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Working Group on Asset Recovery UNCAC

The Return of Illicit Assets Act (RIAA) - a new Swiss law

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Why a new law?

- With CHF **1.7 billion** returned, Switzerland is one of the world's leading countries when it comes to the restitution of assets of politically exposed persons.
- This achievement has been possible because of the various amendments made in Swiss laws and a strong **political will** over the last **20 years**.
- Despite of many successful returns of illicit assets, some specific cases have **challenged** the legal system.



What are the challenges?

- Mutual legal assistance (MLA) requires a **partnership** between requesting and requested States.
- There is an increasing number of States, which are **not anymore in position** to deal with MLA proceedings (failure of state structures).
- Facing these difficulties and based on its experience the Swiss Government has decided to develop a **creative solution** to solve the problem.



When will the RIAA be used?

- Assets have been **seized provisionally** in the context of a process of MLA instigated at the request of the country of origin. The RIAA is a subsidiary solution to legal assistance.
- The MLA proceedings **failed** because the country of origin is **unable** and/or **unwilling** to take legal action against a PEP or a member of his/her entourage (close associates).
- The safeguarding of **Swiss interests** demands that the assets be frozen.



How does it work?

- A **freezing order** is decided by the Federal Council, as it is already possible with the Swiss Constitution (art. 184. para. 3)

- Judge **confiscates** at request of Federal Council. Because of the reversal of the burden of proof, the holder of frozen assets has to demonstrate their legal origin in case :
 - a. **enrichment** of the PEP is **exorbitant**; and
 - b. **corruption** of the PEP/victim country is notoriously **high**.

- If the PEP could not prove the legitimate origin of the assets, they are confiscated and **returned** to victim country to benefit its population in a **transparent** and **accountable way**.



Next steps

- 20th January 2011: deadline for **popular referendum**
- 1st February 2011: **entry into force** of the RIAA
- Spring 2011: Swiss Government “inaugurates” the RIAA by initiating confiscation proceedings in the **Duvalier case**



Conclusion

- The RIAA will allow Switzerland to **solve the most difficult MLA cases.**
- Switzerland is the **first country**, which developed such a creative and pragmatic tool, complementary to MLA, to confiscate and return assets of illicit origin.
- The RIAA will have a **preventive effect** which should definitely discourage PEP to place their illicit assets in Switzerland.