Confiscation and Asset Recovery

Challenges in Practice
Dr. Claire A. Daams MA LL.M., ADB OECD Regional Anti-Corruption Conference, 15 November 2017 Seoul, Korea
Detection, Investigation, Prosecution, Adjudication, International cooperation.
• Multinational corporation

• 5 layers of companies within the corporate structure

• Payment of bribes to foreign public officials

• Use of various bank accounts, including the company own bank

• Lack of organization within the company
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Multi-jurisdictional co-operation

1. Multiple jurisdictions
2. Obtaining and providing MLA
3. Legal framework
4. Level of Evidence required

- Structure of the corporation
- Defence strategy
- Forum shopping and double jeopardy
- Out of court settlements/DPA/Plea Agreements/Enforcement Actions
INTERNATIONAL COOPERATION

- Timing
- Co-ordination with all foreign counterparts
- Gathering of intelligence
- Division of tasks

- Mutual legal assistance
- Judicial authorities only!
- Legal bases: Multilateral conventions, bi-lateral treaties, domestic law
- Goal: obtaining evidence not intelligence
CHALLENGES in MLA

- Lack of contact prior to the formal transmittal of request
- Difficulties in establishing/maintaining contacts (due to frequent changes within authorities) Lack of support from the requesting state during appeal procedures
- Incomplete Statement of Facts (dual criminality examination) OECD and UNCAC Convention assumes it to be fulfilled
- Language Problems (translation and legal concepts)
- Opaque/no division of tasks
- Incomplete settlements/sanctioning
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Guideline 1: Preliminary review

Prior to a criminal investigation, involved jurisdictions should undertake a sufficient preliminary review of any indications and allegations, using all available sources, including financial and law enforcement intelligence and open source, and where appropriate share financial information with concerned FIUs, with a view to support subsequent criminal investigations.

Step 1 Receive allegation

Potential sources of allegations may include SARs/STRs, financial intelligence, whistle-blowers, witnesses, informants, victims, media reports, requests for MLA or (foreign) law enforcement agencies, and referrals from Foreign Affairs Offices.

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GUIDELINES FOR EFFICIENT RECOVERY OF STOLEN ASSETS

The Practical Guidelines are a set of international good practices intended to enhance the effectiveness and efficiency of requesting and requested states in the asset recovery process.

What are the guidelines?

Asset recovery is an intricate and time-consuming process. The Guidelines for the Efficient Recovery of Stolen Assets outline the asset recovery process, breaking it down into practical, manageable guidelines, allowing a targeted audience to focus on the asset recovery process in a comprehensive manner.

The Guidelines are accompanied by a non-binding step-by-step approach. They both intend to assist practitioners, policymakers, and legislators to better plan each step of the process. The breakdown into guidelines and step-by-step enable viewing the asset recovery process.

Who are they for?

- Practitioners (e.g., intelligence officers, law enforcement and judicial authorities) can gain an understanding of the process and perspectives into the asset recovery process, resulting in medium- to long-term enhanced capabilities for both originating and receiving jurisdictions to recover stolen assets.
- Policymakers will have a better understanding of the asset recovery process in a manner that will allow them to propose targeted policies that result in a meaningful impact.
- Legislators will be able to address legal challenges posed by or within the asset recovery process.

MONFRINI BITTON KLEIN
SWISS LITIGATORS

MBK.LAW
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Thank you

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