

# **STOLEN ASSET RECOVERY: POLICY DEVELOPMENT AND PRACTICAL TOOLS**

## **(SUMMARY)**

*Emile van der Does de Willebois\**

An intimate connection exists between corruption and development, and development organizations, including the World Bank, must be very conscious that they do not sponsor or fund the private activities of corrupt officials; not only is the aid lent thus rendered less effective, but it also perpetuates corruption.

Until recently, the World Bank advocated a non-law enforcement approach to corruption, but there has been a policy change: a shift from this developmental view of the matter to a more “law and order” view. While good governance and transparent and effective public financial systems are vital, they need to be complimented by law enforcement efforts. Realizing this, in 2007 the World Bank and the UN launched the StAR Initiative, which receives strong support from World Bank management as well as external support; for example, the explicit call of the G20 leaders in Pittsburgh on the StAR Initiative to continue its efforts to mitigate the effects of corruption. With this support comes the responsibility to make a real contribution to combating corruption.

The StAR Initiative’s objectives are to reduce barriers to asset recovery, and thereby to encourage and facilitate systematic and timely return of stolen assets. StAR emphasizes the joint responsibility of developed and developing countries in this endeavour. Specifically, these objectives take the form of technical assistance and financing training courses; advisory services to support the preparation and analysis of mutual legal assistance requests (not their execution); and knowledge and advocacy, on which this presentation focused.

Many jurisdictions already have asset recovery legislation in place, and while it is largely focused on proceeds from drugs and organized crime, it can also be used for corruption. The Financial Market Integrity Unit can give advice in this regard, as well as supporting multi-agency teams, encouraging co-ordination and communication between investigators, prosecutors, AMLUs and FIUs, etc. The Financial Market Integrity Unit also contributes to the development of asset recovery programmes and has produced a paper on the management of assets after return. With regard to mutual legal assistance, while the World Bank cannot take control of specific cases, it can give advice in hypothetical terms. Details of these projects are outlined in the accompanying slides 7 to 10.

Of great importance is the integration of the anti-money-laundering (AML) and anticorruption agendas. This is illustrated with the example of James Ibori of Nigeria, a state governor, who, although immune from prosecution under the Nigerian Constitution, had his assets frozen under AML legislation in the UK, the jurisdiction to which he had moved his assets, following advice from the Nigerian Economic and Financial Crimes Commission (EFCC).

The FATF Recommendations overlap with certain provisions of the UNCAC (listed in slide 11) and of particular importance is the issue of politically exposed persons (PEPs), specifically scrutiny of bank accounts held by such persons, which is addressed by Article 52 of the UNCAC and Recommendation 6 of the FATF40+9 Recommendations. However, there is a low level of compliance with FATF Recommendation 6 (only three of 124 surveyed jurisdictions were deemed to be fully compliant), and other provisions relating to PEPs generally.

The issue of PEPs is an important one for the StAR Initiative, and it has written a policy paper, entitled “Politically Exposed Persons – A Policy Paper on Strengthening Preventive Measures”, which

---

\* Senior Financial Sector Specialist, Financial Market Integrity Unit, World Bank.

aims to give policy recommendations to states on how they should deal with PEPs and then is divided into principle recommendations and good practices. Some of the principle recommendations are: enhanced due diligence, (which all countries which have ratified the UNCAC should apply to both domestic and foreign PEPs, regardless of FATF status); requiring a declaration of beneficial ownership at the point of opening an account; requiring an asset and income declaration; periodic review of PEPs customers; and avoiding setting time limits on the time a PEP remains a PEP (this should be considered on a case-by-case basis). See slides 14 to 18.

On the basis of UNCAC Article 54 and FATF Recommendation 3, the StAR Initiative has produced a knowledge product entitled the Non-Conviction Based Guide to Asset Recovery, co-authored by a VE to the Seminar, Ms. Linda Samuel. The guide draws upon the experience and expertise of practitioners from the common law and civil law traditions, as well as from the developing and the developed world. Some of the key concepts addressed in this guide are outlined in slides 23 to 28, including the differences between conviction based or criminal forfeiture and non-conviction based or civil forfeiture. FATF is working on reviewing some of the 40 Recommendations, including forming a Working Group on the issue of confiscation, and possibly strengthening the Recommendation on civil forfeiture, although NCB forfeiture ought never to be a substitute for criminal prosecution. Furthermore, fundamental principles relating to NCB forfeiture, such as the standard of proof to be employed and the use of a rebuttable presumption that unexplained wealth accumulated during a period of public service is attributable to corruption, should be delineated in statutory law.

A further policy product of the StAR Initiative is the publication entitled “Barriers to Asset Recovery”, which will be published in the second half of 2010. (See slides 29 to 38). This publication reflects one of the UNCACs most fundamental principles: the return of assets (Article 51). This principle is also reflected in Recommendation 38 of the FATF 40+9 Recommendations. The publication’s objective is to identify and analyse operational and practical barriers to asset recovery. It also lists recommendations as to how developing countries can deal with the barriers thus identified. Its most important conclusion is that “where there is a political will, there is a legal way”. Lack of political will is the greatest barrier to asset recovery. Legal barriers affecting requesting and requested states, as well as operational, institutional and practical barriers are listed in slides 31 to 35. The publication also recommends that countries utilize the assistance and training offered by the StAR Initiative and other international organizations in the process of asset recovery.

Another of the StAR Initiative’s policy products is a publication on the “Misuse of Corporate Vehicles”, which means using legal entities, including corporations, trusts, foundations and partnerships with limited liability, for illicit purposes, for example, money-laundering. The publication is based on UNCAC Article 12 and FATF Recommendation 33. The Leaders’ Statement at the Pittsburgh Summit requests FATF to strengthen standards on customer due diligence, beneficial ownership and transparency. Details of the contents are available in slides 41 to 43.

Finally, another StAR knowledge product, the Asset Recovery Handbook, the ultimate “how to” guide in asset recovery, will be published in October 2010.



# Stolen Asset Recovery

## Policy development and practical tools

Third Seminar on Good Governance for  
Southeast Asian Countries, UNAFEI  
Manila, December 9-11, 2009

Emile van der Does de Willebois  
Financial Market Integrity  
World Bank  
[evanderdoes@worldbank.org](mailto:evanderdoes@worldbank.org)

1

## Corruption – why we care

- The cross-border flow of the global proceeds from criminal activities, corruption, and tax evasion is estimated at between \$1 trillion and \$1.6 trillion per year.
- Many developing nations are hemorrhaging money desperately needed to alleviate poverty. By one estimate, corrupt money flowing abroad from the developing and transition countries is estimated at \$40 billion per year.
- This represents 40% of annual official development assistance funds (ODA).
- Twenty-five percent of the GDP of African states is lost to corruption every year, amounting to \$148 billion, but the problem exists in every continent.

2

## Corruption-why we care

Assets stolen by corrupt leaders at the individual country-level are frequently of staggering magnitude (estimates by TI):

- Suharto (1967-98) \$15 - \$35 billion
- Marcos (1972-86) \$ 5 - \$10 billion
- Abacha (1993-98) \$ 2 - \$ 5 billion

Even a portion of recovered assets could provide much-needed funding for social programs or badly needed infrastructure. Every \$100 million recovered:

- could fund full immunizations for 4 million children,
- provide water connections for some 250,000 households, or
- fund treatment for over 600,000 people with HIV/AIDS for a full year; or
- fund 50–100 million drug treatments for malaria.

3

## Stolen Asset Recovery (StAR) Initiative Was Launched by the World Bank and UNODC on September 17, 2007

*“There should be no safe haven for those who steal from the poor,”*

*“Helping developing countries recover the stolen money will be key to fund social programs and put corrupt leaders on notice that they will not escape the law.”*

**World Bank President, Robert B. Zoellick**

*“This Initiative will foster much needed cooperation between developed and developing countries and between the public and private sectors to ensure that looted assets are returned to their rightful owners,”*

**Secretary General of the United Nations, Ban Ki-moon**

4

## High Level Political Support

*“As we increase the flow of capital to developing countries, we also need to prevent its illicit outflow. We will work with the World Bank’s Stolen Assets Recovery (StAR) program to secure the return of stolen assets to developing countries, and support other efforts to stem illicit outflows..”*

**Leaders’ Statement, The Pittsburgh Summit, September 24-25, 2009**

5

## Objective of StAR

“To reduce barriers to asset recovery and thereby encourage and facilitate more systematic and timely return of stolen assets. StAR emphasizes that developed and developing countries share a joint responsibility in tackling corruption and that international collaboration and collective action are needed to facilitate asset recovery and prevent asset theft.”

6

## Objective of StAR

- Development of national capacity through technical assistance and financing training courses for practitioners at both the national and regional levels.
- Assistance in the Recovery of Stolen Assets in preparatory stages of asset recovery proceedings. This may include advisory services to support the preparation and analysis of mutual legal assistance requests
- Knowledge and advocacy
  - I. “how to” guides for practitioners
  - II. tools and supporting information systems for practitioners; and
  - III. analytical work to inform the design and implementation of policies aimed at lowering the barriers to asset recovery in financial centers

7

## Country assistance

- Twenty country requests for StAR assistance
- Key areas for assistance
  - Awareness raising
  - Gap analysis
  - Integrating the AML and anti-corruption agendas
  - Legal reform and development
  - Support to multi-agency teams
  - Development of asset recovery programs
  - Support on specific cases

8

## Knowledge and advocacy

### NETWORKS

- Interpol Focal Point Database (Launched February 2009)

### HANDBOOKS FOR PRACTITIONERS

- Non-Conviction Based Asset Forfeiture Guide (April 2009)
- Proceeds of Corruption: Managing Asset Return (July 2009)
- Asset Recovery Handbook (October 2010)
- Good Practice Guide on Income and Asset Declaration (September 2009).

### TOOLS FOR PRACTITIONERS

- Legal Library on Asset Recovery (October 2009 and then continuous)
- Reporting on UNCAC Implementation (October 2009 and then continuous)
- Mutual Legal Assistance (MLA) Request Writer Tool (October 2009)
- Knowledge Consortium (October 2009 and then continuous)

9

## Knowledge and advocacy

### POLICY ANALYSIS

- Managing Politically Exposed Persons (PEPs) : enhanced due-diligence (October 2009)
- International Architecture : gaps in the institutional framework (October 2009)
- Lowering the Barriers : innovation and policy options in financial centers (second half 2010)
- Corporate Vehicles : identifying beneficial ownership (second half 2010)

10

## Overlap AML and Anti Corruption agenda

- UNCAC and FATF 40 recommendations cover some of the same ground
  - Chapter II Preventive Measures covers FATF Recs 5,10,13, 19, 20, 23, 31, 33-34, 40, SR VI, VII, SR IX
  - Chapter III Criminalization and Law Enforcement covers FATF Recs 1-4 and 14 a
  - Chapter IV International Cooperation covers FATF Recs 27, 31 36, 37, 39
  - Chapter V Asset recovery covers FATF Recs 5,6,7,10,18,26,38

11

## StAR policy development: PEPs

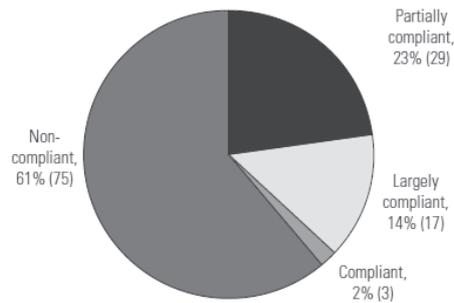
- UNCAC, Article 52:
  - “to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates.”
- FATF 40+9 Recommendations: Rec. 6
  - Risk management systems to identify PEPs
  - Senior management approval
  - Establish source of funds and source of wealth
  - Conduct enhanced ongoing monitoring

12

## PEPs- low compliance

- More than 80% of jurisdictions have not implemented effective measures. Only 3 jurisdictions compliant
- Compliance lower in FATF jurisdictions

FATF Recommendation 6: Compliance of 124 Jurisdictions



13

## PEPs- Principle Recommendation 1

### Apply EDD to All PEPs, Foreign and Domestic

- UNCAC - domestic and foreign PEPs; FATF – foreign only
- Why?
  - Legal and reputation risks remain same – domestic politicians are subject to same pressures and perverse incentives.
  - Increase credibility of commitment to fighting corruption and money laundering
  - Reality: Many banks are already covering both

14

## PEPs- Principle Recommendation 2

### Require a Declaration of Beneficial Ownership

- Provides background to assist with identification and verification
- Assist regulatory authorities in evaluating BO practices
- Requirement to sign under criminal penalty, where existing, serves as deterrent
- *One* tool – not *only* tool—to identify and verify BO. Not sufficient to let banks “off the hook”

**BOX 2.2** Sample Form for Declaration of Identify of the Beneficial Owner

**Form X: Declaration of Identity of the Beneficial Owner**

[To be executed by the contracting customer in writing.]  Account/Deposit No.

Contracting customer: \_\_\_\_\_  
(full name and address)

I, the contracting customer, hereby declare:  
(mark with a "X" where appropriate)

that I am the sole beneficial owner\* of the assets in the account referenced above

OR

that the beneficial owner(s) of the assets in the account referenced above is(are):  
(Provide: Full Name of the natural person(s), Date and place of birth, Nationality, Address/Domicile, Country, Passport Number, National ID Number or similar national identification document and a copy of such document(s))

\_\_\_\_\_

\_\_\_\_\_

The contracting customer undertakes to [automatically] [or within a reasonable period of time and in any event no less than two weeks] inform the Financial Services Business (insert applicable Bank contact) in writing about any changes in the information provided above.

It is a criminal offense to [deliberately] [intentionally] provide material false information on this form (insert applicable criminal law and penalty in bold type).

Signature(s) of the contracting customer: \_\_\_\_\_ Witnessed by Bank Official: \_\_\_\_\_

Date: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\* Beneficial Owner includes (the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf the transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement and relevant third parties. (Discations to national law, international standards or conventions as appropriate.)

15

## PEPs- Principle Recommendation 3

### Request Asset and Income Declarations

- Required in more than 110 countries
- Provides a “snapshot in time” that bank can use to compare with profile or account activity
- Addressing refusals
- Issues: Verification is uneven
- Other uses: PEP identification if public list of filers, analysis of STRs by FIUs

## PEPs- Principle Recommendation 4

### Periodic Review of PEP Customers

- Review of the “big picture” on risk-based approach, at least yearly
- Helps to overcome silo approach
- Should include consideration by at least one senior manager
- Good Practice: PEPs Committee

17

## PEPs- Principle Recommendation 5

### Avoid Setting Limits on the Time a PEP Remains a PEP

- UNCAC and FATF – “once a PEP always a PEP”
- Problems with time limits
- Consider on case-by-case basis using risk-based approach

18

## StAR knowledge products: NCB guide

- UNCAC, Article 54 (1)(c) (entered into force Dec 2005):  
“Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other cases.”
- FATF 40+9 Recommendations: Rec. 3 (June 2003)  
“Countries may consider adopting measures that allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction.”

19

## StAR knowledge products: NCB guide

- Limitation of Criminal Forfeiture:  
Cannot always forfeit property that was derived from crime or was used to commit a crime in a criminal prosecution. Defendant may be:
  - Dead
  - A fugitive
  - Immune from criminal prosecution
  - Too powerful
  - [Acquitted for lack of admissible evidence]

20

## StAR knowledge products: NCB guide

- Criminal and NCB Forfeiture:

Conviction Based or Criminal Forfeiture (Common law jurisdictions)		Non-Conviction Based or Civil Forfeiture
Against the person (in personam) → Part of the criminal charge against a person	Action	Against the thing (in rem) → Judicial action filed by a government against the thing as the wrongdoer
Imposed as part of sentence in criminal case	When	Filed before, during, or after criminal conviction, or even if there is no criminal charge against a person
Criminal conviction → beyond a reasonable doubt	Proof required	Unlawful conduct → <u>balance of probabilities</u> . Criminal conviction not required
Forfeit defendant's interest in property	Forfeiture	Forfeit the thing itself, subject to innocent owners

21

## StAR knowledge products: NCB guide

- Based on experience of experts in the field of NCB asset forfeiture, both from civil and common law and from developed and developing countries- investigating magistrates, prosecutors, law enforcement officials and asset managers.
- 36 key concepts- recommendations critical for designing and building an effective NCB forfeiture regime
- Designed as a practical tool for policy makes, legislative drafting groups and practitioners

22

## NCB guide, selected key concepts

- NCB asset forfeiture should never be a substitute for criminal prosecution
  - Undermines the effectiveness of criminal law and confidence in law enforcement
  - Should be viewed as complementary to criminal prosecutions and convictions
- Relationship between NCB asset forfeiture and criminal proceedings should be defined
  - NCB procedure may collide with criminal investigation and prosecution
  - Jurisdictions need to decide whether NCB are permitted only when criminal proceeds impossible or whether the two can proceed simultaneously (preferred)
- Applicable evidentiary and procedural rules should be as specific as possible
  - Promotes uniformity in the application of the law, reduces opportunity for judicially imposed rules- particularly important in regimes with a judiciary inexperienced in forfeiture

23

## NCB guide, selected key concepts

- Tainted assets acquired prior to the enactment of an NCB asset forfeiture law should be subject to forfeiture
  - If not criminal defendants would be given the opportunity to profit from acts illegal at the time- particularly important for recovering proceeds of corruption against official who are in power for long periods of time
  - Not in conflict with the “nulla poena sine previa lege” rule:
    - NCB asset forfeiture does not amount to a criminal prosecution or penalty
    - ECHR: NCB asset forfeiture “comparable to a civil law restitution of unjustified enrichment and therefore not a “penalty within the meaning of the ECHR”. In addition NCB law “aimed at guaranteeing crime did not pay”
    - Cf UK POCA 2002, section 340(4) “It is immaterial (...) whether the conduct occurred before or after the passing of this Act.”

24

## NCB guide, selected key concepts

- The government should have discretion to set appropriate thresholds and policy guidelines for forfeiture
  - Relevant for assets that are depreciating in value or burdensome to maintain (eg house with substantial mortgage, live animals-racehorses) or items that are unsellable (counterfeit products)
  - To avoid the asset forfeiture system from becoming overburdened
- Preservation and investigative measures taken ex parte should be authorized when notice could prejudice the ability to prosecute the forfeiture case
  - Where dissipation of assets is possible if notice is given

25

## NCB guide, selected key concepts

- Fundamental concept such as the standard of proof and use of rebuttable presumptions should be delineated by statute
  - Eg rebuttable presumption that unexplained wealth accumulated during a period of service as a public official is attributable to corruption
  - Thailand rebuttable presumption to invalidate transfers to family members (section 51/52 AMLA)
  - Switzerland: assets belonging to a person who has participated in or supported a criminal organisation are presumed to be at the disposal of the organisation (used to forfeit 7 million Swiss Francs in the case against Duvalier)

26

## NCB guide, selected key concepts

- Rebuttable presumptions cont'd
  - UK any property acquired 6 years before conviction was criminally derived
  - Philippines, section 31 of rules of Procedure in Civil forfeiture cases
  - ECHR confirmed in case that, provided the presumption is worded strictly, rebuttable and reasonable there is no violation of the principle of presumption of innocence

27

## NCB guide, selected key concepts

- The government should be authorized to void transfers if property has been transferred to insiders or to anyone with knowledge of the underlying illegal conduct.
  - To void transfers to insiders/relatives as a way to avoid detection/forfeiture
- Consider assignment of judges and prosecutors with special expertise or training in forfeiture to handle NCB asset forfeiture

28

## StAR policy products: Barriers to Asset Recovery (2<sup>nd</sup> half 2010)

- UNCAC, Article 51 and Article 54 (1)(c):

“The return of assets (...) is a fundamental principle of this Convention.”

“Each State Party shall take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party.”
- FATF 40+9 Recommendations: Rec. 38 (June 2003)

“There should be authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate property laundered, proceeds from money laundering or predicate offences (...) or property of corresponding value.”

29

## StAR policy products: Barriers to Asset Recovery

- The overall objective is to identify and analyze the barriers—operational and practical—that impede the recovery of stolen assets located within financial centers to:
  - Provide analytical work to inform the design and implementation of policies and action plans by financial centers aimed at lowering the barriers to asset recovery; and
  - Assist practitioners in requesting jurisdictions
- The financial centers on which the study will focus are Canada, France, Germany, Italy, Japan, United Kingdom, United States of America, Switzerland, Liechtenstein, Singapore, Hong Kong, Spain, Cayman Islands, Channel Islands (Guernsey), and the United Arab Emirates

30

## Barriers to Asset Recovery, tentative conclusions

- Most important: lack of political will- “where there is political will there is a legal way”
- Legal Barriers
  - Dual criminality requirements ( eg no assistance for cases involving unlawful enrichment), strict application of dual criminality
  - Reciprocity requirement – requesting countries would allow requested countries to do much more than they themselves would allow.
  - Requirement of final judgment
  - Bank secrecy laws make it difficult to trace assets
  - Statute of limitations – length is too limited
  - Laws and procedure do not incorporate principles of UNCAC or other international conventions, despite signature or ratification
  - Additional requirements: in some countries (eg Switzerland), notice is given to defendant before MLA is sent and defendant is allowed to challenge.
  - Requirement to link asset and offence (no money value judgment)

31

## Barriers to Asset Recovery, tentative conclusions

- Legal, in requesting states
  - NCB asset forfeiture is limited.
  - Immunity laws – perhaps these extend too far
  - No internal legislation on MLA
  - Not a signatory to UNCAC, UNTOC, or other regional or international convention involving cooperation; not member of Egmont
  - Time requirements on investigation and trial proceedings is insufficient to allow for MLA request to be completed

32

## Barriers to Asset Recovery, tentative conclusions cont'd

- Operational/Institutional Barriers:
  - Request is channeled through too many departments or agencies.
  - Limited resources (managing assets, available expertise, time) to commit to request and assist foreign jurisdictions. Priority will go to big cases
  - Agencies (Law enforcement / FIU) are not connected to key databases (eg., direct link to bank accounts, real estate database) which limits amount of assistance that can be provided through informal channels
  - Jurisdictions that require submission through diplomatic channels, rather than accepting informal requests.
  - Translation requirements
  - Jurisdictions / agencies not proactive, eg they provide MLA assistance only on accounts requested –not on accounts traceable to – nor do they instigate their own investigations into possible money laundering

33

## Barriers to Asset Recovery, tentative conclusions cont'd

- Operational/Institutional Barriers in requesting states:
  - Individuals in power are perpetrators and beneficiaries of corruption
  - Asset management process is new and very difficult to manage.
  - Prosecutors hesitant to put cases before courts or move cases with MLA requests to low priority because likelihood of obtaining sufficient evidence for trial is low
  - Strict formalities set by central authority
  - More than one central authority in some jurisdictions – cases may get shuffled between authorities or agencies
  - Changing governments
  - Difficulty in proving link between assets and offense, money trail- relative inexperience in conducting financial investigations

34

## Barriers to Asset Recovery, tentative conclusions cont'd

- Practical Barriers
  - Identifying the proper authority/agency to contact
  - Certain procedural laws are ineffective (e.g., direct enforcement of foreign order can be slower than asking foreign jurisdiction to obtain order on country's own behalf)
  - Poor communication (eg., unclear requests/response, no information on status of request, translation), lack of trust, geographical distance
  - Difficulty to link asset and offence
  - Time delays (for MLA, for freeze, for return)
  - Time delays differ from jurisdiction to jurisdiction depending on information request
    - Freeze order quicker in some civil law jurisdictions (eg Switzerland); but slower in common law
    - Breaching bank secrecy can take a lengthy time in some countries, less time in others.
  - Lack of guidance on MLA process

35

## Barriers to Asset Recovery, tentative recommendations

- Communicate → builds trust, avoids misunderstandings
  - In multi-jurisdictional cases, bring countries together in a joint task force atmosphere (pressure element to other jurisdictions; sharing of information)
  - Build communication institution-institution, rather than individual-individual
  - Establish networks, regional workshops
  - Travel for case conferences, communicate receipt of request,
  - Elaborate mechanisms to eliminate barriers to communications: email not common, networks difficult to develop, hesitant to call
- Maximize informal channels for assistance (FIUs, law enforcement)

36

## Barriers to Asset Recovery, tentative recommendations cont'd

- Commit resources
  - In requested jurisdictions to proactive efforts (eg dedicated police units)
  - In requesting jurisdictions to assisting them with investigations, filing proper requests, going through proper channels, trainings, legal support through foreign experts or foreign practitioners that would work on ad hoc basis
    - Initiative in South Africa focused on confiscation. They have POC units and place them in a developed country for 3 months. Undertaking from individual and agency that they will stay in place and do confiscation for 2 years
- Use international conventions to push other jurisdictions to comply

37

## Barriers to Asset Recovery, tentative recommendations cont'd

- Use good offices, training of StAR and other international organizations to assist with process
- Gather more information about recovery from financial centers
  - examples of Procedural Documents with MLA Requests or application of model documentation;
  - available on-line
  - list of focal points available on-line
- Incorporate in national legislations the legal provisions providing for accountability and terms for carrying out MLA Requests; regionally have a peer review mechanism to ensure compliance;
- Swiftly take the matters before courts, understanding the time frame that some countries are working under [perhaps countries should also consider amending legislation to allow for extensions in cases of MLA]
- Provide for statutory provision for execution of conviction and sentence awarded by foreign country

38

## StAR policy work, Misuse of Corporate Vehicles (2<sup>nd</sup> half 2010)

- UNCAC Article 12 (1) and (2):  
“Each State party shall take measures to prevent corruption involving the private sector [which] may include (...) Promoting transparency among private entities”.
- FATF Rec 33:  
“Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.

39

## StAR policy work, Misuse of Corporate Vehicles

“We ask the FATF to help detect and deter the proceeds of corruption by prioritizing work to strengthen standards on customer due diligence, beneficial ownership and transparency.”

Leaders’ Statement, The Pittsburgh Summit, September 24-25, 2009

40

## StAR policy work, Misuse of Corporate Vehicles

- The overall objective of this study is both to inform the debate on this topic and to assist those involved in the investigation thereof.
- At the policy level the project aims to collect and systematize available data on the use of corporate vehicles in grand corruption cases and test implementation of BO identification obligations and possibly how the policy responses could be refined.
- At the operational level the project aims to gather information on the practical difficulties encountered in investigating corporate vehicles and put forward good practices on how these may be overcome.

41

## StAR policy work, Misuse of Corporate Vehicles

3 components:

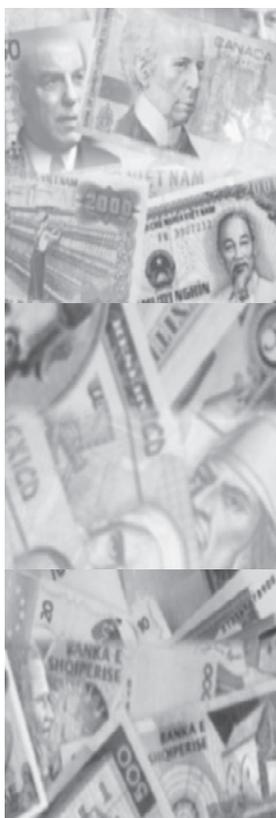
- Database on grand corruption cases involving the abuse of corporate vehicles verifying/debunking commonly held beliefs on this (eg Is “the classic corrupt PEP” dead?)
- Field work on Due Diligence obligations of TCSPs and identification of Beneficial Ownership by financial institutions
- Round tables with investigators to discuss obstacles in obtaining BO information and good practices in trying to deal with those obstacles

42

## StAR knowledge products: Asset Recovery Handbook (Oct 2010)

- UNCAC, Articles 31, 43, 46, 48, 49, 50, 52, 53, 54, 55, 58
- FATF 40+9 Recommendations: Rec. 3, 26, 27, 28, 36,38
- Covers
  - Strategy for asset recovery
  - Identifying and securing evidence
  - Tracing and securing of assets
  - Obtaining assistance from Foreign Jurisdiction- informal channels and mutual legal assistance
  - Asset forfeiture mechanisms

43



**Thank You**

**Emile van der Does de Willebois  
Financial Market Integrity  
World Bank**

**[evanderdoes@worldbank.org](mailto:evanderdoes@worldbank.org)**



44