Session 4 part 3: Use of settlements

StAR study and follow-up
Left out of the Bargain
Settlements in Foreign Bribery Cases
and Implications for Asset Recovery

KEY FINDINGS
ANALYSIS
RECOMMENDATIONS
Welcome increase in Enforcement

Settlements in Foreign Bribery Cases

<table>
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<th>to 2002</th>
<th>2002-2006</th>
<th>2007-mid 2012</th>
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<tbody>
<tr>
<td>Cases (#)</td>
<td>25</td>
<td>45</td>
<td>279</td>
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<tr>
<td>Jurisdictions (#)</td>
<td>1</td>
<td>6</td>
<td>15</td>
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Why Only 3%?

Total Monetary Sanctions and Assets Returned or Ordered Returned Where Jurisdiction of Settlement Differed from Jurisdiction of Foreign Public Officials

- Returned/Ordered returned: $197.6 million (3%)
- Not Returned: $5.77 billion (97%)
How do Monetary Sanctions Relate to Proceeds of Corruption?

Potentially eligible for asset recovery & return
No legal barriers to international cooperation, but too few multi-country settlements

Settlements in Foreign Bribery Cases Settled across Multiple Jurisdictions

- Resolution by Enforcement Action Achieved in one Jurisdiction: 81.52%
- Resolution by Enforcement Action Achieved in two Jurisdictions: 6.84%
- Resolution by Enforcement Action Achieved in three or more Jurisdictions: 11.65%
Developing Countries
Not Parties to Settlements

Settlements undertaken with other jurisdictions
   – 1 case (Kazakhstan / Bota Foundation)

Enforcement in own jurisdiction against bribe givers -> recovery of $556 million
   – Only 4: Costa Rica, Greece, Lesotho, Nigeria

Possible reasons?
   ▪ Not aware of Investigation / Settlement in another Jurisdiction
   ▪ Not proactive enough in pursuing cases and lack of capacity

*Shared responsibility of settling and affected countries to remedy*
Countries Undertaking Settlements
Recommendations

- Develop a clear legal framework
- Improve transparency
- Transmit proactively case information to affected countries
- Inform affected countries of legal avenues to participate in legal proceedings
- Allow courts to recognize claims of affected countries (ex: confiscated assets)
Affected countries
Recommendations

At home...
- Open investigations against suspected bribe takers and givers

... and away
- Explore actively options for Asset Recovery
- Pursue MLA
- Consider private civil law action
- Become a *Partie Civile* (where available)
Issue of settlements was taken up in both COSP resolutions on asset recovery

- **6/2**: reference to StAR study, requests AR Working Group to collect information on settlements and other alternative legal mechanisms and amounts returned
- **6/3**: Urges States using settlements to work collaboratively and proactively share information
- **6/3**: States to make available information on their legal frameworks and procedures eg in practical guides
Background paper building on StAR study database and findings

- Information gathered for 2012-2016: +130 additional settlements for approx. US$4 billion in monetary sanctions imposed
- Number of settlements steady/decreasing but value amounts higher, and compared to previous period, 0.18% was returned
- No significant developments in practice or implementations of recommendations (though some examples exist eg cooperation in Petrobras case)