Terms of Reference

Tainted Assets in M&A Transactions
Working Group

17 February 2016
Terms of Reference

Background & Context

1. Following several months of dialogue between anti-corruption professionals active in industry, the financial sector, the legal and compliance professions, civil society and multilateral bodies, strong interest has emerged to develop a practical response to the problem posed by so-called “Tainted Assets”.

2. The focus is on risks that arise in the context of M&A and joint-venture transactions, where pre- or post-close due diligence reveals concerns related to beneficial ownership.

3. The purpose of the initiative is to build on existing anti-corruption guidance by developing a framework that serves as the globally-recognised de facto best practice standard for remediating historic taint.

4. The aim is therefore not just to mitigate the risk posed to companies by potential enforcement actions, but to address the broader concerns of host communities, civil society, and relevant domestic and international judicial, prosecutorial and administrative authorities arising from the underlying cause of the taint – i.e. the original corrupt acts – by cleansing the asset to maximise economic development for the host country as well as ensure accountability for those involved in wrongdoing.

5. This, in turn, means developing, through a collaborative, inclusive and transparent process, a roadmap with practical mechanisms aimed at rectifying and resolving instances of historic taint. By earning the recognition and endorsement of key stakeholders, including relevant international institutions, this framework aims to reduce legal, reputational and operating risk for companies and their financial advisors, thereby favouring investment and local economic development.

6. Additional information can be found at https://www.forensicrisk.com/taintedassets

Membership

7. The Working Group will be chaired by Karina Litvack, with Jason Hungerford and Toby Duthie serving as Deputy-Chairs.

8. The Secretary of the Working Group will be Lukas Bartusevicius.

9. The Working Group will have three levels of membership: Working Members, Active Members and Observing Members.

10. Working Members will:

   a. Attend regular meetings as required and actively participate in the Group’s work;

   b. Share responsibility for research and drafting of documents;

   c. Manage outreach with prospective members and stakeholders.

11. Active Members will provide support to Working Members as required and endorse the initiative.

12. Observing Members will be kept apprised of the Working Group’s progress and will participate in meetings and provide support at their own discretion.

13. Working Group membership will be considered by the Co-Chairs on a case-by-case basis.

14. Working sub-groups may be created to explore material issues; sub-groups will be led by Working Members who will be supported by Active Members.

15. If and when sub-groups are formed, the relevant

* Tainted Asset – an asset potentially tainted by bribery or other forms of corruption, or otherwise partially or fully the result or proceeds of criminal activity. A classic example of an asset that may be tainted is a benefit – such as a concession to use land, a commercial contract or a regulatory licence or permit – conferred by government. Such assets pose legal risks to the beneficiary, including under anti-corruption and anti-money laundering laws, as well as economic and reputational risks. Further, the risks can overflow to other involved parties, such as banks that advise on or finance transactions that include Tainted Assets.
briefs will be made available for review to all Working Group members.

Meetings

16. The agenda, with attached meeting papers, will be distributed at least one working day prior to the next scheduled meeting.

17. Meetings will be held under the Chatham House Rule.

Handover

19. The OECD has expressed interest in supporting the Tainted Assets Working Group. Among other things, the support may include forming an official OECD working group.

20. In such a scenario, the management of the Tainted Assets Working Group will be handed over to the OECD with support from the Working and Active Members as necessary.

18. Minutes will be provided to all members of the Working Group via email no later than five working days following each meeting.
Tainted Assets in M&A Transactions Working Group

Key Contact Information:

Chair
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Deputy-Chairs
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Secretary
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More information at https://www.forensicrisk.com/taintedassets