

US Lessons learned from prosecuting cases involving vast quantities of wealth

- ▶ Form specialized units of prosecutors, financial analysts and investigators
- ▶ Start with SARs and backup data, Egmont requests and Carin or other informal resources before MLA requests - ways to expedite the investigation
- ▶ Success often depends more on the difficulty of proving the predicate crime than the financial tracing
 - ▶ Embezzlement cases can be easier to prove than bribery
 - ▶ US foreign bribery law encourages self-disclosure for sanctions mitigation
 - ▶ Effect of availability of large financial rewards for information is unknown
- ▶ US forfeits more assets using civil non-conviction based forfeiture than criminal forfeiture
- ▶ Enforcing appropriate foreign court restraining/confiscation orders can be the most efficient way to move quickly to restrain and forfeit assets which are overseas
- ▶ When our ability to recover assets that moved through US correspondent banks is limited, it usually is due to one or both of the following obstacles:
 - ▶ 1) the funds moved to a jurisdiction that does not comply with MLA requests; or
 - ▶ 2) the predicate crime evidence is not available in the US

Confiscation theories

Criminal Confiscation

- ▶ Requires prosecution and conviction of defendant for crime for which confiscation is available
- ▶ Results in money judgment or confiscation order against specific assets in amount set by court
- ▶ Can be used to forfeit substitute assets
- ▶ Can be used to defeat claims of nominees or gifts
- ▶ Maybe easier to enforce abroad than restitution orders

Civil Non-Conviction (Judicial) Confiscation

- ▶ Can be used to forfeit assets directly traceable to the offense for which confiscation is available
- ▶ Can be used even if the owner is deceased, immune from prosecution or impossible to extradite
- ▶ Can be used to defeat claims of nominees or gifts
- ▶ Final Judgments subject to fewer appeals (than in limine prosecutions)

Lessons Learned from Repatriations Process

- ▶ Delays often occur in coming up with specific ideas/projects for how to use the money
- ▶ Parties sometimes struggle with implementing UNCAC obligation on all parties to prevent corruption and to use the assets in a transparent and accountable way
- ▶ Civil society is often silent - who should bring them into the discussions?