The Current Challenges of Asset Recovery
Situation Report

- International initiatives
- UNTOC
- UNCAC
- Number of successful cases of asset recovery...
- Versus the size of illicit proceeds in open and underground economies?
Translating Policy Into Action

- High policy goals must be translated into laws
- Laws must be effectively implemented
- Investment of resources including trained and competent personnel
- Barriers to effective cooperation at the operational level
- Policy goals become difficult to achieve in practice
Obtaining Confiscation Over Property

- Jurisdiction to confiscate property located abroad?
- Conviction based order or non-conviction based order?
- In personam or in rem against property
- Dead or absconding defendants
- Value based order (to pay a certain sum)
- Linkage of offending to property to be confiscated?
Freezing of Foreign Property

- Preservation measures
- Points of contact between requesting and requested jurisdiction
- Stage of the criminal proceedings – investigation or prosecution?
- Identification of the property
- High legal thresholds in the requested jurisdiction
- Matters of political sensitivity e.g. regime change
MLA Mechanisms

- Bilateral Agreements
- Multilateral Conventions
- Assistance based on reciprocity
- Availability of necessary domestic laws in both requesting and requested jurisdiction
- Use of Central Authorities
- Prosecutor to prosecutor assistance
- Priority / delay
Managing and Preserving the Property

- Available tools to preserve and manage assets pending confiscation
- Appointment of property manager or receivers
- Who pays the costs of management?
- Time limits on the freeze of property?
- Cases of serious delay and the running down of the property in value, etc
Challenges to the Freezing Order

- Resolution of issues of fact in the requesting jurisdiction by courts of the requested jurisdiction
- Resolution of issues of foreign law
- The court of the requested jurisdiction is not a rubber stamp
- Issues of due process, human rights and fundamental protections
- How to achieve the right balance?
Enforcing the Foreign Confiscation Order

- Direct enforcement of foreign confiscation orders
- Minimum procedural requirements
- Finality of proceedings, opportunity to defend
- Need to trace offending to property to be confiscated?
- Would enforcement be contrary to the interests of justice?
- Comity between courts
- Issues of mistrust
Sharing and Repatriating Assets

- UNCAC
- UNTOC
- Bilateral sharing mechanisms
- National asset sharing policies
- Question of costs
- Safeguards on repatriated funds to ensure they are put to proper use and not ‘re-stolen’.
Problems of Requesting State

- Developing countries
- Insufficient expertise and resources
- Breakdown of communication with requested state
- Assistance from StAR, ICAR, etc
- Civil versus common law systems
- Need to trace funds to the alleged offending?
- Inability to identify defendants e.g. internet scams
- Delay
Problems of the Requested State

- Mature economies or financial centers with sophisticated legal systems
- High demands e.g. to trace and identify assets
- Failure to receive adequate MLA requests
- Gap between what is required of the requesting state and what the requesting state can provide
- Novel solutions e.g. Swiss procedure to confiscate on basis the requesting jurisdiction is more or less a failed state
Overcoming High Barriers

- Keep dialogue going between the requesting jurisdiction and requested jurisdiction
- Enlist third party support, if necessary
- Engender a sense of trust and joint effort
- Encourage face to face meetings
- Forge a team
- Aim for victory
- It can be fun!
Renewed efforts for effective implementation

High level commitment by governments to adequately resource and give priority to such efforts as part of their national agenda

Possible new solutions and options e.g. an asset recovery sanctions regime coordinated at the international level

Good will all around.