

# MECHANISMS OF CONFISCATION

**Presented by:**

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**DATE: 20<sup>th</sup> May, 2020.**



# HISTORY OF FORFEITURE

- ANCIENT HISTORY

## BIBLE

“ And whoever shall not do the Law of thy God or the Law of the King, let judgment be executed speedily unto him whether it be by death, banishment, **confiscation of goods** or imprisonment” Ezra 7:26



# ASSET FORFEITURE OR CONFISCATION

- The terms “**asset forfeiture** or **confiscation**” usually used synonymously, meaning a final order by the court which changes ownership of an asset from the individual to the State.
- Asset Forfeiture is generally the last action that is taken in a case.(It begins when the Court makes a final confiscation order that is no longer subject to review or Appeal and ends when the order is executed)



# ASSET FORFEITURE/CONFISCATION

- It is now globally accepted that criminals are more hurt when they are deprived of their properties than being sent to prison.
- Asset Recovery is therefore considered an adequate and effective tool of combating corruption and other organized crimes.



# WHY ASSET RECOVERY?

- It incapacitates criminals from committing future crime and prevent them from interfering a due process.
- It deters present and future criminals by removing incentives for crime, thus sending a strong message that crime does not pay.
- It serves to compensate victims for their stolen properties
- It reimburses the State its costs incurred in fighting crimes thereby strengthening law enforcement agencies.



# CRIMES THAT PROMPT ASSET RECOVERY

- Corruption
- Money Laundering
- Human trafficking
- Financing Terrorism
- Smuggling of Migrants
- Forest offences
- Offences related to taxation
- Financial Fraud & Theft
- Illicit trafficking in narcotics



# THINGS TO FORFEIT

- Money in bank
- Real Estate
- Businesses
- Cars
- Boats
- Cash



# THINGS TO FORFEIT cont...

## Other assets

- Instrumentalities
- Co-mingled/Intermingled property
- Any lawfully acquired properties where proceeds can not be located (In case of Pecuniary penalty order).
- Proceeds in converted forms or transformed and accrued interest are also liable to forfeiture.
- Property of corresponding value





# Recovery of Assets – The Last Step !

- Must be preceded by an investigation aimed at:
  - Proving the crime
  - Tracing
  - Seizing / Freezing/Restraining
  - Prosecution
  - MLA
  - Enforcement of foreign orders



# FINANCIAL ACTION TASK FORCE (FATF) RECOMMENDATIONS

- Recommendation 30
- Proper investigation of money laundering and predicate offences
  - *“in all cases related to major proceeds-generating offenses”*
  - *“law enforcement authorities should develop a proactive parallel financial investigation”*



# ASSET RECOVERY MECHANISMS INTERNATIONAL PERSPECTIVE

- Conviction based
- Non-conviction based forfeiture
- Civil action
- Civil law suit



# CONVICTION BASED FORFEITURE

- In –personam action (criminal action against the person)
- Requires conviction
- Burden of proof required
  - Prior to conviction ?
  - After conviction ?
- Often has a “substitute asset” provision – untainted property



# NON-CONVICTION BASED FORFEITURE

- In rem process - civil action against the property
  - No conviction required
  - Standard of proof – to seize ?? to forfeit ??
  - Unrestricted use
  - Restricted use
- Only if person is fugitive or dead



# CIVIL LAW SUIT

- Can be filed in foreign jurisdictions
- Standard of proof
- Need private lawyer
- Possibly expensive
- Not limited by public action



# CIVIL LAW ACTION

- Used in some Civil Law jurisdictions
- Runs within the criminal process by law
- It is a civil action, intended to provide compensation for damages
- Plaintiff can use evidence obtained through the criminal case
- Does not require conviction
  - Criminal trial can fail – the civil action continues



# CHALLENGES TO ASSET RECOVERY

- Political Will
- Weak domestic legal framework
- Cash based economy, unregistered properties
- Lack of technical competence, (proving the criminal case vs following the money trail)
- Lack of adequate domestic resources
- International Cooperation
- Difference in Legal systems
- Complex and lengthy procedures
- Asset Management



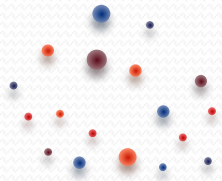


# CONCLUSION

- Asset Recovery is an effective tool of combating corruption and other organized crime.
- Asset Investigation has to be done along with criminal investigation



# CONFISCATION JOURNEY



Interim  
Phase

Seizure/Freezing/  
Restraining

Trial

Confiscation

Enforcement  
of Order

Return of  
assets to the  
Government

Investigation  
Stage

Management

UNCAC



# Q?

## ASANTENI SANA THANK YOU VERY MUCH

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