

Final Workshop report

4.1 “Breaking the links between banking and corruption”

Moderator: **Jeremy Carver**, Director (*Transparency International UK*)

Rapporteur: **Tobias Bock**, *Transparency International Secretariat*, Global Corruption Report (Policy and Research Department)

Panellists: **Anthea Lawson**, Researcher (*Global Witness*)

Jeremy Carver, Director (*Transparency International UK*)

Raymond Baker, Director (*Global Financial Integrity*); Guest Scholar (*The Brookings Institution*, and Senior Fellow, *Center for International Policy*)

Patrick Moulette, Head of Anti-Corruption (*OECD*)

Summary

The workshop started with recent research carried out by Global Witness into the role of banks in facilitating corruption. The presentation provided an overview of (a) countries rich in resources but where corrupt leaders spend incredible amounts of money while the vast majority of the population suffers; (b) Western states where banks fall short of ensuring that they do not work with illicit money from abroad; and (c) offshore banking “paradises”. The workshop then focused on how financial institutions could potentially deal with corrupt customers and act as effective gatekeepers. The panelists suggested policy recommendations for banks, states, and the international community. The workshop was characterized by a strong agreement of the presenters as well as contributors in the audience that what is ultimately needed to ensure the role of banks as effective gatekeepers is a change of culture in the banking sector and especially political will from governments to regulate banks properly to ensure that this change of culture takes place.

It is important to point out that passing adequate legislation and creating a different culture within the financial community is by no means expensive. It depends on the political will to act and ensure the gatekeeper function of financial entities. This process may take time but it is clearly not impossible. Transparency of different levels as is currently illustrated by the ongoing financial crisis is essential for a functioning economic system as well as for civil society to play its role in pushing financial intermediaries, states, and the international community to ensure that the necessary actions are taken. Civil society can act as an independent third party scrutiny which is vital to ensure transparency and accountability. The current financial crisis should be seen as an opportunity to push for these changes.

Summary of presentations

After describing a number of cases illustrating how bank accounts in the West are used to extort money from nations rich in resources but with terrible living conditions for the vast majority of the population **Anthea Lawson** outlined important questions banks should have to answer: Do they know who the person opening the account is? Are they aware of questionable transfers of funds derived from e.g. the extraction of resources? Banks are required to conduct due diligence, meaning that they have to especially vet PEPs (Politically Exposed Persons). This means all state officials, or their family members or friends, who could potentially have access to the fruits of corruption and thus presents a higher risk of money laundering.

The cases of Hong Kong and Anguilla which featured in one of the case studies underline shortcomings: In Hong Kong, as criticised by FATF (Financial Action Task Force) evaluations, reliance on third party introducers is too broad, it is not a legal requirement to do customer due diligence, and most crucially, trust and company service providers are not regulated for anti-money laundering processes. Anguilla has been criticised by the IMF for failing to push non-compliance with money laundering regulations, failures in know your customer procedures, and conflicts of interest in the role of the regulator, who was also responsible for marketing Anguilla's financial services overseas. Hong Kong and Anguilla appear to have failed to comply with FATF standards, to ensure implementation of the standards that they have got, to make the anti-money laundering rules work as well to stop corruption as do to stop terrorist funds, to and to prevent misuse of a shell company in a secrecy jurisdiction to transmit corrupt funds.

Anthea also stressed the role that asymmetric information has been playing for the current financial crisis, and that this is also what allows corrupt funds to be hidden. She advocated transparency and disclosure as the best answer to looted money that is helped to disappear by banking secrecy. Her policy prescriptions include:

1. Banks must be properly regulated to force them to do their due diligence properly, which requires a change of their culture
2. International coordination has to be improved, focusing on the FATF, which should set up a special task force to tackle the proceeds of corruption, make its work more transparent, institute a culture change, publish a credibly accessible roster of each country's compliance status, initiate a new name and shame list focused on implementation of laws, and rethink its mutual evaluation report procedure to allow for proper third party, independent external scrutiny of the process
3. Specific loopholes have to be abolished: Every jurisdiction should be required to publish an online registry of beneficial ownership of companies and trusts as well as an up to date list of its PEPs as a condition for FATF membership.
4. There should be a \$ 1 levy on every wire transaction to fund anti-money laundering and anti-corruption efforts by FATF and other international agencies.



Raymond Baker stressed that curtailing illicit financial flows is by no means a complex matter.

Individual banks should

1. Announce that they welcome money that is legally earned, transferred, and will be legally utilized and do not want to receive money that fails to meet these criteria;
2. Cancel "Hold All Mail" accounts, accounts where the account holder does not want to receive statements and other correspondence;
3. Advise foreign account holders in writing of the bank's policy as per **1.** above;
4. Require foreign account holders to acknowledge in writing that they have been so advised and will abide by the bank's policies.

Individual nations should

1. Announce that they welcome money that is legally earned, transferred, and will be legally utilized and do not welcome money that fails to meet these criteria;
2. Pass legislation barring all forms of criminal, corrupt, and commercially tax evading money;
3. Strengthen know your customer requirements, by specifying in law what financial institutions must ask potential customers before opening accounts, and requiring updating of KYC data bases periodically;
4. Leave bankers with discretion to make exceptions for long standing clients in situations that involve the health and safety of individuals.

Regarding the **international community** the G7 should

1. Require FATF to make a common set of specified unlawful activities to be subscribed to by all cooperating with FATF;
2. Require all financial institutions to know beneficial ownership of account holders;
3. Require corporations to list in their annual reports all entities in which they have an investment or management interest;
4. Extend the EU Savings Tax Directive to corporations, trusts, and foundations and extend to all types of income including dividends, realized capital gains, and pension and insurance payments, and make this automatic exchange of information the global norm;
5. Require corporations to report financial information - revenues and profits - by taxing jurisdiction.

Patrick Moulette reported that the FATF issued 40 recommendations in 2003 making "bribery and corruption" a mandatory predicate offence: every Party to the Convention has by now made the bribery of a domestic public official a predicate offence for the offence of money-laundering. In 2006, the Working Group on Bribery (WGB) stated in its Mid-Term Study on Phase 2 Reports that there was an overriding concern that anti-money laundering (AML) measures in the State Parties had uncovered few foreign bribery and related money laundering cases. At the time of the Mid-Term Study, only three State Parties had detected foreign bribery through suspicious transaction reports (STRs). Shortcomings include that some State Parties' AML systems do not apply to the laundering of the proceeds of bribing a foreign public official and the laundering of the bribe; while some State Parties' money laundering offences do not apply when the predicate offence takes place abroad; money laundering typologies have not necessarily been produced with foreign bribery as a predicate offence; and not all Financial Investigation Units (FIUs) have been providing effective feedback on the use of STRs in money laundering investigations and prosecutions.

The Working Group on Bribery's findings include:

1. Since the offence generates two kinds of illicit proceeds – the bribes and the proceeds of bribery – financial institutions have to be looking for both.
2. The offence normally takes place abroad, which presents serious challenges to the detection of the offence by financial institutions.
3. The need for increased awareness: before 1999 when the OECD Anti-Bribery Convention came into force, the majority of State Parties did not have foreign bribery offences.
4. Financial institutions should also request feedback on STRs from FIUs in order to be aware of what kinds of predicate offences they are not effectively detecting. FIUs should be encouraged to provide prompt and adequate feedback.

Furthermore, more research is needed regarding the money-laundering corruption nexus. There is a lack of awareness concerning Art. 52 of the UNCAC regarding the obligation to compile lists of domestic PEPs. It is also essential that countries provide sanctions for professionals including financial institution employees who aid and abet money laundering and concealing the proceeds of corruption.

The recovery of assets, which is a fundamental principle under the UNCAC, will present financial institutions with new challenges. They will need adequate measures for cooperating with law enforcement authorities in the freezing, and seizure and confiscation of assets, including pursuant to confiscation orders issued by foreign courts. Financial institutions must be able to coordinate with other financial institutions through which the proceeds may have moved, including cross-border transactions. They will also need to be able to cooperate effectively with financial investigators in the tracing of assets.

Main Outputs

It is essential that **banks** change their culture of due diligence so that they are focused on avoiding corrupt money, not just on avoiding potential scandal. If they cannot identify a beneficial owner who is a natural person who does not present a corruption risk, they should not accept the client. Banks should openly communicate a policy of not working with corrupt individuals and organizations, and should cancel “hold-all-mail”-accounts.. **States** should communicate the same anti-corruption policy and pass legislation barring all forms of criminal, corrupt and commercially tax evading money. They need to regulate banks properly to ensure that their culture of due diligence changes. The **international community** (G8, EU, OECD, FATF etc.) needs to intensify cooperation including by developing a common set of specified unlawful activities, require multinational corporations to report separately for each jurisdiction where they are active, and strengthen the EU Savings and Tax Directive. It should also reform the workings of FATF so that it includes contributions from other governmental and non-governmental agencies that are fighting corruption, and holds some of its meetings in open session. Asset recovery will also be an important challenge, demanding increased international cooperation between financial institutions.



Recommendations, Follow-up Actions

The FATF should set up a special task force to tackle corruption and publish an accessible roster of each country's compliance status. It should also initiate a new name and shame list to identify states that are failing to implement its standards even if they have laws in place, and should have its mutual evaluation reports scrutinized by a third party.

Every jurisdiction should be required to publish an online registry of beneficial ownership of companies and trusts as well as an up to date list of its PEP as a condition for FATF membership.

There should be a \$1 levy on every wire transaction to fund anti-money laundering and anti-corruption efforts by FATF and other international agencies.

Banks should be forced to cancel all "hold mail" accounts, strengthen their "know your customer" (KYC) requirements and update their KYC data bases periodically.

The G7 should require FATF to have its members agree on a shared set of specified unlawful activities which they subscribe to cooperate against.

The EU Savings Tax Directive should be extended to corporations, trusts, and foundations as well as all types of income including dividends, realized capital gains, and pension and insurance payments.

It is also essential that countries provide sanctions for professionals including financial institution employees who aid and abet money laundering and concealing the proceeds of corruption.

More research is needed regarding the money laundering-corruption nexus, and specifically how financial institutions can be supported in carrying out their suspicious transaction reporting obligations.



Highlights

“It is political will, not rocket science” (Raymond Baker)

“Illicit capital flight is a poverty and development issue. Pouring aid money into this situation is like running a bath – a gigantic, expensive bath – with lots of plugholes.” (Anthea Lawson)

“But perhaps the world would need fewer aid workers if the banks were required to take their responsibilities to avoid corrupt proceeds more seriously.” (Anthea Lawson)

“The same aspect of the financial system that has contributed to today’s banking and economic crisis is also what allows corrupt money to disappear, and that is asymmetric information: knowledge that’s held by one party but not the other” (Anthea Lawson)

“Looted money is also helped to disappear by banking secrecy rules that obstruct the few subsequent investigations that take place. The answer to this, too, is more transparency and disclosure.” (Anthea Lawson)

“Since the offence generates two kinds of illicit proceeds – the bribe and the proceeds of bribery – financial institutions have to be looking for both” (Patrick Moulette)

“Before 1999 when the OECD Anti-Bribery Convention came into force, the majority of State Parties did not have foreign bribery offences.” (Patrick Moulette)

“[T]he lack of a dedicated typology exercise on the links between money laundering and corruption has been identified as a major gap in this field [...] More research is needed regarding the money laundering-corruption nexus.” (Patrick Moulette)

Signed

Tobias Bock, Berlin, 04 December 2008 _____