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ASSET RECOVERY

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Introduction

Why does Asset Recovery matter?

- **Political case**
 - Accountability and legitimacy
 - Social and political stability
- **Developmental case**
 - Corruption and bad governance drain development resources
 - Recover stolen assets for public sector funding/development
- **Rule of Law case**
 - No safe havens
 - Virtuous circle prevention / repression
 - Ending impunity and establishing the rule of law
 - Compensating the victims of corruption



General/Policy Barriers

- **Lack of trust**
 - Establish institutional and promote personal contacts between relevant officials
- **Lack of comprehensive AR policy – the proceeds of crime**
 - Make AR a policy and operational priority
 - Establish clear targets and institutional accountability
 - Ensure legislation supports asset recovery
 - Create specialized institutional arrangements for AR
 - Create transparency concerning the management/use of recovered assets
 - Determine and allocate resources to the AR effort
 - Develop capacities and skills



Legal Barriers

- **No MLA treaties for AR & no direct use of UNCAC and other relevant conventions**
- **Lack of effective domestic confiscation measures regimes**
 - Property and value-based confiscation,
 - Confiscation of instrumentalities,
 - Presumptions of illicit origin of assets (reversal of the burden of proof, extended confiscation)
 - Non-Conviction Based Forfeiture (NCBF) regime
 - Enforcement of foreign NCBF orders
- **Lack of quick freeze or restraint mechanism**
 - Prompt tracing & freezing powers (even prior to formal MLA),
 - Introduce monitoring orders (required under the Warsaw Convention), and
 - Provide for sufficient time to conclude investigations.
- **Unbalanced notice requirements**
 - Permit investigative measures without notifying asset holders



Operational Barriers (1)

- **Obstacles to financial investigations**
 - Timely access to bank information, property & corporate registries, tax information, asset declarations, etc.
 - Provide FIU powers to proactively request information from financial institutions on accounts & account holders
- **Absent or ambiguous focal points**
 - Identify focal points - provide updated information on gov't websites
 - Use existing global/regional networks (StAR – Interpol, Eurojust, CARIN, etc.)
- **Inability/unwillingness to deal with deficient requests**
 - Lend a helping hand to requesting countries (translation, TA, be proactive)



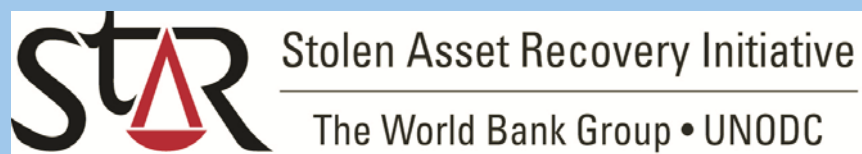
Operational Barriers (2)

- **Formalistic approach to dual criminality**
 - Use a conduct based test to dual criminality
- **Ineffective management of assets**
 - Powers to preserve the value of assets pending confiscation
 - Hire contractors with specialized skills to manage assets
 - Collect all relevant statistical data on seized/confiscated assets in a systematic way



Enhancing Action on Asset Recovery

- Asset recovery as policy priority
- Implement UNCAC and other relevant international/regional conventions at domestic level
- Provide intl. cooperation at all stages of asset recovery, and use UNCAC or other relevant conventions, as needed
- Build domestic institutional and operational capacity
- Clarify roles, responsibilities and coordination mechanisms
- Cooperate with partners in building dedicated AR networks of practitioners



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worldbank.org/star