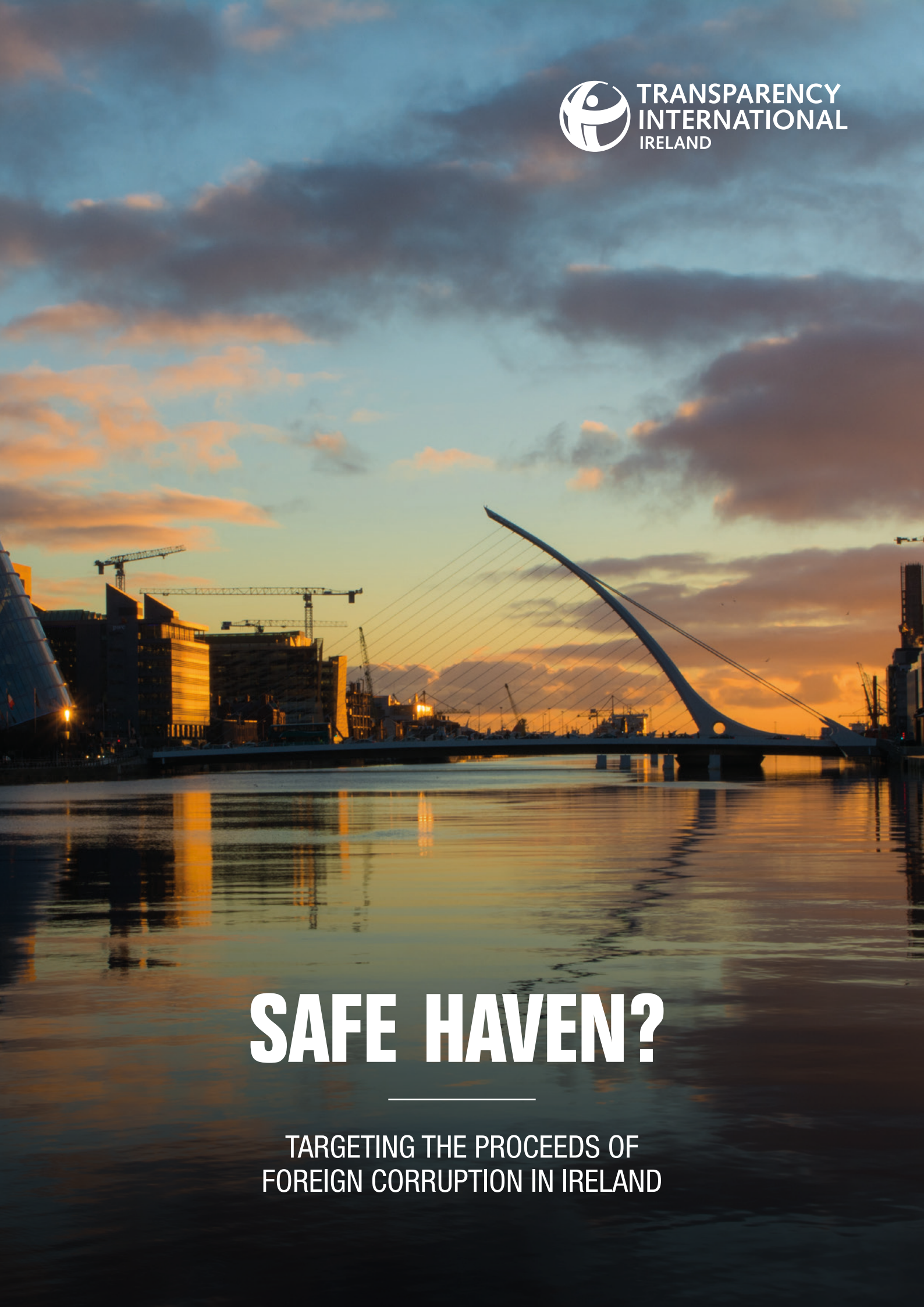

TRANSPARENCY INTERNATIONAL IRELAND

SAFE HAVEN?

TARGETING THE PROCEEDS OF FOREIGN CORRUPTION IN IRELAND

Transparency International Ireland is an independent, non-profit and non-partisan organisation. Our vision is of an Ireland that is open and fair, and where entrusted power is used in the public interest. Our mission is to empower people with the support they need to promote integrity in public life and stop corruption in all its forms.

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SAFE HAVEN?

TARGETING THE PROCEEDS OF FOREIGN CORRUPTION IN IRELAND

CONTENTS

LIST OF ACRONYMS AND ABBREVIATIONS

AML	Anti-Money Laundering
AMLCU	Anti-Money Laundering and Compliance Unit
CAB	Criminal Assets Bureau
CARIN	Camden Asset Recovery Inter-agency Network
CDD	Customer Due Diligence
CFT	Combatting the Financing of Terrorism
CJA	Criminal Justice Act(s)
CoE	Council of Europe
CRO	Companies Registration Office
DFAT	Department of Foreign Affairs and Trade
DJE	Department of Justice and Equality
DNFBPs	Designated non-financial businesses and professions
DoF	Department of Finance
DPP	Office of the Director of Public Prosecutions
ECDD	Enhanced Customer Due Diligence
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
Garda	An Garda Síochána (Ireland's Police Service)
GFAR	Global Forum on Asset Recovery
GNECB	Garda National Economic Crime Bureau
GRECO	Group of States Against Corruption
HVGs	Luxury and high value goods
HVGDs	High Value Goods Dealers
IFSC	Irish Financial Services Centre
IIP	Immigrant Investor Programme
MER	Mutual Evaluation Report
MLA	Mutual Legal Assistance
NCB	Non-Conviction Based orders
NRA	National Risk Assessment
ODCE	Office of the Director of Corporate Enforcement
OECD	Organisation of Economic Cooperation and Development
PEPs	Politically Exposed Persons
POCA	Proceeds of Crime Act(s)
PSPs	Property Services Providers
PSRA	Property Services Regulatory Authority
RBO	Register of Beneficial Ownership
SDGs	Sustainable Development Goals
TCSPs	Financial Trust/Company Service Providers
SPEs	Special Purpose Entities
SPV	Special Purpose Vehicles
StAR	UN Stolen Assets Recovery initiative
STRs	Suspicious Transactions Report
TI	Transparency International
UNCAC	United Nations Convention Against Corruption
UNODC	United Nations Office on Drugs and Crime
4AMLD	Fourth Anti-Money Laundering Directive
5AMLD	Fifth Anti-Money Laundering Directive
6AMLD	Sixth Anti-Money Laundering Directive

1.
INTRODUCTION

Is Ireland a 'safe haven' for the proceeds of international corruption?

While much discussion on recovering the proceeds of corruption tends to focus on countries like the United States and Switzerland, or offshore jurisdictions such as Jersey and the Isle of Man, it is clear that Ireland is also not free of such 'dirty money'. Although relatively few cases involving the alleged proceeds of foreign corruption in Ireland have reached the courts, those that have illustrate the risk that the country's financial services and wider economy could be used as a conduit for laundering illicit financial flows from overseas.

In 2014, for example, the Criminal Assets Bureau (CAB) obtained an order under the Proceeds of Crime Act 1996 & 2005 (POCA) to freeze assets in Ireland linked to alleged corruption on the part of the former governor of the Tourism Authority of Thailand, Juthamas Siriwan. Ms Siriwan was accused of receiving kickbacks to award the Bangkok International Film Festival to a US company. The frozen funds, worth €250,000, were held in investments by HSBC Life (Europe) Ltd in the name of the former governor and her daughter.[1] Siriwan was eventually convicted in Thailand of receiving US$1.8 million in bribes and sentenced to 50 years in jail, while her daughter was sentenced to 44 years' imprisonment for money laundering.[2]

Also in 2014, CAB obtained another order under POCA to freeze US$6.5million worth of investments, again managed by HSBC Life (Europe) Ltd, held for the benefit of Mohammed Sani Abacha – the son of former Nigerian president and dictator Sani Abacha.[3] The funds were held in 30 life assurance policies run by HSBC Life (Europe) in Ireland, which the High Court subsequently ruled as representing the proceeds of crime.[4] In 2013, HSBC Life (Europe) had announced that it was moving its insurance portfolio from Ireland to Malta, although there is no suggestion that this move was a result of money laundering investigations.[5]

In August 2020, the Irish Government announced that it had reached an agreement with the Nigerian Government to return approximately €5.5 million.[6] The repatriation of these funds is governed by a Memorandum of Understanding (MOU) between the two governments, Although the MOU refers to the need for transparency and accountability in the return and disposal of the funds, it has been criticised for containing few specific provisions on safeguards against corruption and the absence of any reference to the role of Nigerian civil society in monitoring the use of the returned assets.[7]

Perhaps the largest known foreign corruption-related money laundering case in Ireland's history arose during the summer of 2015, when US authorities brought proceedings to freeze corruptly obtained assets from Uzbekistan.[8] Reports suggest that between US$100 million and US$300 million of corrupt payments were laundered through funds managed by Bank of New York Mellon in Dublin.[9] The funds were managed on behalf of companies owned by Gulnara Karimova, the daughter of former Uzbek president Islam Karimov. Though details remain scarce, it appears that Karimova was convicted in Uzbekistan in 2015 of fraud and money laundering arising from investigations into allegations that she benefitted from almost US$1 billion paid in bribes by Russian and Dutch telecommunications companies to influence the award of Uzbek mobile telephone licences.[10]

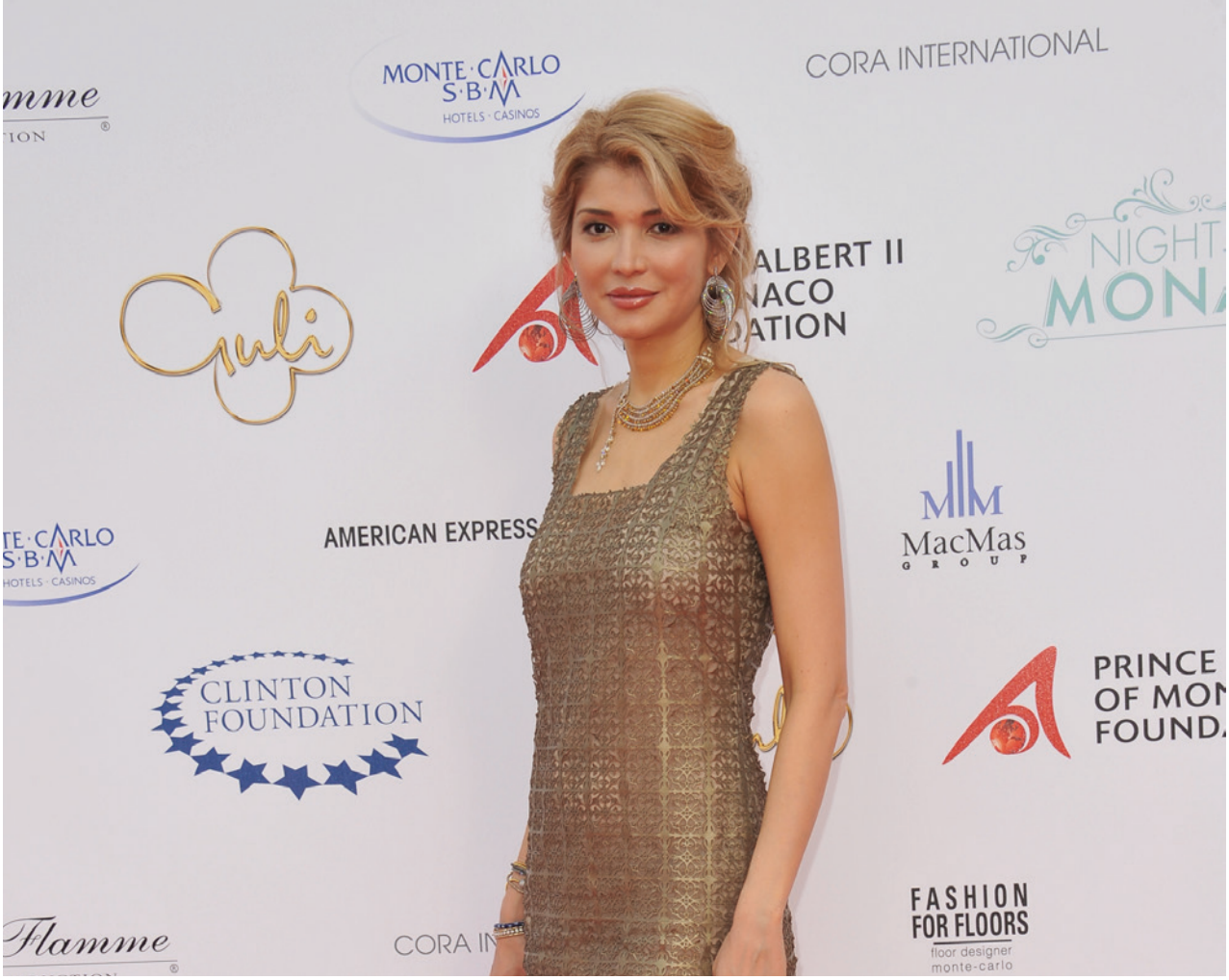


Photo: shutterstock.com/Jaguar PS

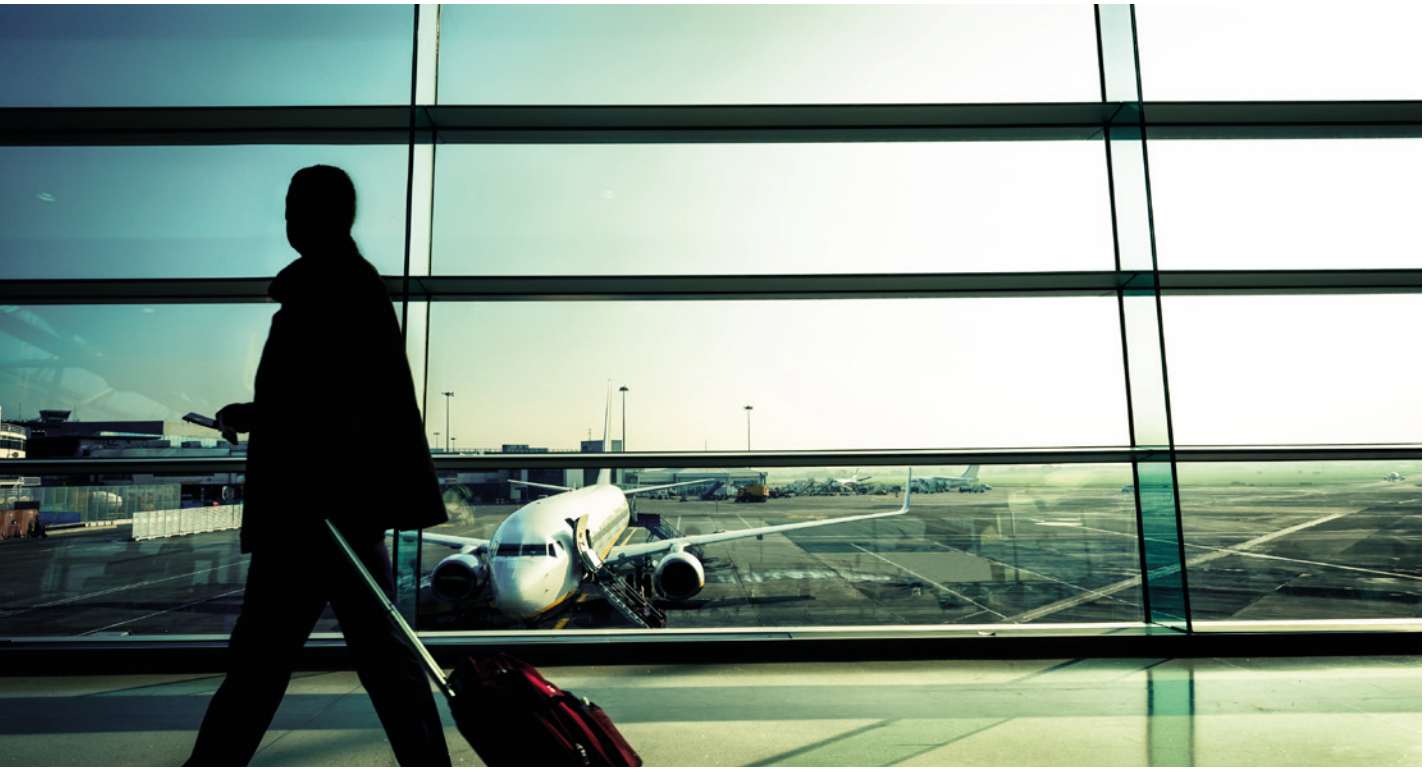
The Karimova case is noteworthy for more than the vast sums of money involved. The case may pose a series of significant legal and political difficulties for the Irish Government, not least because of the appalling human rights and corruption record of the Uzbek Government.[11] The arrest, investigation and subsequent treatment of Karimova herself has also been questioned by international observers.[12] A group of Uzbek political exiles has since written to the Irish Government to argue that, if returned, the funds are likely to be abused by the Uzbek Government and to suggest that the money be returned to the victims of corruption in Uzbekistan by way of charities and trusts.[13] Moreover, it is also believed that the proceeds in question are being pursued by the US Government, which claims jurisdiction in the case. How the Irish Government and courts approach and handle these issues may therefore set important legal and political precedents for future asset recovery cases in Ireland.

It is impossible to determine the true extent of the laundering of corruptly obtained assets through Ireland. However, this small sample of cases highlights the risks associated with providing international financial services – particularly when those financial services form a central element of the country's open economy.[14]

Perhaps the largest known foreign corruption-related money laundering case in Ireland's history arose during the summer of 2015, when US authorities brought proceedings to freeze corruptly obtained assets from Uzbekistan. Reports suggest that between US$100 million and US$300 million of corrupt payments were laundered through funds managed by Bank of New York Mellon in Dublin.

In a global context in which the willingness and ability of governments to combat elite-level corruption is under increasing scrutiny, such cases pose a number of questions around the capacity and capability of Ireland's laws, policies and institutions to stem the flow of dirty money into the country – and, indeed, to ensure that the proceeds of economic crime can be recovered and redirected to the victims, rather than the culprits, of grand corruption. As an enthusiastic supporter of the United Nations' Sustainable Development Goals (SDGs), Ireland has the opportunity to show whether it will help deliver on SDG 16's objective to provide access to justice to all and build strong, accountable institutions. It can go some way towards this by supporting the recovery and responsible return of stolen assets.[15]

This report therefore examines the extent to which Ireland is prepared to detect, freeze, recover, and repatriate the proceeds of overseas corruption laundered through the Irish economy, in particular by Politically Exposed Persons (PEPs) such as Gulnara Karimova and her associates. Chapter 2 assesses the **risk** of laundering corruptly obtained assets via Ireland, first by providing a brief overview of the scale of international corruption, and then by exploring key money laundering risks that may be relevant to overseas corruption cases. Chapter 3 examines Ireland's **response** to those risks, in terms of its legislative, institutional, strategic and regulatory framework. Chapter 4 describes the **reality** of Ireland's anti-money laundering (AML) framework, drawing upon interviews and correspondence with AML practitioners in both the public and private sectors to examine its strengths, weaknesses and vulnerabilities from their perspectives. Chapter 5 asks whether Ireland has appropriate legal, practical and political mechanisms in place for the **repatriation** of corruptly obtained assets to their countries of origin. Drawing on these perspectives, Chapter 6 presents a set of **recommendations** that would help to prevent Ireland from becoming – or perhaps remaining – a safe haven for the world's dirty money. By way of **conclusion**, Chapter 7 offers some final thoughts on the policy decisions that will be required for Ireland to become a truly hostile environment for the proceeds of international corruption.



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2.
THE RISK

Assessing Ireland's vulnerability to the threat of international corruption

2.1 THE SCALE OF INTERNATIONAL CORRUPTION

Corruption is, by its very nature, hard to quantify. Nevertheless, a number of international studies have attempted to gauge the approximate scale of corruption at a global or regional level. The United Nations estimates that US$2.6 trillion are stolen through corruption each year – 'a sum equivalent to more than five per cent of the global GDP' – with funds lost to corruption undermining the rule of law and aiding crimes such as the illicit trafficking of people, drugs and arms'.[16] According to the World Bank, 'businesses and individuals pay an estimated $1.5 trillion in bribes each year', which amounts to approximately '10 times the value of overseas development assistance'.[17] The High Level Panel on Illicit Financial Flows from Africa has previously suggested that the continent was losing in excess of US$50 billion each year through corruption – though also suggested that 'these estimates may well fall short of reality'.[18] The NGO Global Financial Integrity estimated that the total illicit financial outflows from all developing countries for one year alone was between US$620 and US$970 billion.[19] And the think tank International IDEA calculate that 43 per cent of countries still have such high levels of corruption that it obstructs human development.[20]

The indirect social costs of corruption might be more difficult to quantify but they are no less significant. Grand corruption leads to political instability and conflict, undermining citizens' confidence in democratic institutions and the rule of law.[21] Public resources that should be invested in healthcare, sanitation, education and public utilities are used to fund lavish lifestyles and to empower corrupt rulers, public officials and organised criminals.[22] The ruling family of Equatorial Guinea's president Theodoro Obiang, for example, has looted a country with the highest GDP per capita in Africa, leaving it with an infant mortality rate that is higher than that of war-riven South Sudan.[23] Indeed, corruption can be said to pose a threat to the achievement of any and all of the UN's SDGs.[24]

Ruling elites that rely on grand corruption also protect their illicit gains through the abuse of human rights, the use of state intimidation and violence against political reformers, journalists and members of civil society organisations. Uzbekistan's former president, Islam Karimov (father of Gulnara Karimova) was reported to have overseen a brutal regime that relied on the torture and murder of political opponents to protect its status and financial interests.[25] Karimov's successor and current president Shavkat Mirziyoyev has pledged a crackdown on corruption and pledged democratic reforms, including an overhaul of the country's security and criminal justice sectors.[26] It should be noted, however, that in his previous capacity as a regional governor and prime minister, Mirziyoyev is alleged to have been responsible for overseeing a system of forced labour in Uzbekistan's cotton industry.[27]

Gulnara Karimova was protected by the same system that enriched her father. The fashion designer, pop singer and businesswoman was also the owner of Uzbekistan's largest conglomerate and is believed to have worked closely with officials and organised

criminals in Uzbekistan to enrich herself, whilst using her status to have her opponents jailed and her competitors' businesses closed down.[28] In 2015, the US Department of Justice charged three telecommunications companies with paying bribes valued at US$1 billion to Karimova in order to secure Uzbekistan's mobile phone licence. The proceeds of this corruption were then laundered through financial centres in Ireland, the Netherlands, Switzerland and the UK.[29] Thus, while the full scale of the problem is difficult to quantify, the use of international financial centres – such as Ireland – in laundering of proceeds of corruption is undeniable.

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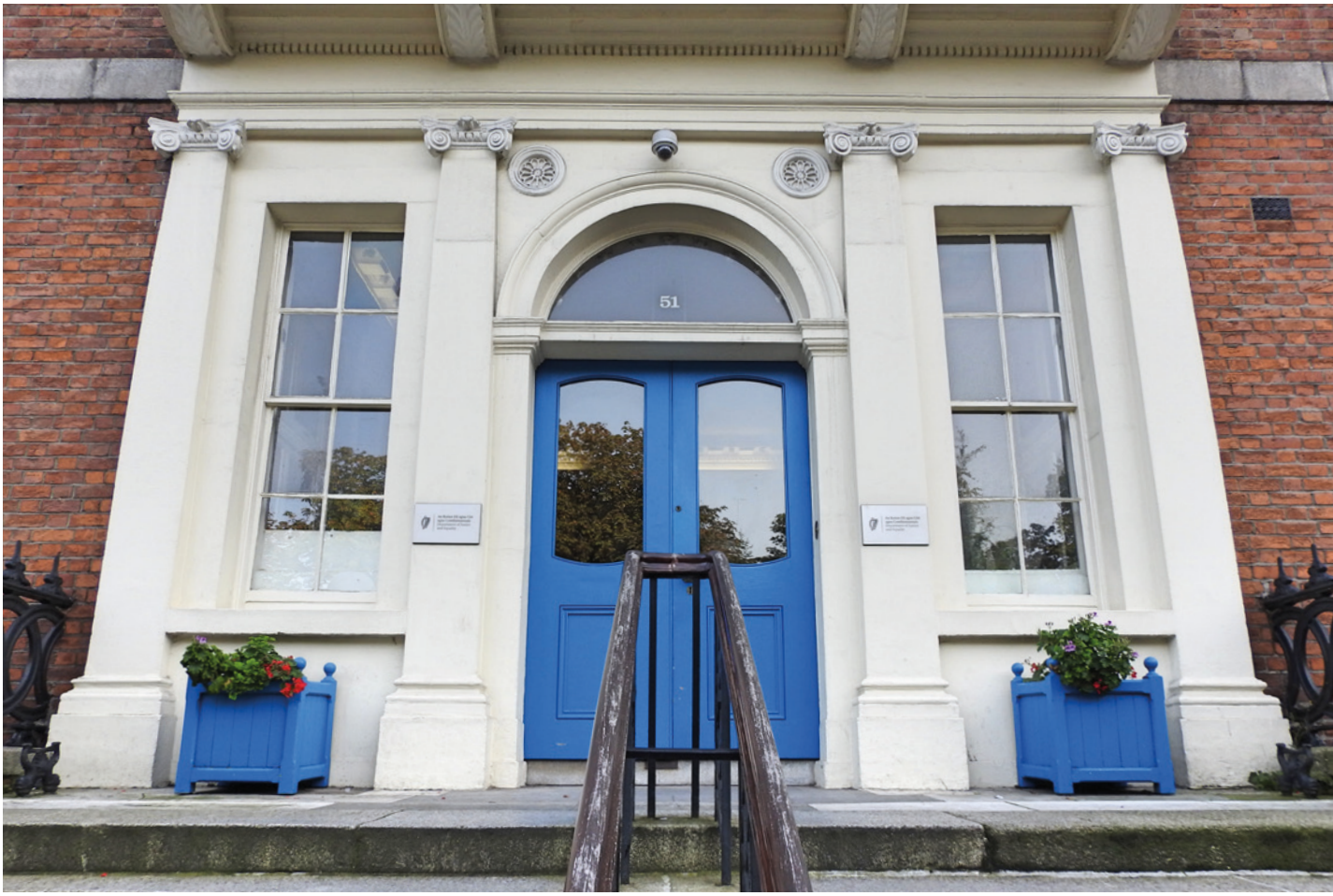
As such, the fight against corruption relies to a significant extent upon the ability of individual states to protect their financial systems and economies from money laundering. In order to effectively protect themselves from this threat, states require an accurate understanding of the risks and vulnerabilities to money laundering posed by different sectors within their economies. This report does not seek to replicate in-depth studies of each sector of the Irish economy (such as in the Government's National Risk Assessment (NRA) – see section 2.2) but rather to identify and briefly discuss themes that are especially pertinent to the laundering of assets obtained by corruption overseas. We first consider how the Irish Government has assessed and calibrated money laundering risks, before examining specific corruption risk areas within the financial and non-financial sectors respectively.

Beforehand, though, it should be noted that money laundering risks also exist outside these categories, through the exploitation of state policies. One example might be the state's ability to grant exemptions from AML obligations. Though the very occasional need for such exemptions is recognised in international best practice, they should be used in 'strictly limited and justified circumstances', based upon demonstrable low risk.[30] In Ireland's case, however, the Financial Action Task Force (FATF) recently found that state-granted exemptions are 'not based on clearly proven low risk'.[31] Perhaps the most notable example of state-facilitated risk is the offer of residency visas, or so-called 'golden visas', in return for substantial investment in a country's economy by High Net Worth Individuals. This practice has been denounced as both unethical[32] – exempting the wealthy from the typically strict immigration requirements imposed on other applicants – as well as a security risk.[33] It has also been recognised by the European Parliament as a money laundering risk – in particular from corrupt businesspeople and PEPs who are seeking a safe haven for their illicitly obtained assets.[34] Ireland is one of the EU countries that continues to offer an 'Immigrant Investor Programme (IIP)' – for which it has received ongoing criticism.[35] In response to such concerns, the Irish Government has introduced enhanced levels of due diligence for all IIP applications,[36] though programmes such as these continue to illustrate how money laundering risks can emanate from the state as well as from the private sector.



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2.2 IRELAND'S SELF-ASSESSMENT

How, then, has Ireland sought to understand its risk of money laundering? In 2016, the Government of Ireland released its first ever '**National Risk Assessment for Ireland: Money Laundering and Terrorist Financing**',[37] which was jointly published by the Department of Finance (DoF) and the Department of Justice and Equality (DJE). A revised version of the NRA was released in 2019[38] which, whilst substantially similar to the original (including its risk ratings), was complemented by a series of sector-specific risk assessments on gambling,[39] new technologies,[40] and legal persons and legal arrangements.[41] The purpose of the NRA is to 'provide a broad assessment of Ireland's ML/TF risks to enhance the understanding of them and to develop effective strategies to address them', and to help 'allocate resources and prioritise activities in a proportionate and risk-based manner'.[42]

The NRA contains a dedicated chapter on the Irish financial services sector, and the risks inherent therein. It recognised that this sector 'as a whole is at risk of being targeted by criminals to launder the proceeds of crime and finance terrorism'.[43] Specific risk factors identified included the wide range of products and services offered in the sector, the nature of the products and services offered, the broad demographic of the customer base, the wide geographic reach of the financial sector, the scale and materiality of the financial sector in Ireland, and the use of complex corporate vehicles. The NRA also examined the risks within the regulated non-financial sector, known as 'designated non-financial businesses and professions' (DNFBPs), which cover a wide and diverse range of industries. The following table presents the NRA's risk assessments, broken down sector-by-sector.

TABLE 1: NATIONAL RISK ASSESSMENT RATINGS[44]

SECTOR / RISK	LOW	MEDIUM/LOW	MEDIUM	MEDIUM/HIGH	HIGH
Retail Banking					✕
Non-Retail Banks				✕	
Money Remittance Firms					✕
Other Payment Institutions		✕			
Bureaux de Change					✕
Life Assurance (domestic and cross-border)		✕			
Funds/ Fund Administrators				✕	
Asset Managers		✕			
Investment Firms (other than asset managers)				✕	
Credit Unions		✕			
Money Lenders		✕			
Financial Trust/Company Service Providers (TCSPs)	✕				
Retail Intermediaries	✕				
Private Members' Clubs				✕	
High Value Goods Dealers				✕	
Non-Financial Trust/Company Services Providers				✕	
Notaries		✕			
Property Services Providers (PSPs)		✕			
Legal Services Sector				✕	
Accountancy Services Sector				✕	
Non-Profit Organisations		✕			

TABLE 2: SECTOR-SPECIFIC RISK ASSESSMENT RATINGS

SECTOR / RISK	LOW	MEDIUM/LOW	MEDIUM	MEDIUM/HIGH	HIGH
Gambling Sector:[45]					
Lotteries	✕				
Bingo	✕				
Poker	✕				
Gaming Machines	✕				
Amusements	✕				
Online (Betting and Gaming)		✕			
Retail and On-Course Bookmaking		✕			
The Tote		✕			
New Technologies:[46]					
Virtual Currencies				✕	
Crowdfunding				✕	
Electronic Money	✕	✕			
Legal Persons and Legal Arrangements:[47]					
Companies				✕	
Funds Structures				✕	
SPE Securitization				✕	
SPE Non-Securitization					✕
Express Trusts (Other)		✕			
Charitable Trusts		✕			
Welfare and Community Trusts	✕				
Pension Trusts	✕				
Employee Share Schemes	✕				
Partnerships		✕			

While the NRA's methodology section suggests that the assessment 'combines qualitative and quantitative information and professional expertise',[48] the NRA does not refer to quantitative data in support of its conclusions and risk ratings.[49] Instead, there is more focus on the qualitative 'professional expertise' of those who work in the field. There are notable problems in this regard, and it is suggested that there is a need for greater insight into the actual level of risk in relevant sectors. Indeed, given that both the Siriwan and Abacha money-laundering cases involved the use of life-insurance products, it is perhaps illustrative to note that the NRA considers these a 'low-medium' risk.

The need for quantitative data was echoed in the FATF Mutual Evaluation Report (MER),[50] which concluded that, 'While Ireland has demonstrated a reasonably good understanding of its ML/TF risks, its risks understanding would be further enhanced if it includes a more comprehensive range of quantitative data', as it would 'provide additional objective points of reference'.[51] Whilst accepting that 'the use of expert opinion and feedback in understanding risk is invaluable', FATF stressed that 'consideration should be given to the detection of new and emerging risks and complex ML schemes'.[52] It is perhaps telling that, three years since the MER was published, Ireland has not taken up FATF's recommendation to use statistical data 'to either validate or correct the risk-map that Ireland's first NRA has produced'.[53] Statistical analysis is arguably of particular importance in gauging the risk from 'less visible forms of ML' – including the laundering of corruptly obtained assets from overseas – and would help 'avoid an over-reliance on... experience and perceptions, which may inadvertently place more focus on the visible risks occurring in the domestic context'.[54]

In addition to the NRA, which is produced on a cross-government basis, the Central Bank of Ireland maintains its own Money Laundering/Terrorist Financing Risk Assessment, which seeks to identify and assess 'ML/TF risk in the financial sector in Ireland from a supervisory perspective'.[55] The sectoral risk assessment feeds into firm-specific risk ratings for companies that are designated persons, which also take into account the Central Bank's supervisory engagement with that firm, for example through inspections. Like the NRA, the Central Bank's risk assessment considers a range of factors when assessing risk, including the nature, scale and complexity of a sector's/firm's products and services, their customer base and distribution channels, as well as a company's business model and Anti-Money Laundering/Combatting the Financing of Terrorism (AML/CFT) controls. Unsurprisingly, therefore, the sectoral risk ratings for financial services in the Central Bank's risk assessments align with the NRA's ratings, however it should be noted that the Central Bank's risk assessment process is an iterative one, whereas the NRA is a static assessment of risk at a particular point in time. This allows the Central Bank to update its assessment in light of changing circumstances, information and experience, including from its engagement activities, and thus to adjust the intensity and frequency of its supervision accordingly.[56]

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2.3 FINANCIAL INSTITUTIONS

Financial services form an important element of Ireland's open, globally oriented economy. Ireland hosts 250 of the world's leading financial services companies – including half of the world's top 50 banks,[57] with €2.8 trillion in net assets in funds domiciled in the country.[58] Ireland is the largest hedge fund administration centre in the world, servicing 40% of global hedge fund assets.[59] Dublin – and the Irish Financial Services Centre (IFSC) in particular – is a major global hub for wholesale banking, aircraft leasing and the international insurance sector, with a large professional support industry built around these firms. The Irish Stock Exchange[60] acts as a world-leading listing venue for fund and structured debt products.[61]

However, many of the features that make a jurisdiction, such as Ireland, attractive for legitimate financial activity can also make it attractive for corrupt individuals, who seek stable global financial centres and advantageous tax regimes within which to launder assets. This is particularly true of corrupt **Politically Exposed Persons (PEPs)** – 'individuals who are or have been entrusted with prominent public functions'[62] – whose wealth and/or position generally facilitates access to the global financial system. Indeed, in almost all international cases of corrupt PEPs studied by FATF, foreign bank accounts were used to launder their illicitly obtained assets. This led FATF to conclude that 'corrupt PEPs nearly universally attempt to move their money outside of their home country'.[63] Such assets are typically moved from lower and middle-income countries to financial centres in high-income jurisdictions, with London, New York and Tokyo frequently mentioned as destinations of choice.[64] The use of offshore and/or foreign jurisdictions[65] 'hold the advantage of being harder to investigate for the victim country, are perceived as more stable and safer, and are more easily accessed than accounts held in the PEP's home country'.[66] In addition, 'a PEP can "stack" foreign jurisdictions: a bank account in one country could be owned by a corporation in another jurisdiction, which is in turn owned by a trust in a third jurisdiction', as 'each additional country multiplies the complexity of the investigation, reduces the chances of a successful result, and extends the time needed to complete the investigation'.[67] Stacking can be further enhanced by the use of complex financial structures, such as Special Purpose Vehicles (see below), which can be especially beneficial to PEPs if they carry low – or no – tax liabilities.

The risk of money laundering by corrupt foreign PEPs makes an increased level of **Customer Due Diligence (CDD)** particularly important – and indeed Enhanced CDD (ECDD) for all PEPs is required by law, irrespective of their residence in Ireland or overseas.[68] Ireland is deemed by FATF to have made 'significant progress' in addressing its previous deficiencies in relation to ECDD, and is now considered to be 'largely compliant' with FATF standards in this regard. Notwithstanding this, FATF's 2019 follow-up report also identified that, under Ireland's legislative amendments, FATF calls for ECDD (recommended when additional risks are identified) would only apply to 'third countries', defined as non-EU/EEA states. This leaves open the prospect that individuals from high-risk European jurisdictions would not be subject to ECDD.[69]

Many assets held by funds operating in Ireland's financial sector are placed in structures known as **Special Purpose Vehicles (SPVs)** or **Special Purpose Entities (SPEs)**, which 'span a wide range of activities and often form part of cross-border, multi-entity corporate structures'.[70] A distinction is usually drawn between 'securitisation SPVs', which are most commonly used for mortgage securities and aircraft leasing, and 'non-securitisation SPVs', which cover a diverse range of functions but typically issue debt securities or loan instruments. SPVs are also often referred to as 'Section 110 companies', which refers to the section of the Taxes Consolidation Act 1997 that effectively exempts these entities from tax whilst allowing them to avail of Ireland's double taxation treaty network. In 2019, non-securitisation SPVs – the majority of which availed of Section 110 – held €479 billion in assets.[71]

Amendments were made to Section 110 in 2016 following some controversy over their tax status,[72] however the amendments relate only to those entities holding Irish assets and therefore the tax treatment of most Section 110 firms remains largely unchanged. Indeed, Section 110 is still described as being 'at the heart of Ireland's structured finance regime', making the country 'an onshore investment platform... which should reduce or eliminate withholding taxes on income flows and capital gains in treaty jurisdictions'.[73] In 2017, Oxfam reported on a Central Bank of Ireland study of non-securitisation SPVs, which demonstrated that, despite holding trillions of Euro in assets, 'these

entities actually benefit the Irish economy very little'.[74] Moreover, the Central Bank paper stated that SPVs 'are generally designed to be tax neutral and most are established as companies with Irish directors but no dedicated employees'.[75] The 2018 Financial Secrecy Index concluded that, although Ireland 'worked hard to rehabilitate its name as a member of the international tax community' after 'years of criticism and being branded a tax haven', its 'oversized financial services sector and continuing tax structures and reliefs... continue to draw criticism'.[76]

Given the prominence that FATF gives to the use of corporate vehicles and trusts in its compendium of typologies and methodologies of corruption-related money-laundering,[81] it is unsurprising that Ireland has rated non-financial **TCSPs** as a 'Medium-High' risk (see Table 1). In every case examined for FATF's 'Laundering the Proceeds of Corruption' report, corporate vehicles, trusts or non-profit entities were used in laundering the proceeds of corruption. The reasons for using this method of laundering include concealing the identity of beneficial owners, creating difficulties for law

Shell companies that cannot be traced back to their real owners are widely held to be one of the most common means for laundering money, giving and receiving bribes, busting sanctions, evading taxes, and financing terrorism.

As well as their tax benefits, SPVs are potentially attractive to money launderers because of their complex and opaque structures', which make it 'difficult to discern the ultimate beneficiary in many transactions'.[77] Moreover, in Ireland, SPVs can evade supervisory oversight and AML regulation by making use of non-domestic financial or credit institutions that are not subject to the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (CJA). Therefore, whilst SPVs conducting activities set out in Schedule 2 of the CJA 2010 are considered 'designated persons' and subject to supervision by the Central Bank for AML/CFT purposes,[78] SPVs that sit outside Schedule 2 activities can effectively evade AML measures such as CDD (or, in the case of PEPs, ECDD). Indeed, the Irish Debt Securities Association highlight that, 'subject to a number of limited exceptions, SPVs are generally not within scope of the CJA, and as such, are not required to carry out any AML checks in respect of their investors or the underlying assets which they acquire'.[79] The Department of Finance recognises that these factors cumulatively create a 'Very Significant' vulnerability for non-securitisation SPVs, placing them at the highest risk category for money laundering.[80]

enforcement to access records, and avoiding public disclosure of assets.[82] According to Findley et al, 'shell companies that cannot be traced back to their real owners are widely held to be one of the most common means for laundering money, giving and receiving bribes, busting sanctions, evading taxes, and financing terrorism'.[83] It follows that those entities responsible for establishing and servicing such vehicles and trusts present a higher risk of being used by corrupt actors – though some, known as 'financial TCSPs', pose a lower risk. These service providers are subsidiaries of Central Bank-regulated financial institutions typically providing ancillary services to their existing Irish-based customers, such as trustee services for pension schemes, and are therefore subject to their parent firm's AML controls and obligations. The NRA rates financial TCSPs as a 'Low' money laundering risk, though notes that customers of financial TCSPs 'are typically "high net worth individuals"'.[84]

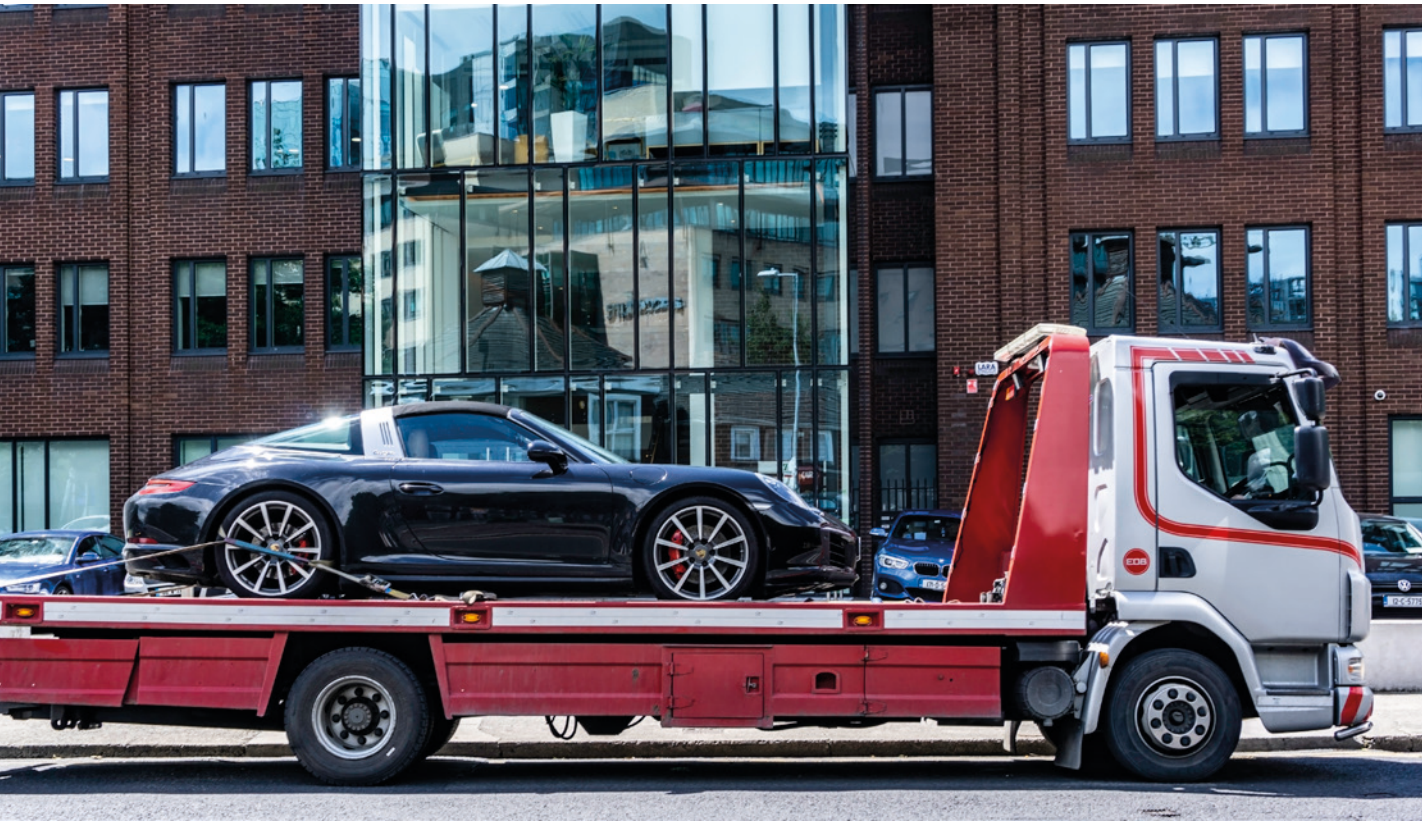
In addition to SPVs, Ireland has had a chequered history in providing mechanisms for avoiding financial transparency on **beneficial ownership**, and which presented attractive options to corrupt individuals looking to launder their assets. Until relatively recently, Ireland facilitated the establishment of thousands of shelf companies, with limited information available on their beneficial ownership, as well as issuing numerous bearer-bonds, against which no ownership information is recorded.[85] Bearer bonds were abolished by the Companies Act 2014[86] and new shelf companies can no longer be created under Irish company formation legislation, though it is still possible to purchase previously incorporated but inactive Irish companies.[87] Company formation specialists still offer Irish companies for sale, some of which have been implicated in serious criminal investigations, including for alleged corruption offences overseas.[88] Moreover, in 2019 FATF found that there is still 'no explicit requirement to include beneficiaries of life insurance' as a heightened risk factor when the beneficiary is a legal person.[89] FATF furthermore highlighted that the law has not yet been amended to allow designated persons to discontinue CDD on beneficiaries when to carry on would 'tip-off' the subject.[90] Given the evidenced use of life insurance policies in previous cases of grand corruption-related money laundering in Ireland (see sections 2.1 and 2.2), it is of particular importance that these loopholes are closed at the earliest opportunity.

Since 2017, following the EU's Fourth Anti-Money Laundering Directive, companies have been required to 'obtain and hold adequate, accurate and current information on their beneficial owner(s) in their own internal beneficial ownership register' and to share details of their beneficial ownership with a central register.[91] In April 2019, the Minister of Finance signed into law a Statutory Instrument to establish an Irish Central **Register of Beneficial Ownership (RBO)** of Companies and Industrial and Provident Societies, which is managed by the Companies Registration Office (CRO).[92] Unrestricted data held within the RBO can be shared with relevant state authorities (who can in turn share it with partner agencies within EU member states), whereas a more restricted tier of information is available to the public, upon payment of a small fee (€2.50),[93] whilst data interfaces between the CRO and the Revenue facilitate company information exchange between the two agencies.[94] The deadline for companies' submissions of their beneficial ownership details was 22 November 2019 yet, by the end of that month, a total of 160,000 companies and 450 industrial and provident societies had registered their beneficial owners, which the CRO calculated as only 69% and 47% of the total of those respective categories.[95] The maximum penalties for failing to register a beneficial owner are fines of €5,000 upon summary conviction, or €500,000 upon conviction on indictment.[96] It remains to be seen whether the CRO will have the necessary resources to rigorously audit the register to ensure the veracity of information submitted, or indeed to enforce compliance – especially in this period of the RBO's early implementation.

2.4 NON-FINANCIAL SECTORS

Alongside financial institutions, non-financial sectors and industries in Ireland also present higher money laundering risks from corrupt individuals overseas, including the property market, the trade in luxury and other high value goods, as well as the legal and accounting professions. Of course, Ireland is by no means unique in facing these risks, but the openness of its economy and its high dependence on foreign investment present risks for money laundering through a variety of channels, including in these non-financial sectors.

The Irish **property market** – especially in Dublin – has substantially increased in value in recent years, although there is little evidence to suggest that Ireland has become a home for the world's oligarchs in the same way as London, Paris or New York. Despite this, increasing residential and commercial property prices promise a solid short-to-medium term investment for anyone looking to launder money, and the controls around the sector leave some room for concern.[97] The Property Services Regulatory Authority (PSRA) became the competent authority for Property Services Providers (PSPs) in 2016. In FATF's 2017 MER, various issues were raised in relation to the robustness of the AML framework around the real estate sector, including the low level of AML compliance by PSPs, the PSRA's need to introduce a Risk-Based Approach to AML supervision, and the lack of AML guidance provided to PSPs by the PSRA.[98] Furthermore, the MER highlighted that PSPs are not required by law to perform CDD on the purchasers of property, which is not in line with Recommendation 22(b) of the FATF standards (recommending that CDD should be extended to both vendors and purchasers of property),[99] and leaves a gap in the market's AML regime that could be exploited by corrupt actors.[100] Though the PSRA's AML guidance for PSPs has improved[101] – and was recognised as such in FATF's Follow-up Report[102] – the wider concerns around AML compliance in this sector highlighted by the MER remain.



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There is also an acknowledged higher risk of money laundering through the trade in **luxury and high value goods (HVGs)** – for example gold, precious stones, antiques, high-end vehicles and boats – due notably to the prevalence of cash transactions in such businesses.[103] The NRA assessed the money laundering risk around High Value Goods Dealers as 'Medium-High',[104] and they are subject to various legal obligations under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended), including the responsibility to conduct CDD on any cash payments of €10,000 or more, and – where deemed appropriate – the requirement to submit Suspicious Transactions Report (STRs) to An Garda Síochána and the Revenue Commissioners.[105] The identification of car dealerships being extensively used for money laundering by Irish organised crime groups[106] has resulted in concerted and robust law enforcement activity against this particular sector in recent years.[107] Though such investigations are laudable, it remains imperative that the legitimate focus upon domestic organised crime involvement in the motor trade does not allow other HVG sectors that are more susceptible to the laundering of corruption assets to escape scrutiny.[108] To that end, it is encouraging that 40% of HVG sector inspections in 2018 related to precious metals and stones,[109] and that dealers and intermediaries in the art industry will be among a number of newly 'designated bodies' under proposed legislation.[110]

The **legal and accountancy professions** have a vital role in detecting and preventing money laundering. However, lawyers and accountants can also act as invaluable 'gatekeepers' on behalf of organised crime groups and corrupt individuals. According to EUROPOL, 'The role of professionals (often known as gatekeepers or professional enablers)... as facilitators in the money laundering process continues to underpin the methods used by criminal groups', not least because the services of such professionals 'give the apparatus of money laundering considerable sophistication and a veneer of respectability'.[111] FATF has paid particular attention to legal professionals, stating that lawyers 'have been used to create corporate vehicles, open bank accounts, transfer proceeds, purchase property, courier cash, and take other means to bypass AML controls', with some having 'subsequently used rules of attorney-client privilege to shield the identity of corrupt PEPs'.[112] In an Irish context, the NRA concluded that the legal and accountancy professions present a 'Medium-High' risk.[113] However, according to the MER, this risk appears not to have received the attention it deserves,[114] with FATF calling on the Law Society and the designated accountancy bodies to 'apply effective, proportionate and dissuasive sanctions for non-compliance with AML/CFT requirements'.[115] In particular, it identified that the lack of fines available to the Law Society for non-compliance 'undermine the proportionality of sanctions available in Ireland'.[116]

3.
THE RESPONSE

Assessing Ireland's legal and institutional framework

3.1 INTERNATIONAL INSTRUMENTS

Ireland is a member of, or signatory to, almost all of the key multilateral AML and anti-corruption instruments at both the global and European levels. As such, it is subject to regular peer review and evaluation mechanisms that seek to ensure the implementation of common standards in the field of AML and counter-terrorist financing. For AML purposes, the most relevant international instruments are the European Union's **Fourth Anti-Money Laundering Directive (4AMLD)**[117] and **Fifth Anti-Money Laundering Directive (5AMLD)**,[118] which have now largely been transposed into Irish law and are discussed further in section 3.2 below. Furthermore, the **Sixth Anti-Money Laundering Directive (6AMLD)**[119] is required to be transposed into Irish law by 3 December 2020.

Ireland has also acceded to various other EU legal, regulatory and technical instruments against money laundering and corruption, including **Regulation (EU) 2015/847 on information accompanying transfers of funds**,[120] which seeks to make monetary transfers more transparent, the **Council Framework Decision 2003/568/JHA on combating corruption in the private sector**,[121] which aims to criminalise both active and passive bribery, and the 1997 **Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union**,[122] which targets corruption on the part of EU or member state public officials. The more recent **Directive (EU) 2019/1153 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences**[123] will – as and when transposed into domestic law – further enhance Irish law enforcement agencies' access to relevant financial records and centralised registries.

In addition to EU measures, the recommendations and reviews of the **FATF**[124] have proven central to Ireland improving its AML regime. As an independent, inter-governmental body, FATF has developed a series of technical standards – **The FATF Recommendations**[125] – the current version of which were issued in 2012 (and updated regularly, most recently in June 2019), which have become the *de facto* international standards for AML measures. Evaluations of FATF members against the FATF Recommendations are carried out by technical experts from other FATF member states on a rolling, roughly ten-year cycle, with follow-up compliance reports issued in the interim. Ireland joined FATF in 1991 and has been subject to two MERs, in 2006 and 2017,[126] with follow-up reports in 2013 and 2019 – the most recent of which re-rated Ireland's technical compliance with non-compliant, partially compliant and largely compliant recommendations, and with recommendations that have changed since the MER. This updated report concluded that Ireland had 'made good progress' in addressing deficiencies identified in the MER and upgraded Ireland's rating for 11 recommendations – though it is still rated 'partially compliant' with seven of the MER's 40 recommendations.[127] Ireland is due to receive a further FATF follow-up assessment in early 2021.[128]

As a member of the **Organisation of Economic Cooperation and Development (OECD)**,[129] Ireland signed the **OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**[130] in 1997 and ratified the Convention in 2003. As its name suggests, the OECD's Convention is tightly focused on the corruption of state officials in the course of overseas business activities. Evaluation of signatories' implementation of the Convention is via the OECD's Working Group on Bribery (comprised of experts from the 41 signatories to the Convention),

which also assesses parties' adherence to the 2009 **OECD Recommendation for Further Combatting Bribery of Foreign Public Officials in International Business Transactions**.[131] Ireland has been evaluated by the OECD several times since 2001, with the Working Group's most recent monitoring report completed in 2019.[132] This report assessed Ireland's legislative progress on the criminalisation of bribery of foreign public officials, the liability of legal persons for such bribery, and the application of money laundering legislation to overseas bribery (see section 3.2, below). Although it identified 'significant issues' with specific elements of Ireland's foreign bribery offence and the liability of legal persons (which will be further reviewed in 2021), the report considered that the money laundering elements of the OECD Convention are now fully implemented.[133]

As a member of the **Council of Europe (CoE)**,[134] Ireland signed the **Criminal Law Convention on Corruption**[135] in 1999 and ratified it in the form of the Prevention of Corruption (Amendment) Act 2001 (which has subsequently been superseded – see section 3.2, below). It also signed the **Additional Protocol to the Criminal Law Convention on Corruption** in 2003.[136] Though aimed primarily at domestic forms of corruption, the Criminal Law Convention on Corruption reinforces various institutional, legal and procedural measures that can in some circumstances also be used against the proceeds of foreign corruption. Although Ireland signed the **Civil Law Convention on Corruption** at the same time in 1999, it has yet to ratify this complementary treaty.[137] Ireland is also a signatory to the 1990 **Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime**,[138] but is one of just five of the CoE's 47 members not to have signed the updated 2005 version, known as the 'Warsaw Convention', which extends the treaty to terrorist financing.[139]

The principal mechanism for ensuring compliance with the CoE Convention(s) on Corruption is via the **Group of States Against Corruption (GRECO)**,[140] who carry out mutual evaluation of members' adherence to the **Twenty Guiding Principles for the Fight Against Corruption**.[141] GRECO has to date launched five evaluation rounds that each deal with specific provisions of the Guiding Principles and selected provisions of the Criminal Law Convention. Perhaps the most relevant GRECO evaluation of Ireland for the purposes of this report was the second round in 2005, which dealt with asset recovery and money laundering (amongst other topics).[142] The most recent evaluation was the fourth round in 2014, which examined corruption prevention in respect of parliamentarians, judges and prosecutors.[143] GRECO's fifth round evaluation of Ireland – examining corruption prevention and integrity promotion in central government and law enforcement – was due to take place in 2020.[144]

Ireland became a signatory to the **United Nations Convention Against Corruption (UNCAC)**[145] in 2003, and ratified the Convention in 2011, as well as participating on an ongoing basis in the Conference of the States Parties to UNCAC. The Convention covers a broad spectrum of corruption-related offences, including both domestic and overseas bribery, influence trading, embezzlement, and the concealment and laundering of the proceeds of corruption. As a signatory to UNCAC, Ireland is subject to a five-yearly cycle of peer review of its progress in implementing the Convention. The first cycle, which reviewed Ireland's progress against Chapters III (Criminalisation) and IV (Law Enforcement and International Cooperation), took place in 2014,[146] and the second, reviewing progress against Chapters II (Preventative Measures) and V (Asset Recovery), was undertaken in 2019. Though broadly positive, the UNCAC Review Group raised some concerns and made a number of practical recommendations, some of which are echoed by this report (see chapter 6).[147] Ireland is also a signatory to the **United Nations Convention on Transnational Organised Crime**,[148] which provides for international cooperation on a broad range of organised crime offences, including money laundering and wider economic crimes.

3.2 DOMESTIC LEGISLATION

In domestic law, the main legislative basis for Ireland's anti-money laundering measures is provided by the **Criminal Justice (Money Laundering and Terrorist Financing) Act 2010**,[149] as amended by Part 2 of the **Criminal Justice Act 2013**,[150] which established a risk-based approach to AML measures with three levels of due diligence, and the **Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018**,[151] which transposed most provisions of 4AMLD into Irish law.[152] Ireland has, however, been fined €2 million by the European Court of Justice for its failure to incorporate 4AMLD into domestic law by the 26 June 2017 deadline.[153] 5AMLD builds upon 4AMLD in certain areas,

and was required to be transposed by EU member states by 10 January 2020, though Ireland was put on notice by the Commission for having only partially transposed 5AMLD by that date. In August 2020, the Cabinet approved publication of the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill to give effect to the remaining provisions of 5AMLD.[154] Other key AML provisions have been introduced through the **European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019**,[155] which legislated for the creation of a publicly-accessible register of beneficial ownership (see section 2.3) and the **European Union (Money Laundering and Terrorist Financing) Regulations 2019**,[156] which require regulated entities to make whistleblower provisions for AML purposes, mandate risk-based supervision, and facilitate international cooperation between AML supervisors. Ireland has until 3 December 2020 to transpose **6AMLD**[157] into national law, with implementation for regulated entities required by 3 June 2021.

Asset confiscation and civil forfeiture is legislated for respectively in the **Criminal Justice Act 1994** (as amended)[158] and the **Proceeds of Crime Acts 1996**,[159] **2005**[160] and **2016**,[161] which provide for the seizure, detention and disposal of criminally derived assets, as well as the **Criminal Assets Bureau Act 1996**,[162] which established and defined the purpose, functions and governance of the multi-agency Criminal Assets Bureau. International mutual legal assistance is provided for in the **Criminal Justice (Mutual Assistance) Act 2008** (as amended),[163] which, inter alia, provides for the exchange of financial information between states for criminal investigation purposes, as well as making provision for outgoing and incoming applications for the freezing, confiscation and forfeiture of criminal assets (in accordance with the UN Conventions on Corruption and Transnational Organized Crime).

Although there are various pieces of legislation dealing with specific aspects of corruption in Irish public life (including ethics, standards in public life, protected disclosures and the regulation of political lobbying), the main piece of legislation dealing with corruption is the **Criminal Justice (Corruption Offences) Act 2018**,[164] which gave effect to the EU Convention Against Corruption Involving EU Officials or Officials of EU Countries, the OECD Convention on Bribery of Foreign Public Officials in International Business Transactions, the CoE Criminal Law Convention on Corruption, and the UN Convention Against Corruption, as well as repealing the various Prevention of Corruption Acts enacted between 1889 and 2010.[165] As such, the Act provides a single, comprehensive legislative basis for preventative and investigative anti-corruption measures, including the criminalisation of passive corruption, influence-trading and business intimidation, the introduction of various presumptions relating to corruption, the application of extra-territoriality to certain corrupt acts, and the extension of liability for corruption offences to legal persons, or corporate entities.

‘Dual criminality’ provisions... could be problematic if, for example, the other state’s laws are weak or unclear, and could also pose difficulties for collecting sufficient evidence from some countries.

Despite consolidating and updating Ireland’s legislative framework around corruption, both An Garda Síochána and the Department of Foreign Affairs and Trade (DFAT) have queried the Act’s ‘dual criminality’ provisions, which mean that certain offences committed overseas must be an offence in both jurisdictions, and that certain connections to Ireland should be established.[166] This could be problematic if, for example, the other state’s laws are weak or unclear, and could also pose difficulties for collecting sufficient evidence from some countries. Although the OECD considered that the dual criminality issue had been dealt with in relation to the laundering of profits from bribery overseas,[167] the concerns expressed by the Garda and DFAT in relation to corruption offences under the new Act have yet to be resolved.

3.3 POLICY AND ENFORCEMENT INSTITUTIONS

There are various state institutions responsible for different aspects of the AML and anti-corruption regime in Ireland. The role of these agencies in countering corruption and the laundering of the proceeds of corruption is likely to undergo further change in light of a review published in December 2020.[168] The review led by James Hamilton, a former Director of Public Prosecutions, was commissioned in 2018 by the Minister for Justice following the Government's 2017 paper on Ireland's response to white-collar crime.[169]

Among the Hamilton review's recommendations are the creation of an Advisory Council on economic crime and corruption and a Joint Agency Task Force (JATF). It has also recommended 'the development of a multi-annual strategy to combat economic crime and corruption, and an accompanying action plan'. In addition, it has advocated for the 'optimal exchange of information and better intelligence between investigative agencies' under the JATF model. Just as significantly, the review has also recommended that additional ring-fenced resources be allocated to the **Garda National Economic Crime Bureau (GNECB)**, the lack of which it notes has ' has for some time been an impediment to the ability of the bureau to carry out its functions effectively'.[170]

Notwithstanding any new measures that might arise from the Hamilton review recommendations, at a policy level, responsibility for Ireland's anti-money laundering framework is likely to continue to be shared between the **DJE** which leads on anti-corruption and economic crime policy,[171] and the **Department of Finance**, which leads on AML-related policy negotiations at an EU level, as well as leading the Irish delegation to FATF.[172] In addition to its policy role, the DJE also holds supervisory responsibilities for certain elements of the non-financial regulated sector,[173] with the **Central Bank of Ireland** acting as the competent authority responsible for monitoring credit and financial institutions for compliance with their AML/CFT obligations under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 Act, as amended.[174] Other competent authorities include the **PRSA**, the **Law Society**, the **Bar Council**, the **Legal Services Regulatory Authority** and eight **accredited accounting bodies**. (The roles and responsibilities of AML/CFT supervisory bodies are further explored in sections 3.4 and 4.2.).

As Ireland's single national police service, **An Garda Síochána** leads the operational response to money laundering, primarily (but not exclusively) through the Garda National Economic Crime Bureau (GNECB),[175] which houses Ireland's Financial Intelligence Unit (FIU), the Money Laundering Investigation Unit and a newly-formed Anti-Corruption Unit.[176] Notwithstanding the obvious benefits of having a dedicated police anti-corruption capability, the UNCAC Implementation Review Group recently criticised the Garda for the Unit's very limited human resources – numbering only three officers – and insufficiently clear mandate.[177] Moreover, it is hard to assess the GNECB's success against corruption-related money laundering as figures for such cases are not made public, an omission highlighted by FATF.[178]

Alongside the Garda, the **CAB** is an independent, multi-agency statutory body responsible for pursuing the proceeds of crime.[179] CAB was established in 1996 and has been credited with particularly positive results against the assets of Irish organised crime groups.[180] Indeed, the Bureau's work has led to Ireland frequently being held up as a model of best practice globally in relation to the Non-Conviction Based (NCB) approach to targeting criminal assets.[181] It is staffed by seconded officers from the Garda, the Revenue Commissioners and the Department of Employment Affairs and Social Protection, who all retain their respective parent agency's executive powers, as well as by directly employed specialists, such as forensic accountants and lawyers.[182] The **Office of the Revenue Commissioners**, Ireland's tax and customs agency, can support investigations into suspected corruption and bribery overseas by Irish-based individuals and firms.[183] Criminal prosecutions of complex money laundering, foreign bribery and other transnational economic crimes are handled by the Special Financial Unit of the **Office of the Director of Public Prosecutions (DPP)**.[184]

FATF's 2017 evaluation noted that 'The range of ML associated with foreign activity that has been prosecuted is minimal considering Ireland's risk profile'.[185] According to the DJE's most recent available figures, the Garda charged 73 persons with 284 money laundering offences in 2018. This represented a 71 per cent increase on the number of persons charged in 2017. In addition, the DPP recorded successful convictions of 28 persons for 130 money laundering offences (some of whom had been charged in previous years).[186] This represented an increase of over 150% in the number of convictions on the previous year. During 2018 there

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were also 114 Interlocutory Orders (preventing disposal of assets pending a court decision) taken out by CAB under the Proceeds of Crime Act 1996, totalling €6.2 million.[187] CAB reported that they returned €4.3 million and €5.6 million to the Exchequer in 2017 and 2018 respectively, and brought 58 proceeds of crime cases before the High Court in those two years.[188] Few details of individual cases are provided (for obvious reasons), though the preamble to the statistics indicate that most – if not all – of these charges, convictions and orders related to domestic organised crime.

It is also clear that, although there are only a very small number of known cases in Ireland involving the proceeds of alleged corruption from overseas, the value of assets sought in such cases is considerably higher than the value of domestic money laundering cases.[189] Moreover, those very few cases in which the proceeds of overseas corruption have been detected in Ireland have arisen where foreign law enforcement agencies have detected the proceeds through their own investigations. There are no known cases where either Irish financial institutions or Irish law enforcement agencies have detected the proceeds of overseas corruption, leading to their confiscation.

In addition to the aforementioned bodies, the **Office of the Director of Corporate Enforcement (ODCE)** has a statutory role in improving the compliance environment for corporate activities in Ireland under the Companies Acts.[190] Though the ODCE would not normally have a core role in money laundering or overseas corruption cases, it forms part of Ireland's overarching financial compliance and enforcement regime. Moreover, the Companies (Corporate Enforcement Authority) Bill currently before the Oireachtas may see the ODCE folded into a new '**Corporate Enforcement Authority**'.[191] This authority would have a statutory footing as an independent agency, as well as a wider remit to combat fraud and financial crime – potentially including corruption and bribery cases.[192] However, as with other aspects of Ireland's anti-corruption and anti-fraud institutional framework, the exact form of the authority is subject to the Hamilton review, which has yet to report its findings.

3.4 SUPERVISORY BODIES

Supervision of regulated sectors, or 'designated persons', for compliance with their AML obligations (such as carrying out CDD, completing risk assessments and identifying beneficial owners and PEPs) is divided between the **Central Bank of Ireland** for credit and financial institutions,[193] the **PSRA** for the property sector,[194] self-regulating professional bodies for the legal and accounting sectors (see below), and the **DJE** for all other DNFBPs.[195] The full range of designated persons are listed in section 25 of the Criminal Justice (Money Laundering and Terrorist Financing) Act, and include, inter alia, trust and company service providers,

lawyers, accountants and traders in high-value goods. For AML controls within the legal profession, the **Law Society of Ireland** is responsible for supervising solicitors,[196] and the **General Council of the Bar of Ireland** is responsible for supervising barristers.[197] Within accounting, there are eight **prescribed accountancy bodies** which are responsible for AML supervision of their members.[198] The **Charities Regulator** is the statutory regulator for registered charities in Ireland and provides some guidance to charities on AML controls, though AML supervision isnot one of its explicit functions.[199]

systems and controls, rather than sanctions for actual money laundering/terrorist financing offences – which typically have to be referred to the Garda for investigation and potential subsequent prosecution by the DPP.)

The Law Society revised its AML compliance regime in 2018, and although five STRs were submitted by the Society that year, there is no data to suggest that it imposed any sanctions for AML non-compliance.[202] However, in 2017, one solicitor who failed to comply with requirements under the 2010 Act[203] – amongst many other instances of misconduct – was struck off

> **Ireland's anti-money laundering and anti-corruption framework appears to lack strategic direction. An external observer might be forgiven for thinking that many of the admittedly positive advances made in recent years seem to have been in response to, or in anticipation of, unwelcome pressure (and bad publicity) from external bodies, rather than being taken proactively at the initiative of the Irish Government.**

In terms of regulatory enforcement, the Central Bank has the power to administer sanctions under its 'Administrative Sanctions Procedure' against designated persons (i.e. relevant credit and financial institutions) for certain breaches of their AML obligations under Part 4 of the CJA 2010. Since 2010, the Central Bank has reached settlement agreements with a total of 12 credit and financial institutions in relation to breaches of AML legislation. Those fined include AIB (fined €2.275m), the Bank of Ireland (fined €3.15m), Bray Credit Union (fined €98,000), Drimnagh Credit Union (fined €125,000), Ulster Bank (fined €3.325m) and Western Union (fined €1.75m).[200] The DJE issued 23 directions for non-compliance with AML controls in 2018, all of which were against High Value Goods Dealers – representing a substantial increase compared to its enforcement activity in 2017, when just one direction was issued.[201] (It should be noted that both the Central Bank's settlements and the DJE's directions related to weaknesses in AML/CFT preventative

the roll of solicitors.[204] Amongst the eight professional accountancy bodies, there were no reports of AML sanctions being issued against any accountancy firm during 2018.[205] Generally speaking, little information is available to demonstrate supervisors' enforcement activity, in particular by the PSRA and self-regulating professional bodies, which brings into question whether their enforcement of AML measures is commensurate with the true scale of non-compliance. Given the extensive sanctions available to the Central Bank under its Administrative Sanctions Procedure[206] and the publication of their enforcement settlements, there is a potential credibility gap between the Central Bank and other AML supervisors, in terms of the latter group's ability and willingness to take robust action against non-compliant companies under their supervision, and to publish details of non-compliant firms.

Indeed, while the Central Bank appears to discharge its AML supervision of the financial sector effectively, previous external evaluations have raised some

concerns around the ability of the DJE and the self-regulating professional bodies to assess risk and enforce non-compliance on a consistent and coordinated basis across the DNFBPs. The 2017 FATF MER, for example, found that 'the nine designated accountancy bodies have... varied approaches to monitoring, and the results of monitoring are uneven'.[207] FATF also expressed 'concerns as to the frequency and intensity of the DJE inspections and its limited resources', with the Department reportedly 'aware that a number of entities within the sectors falling under its remit... are not being supervised for AML/CFT purposes'.[208] Since the MER, the DJE has increased resourcing in its Anti-Money Laundering Compliance Unit, with the number of Regulatory Inspectors increased from two in 2017 to five in 2018.[209] Nevertheless, the recent UNCAC review concluded that Ireland should 'Consider establishing a single, unified anti-money laundering supervisory authority' for DNFBPs, in order to remedy these inconsistencies in both the extent and the effectiveness of AML supervision.[210]

3.5 STRATEGY, COORDINATION AND COMMUNICATION

Ireland's anti-money laundering and anti-corruption framework appears to lack **strategic direction**. An external observer might be forgiven for thinking that many of the admittedly positive advances made in recent years seem to have been in response to, or in anticipation of, unwelcome pressure (and bad publicity) from external bodies, rather than being taken proactively at the initiative of the Irish Government. For example, the Government has committed to updating the NRA on Money Laundering and Terrorist Financing 'on an ongoing basis' in line with Article 7(1) of 4AMLD.[211] However, the latest assessment was published immediately prior to FATF's evaluation, and although a revised version was issued in April 2019, it remains substantially similar to its original iteration. Even the cross-Government paper assessing measures to combat white-collar crime cannot be described as an overarching strategy for dealing with economic crime or corruption – though it contained many valuable ideas and practical steps to deal with financial criminality.[212]

Part of the problem may lie in the fact that – unlike some other jurisdictions – Ireland does not have a clear assessment of the threat from corruption to its economic well-being, social cohesion or national security.[213] Without such an understanding of the threat, attempts to address money laundering and corruption risks are more likely to be reactive and expedient, with resources focused on those cases that attract the greatest media attention, or are easiest to investigate. Such an approach potentially leaves complex and lengthy foreign corruption cases in the 'too difficult tray', while authorities focus attention on simpler domestic investigations. Indeed, the commissioning of the Hamilton review arguably represents an implicit admission that Ireland's strategic framework around fraud and corruption needs a thorough overhaul.

In terms of **practical coordination** against money laundering, however, the picture is more positive. At a domestic level, coordination for the various state bodies involved in different aspects of Ireland's AML framework is provided through the Anti-Money Laundering Steering Committee.[214] The Committee is chaired by the Department of Finance and its membership includes representatives of the DJE, the Garda (including the FIU), CAB, the Central Bank of Ireland, Revenue and the DPP. There is currently no such steering committee or similar body for coordinating cross-government efforts against corruption, although a cross-departmental website – redeveloped and re-launched in 2020 – does seek to raise awareness of bribery and corruption legislation and policy.[215] The Anti-Money Laundering Steering Committee is supported by a Private Sector Consultative Forum, which provides a framework for private sector stakeholders, designated persons and relevant state agencies to regularly engage, share information and discuss emerging issues around AML.[216]

In terms of **overseas engagement**, Ireland is a member of a number of regional and global structures established for policy and operational coordination on AML and anti-corruption issues, as well as the exchange of best practice. In the European sphere, Ireland is a member of the European Commission's Expert Group on Money Laundering and Terrorist Financing,[217] the European Banking Authority's Anti-Money Laundering Standing Committee[218] and the Expert Group on Electronic Identification and Remote Know-Your-Customer Processes,[219] as well as the EU's Financial Intelligence Units' Platform[220] and Asset Recovery Offices network.[221] Within EUROPOL,[222] EUROJUST[223] and INTERPOL,[224] Irish liaison officers have responsibility for investigating a range of serious, cross-border criminal activities, including money laundering and corruption.[225] At EUROPOL, Ireland led an operational action within the priority work plan on 'Criminal Finances, Money

Laundering and Asset Recovery' in 2019.[226] Irish law enforcement representatives also participate in various informal structures, such as the Camden Asset Recovery Inter-agency Network (CARIN),[227] the Egmont Group[228] (a global network of FIUs) and the Association of Law Enforcement Forensic Accountants.[229] Ireland is not, however, a member of the Global Focal Points Network, a platform administered by INTERPOL, which builds upon the joint World Bank and UN Stolen Assets Recovery (StAR) initiative[230] to assist law enforcement agencies with the practical aspects of recovering and repatriating the proceeds of corruption.[231]

As identified in section 2.4, corrupt PEPs and money launderers exploit deficiencies in effective **communication** between and amongst states and financial institutions to 'stack' or 'layer' their assets. 'Stacking' involves attempts to launder the proceeds of crime and corruption through as many financial institutions in as many jurisdictions as possible, to obscure both the original source and the ultimate beneficiary. As FATF have noted, 'money launderers and corrupt PEPs perhaps count on the fact that each layer of the scheme involving another country will reduce the chances of regulators, investigators, or the financial institutions – relying on information exchange procedures that are either cumbersome or not being utilised – being able to understand and prevent the laundering of proceeds of corruption'.[232] Given previously identified low levels of 'spontaneous disclosure' (i.e. proactively contacting an affected jurisdiction where information might be of interest) at both the global level and by Irish authorities,[233] it is no wonder that 'corrupt PEPs, who are able to move money with 21st century speed, will always have the upper hand'.[234]

Similar difficulties are apparent where financial institutions – who are, of course, typically in competition – fail to notify other similar institutions of, for example, the closure of a PEP's account due to suspicious transactions, enabling that individual to simply open another account with a different financial institution.[235] One structure that may help to facilitate communication is the Joint Intelligence Group, which brings together the FIU and the major financial institutions in the State on a regular basis to share information on money laundering and terrorist financing trends.[236] A similar overseas model is the UK's Joint Money Laundering Intelligence Taskforce, which brings law enforcement, regulators and financial institutions together to facilitate real-time information-sharing and analysis on money laundering and wider economic crime.[237]

Despite Ireland's active role within the EU and international AML and anti-corruption fora outlined above, some deficiencies in information-sharing identified by FATF's MER in 2017 – namely the inability of the FIU to share with international counterparts all information available to it domestically, and the lack of a framework for supervisors of DNFPBs to share information internationally – showed no improvement in the 2019 Follow-Up Report.[238] On the other hand, the incorporation of 4AMLD into Irish law does provide for enhanced cooperation between European FIUs.[239] In addition, the FIU have adopted 'GoAML' – a secure information-sharing platform developed by the United Nations Office on Drugs and Crime (UNODC) – as the main portal for designated persons and national competent authorities to share STRs and other data. This not only improves communication between state and private entities, but also assists the FIU in its tactical and strategic analysis of financial crime.[240]

4.
THE REALITY

Practitioner perspectives on Ireland's AML & Anti-Corruption Framework

4.1 OVERVIEW

Having outlined some of Ireland's vulnerabilities to laundering the proceeds of corruption, as well as the Irish state's legal, regulatory and institutional framework to mitigate the risk of laundering the proceeds of corruption, this chapter examines how those responses work in practice. Based upon interviews and written exchanges with practitioners from the DJE, the Central Bank of Ireland, law firms and other relevant bodies, this chapter considers the effectiveness of Ireland's anti-money laundering regime. It focuses on the efficacy of three areas that are central to the prevention and investigation of laundering the proceeds of overseas corruption: namely regulatory enforcement, criminal enforcement and international criminal justice cooperation.

4.2 REGULATORY ENFORCEMENT

The enforcement of Ireland's anti-money laundering and anti-corruption framework can be broadly divided into its regulatory and criminal elements. Interviewees and respondents both emphasised this distinction, with the Central Bank explaining that, under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended) (CJA 2010), 'The Central Bank has no powers in the area of criminal prosecution of actual money laundering', since 'The powers to investigate and prosecute a money laundering offence [such as those established by Sections 7, 8, 9 and 10] rest solely with An Garda Síochána... and the Director of Public Prosecutions'.[241] Rather, the Central Bank explained that it has a supervisory role under Part 4 of the CJA 2010 to monitor preventative measures – or 'AML controls' – such as, 'inter alia, customer due diligence, reporting STRs and policies and procedures'.[242] In these areas, 'The Central Bank has powers as competent authority... to monitor compliance... and it can take steps to secure compliance' using 'its regulatory enforcement powers, when necessary', for breaches of the various AML controls, systems and obligations established by Part 4 of the Act.[243] The CJA 2010 draws a clear delineation between the criminal enforcement responsibilities of the Garda and the DPP for actual money laundering offences, and the regulatory enforcement responsibilities of supervisory bodies for contraventions of AML controls. As explained by the Central Bank, 'it is breaches of AML controls that the Central Bank has the power to sanction and it has done so through the administrative sanctions procedure' under Part IIIC of the Central Bank Act 1942, noting that 'This approach is in line with other AML/CFT supervisors and with FATF best practice'.[244] The Central Bank furthermore highlighted that, while it has no remit to investigate allegations of money laundering offences, if during the course of supervisory activity the Central Bank forms a suspicion that money laundering or terrorist financing has occurred, it is obliged to – and does – report such suspicions to the Gardaí for further investigation.[245]

By contrast, correspondence with the DJE elicited a more resource-centred response, as it was noted that the Department is working to increase the capacity of its Anti-Money Laundering and Compliance Unit (AMLCU) – 'subject to the overall constraints on resources available to the public sector and the need to balance priorities across our overall responsibilities'.[246] The DJE argued that there was 'little evidence' that the 'acknowledged resource constraints' within the AMLCU had led to a direct impact upon Ireland's ability to effectively prevent the laundering of the proceeds of overseas corruption.[247] Although the significant increase in formal directions by the AMLCU to non-compliant DNFBPs in the latest available figures from 2018 (see section 3.4) indicate a positive trajectory, it is still arguable that the scale and

extent of regulatory enforcement by the DJE and other DNFBP supervisors remains inconsistent with the scale and extent of money laundering through Ireland.

In assessing the effectiveness of Ireland's regulatory enforcement, interviewees presented varying perspectives. One participant suggested that, although 'AML has certainly had a big effect for financial institutions', imposing a substantial 'regulatory cost' on the financial sector, the vast bulk of AML notifications do not highlight crime.[248] Indeed, one legal practitioner commented that, in his practice, AML work mainly comes up 'at the regulatory end, such as where a financial institution has a question [about]... the compliance end, rather than hard enforcement, you get relatively little of that'.[249] A similar comment on the regulatory system was that 'The level of enforcement is practically non-existent, apart from the Central Bank going in and doing administrative sanctioning'[250] – though the Central Bank emphasised that its Administrative Sanctions Procedure represents just one of a number of supervisory tools used to increase levels of compliance with AML controls, including its ongoing engagement with regulated firms.[251] Other interviewees suggested that, overall, Ireland's AML regulatory regime has created a more hostile environment for criminals and money launderers, with one participant asserting that 'AML certainly has made laundering your money more difficult and the criminal classes have certainly reacted to it'.[252]

4.3 CRIMINAL ENFORCEMENT

In terms of **criminal enforcement** of money laundering, interviewees tended to draw a distinction between the work of the CAB and that of An Garda Síochána more widely. The Garda have statutory responsibility for investigating substantive money laundering offences created by Part 2 of the CJA 2010, such as the transfer, concealment or conversion of criminal proceeds – including the proceeds of overseas corruption – and are responsible for the 'vast majority' of money laundering prosecutions taken by the DPP.[253] The CAB, by contrast, are responsible for identifying and pursuing the *proceeds* of criminal activity – which may include corruption, money laundering or wider economic crime – using its full range of civil powers. The expertise and output of CAB was emphasised in several interviews, with one participant noting that 'CAB are pretty prolific for the size of the unit, they're litigating day-in day-out, and they're getting results day-in day-out'. It was stressed that 'the work that CAB do is quite distinct from normal law enforcement; it's a broad spectrum enforcement that's designed to make life intolerable for those they target, and it certainly achieves that'.[254] In drawing the distinction between CAB and other Garda units, one interviewee was keen to illustrate both the depth and breadth of specialisation in the Bureau, with CAB having 'a lot more expertise that is hardwired into the

Photo: istockphoto.com/noel bennett

organisation' and embedded into its structures.[255] In particular, the interviewee highlighted CAB's access to in-house legal advice as making 'a huge difference'.[256] The legal team's presence in the Bureau means that they are 'actually giving direction to investigations', which the participant argued 'has a huge impact'.[257]

This embedded expertise was contrasted by some interviewees with other Garda units – notably the GNECB – which, though responsible for delivering an increase in charges for money laundering offences, have reportedly suffered from 'grossly inadequate' resourcing over a protracted period.[258] Although some extra resources have been made available for tackling white-collar crime, one interviewee said that 'things have not really improved'.[259] Another interviewee commented that although the GNECB might 'have a couple of accountants working for them', in reality 'that's not enough' given their broad range of responsibilities.[260] In particular, the interviewee argued, 'You need legal direction',[261] as well as 'guys who have actual proper skills in IT'.[262] The cumulative effect 'When you get that resource shortage', asserted one interviewee, 'is that areas that are perceived as dealt with by other regulators are simply excluded from consideration' and 'you don't have a spectrum of enforcement'.[263] However, for another interviewee, the lack of specialist skills necessary to properly combat economic crime was not solely due to resourcing, but instead to the 'absolutely absurd' system of career progression within the Garda.[264] The example was given of a Garda interested in a career in financial investigation and spends years specialising in that area, but then gets promoted and transferred to an entirely unrelated role.[265] Reflecting on this scenario, the interviewee suggested that 'It's almost as if the system is designed to prevent people specialising'.[266]

Beyond resourcing and specialist skills, it was suggested that there are broader problems in relation to prosecuting money laundering offences that exist across all white-collar crime prosecutions. Examples of such challenges provided by one interviewee included the absence of formal, pre-trial case management systems, as well as the approach to documentary evidence and hearsay – which might be particularly problematic with extra-territorial evidence.[267] A further interviewee suggested that an inclusionary rule should be introduced for documentary evidence,[268] with another advising that search powers for corporate and financial offences required attention,[269] and that 'there are big problems' around the interrogation of electronic data for disclosure purposes.[270] The end result of all these issues, noted a participant, is that there are 'huge difficulties in Ireland for convicting of money laundering'.[271] A related concern was the perception of a general disinclination to pursue criminal money laundering, with the State favouring prevention over investigation by showing a 'clear preference for the administrative sanctions route, rather than the criminal law route'.[272] According to another interviewee, such reticence is compounded by a 'cultural reluctance to even look at international, transnational offences' within relevant Irish authorities.[273] Indeed, there appears to be less appetite for cases involving suspected overseas corruption, with one interviewee commenting on a case in which they had previously been involved: 'What was remarkable about it was the extent to which the State took no interest in the fact that he [the suspect] was a Politically Exposed Person'.[274]

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4.4 INTERNATIONAL COOPERATION

A central element of effectively targeting the proceeds of overseas corruption is cooperation between officials in different jurisdictions. The formal process for such cooperation is known as **Mutual Legal Assistance (MLA**), which is provided for in bilateral and multilateral treaties and usually takes place via a 'Central Authority' in each state – typically located in a ministry of justice or interior – which handles all incoming and outgoing requests for legal assistance between that country and others. Within the European Union, cooperation has been further expedited by a series of legal mechanisms to facilitate mutual assistance on a range of criminal justice measures, including money laundering and related asset recovery processes. Interviewees made particular reference to various EU Framework Decisions concerning intra-EU property freezing orders,[275] the mutual recognition of financial penalties[276] and confiscation orders,[277] as well as the EU Directive on the freezing and confiscation of proceeds of crime.[278] One interviewee highlighted the particular significance of the Criminal Justice (Mutual Assistance) (Amendment) Act 2015, which provides for the mutual recognition of restraint orders and confiscation orders in Ireland and 'was brought in to recognise our position under the 2005 and 2006 Framework Decisions'.[279]

The Criminal Justice (Mutual Assistance) Act 2008, as amended, provides two routes for confiscation-related MLA requests to Ireland. In confiscation cases with other EU member states, which are governed by Section 51A, requests that comply with EU Framework Decision 2006/783/JHA and other relevant requirements are sent by the Central Authority to the DPP for execution.[280] In non-EU cases, which are covered by Section 51, the Central Authority (which is housed within the Mutual Assistance Division of the DJE) will cause an application to be made to the Courts in the name of the Minister for Justice, though 'in practice' the normal procedure is for the Chief State Solicitor's Office to make the application.[281]

Applications from overseas for **NCB orders** pose particular challenges for cross-border cooperation. One interviewee emphasised that, 'In practice, there is a process whereby an application can be made for mutual recognition of a confiscation order – but it has to be a criminal order', stressing that 'It does not apply to NCB orders'.[282] In circumstances where a request for assistance is made in relation to NCB orders, it was said that the easiest way to proceed would be for the CAB to bring its own case: 'the money is in Ireland so CAB has jurisdiction' and 'It doesn't need an order from elsewhere'.[283] The example was given of an order under the UK's proceeds of crime legislation, whereby if the UK authorities were to contact the CAB with details of their order, then that can be used to base a belief for an Irish process.[284] If deemed necessary, representatives of the relevant UK authority might be asked to attend court in Ireland to give evidence in support of CAB's application – with their testimony normally being held 'valid' as 'simple proof of evidence'.[285] In such situations, a deal can be – and indeed has been – negotiated between Irish and UK authorities to share the assets, though that is not always deemed necessary. Commenting on this approach, an interviewee said that 'It is not mutual recognition, it is simply coordination – it's an application in Ireland using foreign evidence'.[286] While there have been criticisms of the NCB approach,[287] there are clear benefits in using this route in transnational cases, including the use of belief evidence and – upon the establishment by the CAB of a *prima facia* case – transferring the onus onto the respondent to demonstrate that their assets were not the proceeds of crime.[288] The NCB route is also considered to be a much quicker option than a formal MLA request. Although one participant observed that there has been resistance to the NCB approach in other jurisdictions due to human rights concerns, the interviewee disagreed with such criticisms,[289] noting both that the Irish courts have upheld the constitutionality of NCB forfeiture[290] and that the European Court of Human Rights has previously reached a similar conclusion in relation to NCB legislation.[291]

As well as formal MLA requests via Central Authorities, **informal assistance** – based upon professional contacts and networks – is, in practice, also central to effective cross-border cooperation. As one interviewee noted, 'There are ways of ensuring that the experts talk to the experts to make it as efficient as possible'.[292] Such contacts can, for example, be developed through the asset recovery offices in different European states, CARIN, the Egmont Group of FIUs, or via the network of Garda Liaison Officers posted in various strategically located foreign countries and multilateral institutions. The EU's criminal justice and law enforcement cooperation agencies, EUROJUST and EUROPOL, were also highlighted as playing an important role in facilitating

good cooperation.[293] For one participant, the many benefits of such informal and direct joint working with trusted professional contacts in foreign agencies include 'improving working relationships and getting things done'.[294] The option of informal cooperation[295] might also help to explain why interviewees acknowledged that the numbers of incoming MLA requests to Ireland on money laundering cases – and especially on asset recovery – are relatively low,[296] with one interviewee agreeing that 'the volume of business is small'.[297]

Unsurprisingly, securing effective cooperation between different jurisdictions in an already challenging field of law raises various issues; the sheer **complexity** of such cases being a recurring theme for several interviewees. One noted that the difficulties of international cooperation in asset recovery cases stems from 'the proliferation of different remedies and the unnecessary complexity of it', lamenting 'I'm not sure there is much you can do about it'.[298] Another participant highlighted that this was not only a feature of other jurisdictions, pointing to 'the complexity of Ireland when it comes to international cooperation'.[299] Compounding this legal complexity, there are frequent misunderstandings over the actual terminology used in different jurisdictions, with an interviewee reflecting that 'The words mean so many different things, and words need to be defined', yet there can be significant legal and operational issues as a result of 'not defining the words correctly'.[300] The specific meaning of different terms – including, for example, the exact meaning of asset confiscation – often varies depending on the jurisdiction and, at a practical level, such ambiguity can be problematic.[301] The importance of mutually understood and agreed definitions is of particular importance when it is necessary 'to negotiate a deal across the board' with foreign authorities, in order for a written agreement to be put before the court.[302] A further common challenge identified by one participant concerned practical arrangements in relation to obtaining certain required documentation or translations, though the interviewee thought this was usually more of 'a capacity thing, rather than a will thing'.[303]

5. REPATRIATION

We've confiscated the money, now what?

5.1 OVERVIEW

Recent advances in international cooperation, the creation of more robust cross-border legal mechanisms, standards-setting and best practice peer reviews have together enhanced global efforts to tackle corruption and to trace and restrain corruptly obtained assets. It is widely acknowledged, however, that the repatriation of such assets to the countries from which they were stolen – commonly referred to as 'victim countries' – is often overlooked or dismissed as too complicated. In 2013, the StAR initiative of the UNODC and the World Bank identified that, out of 395 foreign bribery cases concluded between 1999 and 2012, only US$197 million was returned to victim countries out of US$5.9 billion of fines imposed for foreign bribery offences – representing 3.3 per cent of the total.[304] This led the Conference of the States Parties to the UNCAC to analyse the reasons for this deficiency, and to explore legally and practically viable avenues for the repatriation of corruptly obtained assets.[305] Acknowledging that repatriation can pose significant legal, ethical, and even political challenges, this chapter assesses where Ireland stands in relation to the issue by examining both the current legal framework around repatriation, as well as common barriers and possible solutions to returning funds to their country of origin.

5.2 THE LEGAL FRAMEWORK FOR REPATRIATION

At an international level and as a signatory to UNCAC, Ireland is committed to the fundamental principle of recovering assets obtained through corruption and returning those assets to their prior legitimate owners and to those harmed by their theft.[306] Under domestic legislation, the default approach enshrined in relevant legislation – such as the Criminal Justice Act 1994 and the POCA 1996 – is that seized assets realised from proceedings under either of those laws shall be paid to the Exchequer.[307] However, under Section 3 of POCA, anyone who the Courts consider to be a legitimate claimant – including foreign states – can seek to claim the property in question. This could include the government of the victim state or a third country's government – such as that of the United States of America – in circumstances in which it can show that it has a legitimate interest in the assets in question. This possibility was recognised in FATF's MER on Ireland, which stated that although 'There are no provisions within the Proceeds of Crime Act to share forfeited assets with any other state... Section 3(3) of the Proceeds of Crime Act allows for restitution of funds to victims of crime upon the direction of the High Court'.[308] FATF acknowledged that, 'Although not its intended use, there is the potential for this provision to be used in future for sharing of frozen assets with other countries'.[309] This would mean that, where assets have been confiscated in Ireland from foreign PEPs, there are different options that might be adopted. For example, the assets may be retained by the Irish State, they may be split on a 50/50 basis (above a certain amount) between Ireland and the victim state, or they may be repatriated in their entirety to the victim state. In the recent case of assets being repatriated to Nigeria,[310] Ireland has opted to repatriate the entirety of the forfeited assets.[311]

In cases where a foreign state seeks recognition of their own asset confiscation order through the Irish courts, there are different legal routes for different countries, as laid down in the Criminal Justice (Mutual Assistance) Act 2008, as amended. As outlined in the preceding chapter (4.4), post-conviction confiscation orders from fellow EU Member States are directly enforceable in Ireland, and orders from states designated under the Act can also be enforced – though indirectly via the Central Authority

making an application to the High Court on behalf of the requesting country.[312] (Statutory Instrument 222/2012 enables, *inter alia*, the repatriation provisions of UNCAC to be applied to all parties to the Convention, which includes most countries and is currently being updated to include more recent signatories.)[313] Similarly, civil non-conviction based confiscations are also available upon request from foreign countries, via the CAB.

Previous reports on asset repatriation have highlighted the importance of confiscating states proactively informing victim states – and potentially affected third countries – of cases involving corruptly obtained assets from their jurisdiction, and clearly setting out the legal avenues available to seek repatriation of the stolen property, and/or other forms of redress for the harm caused.[314] Although there is little evidence that Irish authorities have proactively pursued investigations into the proceeds of foreign corruption, once notified by foreign law enforcement they do appear willing to notify victim countries. Indeed, in two separate cases in which the CAB have frozen property in Ireland linked to foreign corruption, Thailand and Nigeria were informed of the potential to apply under section 3(3) of POCA to recover that money[315] – and, as previously stated, one such application has since been issued by the Federal Republic of Nigeria and responded to by Ireland.[316]

In a different context, an asset recovery case relating to a so-called 'Ponzi' (pyramid) scheme shows how such a section 3(3) application from overseas might work. In this case, the money derived from an insurance fraud, in which a company took premiums and transferred the money via accounts in offshore jurisdictions, before eventually placing the money in Ireland. The liquidators of the company applied to the Irish courts and the money was duly returned, though it was monitored by Irish authorities and the liquidators had to provide a report to the court to show how it was dispersed. As such, the case shows a positive result from a section 3(3) application involving illicitly obtained funds from overseas.

5.3 BARRIERS TO REPATRIATION – AND POSSIBLE SOLUTIONS

Despite both international and Irish law indicating that repatriation is legally permissible, there are nevertheless some significant barriers to returning assets – especially to certain jurisdictions. Arguably the greatest of these obstacles is the fear of returning corruptly obtained assets to their country of origin, only for those very same assets to be diverted or misappropriated once again for the corrupt personal use of state officials. For example, political exiles from Uzbekistan have called for money laundered by Gulnara Karimova in Irish bank accounts (see page 4) not to be returned to the Uzbek Government, but instead have asked for that money to be used to compensate the victims of corruption.[317]

From an Irish legal perspective, the court's primary function is to determine the owner of the assets in question. If they are deemed to be the proceeds of crime, then those assets will go to the Minister for Finance in accordance with the legislation. But if a victim of crime – including a victim state – comes forward, then the courts might order the money to be given to the victim ahead of the Minister. If the courts were not satisfied that the money would or could be returned to its legitimate owner, such as the people of a foreign country, it is possible that they might be open to not returning the money to the government of that foreign country – if there was a feasible alternative for getting the money back to its legitimate owners.

One approach that has been used in similar scenarios in other jurisdictions is the establishment of an independent foundation tasked with dispersing the funds but with no, or limited, political involvement. Perhaps the most notable example of such an approach is the BOTA Foundation which was established as an independent NGO in 2008 by the governments of Kazakhstan, Switzerland and the USA as a means of returning in excess of US$115 million to Kazakhstan. The Foundation was in turn overseen by the World Bank.[318] An alternative approach was taken in 2008 with the Swiss decision to return US$500 million to Nigeria on the condition that the repatriated funds be dispersed to development projects overseen by the World Bank.[319]

In 2020, the Swiss government reached a settlement with the Uzbek government on the disbursement of US$131 million confiscated from accounts beneficially owned by Gulnara Karimova. The assets will be disbursed according to an MOU which stressed the importance of transparency and accountability in the asset recovery process as well as the need to fight impunity.[320] It was the first to cite the Global Forum on Asset Recovery (GFAR) Principles.[321] The GFAR Principles, *inter alia*, encourage the participation of civil society in the asset return process. However, the MOU has been criticised, for its lack of specific provisions on anti-corruption safeguards, including independent oversight.[322]

Striking the right balance between ensuring political 'buy-in' from the victim and repatriating state as well as safeguarding the assets from corruption is a challenge that may require each case to be taken on its own merits. However, both the GFAR and Civil Society Principles for Responsible Asset Recovery, published by TI EU Office in 2020[323] also offer some direction for governments in establishing the appropriate transparency and accountability mechanisms at all stages of the asset recovery process.

Acknowledging the concerns of activists – such as those campaigning against repatriation of corruptly obtained assets to the Uzbek Government – demonstrates that, 'as much as it may have been designed not to be', asset recovery (and in particular asset repatriation) 'is still as much of a political process as a legal one'.[324] Diplomatic relationships, trading links and other vested interests in either or both jurisdictions can all compound the legal and practical barriers identified elsewhere in this report to further hamper the effective return and dispersal of assets.

Two themes in the literature on asset recovery suggest possible remedies for overcoming such obstacles. The first is to apply the principles of transformative justice to asset repatriation, as Laslett *et al* suggest in their report on corruption in Uzbekistan.[325] Such an approach 'would require processes oriented towards (a) redress of the diverse social harms suffered by victimised populations, (b) securing non-reoccurrence, and (c) assisting movements and initiatives that can instigate reforms which confront structural violence'.[326] In practical terms, this approach 'encourages the engagement of victim groups both in the design of enacting mechanisms for asset return, and defining desirable outcomes', which thereby 'promotes a return process that is bottom-up, victim oriented, context driven and calibrated to important systemic changes'.[327] The second, related, theme seeks the active involvement of civil society in not only designing the repatriation process,[328] but ensuring that it has a central role in monitoring the effective and publicly-credible implementation of the dispersal process: 'civil society involvement can help prevent... corrupt wealth from being re-stolen, by ensuring returns are accountable and transparent'.[329] The use of transformative justice principles and the inclusion of civil society both necessitate innovative partnerships and approaches on the part of government, but are increasingly recognised as contributing to more transparent, credible and just repatriation processes.[330]

6. RECOMMENDATIONS

In light of the risk of corruptly obtained assets being laundered in or through Ireland, and the State's current response to that risk, this report offers the following recommendations for making Ireland a more hostile environment for the proceeds of international corruption. These recommendations build upon ongoing efforts by the public, private and voluntary sectors to tackle corruption and money laundering in Ireland.

Transparency International (TI) Ireland recommends that Ireland should:

STRATEGY, STRUCTURES AND COORDINATION

1. Develop coordinated but distinct **national strategies** on economic crime – including money laundering – and corruption. Both strategies should be based upon regularly updated **national threat assessments** and should in turn directly inform regularly reviewed **national action plans**, which clearly assign responsibilities, timescales and accountability for implementation of the strategies. Coordination of the national action plans should be carried out by the Anti-Money Laundering and Anti-Corruption Steering Committees (see Recommendation 4), with leadership provided by the Department of An Taoiseach. (See section 3.5)

2. In the interim, conduct a thorough update of the **National Risk Assessment** on Money Laundering and Terrorist Financing, incorporating feedback from FATF and other review processes. In particular, the updated NRA should have a dedicated section examining the risk of laundering the proceeds of overseas corruption. It should also be based on more quantitative data to validate or correct the risk-map produced by the preceding NRA. (See section 2.2)

3. Consider the submission made by TI Ireland in 2019 to the DJE Review Group on Anti-Fraud and Anti-Corruption Structures and Procedures, notably in relation to the establishment of a robust, independent **National Anti-Corruption Bureau** dedicated to investigating and recovering the proceeds of both domestic and foreign corruption. Such an agency would allow for resources to be ring-fenced and expertise to be dedicated to gathering intelligence, investigating and recovering corrupt assets. (See section 3.3)

4. Create a multi-agency **Anti-Corruption Steering Committee**, using the model of the Anti-Money Laundering Steering Committee, in order to better coordinate anti-corruption strategy, policy and operational coordination. Such a group would be in line with the UNCAC Implementation Review Group's recommendation and could be a useful coordination body to assist in the establishment of a National Anti-Corruption Bureau (see recommendation 3) and/or any other relevant structures established as a result of the Hamilton review. (See section 3.5)

5. Consider establishing a single, unified **anti-money laundering supervisory authority** for DNFBPs, in line with the UNCAC Implementation Review Group's recommendation. (See section 3.4)

6. Consider expanding the membership and remit of the **Joint Intelligence Group** to include other relevant regulatory, supervisory and law enforcement units to share information and jointly analyse threats from money laundering – including from overseas corruption – with appropriate private sector partners. The multi-agency, public-private approach of the UK's Joint Money Laundering Intelligence Taskforce is a possible model for this approach. (See section 3.5)

POLICY AND LEGISLATIVE REFORM

7. Review and incorporate into an updated National Risk Assessment (see Recommendation 2) – any loopholes for laundering the proceeds of corruption facilitated by the State. In particular, the Irish Government should heed the European Parliament's concerns around **'golden visa' schemes**, in order to prevent Ireland's Immigrant Investor Programme from being used to launder corruptly obtained assets and grant corrupt individuals residency. (See section 2.1)

8. Ensure that **state-based exemptions** to anti-money laundering obligations are based on assessed and demonstrable low risk, in line with FATF's recent recommendations. Furthermore, in the interests of transparency and accountability, the Government should publish data on the number, reasons and industry sectors of all exemptions granted by the State, as part of its annual report on money laundering. (See section 2.1)

9. Consider signing and ratifying the CoE 2005 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and on the Financing of Terrorism (**the 'Warsaw Convention'**). (See section 2.1)

10. Prohibit the continued sale of dormant **shelf companies** in Ireland. (See section 2.3)

11. Create an explicit requirement that legal persons acting as **beneficiaries of life insurance policies** becomes a heightened risk factor for relevant firms' AML risk assessments. (See section 2.3)

12. Explore options for bringing all **Special Purpose Vehicles** currently exempt from anti-money laundering requirements within the scope of statutory AML obligations and regulatory supervision. (See section 2.3)

13. Review the **use and effectiveness of AML sanctions** available to AML supervisors (other than the Central Bank) for non-compliance with AML obligations. This review should inform considerations around the creation of a single AML supervisory authority for DNFBPs. (See also Recommendation 5 and section 2.4)

INTERNATIONAL COOPERATION

14. Consider applying for membership of the **StAR Global Focal Point Network** to assist in the practical aspects of asset recovery and repatriation. (See section 3.5)

15. Observe and implement international standards such as the GFAR Principles and Civil Society Principles for Responsible Asset Recovery to ensure that the repatriation of corrupt assets is subject to clear anti-corruption safeguards as well as international and national civil society oversight. (See section 5.3)

RESOURCING

16. Ensure that the Companies Registration Office is sufficiently resourced to properly manage the Central **Register of Beneficial Ownership** of Companies and Industrial and Provident Societies, and to enforce compliance with the reporting obligations. (See section 2.3)

17. Ensure that the **GNECB**, and in particular the Anti-Corruption Unit, is properly resourced, in line with the Hamilton review and UNCAC Implementation Review Group's recommendation. (See section 3.3)

18. Consider the use of **Overseas Development Assistance** investment in the investigation, seizure, management and repatriation of the proceeds of foreign corruption, as part of Ireland's strong commitment to overseas development and the UN SDGs. (See section 7.0)

7. CONCLUSION

Making Ireland a hostile environment for the proceeds of international corruption

It is clear that in recent years Ireland has, with some exceptions, made progress in improving its response to overseas corruption and money laundering. Although certain legislative provisions require further amendment (including the dual criminality requirements for corruption offences), Ireland appears to have an appropriate legal framework in place to recover the proceeds of international corruption. Indeed, legislation that entered into force in 2018 has attempted to update and consolidate the law around both corruption and money laundering, incorporating European and international best practice and standards. There is also a relatively coherent institutional framework in place to tackle these issues, even if certain state entities (including the GNECB Anti-Corruption Unit) appear insufficiently resourced to fulfil their anti-corruption or anti-money laundering roles.

However, despite this generally sound legislative and institutional framework, Ireland's willingness to consistently take robust action against corruptly obtained assets remains unproven. Regulatory enforcement of AML controls certainly takes place, in particular by the Central Bank, though it is arguable that neither the powers and resources of some other regulatory bodies, nor the severity of sanctions imposed by these bodies to date, are reflective of the scale of non-compliance or of the risk that corruptly obtained assets are being laundered through Ireland's economy. It is acknowledged that high-profile gangland crime in Dublin and along the border with Northern Ireland means that tackling domestic organised crime is, quite legitimately, both a policing and a political imperative. Nevertheless, so long as criminal enforcement of money laundering is focused almost exclusively on domestic organised crime, complex and costly overseas corruption cases are unlikely to receive the attention and resources they deserve.

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Notwithstanding this, if Ireland is to demonstrate its stated commitment to international development – and in particular to the SDGs – then it must also show that it will take action against the pernicious influence of corruption, which both the UN and the Irish Government have identified as a cross-cutting threat to the achievement of sustainable development in lower income countries.[331] This requires political will,

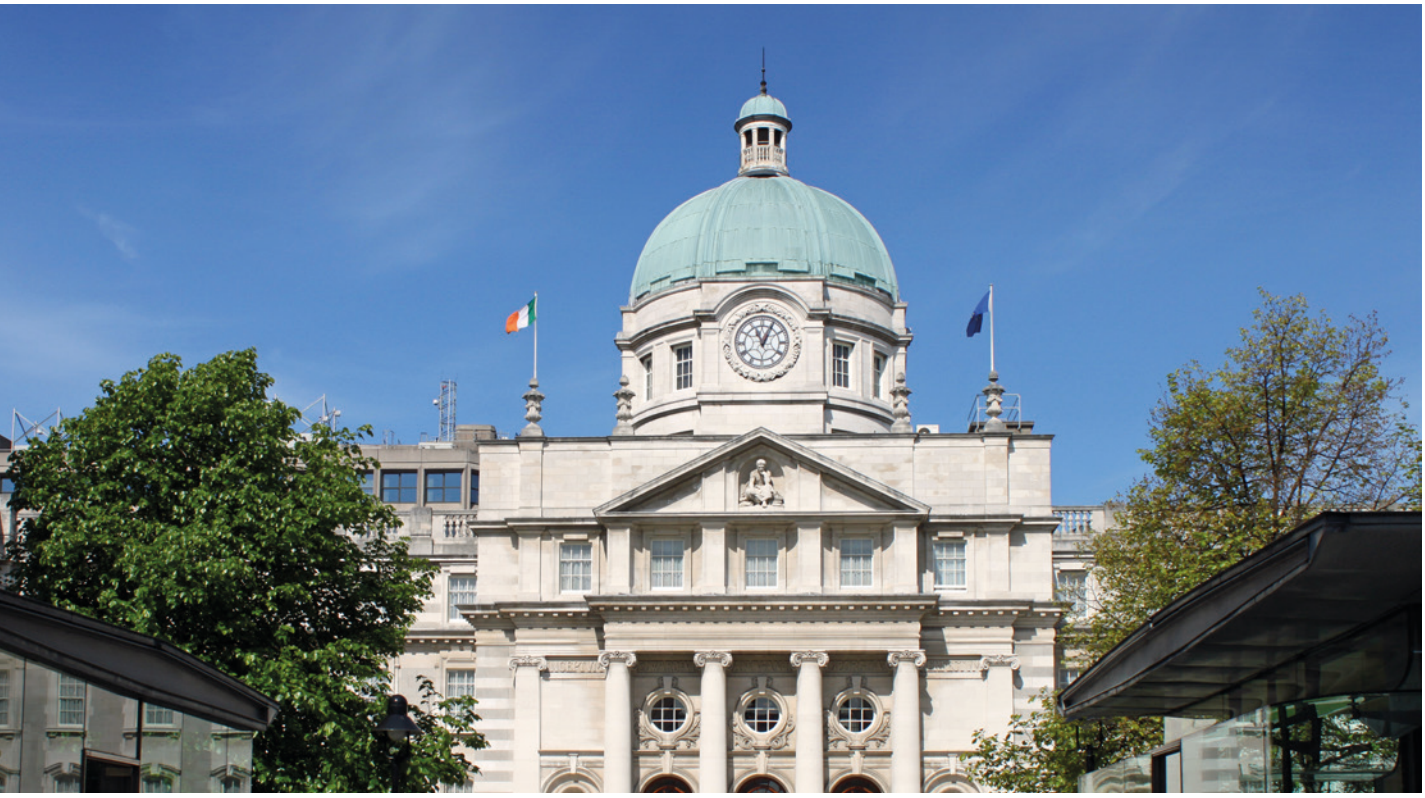

Photo: shutterstock.com/spectrumblue

in order that the State's finite resources are used not only in pursuit of popular domestic goals, but also in support of less visible foreign policy objectives. Overseas Development Assistance may also be required to invest sufficiently in the investigation of international corruption and asset recovery. The active pursuit of the proceeds of foreign corruption in Ireland would set a clear example of moral leadership at a time when Ireland has secured a more prominent role on the global stage via its seat on the UN Security Council.[332]

Taking such action will necessitate greater strategic coherence than exists at present. Ireland's understanding of the threat from corruption to its economy, institutions and social fabric is under-developed – which perhaps accounts for the paucity of such investigations. What enforcement action does take place against corruption is not directed by any over-arching strategy, nor is the allocation of resources based on a clear prioritisation process. It is due to these deficiencies that one of the central recommendations of this report is the development of clear, publicly accessible strategies for economic crime and corruption – including money laundering and overseas corruption respectively – which are based upon periodically updated threat assessments (see chapter 6). These strategies should, in turn, inform cross-government action plans that drive operational activity, be regularly reviewed and, crucially, identify which relevant agencies are responsible for their delivery – with the Department of An Taoiseach providing leadership and impetus to the process.

Fifteen years ago, Ireland was branded the 'Wild West of European finance' after the regulator's failure to prevent one of the country's largest financial scandals.[333] Despite numerous warnings, the collapse of the banking system in 2008 exposed Ireland's loose controls on its financial sector. Leaving aside whether it is still fair to describe Ireland as a regulatory 'Wild West' today, it remains incumbent to ask whether the country is doing all it can to prevent its FDI-dependent economy from acting as a safe haven for the proceeds of international corruption. While progress has certainly been made, those advances now need to be consolidated and the law actively enforced to ensure that Ireland becomes a truly hostile environment for the world's dirty money.

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194. Property Services Regulatory Authority, *supra* n. 100.

195. Department of Justice and Equality, 'Anti-Money Laundering and Compliance Unit': http://www.justice.ie/en/JELR/Pages/AntiMoneyLaunderingComplianceUnit

196. Law Society of Ireland, 'Anti-money laundering obligations for solicitors': https://www.lawsociety.ie/Solicitors/Regulations/Anti-Money-Laundering/

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278. Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union – see: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0042

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281. Practitioner interview.

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290. See the Supreme Court decision in: *Murphy v GM; Gilligan v CAB* [2001] 4 IR 113. For a critical analysis of the approach of the Irish courts, see: King (2017) in Katalin & Simonato (eds.), *supra* n. 287.

291. See: *Gogitidze v Georgia* [2015] ECHR 475, App No. 36862/05, 12 May 2015.

292. Practitioner interview.

293. Practitioner interview.

294. Practitioner interview.

295. FATF highlighted one such example in which Ireland 'cooperated with Austrian authorities to have an Irish confiscation order recognised in Austria, although no MLA request was ultimately made': FATF (2017), *supra* n. 51, p. 121.

296. FATF's 2017 evaluation of Ireland reported that there were 'approximately five requests between 2012 and 2016' from other jurisdictions related to asset confiscation: FATF (2017), *ibid*., p. 119.

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