

Best Practices: Investigation and Prosecution of Environmental and Tax Crimes

Charles Monteith | 5 March 2014

INTERNATIONAL CENTRE FOR
ASSET RECOVERY

About the Basel Institute on Governance

The Basel Institute on Governance is composed of four divisions:

- The International Centre for Asset Recovery (ICAR)
- the Division for Public Governance
- the Division for Corporate Governance and Compliance
- the International Centre for Collective Action (ICCA)

International Center for Asset Recovery (ICAR)

ICAR, a not for profit agency, specialises in strengthening the capacities of countries in recovering stolen assets, with an emphasis on financial investigations and asset tracing techniques, mutual legal assistance and international cooperation in relation to corruption and money laundering cases.

To this end ICAR delivers:

- Country-specific on-site training programmes
- Case consultancy and policy advice
- IT Tools and products

ICAR – capacity building through case consultancy and policy advice

ICAR assists countries by facilitating mutual legal assistance and providing advice to concerned law enforcement authorities in handling specific asset recovery cases.

The demand for such assistance has recently increased in light of the regime changes of the Arab Spring where new democratic establishments are seeking to engage on an international level to trace and repatriate stolen public assets stashed away in countries abroad.

ICAR – capacity building through training

ICAR's training programmes are interactive and country-specific to enhance the skills and competencies of investigators and prosecutors to analyse, investigate and prosecute complex corruption, financial crime and money laundering cases

As by-product of these trainings, ICAR produces also training manuals, and train-the-trainer programmes

Corporate Governance & Compliance

The division for Corporate Governance and Compliance advises corporate clients in compliance and in the development and implementation of corporate systems, programmes and policies to comply with anti-bribery and anti-money laundering laws and standards.

The Corporate Governance & Compliance division has recently launched the [International Centre for Collective Action \(ICCA\)](#), which assists companies and other stakeholders to in enhancing their ability to reduce the risk of corruption through Collective Action.

ICAR - IT Tools and products

ICAR develops e-learning modules on aspects of financial investigation and asset recovery, and advises law enforcement agencies on their IT needs and capacities.

ICAR developed the [Basel AML Index](#), which is an anti-money laundering (AML) country risk ranking that serves as an independent risk assessment tool for financial institutions and other stakeholders that have to comply with AML, counter-terrorism-financing (CTF), sanctions and anti-bribery rules.

Preliminary Definitions

Tax avoidance v Tax evasion

- Tax evasion refers to illegal practices that are adopted to escape taxation
- Tax avoidance takes place within the legal context of the tax system, and involves firms or individuals taking advantage of gaps and 'loopholes' in the tax code
- In many cases, the distinction between tax avoidance and tax evasion is a matter of interpretation, and is only clear from a post-court perspective

Environmental Crime

- All acts in violation of laws and regulations that exist to protect the environment

Introduction

No matter the criminal activity:

Establishing a clear methodology, strategy, and investigative plan is crucial in assisting agencies to build upon initial allegations and conduct successful investigations.

All the pieces of the puzzle must be fitted together: a thorough investigation is meaningless without an effective prosecution, and a successful prosecution depends on a thorough investigation.

This presentation will cover:

- Best strategies for conducting successful investigations
- Best strategies for achieving a successful prosecution

Divided we lose

C.L.A.S.P

COOPERATION: It is important that all relevant agencies cooperate effectively with regular strategic meetings

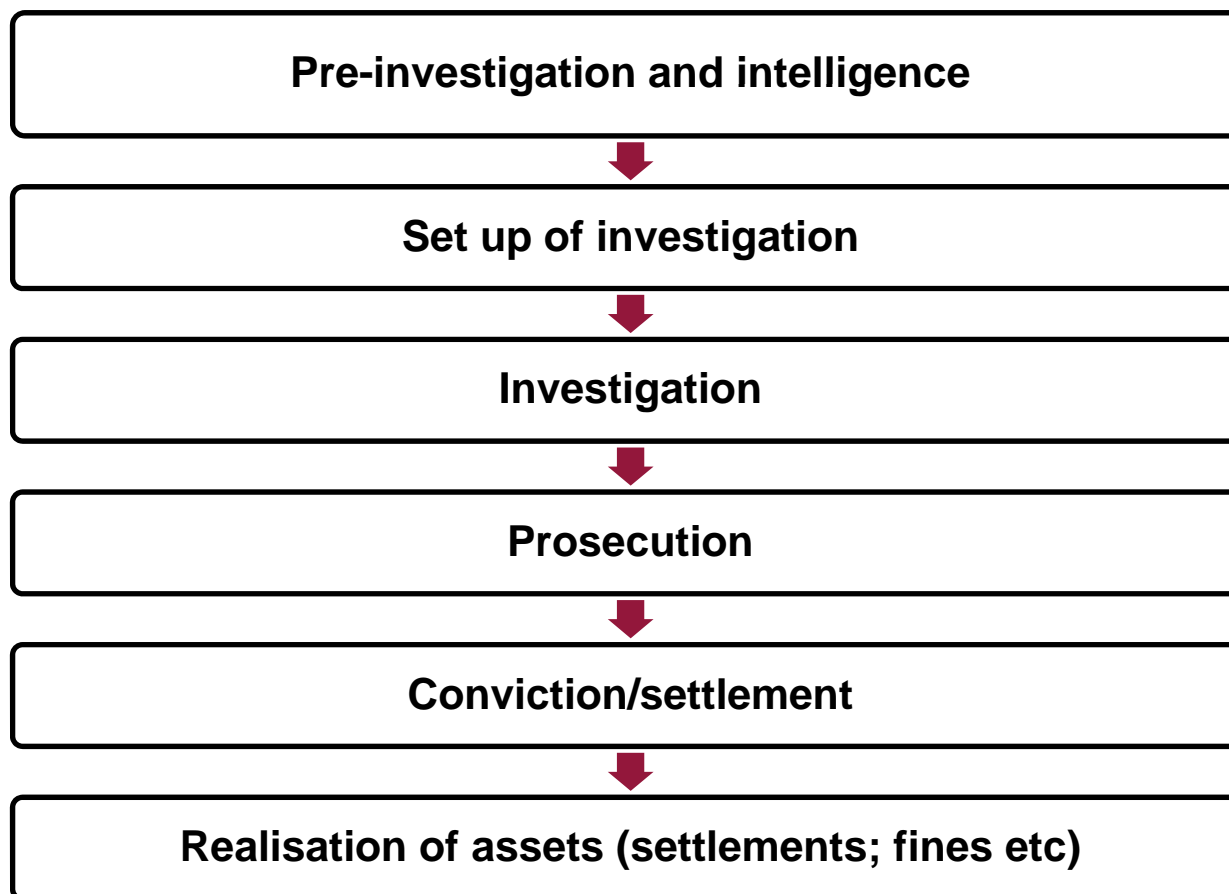
LEADERSHIP: One agency should provide the strategic leadership

ALLOCATION: Roles and responsibilities should be allocated

SHARING: Relevant information must be shared as part of a communication strategy

PROACT: Those involved in the strategy must be creatively proactive and not wait for events to unfold and then be presented to them. The investigation strategy, tactics and plan should be disseminated.

Process overview



The Investigation Plan

There are five essential parts to an investigation plan:

- A) The features of the criminal activity**
- B) The proposed evidence-gathering strategy**
- C) Use of investigation powers and tools**
- D) A media communication strategy**
- E) Evaluation**

A) The features of the criminal activity

- (1) **Who** (subjects of the investigation): identify the businesses and individuals related to the criminal activity and their relationship to each other;
- (2) **What** (type of activity is occurring): identify the events or actions;
- (3) **Where** (geographic area affected): identify locations and the geographic area affected to assess jurisdictional reach;
- (4) **When** (duration): identify all time factors related to the criminal activity, and assess statutory limitations;
- (5) **Why** (motive of the participants): identify causes for events or actions related to the criminal activity; and
- (6) **How** (the way the criminal activity was committed): identify the sequence of events and method used to commit the criminal activity.

B) The proposed evidence-gathering strategy

- What is needed to establish the offence? What will need to be proven, and what type of evidence will prove this?
(For example: official tax return outlining Company X's profits)
- What evidence has already been obtained? What is missing?
- What is the best strategy or source for obtaining this evidence?
(For example: request to tax office, witness statement from tax official explaining tax return document)

C) Use of investigation powers and tools

- Using Intelligence
 - Open Source Intelligence
 - Human Intelligence
 - Financial Intelligence
- Covert Actions
- Searches and Seizures
- Compulsory Information Requests and Compulsory Interviews
- Arrest and Interview
- Cooperation with Foreign Enforcement Agencies
 - Foreign tax information – adopt and use Tax Information Exchange Agreements (TIEAs)
- Take note of:
 - Time constraints
 - The need for prioritising and tasking
 - The outcome: never lose sight of the desired result

D) Media communications

- It is important to handle media communications well to maintain community confidence in the progress of large public cases
- Whilst it may not be possible to confirm or deny that an investigation has started once elements of the investigation become public (eg. when searches and seizures are conducted and arrests are made) it is important to engage with the wider public as far as possible to **manage expectations**.

E) Evaluation

It is important to continuously evaluate the investigation plan as the investigation evolves:

- Revise and adapt the investigation plan and strategy to reflect the evidence as it is obtained;
- Evaluate the relevant issues;
- Consider emerging issues;
- Assess evidence-gathering strategies;
- Redistribute administrative tasks.

Prosecution Plan

Is this a case that could be settled?

- Legal framework?
- Attitude of suspects
- Is a settlement the right thing to do? Prison/Message to the public/outcomes.

If goes to court:

- Minimum pleas required reflecting seriousness/prison/fines/compensation/confiscation
- Select charges reflect seriousness and give adequate sentencing/penalties
- Cannot reflect ALL the offending: editing and selecting easiest to prove.
- Handling of cooperating accomplices: plea bargains/immunities
- Presentation: use of diagrams and charts. Placing of most serious charges/order of witnesses.
- Think like the defence : analyze potential prosecution/investigation weaknesses
- Focus on defence vulnerabilities: motive/ opportunity/ dishonesty and lies.

The response: criminal or civil sanctions?

What is the desired outcome?

In determining an appropriate response, prosecutors should consider:

- Evidential issues – is there enough to satisfy the necessary burdens of proof?
- The degree of offence – is it a serious offence?
- The attitude and history of the offender
- The foreseeability of the offence
- Financial implications
- Public interest – is there a strong need to deter future offenders

Remember: each case is unique

Who should be punished?

- If possible: target the individuals responsible as well as the company
- Having individuals held responsible does not allow corporate officers and executives to hide behind the corporation
- It precludes an attempt to avoid all liability through a company filing for bankruptcy
- Proving the culpability of actual people will do far more to deter future corporate officers from committing similar acts

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