



Barriers to Asset Recovery

Oliver Stolpe, StAR Senior Advisor

Seminar on Identifying, Restraining and Recovering Stolen
Assets in the OSCE Region
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Why does Asset Recovery matter?

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★ 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

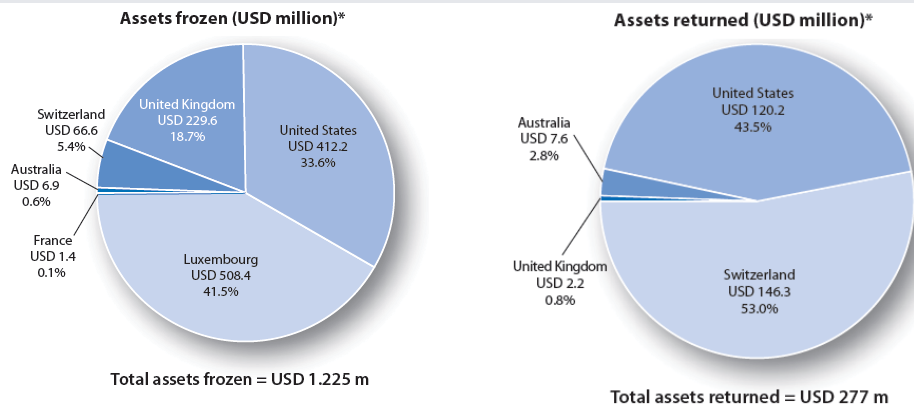
★ Rule of Law case

- ★ No safe havens
- ★ Virtuous circle prevention / repression
- ★ Ending impunity and establishing the rule of law
- ★ Compensating the victims of corruption

STAR Action only by a few OECD countries

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- ★ The efforts of the main financial centres to trace, freeze, and return the proceeds of corruption to a foreign jurisdiction remain few (2006/09)



STAR General/policy barriers

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- ★ Lack of trust
 - ★ Promote personal contacts between relevant officials
- ★ Lack of comprehensive AR policy – the proceeds of crime: and afterthought
 - ★ 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 clarity/transparency concerning the management and use of recovered assets
 - ★ Determine and Allocate resources to the AR effort
 - ★ Develop capacities and skills

STAR Legal barriers

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- ★ **No quick freeze or restraint mechanism**
 - ★ Prompt tracing & freezing powers (even prior to formal MLA), and
 - ★ Provide for sufficient time to conclude investigations.
- ★ **Unbalanced notice requirements**
 - ★ Permit investigative/preservation measures without notifying asset holders
- ★ **Lack of effective confiscation regime**
 - ★ Property and value-based confiscation,
 - ★ Confiscation of instrumentalities,
 - ★ Rebuttable presumptions of illicit origin of assets
 - ★ Non-Conviction Based Forfeiture regime
 - ★ Enforcement of foreign NCBF orders
- ★ **No MLA treaties for AR & no direct use of UNCAC**

STAR Operational barriers (domestic & intl.)

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- ★ **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
- ★ **Inability/unwillingness to deal with deficient requests**
 - ★ Lend a helping hand to requesting countries (translation, TA, be proactive)
- ★ **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



Oliver Stolpe, StAR Senior Advisor
ostolpe1@worldbank.org

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