



Making Sure Crime Doesn't Pay: Repatriating the Proceeds of Corrupt Regimes

Illicit assets of politically exposed persons (PEPs)

Politically exposed persons (PEPs), such as Head of States and high public Officials, who illegally enrich themselves through state funds, deprive their state of capital and hinder the development of their country. These sometimes called potentate funds are frequently sent out of the country and invested in international financial centres. Switzerland has a fundamental interest in ensuring that assets of criminal origin are not invested in the finance centre Switzerland. Swiss laws and procedures to combat money laundering, corruption and the financing of terrorism are effective means of keeping out illicite funds of PEPs.

Restitution of illicit funds of PEPs

Illicit assets of PEPs that manage to enter Switzerland despite comprehensive precautionary measures have to be identified and repatriated to their country of origin. This so-called restitution is an important instrument in the Switzerland's policy of combating illegal monies. Therefore Switzerland has returned about CHF 1.7 billion to their countries of origin, which is more than any other financial center of a comparable size. Individual cases attract considerable publicity on account of the high profile of the people and the amounts of money involved. Examples include:

- the Montesinos case, Peru, 2002
- the Marcos case, the Philippines, 2003
- the Abacha case, Nigeria, 2005
- the Angolese assets case, Angola, 2005
- the Kazakh assets case, Kazakhstan, 2007
- the Salinas case, Mexico, 2008

Some cases are particularly complex to solve. Among them, one can mention the Mobutu case (Democratic Republic of Congo/DRC) and the Duvalier case (Haiti). In the Mobutu case, Switzerland strove during 12 years to return the frozen assets to the DRC. This challenge finally failed among others because of the lack of cooperation of this State. In these circumstances, the Federal Criminal Court of Switzerland (FCC) ruled on 14.07.2009 against

pursuing a complaint regarding these assets. The freezing of Mobutu's assets in conformity with the decision taken on 30.04.2009 by the Federal Council (Swiss Government) has therefore been lifted.

In the second case, refunds of ex-dictator Jean-Claude Duvalier totaling about CHF 6 million have again been frozen by a Federal Council decision of 03.02.2010. Following the judgment of Swiss Federal Court dated 12.01.2010, which put an end to the mutual legal assistance between Haiti and Switzerland, this freezing order has avoided a return of the assets to the Duvalier family. The freezing remained in force until the entry into force of the Act on the Restitution of Illicit Asset (LRAI). This law was accepted by Parliament in the autumn session 2010 and is entered into force on 1 February 2011. The Duvalier assets have then been frozen on the basis of article 14 RIAA. The Confederation took legal action before the Federal Administrative Court to enable frozen assets to be forfeited in April 2011, further to the decision of the Federal Council to ask the Federal Department of Finance (FDF) to initiate proceedings for the forfeiture of the Duvalier funds frozen in Switzerland. Once confiscated, the assets will be returned to Haiti in order to improve the living conditions of the Haitian people. The RIAA illustrates the policy that Switzerland has pursued for the last 20 years in order to avoid being used as a safe haven for stolen assets by PEPs.

Switzerland's international commitment

Switzerland has launched several initiatives to promote internationally coordinated action to combat illicit assets of PEPs. The international financial centres must form a common front to prevent the inflow of such funds, to quickly freeze assets of criminal origin and return them to the rightful owners.

To this end, Switzerland financially supports the International Center for Asset Recovery (ICAR) in Basel, since its foundation, as well as the Stolen Assets Recovery Initiative (StAR) jointly launched by the United Nations Office on Drugs and Crime (UNODC) and the World Bank (WB) in 2007. Moreover Switzerland organizes since 2001 informal meetings of government experts in Lausanne (Lausanne I and II in 2001, Lausanne III in 2006, Lausanne IV in 2008 and Lausanne V in 2010 in partnership with STAR). In June 2010, Switzerland organised together with StAR (UNODC et BM) an international conference on development and the recovery of assets.

In the negotiations on the United Nations Convention against Corruption (UNCAC), Switzerland supported the obligation to return illicitly acquired assets to the countries of origin and to compensate the victims. Switzerland ratified the Convention on 24 September 2009, and it entered into force on 24 October 2009. Switzerland is since then committed to ensuring the efficient implementation of the UNCAC throughout the world, in particular with regard to the matter of dealing with the assets of politically exposed persons.

Two instruments to fight financial criminality of PEPs

1. Prevention

Prevent corruption: striking at the root of the problem

Fighting corruption in states with which Switzerland cooperates is an important aspect of Swiss foreign and development policies. Concrete measures include e.g. implementing good governance programmes. All cooperation agreements include clauses on preventing corruption.

Identification: banks must be able to identify their clients and the origins of the monies

The strict provisions of Switzerland's anti-money-laundering legislation oblige Swiss banks and all other providers of financial services not only to identify the party to the agreement, but also to establish the economic beneficiary ("Know Your Customer"). Moreover, the Swiss Money Laundering Act makes provision for a special duty of clarification with regard to PEPs. Swiss banks are regarded as pioneers in keeping out illegal funds; already in 1977 they drew up their own strict due diligence rules.

Reporting and freezing: suspicious transactions are reported

The banks and other financial intermediaries are obliged to report any suspicious transaction to the Money Laundering Reporting Office (MROS) and if substantiated to immediately block an account. Swiss banking secrecy does not offer any protection against criminal prosecution either within Switzerland or in respect of international legal assistance. Additional measures prevent assets from being withdrawn before foreign authorities submit a formal request for legal assistance.

2. Legal assistance and restitution

Legal assistance enables cooperation with the states of origin

Within the framework of legal assistance, Switzerland supplies the state that has submitted a request with details of suspicious accounts that can be used as evidence in criminal procedures or legal proceedings.

Returning stolen or embezzled funds is a priority

Switzerland cooperates with the states concerned to find ways to return the assets to the rightful owners. It also considers it important that these funds do not flow back into the pool of criminal financial capital after being returned. If it is obvious that the origin of the funds is unlawful, Switzerland is even empowered to return the funds to the state concerned without a final and executable order of confiscation (Abacha case).

Act on the Restitution of Illicit Asset (RIAA)

The law comes into existence as a result of difficulties encountered by the Swiss authorities in returning assets frozen in Switzerland to so-called “failing states” following the failure of the process of international mutual assistance to produce a satisfactory result. The draft law provides for a subsidiary solution to the Federal Act on International Mutual Assistance in Criminal Matters. To resolve cases of illicit assets of PEPs deposited in Switzerland, the law comprises the three instruments of freezing, forfeiture and restitution in situations when the state of origin of the assets in question is unable to conduct a criminal procedure that meets the requirements of Swiss law on international mutual assistance.

For more information see also:

- General information with further links:
<http://www.eda.admin.ch/eda/en/home/topics/finec/intcr/poexp.html>
- Switzerland's Federal Act on the Restitution of Illicit Assets (RIAA):
 - Text of the Federal Act: http://www.admin.ch/ch/e/rs/c196_1.html
 - Dispatch concerning the Federal Act:
<http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/finec/intcr.Par.0018.File.tmp/Message%20LRAI%20in%20English.pdf>
 - FAQ on the Federal Act :
<http://www.eda.admin.ch/eda/en/home/topics/finec/intcr/poexp/faqria.html>
- Freeze on assets (especially following the popular uprisings in North Africa) with further links:
<http://www.eda.admin.ch/eda/en/home/topics/finec/intcr/poexp/sperr.html>