Digest of Asset Recovery Cases

St. Petersburg, 3 November 2015
Digest of Asset Recovery Cases – Process

- Recommendations of the Working Group on Asset Recovery to prepare an analytical study of asset recovery cases

- Expert Group Meeting on 2 and 3 April 2012

- Dissemination of the draft Digest at the 5th session of the COSP in November 2013 in Panama

- Release of final product during the Asset Recovery Working Group in September 2015

Digest of Asset Recovery Cases – Content

- Chapter I: Noteworthy Cases of Corruption
- Chapter II: Forms and Devices of Concealment of Proceeds of Acts of Corruption
- Chapter III: Initiation of Asset Recovery Cases
- Chapter IV: International Cooperation in Identifying, Freezing or Seizing and Tracing Proceeds of Crime
- Chapter V: Tools and Mechanisms for Recovery and Confiscation of Stolen Assets
- Chapter VI: Return and Disposal of Assets
- Chapter VII: Conclusions

Glossary
Digest of Asset Recovery Cases – Some conclusions

✓ States are encouraged to fully implement chapter III of UNCAC while practicing flexible approach to dual criminality and use the Convention as a basis for international cooperation.

✓ Importance of implementing asset disclosure and money laundering prevention measures and the establishment of FIUs.

✓ States are encouraged to consider establishing specialized anti-corruption and asset recovery bodies, providing civil society with capabilities to initiate legal action (partie civile, ex parte), introducing specific legislation on asset recovery (e.g. Canada and Switzerland).
Digest of Asset Recovery Cases – Some conclusions

✓ States are encouraged to consider how identification and restraint orders work together to avoid dissipation of assets.

✓ States are encouraged to introduce NCB forfeiture, allow domestic courts to recognize foreign confiscation orders and actively coordinate actions with foreign counterparts.

✓ States are encouraged to consider entering into agreements on the return and disposal of assets and setting up transparent and accountable regimes for their management.
Effective management and disposal of seized/frozen and confiscated assets
Balancing policy objectives

- Deprive the offender of ill-gotten gains
- Compensate victims
- Mitigate damages done to society
- Undermine organized crime, terrorism and economic crime
- Protect the legal economy against infiltration by organized crime
- Create an economically viable asset recovery system (cost-benefit analysis)
- Preserve the value of seized and confiscated assets for the benefit of the state, society and victims
- Ensure accountability and transparency of and public confidence in the asset recovery system
Diversity of Legal Frameworks

Providing legal powers to effectively manage seized assets and preserve their value, e.g. powers to:

- Invest in maintenance and storage
- Protect against abuse and damage by the owner/third parties
- Dispose of seized assets under certain conditions
- Use assets pending final confiscation
- Restrain the use of assets (in lieu of seizure)
- Pursue both conviction based and non-conviction based forfeiture
International cooperation in the management of seized/frozen and confiscated assets

- Recognition and direct enforcement of non-conviction based forfeiture orders in particular between jurisdictions;

- Recognition and direct enforcement of asset management orders for complex assets;

- Asset sharing among countries that contributed to the recovery.
Institutional arrangements

Most countries have institutionalised their AR system using a combination/any of the below:

- Specialized asset recovery office (ARO)
- Specialized asset management office (AMO)
- Creating an asset management unit within an existing agency
  - “Law enforcement model”
  - “Asset management model”
- Outsourcing asset management: private players
Operational arrangements

While operational arrangements vary significantly, most systems entail:

✓ Asset recovery fund
✓ Pre-seizure planning
✓ Centralized database
✓ Mix of skill sets required to manage different types of assets
✓ Allowing the contracting of outside expertise and capacity (storage, maintenance, auctioning/sales)
For more information:

www.unodc.org/corruption
http://star.worldbank.org/star/
www.track.unodc.org