

Fraud

Beating fraudsters at their own game

Stephané Bonifassi, Executive Director of FraudNet, a division of Commercial Crime Services, speaks exclusively to Commercial Crime International.

THE Panama Papers exposé and other recent high-profile cases in the media show the scale of corruption globally and that there is still a lot of work to be done in tackling it. In your opinion, what can governments, law enforcement agencies, the private sector and organisations such as FraudNet do in this regard?

I think it's important to realise the full extent of international corruption and the Panama Papers was a master class in this. But Panama is something of a scapegoat, as I think many jurisdictions have the same vulnerabilities. Some governments and law enforcement agencies are getting more proactive about prosecuting companies that bribe foreign officials.

The United States was at the forefront of this effort but other governments are rallying. Still, many of them aren't doing anything about it. In addition, when it comes to laundering the proceeds of corruption, no jurisdiction seems to have an unblemished record.

FraudNet exists to assist governments that want to recover assets and our members have been highly successful. Considering our geographical reach and wealth of shared knowledge about civil and criminal remedies (and sometimes criminal proceedings are crucial), I believe no one is better positioned to deliver results. But sadly, many governments where corruption is endemic are unwilling to do anything about it because their rulers are the main beneficiaries. And there is nothing even an organisation like FraudNet can do about this.

Some of us believe there's a standing issue that needs to be addressed to enable citizens of these countries to act when their governments lack the will to proceed. This standing issue hasn't been properly resolved.

And there are other open questions: If assets are recovered, how do they find their way back to a country's coffers? Who should fund the asset-recovery efforts, which can be immensely costly? Who should be willing to take the risk of adverse costs? etc.

There are still 'problem' areas which need addressing. One such area is that of jurisdiction relating to confiscation of assets and asset restitution as you highlighted in an article about the Obiang case. Also, as seen in the case of Saleh v SFO, we see that worldwide orders are not necessarily enforced worldwide. What can be done to address these problem areas?

Governments and enforcement authorities that are willing to confiscate assets belonging to corrupt officials must overcome huge difficulties and the two examples you mention are clear examples of that. I know the Obiang/Equatorial Guinea case well because part of it is pending in France. French enforcement authorities have frozen assets.

But there is still a thorny standing issue. If the French government assumes standing to freeze and confiscate assets that belong to Teodorin Obiang, son of the Equatorial Guinea ruler, how can it return those assets to Equatorial Guinea?

Of course, an alternative would be to keep them for the French treasury, but that would hardly be acceptable--or at least it would have to be more clearly expressed. And not only France is engaged in the debate. The U.S. Department of Justice's Kleptocracy Asset Recovery Initiative faces the exact same issue.

What trends and patterns do you see developing with regards to corruption, whistleblowing and fraud?

Whistleblowing has become an accepted tool to fight corruption and fraud. For a long time many countries saw it as a U.S. practice that shouldn't be emulated. That certainly was the case in France, where in the early 2000s there was strong opposition to whistleblowing.

This reluctant approach has evolved in many countries into promoting the practice and trying to protect whistleblowers from reprisals. Will promotion of whistleblowing go further, as in the U.S. where it's acceptable to financially reward whistle-blowers? That remains to be seen.

Continued on page 5/



FraudNet — from page 4

How can companies, specifically those providing financial and legal services, protect themselves so as not to become unwitting actors in corruption and fraud schemes? What are the 'red flags' that they should be looking out for?

Financial and legal service companies can be the focal point of fraud and corruption, as the Panama Papers and similar leaks have shown. This is not good for our professions. We have a tendency to try to avoid accountability by invoking principles of bank secrecy, confidentiality rules and attorney client privilege.

And while these principles are important and should be protected, we endanger them by acting the way some professionals are acting. All professionals know or should know the risks and red flags attendant to their activities.



Stephané Bonifassi

Tell us about some of the plans for FraudNet? With regards to the meeting held last month, what were some of the things members discussed and hope to achieve? And as Executive Director, what are your hopes for FraudNet this year and looking forward to next year?

FraudNet brings together the best asset-recovery lawyers. We constantly share with our peers the best practices and techniques to remain at the top of our craft. This is what our meetings are about. Recovering assets for fraud victims is an extremely difficult task because fraudsters are astute people who know how to take advantage of globalisation to hide their loot. Victims' lawyers have to beat them at their own game.

We must exchange ideas with our natural partners— financial forensics, insolvency practitioners, investigators. We also need to cultivate third-party funders who help us level the playing field for victims deprived of the financial means to fight the very fraudsters who took their assets.

And we must remind law enforcement authorities and the judiciary that victims need understanding and encourage ingenuity to obtain redress for them. FraudNet owes it to everyone to have the best practitioners. My goal is to maintain this approach.