

## Identifying, Restraining & Recovering Stolen Assets in the OSCE Region Vienna, Austria September 3, 2012

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### ASSISTANCE FROM THE U.S.

- Enforce Foreign Forfeiture Judgments
- U.S. initiates its own forfeiture action
  - Criminal Forfeiture (requires U.S. prosecution)
  - *In Rem* (NCB) Forfeiture
- Provisional Restraint Mechanisms



## Challenges U.S. faces in asset recovery

- Cases are dependent upon foreign evidence & cooperation
- Conduct has been legitimized in the victim country because of influence of corrupt official
- Unwillingness of investigators and prosecutors in the victim country to provide evidence due to fear of reprisals
- Staleness of evidence, particularly after a regime change
- Acquittal of the official in the country where corruption occurred.
- Dual Criminality - false financial disclosure statements, malfeasance in office, illicit enrichment, are not forfeitable offenses in the U.S.
- Inability to prove nexus between property in the U.S. and corruption acts often due to limited financial investigations capacity
- Plea agreements, settlements, and judgments of convictions in requesting country fail to address foreign based property
- Concerns about Due Process in requesting country affect acceptance of foreign orders and judgments



## Arafat Rahman ("Koko") son of former Prime Minister

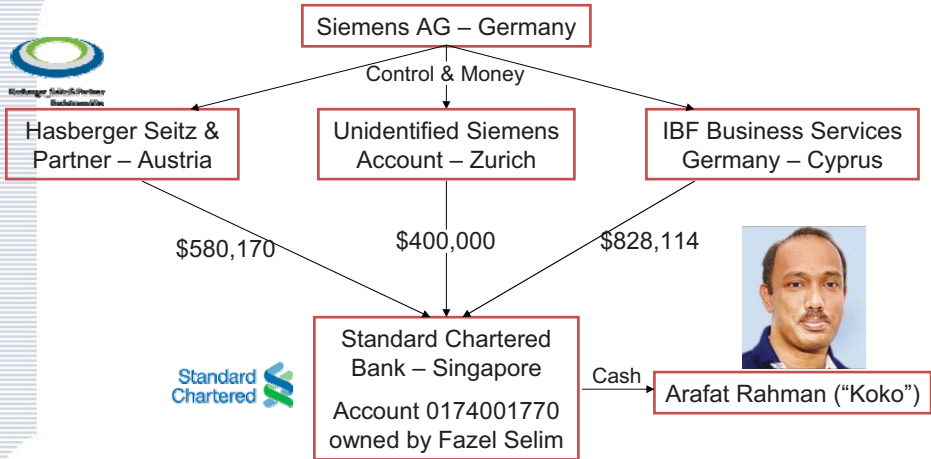


- Convicted in Bangladesh for Money Laundering and sentenced on June 23, 2011, to six-year rigorous imprisonment and fined him Tk 38.83 crore for laundering Tk 20 crore to Singapore.
- The U.S. initiated a Non-Conviction Based Confiscation Proceeding against assets laundered through the United States and transferred to Singapore involving more than \$2 million as proceeds of foreign corruption and FCPA violation in connection with government telecommunications and port projects. (UNCAC Article 54(1)(b)).



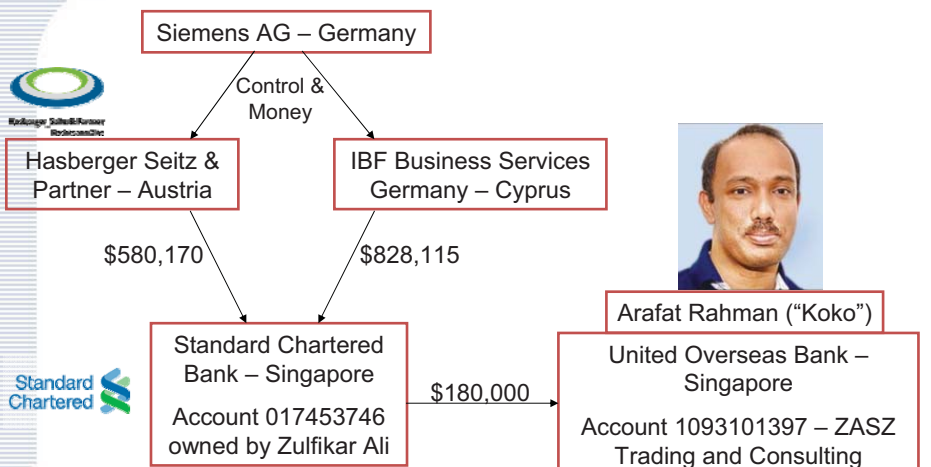
## Bangladesh Telephone Telegraph Board

Transfers from Siemens to Fazel Salim to Arafat Rahman ("Koko")



## Bangladesh Telephone Telegraph Board

Transfers from Siemens to Zulfikar Ali to Arafat Rahman ("Koko")





চট্টগ্রাম বন্দর কর্তৃপক্ষ  
CHITTAGONG PORT AUTHORITY

Transfers from China Harbor Engineering Company to Arafat Rahman ("Koko")



\$626,828  
\$565,349  
\$564,658

Arafat Rahman ("Koko")

United Overseas Bank –  
Singapore

Account 1093101397 – ZASZ  
Trading and Consulting



## World Ocean Farm

- Between 2005 and 2007, World Ocean Farm defrauded over 35,000 Japanese victims by promising investors 100% annual return.
- World Ocean Farm claimed to invest in profitable shrimp ponds in the Philippines growing and selling Black Tiger shrimp for export.



ワールドオーシャン基金(1号)匿名組合

重要事項説明書

予想現金分配

100%相当

(営業者)  
ワールドオーシャン基金 株式会社



## Investors Visit the Farms

“Shrimp production was so small that when a group of investors visited the shrimp farms, employees had to buy shrimp from a local market to feed the investors.”

-DOJ Press Release M



Kuroiwa said the ponds were 450 times the size of the Tokyo Dome, but they were really only 14 times the size and never produced a profit.

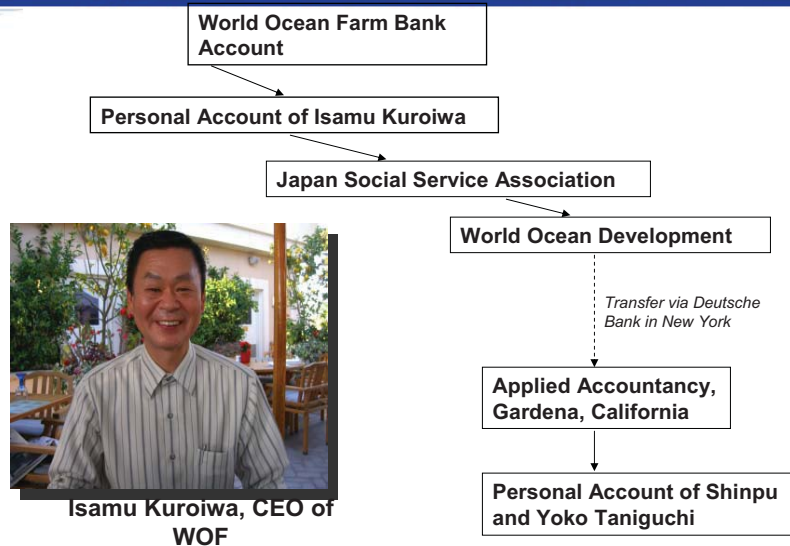


## Proceedings in Japan

- On July 2, and July 24, 2008, Kuroiwa was arrested and charged with violations of the
- Acts on Punishment of Organized Crimes, Control of Crime Proceeds and Other Matters,
- Article 3 (*organized fraud*) and Penal Code, Articles 246 (*simple fraud*) and 60 (*complicity*).



## Scheme collapsing -- Money Flow to the U.S.



## Laundering & Layering of \$40 Million

- Kuroiwa moved the money through different accounts to disguise the source and nature of the \$40 million.
  - The transfer to JSSA was to make the money appear to have come from a charity
  - The transfer through Applied Accountancy was a deliberate attempt to avoid suspicion and distance himself from the money.



## Funds Seized by the FBI

**CASHIER'S CHECK**  
Los Angeles Main #113 File#M1169668

OFFICE OF ISSUE: Union Bank - Legal Process Department 9404084

REMITTER: Shinpu Tanaguchi Acct#1131150417 DATE: 4/16/2007

PAY TO THE ORDER OF: \*\*\*\*\*U.S. MARSHALS SERVICE\*\*\*\*\* \$ 40,164,465.52

FORTY MILLION ONE HUNDRED SIXTY-FOUR THOUSAND FOUR HUNDRED SIXTY-FIVE AND 52/100 DOLLARS

UNION BANK OF CALIFORNIA  
UNION BANK OF CALIFORNIA, N.A.  
SAN FRANCISCO, CALIFORNIA  
800-238-4486

FORM 00247-L (Rev. 8/2006) 11-497 1210

AUTHORIZED SIGNATURE

⑈9404084⑈ ⑆21000497⑆0534000005⑈



## Forfeiture of \$40 Million



- The United States filed a Non Conviction Based forfeiture action against the \$40 million on May 6, 2009, based on:
  - Money Laundering and attempted Money Laundering, Wire Fraud, and International Transportation of Stolen Property
  - MLAT Request sent to Japan to give notice to Kuroiwa
- *The court entered a default and judgment of Forfeiture on March 12, 2010.*



## Returning Forfeited Funds to Japan

- Kuroiwa pleaded guilty in Japan and was sentenced to 14 years in prison.
- \$40,269,890.20 was forfeited to the United States on March 12, 2010.
- Department of Justice granted the bankruptcy administrator's petition for remission on February 11, 2011.
- ***The forfeited funds were returned to Japan on March 7, 2011.***



## Distribution of Returned Funds

- United States may return money to innocent victims of the crime for which the money was forfeited. See 28 C.F.R. Part 9.
- Forfeited Funds will be deposited into a separate, non-comingled account
- Disbursements must be approved by Tokyo District Court
- Forfeited Funds will only be distributed to victims as defined by 28 C.F.R. Part 9 and as
- Interest and attorney's fees will not be paid to any victim from the Forfeited Funds.
- All of the Forfeited Funds will be distributed to victims (not attorneys' fees, administrators costs, expenses etc.)





## PRACTICE TIPS

- Time is the enemy –Plan ahead
- Keep it simple; focus on what is realistic
- Coordinate timing and execution
- Translations
- We try our best but if disclosure is ordered by our court, **CONFIDENTIALITY CANNOT ALWAYS BE ASSURED.**
- Execution of requests are governed by U.S. law (the law of the requested state)



## PRACTICE TIPS

- Work with US law enforcement to confirm the existence and location of assets
- Explore possibility of U.S. domestic case
- Follow format for making requests (Exemplars available from OIA –the U.S. Central Authority)
- Share a copy of your assistance request with DOJ (OIA/AFMLS) in draft form for review
- Seek to include findings in the court judgment providing the nexus between the property in the U.S. and the criminal activity



## PRACTICE TIPS

- Include “any proceeds traceable thereto” language
- Explain nature of criminal activity so that analogous U.S. offense can be determined
- Explain due process accorded
- Duration of order should be stated
- Consult with DOJ prior to obtaining an order in your court affecting property in the United States



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