Cooley

March 18, 2015

Cooley discusses the legal options open to states seeking to locate, freeze and recover the proceeds of corruption laundered to foreign states, and considers their advantages and disadvantages.

Corruption cases are typically international and multi-jurisdictional. Bribes for the award of public contracts or stolen public funds may be paid into foreign accounts or used to acquire foreign properties or other assets; the proceeds of corruption may be laundered through a number of countries, usually involving both major financial centres and offshore jurisdictions.

The available recovery mechanisms are criminal or civil; or, in the case of civil forfeiture by law enforcement agencies in the absence of criminal conviction, a hybrid of the two. These mechanisms are all identified by the United Nations Convention Against Corruption (UNCAC) as viable routes to recover the proceeds of corruption.

However, the choice of mechanism sometimes polarises opinion. These practitioners will usually point to individual examples that support their viewpoint.

In our experience, the "correct mechanism" for an individual case will depend on its particular facts and include analysis of the potential value and speed of recoveries. There are some circumstances in which the criminal route is the most likely to achieve meaningful recoveries in a sensible time-frame, and others where the civil route is more likely to do so. In some cases either the criminal or civil mechanism is unavailable, so the choice is between a particular route and no recovery at all.

An effective asset recovery strategy is likely to make use of a combination of criminal and civil mechanisms. At the outset, states often carefully consider the circumstances before selecting the right route for a particular case. There will always be difficult cases where reasonable people can quite properly disagree, often on incomplete information, on the most effective recovery route. But there are also plenty of cases where the correct route is reasonably obvious on open-minded analysis.

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