	Suspicious Activity Report
SCC	Swiss Criminal Code
SOCA	Serious Organised Crime Agency (UK FIU)
SOE	State-owned / State-controlled Enterprises
StAR	Stolen Assets Recovery Initiative
STR	Suspicious Transaction Report
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime