International Association of Prosecutors

Ninth European Regional Conference 2009

‘Following the Money’

International Asset Recovery: the Challenges

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International Centre for Asset Recovery (ICAR)

- Founded in 2006, with seed funding from Switzerland, Liechtenstein and UK
- Non-profit making
- Mission: Provide assistance to developing and developed countries alike in improving their capacity to trace, confiscate and repatriate assets stolen through corruption and related crimes:
  - Capacity development in asset recovery and MLA
  - Case assistance
  - Policy dialogue and research
  - Knowledge dissemination www.assetrecovery.org
  - Practical tools (e.g. IT case management systems)
ICAR - Partners

- International community: Bilateral donors, MDBs (World Bank, Asian Development Bank, African Development Bank, IADB...), UNODC, StAR Initiative, etc.

- Regional Initiatives (Asia-Pacific Anti-Corruption Initiative, POGAR – Programme on Governance in the Arab Region, etc.)

- Network of local experts (e.g. from Malaysia, Nigeria, Philippines, Singapore, South Africa, Argentina...)

ICAR – Programme of work

- Long-term commitment to capacity development programmes and case assistance in Bangladesh, Brazil, East Africa (regional), Indonesia, Madagascar, South-East Asia (regional), Tanzania, Bangladesh etc.

- Contribution to international policy dialogue (Lausanne IV, asset recovery publication, active contribution in UNODC and StAR policy processes, etc.)

- Continuous development of www.assetrecovery.org, e-learning and case management tools
Successful Recovery of Assets

So what is needed?
Five steps to recover assets

- Identification of cases
  - How to initiate cases?

- Tracing
  - How and where to find the assets?

- Freezing
  - How to freeze the assets?

- Confiscation/Forfeiture – getting the evidence
  - What does the requested and requesting state need to do to change ownership?

- Repatriation – getting the proceeds
  - To whom does the money belong?
First step: Case Identification

- **Challenges**
  - Hidden transnational networks
  - Lack of expertise/capacity/technology
  - Political interference

- **Solutions**
  - Whistleblower systems
  - Banking regulations (know your customer systems, suspicious transaction reports, politically exposed person PEPs)
  - Investigative journalism
  - Enforcement of investigation units
Second step: Tracing

- **Challenges**
  - Ability of local law enforcement to act (execute raids, understand documentation)
  - No evidence available
  - Bank secrecy
  - Problem of fishing expeditions

- **Solutions**
  - Follow the money, or even the person
  - Use of informal channels
  - Amnesty agreements
Third step: Freezing

- **Challenges**
  - ✓ Speed of money/delay of reaction
  - ✓ Lack of expertise in victim countries
  - ✓ Mutual legal assistance requests

- **Solutions**
  - ✓ Stronger FIU cooperation
  - ✓ Informal channels
  - ✓ Coordinated investigations in the requesting state
  - ✓ Provisional seizure within 24 hours
Fourth step: Forfeiture/Confiscation

- **Challenges**
  - ✓ Mutual legal assistance requests
  - ✓ Delay in criminal proceedings due to legal problems
  - ✓ Difficulty to establish evidence/ability of local courts
  - ✓ Huge costs

- **Solutions**
  - ✓ Easing burden of proof
  - ✓ Use of anti-money laundering law in requested states
  - ✓ Use of civil actions
  - ✓ Voluntary repatriation – out of court settlements
Fifth step: Repatriation

- **Challenges**
  - National interest in requested states
  - Lack of confidence in the rule of law in the requesting jurisdiction
  - Conditions
  - Third parties interests

- **Solutions**
  - Asset sharing agreements
  - Well prepared monitoring
  - Early release through escrow accounts
Approaches to the Challenges

- Political will
  - Ratification of UNCAC
  - Willigness and ability for legislative reform
  - Accountability and transparency
  - Prosecution of former public officials
  - Effective cooperation of requested states

- Capacity constraints
  - Building institutional capacity
  - Education and training of staff
Approaches to the Challenges

- **Conventions and Agreements**
  - UNCAC
  - OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
  - FATF 40+9 Recommendations on Anti-Money Laundering and Combating the Financing of Terrorism

- **Multilateral**
  - Conference of States Parties of UNCAC and Working Group on Asset Recovery
  - WB/UNODC: Stolen Asset Recovery Initiative (StAR)
  - ADB/OECD Anti-Corruption Initiative for Asia and the Pacific
Approaches to the Challenges

- **Bilateral**
  - Numerous Donor UNCAC Projects
  - Anti-corruption in Good Governance
  - Capacity development

- **Non-state actors**
  - International Centre for Asset Recovery (ICAR) at the Basel Institute on Governance
International Measures: Focus on UNCAC

- Structure of UNCAC
- UNCAC Provisions (Chapter II – VI)
- The OECD Convention
- Future of the OECD Convention
UN Convention against Corruption – What is it? An Overview

- Global anti-corruption treaty
- International consensus
- Responding to corruption as a “... trans-national phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential” (Preamble)
- Prevention and criminalisation of corruption
- International cooperation and asset recovery
- Structure - 8 Chapters, 71 Articles
Structure of Provisions

- **Mandatory requirements**
  - Obligation to take legislative measures
  - Obligation to take other measures

- **Obligations to consider**
  - Measures that state parties must consider to apply or endeavour to adopt

- **Optional measures**
  - Measures state parties may wish to consider
International Center for Asset Recovery

Chapter In force since 12/2005
140 signatory states
109 ratifications

Preamble

Definitions
Chapter I

Prevention
Chapter II

Asset Recovery
Chapter V

International Cooperation
Chapter IV

Technical Assistance
Chapter VI

COSP
Chapter VII

Final
Chapter VIII
Corruption: A Criminal Act

- Jurisdiction (42)
- Law enforcement (37-40, 41)
- Bribery of national and foreign public officials (15, 16)
- Embezzlement (17)
- Laundering proceeds of crime (23)
- Obstruction of justice (25)
- Freezing, seizure, confiscation (31)
- Trading in influence (18)
- Abuse of function (19)
- Illicit enrichment (20)

- Spec. authorities (36)
- Witness protection (32, 33, 34, 35)
- Liability of legal persons (26)
- Concealment (24)
- Bribery & embezzlement in private sector (21, 22)

- must consider
- mandatory
- optional
Challenges Facing Those who Ratify

- Chapter II Prevention
- Chapter III Enforcement
- Chapter IV International Cooperation
- Chapter V Asset Recovery
Conclusion: The Challenges

- Lack of an appropriate legal framework
- Overcoming jurisdictional issues
- Changing the mindset of law enforcement
- Increase Capacity/Expertise
- Increasing vigilance in Financial Centres
- Sharing and facilitating an improved exchange of information between countries
Prominent Case Studies

Ferdinand Marcos - Philippines

Sani Abacha - Nigeria
The Case of Ferdinand Marcos

- **Estimated amount and countries involved**
  - Estimated US $5 to 10 billion → mainly CH, US

- **Process of recovering assets**
  - 1986 Voluntary freezing of Marco’s and his cronies’ assets in CH
  - 1998 Transfer money to escrow account
  - 2003 Philippine Supreme Court forfeiture decision

- **Amount of recovered money, time frame**
  - $658 million in 18 years
  - Public treasury – Agrarian Reform Fund
The Case of Sani Abacha

- **Estimated amount and countries involved**
  - Estimated US $2 to 5 billion → CH, LIE, LUX, UK

- **Process of recovering the assets**
  - Decree 53 → amnesty → $770 million
  - 1999 Nigerian request → CH froze $670 million
  - 2004 CH repatriation order without judgement in Nigeria

- **Amount of recovered money, timeframe**
  - 2005/06 repatriation under conditions: $505.5 million in 5 years
  - Monitoring: WB and NGOs
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