

Switzerland's experience and best practice in the fight against corruption and illicit acquisition of assets by politically exposed persons

General introduction

Switzerland has a comprehensive set of policies to fight corruption, both at the national and international level. The anti-corruption policies are closely linked to the government's efforts to fight organized crime and money-laundering. In many cases, there is a close link between corruption and illegal holdings of *politically exposed persons* (PEPs). As a major international financial centre, Switzerland has a fundamental interest in ensuring that illicitly acquired assets do not find a safe heaven in Switzerland. The Swiss government has therefore put in place a comprehensive range of legal instruments and measures for identifying, blocking and returning assets of criminal origin.

Switzerland handles assets illicitly acquired by PEPs in the same way as other assets of criminal origin. The Swiss banking secrecy law does not protect assets of criminal origin. The legal instruments deployed for preventing entry of illegally acquired assets, and for identifying, blocking and returning such assets, are manifold: criminal law, money laundering provisions, mutual legal assistance, and regulations governing the due diligence of banks. In some specific cases, the federal government has the power to block assets on its own initiative, in order to assist the country concerned in its efforts to recover them.

Experience has shown that the existing array of instruments is effective in dealing with illicit assets of PEPs. Switzerland is a worldwide leader in the field of asset recovery of PEPs. Over the past 20 years, Switzerland has returned ca. 1.6 billion USD to their countries of origin. No other government has returned a comparable amount.

Each case involving illicit assets of foreign PEPs is structured differently, but the "five pillars" to prevent the inflow of PEPs assets remain the same:

- I. Prevention of corruption: tackling the problem at the source:** the fight against corruption is a high priority for Swiss foreign and development policy. Specific measures are being implemented, for example in programmes to promote good governance. Usually, co-operation agreements also contain specific provisions on fighting corruption.
- II. Identification: names of bank clients and origin of assets must be known:** the strict regulations of the Money Laundering Act require Swiss banks and other providers of financial services to identify the contracting party and to establish the identity of the economic beneficiary ("Know Your Customer" principle). Swiss Money Laundering legislation also envisages special due diligence requirements for institutions dealing with PEPs.
- III. Reporting and blocking: suspicious transactions are reported:** banks and other financial intermediaries are required to report all suspicious transactions to the national Reporting Centre for Money Laundering (MROS) and to block the account immediately in the event of suspicious movements. Swiss banking secrecy does not provide protection against criminal prosecution, neither domestically nor in the framework of mutual legal assistance with other countries. Assets remain frozen until the foreign authorities submit a formal request for legal assistance.
- IV. Mutual legal assistance facilitates co-operation with the countries of origin:** when legal assistance is requested, Switzerland provides the requesting State with details of the accounts concerned. This information can be used as evidence in criminal and civil proceedings.
- V. Restitution of stolen or fraudulently acquired assets is the main priority:** the restitution of illicit assets is an important pillar of the Swiss policy. Together with the States concerned, Switzerland seeks ways of securing the restitution of such assets to their rightful

owners. If the criminal origin of the assets is indisputable, Switzerland can return assets, even without a legally binding and executable confiscation decision by the State concerned.

A concrete and successful example: the Abacha case

Switzerland's efforts in the area of mutual assistance in criminal matters make an important contribution towards the promotion of good governance. In this area, the Abacha case is a good example of an important restitution of illicitly acquired assets to their country of origin.

Since 1999, when funds of former President Abacha were discovered in Swiss bank accounts, the Swiss authorities have been cooperating closely and successfully with the Nigerian authorities. On the basis of Swiss legislation, in particular the Money Laundering Act and the Federal Act on International Mutual Assistance in Criminal Matters, the Swiss authorities were able to gather all relevant information and to proceed with the restitution of the funds to the Nigerian government. Nevertheless, the restitution of the funds would not have been possible without the constructive cooperation of the Nigerian authorities. In February 2005, the Swiss Federal Supreme Court upheld the decision of the government to return 500 million USD to Nigeria.

In its decision, the Supreme Court concluded that the structure established by Abacha and his accomplices constituted a criminal organization. According to the Swiss criminal code, this finding led to a reversal of the burden of the proof concerning the origin of the assets. As the defendants were not in a position to prove the legality of their entitlement, the funds could be returned on the basis of the Federal Legal Assistance Act, which exceptionally allows for early restitution to the State of origin without a legally binding and enforceable ruling by that State. This has been a breakthrough for "early repatriation".

As of today, almost all the assets blocked in Swiss bank accounts - a total of about 700 million USD - have been returned to Nigeria. It is expected that the remaining 7 million USD will be refunded by the end of the year 2007. Of all the countries where assets stolen by the Abacha clan have been identified, Switzerland has been the first State to start returning them to Nigeria.

Nigeria and Switzerland also agreed to allow the World Bank to monitor the use of the funds in the framework of a budget control process of various welfare projects (health, educational and infrastructure projects). Establishing a monitoring mechanism was not a condition of the restitution of the Abacha funds.