

Belt and Road Initiative: legal mechanisms to recover stolen assets

Belt and Road
Initiative

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Abstract

Purpose – This paper aims to determine the types of legal mechanisms that authorities can use to recover stolen assets for and from China.

Design/methodology/approach – Newspaper articles and books are examined as are relevant reports by various regulatory authorities and academic institutions.

Findings – The effectiveness of legal mechanisms in the recovery of stolen assets may be affected by issues such as the difficulties in tracing illicit funds, the ambiguous nature of “value” as well as the rise in technology.

Research limitations/implications – There are limited data available in relation to the prevalence of corrupt officials along the Belt and Road Initiative and the statistical success in the recovery of stolen assets. Any discussions within this paper are based on the impressionistic observations of this author, which may not reflect the true state of affairs of the Belt and Road Initiative.

Practical implications – Those who are interested in examining how authorities could recover stolen assets from and for China will have an interest in this topic.

Originality/value – The value of the paper is to demonstrate the difficulties in recovering stolen assets for and from China.

Keywords Belt and Road Initiative, China, Corruption, Recovery, Stolen assets

Paper type Research paper

1. Introduction

The extent and scope of infrastructure projects within the Belt and Road Initiative (BRI) may potentially provide a catalyst for corrupt acts along the BRI (Russel and Berger, 2019). To combat corruption, the Communist Party of China (CPC) expanded the scope of its anti-corruption campaign (“Campaign”) to include the monitoring of overseas BRI-related projects (Weinland, 2019). As of December 2022, the CPC has successfully indicted approximately 4.7 million corrupt officials (Liu and Li, 2022).

The indictment of corrupt officials raises an interesting question as to *how* authorities can recover the assets (e.g. monies and property) stolen by such officials. In other words, apart from initiating *criminal proceedings* against corrupt officials, there is ambiguity as to whether authorities can use other legal mechanisms such as *civil proceedings* to recover such assets.

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2. Thesis

This article serves to examine whether there are appropriate legal mechanisms (including civil remedies) that authorities can use to recover stolen assets. Following which, this article will then examine whether there are any potential challenges that authorities may face in using such legal mechanisms (including but not limited to the difficulties in tracing illicit funds, the ambiguous nature of “value,” and the rise in technology).

Before examining these issues, this article will briefly establish the following conceptual background, namely, the:

- extent of corruption along the BRI;
- types of assets that get stolen along the BRI;
- methods in which assets get stolen along the BRI; and
- places in which stolen assets may typically end up at.

3. Brief background

3.1 *Extent of corruption along the Belt and Road Initiative*

The BRI prides itself as a globalized community that has “expanded beyond the borders of China to become an international effort” ([Xinhua News Agency, 2023](#)). This has enabled developing countries to leverage on the BRI’s resources (such as its construction expertise and working capital) to further develop their infrastructures ([Xinhua News Agency, 2023](#)).

However, the internationalization of the BRI is a double-edged sword. This is because access to BRI resources may potentially provide a platform for corrupt officials to carry out illicit activities. Indeed, the CPC’s decision to expand the scope of its Campaign toward overseas BRI projects suggests that corruption is a topical issue in relation to the BRI. Even so, there is currently limited data as to the *extent* of corruption along the BRI.

According to a report by [The Bank of China \(2008\)](#) (“Report”):

- Between the mid-1990s and 2008, there were approximately 16,000–18,000 officials who have left China with illicit funds.
- In 2011, there were approximately more than 10,000 corrupt officials who were involved in a 15-year period of embezzlement and bribery, which resulted in \$120bn being taken across borders.

Based on the statistical findings published in the Report, this author forms the following observations in relation to the extent of corruption along the BRI:

- It seems that, pre-BRI (i.e. before 2013), there has already been officials embezzling and dissipating monies across borders. This suggests that corruption may become more prevalent post-BRI (i.e. after 2013), given that there is currently no structured framework as to how funds within the BRI should be used. This in turn provides a platform for corrupt individuals to leverage on the BRI’s resources. For example, the BRI may provide a platform for crook officials to embezzle funds across borders using the pretext of “infrastructure development.” This may then allow such officials to artificially inflate the costs of construction to embezzle significant amounts of monies across borders.
- It appears that, as a class, higher-ranking officials are not excluded from involvement in illicit activities. Indeed, according to recent studies in managerial

decision-making: “executives, especially the more senior and experienced ones, resort extensively to something variously called intuition, gut feel, or, simply, judgement” (Kahneman *et al.*, 2021). Such “intuition,” which often masquerade as rational confidence in the validity of one’s judgment (Kahneman *et al.*, 2021), may lead to high-ranking officials resorting to intuitive decision-making in situations they perceive as highly uncertain – in other words, when facts deny them the sense of understanding and confidence they crave, they turn to their intuition to provide a sense of confidence (Kahneman *et al.*, 2021). This may in turn provide an artificial sense of confidence which leads to high-ranking officials risking their entire careers in exchange for miniscule amounts of monies.

- Such “intuition” is often accompanied by “delusional optimism.” Studies have shown that executives (such as higher-ranking officials) often make decisions based on “delusional optimism” rather than the weighing of gains, losses and probabilities (Hodges, 2015). As such, risk takers may misread the risks, and the confidence in their future success sustains a positive mood that enhances their prospects of prevailing (Hodges, 2015). This suggests that higher-ranking officials may not always take the time to stand back and think about the ramifications on their professional career should they be caught committing illicit activities. The failure to consider the costs versus the reward thereby provides a false sense of optimism for higher-ranking officials to commit illicit acts.

All in all, the absence of a structured framework along the BRI (in relation to the use of resources) coupled with the highly intuitive and optimistic mindsets of individual higher-ranking officials may potentially lead to higher rates of corrupt activities along the BRI. Given the significant effects that corruption can have (Financial Action Task Force, 2011), it becomes important to understand the *types* of assets that may get stolen, *how* such assets get stolen and *where* such assets usually end up at.

3.2 *Types of assets that get stolen along the Belt and Road Initiative*

The United Nations Convention Against Corruption (“UN Convention”) does not define the term “asset” (United Nations, 2004). Even so, the definition of “property” under Article 2(d) of the UN Convention seems to suggest that the term “asset” is interchangeable with the term “property”:

“Property” shall mean “assets of every kind, whether corporeal or in-corporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets”.

Accordingly, given the broad definition of the term “assets,” it means that *any type* of property can get stolen along the BRI. However, this article will narrow its scope of examination to “monetary assets”. As the UN Convention does not define the term “monetary assets,” this author is of the view that that the *types* of monetary assets that can get stolen along the BRI include, among others, those illustrated in Figure 1.

3.3 *How do assets get stolen along the Belt and Road Initiative*

When one talks about monetary assets getting “stolen,” this would mean that there is a *predicate offence* that has led to such assets being stolen. In other words, the “predicate offence” is a crime that is a component of a more serious crime (UN Convention, 2004). For example, “corruption” is the predicate offence of money-laundering (Financial Action Task Force, 2011), as illustrated in Figure 2 below:

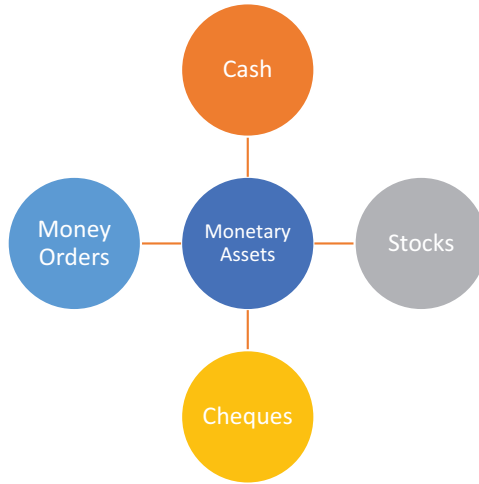


Figure 1.
Flowchart of the types of “monetary assets” that can get stolen along the BRI

Source: Created by author

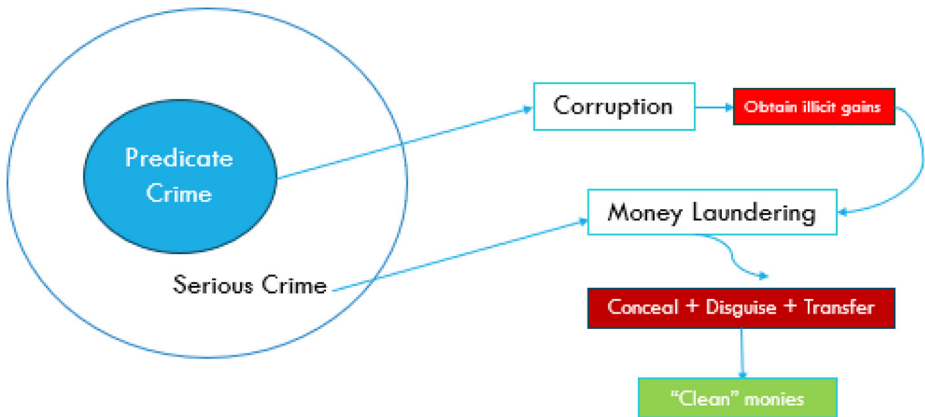


Figure 2.
Flowchart of the link between a predicate crime (i.e., corruption) and a serious crime (i.e., money-laundering)

Source: Created by author

As seen in [Figure 2](#) above, the main purpose of carrying out corrupt activities is to obtain illicit monies. To hide these illicit monies from authorities, corruptors undergo the “money-laundering” process to conceal, disguise and transfer monies – with the goal of producing “clean” and “legitimate” monies. As such, money-laundering can be seen as an extension of corrupt behaviors, and it is through the money-laundering process that corrupt officials can *steal* monetary assets along the BRI ([The Bank of China, 2008](#)).

There are various methods of money-laundering that corrupt officials may use to *steal* monetary assets along the BRI ([Financial Action Task Force, 2011](#)). This is illustrated in [Table 1](#) below.

S/No.	Method of Money-Laundering	Description
1	Use of corporate vehicles and trusts	A vehicle/shell company can be created as part of a series of multi-jurisdictional structures, under which a company in one jurisdiction is owned by one or more other corporations or trusts in other jurisdictions (Financial Action Task Force, 2010). This enables corrupt officials to conceal their sources of funds and their ownership of the corporate vehicles
2	Use of specialized professionals	Corrupt officials may seek the assistance of specialized professionals to set up corporate structures to disguise the source and ownership of the monies (Financial Action Task Force, 2010)
3	Use of domestic financial institutions	Corrupt officials may use foreign financial institutions to transfer and hide the proceeds of corruption, as well as use domestic financial institutions to launder funds (Sharman, 2009; Financial Action Task Force, 2011)
4	Use of cash	The anonymous nature of cash, coupled with its lack of paper trail, provides an attractive option for corrupt officials to launder monies. For example, illicit monies can be converted back to cash in order to break the paper trail (Financial Action Task Force, 2011)

Table 1. Tabulation of the methods that corrupt officials can utilize to steal monetary assets along the BRI

Source: Created by author

3.4 Where stolen assets end up at

According to studies done by the Bank of China, the *destination* to which such stolen assets end up at is dependent on the *ranking* of the corrupt official (The Bank of China, 2008), as illustrated in Figure 3 below.

Other than the findings made by the Bank of China and the Financial Action Task Force (2011), there is limited data as to the *exact* locations to which stolen assets end up at. Hence, notwithstanding the relatively outdated nature of the findings put forth by the Financial Action Task Force and the Bank of China, this author will rely on these findings to make the following observations:

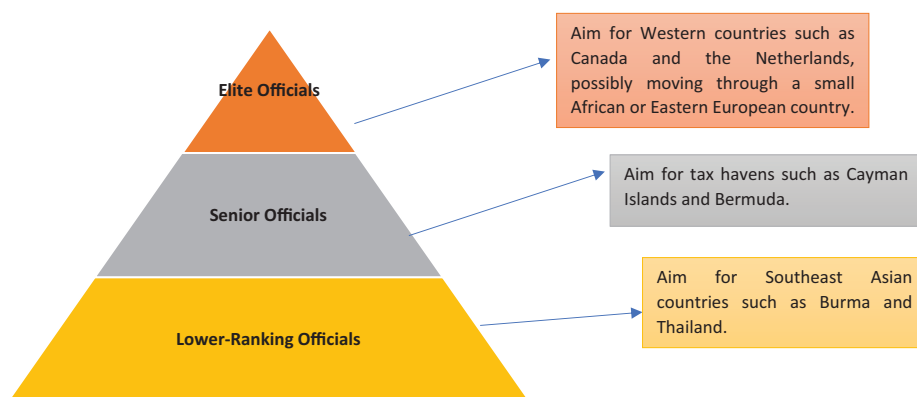


Figure 3. Diagram of where stolen assets may potentially end up at depending on the ranking of an official

Source: Created by author

- Elite corrupt officials tend to have more *power* and, as such, would make use of *complex* schemes to surreptitiously transfer *huge* amounts of monies across borders. Given that *huge* amounts of monies are involved, it is unsurprising that such officials would escape to *larger* countries, such as the USA and Canada, to swiftly escape detection from authorities and to, for example, incorporate various shell companies all around the different states of the USA so as to conceal the origins of funds and to hide their beneficial ownership in the shell companies.
- Lowly ranked officials tend to be *less powerful (and therefore, less financially capable)* and hence would have to make use of *simple* schemes to facilitate the transfer of *small amounts of monies* into other *small countries* such as Burma and Thailand. Given that the costs of living in *smaller countries* are relatively *cheaper* compared to larger countries such as the USA, such low-ranked officials can lay low with little to no financial burden.

4. The types of recovery mechanisms to recover stolen assets

4.1 Introduction

Corruption generates vast amounts of *stolen* monetary assets which provides the environment to foster other predicate crimes such as large scale tax evasion and transnational organized crime (Financial Action Task Force, 2022). This would severely impact economies, as such corrupt acts would undermine the regulatory systems put in place to prevent money-laundering, terrorist financing and proliferation financing (Financial Action Task Force, 2022).

It is therefore important for us to understand the types of mechanisms that authorities can use to recover stolen assets for and from a particular jurisdiction. By way of illustration, in relation to China, such mechanisms include, among others:

- the Central Commission for Discipline Inspection (CCDI);
- the integration of China's domestic laws with the UN Convention;
- the integration of China's domestic laws with bilateral agreements/treaties;
- the Financial Action Task Force and INTERPOL's Joint Global Asset Recovery Initiative; and
- civil remedies.

This article will address each mechanism in turn.

4.2 Mechanism (1) – the Central Commission for Discipline Inspection

CCDI is China's top anti-corruption watchdog (Bloomberg News, 2023). To hamper the proliferation of corrupt activities along the BRI, the CCDI has vowed to strengthen the Campaign's role in deepening anti-corruption cooperation (Ip, 2023). For example:

- On November 7, 2023, South China Morning Post reported that Li Xi (head of CCDI) and Tran Cam Tu (head of the ruling Vietnamese Communist Party's top anti-corruption body) both pledged to strengthen cooperation to battle corruption to ensure a "*clean Silk Road*" (i.e. free of corruption and bribery) (Ip, 2023).
- On October 18, 2023, the Ministry of Foreign Affairs of the Republic of China reported that China will "[...] establish the Corporate Integrity and Compliance Evaluation System for the [BRI]. [China] will also work with international organizations to carry out research and training on the promotion of integrity in

[BRI] cooperation” as well as “[...] strengthen the building of multilateral cooperation platforms covering [...] anti-corruption” ([Ministry of Foreign Affairs of the Republic of China, 2023](#)).

Based on the above, it is clear that CCDI’s main goal is to clamp down on corrupt activities along the BRI so as to improve the integrity of the BRI. The CCDI therefore provides a platform for authorities (within or outside China) to cooperate with the CCDI to strengthen anti-corruption enforcement along the BRI. This would in turn greatly assist the recovery of stolen assets for and from China.

4.3 Mechanism (2) – integration of China’s domestic laws with the UN convention

On December 10, 2003, China signed the UN Convention and ratified it on January 13, 2006 ([United Nations, 2016](#)). On February 12, 2006, pursuant to Article 68(2) of the UN Convention, the UN Convention came into force in China ([United Nations, 2016](#)).

Notwithstanding that the UN Convention has a force of law in China, this author forms the view that the *integration of China’s domestic laws* with the UN Convention is vital in China’s attempt to recover stolen assets for and from China. Indeed, according to the preamble of the UN Convention, its main purpose is to strengthen international cooperation in the recovery of illicitly acquired assets:

[...] prevent, detect and deter in a more effective manner international transfers of illicitly acquired assets and to *strengthen international cooperation in asset recovery*. (emphasis in bold and italics) ([United Nations, 2004](#))

Furthermore, Chapter V of the UN Convention contains provisions which would facilitate the recovery of stolen assets from and for China ([United Nations, 2004](#)). These provisions include, among others:

- Article 52 – prevention and detection of transfers of proceeds of crime;
- Article 53 – measures for direct recovery of property;
- Article 54 – mechanisms for recovery of property through international cooperation in confiscation;
- Article 55 – international cooperation for purposes of confiscation; and
- Article 57 – return and disposal of assets.

Fortunately, China has since revised its Criminal Law (CL) and Criminal Procedure Law (CPL) to be in line with the UN Convention (collectively “*Revisions*”) ([United Nations, 2016](#)). These Revisions include, among others, aligning:

- the definition of “public official” within Article 93 of the CL with Article 2 of the UN Convention ([United Nations, 2016](#));
- the criminalization of money laundering and concealment within Article 191 and 312 of the CL (the former dealing with the laundering of proceeds of “embezzlement and bribery,” whereas the latter dealing with proceeds of “all crimes”) with Articles 23 and 24 of the UN Convention (which deals with the laundering of proceeds of crime as well as concealment) ([United Nations, 2016](#));
- Article 307 of the CL (which deals with the obstruction of justice) with Article 25(a) of the UN Convention, including the bribery of witnesses and obstruction by any other means ([United Nations, 2016](#)); and

- Articles 64, 65, 69, 72 and 75 of the CPL with Article 30(4) of the UN Convention (which deals with prosecution, adjudication and sanctions) ([United Nations, 2016](#)).

Based on the above, it can be seen that China's adoption of the UN Convention alongside the Revisions thus provides an effective legal mechanism for authorities to recover stolen assets for and from China.

4.4 Mechanism (3) – integration of China's domestic laws with bilateral agreements/treaties

The integration of China's domestic laws with bilateral agreements/treaties provides a legal mechanism for different states to share valuable information on stolen assets – which in turn – would facilitate the recovery of stolen assets for and from China. Indeed, according to Article 48(1) read with Article 48(2) of the UN Convention, state parties (including China) can enter into bilateral agreements to cooperate closely with one another to exchange information on the movement of proceeds of crime – thereby enhancing the effectiveness of law enforcement action ([United Nations, 2016](#)).

There is limited data concerning the number of bilateral agreements and treaties that China has executed with another country. Even so, there are two key bilateral agreement/treaty which may assist in the recovery of stolen assets, as illustrated in [Table 2](#).

Based on [Table 2](#), it appears that bilateral agreements/treaties would provide authorities with an effective legal mechanism to facilitate the recovery of stolen assets while deterring potential perpetrators from attempting to hide illicit gains across borders. Indeed, as observed by an official of the Chinese Foreign Ministry as well as a senior officer with the Ministry's Economic Crimes Investigation Bureau, such bilateral agreements/treaties send a signal to criminals that China as well as other foreign countries are “no longer a safe harbor for their criminal gains” ([Zhu and Wen, 2022](#)), which in turn, would “facilitate the return of the money transferred by fugitives and the recovery of losses” ([Yan, 2016](#)). As such, China should enter into more bilateral agreements/treaties with other countries so as to facilitate the recovery of stolen assets for and from China.

Key bilateral agreement/treaty	Date of Execution	Date of Entry into Force	Effect
Treaty between the United Kingdom of Great Britain and Northern Ireland and the People's Republic of China on Mutual Legal Assistance in Criminal Matters	2 December 2013	15 January 2016	China, the United Kingdom and Ireland are to provide mutual legal assistance in the investigations, prosecutions and judicial proceedings related to criminal matters, including the restraint, freezing, seizure and confiscation of the proceeds and instrumentalities of crime (Treaty Series No. 10, 2016)
Agreement on the Return or Sharing of Recovered Assets	In or around 2016		China and Canada will share illegally transferred assets if their origin cannot be confirmed (Zhuang, 2016)

Table 2.
Tabulation of the bilateral agreement/treaty entered into by China to strengthen the recovery of stolen assets

Source: Created by author

4.5 Mechanism (4) – Financial Action Task Force and INTERPOL’s Joint Global Asset Recovery Initiative

The process of recovering stolen assets is often complex, given that many stolen assets are “often moved out of countries quickly and channeled to or through multiple countries” (Financial Action Task Force, 2022). As such, the newly launched joint initiative between the Financial Action Task Force and INTERPOL (“Joint Initiative”) may provide yet another mechanism for authorities to rely on to recover stolen assets for and from China.

According to a report dated September 13, 2022, the main aim of the Joint Initiative is to “deprive criminals of their dirty money, marking a turning point in global efforts to recover illicit assets” (Financial Action Task Force, 2022). To facilitate the recovery of stolen assets, the Joint Initiative aims to do the following, among other (Financial Action Task Force, 2022):

- promote national policies and actions that prioritize the tracing, seizure and confiscation of criminal assets;
- enhance operational cooperation at the national, regional and international levels; and
- increase effective information sharing among public authorities and with the private sector.

Given the recency of the Joint Initiative, it remains to be seen whether it would be an effective mechanism in the recovery of stolen assets. Even so, this author forms the view that it is *highly likely* that the Joint Initiative would facilitate the recovery of stolen assets. This is because it seems that there is currently a lack of bilateral agreements/treaties between China and the rest of the world – which may severely hamper the recovery of stolen assets. Such sentiments have been expressed by several individuals, including but not limited to the following (China Daily, 2016):

- China’s Ministry of Public Security: “a lack of bilateral extradition treaties and differences in national legal systems have seen the US, Canada, Australia and Singapore become popular destinations for corrupt officials in recent years.”
- Deputy Director of the Ministry’s Economic Crimes Investigation Department: “the Chinese police face practical difficulties in repatriating fugitives and recovering funds [. . .] It’s the result of a lack of signed extradition treaties, political differences and complex legal procedures.”
- Professor of International Criminal Law at Beijing Normal University: “The most difficult issue is that we can’t provide sound evidential documents to our foreign counterparts, such as the US and Canada, to form a complete chain of evidence.”
- Deputy director-general of the judicial assistance and foreign affairs department at the Ministry of Justice: “[. . .] solid information is essential when requesting judicial assistance from other countries [. . .] in identifying, freezing and confiscating ill-gotten assets that have been transferred overseas.”

The Joint Initiative may therefore cure the negative impacts arising out of a lack of bilateral agreements/treaties by:

- providing a legal platform for authorities in China to receive mutual assistance from other countries (including but not limited to sharing information on stolen and suspected stolen assets) notwithstanding the differences in national legal systems; and
- ensuring that the national policies of countries prioritize the recovery of stolen assets by implementing an effective regime to hasten the tracing, seizing and confiscation of illicit assets at national, regional and international levels.

4.6 Mechanism (5) – civil remedies

According to the World Bank, states and government entities can make use of civil lawsuits and remedies to recover assets stolen by former officials and/or get compensation for damages caused by corruption (World Bank, 2015). Such civil lawsuits and remedies are also encouraged by Article 53 of the UN Convention, which allows each state party to United Nations (2004):

[. . .] *initiate civil action in courts* to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention. (emphasis added in *bold and italics*)

In this regard, this article will examine how States could make use of civil proceedings to recovery stolen assets. This would involve going through the following step-by-step process, including among others, the following steps:

- *Step 1*: identify the potential plaintiffs and defendants in a corruption case.
- *Step 2*: identify the types of actions including whether a proprietary action or a personal claim should be taken.
- *Step 3*: identify the civil investigative and provisional measures that could be used to assist in civil asset recovery.
- *Step 4*: recognition and enforcement of judgment against the defendant(s)/potential defendant(s).

Due to space constraints, this article would not provide a comprehensive guide as to how one could pursue a civil action. Even so, the following paragraphs would adequately address the key steps that the plaintiff(s) could undertake to commence a civil recovery suit.

First, the identification of potential plaintiffs and defendants in a corruption case is as illustrated in Table 3 below.

Second, once the plaintiff(s) and defendant(s)/potential defendant(s) have been identified, it is important to note that there are two (2) primary categories of claims that may be pursued by the plaintiff(s) (World Bank, 2015):

- *Proprietary claim*: Whether a corrupt individual has stolen an asset (belonging or beneficial owned by the state), the state would commence a proprietary action against the potential defendant to claim a “specific asset” that has been stolen (World Bank, 2015). For example, if monetary assets (such as cash) have been stolen by a corrupt official from State A – State A would be able to commence a proprietary action against the corrupt official to specifically claim for the *stolen cash*.
- *Personal claim*: This involves actions against a corrupt individual or third party for “monetary damages” rather than to reclaim a “specific asset.” This may include, among other things, an action for breach of contract, for compensation through damages or for recompense for unjust enrichment (World Bank, 2015). For example, where a corrupt official has dissipated all monies stolen from State A – and State A can no longer trace where the stolen monies have dissipated to – State A could then attempt to commence an action against the official for breach of his or her fiduciary duties (i.e. failure to act in the interest of State A) and claim compensation in the form of damages.

Third, once the potential parties to a civil recovery action (whether proprietary or personal) have been identified, it becomes important to examine the types of measures that could be used to investigate and freeze assets. This includes:

Potential plaintiffs	Potential defendants
<p>As recognized by Article 53 of the UN Convention, an “injured state” may bring a private civil action against the potential defendants (World Bank, 2015):</p> <ol style="list-style-type: none"> In its own courts and seek to enforce the decisions in the jurisdiction where the assets are located; or In the courts of another state <p>For example, where assets are stolen by officials from State A – State A may bring a private civil action against such officials (as potential defendants) in its own courts or in the courts of another state</p>	<p>The potential defendants include, amongst others (World Bank, 2015):</p> <ol style="list-style-type: none"> The perpetrators of corruption (including those who have <i>assisted</i> in the corruption); and The intermediaries used to conceal and launder proceeds of corruption (e.g., see [14] above where corporations are used as shell companies to conceal the beneficial ownership and origin of funds)

Source: Created by author

Table 3. Tabulation of the potential plaintiffs and defendants in a corruption case

- *Investigative measures:* The main purpose of investigative measures is to collect evidence and secure assets to pursue a lengthy civil corruption suit (World Bank, 2015). Such measures are briefly illustrated in Table 4.
- *Provisional measures:* To prevent the dissipation of stolen assets/suspected to be stolen assets during a lengthy civil trial, authorities can make use of the provisional measures illustrated in Table 5.

Finally, if the court is persuaded by the plaintiff(s)’ case, a judgment would be issued in favor of the plaintiff(s). To successfully retrieve the stolen assets from the defendant(s), the following two steps have to be taken (World Bank, 2015):

- Step 1 – “Recognition” of judgment:
 - Where a plaintiff seeks to enforce the judgment in the country where the assets are located, the “recognition” of the judgment would mean that the court (in the

Investigative measures	Effect
Early Disclosure and “No-Say” or “Gag” Orders in Common Law Countries	To obtain evidentiary evidence, a plaintiff may request for the disclosure of the relevant documents (such as bank statements and the identity of beneficial owners of companies and accounts) from respective defendant(s)/potential defendant(s) as well as third parties such as banks (World Bank, 2015)
Anton Pillar Orders (i.e., Search and Seizure Orders)	A plaintiff may apply for an Anton Pillar Order, which would provide the plaintiff with access into the defendant(s)/potential defendant(s)’ premises so as to secure property, documents or other materials as specified in the order itself (World Bank, 2015)
Evidence from Witnesses	Defendant(s)/potential defendant(s) may be ordered to provide a witness statement disclosing how they acquired specific assets. Often, a corrupt defendant would have difficulties providing a plausible explaining how a specific asset was obtained. As such, seeking such witness statement from defendant(s)/potential defendant(s) at an early stage may be an effective pressure point (World Bank, 2015)

Source: Created by author

Table 4. Tabulation of investigative measures that can be utilized by the plaintiff(s) to secure evidence and assets

country where the assets are located) *unconditionally* accepts the conclusion and terms of the judgment – without the need for the plaintiff to provide any additional evidence to prove its case (World Bank, 2015).

- If the judgment and assets are in the same jurisdiction, there is no need for “recognition” (World Bank, 2015).
- Step 2 – “Enforcement” of judgment:
 - Where the judgment and assets are not in the same jurisdiction, “recognition” has to precede “enforcement” of the judgment. It is only when the judgment is “recognized” that the plaintiff(s) can seek to enforce the judgment (i.e. ask the Court to give effect to whatever that is stated within the judgment. For example, if the judgment states that the defendant has to pay compensation to State A for wrongfully diverting assets out of another state – State A can ask the court to enforce the judgment so as to force the defendant to pay compensation to State A).
 - Where the judgment and assets are in the same jurisdiction, there is no need for “recognition” to precede enforcement; the plaintiff can just seek to enforce the judgment in that jurisdiction.

5. Potential challenges in the recovery of stolen assets

5.1 Introduction

Notwithstanding the existence of legal mechanisms, there may be potential challenges toward the recovery of stolen assets. Notably, broad issues pertaining to conflict of laws (“COL”) may arise when a plaintiff attempts to recognize and enforce a judgment. Even so, the examination of such COL issues goes beyond the scope of this article, and this article will instead focus on examining the following three challenges, namely, the:

- difficulties in tracing stolen monetary assets;
- ambiguous nature of “value”; and
- rise in technology.

5.2 Potential challenge (1) – difficulties in tracing stolen monetary assets

Through the money-laundering process, corrupt officials would use a combination of different mechanisms to hide the origins of stolen monetary assets – which inevitably makes it difficult for authorities to trace such assets (Financial Action Task Force, 2018).

Table 5.
Tabulation of provisional measures that can be used to prevent the dissipation of stolen assets/suspected stolen assets

Provisional measures	Effect
Seizure orders	To obtain <i>physical possession</i> of target assets such as stolen cash (World Bank, 2015)
Restraint order (E.g., Mareva Injunction)	To restrain any defendant(s)/potential defendant(s)/third parties from dealing with or disposing of the assets named in the order (World Bank, 2015)
Proprietary Injunctions	This prohibits the defendant(s)/potential defendant(s) from dealing with specific assets or the traceable proceeds of such assets (World Bank, 2015)

Source: Created by author

The different money-laundering mechanisms that corrupt officials may use (Financial Action Task Force, 2018) are as illustrated in Table 6 below.

There are three key reasons why such mechanisms make it difficult for authorities to trace stolen monetary assets:

- (1) First, when illicit funds enter into bank accounts (whether domestically or internationally), these funds are often mixed within the bank accounts, and then spread over multiple bank accounts (through the use of money mules). These funds are then transferred out or withdrawn within a few days of receipt so as to evade detection by authorities (Financial Action Task Force, 2018).
- (2) Second, the use of proxy networks would enable corrupt officials to use bank accounts of multiple shell companies in different jurisdictions which were incorporated solely to redistribute and mix funds from various sources. Such a scheme is designed to make the portion of funds belonging to corrupt officials untraceable as laundered funds would be transferred back to the official's "personal bank account(s), affiliated companies or foundations under their control, or handed over to them as physical cash" (Financial Action Task Force, 2018).
- (3) Third, trade-based money laundering often includes legitimate businesses which utilize false documentations, layer-related financial transactions as well as shelf companies to facilitate the purported trade. This in turn *breaks* the link between the predicate crime (i.e. corruption) and money-laundering, which makes it difficult for authorities to associate corrupt officials with the money-laundering activities (Financial Action Task Force, 2018).

This author forms the view that there may potentially be solutions to tackle these challenges including but not limited to the following:

Types of money-laundering mechanisms (Non-Exhaustive)	Effect
Bank Accounts	Illicit funds may be moved through a complex chain of domestic and international bank accounts owned by shell companies (Financial Action Task Force, 2018)
Money Mules	Corrupt officials may offer cash payments and free travel to incentivize and recruit "money mules". For example, money mules would utilize their bank accounts to transfer illicit funds to various bank accounts (Financial Action Task Force, 2018)
Proxy Networks	Proxy networks obfuscate the trail of financial flows through the use of multi-layered transfers via bank accounts, allowing illicit funds to be moved to a final, pre-determined destination undetected (Financial Action Task Force, 2018)
Trade-Based Money-Laundering	It is a process under which illicit funds are disguised through the use of trade transactions to deceitfully legitimize their illicit origin. This can include, amongst others, purchasing high-value goods (such as luxury bags or jewelry) followed by the shipment and re-sale of goods overseas (Financial Action Task Force, 2018)

Table 6.
Tabulation of the types of money-laundering mechanisms that corrupt officials may utilize in order to evade detection by authorities

Source: Created by author

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- First, when an individual attempts to open a bank account, the relevant financial institution should *always* undertake rigorous customer due diligence by: (a) identifying the individual's identity using reliable and independent source documents; (b) obtaining information on the purpose and intended nature of the bank account; and (c) conducting *ongoing* due diligence and scrutinizing whether the transactions undertaken within the bank account are consistent with the financial institution's knowledge of the individual and risk profile, including (where necessary) the source of funds (Financial Action Task Force, 2023). This may in turn create an administrative hurdle which may discourage money mules/corrupt officials from making use of multiple bank accounts to launder illicit funds.
 - Second, financial institutions should maintain records of bank transactions undertaken by an individual for at least five (5) years *after* a bank account is closed. Such records could potentially be evidence for the prosecution of corrupt officials/money mules who have made use of multiple bank accounts to evade detection (Financial Action Task Force, 2023).
 - Third, financial institutions should monitor *wire transfers* to detect transfers that *do not* have any information on the originator and/or beneficiary of the funds. Once such transfers are detected, financial institutions can then take appropriate actions such as *freezing* the bank accounts as well as prohibiting transactions with individuals who own the relevant bank accounts (Financial Action Task Force, 2023). This would then prevent the dissipation of illicit funds – which would facilitate authorities in tracing and detecting other illicit funds.

5.3 Potential challenge (2) – the ambiguous nature of “value”

Different individuals would have different perceptions of “value”, which in turn, makes the concept of “value” ambiguous. Given that money-laundering is essentially the transfer of *any* type of value, the ambiguous nature of “value” thus creates an avenue for corrupt officials to clean their illicit funds.

For example, there has been a recent trend where individuals are entering the second-hand market to spend *exorbitant amounts* of monies on “branded” figurines, including:

- A 2006 Coco Chanel Bearbrick, which was retailed at USD 2,500, was resold at approximately USD 19,000 (Barger, 2022). The same item was auctioned at Sothby's in September 2020 at approximately USD 38,723.80 (Cheng, 2023).
- A Supreme red-clay brick (i.e., the kind you use for building houses) was retailed at USD 30 and resold for approximately USD 1,000 (Khomami, 2016).

Unfortunately, resellers of such branded figurines *may not* have any knowledge on the concept of money-laundering, and authorities currently *do not* monitor the resale of such figurines. This therefore provides a potential loophole for corrupt officials to *easily* clean illicit funds through the sale and re-sale of such branded figurines.

As to the potential solution to this challenge, this author forms the view that:

- On the one hand, authorities could potentially implement measures to monitor and detect the resale of branded figurines which go beyond a certain value (e.g., USD 1,000 and above). Although this may hamper the sales of resellers, the implementation of such a measure could potentially hinder corrupt officials from utilizing the resale market as a platform to “clean” illicit funds.

-
- On the other hand, even if authorities were to implement measures to monitor the branded toys market, corrupt officials could *easily* utilize another item of value (such as the sale of a “branded” fork) to clean illicit monies. Indeed, given that *anything* with value can be used to transfer value from one place to another, it is highly unlikely that there can be a comprehensive measure that could eliminate illicit activities within the resale market.
 - In this regard, authorities could perhaps implement new anti-money laundering requirements for resellers – akin to the new anti-money laundering requirements that developers in Singapore must abide to [Urban Redevelopment Authority \(2023\)](#). This includes, amongst other things, requiring resellers to:
 - implement programmes and measures to prevent money laundering in relation to the reseller’s business (including notifying potential purchasers of figures worth above USD 1,000 that the reseller has to perform customer due diligence measures); and
 - submit a “Suspicious Transaction Report” to the relevant authorities for suspicious money-laundering activities (e.g., such as an individual purchasing figurines worth tens of thousands of dollars and then immediately reselling into the open market).

5.4 Potential challenge (3) – the rise in technology

Corrupt officials may convert illicit funds into virtual currencies, which are then stored in e-wallets or virtual currency wallets that “go through a complex chain of transfers” ([Financial Action Task Force, 2018](#)). This includes “virtual currencies” and “virtual commodities” offered by virtual reality games such as Habbo Hotel:

- In brief, Habbo Hotel used to have domains *regionally* based (e.g., the URL for Singapore was Habbohotel.com.sg; the URL for the United Kingdom was Habbohotel.co.uk). Subsequently, in 2006, Habbo Hotel became a single-domain website where players from all around the world make use of a single domain (i.e., Habbo.com) ([Yassok, 2016](#)).
- Given that Habbo Hotel is now a single domain website, this essentially creates a virtual *playground* for corrupt officials all around the world to utilize the *same* domain in order to go through multiple chains of transfers to clean illicit funds, as illustrated in [Figure 4](#) below:

In essence, [Figure 4](#) illustrates how the process of money-laundering can be used to clean illicit funds:

- *Placement*: Corrupt officials can place illicit monies into a legitimate system such as Habbo Hotel by exchanging real monies for “Habbo Credits” (i.e., virtual currencies).
- *Layering*: Once “Habbo Credits” are credited into the e-wallet within Habbo Hotel, such Habbo Credits can then be used to purchase super rare items such as the “Fire Overlord Outfit” which costs approximately 1000 Habbo Credits (approximately USD 200) ([Habbox Wiki, 2023](#)). The transferring of Habbo Credits to the seller of the “Fire Overload Outfit” essentially adds a *layer* to hide to origins of funds.
- *Integration*: The “Fire Overload Outfit” would then be sold to a player for real-life monies – this essentially allows the illicit monies, which was previously used to purchase Habbo Credits, to be “cleaned”.

Based on the above, it can be seen that the use of virtual currencies within virtual reality games such as Habbo Hotel makes it difficult for authorities to trace and recover illicit monies stolen by corrupt officials. This is because:

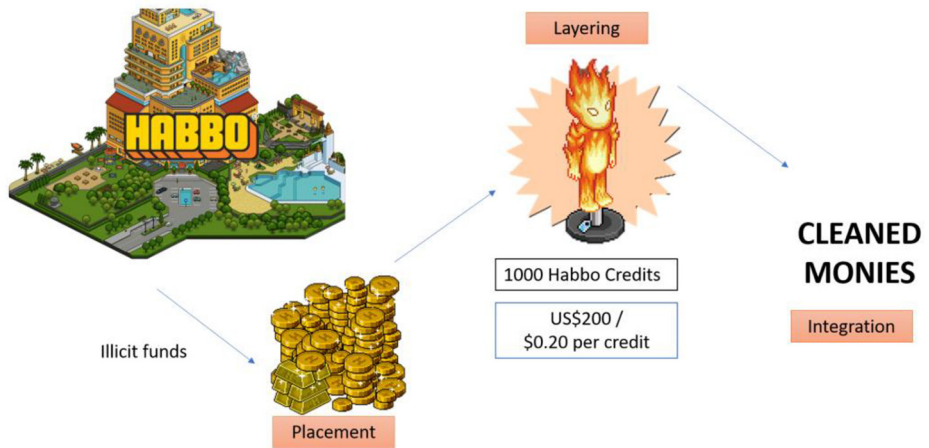


Figure 4. Flowchart of how illicit funds can be laundered through Habbo Hotel (virtual reality game)

Source: Created by author with images (obtained from Sulake)

- Proceeds can be distributed into different small transactions (e.g., such as purchasing multiple virtual commodities within Habbo Hotel) and then combined into a whole lump sum of funds (i.e., such as selling all the virtual commodities obtained within Habbo Hotel to a single player for real-life monies); and
- The greater the number of transactions (domestically or cross-jurisdictionally) entered into, the more difficult it would be for authorities to detect and trace the illicit monies.

To combat money-laundering within virtual reality games, this author is of the view that game developers (such as Habbo Hotel) should undertake the following preventive measures (ACAMS, 2023):

- Implement machine learning algorithms to analyze suspicious transactions and identify money-laundering “red flags”; and
- Introduce “know your customer” and anti-money laundering procedures to verify the identities of players and to monitor their in-game transactions. For example, “Linden Lab” (i.e., developer of the online game Second Life) announced in July 2019 that all Second Life users need to: “*register with its fully owned subsidiary Tilia Inc., a money [services] business ... As Tilia is required to comply with [anti-money laundering/ counter-terrorist financing] obligations under the Bank Secrecy Act and its implementing regulations, including in relation to customer verification and suspicious transaction reporting*”. This would therefore provide Tilia with the ability to detect and prevent any potential money-laundering activities within Second Life.

6. Conclusion

Apart from criminal proceedings, authorities may utilize various legal mechanisms such as the CCDI, the UN Convention, bilateral agreements/treaties, the Joint Initiative as well as civil remedies to recover stolen assets across borders.

However, despite the presence of such legal mechanisms, authorities may potentially face challenges in recovering stolen assets due to:

- the difficulties in tracing assets that have been dissipated across jurisdictions;
- the ambiguous nature of “value” such that anything with value can be used to transfer and dissipate illicit monies; and
- the rise in technology which enables the conversion of illicit funds into virtual game currencies that makes it difficult for authorities to trace and recover such funds.

Even so, the following solutions could potentially be utilized to enhance the detection and recovery of stolen assets across borders:

- Financial institutions should undertake rigorous customer due diligence, maintain records of bank transactions undertaken by an individual (for at least five (5) years after a bank account is closed), and monitor wire transfers to detect transfers that do not have any information on the originator and/or beneficiary of the funds;
- Authorities could implement measures to monitor and detect the sale of items on resale markets that go beyond a certain value (such as USD 1,000) – including imposing requirements on resellers to carry out due diligence on customers; and
- Game developers should implement “know your customer” and anti-money laundering procedures to verify the identities of players as well as implement machine learning algorithms to detect “red flags”.

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