

COMBATING FINANCIAL CRIME THROUGH INTERNATIONAL STANDARDS AND COOPERATION

Address by

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at

FRAUD2004: The Fifth IFex International Fraud & Financial Crime Convention

London

November 1-3, 2004

The immense economic benefits that have come from the increasing globalisation of trade and investment are evident. There has been an acceleration of the process of liberalisation of markets, which has been at least partly technology-driven, with the rapid development of global networks, electronic commerce and the information economy. Financial activity, services and investments are becoming increasingly mobile. These developments provide opportunities for sustained improvements in economic performance but they also raise important new challenges for policy-makers and regulators. In particular, the internationalisation of our economies and the advances in communications and information technology facilitate financial crime and other abuses. As governments seek to situate their economies to participate in and reap the benefits of the new, global economy and to manage the various problems that can arise, they are giving increased priority to combating international financial crimes and abuse.

The real costs of financial crimes and abuse are immense. They retard social and economic progress, particularly in developing and transition economies. Trade and investment flows, the functioning and integrity of financial markets and hence the allocation of resources are distorted. Most importantly, confidence in democratic institutions and public support for an open, modern world economy are seriously undermined.

In the global economy of the 21st century, combating such economic crime and abuse, which knows no frontier, requires international co-operation, both between governments and between international organisations and regulatory groupings. A spectrum of approaches is needed, yet there are many concerns relevant to most, if not all, financial abuses, such as the need for improved transparency; and frequently there are linkages between individual crimes such as money laundering, bribery, tax crime and securities fraud. The integrity of the global financial system requires that the international community see these abuses as a series of interlinked issues that call for a coherent and complementary set of responses. An effective international approach must include access to information available abroad, mutual legal assistance and co-ordinated defensive measures.

¹ The views expressed in these remarks in no way commit the OECD or its Member countries.

In recent years our governments have turned to the OECD as a forum well suited for developing such co-operation. The OECD has a proven capacity to develop international standards and guidelines that are used by member countries as well as by non-members. The methods used by the OECD include objective comparative analysis, development of multilateral disciplines - many which are of a voluntary (soft law) nature, but some of which are legally binding - and processes of multilateral surveillance and applying "peer pressure".

Governments also have to address the problem of countries and jurisdictions that are not cooperating in the combat against financial crime and abuses. Jurisdictions that are unwilling or unable to adhere to international standards for supervision and regulation, for transparency, and for international co-operation and information sharing constitute risks to other countries and a potential threat to global financial stability. These serious concerns have led governments to undertake a number of actions to encourage/pressure these jurisdictions. Recent experience has shown that public statements of concern or the listing of non co-operating jurisdictions can bring strong pressures to bear. It is important that such measures be open, fair with due process and based on objective criteria.

My further remarks today give a brief overview of OECD's co-operative activities to combat bribery in international commerce, tax fraud and evasion, the misuses of corporate vehicles and trusts, inadequate corporate governance, and, with respect to combating money laundering and terrorist finance the work of the Financial Action Task Force (a separate organisation housed in the OECD).

Anti-bribery Convention

Signalling that corruption can no longer be considered "business as usual", the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions entered into force on February 15, 1999. It has been signed and ratified by 30 OECD Members and 5 non-Members (Argentina, Brazil, Bulgaria, Chile and Slovenia). The central obligation of the Convention requires its signatories to move in a co-ordinated manner to make bribery of a foreign public official anywhere in the world a criminal offence under the national law of the signatory and to back this up with effective, proportional and dissuasive sanctions. Other obligations include eliminating the tax deductibility of bribes and strengthening accounting and auditing standards.

An important factor behind the choice of the convention approach was to assure that all signatory countries took parallel action and thereby to maintain a relatively level playing field. Key to this objective is a systematic follow-up process to monitor and promote full implementation. This is a two phase rigorous peer review the results of which are made public. This monitoring process is well advanced. We believe this process of peer group pressure backed eventually by public opinion and market forces will prove to be important in reinforcing the effectiveness of the Convention.

Tax Fraud and Evasion

OECD's Harmful Tax Practices initiative has the objective of promoting tax practices that discourage the use of financial centres for illicit purposes through encouraging transparency and cross-border co-operation between governments with respect to certain information regarding taxpayers.

The problem of tax revenues lost through tax fraud and evasion is large. It is estimated that some \$50 billion in tax revenues are lost each year to tax havens – the equivalent of half of the world's annual aid budget.

We believe that tax competition can be both fierce and fair. The "high road" is to compete on overall levels of tax, the balance of taxes, and the general tax structures. Non discrimination and transparency are important. The "low road" however is one characterised by a lack of transparency and the use of secrecy provisions to block international co-operation to pursue tax fraud and evasion.

Here, too, the shared objective is one of achieving a global level playing to achieve high standards of transparency and information exchange that are fair equitable and permit fair tax competition between all countries, large and small, OECD and non-OECD.

Corporate Governance

The recent massive destructions of financial wealth in the US and Europe (ENRON, WORLDCOM, PARMALAT,...) revealed serious weaknesses in corporate governance and in certain market functions. Incentives were misaligned and key checks and balances failed. Market participants tolerated, and in some cases contributed to deceptive practices. All this reflected shortcomings in the quality of corporate governance needed to insure investor confidence, economic dynamism and competitiveness. Good corporate governance serves as an early warning system to corporate and financial problems. Moreover, strengthening transparency and accountability in particular are critical in combating efforts to put wealth beyond the reach of law enforcement and the tax man. An economy characterised by high standards of disclosure and one in which members of management are accountable to their boards and the boards are accountable to their shareholders – including minority shareholders – is one where financial fraud and other financial crimes will be less likely to flourish.

The OECD Principles of Corporate Governance, issued in 1999, soon became the international benchmark in this area. They were revised and strengthened this year in light of developments since 1999. They cover six main areas:

1. The legal and regulatory framework for effective corporate governance;
2. Shareholders rights;

3. Equitable treatment of shareholders;
4. The role of stakeholders (employees, creditors, etc)
5. Transparency and disclosure;
6. Responsibilities of the Board.

It is important to note that implementation of these Principles is being carried out through an unprecedented level of co-operation between international organisations and regulatory groupings. The Principles are one of 12 Key Standards recommended by the Financial Stability Forum. The OECD and World Bank agreed to a memorandum of understanding to co-operate in promoting corporate governance reforms around the globe using the Principles. The World Bank's country assessments in the area of corporate governance use the Principles. IOSCO's Emerging Market Committee recommends the Principles to its members and the Basel Committee of Bank Supervisors use the Principles as the basis for their corporate governance principles for Banks.

Misuse of Corporate Vehicles and Trusts

The OECD's work on corporate governance and discussions in the Financial Stability Forum led to a project in the OECD that examined how corporate vehicles and trusts can be misused to facilitate financial crime such as money laundering, bribery, fiscal crimes, improper self-dealing and market manipulation, as well as terrorist finance. The critical concern is the potential for anonymity provided by the veil of a separate legality which may be strengthened in certain jurisdictions by stringent secrecy laws and the availability of instruments that obscure beneficial ownership. The OECD produced first a report giving a menu of alternative approaches that a jurisdiction could adopt and then a template that can be used for assessing a jurisdiction's capacity for obtaining ownership and control information and sharing that information with authorities of other countries.

Financial Action Task Force

The Financial Action Task Force (FATF) was established in 1989 to combat money laundering around the globe. Following the events of September 11 in 2001 the FATF began waging a financial war on terror as well. The FATF is organisationally separate from the OECD with a different membership, but its Secretariat is housed in the OECD. The members of the FATF have reached a high level of consensus on needed actions each of them should take. They have committed collectively to follow a set of "40 Recommendations", which were revised significantly in 2003. The revisions reflect more complex forms of money laundering, new sectors deemed to be vulnerable, developments in best practices and recent international treaties. The FATF has also agreed to 8 special recommendations to counter terrorist financing.

The anti-money laundering and anti-terrorist financing recommendations address such financial sector issues as customer due diligence and record keeping, suspicious transaction reporting, internal controls and necessary regulation and supervision.

The FATF has been applying an effective programme of peer-group monitoring and assessment of the implementation of its Recommendations. The evaluation methodology has recently been revised in co-operation with the IMF and the World Bank. The assessments based on this methodology will be carried out within the framework of the IMF's financial sector assessments (FSAPs) or the multilateral evaluations by the FATF or the FATF-style regional bodies.

Since 2000 the FATF has undertaken an initiative to help ensure that all significant financial centres adhere to international anti-money laundering standards. This initiative on Non-Co-operative Countries and Territories (NCCT) has triggered significant improvements throughout the world.

Some 23 jurisdictions were placed on the NCCT list in 2000 and 2001. Today only 6 remain on the list and of these 5 have enacted reforms significant enough to be placed in the "implementation stage". Recommendation 21 of the FATF has been a factor in this success as it permits members to protect their economies against funds of unlawful origin by applying additional scrutiny or even counter-measures. Typically this has involved issuing financial advisories, or threatening to do so.

Concluding Comments

The OECD's experience in these areas has given ample demonstration that in this millennium's highly integrated global economy, combating financial crime requires co-operative efforts that also span the globe. International organisations must join forces to associate and assist developing countries to move towards international standards, to engage in effective international co-operation and to strengthen their abilities to counter illicit activities -- activities which can seriously undermine the development process and also have far-reaching international effects. The challenges presented by the global economy are great and will require our being strongly committed to maintaining and further developing a rules- and values-based system.