

**INTERNATIONAL CONFERENCE ON FINANCIAL CRIME
AND ASSET RECOVERY - FEBRUARY 10TH /11TH 2010 - IN JERSEY**

STATEMENT OF OUTCOMES

1. On February 10th/11th 2010 the Government of Jersey hosted a Conference in the Island attended by representatives from 26 developing countries in Africa and Asia Pacific. The theme of the Conference was how to assist developing countries to obtain information on financial crime including fiscal crime and to recover the proceeds of such crime.
2. Delegates attending the Conference represented the following countries and were drawn from Ministries of Justice, Ministries of Finance, Central Banks, AML and Financial Intelligence Units, and Revenue authorities:-

Bangladesh	Malawi	Senegal
Benin	Mauritius	Seychelles
Burkina Faso	Mongolia	Sierra Leone
Cambodia	Namibia	Solomon Islands
Cote D'Ivoire	Nauru	Tanzania
Gambia	Nepal	Thailand
Ghana	Nigeria	Togo
Guinea Bissau	Pakistan	Zambia
Indonesia	Philippines	Zimbabwe

3. Speakers at the Conference represented the following organisations:-

APG (Asia Pacific AML Group)
GIABA (West African AML Group)
ESAAMLG (East & South African AML Group)
Christian Aid
The International Centre for Asset Recovery (Basel Institute of Governance)
Transparency International
UK Department for International Development
United Nations Office of Drugs and Crime
World Bank

4. Speakers at the Conference also included officials from the following Jersey bodies:-

The Law Officers' Department

5. In his welcome speech Jersey's Chief Minister, Senator Terry Le Sueur referred to the G20 Summits in Washington, London and Pittsburgh which among other things addressed the need to strengthen support for those economies most vulnerable to the global financial and economic crisis. He quoted from the Leaders Statement issued after the G20 Pittsburgh Summit "As we increase the flow of capital to developing countries, we also need to prevent its illicit outflow. We will work with the World Bank's Stolen Assets Recovery (StAR) programme to secure the return of stolen assets to developing countries, and support other efforts to stem illicit outflows." The Chief Minister emphasised that Jersey wished to play its part in supporting the G20 in the pursuit of these objectives. He said "We consider that through Jersey's recognised high level of compliance with international standards, and its experience as an international finance centre, we are in a good position to help. The aim of the Conference is to find out what developing countries see as their greatest needs in the fight against financial crime, learn from the experience of organisations who have worked with developing countries, show the help that Jersey can offer, and identify the future global action needed."

6. The Conference commenced with a keynote speech from the Financial Secretary to HM Treasury, the Rt. Hon. Stephen Timms MP who thanked Jersey for hosting the Conference, stressed the support needed for developing countries to benefit from a new more cooperative tax environment and the need to develop proposals that could make this happen. He said that the four main priorities that the UK has on this agenda are –
 - To launch a multilateral arrangement to negotiate tax information exchange by the end of 2010;

- The automatic exchange of information;
- Country by country reporting by multi-nationals;
- Ensure developing countries have the capacity to benefit from all the action.

On financial regulation he stressed the importance of countries working together and all jurisdictions adhering to internationally coordinated standards. He also referred to the work of the Financial Stability Board in reviewing capacity building measures to help low capacity jurisdictions meet international supervisory and information sharing standards. Looking to the future he referred to the challenge in ensuring that initiatives on the money laundering and the tax side are mutually reinforcing and for the benefit of developing countries.

7. Following the Minister's speech the Conference heard from the developing countries on what they saw as their areas of greatest need. Speakers for the Asia Pacific from the Secretariat of APG, Mongolia, Nepal and the Philippines; for West Africa from the Secretariat of GIABA, Benin, Gambia and Nigeria
8. Key challenges identified were -
 - corruption and weak governance;
 - achieving sufficient political commitment;
 - compliance costs (start up and ongoing) to implement the AML/CFT standards;
 - low capacity countries face resource constraints in implementing AML/CFT regimes;
 - challenges in information sharing arising from bank secrecy and technological issues;
 - technical assistance needs with priorities for training and awareness and also assistance with the drafting of legislation.

9. Speakers referred to the challenges of accessing financial crime information and stated that requests for assistance on criminal matters can be refused despite the existing treaties where the following grounds are present –

- the case relates to the prosecution or punishment of a person for a political offence;
- request was made to prosecute, punish or otherwise prejudice a person on account of his/her race, sex, religion, nationality or political opinions;
- the offence relates to an act or omission that constitutes an offence under a State's military law but not under its ordinary criminal law;
- the assistance could prejudice criminal investigation or proceedings in the requested State;
- granting of the request would prejudice sovereignty, security or national interests of a State or the essential interests of a State or territory;
- request relates to the prosecution of a person for an offence for which the person has been acquitted or pardoned by a competent foreign tribunal or authority, or has already undergone the relevant punishment ("double jeopardy");
- the case would prejudice the safety of any person in or outside the requested State;
- the process for expedition of MLA would impose an excessive burden on the resources of the State or territory, or;
- where the court or the authorities in a requested State decide not to assist in criminal matters or extradite internationally.

10 In particular where the accessing of financial crime information is required on an international basis the following challenges were identified –

- deficiencies in national legislation;
- dual criminality principles;
- delays in responding to requests;
- limited scope of cooperation;
- reciprocity as a precondition;
- absence of uniform procedures for granting MLA requests;
- failure to identify or designate a responsible central authority;
- non-ratification of international conventions particularly the UNCAC;
- non-application of the UNCAC non-conviction based asset recovery framework by most countries;
- no provision in the national law for asset sharing;
- language barrier.

11. Reference was also made to the financial and technical technical assistance required to enhance capacity on international cooperation frameworks including ability to request and respond to mutual legal assistance through the following mechanisms:-

- promotion of national, regional and international cooperation through networking;
- drafting of legislation and sharing of comprehensive MLA instruments, laws and policies;
- promotion of judicial and law enforcement cooperation;
- training of judges, law enforcement officials, and prosecutors on the application of relevant laws and procedures in different countries;
- providing assistance in the use of new technology and the implementation of IT systems to facilitate data access and analysis;
- financial and technical support from the developed countries through the organisation of workshops and facilitating secondments to and from developing countries;

- develop uniform procedures for effective and timely response to requests;
 - develop gateways for informal access to financial information – using existing unilateral treaties such as the UNCAC.
12. Following consideration of what information and assistance developing countries require, those representing the international bodies at the Conference spoke of their experience to-date in working with developing countries on the recovery of the proceeds of financial crime.
13. For the International Centre for Asset Recovery reference was made to its mission which was to provide assistance to developing and developed countries alike in improving their capacity to trace, confiscate and repatriate assets stolen through corruption and related crimes. The challenges faced and solutions in meeting those challenges were identified for the five steps to recover assets – identification of cases; tracing; freezing; confiscation/forfeiture; repatriation. The overall challenges identified through experience were –
- lack of an appropriate legal framework;
 - overcoming jurisdictional issues;
 - changing the mindset of law enforcement;
 - increase capacity/expertise;
 - increasing vigilance in financial centres;
 - sharing and facilitating an improved exchange of information between countries.
14. For the World Bank, reference was made to the recently published report “Stolen Asset Recovery – A good practices guide for non-conviction based asset forfeiture.” The overall message was that governments must act to disrupt and dismantle organised crime networks by, among other things:

- identifying, investigating and prosecuting important cases, obtaining significant terms of imprisonment and fines, and seizing and forfeiting proceeds and instrumentalities of crime;
- using laws against corruption, money laundering, fraud, organised crime, as well as criminal and non-conviction based asset forfeiture;
- ensuring effective coordination and cooperation among law enforcement agencies including anti-corruption agencies and financial intelligence units;
- providing timely and effective responses to requests for international legal assistance to developing as well as developed countries and jurisdictions.

15. For the UK Department for International Development reference was made to the Department's anti-corruption approach by promoting a more robust response to corruption in developing countries that integrates in country and international efforts to tackle corruption using UNCAC as the common agreed framework. Mention was made of the means of improving the Department's capacity to assist developing countries in investigating cases; obtaining cooperation from other jurisdictions; freezing, seizing and confiscating assets; prosecuting cases; helping civil recovery; and returning assets. The aim was to make the UK a hostile environment for corrupt PEPs by -

- establishing an effective deterrent against PEPs money laundering through improved intelligence;
- optimising PEP suspicious activity reports;
- maximising the recovering of stolen assets in the UK;
- maintaining an effective and proportionate legal and regulatory environment.

16. For the United Nations Office on Drugs and Crime reference was made to the Office's objectives and identified challenges arising from sovereignty of states; different legal systems; varying levels of

progress; low awareness, lack of political will; many bilateral, multilateral actors; shortages of resources; and obtaining coordination among providers. Mention was made of the ways forward on improving evidence gathering (for example, through the use of conventions to grant MLA; through informal channels; through sharing information without request; and through training/tools for central/competent authorities); and restraint and confiscation (for example, through the development of asset confiscation networks; the adoption and use of direct enforcement mechanisms; and the use of non-conviction based asset confiscation and application of mutual assistance to such investigations/orders).

17. Speakers from Jersey described what assistance could be, and had been, given in the pursuit of those engaged in financial crime and in the recovery of stolen assets. Mention was made of the comprehensive legislation in place to support mutual legal assistance; the assistance provided by the financial regulator under financial services and AML/CFT oversight legislation; the role played by the FIU; and the written guidance available to other authorities from the Law Officers Department, the Jersey Financial Services Commission and the Jersey Financial Crimes Unit.
18. Mention was also made of the Criminal Assets Management and Enforcement Regulators Association formed in March 2009 to assist litigators, criminal asset managers and confiscation enforcement agencies from around the world to establish and maximise relating expertise.
19. The Conference then focussed on what future global action is needed with presentations from the UK Department for International Development, the World Bank, the UNODC, Transparency International and Christian Aid.

20. For the World Bank and the UNODC the focus was on the issues surrounding politically exposed persons. Among the issues raised were –

- a lack of political will, with a failure to pass and implement legislation and regulations;
- no regulatory sanctions;
- little interest in measuring effectiveness of PEPs measures.

PEPs compliance was seen as a problem because the classic corrupt PEP no longer exists. Corrupt PEPs are now using complex corporate and trust arrangements and close associates or relatives to veil the identity of the PEP or the PEPs beneficial ownership.

21. To assist in dealing with the problems it was stated that a declaration of beneficial ownership was required; asset and income declarations should be requested; and there should be a periodic review of all PEP customers. Setting limits on the time a PEP remains a PEP should be avoided and dealing with PEPs requires a globally coordinated effective approach involving all relevant agencies.

22. For the UK Department for International Development future global action was considered to fall within three main areas – technical; political; advocacy/communications. The issues to be faced included PEPs identification; capacity to deal with cases and ensure operational linkages; addressing the requirements for the return of assets, the need to keep asset recovery at the forefront; and assisting an effective process of advocacy by highlighting the progress achieved.

23. For Christian Aid the need was to expose the scandal of poverty; to contribute to poverty eradication; and to challenge structures and systems that keep countries and people poor, excluded and marginalised. The key factor identified was the impact of global financial opacity with a call for corporate transparency – an

international accounting standard requiring country by country reporting by multinationals; and jurisdictional transparency – through a multilateral agreement for automatic information exchange. The agenda for individual jurisdictions proposed was –

- engage with the new drive for transparency, in the name of reducing the human development costs of financial opacity – and in own long term interests;
- protect own short term interests by insisting on a level playing field for all jurisdictions;
- address own opacity (for one indicator of which reference was made to the Financial Secrecy Index published by Tax Justice Network) and challenge others to do the same – with a focus on information exchange with developing countries.

24. For Transparency International the aim was to prevent money laundering because a facility to launder the proceeds of corruption facilitates the commission of bribery and corruption offences; and to strengthen international cooperation and processes to recover and repatriate the financial proceeds of crimes. Reference was made to the need for enhanced due diligence on politically exposed persons; identifying the beneficiaries of trusts; and strengthening the regulation of trust and company service providers. To boost asset recovery efforts there was a need for –

- cross-departmental and cross-agency cooperation in AML and asset recovery which should be spelt out in a memorandum;
- legislation to be introduced to restrain assets in support of foreign civil forfeiture proceedings;
- foreign governments to be assisted to recovery assets, either through stand-alone proceedings brought by the main prosecution agencies with the relevant powers or through assisting or encouraging foreign governments to bring private civil proceedings;

- taking steps to identify the ultimate beneficial owners particularly in respect of property acquisition, to make it easier to identify corrupt PEPs.
25. In concluding the Conference the Chief Minister stated that he believed the Conference had been successful in –
- hearing from the developing countries represented on what help they most needed;
 - hearing from the international bodies represented of their experience in helping to recover the proceeds of financial crime;
 - hearing from Jersey what help it has to offer;
 - hearing about the future global action that is needed to assist developing countries to get information on, and obtain cooperation in recovering the proceeds of, financial crime.
26. He emphasised that the Conference was not a one-off contribution to the achievement of the G20 objectives. Jersey has a track record of assisting in the recovery of stolen assets; it has a track record of contributing to training programmes in developing countries and inviting regulators and law enforcement officials to come to Jersey to learn from the Island's experience at first hand; and Jersey would continue to play an active role in the pursuit of the G20 objectives. The Conference was but one step down a road at the end of which hopefully there will be much benefit for all concerned and in particular for developing countries.
27. Key messages to come out of the Conference were–
- there is a need for the developed countries to listen more to the developing countries on what they see as their priorities. A priority for developing countries is for assistance in building up their capacity for dealing with financial crime. This involves technical and other assistance involving officials from developed

countries spending sufficient time in developing countries to assist and build up a local capacity; offering the opportunity for officials from the developing countries to spend time in law enforcement, financial regulatory and financial intelligence units within the developed countries to gain experience;

- there is a need for more effective coordination of the assistance offered by a wide range of international organisations and individual developed countries;
- there is a need for global standards on multilateral information exchange and for good practice guidance;
- there is a need for greater transparency and more automatic exchange of information while recognising that for this to be fully effective the capacity of developing countries to deal with the information received needs to be enhanced;
- there is a need to ensure the legislation is in place to assist in the implementation of UNCAC and to permit confiscation orders that do not require conviction;
- there is a need to reduce the barriers of legal costs. Assistance should be given to facilitate recourse to a number of channels for the recovery of corruptly acquired assets, and developing countries should be given financial assistance to help them progress legal proceedings both criminal and civil to recover the proceeds of corruption;
- more effort is required to identify those benefitting from the proceeds of corruption through the better identification of PEPs and also the identification of family and close associates;
- there is a role for Civil Societies in the developing countries in helping to identify financial crime (for example as whistle blowers);
- there is a need for more political will in the developing countries and the developed countries in obtaining information on financial crime, in pursuing those engaged in such crime and in the recovery of the proceeds of such crime;

- there is a need for tougher action by the developed countries against financial institutions that accept illicit money;
- there is a need to reduce the delays in responding to requests, both from developing of developed countries and vice versa, and to break down barriers arising from different legal systems, high costs and language;
- Jersey was congratulated by delegates and speakers for its initiative and leadership in holding a Conference which had given representatives of developing countries an opportunity to network with each other and with representatives of relevant international bodies. Delegates and speakers expressed the hope that the Jersey initiative would lead to conferences of this nature being held on a regular basis.

11 March 2010

Jersey

[Note: for further information on the Conference please contact Colin Powell, Adviser – International Affairs, Chief Minister’s Department, States of Jersey: Tel: 00 44 1534 440414; e-mail: c.powell@gov.je].