

Canada Asset Recovery Action Plan Implementation Road Map 2013

Action Plan commitment	Progress so far	Timetable for next steps
<p>Seek to enhance responsiveness: Take into account the importance of transition countries' requests for case assistance in recovering proceeds of corruption and organized crime and accordingly give them priority, where legally permissible, and encourage regional partner countries to do the same. Implementation: Immediate</p>	<p>Canada's central authority at the Department of Justice, the Royal Canadian Mounted Police (RCMP) and Department of Foreign Affairs, Trade and Development Canada (DFATD) have attributed high importance to requests to assistance for asset recovery by sending officials to meet with officials in requesting states and by clarifying in detail the requirement of Canadian law to give effect to request for assistance. In this regard, Canadian officials provide hands-on assistance to requested states in the drafting of specific requests for assistance and have worked together to provide coordinated case work assistance within Canada and <i>in situ</i> for asset recovery.</p> <p>Canada passed the <i>Freezing Assets of Corrupt Foreign Officials Act</i> on March 23rd, 2011 in response to requests for assistance from Deauville countries to freeze assets suspected to have been illicitly obtained by corrupt foreign officials, their associates or their family members. In addition, the government may implement under its <i>United Nations Act</i> whatever measures are necessary to implement decisions of the United Nations Security Council, including freezing the assets of specific persons. The government may also take certain actions pursuant to <i>Special Economic Measures Act</i> to designate and freeze assets to address situations where there has been a call for economic sanctions by an international organization of states, or where there has been a grave breach of international peace and security that has resulted or is likely to result in an international crisis. Under these laws, the government has passed regulations that require every person in Canada and every Canadian outside Canada to disclose to the RCMP whether they are in possession or control of property owned or controlled by or on behalf of a designated person. In addition, financial entities may be required to determine on a continuing basis whether they are in possession or control of property owned or controlled by or on behalf of a designated person.</p>	<p><u>Ongoing:</u> Experts from the Department of Justice Canada, DFATD and the RCMP continue to work cooperatively with Arab Spring countries seeking assistance in the recovery of stolen assets.</p>
<p>Adopt and enforce international frameworks: Ratify the U.N. Convention Against Corruption as soon as possible, and</p>	<p>Canada ratified the <i>UN Convention Against Corruption (UNCAC)</i> on October 2nd, 2007 and the <i>UN Convention</i></p>	<p><u>October 2013:</u> In 2008, the RCMP established the International Anti-Corruption Unit (IACU), comprised of two</p>

<p>take steps to enhance their enforcement of laws against foreign bribery, in order to provide a universal legal framework for asset recovery cooperation.</p>	<p><i>against Transnational Organized Crime (UNTOC)</i> on May 13th, 2002.</p> <p>Parliament passed the <i>Corruption of Foreign Public Officials Act (CFPOA)</i> on December 10, 1998 to criminalize the bribery of a foreign public official. On June 19, 2013, Bill S-14, entitled the <i>Fighting Foreign Corruption Act</i>, was granted Royal Assent to strengthen the CFPOA with six amendments that include:</p> <ul style="list-style-type: none"> • Giving the RCMP the exclusive authority to lay charges; • Introduction of nationality jurisdiction; • A new books and records offence for foreign bribery; • Elimination of the requirement that business be for profit; • Removal at a later date of the facilitation payment defence; and • Prison maximums increased from 5 years to 14 years. 	<p>seven-person teams based in Ottawa and Calgary, respectively. Following the re-engineering of Federal Policy, the International Anti-Corruption Program is now managed under the umbrella of the RCMP Federal Policing Support Services, Federal Coordination Centre (FCC). There is an Inspector and two Sergeants in the FCC who provide subject matter expertise internally and externally to national and international partners as well as government departments. The base complement of personnel for the IACU teams have been retained in Ottawa and Calgary but integrated into larger multidisciplinary teams. In Ottawa, the team is integrated into the National Division as part of the Sensitive & International Investigations Section. The National Division have a Superintendent in charge of 115 personnel divided into four investigative teams and one quick response team. Similarly, Calgary RCMP has a Superintendent in charge with approximately 130 personnel divided into four Federal Policing Investigative Teams. Respecting corruption, the investigative teams are charged with investigating:</p> <ul style="list-style-type: none"> • Allegations that a Canadian person or business has bribed, offered or agreed to bribe a foreign public official; • Allegations that a foreign person has bribed a Canadian public official; and • Allegations that a foreign public official has secreted or laundered money in, or through, Canada. <p>In addition, the investigative teams assist foreign states in tracing alleged proceeds of corruption in response to requests for assistance.</p>
<p><u>Promote transparency and effective cooperation.</u> <u>Each G8 member will:</u></p>		
<p>Publish a guide that describes specific steps required for assistance and cooperation in matters related to tracing, freezing, confiscation, and return of proceeds of corruption, whether through formal mutual legal assistance (MLA) or other forms of cooperation and make the guide available in Arabic</p>	<p>Canada's guide is published on the StAR website and is available in Arabic, English and French language versions. http://star.worldbank.org/star/ArabForum/country-guides-asset-recovery-0</p>	<p><u>Fully implemented</u></p>
<p>Designate or appoint the office/persons responsible for</p>	<p>Canada's Central Authority is responsible for inquiries and</p>	<p><u>Fully implemented</u></p>

<p>inquiries, guidance, or other investigative cooperation permitted by law, both for MLA and for other forms of cooperation not requiring MLA requests</p>	<p>guidance related to MLA. All the contacts for MLA, asset recovery as well as police-to-police and intelligence enquiries (CARIN, the Focal Point network, and Egmont) are given in Canada's asset recovery guide available online on the StAR website: http://star.worldbank.org/star/ArabForum/country-guides-asset-recovery-0</p>	
<p>Designate the appropriate points of contact to relevant networks, including but not limited to the global asset recovery Focal Point network, UNCAC COSP, and CARIN, that may be useful for coordination</p>	<p>Canada has designated points of contact for the relevant networks.</p> <ul style="list-style-type: none"> • Star/INTERPOL Asset Recovery Focal Point Network and CARIN. Royal Canadian Mounted Police • UNCAC COSP Criminal, Security and Diplomatic Law Division Legal Affairs Bureau Department of Foreign Affairs, Trade and Development <p>The complete contacts are given in Canada's asset recovery guide available on the StAR website: http://star.worldbank.org/star/ArabForum/country-guides-asset-recovery-0</p>	<p><u>Fully implemented</u></p>
<p><u>Facilitate cooperation leading to effective recovery.</u></p>		
<p><u>Each G8 member will act urgently on the following key measures:</u></p>		
<p>Ensure that there are mechanisms in place for enforcement of foreign orders of confiscation unless inconsistent with fundamental principles of domestic law. This would include, wherever possible, considering measures as may be necessary to enforce non-conviction based confiscation orders (such as confiscation orders which do not require a criminal trial and conviction), at a minimum in the circumstances envisaged by UNCAC and FATF Recommendations. Such enforcement should be permitted</p>	<p>Canada has a wide range of asset recovery mechanism, including NCB asset confiscation. However, Federally, Canadian law provides for conviction based forfeiture with some exceptions that allow for forfeiture of property without a conviction where an accused has died or absconded. As a result and as noted in Canada's Asset Recovery Guide, the Government of Canada cannot respond to a request for NCB asset forfeiture as such requests fall within the jurisdiction of Canada's provinces. As such, should a foreign state seek to</p>	<p><u>Fully implemented</u></p>

<p>even in the absence of a domestic system for non-conviction based confiscation or other equivalent avenue</p>	<p>recover assets from Canada through NCB asset forfeiture, it must hire private counsel to act on its behalf in the province where the private property is located.</p>	
<p>Consider, to the extent consistent with fundamental principles of domestic law and judicial proceedings, establishing systems that allow for recovery through non-conviction-based confiscation or equivalent (at minimum in cases of death, flight, or absence) and adopting legislation that establishes a non-criminal standard for burden of proof or reverses the onus of proof through rebuttable presumptions</p>	<p>Canada's <i>Criminal Code</i> permits the return of seized or confiscated property to the legal owner. To this end, a judge can order forfeiture to the federal or provincial government that prosecuted the offender, unless a third party, not involved in the offence, had a valid and lawful interest in the property, in which case the court would order the property returned to that person (section 462.41). Beyond this basic criminal procedure for known proceeds of crime, recovery is also applicable in cases where an accused party has died or been at large for six months (section 462.38.).</p> <p>Civil forfeiture premised on a non-criminal standard for the burden of proof may be pursued in Canada, but due to the constitutional division of powers in Canada where property and civil rights fall under provincial jurisdiction, NCB based asset forfeiture or civil forfeiture falls primarily under provincial law. Eight of Canada's ten provinces do have laws that permit the use of NCB confiscation.</p>	<p><u>Fully implemented</u></p>
<p>Ensure that domestic legal frameworks (i.e., legislation and/or regulations) allow for swift identification and tracing of assets, including in response to international requests.</p>	<p>Domestically, Canada has implemented measures under the <i>Criminal Code's Proceeds of Crime provisions</i>, the <i>Proceeds of Crime (Money Laundering) & Terrorist Financing Act</i> and the <i>Controlled Drugs & Substances Act</i> that allow Canada authorities to identify and trace assets. To this end, the RCMP investigates money laundering and targets the proceeds of organized crime for seizure under Part XII.2 of the <i>Criminal Code of Canada</i>. Across Canada there are Federal Investigative teams in every province that work on priority files involving organized crime and the subsequent tracing and potential seizing of assets. These teams can include members of other police forces, the Canada Revenue Agency, the Department of Justice, Forensic Accountants and Seized Property Management personnel. In addition the RCMP investigates Money Laundering targeting international</p>	<p><u>Fully implemented:</u></p>

	<p>controllers who facilitate the illegal movement of illicit funds. To date, the Proceeds of Crime initiative has seized over \$243 million worth of criminal assets since 2000.</p> <p>The RCMP is responsible for providing intelligence in response to international requests for assistance in tracing assets. It is a member of both the Egmont Group and CARIN and in 2014 will commence participation in the ECAN group.</p> <p>Regarding Canada's asset freezing legislation, the legal model that Canada follows obliges every person in Canada, every Canadian outside of Canada as well as designated financial institutions to determine and disclose to the RCMP on an ongoing basis whether they are in possession or control of property owned or controlled by or on behalf of a person exposed foreign person who has been designated by Canada in response to an international request or an UNSC resolution. The regulations within this legal framework give effect to international requests or UNSC resolutions to freeze the assets of specified corrupt foreign officials. Persons and financial institutions are prohibited from dealing in the property of specified persons directly or indirectly. This thereby precludes the possibility that the assets can be transferred to evade confiscation. Where a person or financial institution becomes aware that they are in possession, or control, of property belonging to a designated person, they are required by law to report the existence of such property to the RCMP so that it may be identified</p>	
<p>Ensure that domestic legislation and/or regulations allow sufficient time frames for freezing assets during the pendency of foreign investigations and proceedings</p>	<p>Under the <i>Freezing Assets of Corrupt Foreign Officials Act</i>, assets may be frozen and safe for five years with the possibility of renewal to ensure that foreign authorities from requesting states have time to pursue their investigations and gather evidence to support a formal request for the enforcement of foreign orders to seize or forfeit these assets at a later date.</p>	<p><u>Fully implemented</u></p>

	Canada fully implements UN sanctions regimes that freeze assets related to the former regimes in Libya.	
Ensure that mutual legal assistance regarding asset recovery can be granted in the absence of a bilateral legal assistance agreement , under appropriate circumstances. If necessary, and without prejudice to the preceding point, recognize UNCAC as a sufficient legal basis for mutual legal assistance (MLA) by States Parties	Under Canada's Mutual Legal Assistance in Criminal Matters Act, mutual legal assistance is available pursuant to a request made to Canada under both bilateral MLA treaties or multilateral conventions containing MLA provisions. This would include the UNCAC.	<u>Fully implemented</u>
Ensure that MLA requests for freezing can be permitted on an <i>ex parte</i> basis (i.e., no requirement to give the asset holder the opportunity to contest beforehand the provision of MLA)	Under the <i>Freezing Assets of Corrupt Foreign Officials Act</i> regulations may be passed to freeze the assets or property of politically exposed foreign persons at the written request of a foreign state, where the Governor-in-Council has determined that the foreign state is in a state of turmoil or political uncertainty, and where the making of an order or regulation is in the interest of international relations.	<u>Fully implemented</u>
Allow domestic officials, in accordance with its domestic laws, to alert a foreign jurisdiction to an ongoing investigation in the disclosing jurisdiction and indicate that existing information could be of interest, a proactive form of assistance, and to do so on a peer-to-peer basis where permissible	Canadian Law Enforcement can share information either through police to police or with the use of INTERPOL on ongoing investigation. We have liaison officers throughout the world that can initiate contact with foreign authorities and provide necessary information. This is done on a case by case basis.	<u>Fully implemented</u>
In case of a barrier to execution of a mutual legal assistance request, promptly communicate the nature of the difficulty to the requesting authorities so that it may be corrected expeditiously	It is routine practice for Canadian officials to inform requesting authorities when an MLA requests lacks the requisite information and to advise what information must be provided to comply with Canadian law to give effect to a request for MLA. Such information can be communicated in writing, and in some cases, Canadian officials (legal, policy and law enforcement) may meet with representatives from a requesting authority to address the barriers to execution so that further action may be taken. In a number of complex cases, Canadian officials have met with the requesting authorities and other experts in several different jurisdictions to provide hands-on guidance and cooperation, including: <ul style="list-style-type: none"> • Explaining the requirements of Canadian law; • Providing advice and precedents; • Offering to review drafts of requests to ensure completeness; 	<u>Ongoing</u> : Canada continues to extend offers for assistance and law enforcement cooperation to countries in the Middle East and North Africa region for the purposes of asset recovery when there is an operational basis for greater collaboration.

	<ul style="list-style-type: none"> • Offering to work <i>in situ</i> with investigators; • Acting on parts of requests that met the requirements of Canadian law; • Providing feedback and suggestions on extant requests; and • Remaining willing and able to continue to assist in the same way. 	
Enhance case cooperation:		
<p>During the post-transition period, work with local officials in requesting transition countries on the underlying investigations to develop leads for records and assets located abroad as well as to facilitate international legal assistance. This would include, upon request, sending practitioners (whether from the G8 country governments themselves, relevant international organizations and initiatives or other appropriate sources) to the requesting country</p>	<p>Canada has sent legal experts in MLA and law enforcement officials to requesting transition countries to meet local officials to assist in the preparation of MLA requests to Canada and to pursue cooperation between law enforcement authorities. In addition, Canada actively participates in international fora at the UNODC and the Interpol to enhance case cooperation by sharing information, developing best practices and suggesting means whereby cooperation could be enhanced.</p>	<p><u>By the end of 2013:</u> Canada hopes to do a needs assessment in Northern Africa on law enforcement cooperation.</p>
Measures Related to Technical Assistance and Capacity Building:		
<p>Provide Specialized Training: During the post-transition period, to the extent possible, provide funding and/or in-kind expertise to ensure that specialized training by international practitioners from relevant public authorities, whether from the G8 country governments themselves, relevant international organizations and initiatives (such as, inter alia, the World Bank/UN Office of Drugs and Crime Stolen Asset Recovery Initiative - StAR), or other appropriate sources is provided to requesting transition countries. The key topics would include: financial investigations, financial document analysis, asset confiscation and forfeiture, requesting international assistance, asset recovery and asset management tools, and other topics identified by the requesting countries</p>	<p>Under the auspices of the Arab Forum on Asset Recovery Canada has participated and provided training on the domestic co-ordination of asset recovery, financial investigation, and the role of civil society in asset recovery.</p>	<p><u>On-going:</u> Canada continues to offer needs assessment and law enforcement training to advance investigations on asset recovery in Northern Africa and Middle East where there are operational imperatives.</p>
<p>Support domestic coordination: During the post-transition period, assist a requesting transition country in setting up locally an Asset Recovery Task Force (ARTF), as a domestic coordination measure for the transition country partner,</p>	<p>Canada participated in the AFAR Special Session I on domestic coordination.</p>	<p><u>Ongoing:</u> Canada continues to promote law enforcement cooperation and to engage with Deauville countries to do needs assessment for the purposes of advancing investigations on asset recovery matters.</p>

<p>comprised of representatives of relevant law enforcement agencies (police, customs, prosecutors, etc) and regulatory bodies (such as financial intelligence units, central banks etc.), among whose functions will be cooperation with international practitioners</p>		
<p>Promote legal and institutional reforms: During the post-transition period, to the extent possible, assist a requesting transition country in drafting appropriate legislation and/or institutional reforms that will adhere to international standards, including, but not limited to, in pursuing criminal and/or non-conviction based forfeiture legislation; and to establish systems for disclosure of assets and interests by senior public officials and appropriate relations, consistent with international best practices; and other relevant legal frameworks. Urge relevant international organizations to assist in this regard</p>	<p>Canada has not yet received bilateral requests for assistance in this area.</p>	<p><u>Ongoing:</u> Canada stands ready to share its best practices and expertise on legislative and institutional reform for asset recovery to any requesting countries in the MENA region.</p>
<p>Strengthen frameworks to manage recovered funds: During the post-transition period, to the extent possible, assist a requesting transition country with legislative drafting advice or other assistance in setting up locally a central fund, to receive assets confiscated at home or abroad and to ensure transparency in their administration.</p>	<p>Canada has not yet received bilateral requests for assistance in this area.</p>	<p><u>NA</u></p>
<p>Support the Arab Forum on Asset Recovery: Support the establishment of and participate as appropriate in the Arab Forum on Asset Recovery, including through financial support, where possible, expertise, and attendance at the inaugural meeting at the appropriate level.</p>	<p>Canada participated in the first Arab Forum on Asset Recovery, providing an expert delegation to run workshops and offer bilateral casework meetings.</p> <p>In 2013, Canada sent experts to the first two Special Sessions organized by StAR and the UK leading up to the 2nd Arab Forum on Asset Recovery.</p>	<p><u>October 2013:</u> Canada will attend and moderate a session at the 2nd Arab Forum on Asset recovery hosted by Morocco and the United Kingdom.</p>