



# UK Asset Recovery Strengths and Weaknesses

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Image: [nARCOTO](#). On 9 September 2011, just off the Champs-Élysées in Paris, 11 sports cars worth US \$5 million were seized by French police. They are part of the great wealth believed to have been amassed in France by the Obiangs, the ruling family of Equatorial Guinea.

# **CORRUPT CAPITAL**

# UK Strengths in AML for Proceeds of Corruption

- The global importance of London as a financial centre
- UK political focus on the issue at the highest levels
- A commitment to legislate to improve anti-money laundering (ML) and asset recovery
- Law enforcement focus and ring-fenced resourcing of policing of proceeds of corruption
- HM Treasury Supervision Reports
- Financial Conduct Authority (FCA) new penalty regime and an emphasis on AML compliance regarding politically exposed persons (PEPs)
- International convening power to bring together and support investigators from around the world
- Commitments to transparency of corporate beneficial ownership
- A well-resourced AML compliance community in banking with a developed professional development framework of events and trade publications

## Scale of the threat

- UK as a financial centre – attractive for proceeds of corruption as well as for legitimate financial services
- Global Financial Integrity, estimates that developing countries lost on average £351.5 billion per annum through illicit flows over the decade ending 2010
- Recent US estimates have put the worldwide cross-border flow of the proceeds of crime, including corruption, at US \$1.6 trillion.
- The European Commission estimates that, across all European Union (EU) Member States, corruption costs Europe around £144 billion per year.
- Prior to its abolition in early 2013, the UK Financial Services Authority (FSA) provided an estimate that £23-57 billion was being laundered within and through the UK each year.

## Case studies

- In the case of General Sani Abacha and his conspirators, an estimated £780 million of money stolen while he was dictator of Nigeria is believed to have been laundered through UK banks.
- James Ibori, former Governor of Delta State in Nigeria from 1999 to 2007, who pled guilty to ten counts of money laundering, is estimated by UK law enforcement to have embezzled £150 million of Nigerian public funds. Reporting around the Ibori court case shows he bought a house in Hampstead, north London, for £2.2m, and a property in Shaftesbury, Dorset, for £311,000.
- Saadi Gaddafi owned a £10 million home in Hampstead, London via a company named Capitana Seas Ltd. After Gaddafi was deposed, the transitional government in Libya was granted a default judgment against Capitana Seas Limited.

10 M €

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2.2 m €

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# Property as a key risk

- Property is a key risk area for the UK. ‘Parking’ assets and investing them in the UK is very attractive to foreign investors, particularly in the London property market.
- Foreign buyers bought up to 75% of new homes in central London over the past year, and foreign buyers reportedly accounted for 49% of all properties + £1m
- £7bn of foreign investment was spent on high-end London homes in 2013.
- Land registry data indicates in 2011, at least £3.8 billion worth of UK property was bought by BVI-registered companies
- A media investigation revealed an estimated US\$588 million (£350 million) worth of vacant properties on a prestigious London road ranked last year as the second most expensive street in Britain. The empty buildings include a row of 10 mansions worth US\$123 million (£73 million), which have stood largely unused since they were bought between 1989 and 1993. Most of the properties are registered to companies in the British Virgin Islands, Curaçao, the Bahamas, Panama and the Channel Islands, allowing international owners to remain anonymous.

## TI-UK Property Research



**HOW THE SECRET OWNERSHIP OF PROPERTY IN  
LONDON AND THE REST OF THE UK FACILITATES  
GLOBAL CORRUPTION**

THE BOROUGHS OF WESTMINSTER AND KENSINGTON & CHELSEA ACCOUNT FOR 48% OF ALL LONDON PROPERTY THAT IS OWNED BY A SECRECY JURISDICTION COMPANY



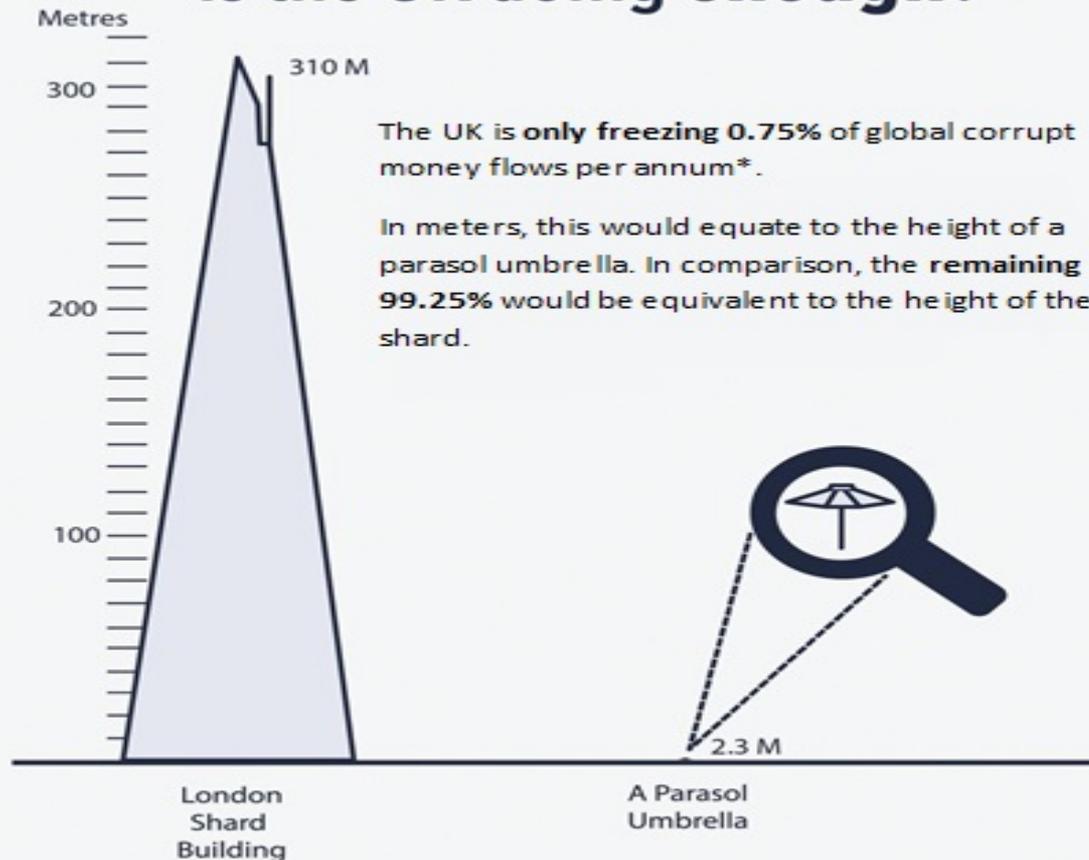
TOTAL NUMBERS OF PROPERTY TITLES HELD BY SECRECY JURISDICTION COMPANIES BY BOROUGH



## Estimates on detection and recovery

- Against this scale of threat, the United Nations Office for Drugs and Crime (UNODC) estimate that the global detection rate of illicit funds by law enforcement is as low as 1 per cent for criminal proceeds, and the seizure rate is possibly 0.2 per cent.
- The UK National Audit Office (NAO) estimates that only 26p out of every £100 is confiscated from organised criminals
- British Overseas Territories (OTs) and Crown Dependencies (CDs) are also believed to play a substantial role in facilitating illicit funds. In 2011, the UNODC and the Worldbank Stolen Asset Recovery (STAR) initiative analysed over 150 grand corruption cases and found that out of the corporate vehicles involved in money laundering associated with the cases, the following territories had hosted the secret corporate vehicles: BVI (91); United Kingdom (24); Cayman Islands (15); Bermuda (12); Jersey (12); Isle of Man (7)). Oxfam estimates US\$7.18 trillion is held in accounts situated in British OTs and CDs.

## Is the UK doing enough?



\*Based on OECD figures and conservative estimates



# AML for Proceeds of Corruption – UK Weaknesses

At a strategic and policy level...

- A relatively slow sanctions regime
- Reliance on a conviction in the origin state
- No special powers for freezing assets in post-revolutionary or highly corrupt environments.
- Vulnerabilities in close connections to Overseas Territories and shell companies
- Limited recognition of lobbying activity undertaken by potential perpetrators of grand corruption in the UK

# AML for Proceeds of Corruption – UK Weaknesses

At an investigative and prosecution level...

- Geographic limitations of policing investigations to (Department for International Development) DFID priority countries.
- Limited police, Crown Prosecution Service (CPS) and Serious Fraud Office (SFO) resources for (expensive) investigations
- Low risk appetite due to the risk of legal damages being brought against the police, SFO or CPS
- The failure to recover policing costs through recovered assets in politicised cases

# AML for Proceeds of Corruption – UK Weaknesses

At a regulatory level...

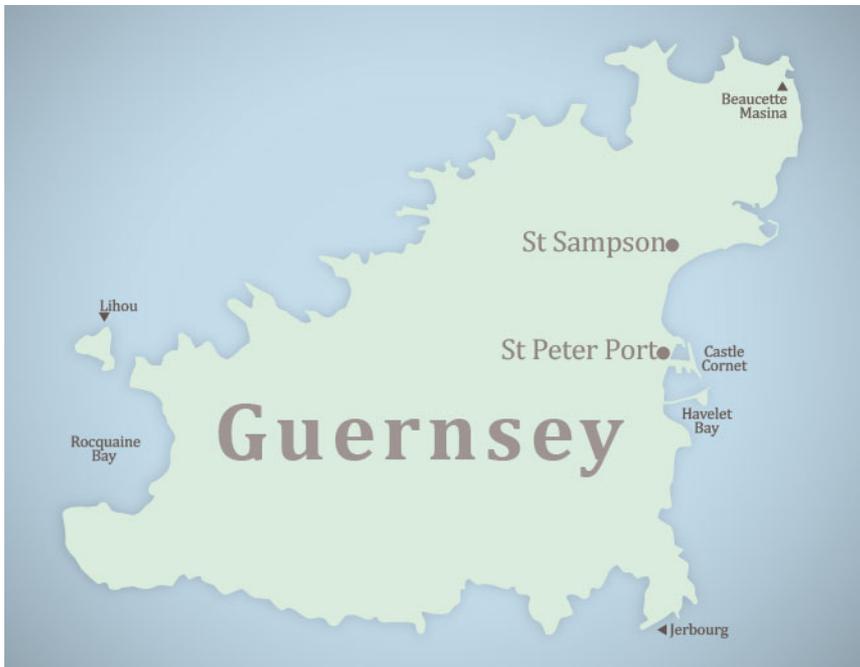
- A disparate regulatory framework for AML in the UK.
- Inadequacies of regulators' risk assessments.
- Wide variation in enforcement of AML regulations.
- No official consensus of the scale of money laundering and a general lack of data PEP risks undermining understanding of the problem and lack of transparency
- Regulatory weaknesses in non-banking sectors
- Low requirements for a 'fit and proper' test for Trust and Company Service Providers (TCSPs).

# AML for Proceeds of Corruption – UK Weaknesses

At a private sector level...

- Widespread shortcomings of AML procedures (known in banking, possibly worse in other sectors).
- Limitations of estate agents money laundering requirements.
- Very low Suspicious Activity Report (SAR) filing by gatekeeper sectors.
- The legal profession exemption from reporting suspicions.
- Lack of personal responsibility for ML failings
- ‘De-risking’ by major banks
- Land registry ownership secrecy
- Lack of transparency over trusts.
- Poor indicators in use for successful application of AML and non-systematic monitoring of refused business

# The Garnet / Suharto case in Guernsey



## Corrupt enrichment suspicion - Limitations of UK existing powers

- SAR regime provides the NCA 7 + 31 days to meet the required threshold for restraining the assets
- A de facto 'rubber stamp' authorisation for the bank to process the transaction in place
- Reliance on a predicate offence (in the origin state).

# Corrupt Enrichment

Whether there should be a duty to explain the legitimate sources of wealth for substantial, suspicious and unexplained funds belonging to public office holders, far beyond their declared official income and assets, passing through the UK (in line with article 20 of UNCAC)

- Inadequacy in the existing UK legal framework
- Forty-four other countries have illicit/corrupt enrichment law.
- Ireland, Australia and Columbia have an Unexplained Wealth Order (UWOs) regime, i.e. no proof of the property being connected to the crime, and a reversed burden of proof.
- Civil libertarian and human rights considerations are complex, and require detailed consideration.

## Evaluating a Corrupt Enrichment Law

1. Is there a gap?
2. Is corrupt enrichment the solution?
3. Is it proportional? What should the basis for suspicion and the burden of proof in any such offence?
4. Should it be illicit enrichment or corrupt enrichment?
5. What should be the territorial scope of the legislation?
6. Civil or criminal?
7. Is it enforceable?

# TI-UK Corrupt Enrichment Taskforce

Reviewing...

- Better use of existing legislation
- A UK Unexplained Wealth Order (UWO) regime and NCBAF
- Extending cash seizure powers and applying them to PEP assets
- A Standalone Corrupt enrichment law
- ‘No consent’ regime like in Guernsey
- Bribery Act amendments

## Taskforce evaluation- UK Corrupt Enrichment Options

- Intensity of use
- PEPs or broader financial crime
- Compatible with human rights law
- The ‘right to silence’
- Adheres to the Principle of Legality
- Obligations under the MLRs and POCA
- Scope
- Extra-territoriality



## Burden of proof issues - PEPs

- UK law that already contain elements of a duty to report (which may conflict with the right against self-incrimination):
- Duty to report suspicions of money laundering under Proceeds of Crime Act 2002 - Part 7 of POCA provisions requiring businesses within the regulated sector to report suspicions of money laundering. The offence of failing to report a suspicion of money laundering by another person carries a maximum penalty of 5 years imprisonment and/or a fine.
- Deferred Prosecution Agreements (DPAs) under UK Bribery Act

### Interest and asset disclosure

- Failure to declare a pecuniary interest as defined under the Localism Act
- Parliamentary register of financial interests in the Code of Conduct

Questions?  
... and discussion

## Literature analysis

- Booz, Allen, Hamilton: Comparative Evaluation of Unexplained Wealth Orders (UWOs) [2012]
- STAR/Worldbank/UNODC: On the Take: Criminalizing Illicit Enrichment to Fight Corruption [2012]
- Maud Perdriel-Vaissiere, The accumulation of unexplained wealth by public officials: Making the offence of illicit enrichment enforceable [2012]
- TI-UK: Closing down the Safe Havens [2013], and Ten Tests: Can UK Legislation Tackle Corrupt Capital? [2014]
- TI-S Anti-Corruption Helpdesk review of illicit enrichment [2012]