



## ***Tainted Assets - Working Group***

### ***Summary of the Meeting held on 21 January 2016***

#### **1. Overview**

- Participants agreed that the end-goal of the initiative was to develop a framework that:
  - Is globally recognised as the *de facto* best practice for remediating<sup>1</sup> the key legal, reputational and operating concerns posed by holding or transacting in tainted assets (as opposed to providing a definitive safe harbour);
  - Is designed, and explicitly stated to be, for the benefit of host countries as well as companies, by reducing risk and thereby favouring foreign investment;
  - Provides practical and specific guidance that sets out mechanisms for identifying and remediating legacy taint, rather than avoiding risk by not investing;
  - Has earned the recognition/endorsement of key stakeholders and international institutions, including the OECD; and
  - Engages all relevant stakeholders via a transparent process, with a particular focus on the crucial role played by host governments (see **2** below).
  
- Nicola Bonucci noted that:
  - Support could be forthcoming from the UK government/OECD, provided there were 1) evidence of a well-structured and credible deliverable endorsed by a critical mass of corporates that is representative in terms of different industries and geographies, and 2) active engagement of/acceptance by other key stakeholders.
  - The initiative would also need to include at least one "host" government and so it would not be practical to have a fully-formed initiative by the time of the UK Anti-Corruption Summit on 12 May 2016. Rather, a "statement of intent" or proposal could be formulated.
  - The initiative could be potentially the focus of one of the breakout sessions at the OECD/TI policy forum on c.18-19 April 2016.
  - The UK Summit could then indicate encouragement for the initiative and encourage the OECD to be its convenor.
  
- Evidential thresholds applicable to assessing taint were discussed (see **3** below).
  
- Specific next steps were agreed (see **4** below).

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<sup>1</sup> It was also noted that, as a secondary but complementary objective, long-term prevention of further taint also ought to be built into the framework.



## 2. Engagement with “host” governments

- It was agreed that:
  - The most difficult issue in dealing with tainted assets was determining at what stage, and on what basis, corporates should engage with host governments.
  - Such engagement would be daunting, particularly for companies acting alone. It would therefore be helpful to formulate guidelines setting out what corporates could collectively offer to host governments and what they could expect in return. Companies could then engage with host governments with the comfort of being part of a multi-stakeholder initiative.
  - The guidelines on government engagement could not be a recipe for self-protection or a safe harbour, but would serve as a structured set of expectations formulated in conjunction with host governments, civil society, and relevant international institutions.

## 3. Evidential/materiality threshold in relation to corruption

- It was agreed that:
  - The evidence relied upon in establishing taint could be a presumption or inference, based on a collection of circumstantial factors and/or a lack of credible evidence to rebut such a presumption.
  - There needed to be some kind of materiality threshold for any framework to apply, i.e. the taint must pertain to the core value of the deal. If it did not, minor issues could be dealt with as part of a compliance programme.

## 4. Agreed next steps

- Working Group to produce skeleton proposal that builds a narrative of why the issue of tainted assets is important to companies, governments and civil society.
- NRG/TT/TRACE to provide high-level feedback/research on examples of government engagement in relation to tainted assets and examples of DPAs/settlements including compensation to affected governments/companies.
- Formulation of working group governance structure including core working group as a subset of the wider membership.
- Produce “offer and expectations” document and list of participants and stakeholders.
- Seek further corporate/stakeholder engagement in the initiative:
  - TT and TRACE to raise initiative with Corporate Supporters’ Forum and clients, respectively.



- Karina Litvack to seek to recruit further participation at the EITI global conference 24/25 February 2016.
- NRF to raise with the Basel Institute.
- Jason Hungerford to discuss with Louise Dumican (Carlyle) engagement with other PE firms.
- All to speak to peers from respective industries as appropriate.