

INTERNATIONAL ANTI-CORRUPTION CONFERENCE 2024

Vilnius, Lithuania

18-21 June 2024

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: Cracking trusts: stopping corrupt actors and enablers from hiding assets with impunity

Date: 20 June 2024

Time: 08:30 PM - 10:00 PM (GMT +3)

Report prepared by:

Monica Guy
Team Lead Communications & External Relations
Basel Institute on Governance

Moderated by:

Jonathan Spicer
Senior Specialist, Asset Recovery
Basel Institute on Governance

Panellists:

- May De Silva
Commissioner
Anti-Corruption Commission Seychelles
- Mark Temple KC
Attorney General of Jersey
- JC Weliamuna
Council Member, IACC and Director, Transparency International Australia

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

This workshop examined the challenges that can arise in transnational corruption and asset recovery cases, particularly when assets are held in trusts or similar structures in international financial centres. It also addressed the common perception that the use of trusts can render tainted assets beyond the reach of law enforcement.

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

a) Challenges posed by complex transnational cases

Small jurisdictions such as the Seychelles experience significant challenges investigating and prosecuting complex transnational corruption cases. The ongoing “Black Iron” case in the Seychelles – involving the alleged embezzlement of USD 97 million by an economic advisor to the former president – revealed:

- **Legal limitations of the Anti-Corruption Act and AML Act**, which required amendments to extend existing powers of other prosecuting agencies to the ACCS to enable the investigation and prosecution of corruption and money laundering offences.
- **Technical limitations in relation to the analysis of large quantities of digital evidence** seized from the suspect's property, including 800 devices. These challenges were particularly overcome thanks to assistance from the UK National Crime Agency which loaned equipment for a digital forensics lab and assisted with training two Seychelles officers in their use.
- **Resource and capacity limitations in the analysis of large quantities of documentary exhibits** and their use as evidence, which has revealed the need to update the Seychelles' evidence act.
- **The complexity of international cooperation in a case involving over 20 jurisdictions.** Here in particular, the Seychelles benefited from the assistance of the Basel Institute's International Centre for Asset Recovery and the International Anti-Corruption Coordination Centre in terms of identifying focal points for cooperation, coordinating informally, advising on asset recovery and drafting, sending and dealing with mutual legal assistance (MLA) requests.

Nevertheless, the process of conducting such complex, high-value cases together with international partners and expert advisers enables jurisdictions to gain valuable experience and relationships with foreign counterparts. It can also trigger beneficial legal reforms. Both pave the way to creating a more resilient and capable criminal justice system able to handle both domestic and international cases in the future.

b) Low capacity, resources and independence – but high expectations

Sri Lanka's early efforts to address corruption and recover stolen assets, following the election of a new government in 2015, reveal additional challenges faced by many low-resource jurisdictions. These include:

- **Issues with institutional independence** and the inclusion of compromised individuals in government and law enforcement.
- **Legal limitations and pushback** in attempts to reform relevant legislation, in part related to the point above.

- **No systematic process to vet law enforcement officers**, potentially compromising ongoing investigations and prosecutions.
- **An almost complete lack of capacity, resources and equipment** in the area of financial crime investigation and prosecution, including even a lack of computers and financial analysis skills.
- **High public expectations** regarding the government's actions to combat corruption and recover assets – expectations that were impossible to satisfy given the issues described above.

In such cases, targeted training/capacity building and mentoring for specialised and vetted law enforcement officers helps greatly, as does assistance with legal reforms that can withstand political changes and interference.

c) Confiscating assets held in trusts

Several recent cases involving Jersey serve to dispel the common perception that assets held in trusts in an offshore financial centre such as Jersey are “beyond the reach” of law enforcement. In contrast, the fact that trusts are part of a regulated financial industry in Jersey enables suspect assets held in trusts to be rapidly locked down and subsequently recovered if a criminal or civil confiscation order is obtained.

- One example discussed was a 10-year case involving an Indonesian public official and a luxury apartment in Singapore held through a Jersey trust. Jersey was able to respond rapidly to Indonesia's request for mutual legal assistance to lock down the assets through a *saisie judiciaire* (Jersey form of freezing order) and subsequently recover and return these to Indonesia after a lengthy appeal process.
- In a domestic case involving a public official in Mozambique, Jersey's Financial Intelligence Unit was able to prevent suspect assets held in the “Tolvex” trust from being transacted while an investigation and civil proceedings were conducted. Around GBP 829,500 were recovered and will be returned to Mozambique for use in strengthening the criminal justice system.
- In both cases, a major point is that proceeds of crime or tainted assets gifted to or settled on trusts in Jersey can be recovered by law enforcement or anti-corruption agencies by targeting the Jersey trustee.
- Assets all over the world can be targeted, so long as they are held by a regulated trustee.
- Jersey's 2018 Civil Forfeiture Law is proving a powerful tool in the recovery of assets held in trusts, among other things as it reverses the burden of proof onto the asset holder to provide evidence that the assets derive from a legitimate source.

These and other cases involving the civil forfeiture of assets held by Jersey trusts counters the widespread perception that trusts and similar structures enable corrupt individuals to conceal and enjoy their wealth with impunity.

Main outcomes of the session (include quotes/highlights and interesting questions from the floor)

- Small and low-resource jurisdictions face significant challenges in investigating and prosecuting corruption and money laundering cases and recovering assets.
- Technical assistance from international counterparts and centres of excellence such as the Basel Institute's International Centre for Asset Recovery are invaluable for such jurisdictions. Assistance can be in the form of training, mentoring, the provision

of digital forensics equipment, assistance with international cooperation through informal and formal channels, and more.

- International financial centres that hold assets arising from corruption can often wield their domestic laws powerfully to cooperate with victim jurisdictions and recover assets on their behalf.
- This includes when assets are held in trusts or similar structures in offshore financial centres.
- Complex, high-value cases often trigger important legal reforms and build both capacity and relationships, paving the way for future asset recovery success.
- Assets returned to victim countries can be used valuably as part of negotiated agreements to invest in development projects and/or to strengthen the criminal justice system.

Key recommendations for the future and concrete follow-up actions

- Encourage investment in strengthening asset recovery systems as a way to tackle the impunity often associated with corruption.
- Raise awareness of the possibilities of locking down and confiscating assets held in trusts and similar structures in offshore centres.
- Jurisdictions can and should share experiences and encourage peer learning at both the technical and legislative levels.

What can be done to create opportunities for scaling up the solutions discussed in the session? And by whom?

- The Basel Institute on Governance and its International Centre for Asset Recovery actively seeks to work with international partners to advance complex, transnational cases and enhance global asset recovery systems. We are always happy to discuss opportunities in this area: please contact info@baselgovernance.org.

Is there a specific call to action to key stakeholders, such as governments, businesses, funders, civil society, young people, journalists or any other stakeholder that should be noted? Please specify if relevant.

Rapporteur's name

Monica Guy
Team Lead, Communications and External Relations
Basel Institute on Governance

Date submitted

21 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.