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Developing and Maintaining an Effective PEP Management Program

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Developing and Maintaining an Effective PEP Management Program

- Legal and Regulatory Basis (not a “US-centric” issue)
 - Report of the United States Senate Permanent Subcommittee on Investigations, *Keeping Foreign Corruption Out of the United States: Four Case Histories*, released on February 4, 2010.
 - Using four case histories, the report shows how some PEPs have used U.S. lawyers, real estate and escrow agents, lobbyists, bankers, and even university officials, to circumvent U.S. anti-money laundering and anti-corruption safeguards. The report also offers recommendations to stop the abuses.
 - Financial Action Task Force (FATF): Recommendations 1 and 6 (corruption and bribery are predicate offenses for AML regimes).
 - United Nations Convention Against Corruption, entered into force in December 2005 (as of February 2008, 140 signatories; ratified by 107 countries), calls for enhanced scrutiny of PEP accounts. Its legal architecture includes: Prevention, Criminalization, International Cooperation, and Asset Recovery.

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- Legal and Regulatory Basis...continued
 - Group of 20 (“G20”) called for enforcement of the UN Convention Against Corruption and the FATF Recommendations “as a means to deter corruption and detect and deter the flow of proceeds of corruption.” “In September 2009, the G20 Heads of State called for the ratification of the UNCAC and asked FATF to focus on detecting and deterring the proceeds of corruption by strengthening standards on customer due diligence, beneficial ownership, and transparency.”
 - Basel Committee on Banking Supervision, “Customer Due Diligence for Banks” (2001), “PEPs are a special category of individuals who expose a bank to significant reputation and legal risks.”

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- Legal and Regulatory Basis...continued
 - OECD Convention on Combating Bribery of Foreign Public Officials, entered into force in 1999; ratified in 2002 (34 countries), and the Civil Law Convention on Corruption, entered into force in 2003
 - Convention of the European Union on the Fight Against Corruption, involving officials of the European Communities or officials of member states, various protocols adopted in 1995, 1997, 1998 and 2003
 - Organization of American States Inter-American Convention Against Corruption, entered into force in 1997
 - African Union Convention on Preventing and Combating Corruption, adopted in Mozambique in 2003 (entered into force August 2006; 43 of 53 countries signed; 28 ratified)
 - MENA FATF Workshop (Bahrain 2005)
 - Wolfsberg Group—2008 PEP Guidelines
 - European Union Third Directive
 - Joint Money Laundering Steering Group Guidance
 - USA PATRIOT Act

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■ Magnitude/Scope of the Problem

- The World Bank estimates that more than \$1 trillion is paid in bribes each year and “the proceeds of corruption stolen from developing countries alone ranges from \$20-40 billion per year—roughly equivalent to the annual GDP of the world’s 12 poorest countries where 240 million people live.”
- Case studies in Private Banking (cited in World Bank StAR Report):
 - Abacha (Nigeria) US\$2-5 Billion (estimated)
 - Suharto (Indonesia) US\$15-35 Billion (estimated)
 - Marcos (Philippines) US\$5-10 Billion (estimated)
 - Mobutu (Zaire) US\$5 Billion (estimated)
 - Milosevic (Yugoslavia) US\$1 Billion (estimated)
 - Duvalier (Haiti) US\$.3-.8 Billion (estimated)
 - Fujimori (Peru) US\$.6 Billion (estimated)
 - Lazarenko (Ukraine) US\$.114-.2 Billion (estimated)
 - Aleman (Nicaragua) US\$.1Billion (estimated)
 - Estrada (Philippines) US\$.07-.08 Billion (estimated)

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- How Are the Proceeds Laundered?

(EXAMINE THE TYPOLOGIES TO IDENTIFY SOME RESPONSIVE POLICIES, PROCEDURES AND CONTROLS)

- Using reports from the FATF and the Egmont Group, Reuter and Truman (*Chasing Dirty Money* 2004) analyzed 580 cases and determined that “...nearly 25% of them used wire transfers as the laundering mechanism and 13% used front companies.” They found that “...while drug trafficking tends to use the full spectrum of alternatives, **bribery and corruption rely heavily on wire transfers and use significantly fewer typologies of laundering mechanisms.**”
- Abacha used “a **complex web of banks and front companies** in several countries” (Nigeria, UK, US, SZ, Lux, Liechtenstein, Jersey, Bahamas)
- Fujimori and Montesinos “used **shell companies, based in tax havens**, managed by trustees.”
- Marcos laundered his corrupt proceeds “through the use of **shell corporations**, which **invested the funds in real estate** in the US, or by depositing the funds in various domestic and offshore banks under **pseudonyms**, in **numbered accounts** or accounts with code names.”

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- How Are the Proceeds Laundered? ...continued...
 - PSI Report Findings:
 - Lawyers—attorney-client, law office, and shell company accounts used as conduits for Obiang (Equatorial Guinea) funds
 - Realtors—helped Obiang buy and sell multi-million dollar residences
 - Escrow Agents—\$38.5 million purchase of private aircraft
 - Lobbyist—helped Bongo (Gabon) obtain six U.S.-built armored cars and U.S. government permission to buy six U.S.-built military cargo aircraft from Saudi Arabia
 - Offshore Corporations—wire transfers from offshore corporations, more than \$25 million for Atiku Abubakar (Nigeria)
 - University—more than \$14 million in wire transfers from unfamiliar offshore shell corporations to pay for consulting services
 - Personal Accounts—personal, family and U.S. shell company accounts, despite status as an arms dealer to move funds for President of Angola
 - Government Accounts—unsuccessful attempts to transfer \$50 million in Angolan government funds to private accounts in the U.S.
 - Correspondent Accounts—private Angolan bank catering to PEPs not treated as a PEP client subject to enhanced scrutiny/monitoring.
 - Vendor PEP Lists—some were incomplete and unreliable.

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- Based on the Case Studies and the Published Typologies, what can a financial institution do—what policies, procedures and controls might be responsive to the risks?
 - PSI Recommendations (8)
 - Account Opening:
 - Escalated Approvals and Enhanced Due Diligence; More Frequent Periodic EDD Reviews
 - Restrictions on Client Types:
 - Trusts, Bearer Share Companies, PICs and Shell/Front Companies; Use of Power of Attorney and Other Intermediaries; Numbered and Pseudonym Accounts
 - Enhanced Scrutiny on PEP Transactions:
 - Wire Transfers, especially crossing borders, originating in or transiting high risk countries
 - Deposits of cash and cash equivalents
 - Use of escrow accounts (property purchases)
 - Enhanced Training, country specialization.

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- Challenges:
 - Definitions of PEP, especially as applied to “family member”, not consistent among countries
 - Difficult to identify “close associates”
 - Duration: “Once a PEP, always a PEP”? Status changes
 - No government repository of the information (banks must rely on the client)
 - Allegations/negative news may be politically motivated
 - How does the business decide to “onboard” a controversial PEP? What factors about the country itself would you consider?
 - Has it ratified the UN Convention?
 - Are there sound financial controls in the country/is there an open and accountable financial system? Transparency International CPI?

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Introduce the Panel