Working Group on Asset Recovery
UNCAC

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

Vienna, 16 December 2010
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.