SESSION REPORT

Please know you may design the structure of this report to better suit the session. It's important to capture the key outcomes and solutions proposed for the future.

Session Title: Home tainted Home: How to (Finally) get Dirty Money out of Real Estate

Date: 19 June 2024
Time: 3:30 PM - 5:00 PM (GMT +3)

Report prepared by:

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Moderated by:

Maira Martini
(Interim) Head of Policy & Advocacy
Transparency International (Secretariat)

Panellists:

- David Szakonyi
  Co-Founder
  ACDC Anti-Corruption Data Collective

- Mary Butler
  Chief, MLARS International Unit
  U.S. Department of Justice

- Daniela Castro
  South American Editor
  OCCRP (Organised Crime and Corruption Reporting Project)

Share the thematic focus of the session, its purpose and corruption risks?

The push for beneficial ownership transparency has often been motivated by the need to uncover where the corrupt stash their dirty money. Recent advances should make it harder to use anonymous companies to hide ownership of high-value assets, such as real estate, So why are the world's hottest property markets still bursting with dirty cash, and what can we do about it?

This discussion focused on how the real estate sector has been used by individuals to hide ill-gotten gains, and how to mitigate the risks of the real estate sector being used to launder corrupt money.

Summary of panellists' contributions & discussion points (please be as detailed as possible)

Maira Martini (Transparency International) opened the session with an outline of the risks associated with the real estate sector as a haven for corrupt money and Transparency International's (TI) efforts to combat them.

Real estate is attractive for laundering corrupt money due to the ease of hiding funds in property, concealing ownership, and the ability to continue laundering through upgrades to the property (renovations etc).

TI has long recommended closing loopholes in the real estate sector. It continues to advocate for better data collection and availability of data to law enforcement – though making it public would be even better.

Transparency International and the Anti-Corruption Data Collective are designing an Opacity in Real Estate Ownership (OREO) Index. The index analyses data from 24 countries, and is a useful tool for highlighting the gaps in data collection and enforcement.

The first pillar of the index measures the public availability of real estate data in the respective jurisdiction, while the second measures the strength of the jurisdiction's anti-money laundering legal framework concerning real estate.

Early OREO Index findings are that:
o   The US, South Korea, Australia are ranked lowest, while France England and Wales are appearing quite high up – but will need to wait to see what final analysis tells us.
o   while advanced AML legislation exists in many countries, majority of countries TI looked at still do not have a central register where information is available – even to authorities.
o   Beneficial ownership (BO) data is often not collected, making cross-checking with other registries (i.e. land registries) difficult.
o   Loopholes in foreign ownership reporting remain, even in progressive countries.

In the case of Dubai, for example, authorities have data but may not be using it effectively. For France, authorities conducted their first analysis of available data after being asked to respond to TI's queries - showing the importance of data analysis capacity and capability. During the Q&A session, Ms Martini responded to a question about how best to balance beneficial ownership transparency with privacy concerns by noting that the balance needs to take the public interest into account – privacy claims may be used to mask corruption connections, for example.

As moderator, Ms Martini concluded the session by noting that despite ongoing challenges in getting dirty money out of real estate, progress is being made, with the development of better laws and provision of more resources for authorities to pursue cases.

Mary Butler (Department of Justice) covered US / DoJ efforts and challenges in tackling corruption and money laundering through real estate.

She first thanked civil society, journalists, and other witnesses to corruption for their work and noted the importance of such efforts to the DoJ's own work. On learning of the U.S.' potential low ranking in the OREO index, expressed her hope that the index accounts for effectiveness in its ranking, noting the FATF has at least ranked the U.S. higher on this metric.

The DOJ relies on money laundering laws to prosecute offenses, including transactions to conceal sources, promote money laundering, and involving proceeds.

Key predicate crimes include foreign corruption, fraud against foreign banks, sanctions evasion, and U.S. law violations like interstate transportation of stolen property and bank fraud. The reach can be broad where there is appropriate evidence.

Ms Butler spoke to a powerpoint that contained the following points:

Three Main Circumstances of DOJ Work on corruption in real estate:
o   Where there is known investment of embezzled money into real estate.
o   Where there is investment in real estate but source of funds unknown.
o   Where there is investment with very little/no knowledge of ownership, which requires significant investigation.

Case examples of DoJ work:
o   1MDB: $4.5 billion embezzlement with assets traced to the U.S. and other countries. $1.4 billion returned using civil non-conviction-based confiscation.
o   Yahya Jammeh: Former Gambian president's house in the U.S. was confiscated based on a Gambian corruption report.

Ms Butler also presented challenges to the DoJ's work. In particular, the misuse of attorney-client privilege, which she identified as a significant barrier, though one that can be bypassed if communications between the lawyer and client can be shown to have facilitated a crime.

The increasing use of trusts in real estate is also complicating asset recovery efforts.

Ms Butler identified Civil Confiscation cases as a critical tool - the evidence standard is lower than criminal cases, allowing asset forfeiture based on a preponderance of evidence (rather than the higher bar of beyond reasonable doubt). It may not result in jail time for perpetrators of corruption, but can at least see assets restored to victims.

In responding to a question about trends and strategies in this space, Ms Butler responded that corruption is being tackled with improved legislation and resources but efforts could benefit from stronger whistleblower programs – the US is investigating possible reward and incentive schemes for whistleblowers including visas and a portion of seized assets. Noted the growing role of trusts in obfuscating ownership data.

To another question on coordinating with journalists, Ms Butler said that pre-disclosure prior to publication could assist law enforcement in arresting corrupt persons, though increasingly there are so few 'real persons' not protected by lawyers that this is a context dependent question.

Daniela Castro (OCCRP) outlined a strategy for investigating whether properties are owned by potentially corrupt individuals. Key to such projects lies in establishing whether properties are associated with a person of interest, be it their political association, involvement in crime or as a relative of such a person.

Case studies referenced included a Peruvian criminal associated with the narco-trade who was arrested in Argentina. While authorities in Argentina had identified properties owned by the criminal, a Peruvian reporter found additional properties in Peru that were not under investigation.

In another case, a reporter investigated a company linked to a Cali-cartel. Despite discrepancies in corporate records, the reporter found additional properties through local inquiries. Courtesy of Luxleaks, journalists used partial access to beneficial ownership (BO) registries to link properties in the Dominican Republic and Cartagena to individuals in Venezuela – which highlights how crucial publicly available information is for verifying property ownership. Similarly, leaked data from the Dubai Land Department helped uncover properties linked to the son of a former Mexican governor under investigation for corruption (Dubai unlocked story).

Ms Castro then addressed the impact of the CJEU's ruling on beneficial ownership in July 2023, when the EU restricted access to BO information on privacy grounds. Journalists continued using data scraped from before the restrictions (working with TI France) to reveal properties linked to alleged money launderers from Venezuela, Brazil, and Peru.

Where there is no access to data (leaked or otherwise), it obviously becomes much more difficult to identify ownership links to a potentially corrupt person. However, leaked data in other countries may still be of value – for example, a former Venezuelan minister's property in Paris was traced back to funds used by his wife and relatives.

On the question of balancing privacy concerns with beneficial owner transparency, Ms Castro noted the additional problem of carveouts for such registries. For example, an exception in Luxembourg's registry allows minors to be excluded from having to register – resulting in multiple properties being registered under children's names.

In responding to a question about journalist cooperation with law enforcement, Ms Castro said while in general journalists do not instinctively share information directly with law enforcement, they welcome law enforcement's use of published investigations.

David Szakonyi (ACDC) provided insights gained from ACDC's work in analysing bulk data related to property ownership and beneficial ownership (BO) transparency, focusing on various jurisdictions, including France, the UK, and the US.

First step in such an investigation is to hoover up all available data. For a country like France, that has relatively open land records, especially for companies, this work is a bit easier. However, BO data is less accessible – required scraping information from over six million pages.

Mr Szakonyi identified several challenges that have arisen in his research, starting with data gaps: a significant portion of owners do not properly declare their ownership, creating gaps in government oversight. In Paris, less than a third of land parcels had properly declared BO.

Unless data is made available to analysts it will be underutilised - especially in contexts with limited public resources. TI France had been very helpful in increasing the impact of this research.

In comparison, the UK has quite good data availability. From this dataset, ACDC research suggests transparency in real estate ownership has in fact had an affect on land prices, indicating greater scrutiny may reduce demand for high-value real estate from bad actors. Data transparency in the UK serves as a model for other jurisdictions, particularly those with offshore shell companies.

On commercial real estate in the US, Mr Szakonyi again highlighted the difficulty posed by data gaps. The area is of potential interest as commercial real estate in the US, which is defined as anything other than family homes, has not received as much scrutiny. DOJ data showed $2.5 billion had been recovered from corrupt money flows into commercial real estate – though the actual figure is likely higher.

The complex transactions involved in acquiring commercial real estate raise further problems – such as the use of shell companies, special funds, and complex loan arrangements. In one case, involving a sophisticated money laundering operation on the Black Market Peso Exchange, the DOJ seized $42 million connected to property investments in Florida made by Sefira Capital on behalf of a cartel, but a subsequent media investigation found a missed bank account was still holding proceeds allowing the original perpetrators to continue enjoying their ill-gotten gains.

On regulatory gaps, Mr Szakonyi noted commercial real estate is excluded from current US rule-making efforts around dirty money in real estate. He recommended extending BO transparency rules to commercial real estate – while acknowledging pushback from commercial real estate sector which is under current financial strain. Though some in industry argue that existing financial data (e.g., loans) should suffice for tracking ownership, relying on banks has proven insufficient to monitor corrupt money flowing into real estate.

On the point about balancing privacy concerns with transparency requirements, Mr Szakonyi pointed out that in the two countries that have open BO registries, there has been no marked increase in security risks, suggesting that privacy concerns may be overstated.

On potential unintended consequences, he also noted the Corporate Transparency Act (CTA) may push individuals into using trusts more, a growing industry with opaque structures. This could create further barriers for researchers hoping to accessing US data, which is costly – up to $100,000.

Main outcomes of the session (include quotes/highlights and interesting questions from the floor)
The session highlighted emerging trends and challenges in the use of data in uncovering corrupt money in real estate.

Quotes:
Maira Martini: *"we talked about a lot of challenges, but can also leave with a little bit of optimism that there are developments, we on the panel will continue pushing for*

more information availability, better laws, and more resources for authorities to pursue cases."

Mary Butler: "we only catch the sloppy stupid people … we catch the people who make mistakes, who disclose themselves as connected to a property or the crime … thankfully it's not just those people who are the direct beneficiaries or the criminals themselves, it is everyone that knows about it, and as that circle grows, somebody in that circle makes a mistake, and we can be there with your help to capitalise on those mistakes"

On the misuse of attorney-client privilege: "we have to be more clear about what is the provision of legal services and what is not, and have disclosure obligations for what are not legal services. People have lawyers provide these services so they can cloak themselves in secrecy, but much of this work does not require lawyers. There is some legislation pending in congress to do this, but we need to make sure that disclosures that are required are truthful and to do that we probably need more investigators"

On what role the US can play in identifying corrupt money flowers in real estate overseas (that involve US intermediaries or enablers): "the US has a lot of work to do on this area, not only because of [its] own security interests, but also partners' security interests, corruption is so destabilising and if we are enabling [corruption] this is a problem"

"one [trend] seems to be that there are more trusts in the United States now, in states where they weren't known to be as hospitable to shell corporations, this is troubling, trying to find who are the beneficiaries of trusts is a problem for us"

David Szakonyi:
"as social scientists, we have two countries that have experienced with such openness and have not seen the security risks manifesting,"

"I don't trust a lot of central beneficial ownership data sets, you need to combine data sets effectively, there are lots of ways to validate if you can create an ecosystem of data, which is most of what we do - validating and benchmarking"

Key recommendations for the future and concrete follow-up actions
Access to data and data transparency is critical to uncovering corruption and money laundering.

Effective data analysis requires combining multiple data sets to validate and benchmark information. The interventions underscored the importance of public information and cross-border data in uncovering corrupt activities and emphasized the need for ongoing access to beneficial ownership registries, despite regulatory changes.

There is an ongoing need for robust data ecosystems to enhance transparency and accountability in property ownership.

Transparency International and ACDC will continue to develop the OREO index, which will provide further insight into how to increase the effectiveness of efforts aimed at ending corrupt money flows into real estate.

Governments must be more clear about the provision of legal services – what is a legal service and what is not, and have disclosure obligations for what is not legal services. Also need to ensure such disclosures are truthful (requiring more investigators and resources).

On balancing privacy concerns with BO transparency requirements, important to factor in public interest. For some datasets, there is a public interest in knowing what is a 'real company', if company has been created simply to obfuscate ownership, then there is still a public interest – this can be done in a way that 'layers' available data, which does not disclose the address or gender of the beneficial owner – just what is necessary to the ownership of a company, and there are different ways of knowing this. Important to also separate privacy and security concerns, in the latter, protections can be put in place if it can be shown that making such information available would put the beneficial owner at risk.

Rapporteur's name

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Date submitted

20 June 2024

Action! This report needs to be emailed to iacc-av@transparency.org within 24 hours of the session. If you wish to update the report, please do so by 21 July. Thank you.