

ACAMS[®]TODAY

The Magazine for Career-Minded Professionals in the Anti-Money Laundering Field

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MARCH/APRIL 2008

VOL. 7 NO. 2

A publication of the
Association of Certified
Anti-Money Laundering
Specialists (ACAMS)

Miami, FL USA

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Anti-corruption foes intensify focus on bank compliance

In late January more than 1,000 government officials, reporters, celebrities and activists from around the world met in Bali for the second conference of the U.N. Convention Against Corruption (UNCAC), a treaty of unprecedented scope signed by 140 countries and ratified by 107.

The convention's 71 articles create powerful tools to combat governmental corrup-

tion through codes of conduct, bank scrutiny of politically exposed persons (PEPs) and strengthened anti-money laundering (AML) measures. Yet progress has been feeble and corruption seems to be on the increase rather than the decline.

According to United Nations and World Bank estimates yearly cross-border flows of proceeds of criminal activity, including

corruption and tax evasion, range between \$1 trillion and \$1.6 trillion. The World Bank calls corruption "the single greatest obstacle to economic and social development", blaming it for keeping half the world's population, over 3 billion people, mired in poverty, disease and terrorism.

The Bali conference addressed two primary issues. The first was how to assess

progress in implementing UNCAC, and the second was how to use technical assistance — especially in recovering assets. The delegates failed to reach agreement on independent assessments, a failure assailed by Transparency International and a coalition of civil society organizations as a major setback. And although there was greater consensus on the steps to be taken for recovery of stolen assets, a concerted plan of action is still lacking.

All in all, UNODC executive director Antonio Maria Costa, said: “I think it is fair to say that we took three steps forward, even if they are not great leaps.”

In the aftermath of Bali, individuals and organizations committed to battling official corruption are likely to step up efforts to push governments to fully implement UNCAC provisions, especially those that focus on the duty of commercial banks to control money-laundering. UNCAC is replete with references to the role of banks, including requirements for:

- a comprehensive regulatory regime for banks and non-bank financial institutions to deter and detect money laundering, emphasizing customer and unofficial owner identification, record-keeping and reporting suspicious transactions. Article 14 (1) (a)
- measures to require financial institutions to apply enhanced scrutiny to funds transfers that lack complete information on the originator. Article 14 (1)(3)(c)
- criminalizing aiding, abetting, facilitating and counseling the commission of any offenses established in UNCAC. Article 23(2)(b)(ii)
- implementing measures to enable the identification, tracing, freezing or seizure of any item for the purpose of eventual confiscation. Article 31(2)
- empowering courts and other authorities to order that bank, financial or commercial records be made available or seized, and to override refusals based on bank secrecy rules. Article 31(7)
- requiring financial institutions to verify the identity of customers, take steps to determine the identity of beneficial owners of funds in high-value accounts and conduct enhanced scrutiny of accounts sought or maintained by or for individuals who have prominent public functions and their relatives and close associates. Article 52(1)

Conference delegates were encouraged by progress in the asset recovery arena. A number of organizations have stepped in

No bank wants to harbor stolen assets

to help, including the International Centre for Asset Recovery (ICAR), created in Basel to provide training courses for developing countries; the International Association of Anticorruption Authorities (IAACA), established in Beijing to share best practices and provide technical assistance on asset recovery, with emphasis on Asia; and the Council of the European Union, which required its member states to designate national asset recovery offices to trace the proceeds of criminal activities and ensure that those offices share information with each other.

The biggest boost came in September 2007 when the World Bank joined with the U.N. Office on Drugs and Crime (UNODC) to launch the Stolen Asset Recovery (StAR) initiative. That initiative seeks to help developing countries build capacity for mutual legal assistance, create partnerships to share information and expertise, and establish a joint funding vehicle to help states with asset recovery.

Despite the Bali conference's modest achievements, there are signs of greater political will among various countries to prevent corruption and recover stolen assets. Before the conference, 51 countries submitted self-assessments that showed growing compliance with UNCAC. The reports also identified a number of individual state initiatives under way to crack down on corruption and money laundering. Argentina's Central Bank and the Mexican Ministry of Finance have established publicly available lists of PEPs, and Argentina has posted its on the Internet.

But of all the UNCAC provisions in the assessments, the asset-recovery articles had the lowest compliance rate (less than 50%). Thousands are currently under investigation (Brazil alone has over 600), but many countries are still frustrated by the legal complexities of such cases. What is needed to fully implement the UNCAC and uncover the billions in stolen assets concealed in banks is a huge effort to streamline laws, and to increase training, coordination and funding.


Most countries reflexively turn to criminal procedures to recover stolen assets, but most of the large recoveries have been

achieved through civil litigation. The standards of proof are lower, and proceedings can often go forward even in the absence of the defendant. Examples include the \$658 million returned to the Philippines in 2003 from the loot stolen by former President Ferdinand Marcos and the over \$700 million returned in 2006 to Nigeria from the thefts of its former president Sani Abacha. Regardless of the forum selected, recovery cases can be horribly expensive if not managed properly. Undertakings like StAR cannot provide all the necessary funding alone.

But properly managed cases can be enormously profitable. Over 15 years, the U.S. Federal Deposit Insurance Corp. recovered over \$6 billion from cases involving misconduct contributing to the banking crisis of the 1980s and 1990s. Those cases cost less than \$1.5 billion, yielding a 425% return overall. That suggests a business case for private capital to finance recovery initiatives and to provide a boon for developing countries.

Multimillion dollar fines against such venerable institutions as Union Bank of California, American Express, ABN Amro Bank, and Riggs Bank are ample evidence of the seriousness with which U.S. regulators are taking AML requirements. Regulators elsewhere are beginning to follow suit. Banks must therefore be prepared to deal with more demands for records and proceedings to freeze and confiscate assets.

In the old days such actions might have been shrugged off under the mantle of bank secrecy. No longer, thanks to new laws and treaties like UNCAC.

Unfortunately, in the past Western banks have been perceived as willing partners in concealing corrupt assets. Bank compliance officers must understand what is happening abroad and prepare their boards for the changing environment. No bank wants to harbor stolen assets, and with the consequences of corruption so serious, responsible bankers will seek ways to be part of the solution, not part of the problem. 

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