

ASSET RECOVERY

THE CHALLENGE

The theft of assets through corruption constitutes a severe leakage of state funds, often draining away much needed resources from developing countries. It weakens confidence in public institutions, damages the private investment climate, and divests needed funding available for core investment in such poverty alleviation measures as public health, education, and infrastructure.¹ Funds can be laundered through corporate structures, held in cash, or invested in financial products. Stolen assets are often managed by major global financial players in private and offshore banking centres around the world. It remains extremely complex to locate and return assets: freezing is slow, seizure is difficult, cross-jurisdictional investigations are complex and expensive. It is estimated that 99 per cent of illicit funds remain undetected and there is a seizure rate of just 0.2 per cent of all funds uncovered.² Given this reality, corrupt individuals know that they can use a number of safe havens for their stolen assets and will unlikely ever be found out.

CURRENT STATUS

In their declarations, G20 governments have repeatedly committed themselves to facilitate the recovery of stolen assets stowed abroad, mainly building on the World Bank's Stolen Assets Recovery (StAR) programme. The G20 Anti-Corruption Action Plan 2013-2014 calls for continuous assessment, the sharing of good practice and the development of publicly available national guides on international cooperation on asset recovery. However, this is not enough and efforts need to be spearheaded for a collective solution to confront the complicated challenge of asset recovery.

RECOMMENDATIONS

G20 members should:

- Adopt and implement a commonly agreed set of asset recovery actions, which would draw on the StAR programme's eight recommendations.³
- Commit publicly to ensure frozen assets do not remain indefinitely with the financial institutions that originally accepted them.
- Develop mechanisms to promote the transparent use of funds when returned. This work could be led by the Anti-Corruption Working Group.
- Make national income and asset disclosure (IAD) registries publicly available and harmonized across G20 countries.
- Agree to freeze and return assets for cases where there has not been a formal request from the victim country.

¹ United Nations Office on Drugs and Crime (UNODC) and the World Bank, "Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan" (Washington, DC: World Bank 2007), p. 10, citing Raymond Baker, *Capitalism's Achilles Heel: Dirty Money and How to Renew the Free-Market System* (Hoboken, NJ: John Wiley & Sons, Inc., 2005).

² For figures, see UNODC (2011): http://www.unodc.org/documents/data-and-analysis/Studies/Illicit_financial_flows_2011_web.pdf.

³ See: 'Barriers to Asset Recovery' (StAR, 2011). Transparency International, *Recovering stolen assets: A problem of scope and dimension*. Working Paper 2/2011.

SUPPORTING INFORMATION

The G20 Anti-Corruption Working Group has already taken a number of steps on the issue of asset recovery.

- In 2012 the guide “*Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries: A Step-by-step Guide 2012*” was published, which provides states seeking mutual legal assistance from G20 countries with a step-by-step overview of the requisite procedures.⁴
- The Anti-Corruption Working Group (ACWG) published in 2012 the *Assets Tracing Country Profiles*.⁵ which provide a snapshot for how to file a request for the recovery of stolen assets.
- The ACWG has worked in 2012 and 2013 to develop national guides which identify contact points, and set out procedures and requirements for stolen asset recovery requests.⁶
- With the support of the StAR Initiative, in 2013 the ACWG has undertaken a review of each member’s approach relative to the asset recovery principles adopted in Los Cabos and produced the *Nine Key Principles of Asset Recovery Benchmarking Survey*.⁷

In spite of the steps taken, a huge gap remains between the stolen assets and the amount repatriated. Implementation of the “9 High Principles on Asset Recovery” remains patchy, especially in terms of recognition of non-conviction based proceedings and private law actions, as well as collection, dissemination and sharing of information. According to the StAR initiative, the main barriers include: lack of international cooperation, onerous requirements, excessive banking secrecy, overly burdensome procedural and evidentiary laws – including the need to disclose information to asset holders during investigations.⁸ The lengthy nature of the investigations prevent the effective freezing of the assets in a short time, allowing the assets-holder to take countermeasures.

Moreover, financial institutions often benefit from the storage and managing of the assets irrespectively of their illegal origin and are not held accountable for their complicity. This reduces the incentives to perform robust due diligence procedures and to release frozen assets.

⁴ <http://www.track.unodc.org/Documents/G20%20Guide%20to%20Mutual%20Legal%20Assistance%202012.pdf>

⁵ <http://www.q20india.gov.in/pdfs/2012-Anti-Corruption-Asset-Tracing.pdf>

⁶ G20 Anti-Corruption Working Group 2012 Monitoring Report; G20 Anti-Corruption Working Group Progress Report 2013. Anti-Corruption Working Group Progress.

⁷ <http://www.q20russia.ru/load/783594084>

⁸ ‘Barriers to Asset Recovery’ (StAR, 2011)