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## *Central Asia Regional Judicial Conference on Anti-Money Laundering*

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**AML PROVISIONAL MEASURES – ASSET SEIZURE,  
CONFISCATION, AND FORFEITURE**

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# What is Involved?

Locate, seize, and confiscate proceeds of crime

## Objectives of Presentation

- Legislative framework
- Step one locate assets - Information gathering & seizure
- Confiscation Regime -forfeiture & administration of assets
- International Linkages

# Why give power to seize and confiscate?

- Combat serious crime
- Remove the capacity to profit from crime
- Create 'credible threat' – where impact prevents money laundering

## What tools to do this?

- Protect innocent parties
- Deal with some policy conundrums

# LEGISLATIVE FRAMEWORK - KEY ELEMENTS

- Money laundering offence or cover all serious offences
- Comprehensive Proceeds of Crime laws
- Tools to investigate domestic offences
- Assist international cooperation to investigate offences, locate and recover proceeds and return of offenders and proceeds

# INTERNATIONAL TREATIES

## Vienna and Palermo Conventions

### Key elements of offence:

- Acquire or use proceeds of crime
- Deal with proceeds with aim of hiding origin
- Hide the link of derived assets to proceeds
- Help others to do any of above

# Considerations for Legal Framework

## Simple but comprehensive Laws

- Black letter v fuzzy law

## Policy choices

- Conviction based or civil forfeiture?
- Standards of proof?
- Who seeks confiscation?\*

## Proceeds laws are part of an integrated package

- Money laundering
- Mutual legal assistance
- Necessary linkages- see model laws

# Model Laws

UN [United Nations Model Bill on Money Laundering, Proceeds of Crime And Terrorist Financing \(2003\)](#) (for common law systems)

<http://www.imolin.org/imolin/poctf03.html>

## List of Instruments and Website Links

<http://www.icclr.law.ubc.ca/Site%20Map/compendium/Compendium/List%20of%20instruments.doc>

# Step One LOCATE - Information Gathering & Seizure

- Who authorizes search and seizure?
- What can be searched?
- Extent of search warrant e.g. computers and networks?
- Urgent requests – by phone/fax – what documentation?

# Orders

## Examination orders

- What agencies and what power to require answers?
- Judicial or administrative order? What considerations?
- Protection of witnesses
- Use of evidence (immunities)

## Production Orders

- Application to suspects and associates
- Third parties e.g. financial institutions – bank secrecy laws

## Monitoring Orders

- Tracing of transactions and assets

## Orders (cont)

- Limitations on execution
- 3<sup>rd</sup> party assets -vessels and vehicles
- Administration of assets seized (see later)

# Step 2 - CONFISCATION REGIME

## Restraining orders – what to apply to?

- Assets relating to persons charged with offences?
- Assets relating to suspects i.e. not yet charged?
- Old offences – how to link to present day or these assets?
- Assets relating to terrorism (different rules – lower standards?)
- No suspects or crime?

# Discussion

## What is restrained?

- ❖ Actual proceeds\* -e.g. bank robber caught at scene of crime
- ❖ Derived assets\* e.g. bought house with crime proceeds
- ❖ Instruments of crime\* e.g. getaway car

# CONFISCATION REGIME - ORDERS

## Forfeiture order

- After conviction
- Without conviction
- Minimum time after seizure

## Exceptions

- Third parties affected – how to resolve?
  - ❖ Pecuniary Penalty Orders
  - ❖ Equivalent value of benefit from crime

# Exceptions (cont)

- Legal expenses
- Other expenses
- Use of undertakings

## Conditions, duration & termination

- Breach of orders
- Order terminate if changed conditions

# INTERNATIONAL LINKAGES

## Recognizing and enforcing foreign Orders

- Any precondition – e.g. reciprocity?
- Civil and criminal orders

## Part of Proceeds Law or covered by Mutual Legal Assistance Act?

- Treat the same as other requests for assistance?
- Separate regime (compare enforcing an order and conducting investigation)

# INTERNATIONAL LINKAGES (cont)

## Registration and Enforcement of foreign Orders

- Transmit via diplomatic channel?
- Role of central authority
  - ❖ Who makes application and who give undertakings

## Separate regime or deemed to be domestic orders

- Can they challenge or accept on their face

## Special conditions

- Shortened time frames and capacity for appeals and judicial review

# ADMINISTRATION OF ASSETS

What assets could be involved?\*

Examples:

- 1 Live monkeys - Endangered species
- 2 Frozen food in container on truck
- 3 Vintage motor vehicle
- 4 Share portfolio in oil and gold mining stocks
- 5 30% equity in manufacturing company

What orders are needed?

Who holds, who controls, and who is accountable?

# Administration of Assets - Other considerations

Creation of special accounts and use of funds to preserve assets

Damages for loss

- Immunity of administrator
- Immunity of government

# MAJOR POLICY ISSUES

- Constitutional and judicial arrangements to be considered
- Proceeds of a serious offence or any offence
- Must there be an offender (charged or suspected?)
- Civil or criminal onus – what standard of proof
- Shifting onus

# MAJOR POLICY ISSUES (cont)

- Rights of families and dependents
- Taxation Issues – money laundering avoids tax
- Literary Proceeds Orders
- Examination processes
  - ❑ Self incrimination (derivative or use immunity)