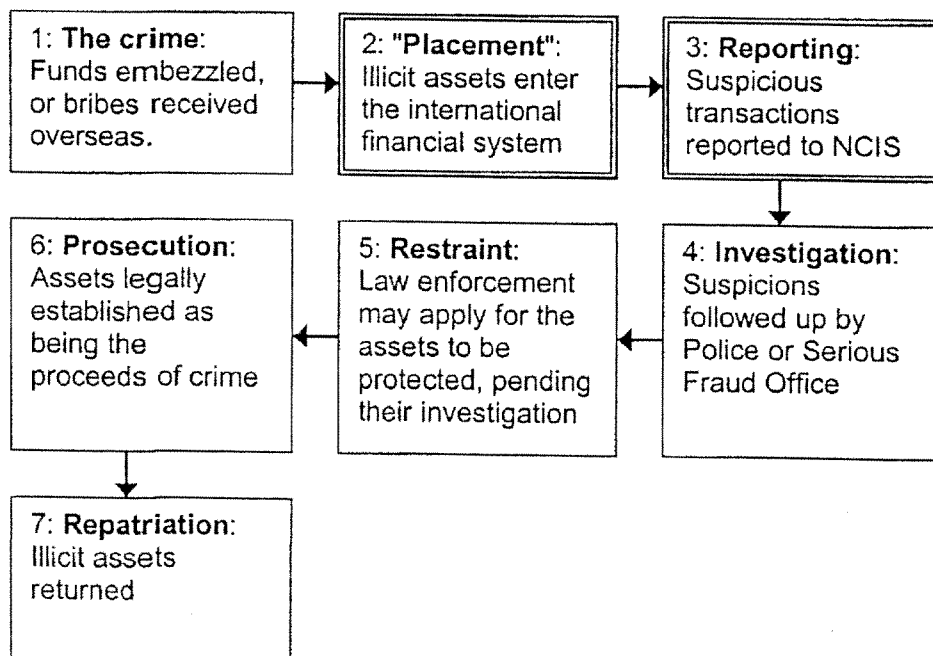


## INTERNATIONAL CORRUPTION: THE ROLE OF THE UK'S ANTI MONEY LAUNDERING REGIME

### INTRODUCTION

1. This paper outlines how the UK's anti-money laundering (AML) framework contributes to the international fight against corruption. The paper focuses on the second and third stages in the 'pipeline' of corruption illustrated at figure 1 below, where UK institutions take the initiative in seeking to identify and isolate corrupt funds.
2. The paper then moves beyond the domestic AML arrangements to describe how the UK responds to requests from a *third country* in respect of funds that they claim to be the proceeds of corruption, and concludes with an outline of the key policy challenges to be overcome.

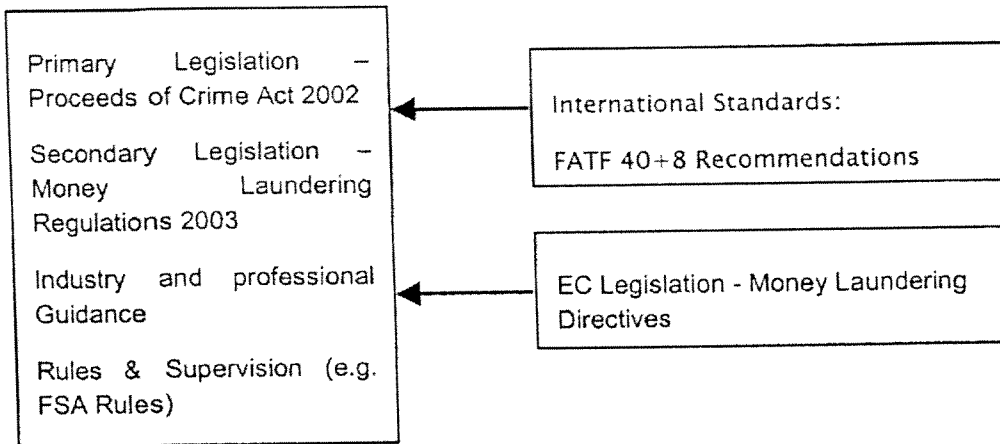
Figure 1: the domestic corruption pipeline



### THE UK'S MONEY LAUNDERING FRAMEWORK

3. The UK's money laundering system is based on a framework of international standards, primary and secondary legislation, industry and professional standards and Financial Services Authority (FSA) Rules (figure 2).

Figure 2: The UK money laundering framework



### Defining the crime of money laundering

4. The **Proceeds of Crime Act (POCA)** provides for a single set of money laundering offences, applicable throughout the UK to the proceeds of all crimes, including corruption; theft; false accounting and other offences that may relate to cases of looted state assets. POCA defines money laundering in such a way that it captures not only "conventional" money laundering, but also possession by criminals of their own proceeds and the offence of handling stolen goods.

5. Where the actual offence occurred overseas, POCA operates a 'single criminality' principle: that is, the fact that a crime is an offence in the UK (and not necessarily in the country concerned) is enough to bring it within the ambit of the UK's money laundering regime.

This means that the proceeds of corruption, even if it occurred overseas, constitute a money laundering offence in the UK.

### Reporting suspicions of corruption

6. POCA imposes a direct obligation on the regulated sector to make a suspicious activity report if they know or suspect or have reasonable grounds to know or suspect that money laundering has taken place. In addition, the Act also requires the regulated sector to seek the consent to undertake a future activity or transaction which may constitute a prohibited act. In practice, this means that suspicious transactions may be suspended pending clearance from the National Criminal Intelligence Service (within seven days). If NCIS refuse consent, the transaction may proceed if law enforcement makes no notification to restrain the assets with 31 days.

7. This requirement does not just apply to banks. The **Money Laundering Regulations 2003** (which implements the Second EC Money Laundering Directive) have expanded the regulated sector to include among others estate agents, casinos,

accountants, lawyers and anyone conducting a business of dealing in goods accepting cash of approximately £10,000 or more in a single transaction. The requirements on the regulated sector include training, client identification, record keeping and the internal reporting of suspicions or knowledge of money laundering.

8. The Regulations provide that, when deciding whether an offence has been committed, the court must consider whether the defendant followed any relevant **guidance** issued by an appropriate body and approved by HM Treasury. The Joint Money Laundering Steering Group (JMLSG) provides **Guidance Notes** for the UK financial sector on interpreting the Regulations which effectively define standards and industry best practice. Other guidance notes exist for other parts of the regulated sector.

9. The effect of POCA and the Regulations, then, is that regulated institutions must make reports if they suspect that funds relate to the proceeds of corruption.

### **Managing the risk of political corruption**

10. Know Your Customer (KYC) rules also form part of the financial sector's defense against corrupt and laundered money.

11. UK money laundering regulations say that institutions must know their customer, including the nature and origin of their funds. In meeting this requirement, they are required to take concrete steps to manage the particular risk associated with providing financial and business services to government ministers or officials (i.e. "Politically Exposed Persons"), especially from countries with widely-known problems of bribery, corruption and financial irregularity within their governments and society.

12. While UK legislation does not currently provide specific enhanced customer due diligence requirements when dealing with PEPs, industry guidance has been promulgated by the JMLSG. This includes:

- a requirement to assess which of the countries with which they conduct business may be susceptible to corruption by referring to the Transparency International Corruption Perceptions Index
- provision for enhanced and ongoing customer due diligence where there is a high risk of money laundering including relations to PEPs (Box 1).
- a definition of PEPs: 'Natural persons who are or have been entrusted with prominent public functions, and whose substantial or complex financial or business transactions may represent an enhanced money laundering risk

#### **Box 1: Examples of enhanced due diligence for PEPs**

Close scrutiny of any complex structures (for example, involving companies, trusts and multiple jurisdictions) so as to establish that there is a clear and legitimate reason for using such structures and a centre such as the UK.

Every effort to establish the source of wealth (including the economic activity that created the wealth) as well as the source of funds involved in the relationship - again establishing that these are legitimate, both at the outset of the relationship and on an ongoing basis.

The development of a profile of expected activity on the business relationship so as to provide a basis for future monitoring. The profile should be regularly reviewed and updated.

and close family members or close associates of such persons.'

13. A key feature of the draft Third Money Laundering Directive is that such measures will become statutory requirements through EU law, rather than industry guidelines.

### **Joining-up with law enforcement**

16. Where financial intelligence points to a possible case of corruption, it will be for the police to pursue the investigation, or possibly Serious Fraud Office if its criteria are met (namely, that the case involves over £1 million; there a significant international dimension; it is likely to be of widespread public concern; requires highly specialised knowledge; or, e.g. of financial market there is a possible need to use the SFO's special powers). Other possible options would include a referral to the Asset Recovery Agency, which as unique powers to take civil recovery action or tax the proceeds of crime.

17. Once a criminal investigation has started, and where there is reasonable cause to believe that the alleged offender has benefited from his criminal conduct (e.g. through money laundering), the investigating body may apply for a restraining order to be served in order to protect assets which may subsequently be required to satisfy a confiscation order by a court.

### **REPATRIATING STOLEN STATE ASSETS**

18. This section outlines current procedures for repatriating state assets that a third country has determined to be criminal property. It describes, firstly, the circumstances under which the UK is prepared to confiscate funds that are claimed by a third country (and how it assists them in that claim), and secondly, what proportion of these funds should be repatriated.

#### **When should the UK confiscate or repatriate funds?**

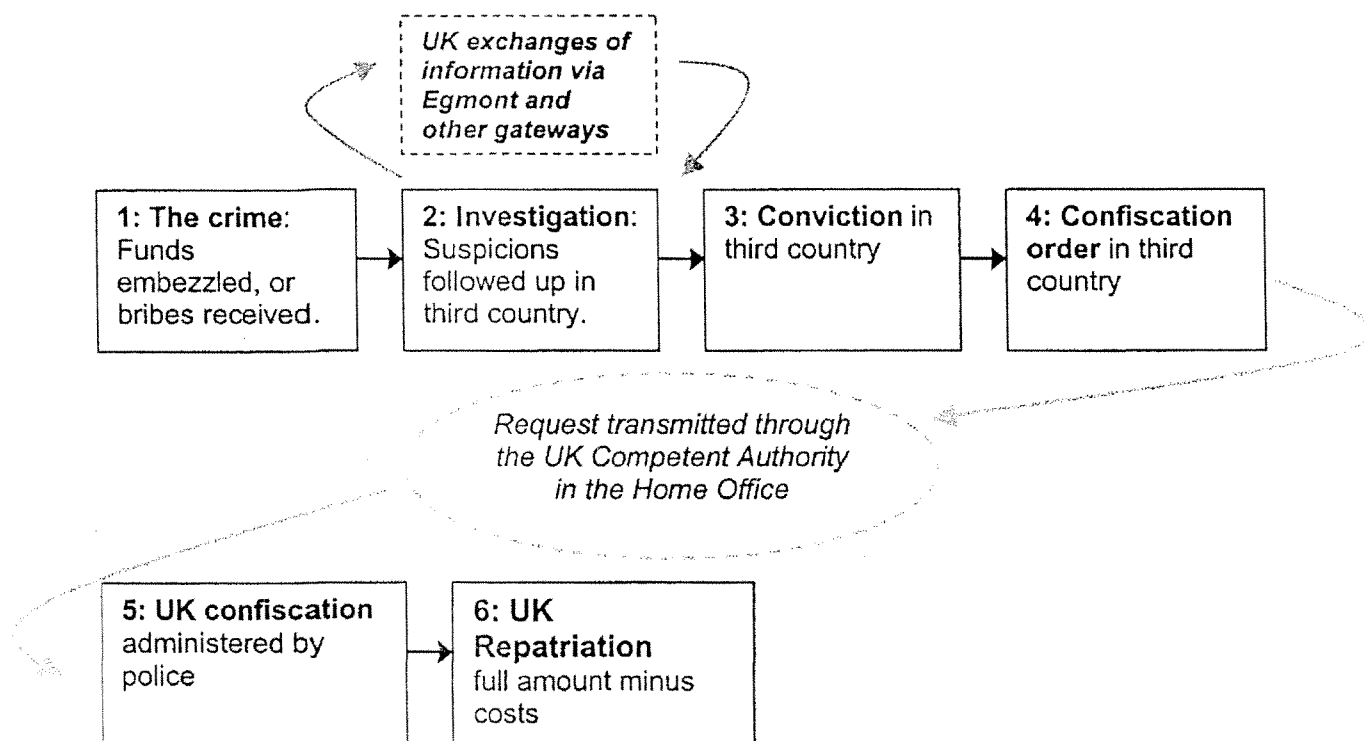
19. The UK is willing to enforce overseas confiscation orders following a criminal conviction in respect of an offence whose proceeds are lodged within the UK. This is

quite different from returning funds on a simple 'on request' basis which, in practice, could well require the UK to act in a way that was contrary to the requirements of due process and the rule of law (for example, in relation to speculative or predatory targeting of an individual's funds by a another state). Indeed, in the absence of an existing conviction, UK action would most likely be subject to legal challenge.

20. The UK has an important role in assisting overseas investigations that might ultimately lead to a confiscation order by cooperating in the international exchange information, particularly through the Egmont Group of Financial Intelligence Units.

Beyond such cooperation, where a third country lacks the necessary domestic confiscation legislation to work with the UK in this way, then is a matter that may be best resolved by bilateral and multilateral technical assistance.

**Figure 3: Repatriating stolen assets**



### How much should be returned?

21. It is general practice in the UK to retain the proceeds from overseas confiscation orders unless we have an asset sharing agreement with the requesting country - in which case we share up to fifty per cent of the proceeds minus our costs. In practice, this is mainly used in drug trafficking cases where the conviction and confiscation is part

of a joint effort (and so it is appropriate to share the proceeds) and there is no clear victim.

22. However, it was established in 2001 that cases involving the looting of state funds by overseas plutocrats, where the country as a whole was the victim and the sums involved were potentially very large, that a different approach would be required. Retention of funds by the requesting state, and even asset sharing, would be inappropriate. Rather, the right course would be to repatriate all the funds minus the costs of recovery.

23. Such cases effectively amount to a 'refund' of assets that have been paid into the Consolidated Fund following the enforcement of an overseas confiscation order.

## **POLICY CHALLENGES**

24. The AML framework provides both:

- (i) a mechanism by which suspect assets may be better identified by banks (and other regulated sectors) and;
- (ii) a reporting system that can spur law enforcement efforts in relation to corruption.

What, then, are the primary challenges to be resolved in enhancing UK responsiveness to international corruption threats.

### **Identifying corruption risks**

All banks should be identifying 'Politically Exposed Persons' and conducting enhanced due diligence accordingly

## **Acting on corruption risks**

### **CONCLUSION**

30. The UK has a sophisticated legal and regulatory framework designed to identify the banking arrangements of political elites:

31. Where assets are first identified, not by UK institutions, but by a third country seeking to reclaim stolen assets, the primary challenge relates to the need for proper judicial backing to exist in support of that claim before UK authorities can act.