Asset Recovery and International Anti-Corruption Cooperation

Purpose: Information
Submitted by: United States

1st APEC Network of Anti-Corruption Authorities and Law Enforcement Agencies Meeting
Beijing, China
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Asset Recovery and International Anti-Corruption Cooperation

OVERVIEW

- U.S. Kleptocracy Asset Recovery Initiative
- Asset Forfeiture and Corruption
- International Cooperation: Assistance to/from the United States
Prosecutor Team Focused on Asset Recovery and Corruption
- Asset Recovery Requires Dedicated Resources

Attorney General Holder Announcement at African Union Summit Kampala, Uganda 2010

Coordination with U.S. Law Enforcement

Compliments Other U.S. Action to Deny Safe Haven and Support Asset Recovery

“We must work together to ensure that corrupt officials do not retain the illicit proceeds of their corruption…When kleptocrats loot their nations’ treasuries, steal natural resources, and embezzle development aid, they condemn their nations’ children to starvation and disease. In the face of this manifest injustice, asset recovery is a global imperative.”

-U.S. Attorney General Eric Holder

Global Forum VI, Doha, Qatar

November 7, 2009
Overview of Asset Forfeiture in the United States

- Types of forfeiture (admin, civil, criminal)
- Types of forfeitable property
- Money Laundering and Corruption

What Is Asset Forfeiture?

The divestiture, without compensation, of property used in a manner contrary to the laws of the sovereign
Why Asset Forfeiture/Recovery?

- Deprive criminals of the profits of their crimes;
- Break up criminal organizations, and prevent the financing of further crimes; and
- Recover stolen assets or provide restitution to victims or the government.

Types of Forfeitable Property

- Real property
- Licenses
- Vehicles
- Bank Accounts
- Cash
Three Types of Forfeiture

- Criminal
- Civil
- Administrative

Criminal Forfeiture

An action that charges a crime against a person and includes the forfeiture of property

(U.S. v. Person)
Administrative Forfeiture

- Permits a federal law enforcement agency to forfeit property without any judicial involvement if it sends proper notice of the forfeiture action to potential claimants and no one files a claim.
- Value cannot exceed $500,000, and other limitations

Civil Forfeiture

An in rem proceeding brought against the property rather than against the wrongdoer

Civil forfeiture proceedings are based on the legal fiction that the property itself is “guilty”

(U.S. v. Property)
### Civil Forfeiture

- Requires a preponderance of the evidence
- **Does not depend on conviction**
  - Important for corruption cases in which a criminal prosecution is not feasible
- Does not depend on ownership

### Advantages

- There is no need for a criminal conviction.
- The forfeiture is not limited to property related to a particular transaction.
- Property of third parties can be forfeited.

### Disadvantages

- There are statutory time limits.
- A parallel civil forfeiture case can interfere with a criminal investigation or trial.
- Third parties are entitled to a jury trial.
- The forfeiture is limited to property traceable to the offense.
- A successful claimant is entitled to attorney’s fees
What Can We Forfeit?

- Proceeds of Crime
- Property “involved in” money laundering
- Other Theories
  - Terrorism, etc.

What is Money Laundering?

Money laundering is any transaction that seeks to conceal or disguise proceeds from illegal activities (called specified unlawful activities)
CORRUPTION AND MONEY LAUNDERING

- CORRUPTION AGAINST A FOREIGN NATION IS A MONEY LAUNDERING SPECIFIED UNLAWFUL ACTIVITY
- The bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official in violation of foreign law. 18 U.S.C. 1956(c)(7)(iv)

OTHER CORRUPTION RELATED OFFENSES

- International/Interstate Transportation of Stolen Property
- Bank Fraud, including Foreign Bank Fraud
- Transnational Crimes
  - Terrorism
  - Wire Fraud, Transport of Stolen Vehicles, Alien Smuggling, etc.

- Proceeds of the foreign corruption
- The subject matter of the transaction
- Any property used to facilitate the money laundering offense
- Property involved in the underlying foreign corruption

Money Laundering Statutes

- Structuring (31 U.S.C. § 5324)
- Bulk cash smuggling (31 U.S.C. § 5332)
Basic Money Laundering

18 U.S.C. § 1956(a)(1)

Sting Provision

**International Money Laundering**

18 U.S.C. § 1956(a)(2)

- **No Violation**
  - International movement or attempt? **Yes**
  - Monetary instrument or funds? **Yes**
  - Knowing the monetary instrument or funds were proceeds of unlawful activity
  - Conceal the nature, source, location, ownership, or control of proceeds (1956(a)(2)(B)(i))
  - Avoid reporting requirements (1956(a)(2)(B)(ii))
  - With intent to promote specified unlawful activity (1956(a)(2)(A))

**Money Laundering Conspiracy**

18 U.S.C. § 1956(h)

- **No Violation**
  - Unlawful agreement to violate § 1956 or § 1957 **Yes**
  - Two or more participants, not including undercovers or informants **Yes**
  - Defendant joined conspiracy **Yes**
  - With intent that the conspiracy succeed **Yes**

18 U.S.C. § 1956(h)
Spending Statute

18 U.S.C. § 1957(a)

No Violation

- No Proceeds of SUA
- No Know property is criminally derived
- No Monetary transaction (involving financial institution)
- No Value greater than $10,000

18 U.S.C. § 1957(a)

International Cooperation and Assistance from the United States of America
ASSISTANCE FROM THE U.S.

- U.S. Can Initiates Its Own Forfeiture Action
  - Criminal Forfeiture or Civil
- U.S. Can Enforce Foreign Forfeiture Judgments
- Provisional Restraint Mechanisms

ENFORCEMENT OF JUDGMENTS

28 U.S.C. § 2467

- Foreign Offense that would be Forfeitable Federal Violation if Committed in the U.S.
- Treaty or Agreement
- Attorney General Certification
- Criminal and Civil Judgments
ENFORCEMENT OF JUDGMENTS

- Enforce Judgment Unless
  - System Incompatible with Due Process
  - No personal jurisdiction
  - No subject matter jurisdiction
  - Insufficient notice to Defendant
  - Judgment obtained by fraud

- Court Bound by Factual Findings in Foreign Judgment

PROVISIONAL MEASURES

US Forfeiture Based on Foreign Predicate

- Pre-Trial Restraining Order
  18 U.S.C. § 981(b)(4)
  - Arrested/Charged Abroad
  - Ex-Parte 30-Day Freeze to await evidence

- Arrest/Seize/Restrain on Probable Cause
  - Seizure Warrant
  - Arrest Warrant *in rem*
PROVISIONAL MEASURES

US Restraint Pending Foreign Proceedings

- Register, Enforce Foreign Restraining Order
  - Attorney General Must Certify
  - Treaty or Agreement Required
- Foreign Request
  - Affidavit Describing Foreign Action and Reasonable Basis to Believe will be Forfeited
  - Hearing Upon Notice (restraint needed, basis)
  - Treaty or Forfeiture Agreement Required

REQUESTS TO U.S. TO OPEN U.S. FORFEITURE CASE

- Complete Description of the Asset
  - Include location and approximate value
- Fact Affidavit to Establish Probable Cause
  - MUST describe the illegal activity
  - MUST describe connection to asset & target
- Full Description of Foreign Law
  - Explain violation and penalty
- Evidence/More Information
  - Conviction orders, witness testimony, etc.
REQUESTS TO THE U.S. TO ENFORCE JUDGMENT

- Complete Description of the Asset
  - Include location and approximate value
- Summary of case facts and description of forfeiture proceedings
- Certified copy of judgment
- Affidavit or sworn declaration stating
  - Defendant received notice in time to defend
  - Judgment in force and not subject to appeal
- Additional information as required

REQUESTS TO U.S. FOR PROVISIONAL RESTRAINT

- If opening US forfeiture case:
  - Required info for opening U.S. case
  - Copy of arrest documentation or indictment (BUT need probable cause evidence within 30 days),
- If in anticipation of enforcement of foreign order:
  - Required information for enforcement of a Judgment
  - Affidavit or Certified copy of restraining order (BUT need evidence for hearing within 10 days)
- Additional information as required
REQUESTS TO THE U.S. FOR EVIDENCE

- Purpose for which evidence sought
- Summary of Facts
  - Include connection btw target and evidence
- Description of Offenses Charged or Investigated
- Detailed Description of Evidence Sought
  - Names, addresses, time period, account info…
  - Describe connection to investig/prosecution

REQUESTS TO THE U.S. FOR EVIDENCE

- Identifying Information on Individuals
- Date by which evidence needed
- Contact information for persons wishing to be present
- Precise Instructions/Forms for authentication
- Confidentiality requirements
REQUESTS TO THE U.S. FOR EVIDENCE

- Search/Seizure
  - Affidavit establishing Probable Cause that Evidence
    - Relevant to investigation, and
    - Can be found at that location
  - Full Description of Property to Seize

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