

U.S., Swiss Initiatives to Recover Looted Assets Likely to Bring Banks More Subpoenas, Regulatory Scrutiny

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By [Brian Monroe](#)



Two initiatives to recover assets embezzled by corrupt political leaders will result in banks receiving more subpoenas and data requests from law enforcement, say analysts.

On July 25, U.S. Attorney General Eric Holder said that the Justice Department had formed the Kleptocracy Asset Recovery Initiative, a group of seasoned lawyers assigned to investigate high-ranking foreign officials accused of stealing funds from their countries.

The formation of the group comes as Swiss lawmakers consider a bill that would make it easier for developing nations to reclaim stolen assets hidden in Swiss banks. Litigants could seek to have assets in suspect accounts frozen for up to five years without the use of a formal mutual legal assistance treaty, even if such an agreement is in place, under the terms of the bill introduced in April.

The two measures will likely further spur investigations into stolen funds, estimated by the World Bank to be as much as \$1 trillion.

The DOJ initiative is “absolutely looking to trace assets from high level government officials into whatever corner of the globe, wherever they may have squirreled it away,” said Jonathan Drimmer, a partner in the Washington D.C. office of Steptoe & Johnson LLP. The focus will likely be on former officials who have looted public funds, he said.

Key to the success of the DOJ group finding foreign assets will be leveraging its “jurisdiction over multinational banks as a tool to get additional information,” said Matthew Herrington, also of Steptoe & Johnson, adding that large international banks could receive more subpoenas from the Justice Department and scrutiny from banking regulators if any funds are found.

The move is part of the “broader anti-corruption enforcement priority that Holder and his team have set,” Herrington said.

Penalties tied to violations of the Foreign Corrupt Practices Act, which targets companies that bribe political leaders, have netted more than \$3 billion in over two years, Herrington said. The prosecutions attack the “supply side of corruption” and the commitment by the Justice Department to help countries victimized by corrupt leaders will attack the “demand side” of the corruption.

The Justice Department group will likely look in “classic secrecy havens” for funds of dubious origin including Switzerland, Cayman Islands, Liechtenstein and other regions, he said.

The group is likely to seek new mutual legal assistance treaties and strengthen those already in place, as well as seek informal meetings with foreign prosecutors and employ diplomatic pressure to banks to get information about assets looted from developing countries, said Fred Abrams, a New York-based attorney specializing in asset recovery.

Asset tracing tied to political corruption is the “flavor of the month” at DOJ and a growing area for private law firms, he said.

The Swiss legislation, labeled the “Federal Act on the restitution of politically exposed persons’ assets,” is likely to be voted on as early as September, according to a Swiss official who asked not to be named.

If passed, there will be no shortage of private attorneys taking advantage of the new standards to aid victimized countries and entities who believe Switzerland has some of their assets, Abrams said.

The bill has a strong chance of passing because the recent battles between Switzerland and the U.S. over UBS AG’s recruitment of U.S. clients who were seeking to evade taxes did “nothing for its image and it wants

to show the international community it has no interest in helping bad people keep dirty money in the country,” said Ed Davis, an attorney for Astigarraga Davis in Miami, FL.

In February 2009, UBS negotiated a deferred prosecution with the United States for helping clients to avoid reporting at least \$20 billion in taxable revenue to U.S. tax authorities. The bank paid \$780 million for the violations and agreed to disclose information on 4,450 accountholders. The Swiss parliament approved a treaty in June to allow the handover of the data.

Over the past 15 years, the Swiss government has returned more than \$1.5 billion in misappropriated assets deposited in Swiss banks by PEPs, a large portion of the amount returned globally, according to a statement in early May by Valentin Zellweger, head of international law at the Swiss foreign ministry.

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