Stolen Asset Recovery (StAR) Initiative

Stolen Asset Recovery
A Good Practices Guide for Non-Conviction Based Asset Forfeiture

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Stolen Asset Recovery: A Case from Kuwait

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During a period of four years between 1989 and 1992, the Kuwaiti Government was the victim of stolen, misappropriated, and embezzled money. The Kuwaiti Investment Office (KIO), a part of the Kuwait Investment Authority (a reputable Governmental investment organization), lost $5 billion from its investments in Spain through the KIO’s London offices. The Kuwaiti Investment Office reported losses of $3.8 billion as a result of a criminal conspiracy, including, but not limited to, bad investments; redemption of share prices as a result of the issuing of new shares; and the misappropriation or mishandling of such investments by some of the top management officials.

Unaccounted monies totaling $1.2 billion were considered missing (that is, stolen, embezzled, or misappropriated). The majority of the disclosed losses occurred during the Iraqi invasion of Kuwait (August 1990 through February 1991). It was suspected that missing monies had been stolen or embezzled by some of the top KIO management officials, including members of the Royal Family managing the office. Banks, accountants, and lawyers were also considered defendants in the conspiracy or embezzle-

ment cases of the missing $1.2 billion.

In April through August of 1991, a new KIO management team took over and discovered the losses incurred by the previous administration and, as a result of their discovery, launched an investigation into the missing assets. Legal counsel was appointed to provide legal advice and to lead the development of a legal process to mediate the issue.

Proposed Action

The legal action against the suspected defendants was considered a critical step to safeguarding the state’s money and maintaining its image. This legal action was realized to be a crucial step to prevent crimes of stealing money from the state. It was important to establish necessary requirements in dealing with the situation because matters of political sensitivity and national image were at stake.

The following agreements were made to secure the success of the initiative:

- the formation of a national team with the necessary capabilities to develop, understand, and create effective policies to mediate the issues at hand;

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the gaining and securing of political will and national support for the legal action to be maintained throughout the legal process;

- an assurance that the Government, Parliament, and the National Team would resist all pressures and interference in the process;

- an admission that such efforts would be costly and time consuming, but would affect the image of the state if such action were abandoned at an early stage; and

- a strategy to deal with the media and issues of public embarrassment arising from the legal actions and investigations.

National Team: Task Priorities

A National Team was created and was composed of four Kuwaitis, all with extensive experience and senior legal qualifications. Team members were required to be fluent in both Arabic and English and three of them were stationed full-time in London (at KIO offices) to do the following:

- Set up a structural vision for running the case worldwide and for managing international law firms and accountancy firms engaged in the case.

- Develop and implement the following steps in the legal process:
  - Initiate offensive actions, rather than being in defensive positions. This required limiting any defensive action to pressing situations.
  - Determine the nature of legal actions to be launched in dealing with embezzlement or conspiracy and recovery actions, including criminal, civil, interlocutory, and settlements.
  - Identify the jurisdictions for legal actions.
  - Distribute and allocate legal team tasks and responsibilities.
  - Define the role of legal firms in handling the cases and initiating litigation.
  - Acquire technical assistance (financial and legal) as deemed required.
  - Determine key legal issues to be addressed or faced, including
    - waiver of state immunity,
    - statutes of limitation,
    - choosing defendants,
    - building witnesses lists, particularly among potential defendants, and
    - dealing with discovery threats, including political pressures and public embarrassment that might result from the disclosure of sensitive documents.
  - Collaborate in judicial processes (technical legal assistance).

Scope of Legal Actions

Because of the complexity of the case, the rapid movement of money, and the need for imminent tracing of assets, the National Team initiated legal actions in 19 countries
and jurisdictions, among them The Bahamas, Bahrain, the Cayman Islands, Italy, Jersey, Kuwait, Singapore, Spain, Switzerland, the United Kingdom, and the United States.

Legal actions varied from NCB asset forfeiture or compensatory action (or both), to criminal and interlocutory actions, namely freezing and disclosure orders.

Private civil actions were filed against both institutions and individuals. Issues of asset recovery, compensatory action, receivership and bankruptcy, and trust disclosure were initiated in these cases.

Criminal cases encompassed issues of embezzlement, conspiracy, fiduciary trusts, and the falsification of documents. These cases targeted individual defendants.

Interlocutory action was also taken and adapted, including worldwide freezing orders and summary judgments (foreign endorsement orders). Various tracing tools and discovery actions were launched, such as disclosure orders (known as a Norwich Pharmacal Order).

Through the National Team’s efforts, more than 30 convictions were obtained and nearly 46 orders, most of which were NCB asset forfeiture orders, were achieved. These actions awarded recovery judgments of $1,011 billion as of January 2008. The Team was able to recover $548 million out of the $1,011 billion total, in addition to winning 12 compensation orders against institutions such as banks and accounting firms. More than 180 orders were placed with respect to money-tracing and money-freezing initiatives. Several mutual settlements were also reached in some of these cases, or parts thereof.

How Private Law Actions Can Work to Achieve Recovery

In the Kuwaiti case, the Team agreed to launch private civil litigation or actions before the concerned courts in the proper jurisdictions. This strategy was approved by the KIO, the Kuwait Investment Authority, and the Kuwaiti Government, with acknowledgment of the high cost, time frame, political embarrassment and pressure, and media publicity that would be associated with the strategy and prescribed actions. The chief aim of the strategy was to achieve asset recovery, mainly through private civil litigation and private forfeiture actions, although not excluding criminal or civil legal assistance from a requested state. Private civil action within the U.K. legal process was the Team’s choice for maintaining control of the litigation, rather than initiating criminal action, which would involve the Serious Fraud Office in the United Kingdom.

Lessons Learned

Private civil actions can be successful; however, they cannot achieve success without national political will and support. With the support of political powers, a competent
and specialized National Team must be chosen and given the necessary discretion and power to handle the legal action by implementing policies and investigations dealing with stolen assets. Countries must expect that efforts to fight corruption will be costly and time consuming and result in heavy publicity and embarrassment. Despite these issues, the asset recovery actions are well worth saving the image of the state.

The following items were critical to the success of asset recovery in the Kuwaiti case.

- The establishment of a dedicated and competent National Team was critical to the success of the initiative.
- Political will was secured to ensure the success of asset recovery.
- The elimination of pressures helped to achieve breakthrough successes for stolen assets recovery efforts.
- Processes were initiated against individuals, rather than institutions, resulting in less resistance and fewer legal battles.
- Private law actions, for several reasons, were a well-established route for asset recovery.