

By email**Malaysia-Swiss Asset Recovery Initiative****assetrecovery@c4center.org**

Bern, 22 January 2018

1 MDB: Profits confiscated from Swiss banks

Dear Ms Gabriel

Dear Ms Chin Abdullah

Dear Mr Chelliah

We refer to your letter dated 30 October 2017 which we received by email on 28 November 2017. You ask that all 1 MDB-related assets confiscated by Swiss regulatory or criminal authorities be assigned to a body or organization whereby the monies will be used to advance human rights and democracy in Malaysia. Particular reference is made to three enforcement decisions of FINMA against Swiss banks.

Firstly, let us emphasize that FINMA is determined to do its utmost to prevent the laundering of corrupt monies through the Swiss financial system. Through sanctioning those who enable such flows of illicit funds through their organizations or do too little to prevent them, we play our part in fighting global financial crime. We take this role very seriously, as evidenced by the six enforcement rulings against banks we have issued in connection with the 1MDB case. In the past two years, FINMA has launched thirteen enforcement proceedings against banks and seven enforcement proceedings against bank managers connected with recent corruption scandals (including 1MDB and Petrobras). We are aware that corruption has a corrosive effect, particularly in emerging markets, and that money laundering is not a victimless crime.

FINMA is an independent financial-markets supervisory authority whose mandate is to supervise, among others, banks, insurance companies, exchanges, securities dealers and collective investment schemes. In order to fulfill its mandate, FINMA may confiscate profits that a supervised person or entity has made through a violation of supervisory provisions. The purpose of this power is to ensure that the violation is not rewarded. Accordingly, confiscated profits fall in Switzerland's general treasury. Importantly, such monies represent gains accruing to the banks or other financial firms involved and should not be confused with the assets of clients of those institutions who may have been involved in illicit activities. Only if persons directly damaged by the action of the respective Swiss financial intermediaries are able to present a corresponding judicial decision or if a

Reference:

8010-T-2-13184

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financial intermediary acknowledges such a claim before FINMA renders its enforcement decision, can FINMA assign confiscated profits to those persons (cf. decision of Swiss Supreme Court of 9 May 2013, DFT 139 II 279, 287). FINMA, as financial market supervisory authority, has neither the power to decide on the use of funds transferred to the Swiss Confederation's general treasury, nor can it confiscate assets of banks' customers involved in criminal proceedings.

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When FINMA took its decisions to confiscate the profits of several Swiss banks, which they made through providing services to 1MDB or related companies and persons, no such judicial decisions or recognized claims existed. Accordingly, without prejudice to criminal confiscation, those profits were allocated to the Swiss Confederation. Appeal proceedings against FINMA's decisions are still pending before the Federal Administrative Court.

We remain at your disposal for any further information.

Yours sincerely,

Swiss Financial Market Supervisory Authority FINMA



Mark Branson
CEO



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