The Institute of Chartered Accountants of Nigeria has an established code of ethics to guide the conduct of its members, as well as an investigatory panel to monitor and probe allegations of wrongdoing. ICAN investigated fifty cases between 1992 and 1995, and has revoked the licences and memberships of erring members. ICAN has also issued planning and performance guidelines that set out basic audit principles, the infrastructure requirements of an audit, the pre-engagement basics of an audit, procedures for audit planning and quality control methods.[9]

The accounting profession in Nigeria must continue to monitor developments in the external and internal reporting environments and respond adequately. The complexity of the Nigerian economy will demand that auditors are appropriately equipped to address the various aspects of financial and economic management. If members of the profession are unable to do this, their relevance, especially as professionals, may be called into question again.

9 Ibid.

Financial institutions and the fight against corruption

Gretta Fenner[1]

As most forms of corruption usually involve a financial transaction between one person or institution and another, many corrupt dealings eventually involve banks or other financial intermediaries. In most cases this involvement will be involuntary and unknowing. The fact remains, however, that financial intermediaries are highly exposed to and potentially directly involved in corruption. Most if not all of their services are at risk, be it private banking, trade financing or investment banking.

As a consequence, banks have a great responsibility as well as much potential to combat corruption, and the related legal, economic and reputational threats are becoming increasingly recognised within the financial industry. Banks' exposure to corruption risks was thrown into sharp relief by the case of late Nigerian ruler Sani Abacha, who is alleged to have spirited several billion dollars of stolen assets out of his country. By 2008 more than US$1.2 billion had been repatriated from accounts in a number of countries, including Belgium, Liechtenstein, Luxembourg, Switzerland and the United Kingdom (including the crown dependency of Jersey).[2] In 2000 this and similar episodes motivated the launch of the Wolfsberg Group's anti-money laundering (AML) initiative, a self-regulatory project led by eleven global banks.[3]

1 Gretta Fenner was until July 2008 executive director of the Basel Institute on Governance, Switzerland.

2 See the International Centre for Asset Recovery; www.assetrecovery.org.

3 M. Pieth and G. Aiolfi, 'The Private Sector Becomes Active: The Wolfsberg Process', in A. Clark and P. Burrell (eds.), *A Practitioner's Guide to International Money Laundering Law and Regulation* (London: City & Financial Publishing, 2003).

The specific role of financial institutions and their capacity to combat corruption has been less the focus of research and policy-making than in other business sectors, however, and thus it is not well understood by either the industry or the public.

Public opinion tends to overestimate the capacity of financial intermediaries, particularly their ability to detect corrupt money flows. At the same time, financial intermediaries seem to have a tendency to underestimate their exposure to direct corruption, the related legal and reputation risks, and the potential of being indirectly abused to facilitate corrupt payments. Unfortunately, they also remain unaware of the full potential of some of their well-tested AML instruments.

Risks and remedies

When financial institutions are involved in corruption it usually happens in one of two ways: Either the financial institution itself or an employee directly commits an act of corruption by bribing or by accepting bribes (employee risk); or the financial institution is (mis-)used by one of its clients to disguise the corrupt origin of funds or to commit tax fraud (client risk).

It is critical to understand that financial institutions as legal persons, their employees and their managers can all be held legally liable for corruption and abetting tax fraud. It is therefore of vital interest for any financial intermediary to implement recommended reform measures to the fullest extent possible.

Active and passive bribery: an underestimated risk profile

When it comes to the active and passive bribery associated with employee risk, the financial sector is usually not mentioned among the most exposed industries, such as construction and the extractive industries. Nonetheless, certain risk factors are likely to increase potential exposure, such as the countries where an institution operates, the quality of the institution's compliance system and general business culture, and the sectors and types of actors with which it interacts. Dealings with particularly corruption-exposed sectors and institutions – such as political parties, legislatures, the police, the judiciary, and public procurement, taxation and public licensing agencies – would dramatically increase an institution's risk exposure and thus warrant a particularly stringent compliance system.

Such a heightened exposure to corruption is not a remote possibility. Foreign banks significantly expanded their global presence in the 1990s, including in many countries perceived to harbour relatively high risks of corruption.[4] Corruption in lending operations is considered a higher risk than commonly assumed.[5] Likewise, in a survey of more than 2,700 businesspeople in twenty-six countries in 2008, almost 10 per cent of the bank managers

4 P. Cornelius, 'Foreign Bank Ownership and Corporate Governance in Emerging-Market Economies', in P. Cornelius and B. Kogut (eds.), *Corporate Governance and Capital Flows in a Global Economy* (New York: Oxford University Press, 2003).

5 See article starting on page 19.

interviewed believed that their colleagues and competitors were involved in the bribery of public officials.[6]

Remedies: risk-specific compliance systems

Given this risk profile, financial institutions are as obliged as any other private sector player to equip themselves with a comprehensive internal anti-bribery compliance system. Such a system will have the added value of putting the bank one step ahead of law enforcement when it comes to detecting corruption cases. A proactive approach of this type can make it easier to obtain some leniency from law enforcement and can help retain the trust of clients, staff and the general public. International frameworks such as the World Economic Forum's Partnering Against Corruption Initiative and the Business Principles for Countering Bribery developed by Transparency International and Social Accountability International provide useful guidance and can form the basis for an industry- and institution-specific risk-mapping. Once the outline of an anti-bribery system has been established, a financial institution should carefully analyse geographic-, as well as industry- and institution-specific, risks.

To prevent the typical operational risks, banks are well advised to pay particular attention to policies on gifts and entertainment, and the handling of intermediaries and agents, both those acting on behalf of the financial institution and the institution's clients. Furthermore, kickbacks may be of particular importance for private and retail banking, while conflicts of interest and procurement are a special concern for investment banking and trade financing. Additionally, insurance providers and retail banks should be particularly watchful of political and charitable contributions, and facilitation payments.

The risk of facilitating corruption and other dubious activities

With respect to the risk of being (mis-)used to participate in money laundering and other criminal acts, the financial industry's exposure is unique compared to other industries. Complex financial transactions that cross multiple jurisdictions can protect the proceeds of criminal activities from seizure by the authorities, while covering up their origin and reintroducing them into the formal economy.

Similarly, such transactions can be structured to help hide assets from the tax authorities or to obscure losses, risks or outright fraud in corporate accounts. A US Senate Subcommittee report released in July 2008, for example, accused the Swiss bank UBS of helping 19,000 US citizens to hide US$18 billion in undeclared accounts from the US tax authorities.[7] J.P. Morgan Chase and Citigroup were ordered to pay a combined US$236 million to investors who had lost money in Enron for their role in helping the company conceal the true scale of its debt.[8]

6 TI, '2008 Bribe Payers Survey' (Berlin: TI, 2008).

7 US Senate Permanent Subcommittee on Investigations, *Tax Haven Banks and U.S. Tax Compliance* (Washington, DC: Permanent Subcommittee on Investigations, 2008).

8 *International Herald Tribune* (US), 30 July 2003.

Banks can also be abused to channel bribes or to fund illegal or terrorist activities discretely. In one notable example, a trust in Liechtenstein and a bank in the Bahamas, both of which the United Nations linked to al Qaeda, were alleged to be embroiled in the oil-for-food scandal.[9]

Although notoriously difficult to estimate, the sums involved are thought to be significant. The overall cross-border flow of proceeds from criminal activities, corruption and tax evasion is estimated to range from several hundred billion dollars to US$1.5 trillion.[10]

Banks and other financial intermediaries therefore play a pivotal role in preventing and sanctioning money-laundering and corruption. They can also help tackle tax and financial corporate fraud.

Consequently, law enforcement and international standard-setting bodies such as the Financial Action Task Force on Money Laundering (FATF) and the Basel Committee on Banking Supervision exert considerable pressure on countries to establish effective and comprehensive remedial strategies for financial intermediaries. Initially concerned with money-laundering related to organised crime and drug-trafficking, international efforts began focusing on corruption as a predicative offence for money-laundering when the OECD Anti-Bribery Convention entered into force in 1999. Finally, in 2003, the FATF followed suit. The Abacha scandal and other highly publicised money-laundering cases that were alleged to involve the proceeds of corruption and related crimes have directed the attention of public standard setters and financial institutions alike to the close linkages between corruption and money-laundering.[11]

A triple link to bribery: underwriting, catalysing and concealing bribes

Typically, a financial institution could be (mis-)used as a vehicle for corruption by a corporate customer who places funds in a bank, often in offshore locations, to pay bribes. These slush funds have been found to be plentiful in recent large-scale corruption cases.

Box 4 Global bribery risks and the global banking system: some recent examples

In large corporations with complex financial structures, slush funds and their use can be very difficult to detect, even for accountants and auditors, and for the banks that host these accounts.

- Siemens, the German engineering conglomerate, allegedly used a web of accounts and shell companies in Liechtenstein and other locations to channel and conceal some of the estimated US$1.6 billion in bribe payments it made around the world.[12]

9 *National Review* (US), 18 April 2004.

10 R. Baker and J. Nordin, 'Dirty Money: What the Underworld Understands that Economists Do Not', *Economists' Voice*, vol. 4, no. 1 (2007); J. Smith, M. Pieth and G. Jorge, *The Recovery of Stolen Assets*, U4 Brief no. 2007-02 (Bergen: Chr. Michelsen Institute, 2007); World Bank and United Nations, *Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan* (Washington, DC: World Bank, 2007).

11 For examples of corruption-related international money laundering cases, see www.assetrecovery.org.

12 *Businessweek* (Europe), 14 March 2007; Bundesgerichtshof, Judgment of 29 August 2008 – 2 StR 587/07.

Box 4 (continued)

- A subsidiary of Halliburton, the US energy contractor formerly run by the previous US vice-president, Dick Cheney, is believed to have used offshore arrangements in Gibraltar for tens of millions of dollars in bribe payments to win a contract in Nigeria.[13]
- BAe Systems, a UK military contractor, allegedly routed questionable payments of £7 million (US$10.5 million) through the offshore banking centre of Jersey.[14]
- Alstom, the French engineering group, is alleged by Swiss prosecutors to have used Switzerland and Panama as transit points for payments to Zambia. Investigations into Alstom are ongoing and the company has denied any wrongdoing.[15]

In addition, a client may misuse banks to spirit the proceeds from corruption or ill-gotten gains out of the country, using seemingly normal but complex layers of transactions to conceal the funds' origin.

The stakes are high. Proceeds from corruption are believed to amount to US$20 to 40 billion in developing and transition countries – the equivalent of 20 to 40 per cent of official development assistance.[16] The Abacha scandal and other episodes of rulers allegedly looting public wealth further demonstrate the risks that banks face.

Finally, banks may be misused as financiers of corrupt business operations, such as business projects won through corrupt means or corrupt payments made during the execution phase. Again, this raises significant reputational and material risks for banks. When corruption is exposed, contracts can be revoked and fines can be imposed that put repayments at risk or raise liability issues for the lender.

Remedies: broadening existing screening mechanisms

Financial institutions usually argue that it is exceedingly difficult for them to detect business relationships and transactions related to corruption. They also claim, however, to be effective in detecting funds from other illegal origins with their anti-money laundering systems. It is worth exploring, therefore, how existing AML systems can be used and enhanced so that banks can better detect and distinguish patterns of illicit transactions related to corruption, along with patterns related to other crimes they screen.

Acknowledging this potential, the Wolfsberg Group's 2007 Statement against Corruption identifies typical red flags for corruption-related activities, and the characteristics of clients and transactions that should raise suspicions of corruption. A typical risk situation involves a public official who has a large amount of money transferred into his or her account by an

13 *Harper's* (US), 30 September 2008.
14 *Guardian* (UK), 8 June 2006.
15 *Wall Street Journal Asia*, 12 November 2008.
16 World Bank and United Nations, 2007.

agent or intermediary in the oil and gas sector. Additional red flags include funds transferred from an offshore financial centre, or through a shell company or another corporate vehicle typically used to obscure the origin of funds. Any of these indicators should naturally trigger an enhanced due diligence process.

Refining existing screening systems to include more red flags that focus on the typical characteristics of corruption is well within the reach of any financial institution. At a minimum, the red flags identified by the Wolfsberg Group should be included in a financial institution's AML system.

Current challenges

Politically exposed persons

AML systems also need to be strengthened and expanded more broadly, including their capacity to deal with politically exposed persons (PEPs). PEPs are individuals who are active and visible in the political arena or who hold high public office, and thus are highly exposed to corruption risks. As a consequence, they represent a special risk for financial institutions, including in reputational terms, given that they are often in the public spotlight. Dealing with PEPs requires special due diligence measures on the part of banks to verify the identity and information provided by clients and to identify potentially suspicious transactions they may be involved in.

The devil is in the details, however. Defining who should be classified as a PEP, and thus require extra scrutiny, is far from clear and continues to engage the anti-corruption community. How senior would a public official have to be? Should the label apply only to heads of state and Cabinet ministers, or to members of parliament as well? Should a PEP's family, close friends and business partners also be screened?

Even the UN Convention against Corruption fails to reflect on PEPs in great detail, and guidance provided by the Financial Action Task Force on Money Laundering is similarly unspecific. A significant improvement is expected from the Third EU Money Laundering Directive, which provides a detailed definition of a PEP, as well as the enhanced due diligence measures that banks must follow when dealing with PEPs. The directive could make a considerable contribution in the fight against corruption, as well as to efforts to recover stolen assets – another highly prominent topic on the anti-corruption agenda.

Recovering stolen assets

Whenever stolen assets are seized and attempts are made to return them to the victimised country, the involved financial institutions find themselves in the spotlight of public outrage and in close association with the alleged crime. The reputational damage to the financial institution, to the financial centre where it is located and, more broadly, to its home country is increasingly recognised within the industry. Public attention on this topic has never been greater.

As of September 2007 Switzerland had returned an estimated Fr1.6 billion (US$1.3 billion) to countries such as Brazil, Chile, France, Italy, Jordan, Kazakhstan, Russia, Ukraine and the United States. The most prominent cases include those of Marcos (the return of assets to the Philippines), Abacha (Nigeria) and Montesinos (Peru). Such laudable exceptions aside, success in asset recovery is still minimal. A multiple of the assets returned so far is still suspected to remain hidden in many of the world's financial centres, and by no means have all the concerned jurisdictions been equally responsive to this challenge.

A large portion of the responsibility for changing this situation lies with the governments of the countries in which the banks are domiciled. They need to ensure that their laws and enforcement practices adhere to the highest standards, such as those of the FATF, the European Union, the Basel Committee on Banking Supervision and the UN Office on Drugs and Crime. Governments need to abolish the typical hurdles that hamper asset recovery, such as unreasonably high legal thresholds, lengthy procedures and overly formalistic requirements for granting judicial assistance to victim states and repatriating the stolen funds.[17]

Because the UN Convention against Corruption addresses many of these challenges, significant improvements in this area should be expected in the coming years, as more countries implement the convention. This should result in a dramatic increase in the funds actually being repatriated.

A stronger commitment to the benefit of all

Financial institutions are not mere bystanders in this corruption challenge. At a minimum, they will need to prove that they adhere strictly to new rules and standards implemented in line with international frameworks. Ideally, financial institutions should contribute constructively to the dialogue at the domestic level, by lobbying their governments to observe these international standards stringently and by working with governments to define the implementing measures financial institutions may need to take. They should also contribute to dialogues at the international level.

Unfortunately, the financial community so far has not taken a very active or outspoken position in these arenas. For instance, the virtual absence of the private sector in general, and the financial industry in particular, from the two Conferences of State Parties to the UNCAC and the fact that more than a half of the banking executives in a large survey in 2008 indicated that they were not familiar with the UNCAC framework must be interpreted as a clear lack of interest.[18] Another 2008 poll of financial services and investment management executives further corroborates this suspicion. Almost a quarter of the respondents said that their companies did not have a monitoring system for suspicious transactions, while another third were not aware of whether their companies had one.[19]

17 For an in-depth analysis of the challenges governments and law enforcement face in recovering stolen assets, see M. Pieth (ed.), *Recovering Stolen Assets* (Berne: Peter Lang, 2008).

18 TI, '2008 Bribe Payers Survey' (Berlin: TI, 2008).

19 *PR Newswire* (US), 23 July 2008.

It is to be hoped that the financial crisis that erupted in 2008 will provide the impetus for stronger commitments. The crisis has prompted a strong and growing call for financial centres and institutions to adopt transparency, accountability and integrity standards commensurate with their essential role in safeguarding the stability and integrity of a globally interconnected economy. Helping to tackle corruption and fraud should be part and parcel of such a commitment by the banking sector everywhere.

Leveraging consumer power for corporate integrity

Oscar Lanza[1]

Corporations today have achieved such immense economic prowess that some rival or exceed the financial power of many countries. The revenue of the top five multinational companies is two and a half times as large as the combined gross domestic product of the world's fifty poorest countries measured by per capita income.[2] Of the world's 100 leading economic entities, fifty-one are companies and forty-nine are countries. The top 200 businesses in the world represent more than a quarter of global economic activity, and their total sales surpass the GDP of the entire planet, excluding the nine most industrialised countries.[3]

Although the growing power and influence of corporations ought to correspond to improvements in corporate social responsibility (CSR), all too often this has not been the case. Corporate failures have compelled citizens to self-organise as consumers and users of products and services, pooling their strength to demand improved product safety and quality, and stronger CSR. Consumer advocacy groups of various types have been formed in virtually every country in the world. The modern consumer movement has become one of the strongest forces for fostering enhanced corporate transparency, accountability and integrity.

The evolution of consumer activism

Since 1960 Consumers International (CI) has been one of the key driving forces behind this steadily growing movement. CI's global federation of more than 220 associate organisations in 115 countries has helped protect and strengthen consumer rights throughout the world, acting as a singular authoritative and independent voice for consumers. CI works on

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2 Calculations based on IMF, 'World Economic Outlook Database', October 2008 edition (Washington, DC: IMF, 2008); CNN Money, 'Fortune Global 500 Annual Ranking', 21 July 2008; see http://money.cnn.com/magazines/fortune/global500/2008/.

3 S. Anderson and J. Cavanagh, *The Top 200: The Rise of Global Corporate Power* (Washington, DC: Institute for Policy Studies, 2000).