

CONFIDENTIAL



Financial
Intelligence Centre

OECD TRAINING

NOVEMBER 2023

Background | OECD - Foreign Bribery

- South Africa agreed to the Organisation for Economic Cooperation and Development (OECD) Anti-Bribery Convention (the Convention) in 2007.
- This Convention focuses on the use of domestic law to criminalise bribery of foreign public officials. It applies to active and passive bribery but excludes bribery that is purely domestic and bribery in which the direct or indirect recipient of a benefit is not a public official.
- The OECD Inter-Departmental Task Team consists of a core group, namely the Department of Public Service Administration (DPSA), National Prosecuting Authority (NPA), Department of Justice and Constitutional Development (DOJ & CD) and the Directorate for Priority Crime Investigations (DPCI). Besides the core group, other role players also attend the intergovernmental meetings, namely: National Treasury (NT), Financial Intelligence Centre (FIC), Department of International Relations and Co-operation (DIRCO), Department of Home Affairs (DHA), South African Revenue Service (SARS), the Auditor-General of South Africa (AGSA), the State Security Agency (SSA) and the South African Reserve Bank (SARB).

Background | OECD - Foreign Bribery

- In South Africa's Country Report for June 2019, the WGB raised concerns on South Africa's lack of active enforcement. The WGB noted that South Africa's investigations were far from reaching prosecution stage, with few formal investigative tools used. They expressed concern that after ten years of having foreign bribery cases before the WGB, not one case was ready for prosecution.

FIC's Role | OECD - Foreign Bribery

- Profiling of individuals and entities, the provision and analysis of bank statements to requestors
- Sharing the STR/SAR and CTR information, IFTR information for intelligence purposes
- Combating foreign bribery through enforcement of related offences (provides support)
- Anti-money laundering measures for detecting and combating foreign bribery
- International cooperation in foreign bribery cases –
 - Providing investigative support related to Mutual Legal Assistance requests
 - Sending ORIs (Outgoing Request for Information) to different Financial Intelligence Units requesting information linked to foreign individuals and entities forming part of the foreign bribery investigations.
 - Sharing information received from different FIUs with the OECD Inter-Departmental Task Team
- Training and awareness to accountable institutions on foreign bribery .

Cross-border cooperation: Eastern and Southern African Anti-Money Laundering Group

Established in 1999

The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) is a FATF-styled regional body (FSRB) subscribing to global standards to combat money laundering and financing of terrorism and proliferation

Heads of analysis forum

Mission:

The HoAF is to serve as a platform for promoting dialogue between analysts on inter-jurisdictional ML/TF threats on financial sector and economy in general and sharing tactics and strategies of combating potential and real ML/TF threats facing the region

Objectives

- To ensure effective and efficient exchange of real time operational intelligence, best practices, knowledge and expertise between the ESAAMLG FIUs.
- To enhance and achieve the highest standards countermeasures to prevent and combat the scourge of money laundering and financing of terrorism and the proliferation of weapons of mass destruction.

19 member countries

Created to enhance information exchange between FIUs aimed at detecting and combating predicate crimes, ML and TF.

Angola, Botswana, Eritrea, Eswatini, Ethiopia, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, South Africa, Tanzania, Uganda, Zambia and Zimbabwe and includes a number of regional and international observers such as AUSTRAC, Commonwealth Secretariat, East African Community, FATF, IMF, SADC, United Kingdom, United States of America, UNODC, World Bank and World Customs Organisation

Cross-border cooperation: Egmont Group of FIUs

SINCE 1995

The **Egmont Group** was established to provide a **forum for FIUs** around the world to improve cooperation in the fight against money laundering and terrorist financing.

170 FIUS GLOBALLY

Created to enhance information exchange between FIUs aimed at detecting and combating predicate crimes, ML and TF.

EXCHANGE OF FININT

Platform for **secure exchange** of financial intelligence

FOLLOW THE PROCEEDS

Membership allows FIUs to **follow the proceeds** of corruption/ML/predicate crimes/terrorist financing across borders. **Extradition treaties** not a requirement.

VALUE OF INFORMATION

Assist in international informal exchange of information **before** a requesting country prepares a **formal application** for mutual legal assistance (MLA). Financial intelligence information obtained is only intelligence and evidence still needs to be obtained with MLA arrangements in terms of the International Cooperation In Criminal Matters Act 1996 (Act 75 of 1996).
FIC's financial intelligence assists to inform and support applications (e.g. bank accounts identified).

FIC HAS 96 MoUs

Section 40 allows for sharing of information with a foreign FIU if there is an **MoU** in place – FIC currently has 96 **MoUs** in place to enable information exchange.

FIC's Role | OECD - Foreign Bribery

- ORIs sent to the following FIUs:

FIU Cameroon FIU France FIU Lesotho FIU Central African Republic

FIU Kenya FIU United Kingdom FIU Botswana FIU Germany

FIU DRC FIU Malawi

- FIC received feedback from most of these FIUs and the feedback was shared with the OECD Inter-Departmental Task Team
- There has been no successful prosecutions yet, however there are ongoing investigations.
- Currently, South Africa is investigating 14 cases, of which 4 were finalised.
- Amongst the 14 cases, there is one involving a Lesotho PIP (Politically Influential Person) and South African individuals and entities. This case is anticipating court enrolment before the end of 2023

Simple definition – Foreign Bribery



***Foreign bribery is the bribery of a foreign public official.
It involves two or more jurisdictions***

Foreign Bribery | Modus Operandi Example

- Generally, a tender is issued by a certain government, then some form of bribery takes place to seal the deal. Those who get bribed are public and government officials, city council members, ministers and ambassadors of that government.
- They are bribed by directors of companies. At times SA citizens are used as intermediaries.
- The bribes may include money in cash, a house, vehicles to partners or even chartered flights. Money is paid cash or into bank accounts, sometimes channeled through foreign companies/ subsidiary companies/ trusts or foreign banks with branches in SA.
- In some cases, low-grade products are delivered at a higher price and old equipment is bought back at inflated prices.

Detection Tools Utilised | Current investigations

- The Foreign Bribery cases investigated by South Africa were detected through:
 - ❑ MLAs (Mutual Legal Assistance),
 - ❑ Referrals to Asset Forfeiture Unit,
 - ❑ Whistle-blowing,
 - ❑ Approached by other law enforcement agencies from other jurisdictions,
 - ❑ OECD secretariat (media).

Detection indicators identified by the FIC

- The FIC utilising cross border information received from SARB (South African Reserve Bank) has identified inward and outward payments reflecting the following BOP (Balance of Payments) categories which were used on the foreign bribery cases currently investigated:

BOP 401 = Gift

BOP 288 = Payment for accounting services

BOP 289 = Payment for management consulting services

BOP 291 = Payment for advertising and market research services

BOP 292 = Payment for managerial services

BOP 297 = Payment for other business services not included elsewhere

BOP 101 = Advanced payments for imports

Challenges in Investigation & Prosecution

- Continued delays in responses to Mutual Legal Assistance (MLA) requests from foreign counterparts.
 - ❑ **There are 6 (six) MLAs that were submitted to different countries as far as back as 2016, still outstanding (no response).**
- Most of these investigations are complex and time consuming, as it involves foreign nationals and most of the time investigations and evidence can only be obtained through the “mutual legal assistance” process from the country of which the foreign public official originates from.
- Visits to the countries involved must be conducted by the investigators to obtain the relevant evidence and/or witness statements.



Financial
Intelligence Centre

A large, abstract geometric graphic on the left side of the slide, composed of various shades of blue and grey triangles and polygons.

THANK YOU