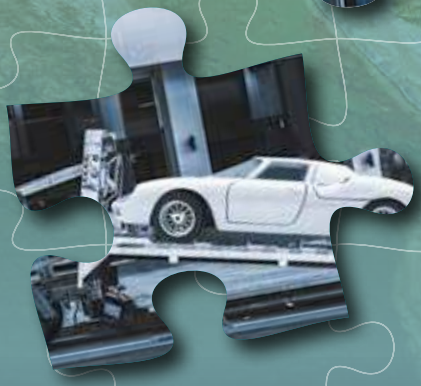
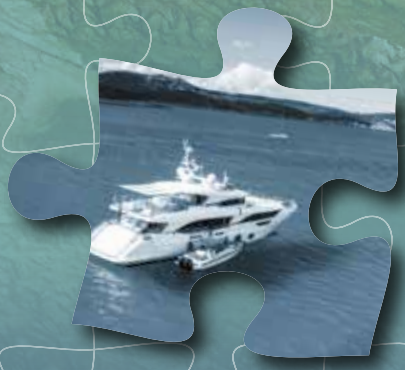
FATF

Asset Recovery Guidance and Best Practices





November 2025

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Asset Recovery Guidance and Best Practices

Executive Summary

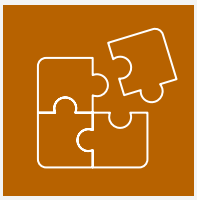
CHAPTER 1: Introduction

The FATF revised its Recommendations on asset recovery and related international co-operation in October 2023 and made corresponding changes to the FATF Assessment Methodology in June 2024. These Standards changes are the first significant amendments related to confiscation in more than three decades. They represent a transformation of FATF's approach to this topic, in recognition of the need to provide jurisdictions with a more robust toolkit to increase the effectiveness of confiscation efforts, which were resulting in only a small percentage of criminal proceeds being recovered globally.

The term "asset recovery" in this Guidance is broader than the meaning given to the term by other international organisations; notably, it expands beyond the recovery of assets related to corruption. In the FATF Glossary and in this Guidance, the term asset recovery "refers to the process of identifying, tracing, evaluating, freezing, seizing, confiscating and enforcing a resulting order for, managing, and disposing of (including returning or sharing), criminal property and property of corresponding value." The FATF's definition of asset recovery is functional, encompassing the process of investigative steps and legal measures implemented with a view toward the permanent deprivation of criminal assets. Accordingly, the Guidance follows the lifecycle of asset recovery, beginning with the establishment of solid legal and policy frameworks necessary to facilitate the identification of assets and financial investigations, processes to preserve and manage assets for eventual recovery, and mechanisms for international co-operation to meet the challenge of crime that transcends international borders.

This is the first comprehensive Guidance and Best Practices paper from the FATF on asset recovery. The purpose of this Guidance is three-fold. It is intended to increase the understanding of the new Standards, assist countries in implementing them through explanations and examples, and contribute to tangibly improving confiscation results.

In reaching this aim, the Guidance explains and elaborates upon the FATF Standards and spotlights legal and operational policies to increase effectiveness. It is intended for policymakers and practitioners alike. It also discusses best practices which, in some instances, may exceed the requirements of the Standards, but are worthy of consideration, especially as countries make reforms to enhance effectiveness of their asset recovery regimes. In this Guidance, text which interprets the revised Standards, as well as examples and best practices that are within the scope of the Standards are in black text; additional considerations and examples for improving asset recovery frameworks which go beyond the foreseeable scope of Standards are in blue text. As with all FATF guidance products, the Guidance is non-binding.



CHAPTER 2: Asset Recovery as a Policy Priority

The revised FATF Recommendations signal that asset recovery must become a policy priority for jurisdictions. Asset recovery is a critical component of a country's anti-money laundering and counter-terrorism financing system (AML/CFT). As such, it should be invested in and consistently analysed and evolved, reducing and disrupting money laundering and predicate crimes, and ultimately making crime unprofitable. This prioritisation cannot be merely identified in writing through policy pronouncements, but must be reflected in practice through the development of sound asset recovery frameworks and practices. This includes maximising the effectiveness of operational structures for asset recovery by providing adequate resourcing, training, and specialisation and enabling domestic co-ordination and co-operation that is accessible and useful for the authorities involved in identifying, investigating, and recovering criminal property.

When considering the benefits of prioritising asset recovery, the Guidance highlights the need for countries to curb criminal activity by removing the financial incentive to commit crime and depleting the funds which sustain organised criminal groups and other bad actors, fuelling further criminality. Not only does it disincentivise those who seek to perpetuate illegal activity for their personal gain, but it also provides a path of restoration for victims who are harmed physically, mentally, or financially by crime. Asset recovery frameworks are also vital to countries' economic health. When countries actively pursue asset recovery, they cut channels through which dirty money can flow, increase opportunities for reinvestment in their communities, and strengthen international confidence and investment in their respective economies, while at the same time reinforcing international co-operation necessary for the fight against transnational organised crime.

Ensuring that asset recovery is a priority demands that relevant stakeholders do not operate in isolation. This requires the co-operation of government ministries and departments domestically and across borders. Within governments, regularised and efficient information-sharing and communication between law enforcement authorities (LEAs), prosecution offices, financial intelligence units (FIUs), et al., is necessary for the detection of criminal activities and criminal proceeds flows, for the successful prosecution of those involved in crime, and for the successful recovery or return of criminal property derived from illegal conduct. Notably, Chapter 2 mentions the potential synergies between asset recovery and tax or revenue authorities that previously may have been underutilised.

Strong asset recovery frameworks significantly benefit from trusted engagement between public authorities and private stakeholders. This is particularly the case in the intelligence-gathering stage where the detection of criminal asset flows and identification of assets relies on information such as suspicious transaction reports (STRs) gathered from financial institutions (FIs), Virtual Asset Service Providers (VASPs), and designated non-financial businesses and professions (DNFBPs). The evidence-gathering stages that support asset recovery proceedings also rely on the private sector for the provision of records, witness testimony, etc. The Guidance discusses the value and variations on public-private partnerships which can enhance the flow of useful information between government and entities and help facilitate concrete case results, including confiscations. There is also a key role for civil society and NGOs that may include aiding in the identification of criminal activity and criminal property and may positively influence legislative and regulatory efforts to advance asset recovery in their respective jurisdictions.

CHAPTER 3: Financial Investigations

To help authorities recover the financial benefits of criminal activity, prosecute offences, and understand the reach of criminal networks, the FATF Recommendations require countries to conduct financial investigations, which are critical to an effective asset recovery framework. Chapter 3 emphasises that authorities should have many diverse avenues to initiate these investigations, and should empower these channels with the resources to gather financial intelligence and other information to identify assets, trace transactions, uncover ownership, and begin to develop legal and practical strategies to ensure the success of asset recovery measures.

Effective asset recovery depends on pro-active measures to initiate, as early as possible, financial investigations in all appropriate cases, particularly in all instances where proceeds-generating offences occur. This can be accomplished by ensuring that competent authorities have usable communication channels and information access to expeditiously identify and trace all categories of criminal property or corresponding value; providing resources (especially technological capabilities) to facilitate effective investigations; and by providing competent authorities with periodic training to use a broad range of basic and special investigative techniques necessary in modern financial investigations.

Chapter Three explores the criticality of beneficial ownership information in building financial investigations. Proving beneficial ownership is a challenging element for investigators and in court proceedings to recover assets. Addressed in this Chapter are hallmarks of beneficial ownership that in some instances can be deduced by context or circumstantial evidence; litigation strategies that can help uncover such evidence (e.g., prosecution of nominees, third parties); and effective verification mechanisms that have proven useful in establishing the true beneficial ownership of property involved in crime. LEAs and other authorities also need the legal powers and skills to be able to swiftly identify accounts or other business relationships (including virtual assets) within their jurisdiction, both upon the initiative of national authorities or pursuant to foreign requests. Competent authorities need access to a range of information to locate and trace criminal proceeds, including but not limited to information on legal persons, financial records, tax information, criminal records and other government-held information, and data which may be available in registries or databases such as for property, shares, vehicles, vessels, etc.

The FATF also requires countries to have effective measures to evaluate assets subject to confiscation and ensure their effective management. Important early steps include the evaluation of assets to determine whether identified property should be seized, as well as initial pre-seizure planning where operationally feasible (e.g., considering preservation strategies and anticipating and allocating resources likely to be needed for asset management purposes). Important considerations for this exercise entail asset valuation and evaluation of possible risks (e.g., of liens or encumbrances that must be addressed before confiscation, or environmental issues that may cause significant expense liability, or reputational harm to the government). Included in this evaluation period is how best and when to secure assets for confiscation, whether targeted property may be required as evidence, and special management considerations for different types of assets (e.g., virtual assets, art, yachts, perishable goods, etc.).

Chapter 3 also highlights how the interests of claimants and intervenors should be adequately preserved during the financial investigation process. This includes implementing strategies to competently identify likely claimants and intervenors entitled to notice, review their legitimacy, and provided them an adequate opportunity to intervene, at appropriate stages, in restraint or confiscation proceedings. Essential considerations such as timing of claimant or victim notification are addressed. In addition, key documentation that is useful in identifying potential claimants (e.g., real estate records, corporate formation documentation) is discussed.

CHAPTER 4: Provisional Measures to Swiftly Secure Assets

Provisional measures are necessary in an effective asset recovery framework as they enable authorities to swiftly secure assets and increase the chances of recovery. FATF's Recommendations have been enhanced to strengthen the tools available to countries to undertake prompt action to respond to and investigate potential criminal property and conduct, and to secure criminal property and corresponding value through restraint or seizure. Effective asset recovery requires that authorities have a toolkit of measures ranging from the shortest and least intrusive postponements to the more lasting provisional orders, and they should select which measure or combination thereof best fits the circumstances of the case.

A new feature of the Recommendations is the power to suspend or withhold consent to transactions suspected of involving money laundering or other crimes. This tool can be implemented through direct and indirect measures. Direct approaches contemplate competent authorities (such as FIUs or other LEAs) taking action without initial judicial involvement to suspend or pause transactions while further analytical or investigative work is undertaken. In indirect approaches, the initiating action may be undertaken by entities under instruction by a competent authority, e.g. a judicial order or the FIU directing a financial institution, VASP, or DNFBP to suspend or withhold transactions.

Whatever model is chosen, suspension is a limited-duration measure that enables authorities to check the suspiciousness or unlawfulness of a transaction and potentially seek a more lasting restraint. As a threshold, authorities exercising suspension authority – whether initiating domestically or at a foreign authority's request – should have reasonable grounds to suspect that the targeted transaction is related to money laundering, predicate offences, or terrorism financing. Suspensions are designed to be quick, temporary measures, communicated to the bank or other business handling the transaction (including virtual assets and real estate transactions). The Guidance discusses the possible triggers and circumstances where suspension has proven most useful. To prevent inadvertent tip-offs that could undermine domestic and foreign investigations, there should be measures such as guidance to entities regarding their communications with affected customers, clear conditions for release, and specific training for employees with suspension authority. Countries should also consider providing safeguards and exemptions from liability to reporting entities for actions taken to comply with lawful suspension measures and potential damages resulting therefrom.

Asset freezing and seizure are important provisional measures to help ensure that ill-gotten gains are not hidden or spent before law enforcement can take action. Clear procedures for seeking these orders must be set out, including to ensure they can be initiated on an *ex parte* basis, without notice to the suspect or affected persons, to avoid alerting investigative targets and to prevent asset flight or dissipation. Legal frameworks should also include sound notification processes to safeguard the rights of individuals and entities affected by the provisional measure and to permit a meaningful opportunity to contest or seek the modification of the measure. Regardless of the country's legal tradition, the level of proof required for initial restraints should not be so high as to be practically challenging for law enforcement to use (e.g., by setting a high bar to show the "risk of dissipation" to be able to secure the property).

The choice of the most appropriate provisional measures – whether freezing or seizing – depends also on the type of targeted property. For instance, where funds are located in a bank account, it is generally prudent to freeze rather than seize such funds; for virtual assets, key points include taking possession of the asset into a government-controlled wallet and further securing it from transfer or theft. Ideally, an order should be obtained or extendable for the duration of the confiscation proceedings. Provisional measures must also be proportionate, i.e. they should not be more restrictive than the scope of a potential, subsequent confiscation order and should prevent any tampering or prejudice to the country's ability to confiscate the asset, without going further than needed.

In addition to traditional methods of freezing or seizing, the 2023 FATF Recommendations contemplate the use of expeditious measures when especially urgent action is required, providing that in some instances, action may be

taken without court order. However, when a country's fundamental principles of domestic law require a court order for such action, countries may use an alternative mechanism if it enables their competent authorities to systematically act quickly enough to prevent the dissipation of criminal property and corresponding value. Regardless of the approach, authorities should ensure that there are appropriate mechanisms for timely judicial review of any action taken. Moreover, these tools should be temporary in nature and are intended to permit additional time to pursue more permanent freezing or seizure actions before property is quickly dissipated.

Effective interim management of the restrained assets is essential to preventing their deterioration or loss of value. This involves a co-ordinated effort among multiple stakeholders (e.g., asset management offices/authorities, LEAs, the judiciary, external service providers, etc.). The main goal is value preservation, and management strategies should strike a balance between seeking to maintain the asset and managing associated costs to ensure efficient resource use. Pre-confiscation or interlocutory sales should be utilised when needed, including through obtaining any required judicial permission, but the irreversible nature of such sales and infringement of property rights requires close consideration of several factors. Sound interim asset management and cost mitigation is vital to ensure that significant value is still available for victims, asset return, or other lawful dispositions of confiscated funds when (sometimes) lengthy legal proceedings have concluded.

CHAPTER 5: Comprehensive Range of Confiscation Measures

The permanent deprivation of criminal property and corresponding value is the most fundamental part of asset recovery. The 2023 FATF Recommendations require countries to have a range of confiscation measures at their disposal – conviction based, extended confiscation, and non-conviction based – the features of which may depend on a country's legal tradition. The Guidance highlights that confiscation measures must cover property owned directly *and* indirectly by the suspect or defendant. They should be able to reach property held by non-bona fide third parties, whether persons or legal entities, when the property they nominally hold is in reality owned or controlled by the suspect or defendant. Criminals tend not to keep assets in their names, but rather use family members, associates, shell companies, nominees, and front persons to engage in transactions which obscure the traceability of the asset to an offence. Regardless of the confiscation method used in any given case, competent authorities are also urged to focus on enforcement and realisation – such that criminals are in actuality deprived of assets ordered for confiscation.

Fundamental principles of domestic law (FPDL), such as those enshrined in constitutions, charters, or high court decisions, may impact the implementation of certain confiscation measures in full or in part. The Guidance provides many real examples of how countries have managed to accommodate FPDL when adopting confiscation measures, including the features which higher courts have highlighted to alleviate potential impingements on FPDL. Describing the way in which others have overcome the relevant challenges – for example, related to the presumption of innocence – can help countries design confiscation regimes which accomplish the policy aims of confiscation while at the same time standing up to judicial scrutiny and protecting fundamental rights.

Conviction-based Confiscation (CBC) is tied to a criminal prosecution and conviction. There are different models of CBC and countries should have well-defined procedures (including for how to protect the rights of both defendants and bona fide third parties) and strive to have as much flexibility as possible. The Guidance highlights practical considerations for object-based confiscation (requiring a proven link between the property and the offence) and value-based confiscation (requiring a calculation of criminal benefit, and enforceable against property belonging to or under the control of the defendant). The Guidance also discusses extended confiscation, which is newly encompassed by the FATF Standards and is a form of confiscation which goes beyond confiscating assets linked to a specific offence for which a person is convicted. This tool can be particularly useful in combatting serious and organised crime or against defendants with a long record of accumulating illicit wealth.

Non-Conviction Based Confiscation (NCBC), which is now required under the FATF Standards, allows confiscation through judicial procedures without requiring a criminal conviction, targeting property involved in or derived from crimes for which prosecution is impossible or impractical. The connection between the property and the crime must be demonstrated through whatever standard of proof and evidentiary threshold is set out in domestic law. Some countries incorporate NCBC aspects into criminal proceedings, while others use civil procedures, with usually lower standards of proof and different procedures. The Guidance highlights that NCBC actions require thorough financial investigations, and can be pursued alongside (or in succession of) CBC. Numerous examples of NCBC are provided which demonstrate how it has been successfully utilised in jurisdictions seeking more options for asset recovery, and how it has enabled authorities to pro-actively target criminal property and address serious offences (organised crime, corruption, human trafficking, drug trafficking, money laundering) which often involve complex financial networks and international components that make securing criminal convictions challenging.

According to the 2023 FATF Recommendations, countries should consider adopting measures which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation. Chapter Five explores emerging and innovative tools for asset recovery, including unexplained wealth proceedings. The idea behind them is that the person who owns or controls the assets will likely be best positioned to explain their origin, particularly if there is a reasonable belief or suspicion that the assets have a criminal provenance. The Guidance explores models of unexplained wealth orders (UWOs), including confiscatory UWOs, which commence a confiscation proceeding directly and often entail burden-shifting to the respondent, and investigatory UWOs, which require the recipient to respond to the order and explain the legal origin of the property at issue (and which may eventually lead to a decision to seek confiscation of that property). As with any asset recovery tool, essential safeguards must be in place to allow the respondent to have a meaningful opportunity to prove whether the property was acquired with funds of a lawful origin. Courts are generally involved in the issuance or approval of UWOs and the consideration of prima facie evidence of illegal origin or illicit enrichment put forward by the state.

With an arsenal of confiscation measures at their disposal, competent authorities need to choose the most appropriate one(s) in any given circumstance to ensure the permanent deprivation of criminal property or the corresponding value subject to a relevant order. Confiscation orders are sometimes not enforced due to an underuse or inadequate provisional measures, asset concealment, ineffective asset management, or a lack of clear responsibility among authorities. The Guidance provides practical tips for "realising" confiscation or bringing in property subject thereto.

CHAPTER 6: International Co-operation

In light of the increasingly cross-border nature of criminal activity and the nearly ubiquitous practice of laundering illicit funds through and to multiple jurisdictions, robust international co-operation is a key component facilitating asset recovery. Policymakers should enact or expand enforcement laws to enable the efficient recovery of assets located in their jurisdiction and subject to foreign asset recovery proceedings, whilst competent authorities should streamline processes which might slow down co-operation and result in asset flight or dissipation. A new resolve to find legal ways to engage in informal co-operation – premised on actionable intelligence, information sharing, and seamless communication – is needed in each phase of the asset recovery process.

The FATF Standards were revised to encourage more efficient processes, with fewer bureaucratic hurdles and more productivity. Chapter Six encourages countries to approach international co-operation with a view to ensuring that it is both well-developed and agile. This means that it can be deployed rapidly and flexibly in order to render asset recovery as effective as possible and prevent the emergence of havens where criminals can conceal property without concern that it can be reached by asset recovery measures.

Four practical considerations can summarise this new approach to asset recovery co-operation: (i) mutuality – countries should be able to do for others as much as they can do in their own domestic cases in terms of investigation, evidence collection, seizure, management, etc.; (ii) pro-activity – jurisdictions are encouraged to reach out pro-actively and spontaneously to share information that may lead to asset recovery and initiate new investigations or cases abroad; (iii) suitability – the most efficient means should be chosen to accomplish the objective, such as dividing labour in multi-jurisdictional cases and using specialised experts where possible; and (iv) informality – countries should utilise informal co-operation as a preliminary matter, have strong channels of communication (avoiding excessive formality), and prepare the groundwork before formal channels are used, such as mutual legal assistance (MLA).

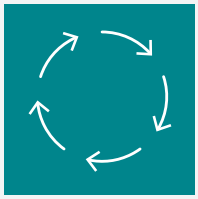
As recognised by FATF Recommendation 40, informal channels are important means of successful international co-operation, and typically have a legal basis outside of treaties. Different competent authorities involved in asset recovery should be able to engage with counterparts (LEAs, FIUs, and even prosecutors or judicial authorities). In addition, Recommendation 40 also envisions co-operation with foreign non-counterparts in appropriate circumstances and with the necessary conditions and safeguards. For example, LEAs should be able to spontaneously share relevant information on criminal property with foreign counterparts, even without a prior request, and should also be capable of identifying and tracing such property when they suspect it may be linked to a foreign investigation within their jurisdiction. FIUs should have similar powers for sharing suspicions. The Guidance underscores that authorities should generally provide complete and detailed information, but it emphasises that sometimes, reaching out to a foreign partner with information that is preliminary or indicative may be warranted when the matter is urgent or foreign information is key to advancing the financial investigation. Moreover, countries may still be able to provide assistance even if there is an ongoing domestic investigation, as long as no harm is done to the domestic matter. Liaison officers posted abroad in key countries can also be helpful conduits for exchanges.

The FATF Standards now specifically promote the use of asset recovery inter-agency networks (ARINs), which enable communication and co-operation in asset recovery matters on a point-of-contact basis. There are ten ARINs around the globe, but if one is not accessible, countries should actively take part in other bodies supporting informal international co-operation in asset recovery, such as INTERPOL (such as through Silver Notices or i-24/7), the Egmont Group, or one of the many other bodies suggested in the Guidance. Obtaining information informally via ARINs or other multilateral or regional networks commonly leads to more successful case outcomes when utilising formal channels. Dozens of real-world examples of co-operation punctuate the Chapter, including where informal co-operation made formal requests more targeted and actionable in relation to specific assets, saving time and effort, and where it led directly to recovery outcomes.

Chapter Six also discusses formal co-operation, its legal bases, and structures for rapidly, constructively, and effectively providing the widest possible range of MLA in asset recovery. It provides practical advice on routing and prioritising requests, and ensuring that asset recovery-related requests are executed by those with training and expertise, considering the often time-sensitive and complex nature of such requests. The Guidance emphasises that a first request pertaining to confiscation, with no preliminary warning or preparation, is the least likely to accomplish its objectives. In addition, countries should have clear procedures for formal requests, make legal requirements known to foreign partners enhance their compliance with those rules, take a constructive approach to minor defects or technicalities, and activate their central authorities (including to forge connections between requesting and executing authorities and to provide pro-active status updates). Joint investigative teams, and investigations conducted in parallel/co-ordination by different countries, have also proven useful in asset recovery, as shown in the Guidance.

The FATF now requires that countries be able to enforce provisional and final orders or judgments. Countries need to have the authority and ability to enforce orders (both criminal and many non-conviction-based orders), although

this does not mean that enforcement must be granted for every request. A sovereign state may choose when and how to grant MLA (in accordance with treaty obligations) and its courts may reject enforcement applications which do not meet domestic legal requirements. There are different models of enforcement, including systems allowing direct recognition and those involving more or less review. A key aspect of the efficiency of enforcement proceedings is that there should be no need to conduct a duplicative domestic investigation. Ordinarily, the country issuing the order will be the primary venue to resolve substantive claims and challenges, and the requested country will, in the normal course, focus its review on issues such as notice and due process afforded to affected parties, finality, and other questions related to enforceability. A re-litigation of the merits of the confiscation action, without access to foreign evidence or witnesses, is not encouraged, and obstacles in enforcement can be largely prevented by, for instance, sharing drafts and engaging in informal consultations on planning, logistics, and legal analyses (such as dual criminality or the ability to enforce orders stemming from NCBC proceedings).



CHAPTER 7: Return, Repatriation, and Use of Recovered Assets

Effective asset recovery requires the appropriate disposal, return, and use of the confiscated assets. This is the most impactful stage of asset recovery for victims of crime and societies, and represents the return on investment by LEAs, prosecutors, and competent authorities in all prior phases. Transparency, oversight, and accountability are key to ensuring the responsible allocation of confiscated funds. This upholds the rule of law and reinforces the legitimacy of the country's asset recovery system as a whole. The public should not perceive confiscation as a profit-driven endeavour, but as one which takes the profit out of crime and can benefit the people of the countries involved, whether directly, through reinvestment in law enforcement, or through other positive or social reuse.

The FATF Recommendations require that countries must have effective mechanisms in place to manage property that is frozen, seized, or confiscated in all stages of the confiscation process. Such measures ensure that the efforts made in earlier phases are not wasted and that the value of the assets is preserved throughout the proceedings and eventually disposed of and used appropriately. Disposal strategies must be flexible and based on transparent criteria, tailored to the type of asset involved. Disposal activities should include safeguards and be carried out by trusted professionals, whether through a dedicated asset management office or administrator, specialised personnel within law enforcement or judicial institutions, or vetted external service providers appointed by the government.

Countries should consider establishing an asset recovery fund, where all or part of the confiscated assets can be allocated to support law enforcement, healthcare, education, or other public purposes. Countries may also direct confiscated funds into general revenue funds for regular expenditures. Whatever model is selected, countries should establish clear rules and procedures for the available uses of confiscated funds, including a clear order of priority and mechanisms for oversight, transparency, and accountability. Misuse or fraud in the handling, disposal, or use of confiscated property (and the proceeds thereof) risks jeopardising the entire programme.

The FATF Standards make clear that countries should have mechanisms to return confiscated assets to their rightful owners or to compensate victims of crime, while recognising the diversity of approaches among countries to legal concepts such as restitution and compensation (which may in some cases take precedence over confiscation). Irrespective of which mechanism is used in a particular case, the interests of justice and a victim-centred approach should generally guide the actions of the government in making decisions about the use and disposition of confiscated assets. This encompasses processes which enable victims of crime or prior legitimate owners to be able to make claims for confiscated funds. Asset recovery strategies need to balance financial considerations with a strong commitment to justice and an aim for social impact, in appropriate circumstances. The benefits of confiscation in terms of justice, deterrence, and the rule of law can be significant even when assets recovered are not especially

valuable. Alternatively, countries can consider allocating assets for other relevant social or institutional beneficiaries, especially in communities indirectly affected by serious crime, such as terrorism or drug trafficking.

On the international level, countries must be able to manage assets on behalf of other states in cross-border cases and arrange for the return or sharing of confiscated assets. Although asset return is frequently conducted under multilateral or bilateral conventions, domestic law usually governs the details of carrying out such transfers. Agreements between requesting and requested states are often necessary to effectuate returns or asset sharing with jurisdictions who co-operated in the investigations or proceedings resulting in confiscation. These agreements can take the form of standing, long-term arrangements or case-specific, ad hoc agreements. Acknowledging that asset return can be complicated, especially in corruption cases, the Guidance advocates for early and open consultations between countries and highlights practical solutions to return funds fairly, promptly, transparently, and with accountability.

An important aspect of international co-operation on asset recovery is the sharing of enforcement costs. Countries should be able to make arrangements for the deduction or sharing of substantial or extraordinary costs incurred when freezing, seizing, or managing property on behalf of other countries. This ensures that the state assisting with asset recovery is not unfairly burdened, especially if the process involves lengthy legal proceedings or significant outlays and expenses. Maintaining asset value throughout the legal process is another fundamental task. Even when full value recovery is not possible, the assisting country should ensure that confiscated assets do not suffer excessive depreciation and that their value is preserved to the extent reasonably possible. This implies timely liquidation when appropriate, proper maintenance of physical assets, and effective interim management.

CHAPTER 8: Safeguarding Rights When Implementing the FATF Standards on Asset Recovery

Effective asset recovery only takes place in an environment that respects human rights and freedoms and has sufficient checks and balances. Substantive and procedural rights may both be affected by asset recovery laws and actions. All asset recovery measures must fully respect fundamental rights and the rule of law. Independent judicial oversight, due process, and proportionality are essential to prevent misuse, maintain public trust, and uphold the integrity of the AML/CFT/CPF framework.

Countries should take into account the essential components of due process – notice and the right to challenge state action – in both the design of the components of the system and their actual implementation. Chapter Eight also shows how countries may be able to protect individuals' rights and apply the proportionality principle, and presents examples of laws which did not provide sufficient protections or cases where laws were applied in a disproportionate way.

This Guidance acknowledges that asset recovery tools can be misused, resulting in miscarriages of justice and undermining the entire premise of asset recovery as a preventative and corrective measure in fighting money laundering, predicate crimes, and terrorist financing. The inherent power exercised by the government in taking private property means that countries should be particularly careful to enact reasonable, fair, and proportional confiscation laws and procedures, and implement them with the utmost professionalism and integrity. The reputation of the practice of asset recovery as a whole and as key pillar of an AML/CFT system depends on it. Protecting the substantive and procedural rights of impacted individuals and wielding the significant powers of the confiscation toolkit in a proportionate manner and in a way that respects due process are essential to a strong, lasting, and effective asset recovery regime.

NAVIGATING THE GUIDANCE

This Asset Recovery Guidance and Best Practices paper is comprehensive, with both a technical orientation to the FATF Standards and policy and operational utility. The Guidance is not intended for a single audience, but for policymakers, many different national authorities depending on their responsibilities over asset recovery, providers of technical assistance, and the broader public. It is a modular product which is not necessarily intended to be read from cover-to-cover.

The Guidance can be navigated using the detailed Table of Contents, Suggested Audience Indicators, and the Chapter Summaries. The Summaries and their accompanying graphics indicate the main topics covered in each Chapter, relevant parts of the FATF Recommendations, and key points which may prompt further exploration. Practical Tips and Country Examples of real cases of implementation are contained in boxes arranged topically throughout the Guidance. Set off in boxes marked in blue text Additional Considerations which provide suggestions that may extend beyond the requirements of the FATF Recommendations, but which are nonetheless useful to enhance effectiveness. Policymakers, investigators and law enforcement authorities, prosecutors and judicial officials, asset managers, and bodies involved in international co-operation are invited to use of these tools to focus on parts of the Guidance most relevant to their interests and responsibilities.

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Acronyms

AML/CFT/CPF	Anti-money laundering, countering the financing of terrorism, and counter-proliferation financing
AM	Asset management (as an activity or discipline)
AMO	Asset management office
AR	Asset recovery
ARIN	Asset recovery inter-agency network
ARO / ARU	Asset recovery office or asset recovery unit
BNI	Bearer negotiable instruments
BOI	Beneficial ownership information
CBC	Conviction-based confiscation
DNFBP	Designated non-financial business or profession
Egmont	Egmont Group of Financial Intelligence Units
EU Directive 2024/1260	Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation
FPDL	Fundamental principles of domestic law
FI	Financial institution
FIU	Financial intelligence unit
FSRB	FATF-style regional body
INR	Interpretive Note to Recommendation [x] (FATF Recommendations)
IO	Immediate Outcome [x] (in the FATF Methodology)
IP	Intellectual property
JIT	Joint investigation team

LEA	Law enforcement authority
ML	Money laundering
MLA/MLAT	Mutual legal assistance / mutual legal assistance treaty
MOU	Memorandum of understanding
NCBC	Non-conviction based confiscation
NRA	National risk assessment
OCG	Organised criminal group
OSINT	Open-source intelligence
Palermo Convention or UNTOC	United Nations Convention against Transnational Organized Crime (2000)
PPP	Public-private partnership
R. / Rec.	FATF Recommendation
STR / SAR	Suspicious transaction (or activity) report
TF	Terrorism financing
UNCAC	United Nations Convention against Corruption (2003)
UWO	Unexplained wealth order
VA	Virtual asset(s)
VASP	Virtual asset service provider
Vienna Convention	United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)
Warsaw Convention	Council of Europe (COE) Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) (2005)

1. Introduction

The FATF revised its Recommendations on asset recovery and related international co-operation in October 2023 and made corresponding changes to the FATF's Assessment Methodology in June 2024. These Standards changes are the first significant amendments related to confiscation in more than three decades. They represent a transformation of FATF's approach to this topic, in recognition of the need for a more robust toolkit to increase the effectiveness of confiscation measures and processes. These changes were preceded by years of work to study the operational challenges to asset recovery (AR) and to understand the practices that were generating more or less successful confiscation outcomes among the members of the FATF and the Global Network of nine FATF-style regional bodies (FSRBs), as evidenced by the conclusion of the last round of assessments focusing on effectiveness.[1] FATF Ministers agreed in 2022 to prioritise the overhaul of the Standards related to asset recovery, and in 2024, they committed to ensuring that the implementation of these measures would be informed by Guidance and outreach to increase jurisdictions' capacity to confiscate criminal assets and address prior deficiencies.

Confiscation has always been a cornerstone of an effective anti-money laundering and counter-financing of terrorism and proliferation (AML/CFT/CPF) system and broader criminal justice systems. However, a modernisation of the FATF's Standards was needed to emphasise the centrality of confiscation as both a response to money laundering and terrorism financing (ML/TF) and a tool to ultimately weaken and disrupt criminals and deter predicate crimes. The FATF's new framework for asset recovery now stands up to the reality of transnational money laundering and technological changes that have revolutionised the speed and methods of money movement. The new requirements emphasise purpose and risk-driven AR structures, flexible and adaptable mechanisms to intervene before assets are dissipated or moved out of reach, proven tools to permanently deprive criminals of property, and efficient avenues for cross-border co-operation that is now indispensable to the successful recovery of assets.

The purpose of this Guidance is three-fold. It is intended to increase the understanding of the new Standards, assist countries in implementing them through explanations and examples, and tangibly contribute to improving confiscation results.

First, this Guidance will explain and elaborate upon the amendments to the FATF Standards, which, taken together, constitute a sea change spread across Recommendations 4 and 38 and their Interpretive Notes (R.4/INR.4, R.38/INR.38); Recommendation 30 and its Interpretive Note (R.30/INR.30), Recommendation 31 (R.31), the Interpretive Note to Recommendation 40 (INR.40), and the FATF Glossary. The Guidance will also draw upon the changes made to Immediate Outcomes (IO) 8 and 2 of the FATF's assessment Methodology, related to asset recovery and international co-operation, respectively.[2] The Methodology is especially relevant to this Guidance because the text of IO8 incorporates new core issues tracking the revised requirements and contains new "examples of information" and "specific factors" which spotlight the issues that countries should consider as they update their legal and operational frameworks. In light of the technical debates and detailed negotiations that resulted in the revised FATF Recommendations, there were also many issues pre-identified for elaboration in this Asset Recovery (AR) Guidance. FATF Guidance cannot change, alter, expand, or contract the Standards as agreed by members, but it can illuminate their meaning and highlight how jurisdictions may comply with universal Standards in their unique contexts.[3]

The second goal of the Guidance is to aid countries in implementing the revised FATF Standards at time when many countries are looking to reinforce their regimes. These changes come at a pivotal time for the next round of assessments, and the timing of the Guidance is intentional. FATF Guidance products are always non-binding.

1. FATF *Internal Report: Operational Challenges Associated with Asset Recovery (2021); FATF Strategic Review Stocktake Internal Report (2021);* and *FATF Report on the State of Effectiveness and Compliance with the FATF Standards* (2022).
2. FATF, *FATF Methodology* (2022), as updated in August 2024.
3. The FATF Recommendations and their Interpretive Notes are co-equal and considered "Standards." They are the highest authority of FATF. The Methodology is merely a tool for assessment. To the extent that there are minor differences, the Recommendation text and its Interpretive Note (if any) govern.

Accordingly, this Guidance will focus on good and best practices, highlighting ways of implementation which have been collectively seen to yield optimal results. As with other recent interpretive products published by the FATF, this Guidance will occasionally mention "bad practices" as examples of less-than ideal means of accomplishing the goal of these Standards, i.e., to use asset recovery processes which lead to confiscation and the permanent deprivation of criminal property and corresponding value. It will also address the potential for abuse of these powerful tools to ensure that they respect fundamental rights and due process both by design and in their implementation.

Finally, the third goal of this Guidance is to provide practical information to be used by policymakers and competent authorities (e.g., police, prosecutors, FIUs) to design well-functioning AR systems and concretely improve asset recovery outcomes. This means increasing the overall use of confiscation and volume of assets seized and confiscated, as well as prioritising timely asset recovery actions which address the unique ML/TF risks specific to each country, disrupt and degrade organised criminal groups and terrorist organisations, and promote recoveries for victims of crime.

This comprehensive guide can be used by asset recovery practitioners and government policymakers to understand the evolution of the FATF Standards, to see detailed examples of implementation, and to consider options and ideas for potential changes which can strengthen and improve asset recovery results. It is not intended to be read cover-to-cover, but can be navigated via the **detailed table of contents, as well as suggested audience indicators and summaries for each chapter**. The FATF acknowledges that asset recovery has posed challenges to many jurisdictions, and that efforts to recover criminal proceeds remain insufficient. Therefore, this Guidance promotes not only various approaches to technical compliance with the revised Recommendations, but also effective practices which will encourage countries to meet and even exceed the FATF's Standards in the future.

To accomplish these three objectives – **elaborate the new Standards, assist country implementation, and improve results** – this Guidance has been developed by a group of 42 experts representing a diverse group jurisdictions. Knowledge and expertise from over 60 FATF and FSRB members and observers (such as the World Bank, IMF, and UNODC) has been critical to this paper, as has the leadership from the project's co-leads, the United States and Italy. Best practices and innovative tools from a total of 38 jurisdictions and international organisations are featured herein, and it was enriched at debated at the FATF's Joint Experts Meeting in January 2025. Comments were received from all FATF members and FSRBs on drafts of this paper throughout 2024-2025. In its near-final form, the Guidance was shared with 22 external stakeholders, including the Stolen Asset Recovery Initiative (StAR), the International Centre for Asset Recovery (ICAR), INTERPOL, and several ARINs, for a targeted consultative process. [4]

The terminology used throughout this Guidance refers to the FATF Glossary, where relevant, or plain meaning.[5] Many of the definitions related to asset recovery were clarified in revisions made to the FATF Glossary in 2023. The most notable revision is that of "asset recovery" itself, which is broader than the meaning given to the term by other international organisations and expands beyond the recovery of assets related to corruption. In the FATF context and throughout this Guidance, the term asset recovery "refers to the process of identifying, tracing, evaluating, freezing, seizing, confiscating and enforcing a resulting order for, managing, and disposing of (including returning or sharing), criminal property and property of corresponding value." Therefore, the FATF's definition of asset recovery is functional; it encompasses a whole lifecycle of steps leading to a defined result. Thus, asset recovery is the process of implementing various measures that leads to the permanent deprivation of criminal assets.

To map the structure of this Guidance, Chapter 2 sheds light on the building blocks of asset recovery as a policy priority. It recalls the important purposes served by asset recovery and provides a reminder of the many reasons that

4. Ms Teresa Turner-Jones of the U.S. Department of Justice and Colonel Fabio Antonacchio of the Guardia di Finanza. The project was managed by Ms Marybeth Grunstra of the FATF Secretariat.

5. FATF Recommendations (updated June 2025) (see also General Glossary and Specific Glossary for R.32).

governments and the broader public should care about asset recovery and prioritise this practice at all. Chapter 2 covers how, concretely, to prioritise asset recovery, whether a jurisdiction is building its framework from scratch or improving a mature system. Chapters 3-7 provide granular guidance and best practices as to the legal and practical components of the system as set out in the FATF's Standards. They will address each phase of the asset recovery lifecycle, from investigations to repatriation. Chapter 8 flags some areas of caution around asset recovery, recognising that the tools of asset recovery can, if not wielded responsibly, have negative impacts. Because the FATF seeks to strongly promote the use of asset recovery, this Guidance identifies and explains potential downsides so governments can consider them when designing their systems.

There are two major themes which are dealt with across several chapters: asset management and international co-operation. This aligns with the approach of the Guidance to follow the lifecycle of asset recovery, and it also isolates issues or concerns which are relevant only to that phase of the lifecycle or asset recovery measure. Asset management features in Ch. 3 (evaluation and pre-seizure planning), Ch. 4 (interim management of seized assets, pre-confiscation), and Ch. 7 (asset management and disposal). International co-operation has a dedicated Chapter, Ch. 6, but it is also covered in pertinent part in various substantive chapters. Asset management is a concern across many parts of the AR process, and international co-operation is necessary in an increasing number of cases. Due to their centrality, these topics feature throughout the Guidance.

This paper is intended as a guide to asset recovery based in the requirements of the revised FATF Recommendations and Methodology, and a best practices paper with curated case studies and expert insights for optional consideration. There are 84 boxes throughout the Guidance containing **Country Examples** which highlight innovative tools and case examples from an array of jurisdictions, as well as **Practical Tips** which highlight practice points drawn from the experience and expertise of the FATF and the Global Network.

This Guidance is not intended as a mutual evaluation tool and assessors should not use this Guidance as a checklist to assess jurisdictions. Assessors should carefully consider the risk, context, and operational environment of a jurisdiction when assessing its policies and measures when referring to this Guidance. The Methodology is mentioned particularly when it sheds lights on the Recommendations and especially as related to effectiveness.

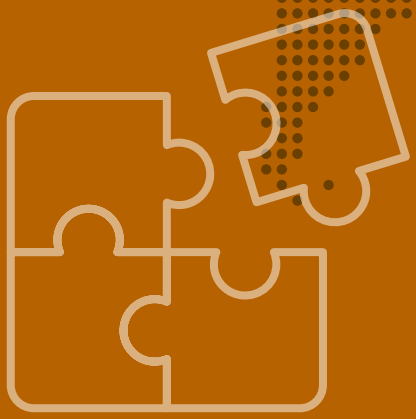
Because this is a hybrid product for the FATF – combining both guidance to explain and elaborate upon the FATF Standards and legal and operational considerations to increase effectiveness – visual and textual cues[6] assist the reader to distinguish between content that is closely related to implementing the Recommendations and text which goes beyond the foreseeable scope of the Standards. Text which interprets the revised Standards and optional best practices that are within the foreseeable scope of the Standards are in black; **additional considerations and best practices which go beyond the Standards are set off in blue and clearly differentiated**. Black text contains interpretations, effectiveness tips, and examples derived from the FATF Recommendations; **blue text extends beyond the requirements of the Recommendations and suggests ways to improve or implement asset recovery frameworks.** As with all FATF guidance products, the Guidance is non-binding in its entirety.

6. E.g., "countries should" or "jurisdictions should ensure" versus "countries may consider" or "jurisdictions may wish to ensure."

2. Asset Recovery as a Policy Priority

Suggested audience:

- **Policymakers**
- **National AML/CFT co-ordination bodies**
- **Senior leadership of investigative agencies, FIUs, and prosecutorial authorities with responsibility over asset recovery**
- **Judicial authorities**



KEY GUIDANCE IN THIS CHAPTER

Prioritising Asset Recovery – Policy Objectives & Operational Frameworks

Shared Stragetic Vision & Commitment	p. 25
Effective Agency Structures with Specialists	p. 31
Sufficient Resources	p. 37
Internal Co-ordination & Co-operation	p. 49
Periodic Review of Ongoing Effectiveness	p. 52
Key Partnerships	p. 54

Chapter 2 Summary

This Chapter discusses how to best implement FATF R.4, which states in pertinent part: "countries should ensure that they have policies and operational frameworks that prioritise asset recovery in both the domestic and international context." As one of the main functions of a country's AML/CFT/CPF system, the Chapter makes the case that asset recovery should be invested in and constantly analysed and evolved, ultimately making crime unprofitable and reducing and disrupting money laundering and predicate crimes. A comprehensive AR regime needs policies and operational frameworks that prioritise recovery measures at every stage of a case – from investigation to provisional measures, confiscation, international co-operation, and finally repatriation.

The first part of Chapter 2 lays out the policy rationale for why governments should pursue asset recovery by examining the benefits of a comprehensive system to recover criminal property. It emphasises the interests of justice served by confiscation, as well as the preventative, restorative, and market-integrity reasons that jurisdictions should deprive criminals of proceeds and reduce the illegal economy. It makes the point that countries need political will, legal authorities and powers, and a strategic vision to foster successful asset recovery outcomes. There is also a need for partnerships – both domestic and foreign, with the private sector, and with civil society.

Chapter 2 also delves into how a country can prioritise asset recovery, especially among other key AML/CFT/CPF initiatives. Guidance is provided on prioritisation, not only through words, but actions and resourcing. This prioritisation may occur through an interinstitutional process resulting in a policy, strategy, several complementary policies, objectives, frameworks, or arrangements which, taken together, set out how the country expects and enables its competent authorities to confiscate criminal property. To enhance effectiveness, countries can update prioritisation policies and make them responsive to ML/TF/PF risk and measurable through data, allowing for periodic changes and improvements. Good practice includes establishing agency structures dedicated to AR, interagency co-operation, resourcing in the form of technology and highly skilled personnel, and training and capacity building.

In summary, asset recovery is a major function of a country's AML/CFT/CFP system, which should be invested in and constantly analysed and evolved, ultimately making crime unprofitable and reducing and disrupting money laundering and predicate crimes.

2.1. Benefits of asset recovery

To better help policy makers set strong AR frameworks, this section outlines some of the main benefits of recovering criminal assets. Financial incentives are one of the most common motives for committing crime. Asset recovery is the main way of removing those incentives and helping to undo the financial consequences of serious crime. To be effective and durable, any national AML/CFT regime must include AR as a key priority. A comprehensive AR regime needs policies and operational frameworks that prioritise recovery measures at every stage of a case – from investigation to provisional measures, confiscation, international co-operation, and finally repatriation. A well-designed confiscation system lessens the economic incentives that drive crime, ultimately making it less profitable, frequent, and dangerous.

2.1.1. Reducing criminal profit incentives

Criminals who commit offences that generate substantial proceeds, such as fraud, corruption, or the illicit trafficking of narcotic drugs, are strongly motivated by the financial benefits of those crimes. A principal objective of asset recovery

is to deny criminals the proceeds of their illegal activity, making the choice of a criminal lifestyle less attractive and cutting off the stream of revenue that criminal networks use to expand. Reducing the financial "payoff" can affect the behaviour of both individual criminals as well as larger criminal enterprises.

By being stripped of their monetary gains, individual criminals are not only disincentivised to commit additional proceeds-generating crimes, but know they will face negative consequences if they continue to seek to enrich themselves through illegal activity. For some individuals, losing the fruits of their offences – the gains they took significant risks to achieve – can be a greater pain than even a temporary loss of liberty. The fear and reality of losing status and wealth gained through criminality can loom larger than prison.

2.1.2. Disrupting and preventing crime

Asset recovery can be very impactful in disrupting and preventing crime, particularly for organised criminal groups (OCGs). Proceeds of crime provide criminal groups and terrorist organisations prestige, recruitment advantages, and operational power to expand their networks. Asset recovery disrupts such groups by depriving them of their operating capital and reducing their access to weapons, technology, and personnel. Deprived of the proceeds of their crimes, gangs and other OCGs have reduced appeal for potential members, and are less capable of committing further offences and harming victims, making them less damaging and lethal over time. It also decreases their ability to pay bribes and coerce individuals and business into dealing with them. If money is a source of power and influence for a criminal organisation, then it is also a vulnerability which can be used by law enforcement to counter the ongoing viability of that organisation.

Asset recovery also removes proceeds of crime and instrumentalities from the cycle of criminal activity. Confiscating dangerous weapons that have been used to commit offences, for example, ensures that those weapons are unavailable for use in future crimes. Confiscating chemicals and equipment used to manufacture deadly synthetic drugs means that those substances are not flowing into communities. Similarly, AR deprives terrorist groups of assets that could be used to prepare for or execute an attack, generate propaganda for the cause, or finance terrorist activity by a third party.

2.1.3. Justice for victims

When criminals are deprived of the profits of their criminal activity, those proceeds can be redirected to victims of crime, whether the victims at issue are individuals or whether they are governmental entities that have been deprived of public funds. For example, in cases such as human trafficking, narcotics trafficking, robbery, fraud, or other crimes where there may be individual victims, asset recovery may provide the best opportunity to compensate or provide restitution to those victims. Using assets or their value to compensate victims helps to reverse the impact of the underlying criminal activity and serves the interests of justice, fairness, and social cohesion.

2.1.4. Reinvestment in law enforcement and communities

Predicate offences extracting funds from public institutions could be compensated by reinvestment of confiscated criminal assets in those institutions fighting crimes or in development of communities. Public institutions provide critical services, such as law enforcement, healthcare, and education to citizens. Where public funds are misappropriated, particularly through corruption, criminals directly impact the functioning of these institutions and the services they provide. This criminal activity also depletes the public's trust and confidence in government. Likewise, large-scale crimes typical of organised groups including fraud, drug and arms trafficking, human trafficking, and extortion, can have severe deleterious impacts on individual victims and communities, fuelling addiction, violence, and poverty.

Effective asset recovery can help negate these harmful consequences. In addition to returning funds to victims of crime, asset recovery can also make funds available for reinvestment in law enforcement and for the benefit of affected communities. This is a practical response that can help undo the damage caused directly and indirectly by

crime. Moreover, where mechanisms are in place for reusing, repurposing, and sharing assets (within countries and abroad), the proceeds of crime can instead be used for positive purpose, such as to invest in critical programmes and bolster ongoing law enforcement efforts to fight crime. By reinvesting in communities, asset recovery serves to raise the public's confidence in the functioning of the criminal justice system and notions of justice.

2.1.5. Financial and market integrity

By breaking the link between the underground and the real economies, asset recovery can help to preserve financial and market integrity. Money laundering can skew local, national, and even international economies. For example, proceeds of crime that are laundered through the purchase of real estate can drive up the overall cost of real estate, harming individuals who are seeking to buy property. Fraudulent schemes committed through virtual assets have harmed the reputation of an entire sector, and lured countless investors into traps causing immense financial losses. Asset recovery helps to mitigate those economic harms by ensuring that criminal activity does not distort the investment climate, raise prices for the larger population, or threaten the stability of financial institutions relied upon by communities for payments, savings, and loans. By preventing and removing criminal proceeds from individual sectors of the economy, asset recovery helps to foster a level playing field and protect the integrity of the global financial system.

When countries independently have strong AR systems and when they work collectively to co-operate across borders, they close off the places where dirty money can flow. By preventing and removing criminal proceeds, asset recovery helps prevent market distortions, fostering a level playing field and protecting the integrity of the global financial systems. This builds a safer and more transparent financial system and a fair economy based on legal, taxable revenue.

2.2 National asset recovery regimes

To visualise the content of this Chapter, Figure 1 illustrates the web of possible components which can help a country emphasise and realise its asset recovery objectives.

2.2.1. Setting the policy objective

Crime is persistent and resources are scarce, requiring competent authorities and courts to prioritise their time and efforts. As such, asset recovery must be among those first priorities that animate the daily work of several agencies. Asset recovery does not achieve this essential status overnight or automatically; it requires a top-down and bottom-out approach. To do so, jurisdictions rely on the decision and direction of policymakers, which is then effectuated by several stakeholders from the leadership to the staff level. It has to have conceptual buy-in, adequate support, and clear incentives in the form of benefits for the government, victims, and the public. Above all, it must be a priority not in name only, but in action. The previous chapter focused on why asset recovery is beneficial and why it is a goal worth pursuing. This section focuses on how to make asset recovery a practice that is ingrained in national AML/CFT regimes and larger criminal justice systems.

Although the concept of prioritisation has long existed in the FATF Methodology, since 2023, Recommendation 4 has explicitly required that: "Countries should ensure that they have policies and operational frameworks that prioritise asset recovery both in the domestic and international context." It is the first line of the Recommendation because it is the basis for everything that follows. INR.4 elaborates on the meaning of "prioritisation" and "frameworks." INR.4(A)(1) states that "countries should review their asset recovery regime to ensure its ongoing effectiveness and provide sufficient resources to effectively pursue asset recovery." INR.4(A)(2) states: "Consistent with Recommendation 2, countries should ensure that they have the necessary domestic co-operation and co-ordination frameworks and agency structures to enable effective use of" asset recovery measures in the Recommendation.

Prioritisation, and the policies and frameworks which actualise it, must exist, per R.4. The concept of prioritisation of confiscation has been contained in Immediate Outcome 8 since 2012. This Core Issue was reworded in 2024 to

FIGURE 1 – **Mapping a Sample Asset Recovery Policy Framework**

ask: "To what extent is the country: (a) prioritising the pursuit of asset recovery as a policy objective; (b) periodically reviewing the asset recovery regime to ensure its ongoing effectiveness; and (c) using effective agency structures, with adequate resources, and co-operation frameworks?" Revised R.4 and revised IO.8 are interwoven. The critical distinction is that the extent and quality of prioritisation is dealt with by IO.8, whereas R.4 ensures that the elements are in place. This chapter explores these concepts and provides examples of how countries have embedded asset recovery into their regimes, both from a R.4 and IO.8 perspective.

Asset recovery should be declared as *a* priority, but there is no expectation in the Recommendations that AR needs to be *the* priority among many in the AML/CFT system or the criminal justice system more broadly, or an exclusive focus of authorities. There may be times, however, when AR is the main priority, in a given timeframe, of national policy or enforcement activities. R.4 reflects the notion that AR is equally integral to an AML/CFT system as a risk-based approach, preventive measures, supervision, and enforcement of ML and TF offences. Recommendation 4 does not require a document, co-ordination committee, or even a formal or unitary AR policy or strategy. It requires that the policy and operational frameworks *prioritise* asset recovery. In its most basic form, this is about showing, rather than telling. For example, a deliberative process and the establishment of goals related to asset recovery would equal, or result in, a policy or strategy. At the very least, when the functions of the country's frameworks are examined and calibrated, this may coalesce into what can be described as an asset recovery policy or strategy, thus proving AR to be "a priority" to the jurisdiction and its competent authorities. This prioritisation process can have beneficial effects: it can create feelings of ownership and buy-in among agencies; persuade policymakers, legislatures, and budget committees; and foster essential collaboration and co-ordination.

A singular asset recovery policy or strategy is not a firm requirement. But in taking the steps to prioritise AR through establishing resources, structures, co-operation and co-ordination mechanisms and the like, the process may gravitate towards the creation of outputs or products, such as a document setting out a priority or strategy. The variety of policy and strategic vehicles are many and can include policy manuals, standard operating procedures, decrees, directives, or orders. An AR strategy or policy should not be designed merely to check-a-box; instead, policies and operational frameworks should be conceived holistically and put in place for practical benefit.

a. Ensuring a shared strategic vision and commitment

Prioritisation of asset recovery as a policy objective can be agreed and achieved by a country in a number of different ways. It need not be a singular document or approach, as R.4 discusses "policies" and "operational frameworks" in the plural. However, IO.8 asks to what extent the country is prioritising the pursuit of asset recovery as "a policy objective," meaning the components of the approach, taken together, should be coherent and internally consistent. This is especially important when numerous institutions are involved in asset recovery, and when jurisdictions have sub-national entities to incorporate into a comprehensive whole.

The key components of prioritisation could include (1) a detailed expression of the importance placed on the topic by a sufficiently high-level official or a coalition of the same (i.e., setting and affirming the goal or objective), (2) a dedication of resources toward achieving the objective (including laws, human resources, technical capacities), and (3) a plan for actualising the objective (i.e., the "follow through" steps by which the objective will be carried out). In the context of asset recovery, countries may establish various targets for actualising the policy based, for instance, on legal and institutional reforms, objective targets, or performance plans.

At the general level, a country can express that it is making asset recovery a priority through law. Legislative bodies may hold hearings on asset recovery-related topics, question witnesses and take testimony from experts in standing or special committees, and hear from various constituents – including the public and interest groups – about the laws and provisions they should consider passing in relation to confiscation. Such bodies or committees, including

BOX 1. **PRACTICAL TIP: Designing Baseline Asset Recovery Policies**

Jurisdictions establishing a comprehensive asset recovery system for the first time or attempting to bring cohesion to an existing system in order to increase outcomes could consider addressing the following questions through their prioritisation exercise:

- What are the goals of conducting asset recovery?
- How will this help prevent, reduce, or combat crime?
- How will confiscation interact with existing or new systems to compensate victims of crime?
- What will be the legal tools and other measures to achieve these aims?
- Who will be assigned to use those tools, and do they have the necessary resources and skills to deploy them effectively? What are the training needs?
- How will financial investigations to identify and trace assets be incorporated into the existing criminal investigation framework?
- Are the courts sensitised and prepared to adjudicate not only confiscation matters and applications for provisional measures? What are the training needs?
- Is there need for, or scope for, outreach to the private sector?
- How will confiscation efforts be geared towards areas of higher ML/TF risk?
- Who will be assigned to manage and dispose of assets?
- How will the government ensure that assets are realised (i.e., definitive possession/control by the government through and final ownership) after confiscation is ordered?
- What will be the final destination of assets confiscated? How will they be used?
- How will statistics be collected, and by whom, to ensure tracking, accountability, and effectiveness of the system?
- How will progress be measured over time so adjustments can be made to increase effectiveness (e.g., results and impact)?
- How will the fundamental rights of persons affected by confiscation and other similar measures be protected, and what are consequences that the government does not want to see result from the implementation of an asset recovery system?
- What partnerships are needed? How will the private sector and civil society be involved in the AR process?

those sub-groups dealing with crime, the judiciary, or national security, may commission other entities to examine the pros and cons of specific approaches to asset recovery, to conduct gap analysis, or consider reforms to existing laws and regulations. Laws which establish or reform confiscation systems, processes, or measures sometimes contain preambles, statements of policy intent, or other "purpose" oriented language to explain why the body exercising its legislative power in relation to asset recovery. Although this may not alone constitute an asset recovery strategy, such prioritisation by the legislative branch can provide a sound and reasoned policy basis and express the primacy and importance of asset recovery. Establishing a priority through law can also have downsides, such as time that it can take to pass legislation and the absence of responsiveness and adaptability to changing circumstances. Laws can also

BOX 2 – COUNTRY EXAMPLE: EU Requirements for Member States' Asset Recovery Strategies

Article 25 of EU Directive 2024/1260 requires EU Member States to adopt a national strategy on AR by May 2027 and update it at regular intervals of no longer than five years. The strategy developed by individual Member States must contain certain elements concerning the priorities of national policy in AR, and objectives and measures to achieve them; define the role and responsibilities of the competent authorities, including arrangements for co-ordination and co-operation; and set out the resources, training, and measures allowing for regular evaluation of results of the strategy. Relatedly, art. 26 requires AROs and AMOs to have qualified staff and appropriate financial, technical, and technological resources. Articles 27-28 set out measures for the management and use of confiscated assets and the collection of statistics.

yield unknown or unanticipated consequences[1] or results and the effectiveness of legislation depends strongly on implementation.

At a more granular level, countries could consider establishing a specific asset recovery strategy or policy, or set of strategies or policies, which brings together a country's multifaceted approach to asset recovery. In some jurisdictions, this may take the form of an inter-agency strategy which is developed through a policy process involving many stakeholders (e.g., LEAs, prosecutors, FIUs, AROs, central authorities, and even the judiciary). In other jurisdictions, such strategies or policies may be set by an executive entity or at the highest-political level. The AR aspect could also be incorporated as a part of a larger strategy or policy, including but not limited to national security, policing, crime control, or criminal justice. A common approach is to establish and assign asset recovery priority status within a national AML/CFT or counter-illicit finance strategy. Another approach is to assign the prioritisation of asset recovery to the institution most involved in recovering assets. This may be a ministry of interior, home office, justice department, attorney general's office, prosecutor general's office, law enforcement authority, or any other agency with substantial control or influence over the legal and operational aspects of asset recovery.

The revised FATF Standards are indeed flexible as to how the priority on AR is demonstrated, however, countries may strive for a deliberate and coherent expression of the priority that is agreed across the relevant agencies and institutions and which is lasting (effective for several years) and concrete. The development of the policy could be led by the designated authority or "other mechanism" for national co-ordination of AML/CFT policies, as is required by Recommendation 2; this would be a natural extension of that body's role. Because resources are limited and AR responsibilities may be split between different agencies or levels of government, the policy or strategy could seek to minimise duplication of efforts and establish ways to resolve jurisdictional overlaps or potential conflicts.

1. For example, jurisdictions may find it necessary to amend laws beyond those related specifically to confiscation when making reforms in line with the revised R.4/R.38. An analysis could be conducted to consider cascading effects on other laws. For example, one issue that has arisen in some countries is the problem of double recovery where tax evasion is a predicate for money laundering, or where the authorities confiscate the proceeds of a tax evasion offence and tax authorities seek to recover unpaid taxes owed. The confiscation authority and the tax authority may seek to recover the same money, without considering policy and operational coordination. Depending on the domestic laws and arrangements, this could be the type of issue overlooked by countries as they implement changes to their confiscation legislation and processes.

ADDITIONAL CONSIDERATIONS

When developing an asset recovery policy or policies, countries should be mindful of potential pitfalls.

- Housing an asset recovery strategy or policy within too specific of document (e.g., an anti-corruption strategy or a counternarcotics strategy) may have the effect of associating asset recovery to certain predicate offences, and thereby distancing it from others. Countries should ensure the umbrella of the document is broad enough and relevant to all necessary agencies.

- The strategy can be too general, and lack specifics based on the legal system, structures, and context of the country. A country will want to ensure that such a foundational expression of priority is tailored to their unique situation and applicable to the system in the country.

- AR policies and strategies must find a balance between being achievable in the domestic context, and aspirational, to encourage the large and small reforms needed.

- Strategies or policies need to be credible, meaning that all relevant stakeholders and experts contributed to the policy or strategy, and it was not developed in a silo or without drawing on the experiences of internal and (optionally) external experts.

- The policies or strategies need to be actionable: the expression of the importance placed upon asset recovery or the establishment of the primacy of asset recovery among other pressing priorities means little if it is not followed up.

- AR priorities may be too inward looking and underplay the importance of foreign predicate threats or international co-operation. Even the most isolated countries will need to engage with foreign partners from time to time on asset recovery in an increasingly globalised and mobile world. Asset recovery policies or strategies should therefore address the strong possibility that the country will have to pursue assets located abroad and respond to requests to do the same from other countries. Thus, it should underscore asset recovery as one of the essential components of international co-operation (and vice versa).

Finally, the priority placed by a country on asset recovery may include a commitment to collect and maintain related statistics. The issue of statistics related to confiscation has been a long-standing concern, both for operational authorities in justifying their resources and for policymakers looking to measure their country's accomplishments and challenges related to asset recovery.

FATF Recommendation 33 requires countries to maintain comprehensive national statistics relevant to the AML/CFT system as a whole. Specifically, it mentions statistics on "property frozen; seized, and confiscated." This may not be sufficient for countries to measure the overall functioning of their asset recovery system, and it is challenging for countries to draw conclusions about their systems or make improvements without the benefit of quantitative data. Qualitative information can help a country to contextualise its data and consider whether its actions are aligned with risk, but facts and figures are essential to conducting and gradually improving an AR system.

BOX 3a – COUNTRY EXAMPLES: Asset Recovery Strategies

SINGAPORE: Due to its position as a global financial and open business hub, Singapore is an attractive economic regime for investors, making it more vulnerable to the risks of transnational ML. Between January 2019 and June 2024, Singapore seized about SGD 6 billion associated with criminal and ML activities. Of this amount, SGD 416 million has been restored to the victims, while SGD 1 billion has been forfeited to the State. Acknowledging its ML exposure and the importance of maintaining a trusted financial system alongside an effective regulatory framework, the Singaporean government has established AR as a key priority in its Anti-Money Laundering strategy. This commitment is now embodied in the country's stand-alone National Asset Recovery Strategy, launched in June 2024 by the country's Prime Minister.

Singapore's strategy adopts a holistic, multi-faceted approach involving a whole-of-government efforts, guided by the inter-agency AML/Countering the Financing of Terrorism Steering Committee. The strategy is bolstered by dynamic public-private and international partnerships. This AR policy framework focuses on four operational pillars:

- **Pillar 1 (detect):** Dedicated to detecting suspicious illicit activities through a comprehensive legal framework, regularly reviewed. It also leverages technology, specialised training, and clear guidelines to effectively identify and seize criminal assets during raids.

- **Pillar 2 (deprive):** Emphasises the critical need to promptly deprive criminals of their unlawful gains through swift seizures and confiscations. Simultaneous investigations into money laundering, along with sector-specific regulations, should serve to enhance enforcement measures. Furthermore, mutual assistance with international partners and inter-agency co-ordination should ensure the smooth and efficient implementation of the asset recovery process.

- **Pillar 3 (deliver):** Focuses on maximising forfeiture and restitution to victims. This should be accomplished through a victim-centred strategy, ensuring the preservation of assets and their value upon return, fostering pro-active collaboration with private sector and international partners, and leveraging tools such as tax recovery measures and voluntary restitution.

- **Pillar 4 (deter):** Aims to prevent criminals from using Singapore as a hub to conceal, transfer, or enjoy illicit assets. This should be achieved through regular reviews of laws, imposing stringent penalties as a deterrent, and fostering community engagement through crime prevention programmes, and whistleblowing mechanisms.

BOX 3b – **COUNTRY EXAMPLES: Asset Recovery Strategies**

ROMANIA: Asset recovery is a national security priority for Romania, given the involvement of OCGs in tax evasion, money laundering, smuggling, and counterfeiting. To reduce their capacity and protect national security, the 2021–2025 National Asset Recover Strategy (Crime Doesn't Pay) builds on the National Anti-Corruption Strategy and the Judiciary Development Strategy, aligning with EU and UN commitments.

Core tasks:

- Strengthening the mechanisms for integrated coordination of the AR process by strengthening the role of ANABI as the authority in charge in the field, and by ensuring a task force approach at national level;
- Improving the efficiency of the process of identification, management, and disposal of assets related to crime, while ensuring the constitutional guarantees;
- Operationalizing the National Crime Prevention Mechanism for the purpose of expanding the impact of the reuse of the assets confiscated in criminal proceedings for public interest and social purposes. These will be achieved through better facilitating the payment of compensations to victims and the implementation of social projects aimed at protecting the victims of crime, providing education in the legal field, and preventing crime;
- Increasing the resilience of communities against crime, through prevention, promoting transparency, improving active partnerships with the civil society and the business environment, increasing citizens' trust in AR activity and the reuse of such assets for social and public purposes.

The Strategy reinforces Romania's progress under the Cooperation and Verification Mechanism; contributes to the Rule of Law reform in the National Recovery and Resilience Plan; supports the UN 2030 Agenda for Sustainable Development and EU security objectives (2020–2025); and complements the National Defence Strategy. The target groups include national authorities and institutions, crime victims, and public and private sector stakeholders. The ultimate purpose is to ensure responsible and sustainable recovery and reuse of seized and confiscated assets, while strengthening institutions dedicated to fighting corruption and organized crime.

The FATF has previously identified common shortcomings with statistics in mutual evaluations and in the 2021 FATF Report on Operational Challenges Associated with Asset Recovery. These include gaps in data (e.g., data only for particular agencies, certain types of confiscation, or certain districts or federal/state entities), inconsistencies in the scope of data (e.g., covering confiscation for ML only, or for all/some predicates, or not including corresponding value), inconsistent terms to designate freezing and confiscation actions, and a lack of clarity as to whether confiscated sums reported reflect confiscation orders or sums actually recovered. Adding to this list, jurisdictions may be missing data on cross-border/customs seizures, inventory tracking and valuation of assets, or not tracking seized value versus sale value. Many face limitations on confiscation statistics related to certain asset classes or categories of property (e.g., real property, financial assets, cash, VAs, personal and moveable property). Some are not tallying assets returned/shared/repatriated, are missing figures for restitution, or cannot quantify the number of financial investigations formally initiated (if relevant). Additionally, there may be situations where countries are not tracking the use or final destination of confiscated assets, treasury/budget supplements from confiscation, or confiscation orders issued by all courts or other authorised parties (e.g., prosecutors or administrative agencies). Jurisdictions also may not be

able to distinguish normal tax recoveries form those linked to criminal proceeds, or to explain how certain types of settlements and resolutions represent or approximate proceeds or other losses caused by predicate crimes.

Statistics and data are paramount to understanding the functioning, effectiveness, and efficiency of any asset recovery system. They can help to:

- aid in the creation of objectives and tangible goals;
- build confidence in the practice of asset recovery, by ensuring integrity, accountability, and transparency;
- enable accurate planning for the management and use of confiscated assets;
- facilitate the evaluation of strengths and weaknesses in systems and the identification of areas for reform; and
- justify expenditures and further investment in asset recovery.

Countries will not realistically be able to gather all of the data listed above or mentioned in the Methodology for IO.8.[2] But they should aim to count, track, collect and maintain as many types of AR statistics as possible, with as many filters and variations as possible and the widest geographical coverage. This collection effort should be embedded in the prioritisation of asset recovery, including any associated strategy or policy; it will also inform and enable the design and refinement of such policies in the future.

b. Effective agency structures and specialisation

An effective structure and specialisation of relevant authorities are integral to setting asset recovery as a policy priority. FATF's revised Standards speak to the need for specialisation in several places beyond the prioritisation language in R.4. Recommendation 30, pertaining to the responsibilities of law enforcement and investigative authorities, states: "Countries should ensure that designated law enforcement authorities have responsibility for money laundering and terrorist financing investigations within the framework of national AML/CFT policies. At least in all cases related to major proceeds-generating offences, these designated law enforcement authorities should develop a pro-active parallel financial investigation when pursuing money laundering, predicate offences, and terrorist financing. *Countries should ensure that competent authorities have responsibility for expeditiously identifying, tracing and initiating actions to freeze and seize criminal property and property of corresponding value.* Countries should also make use, when necessary, of *permanent or temporary multi-disciplinary groups specialised in financial or asset investigations.* Countries should ensure that, when necessary, cooperative investigations with appropriate competent authorities in other countries take place." (Emphasis added.) Moreover, Recommendation 31 pertaining to the powers of these law enforcement and investigative authorities provides specifically that "countries should ensure that competent authorities have timely access to a wide range of information, particularly to support the identification and tracing of criminal property and property of corresponding value." The Interpretive Note to R.30 goes on to specify that "one or more competent authority" should be designated to identify, trace, and initiate freezing, seizing and confiscation.

A key component of a successful asset recovery system is an agency or institutional structure – on the whole – that is designed for, or conducive to, carrying out the national policy priority. The "structure" does not necessarily refer to one agency or institution, but all agencies or structures which form the AR system, or even specific structures within agencies or institutions which form the AR system. Not all countries have the ability to imagine a new system from scratch, especially in a mature AML/CFT regime. Countries also have widely divergent legal systems and government

2. Examples of data and statistics mentioned in the IO.8 Methodology include: (1) the frequency of training delivered concerning AR; (2) the number and types of cases where AR is pursued; (3) value of criminal property and corresponding value frozen and seized; (4) value of criminal property and corresponding value confiscated; (5) breakdown of confiscation by foreign or domestic offences; (6) breakdown of confiscation by basis (e.g., CBC, NCBC, other); (7) value of property realised pursuant to confiscation orders; (8) value of assets taken in tax matters resulting in a deprivation of criminal property/corresponding value; (9) number and nature of requests made to other jurisdictions related to AR investigations or actions; (10) value of criminal property restituted or compensated to victims; (11) number and value of cross-border declarations/disclosures; (12) individuals with relevant skill-sets for AR; (13) variety of information in databases and elsewhere available to authorities for the identification and tracing of assets.

configurations, which to some extent may dictate the roles and responsibilities of different agencies, based on constitutions, organic or enabling laws, or history.

Ideally, if there are numerous LEAs involved, there is clear law or policy on the jurisdiction, competence, and division of labour between domestic LEAs as to financial investigations supporting AR, as well as co-ordinating mechanisms between them. Civil and common law traditions might also impact institutional structures, as would a federated

BOX 4 – COUNTRY EXAMPLES: Confiscation Statistics Collection Practices

UNITED KINGDOM: As part of its official statistics-keeping, the UK Home Office publishes an annual Asset Recovery Statistical Bulletin. The statistics relate to the implementation of the Proceeds of Crime Act (POCA 2002) which enables LEAs to deprive criminals of their money, or other property connected to criminal activity, and recover the proceeds of crime. This legislative framework encompasses several asset-focused interventions, both criminal and civil, and the statistics for these categories are tracked.

The most recent bulletin covers years 2019-2024. It contains extensive data for the jurisdictions of England and Wales, and Northern Ireland on:

- value and volume of proceeds of crime restrained, seized, frozen (the 'denial' phase)
- value and volume of proceeds of crime subsequently recovered and receipted (the 'recovery' phase)
- the value and volume of proceeds of crime by the associated criminal offence types
- the value of compensation paid to victims
- the amount of funds distributed to POCA agencies through the Asset Recovery Incentivisation Scheme (ARIS)
- the use of funds received by POCA Agencies through ARIS
- the amount awarded to projects via ARIS Top Slice Funding
- statistics on international asset recovery, including asset sharing and the denial, recovery and return of the proceeds of grand corruption

In Scotland, information on the monies recovered through criminal confiscation and civil recovery under the Proceeds of Crime Act are set out the Scottish Serious Organised Crime Taskforce Progress Report.

The UK approach to statistics has several advantages, including being detailed, comprehensive, comparable year-over-year. It is also made public, which fosters accountability to the country's strategic objectives.

NEW ZEALAND: New Zealand keeps highly detailed statistics on all elements of its restraints and forfeitures. Statistics are captured from the point of referral of a case to the ARU through to the final disposition of the asset. It is the responsibility of each supervisor to update the cases held by their investigators. Data is captured at the case level and the asset level. This allows for general case information to be captured which includes data such as:

- Case overview
- Referred via an MLA or an international request
- Terrorism financing / proliferation financing links
- Estimated asset value (which is later replaced with actual value on restraint)
- Organised crime groups involved
- Main predicate offence
- Referring agency
- Money laundering typology(ies)

system (comprised of states, provinces, or other quasi-independent entities). With respect to stand-alone agencies established to pursue AR, care should be taken to ensure their operational independence. Countries should operate within the confines of their unique systems to create agency structures that work well across all phases of the AR lifecycle. They should also be open to change those structures which are not (or no longer) working.

At the asset level, data captured includes:

- Asset type and description
- Value of the asset
- Status of the asset in the proceedings
- The type of order used to confiscate the asset

Data validation remains a challenge due to the number of cases and assets. This is prioritised within the ARU and restricted only to supervisors to minimize the number of people entering data. There are a number of compulsory fields that require structured data, and there are automated data quality checks conducted that prompt data to be corrected. While the Asset Recovery Unit does not publish these statistics, they feature in the NZ Police annual report and are provided to the media and other groups when requested under the Official Information Act 1982.

EUROPEAN UNION: The EU Directive on asset recovery and confiscation, 2024/1260, art. 28, includes a non-exhaustive list of specific statistics which EU member states shall collect "in order to review the effectiveness of their confiscation systems".

ROMANIA: To ensure access to public information, ANABI has published the annual activity reports for 2016-2024 in the ANABI Reports subsection of the Public Information section on its website. These reports contain information on the value of assets under the Agency's administration, and the identified assets that may be subject to protective measures during judicial proceedings in criminal matters, special confiscation or extended confiscation.

ANABI has also developed the ROARMIS system as a mechanism for collecting information on seized and confiscated assets. The system is designed to generate both seized and confiscated assets statistics, as set out in law in 2015. The input of data is an obligation of the institutions involved in the adoption and implementation of the measures and activities referred to in the law, according to their competencies.

ROARMIS includes information on the different stages of the AR process, starting with the first phases of identification and tracing of assets, followed by the seizure of proceeds of crime and other types of assets, up to the implementation of the final procedures for the execution of the precautionary measures of special or extended confiscation, the reparation of damages, the conclusion of international agreements on the sharing of confiscated assets or the decision on the reuse of confiscated property for public or social benefit. Workflows were created for each type of recipient (criminal investigation bodies for the seizure of movable and immovable assets, prosecutors' offices and courts, tax authorities for the recovery of assets established in cases, ANABI and the MoJ for international seizure and confiscation orders).

There are a variety of possible organisational models which would enable and facilitate asset recovery, and some examples are provided below. The points they have in common are (1) a dedicated asset recovery function, (2) specialised expertise, (3) time and space without or alongside regular LEA or prosecutorial duties to focus on asset recovery, and (4) objectives which integrate asset recovery.

Specialisation may entail a focus on confiscation, or even one type of confiscation, but it need not be exclusive. Many countries have structures specifically geared towards "proceeds of crime"; others use a combined structure which pairs money laundering and asset recovery; while still other countries may situate an asset recovery structure or speciality within a wider economic, financial, or organised crime unit. To the extent that an authority is normally responsible for criminal prosecution and conviction-based confiscation, countries could consider whether to incorporate non-conviction based confiscation into their remit or into a different institution. While these practices are complementary and are carried out by the same authority in many countries, NCBC and CBC may entail the use of different procedural rules and require an expansion of the skill set of attorneys who usually work on civil matters or criminal matters.

Some structures may rely on a referral model by which investigators or prosecutors in different regions refer cases which may require assistance related to confiscation to a specialised unit. An example is when a small office encounters a case with significant AR potential that it cannot handle due to limited personnel or resources, or when it is clear to investigators that the matter has multi-jurisdictional links or national-level implications. These characteristics might make a case ripe for referral to a more expert or well-resourced office. Such a model would need to be well socialised: police and prosecutors in the field would need to be aware of the nature and scope of assistance available (e.g., investigative support, legal advice, logistical support, or partnering and staffing related to analysis, investigative techniques, litigation, or transfer of the case). Conversely, the specialists to whom the referrals are made need to be responsive, well-resourced, timely, and flexible in their response.

All relevant stakeholders should have confiscation on their radar as a potential objective when they encounter a case which may have generated proceeds or criminal property. As a characteristic of an effective AR system, Immediate Outcome 8 emphasises that "the pursuit of criminal property" be "prioritised and integrated into the objectives and practices of all key stakeholders, particularly LEAs, prosecutors, and FIUs". Therefore, it is not only the "specialists" who are expected to have a baseline level of awareness and proficiency in asset recovery. The potential for confiscation should always be examined, even if it is dismissed. Opportunities to deny criminals of assets should also be considered at the outset of investigations, at the earliest opportunity, to maximise positive outcomes. Senior leadership and line managers could emphasise asset recovery considerations as one of many performance indicators (if relevant to the person's job responsibilities), and credit employees who pursue confiscation among their multiple objectives.

There may be additional stakeholders relevant to the AR system beyond those specifically mentioned in IO.8. In some countries, courts have been established to deal with sophisticated economic crimes, and even money laundering offences, in particular. Certain courts may have jurisdiction over serious offences, which may include crimes carrying a certain level of possible penalties. In other countries, courts (and judges) do not specialise beyond those handling criminal, civil, or administrative dockets. However, if there is an opportunity for magistrates who decide on investigative or procedural steps; investigating judges/magistrates; or trial judges who decide on cases, to have confiscation integrated into their objectives or considerations when carrying out their duties, this can be beneficial. The purpose would not guarantee that confiscation orders are made in every case, but that due consideration is given to it alongside other criminal consequences or case outcomes.

Countries should consider if and to what extent investigators and prosecutors who deal with economically-motivated or proceeds generating offences should have confiscation incorporated into their professional goals. Asset recovery is frequently paired with the pursuit of money laundering charges, but "criminal property" which should be subject to

BOX 5 – PRACTICAL TIP: Possible Structures to Facilitate Asset Recovery at the Operational Level

- **Specialised Units (replicated or stand-alone):** Created for the purpose of investigating or pursuing asset recovery or confiscation, whether as a sole or shared mandate. Countries may create multiple of these units – for example one in each district, or spread throughout the country in key locations – or they may rely on one unit for the entire territory. For example, the United States has a central, federal Money Laundering and Asset Recovery Section with: several areas of unique prosecution/confiscation focus (i.e., litigation handled primarily or exclusively from the Department of Justice in Washington, DC); a training role; and a policy-making role. It gathers Asset Forfeiture Chiefs from all 96 federal districts to share guidelines and expertise with the field and can be consulted for assistance, advice, and other asset recovery support.

- **Task Forces:** The task force model incorporates personnel from different competent authorities who share a common goal, bringing together different expertise and tools or legal powers. Task forces may be permanent or temporary, topic-specific or general, local or national, and case-related or not. Their key feature is drawing on varied skill sets and having a multi-agency nature. For example, Australia's Criminal Assets Confiscation Taskforce (CACT) leads the vast majority of proceeds of crime matters at the Commonwealth (federal) level. The CACT is led by the Australian Federal Police and brings together, on a permanent basis, the expertise of law enforcement investigators, in-house litigation lawyers, financial investigations and accounting specialists, as well as capabilities from Australia's national criminal and financial intelligence agencies, customs and border security, and the tax office, to investigate and litigate proceeds of crime matters.

- **Initiatives:** This model is usually threat or risk-driven, and may be short term, medium term, or indefinite as long as the reason persists. Examples include initiatives aimed at focusing the attention of authorities and resources on certain types of crime (e.g., foreign corruption, sanctions evasion, scam centres, etc.).

- **Centralised Model (spoke and hub):** This model includes one office which has responsibility for asset recovery and is positioned to give policy, guidance, training, or tactical advice to other decentralised offices. Created to unify subject matter expertise on, among other things, asset recovery, and to serve as a central POC for support to the field. The spokes are expected to involve and contact the central hub whenever relevant.

- **Asset Recovery Offices (AROs):** Similar to the above. Often used to co-ordinate across and within supranational entities (e.g., establishment of an ARO is an obligation of EU Council Decision 2007/845/JHA which will be replaced by EU Directive 2024/1260). Some countries may have one ARO, others may have several.

- **Specialised Personnel:** Teams or individuals within competent authorities are designated as having unique responsibility for handling or supporting asset recovery within their area of responsibility.

- **Asset Management Offices/Agencies:** This phase of asset recovery requires specific knowledge, skills, and resources and responsibility for asset management and disposal is frequently delegated to a single-purpose agency.

- **Service Level Agreements:** SLAs and MOUs can be negotiated between competent authorities to facilitate AR co-operation and co-ordination

- **Secondments:** Staff having different specialised skills and functions to contribute to AR can be embedded into different agencies and institutions (e.g., specialised prosecutors could be detailed to another authority)

BOX 6 – **PRACTICAL TIP: Referring Cases or Matters for Asset Recovery Assistance**

If establishing a system that depends on referral of matters from LEAs to other AR experts, countries may take into account the following questions and issues. The referral system also could be monitored so that its effectiveness can be measured and adjusted as needed.

- Are all geographies or relevant offices taking advantage of the assistance available?
- Is the system overwhelmed such that the country might consider adding additional resources?
- In terms of added value, are matters referred for assistance resulting in better confiscation outcomes than those which are not referred?
- Are cultural and legal differences respected by the specialists? How is reluctance to seek assistance overcome?
- Is communication on operational matters smooth and timely?
- The purpose of specialisation is not only to define responsibility for AR, but to foster subject matter expertise. Training elements are discussed in detail in the subsection below, but the things that characterise specialisation include:
- Interest in the field (volunteers who are inclined toward asset recovery or possess prior relevant experience may make more engaged specialists);
- Currentness (staying informed with current best practices, changing legal frameworks, and/or judicial precedent);
- Ability to communicate, teach, and share (specialists may work on asset recovery directly and independently, but they are frequently brought into teams for their special knowledge or play an advisory role for non-specialists who are pursuing confiscation in the course of their usual work);
- Access to information (to include certain resources, databases, training, and even other experts or consultants);
- A broader perspective (whether this is across institutions, across countries, or across national borders, asset recovery specialisation often requires collaboration, and knowing when, who and who to reach out to for particular asset recovery needs).
- Objectives which integrate, or specify asset recovery (this may be accomplished with varying levels of formality, but examples include incorporating asset recovery goals into performance metrics and promotion criteria).

confiscation encompasses proceeds and instrumentalities of predicate offences, even when they are not associated with a money laundering investigation or prosecution. This implies that to some extent, most LEAs dealing with predicate crimes should have a level of proficiency in confiscation and awareness around the need to follow the money linked to underlying criminal activity. In an effective system, asset recovery would be incorporated into the goals of most police and other LEAs and investigators, assuming it is within their legal competence or mandate.

Law enforcement authorities, particularly those with AR responsibilities, can maximise AR results by taking a pro-active approach to financial investigations. According to R.30, at least in all cases related to major proceeds-generating offences, these designated law enforcement authorities should develop a pro-active parallel financial investigation

when pursuing money laundering, predicate offences, and terrorist financing. The word "pro-active" in R.30 does not mean without reason, suspicion, or cause. LEAs would need some reason to look at a particular individual or asset with a view to confiscation, which generally means that the person is already linked in some way to an offence that has occurred, the asset has been connected with an offence, or the relationship between the person and the asset do not make sense but for the absence of potential illicit activity. Pro-active, for authorities charged with investigating ML, TF and "major proceeds generating offences" according to R.30, means without a prior referral or order to do so, that such authorities will examine the financial flows linked to offences and the suspects involved in those offences.

Pro-active can therefore be understood as "as a matter of course" or "routinely", or as a core duty of the relevant LEA. It does not mean drawing up a list of persons to investigate *sua sponte*, without prompting, or that any large or luxury asset is automatically suspect. Here, pro-active can be understood not as merely responding to offences, but defining when its financial aspects or consequence should be pursued. Fundamental principles of domestic law will generally require some defined quantum of justification for an investigation and prevent baseless probes into the affairs or property of persons or entities. Thus, for crimes likely to have resulted in significant financial gains, a financial investigation is presumed to be a part of a thorough criminal investigation. Both in R.30, as to LEAs, and as used throughout this Guidance, this meaning of pro-active, which emphasises an active over a passive approach, is intended and used.

c. Sufficiency of resources: human and technical

Countries should assign the sufficient level of resources to properly prioritise AR as a policy objective. The Interpretive Note to R.4 is clear that countries must "provide sufficient resources to effectively pursue asset recovery." INR.30 underscores this point by specifying that "Law enforcement authorities and prosecutorial authorities, *including those authorities responsible for asset recovery*, should have adequate financial, human, and technical resources. Countries should have in place processes to ensure that the staff of these authorities maintain high professional standards, including standards concerning confidentiality, and should be of high integrity and be appropriately skilled" (emphasis added). On the point of integrity, it is also noteworthy that proper resourcing, and in particular, salaries for these professionals, can mitigate the potential for bribery and corrupt acts. Like all law enforcement and investigative resources, the people and tools dedicated to asset recovery should be maintained at an adequate level at all times, and triaged when necessary to mitigate particular risks and situations.

As a characteristic of an effective system, IO.8 highlights that "sufficient resources are available and used effectively, relative to the nature of the risks faced." The level of resourcing, like many features of an AML/CFT system, will be driven by size of the country and its risk profile. This should also take into account the context of the jurisdiction, including the extent to which it is a source of criminal proceeds, a transit point, or a destination for proceeds generated elsewhere. Most countries are, in fact, all three, but may display traits of one or more of those qualities in varying degrees. The exact deployment of resources towards asset recovery may also be determined by reference to other characteristics.

When making decisions about structures and resources, competent authorities need to prioritise activities taking into account the context of the country as well as its exposure to risks. At a more granular level, competent authorities making discrete decisions to pursue confiscation (particularly at the investigatory stage) will recognise that investigative, prosecutorial, and judicial resources are not infinite. Immediate Outcome 8's text points to the need to use resources effectively, in alignment with the level and nature of the risks faced. Authorities should consider developing clear policies as to the types of cases which will be pursued and those which they are not likely to. These considerations can include the prevailing ML/TF risks, amounts involved, the interest of victims, the likelihood of success, or other public interest criteria. The reality is that not all cases can be pursued. The relevant authorities will thus need to have guidance on the types of cases to spend their time and resources on. This also assists in managing expectations.

ADDITIONAL CONSIDERATIONS

The exact deployment of resources towards AR may be determined by reference to a number of characteristics. For example, a country with porous or highly transited borders and ports may invest more resources to asset identification and detection at points of entry. A country with a material VASP sector may invest more resources in resources and specialists who can trace and efficiency seize and manage virtual assets. A country with a popular real estate market with international buyers may invest more resources in identifying, restraining, and managing real property. A country with a higher threat from drug trafficking may invest resources in asset recovery to disrupt and degrade powerful criminal groups and cartels.

The resources countries need include people and their unique skills (e.g., forensic accountants, data analysts, intelligence analysts). For some LEAs and investigative authorities, their entry requirements and initial training may already cover the necessary skills, but jurisdictions may consider setting up a national accreditation or certification specifically aimed at financial investigations.

The resources needed also include the technology which should be accessible to these individuals which facilitates complex financial investigations and asset recovery. Likewise, the usefulness of the best software for making connections between individuals and assets depends on the skills of the person deploying it. There is also a need to process vast amounts of data, such as bank records, hard-drives, emails, and audio or video recordings, in a short amount of time. This may require data processing capabilities which demand expensive licenses or equipment and technical know-how. As machine learning and artificial intelligence advances, more FIUs and LEAs will seek to take advantage of sophisticated tools that can detect trends and ties that are not evident to humans, or which are more efficient than human analysis. This generates opportunities as well as challenges – both ethical and legal, and countries will need to carefully navigate these when applying these developing technologies.

As virtual assets continue to be used to commit crime and launder proceeds, countries also need resources to be able to trace funds between fiat and virtual currency, across coins and ledgers, and through mixers, tumblers, and other anonymity-enhancing products. In addition, while access to government database can be key to identifying and uncovering assets, there may be a need to supplement what is available internally with commercial or paid subscriptions. Some LEA laboratories develop in-house technological solutions to enhance financial investigations, and some countries contract with the private sector and government services providers. As discussed in further detail later, these capabilities are increasingly important to successful asset recovery outcomes.

d. Training and capacity building

As reflected in Immediate Outcome 8, appropriate skills are essential for conducting financial investigations, and therefore to properly prioritise AR as a policy objective. As defined by the FATF in INR.30, a financial investigation is an enquiry into financial affairs related to criminal activity, with a view to (1) identifying the extent of criminal networks and/or the scale of criminality; (2) identifying and tracing *criminal property and property of corresponding value*; and (3) developing evidence which can be used in criminal *and/or confiscation proceedings*. The italicised text reflects new revisions in the FATF Standards which add in and prioritise asset recovery into the heart of the definition.

Countries can approach the training of competent authorities in different ways. Police and investigators generally need to graduate from an intensive academy or other institution for a year or more before being given a badge and becoming a sworn-in law enforcement officer. However, an officer who enters a speciality bureau – such as a revenue service or financial crime unit – would have additional training requirements. FIU analysts may be trained on the job after relevant experience or schooling. Prosecutors would generally be sent to training courses, after relevant work experience or internships, where they would learn the fundamentals of criminal procedure, prosecution, and criminal

litigation skills including evidence and advocacy, etc. They may then undertake further training if they specialise in a particular area. These three main professional backgrounds will be dealt with in turn, but training is an indispensable component of prioritising asset recovery and operationalising an AR strategy or policy. The plans will falter if those charged with following through on them do not have the education and practical skills they need to undertake the work involved in the process of confiscation.

Aspiring law enforcement officers in the beginning of their careers, assuming they will be dealing with proceeds generating offences, should all be required to undergo a financial investigations training as a baseline requirement. This should be a prerequisite for new officers, even in countries where referrals can be made to specialised officers to deal with ML and associated predicate investigations and confiscation. This initial training is essential to recognise that financial gain is a motivating factor for many crimes, including, in some circumstances, violent crime. Enrichment and greed are powerful motivators, and not only for white collar offenders engaged in acquisitive crime where the main purpose is to obtain a monetary reward. Environmental polluters, child exploiters, arms dealers, and terrorists may also have financial motives, even if other factors propel them to commit criminal acts. This lesson is critical for LEA recruits to fully understand criminal psychology, and therefore, the way they approach their jobs. They will be taught that each step in an investigation is methodical, deliberate, and that no information is useless until proven otherwise. But they also need to be trained that every crime – even the unobvious ones – may require a financial investigation.

Not only is money a motivator, but the flow of funds can provide a set of clues for how an offence was committed. LEAs will also need to have basic financial investigation training to understand all aspects of the crime, from identifying the suspects, to dissecting the modus operandi, to determining the scale and extent of the damage. The financial footprint will leave evidence, which may not only be important for proving the crime under investigation in court, but finding additional offences to charge and identifying witnesses who can shed light on the events. Finally, following the money is the best way of working toward the goal of asset recovery, thereby depriving an offender of the benefit of their crimes, compensating or providing restitution to victims, and reducing the likelihood of future crime.

These three reasons, (1) understanding the motive, (2) mapping the scope and scale of criminality, and (3) adducing the proof of the offence and identifying assets to restrain and confiscate, all combine to explain why *every* LEA needs at least some basic fluency in financial investigations. Each investigator needs to know when to look out for the money trail, why it this is beneficial, and how, concretely, to do so. Please see the Box below for a sample of how a simple financial investigations course can be designed by jurisdictions. Although this has an LEA focus, it can be adapted for other professionals.

Depending on the legal system in place, prosecutors and investigating judges may also play a role in overseeing and leading criminal investigations, including financial investigations. In order to do so, these lawyers will have to have a solid understanding of LEA powers and responsibilities. Training for prosecutors, magistrates, and other legal specialists (such as those in an ARO) should include familiarity with LEA powers and practices. FIU analysts will benefit from understanding the LEA and prosecutor training in summary, as they need to understand what (1) will be helpful to LEAs to pursue their investigations and for prosecutors to build cases, (2) how to disseminate information in a format most likely to be actionable or trigger an investigation, and (3) how to answer requests and be maximally responsive to the operational needs of the end users. Although FIU training needs may be more desk-based and technology heavy, they should emphasise the identification and tracing of assets for potential confiscation as primary goal which is on par with identifying potential crimes.

ADDITIONAL CONSIDERATIONS

Once an initial financial investigations training is conducted, there are other features of a training system which jurisdictions may wish to consider:

- **Specialisation:** Building on the initial offerings, more specific and intensive courses can be developed and offered. These may include training on advanced or complex financial investigations; confiscation and advanced confiscation and/or asset recovery; money laundering offences; financial and electronic evidence gathering; the use of tax information; trainings related to certain categories of assets (e.g., virtual assets); international investigations; and asset management.

- **Ongoing education:** The need to refresh knowledge and skills is essential. This aspect should be considered when designing curricula for the length of a career, as individual training needs change and deepen over time. Requirements should be in place at different career markers and milestones and periodicity of training should be a key aspect of professional development and advancement. Accreditation could be explored for more advanced training, which can add weight to an investigator's credential as an expert in court.

- **Updating offerings:** Training geared towards ML, TF, AR, or financial investigations, needs to be updating, as laws, technology, and criminal trends and methods evolve.

- **Varying offerings:** The course offerings should be varied on a yearly basis so that an official who works in the government for, e.g., five years, would have the opportunity to take all necessary or desired courses.

- **Encouragement and incentives:** These need to be put into place so that training is part of one's job duties, not considered a reward, unproductive time away from work, or a punishment.

- **Mentorship:** Class-based learning is highly effective, but jurisdictions should consider establishing one-on-one mentorship programmes for LEAs, prosecutors, intelligence analysts, and AR specialists.

- **Training the trainers:** When a participant is highly trained and experienced, there should be a pathway to becoming a trainer which is available to those interested in passing on knowledge to others.

- **Reducing waste:** Strategic thinking by LEA management can ensure that, to extent possible, training and especially advanced training related to AR is provided to officers with a reasonable possibility of staying in the field, and not to officers likely to move to an area where these skills would not be utilised.

- **Internationalisation:** openness to collaboration with foreign partners, sister agencies in different countries, and trainers from other jurisdictions can cultivate the expertise of dedicated personnel and incline them to co-ordinated and joint law enforcement action.

BOX 7 – PRACTICAL TIP: Ten Basic Components of a Financial Investigations Training

Jurisdictions may consider whether to provide this as one component of a larger syllabus for LEAs or as a stand-alone course offering. The following can be adapted to other audiences (FIUs, prosecutors, investigating judges/magistrates, or other operational authorities), but some essential parts include:

1. **Principles** – what is a financial investigation and how can it benefit a case

2. Opening of a financial investigation:
   - Aim to cover any formalities needed to initiate this phase of the investigation
   - Cover whether it is integrated into a predicate investigation, parallel, or standalone
   - Then cover information gathering starting with the most informal/accessible to the most complex tools and methods

3. **Databases** – what information is available to be without legal process/compulsion to initiate the financial investigation:
   - Aim to cover open source, proprietary systems, commercial systems, government databases, and registries held by other institutions
   - Aim to detail resources by asset type

4. **Legal tools** – what are the laws and powers at the disposal of the agency/official to broaden the financial investigation:
   - Aim to cover criminal procedures and other special legislation that enables the gathering of financial evidence, electronic evidence, and in-person interviews or testimony
   - Aim to cover the legal threshold or standard of proof necessary to use each tool or obtain classes of information
   - For some countries, this may include grand juries or other investigative/fact finding bodies
   - Aim to cover financial intelligence and resources available from or through the FIU (including but not limited to STRs, cash transaction reports, cross-border currency declarations, wire and other payment information) and tax authorities
   - Aim to cover interactions with agencies holding other data (APIs, MOUs, access rights, requests, court permissions)

5. **Investigative Techniques** – what steps can be taken to enrich financial investigations:
   - Aim to cover traditional and special techniques ranging from surveillance, search and seizure, undercover and sting operations, controlled purchases and deliveries, informants, co-operators, wiretaps and other communications interception, location/data/geographical tagging, arrests and detention, voluntary questioning, etc.
   - Aim to cover the authorisation needed for such techniques and how to obtain it
   - Aim to cover specialist help available to LEAs (e.g., data mining tools, AI/machine learning, bank record processors, i2 and other link-analysis and network mapping systems, digital ledger investigative support, internal and external experts and government contractors who can provide essential services)
   - Aim to cover interviewing tactics and steps for getting the most out of questioning subjects who may have valuable financial information or insights.

6. **International Outreach and Assistance** – what mechanisms, both informal and formal, are available for cases with international connections:
   - Aim to cover domestic resources abroad (liaison officers, attachés)
   - Aim to cover information available upon request to foreign counterparts bilaterally or through networks and means/methods for information exchange
   - Aim to cover the possibility of JITs and other forms of co-operation

7. **Analysis** – how to analyse all information gathered, identify gaps, test theories, and create visual aids:
   - Aim to cover tools which can show the flow of funds – demonstrating how to follow the money will be essential to explaining the overall picture and key transactions to other stakeholders in a digestible and simple form
   - Aim to cover methods like source and application of funds analysis, cost/revenue modelling, net worth analysis, unexplained wealth calculations, reverse financial engineering, transaction sampling, and other accounting/forensic techniques
   - Aim to cover alternative explanations, identify gaps, and specify what additional information is needed
   - Aim to cover ways to compliment financial records with other records or evidence (e.g., audio/visual, email and message communications, geolocation)
   - Aim to cover the need for an iterative process, re-assess old information in light of new information

8. **Identification** of criminal property and corresponding value and tracing (partly incorporated above):
   - Aim to cover all available tools for provisional measures, urgent measures, and all possible types of confiscation as well as how to obtain them, legal thresholds, and standards of proof

9. **Use** – how will the conclusions and outputs of the financial investigation be used for the criminal case and confiscation:
   - Aim to cover a building of the "theory of the case" or "case narrative" – how do the finances tell or elaborate the story of the offence
   - Aim to cover authentication or certification needed for evidentiary purposes
   - Aim to draft necessary affidavits, sworn statements, charging documents
   - Aim to cover preparations for providing expert testimony or serving as a witness
   - Aim to cover preparation of other witnesses and exhibits to aid understanding of financial flows and proceeds
   - Aim to cover assessment and evaluation of assets, final confiscation plans, substitutions

10 **Practical exercise** – It is essential for learning effectiveness, audience engagement, and active participation that a financial investigations course includes a practical exercise or a real-world case scenario. Lectures and presentations are necessary, but not sufficient:
   - Aim to prompt participants to develop an investigative plan and seek information, e.g., items the possession of the trainers, mock interviews
   - Aim to have participants use real (sanitised) records and material
   - Aim to test analytical skills and gap-identification – create obstacles for participants to overcome
   - Ensure provisional measures are built into the course, e.g., when they should be sought, covering which assets, and how should they be pursued, and what challenges are likely to be faced.
   - Aim to have participants present their conclusions or theory of the case near the conclusion, consider whether to require a written product, oral presentation, or segment of a mock trial
   - Aim to incorporate case examples by the trainers – war stories from experienced colleagues are both fun and enlightening

ADDITIONAL CONSIDERATIONS

With all training and capacity building, it may be necessary to look elsewhere, potentially outside of one's own agency or institution, or even to external providers. Smaller, low, and medium-capacity jurisdictions may not have enough people, funds, or expertise needed to deliver upon all training needs. External training and capacity building may be available from donors, including neighbouring jurisdictions, higher-capacity donor countries, independent organisations (e.g., ICAR), international organisations, and IFIs (e.g., World Bank, IMF, UNODC, OSCE), and outside consultants with appropriate professional expertise. Some countries, including the United States, Germany, and the United Kingdom have established entire programmes for international law enforcement and judicial training and may have staff stationed in their embassies or commissions to carry out this role. Other countries, through their international aid or development offices, may also offer training and capacity building, or possibly money or grants for these purposes. Cost is always a consideration, but investment and even free resources may be attainable, especially if increasing the capacity of authorities in recipient jurisdiction A would serve to increase effectiveness in the investigations and international co-operation in donor jurisdiction B. As mentioned below, the recovery of criminal assets may generate funds to use for LEA training purposes. Regardless of the provider of the training, it is important that it is tailored to the laws, practices, and norms of the recipient jurisdiction and is not generic or based on a one-size-fits all approach.

Aside from training of LEAs and investigators, training of prosecutors and other legal practitioners dealing with AR matters is of utmost importance. Many prosecutor's offices offer in-house training on litigation, trial techniques, evidence (including electronic evidence), etc. But there is a need for bespoke training offerings for prosecutors on basic financial investigations and confiscation, across the board, and more advanced offerings on asset recovery topics, if AR will be a meaningful part of their practice. Prosecutors or lawyers who will specialise in confiscation will require more detailed training. As a good practice, countries may consider including prosecutors/legal practitioners in mixed trainings with police or LEAs, especially on financial investigation, asset identification, asset tracing, and securing provisional measures. This tends to enrich both parties' understanding, builds a common approach, and fosters relationships between key institutions.

Countries may also consider offering qualifications or credentials for attorneys who can be considered as highly trained or experienced in asset recovery matters. This can help place them in offices/districts which may lack that expertise. Additionally, as more countries adopt NCBC, there may be a need to train prosecutors and judges who are familiar with criminal procedures and rules on civil procedures and rules (if relevant). As for all officials, training should be kept current (e.g., to include updated courses on new legal tools/provisions) and focus on areas of the AR process of particular concern to prosecutors, such as: options and thresholds to obtain evidence; co-operation with the FIU and LEAs during financial investigations; options and thresholds for issuing or obtaining provisional measure orders and types/proof of confiscation; dealing with challenges from claimants/third parties; victim issues; and trial advocacy and motions/hearings when cases involve financial evidence.

Finally, training and capacity building can be delivered on the job. In addition to the mentorship component mentioned above, resources should be made available on topics relevant to asset recovery and financial investigation including, e.g., treatises, books, publications, and knowledge products. Many of these resources in the field of asset recovery are made available for free or can be easily licenced by a country or institution. Additionally, manuals, standard operating procedures, policy manuals, and the like can serve as educational products, while case compendiums (especially in common law jurisdictions) can highlight important new legal decisions and precedents, particularly for lawyers. When possible, consideration should be given to assignments which will broaden the perspective of AR practitioners. This may take the form of case assignments (e.g., could a junior investigator or lawyer be assigned as the second or third person of a high-profile case); details, stages, and secondments to other agencies (e.g., including placement in the FIU); and rotations in offices with a heavier docket of money laundering or asset recovery matters.

e. Reinvestment in asset recovery

Considerations of how to reinvest recovered assets could form part of a proper prioritisation of AR as a policy objective. As mentioned in Ch. 2.1 above regarding the benefits of asset recovery, confiscated assets can be reinvested in law enforcement and to benefit communities. Possible uses of confiscated assets will also be discussed in Ch. 7 regarding final disposition. INR.4(15) states that "countries should consider establishing an asset recovery fund into which all, or a portion of, confiscated property will be deposited for law enforcement, health, education, or other appropriate purposes." The word "consider" makes the use of a fund and the concept of reinvestment in general an option, not a requirement. Similarly, the reference to "law enforcement" in INR.4(15) means that reinvestment law enforcement activity related to asset recovery is but one option for the use of confiscated funds. While recognising that this approach is not without its risks, it is worth mentioning examples of how a national asset recovery priority can become sustainable over time by using confiscated assets to fund some of its key components.

ADDITIONAL CONSIDERATIONS

A jurisdiction may consider funding some or all of its initiatives linked to its national AR policies or strategies through confiscated assets which are not spent for other purposes (e.g., victim compensation, international asset sharing, etc.). Advantages of this approach and possible uses will be discussed below, but there are some prerequisites for considering this type of reinvestment in the cause of asset recovery.

First, this will generally become feasible once confiscation is a well-established national practice. In a more mature system, the amount of funds recovered through confiscation and other similar measures becomes more predictable and gradually increases over the long-term.

Second, aside from a relatively stable revenue stream, the country may require a legal basis to deploy confiscated funds in this way, especially if its regular use for such funds was previously defined in legislation and does not envision the payment of expenses related to the pursuit of asset recovery. For example, if, by law, all confiscated assets must be put into the general treasury or used for a specified purpose such as road repairs or prison upkeep, then it may not be possible to plug confiscated funds back into the AR system.

Third, this may also entail some degree of discretion on the part of a minister or high-level official or committee charged with oversight or management of confiscated funds. Even if only a segment of confiscated funds can be utilised for asset recovery, and that segment is allocated to the minister or official for use in line with that purpose, this would be positive. The needs may change over time, so it is important to build-in some flexibility for the appropriate official to spend resources for a law enforcement or "other appropriate purpose." However, such a funding stream should not be used as a slush fund and should have all necessary guardrails to prevent fraud, misuse, or embezzlement, including reporting requirements and auditing.

The advantages of recycling confiscated funds back into the AR system are numerous. When making AR a priority, commissioning strategies, and passing new laws and regulations related to confiscation, lawmakers and policymakers will be more inclined to support AR initiatives if they are low cost, no cost, or funded by some cash flow which is not seen as "subtracting" from other important uses. While the case for AR is persuasive, as recounted in Ch. 2., it can be unpopular in some quarters for governments to make expenditures for the purpose of taking their citizens' property (regardless of the justification). If the practice of asset recovery is minimally invasive from a budgetary perspective, it can be more politically palatable.

In addition, if the funds needed to run the AR infrastructure are derived from recovered assets, there is a positive incentive created to keep pursuing criminal property and property of corresponding value. While this incentive can have a downside if executed improperly or subject to abuse, it may make sense for the individuals who investigate and prosecute confiscation matters to be indirectly invested in the continuation of their endeavour. There is nothing inherently wrong with police, investigators, analysts, and lawyers having some of their funding come from the same source that they contribute to through their casework, especially when this is decided through a veritable process such as appropriations by a legislature or budgeting by ministers or agency heads. But, as covered in Ch. 8, any approach that resembles bounty hunting or too closely ties an official's confiscation work to their financial incentives (such as bonuses, etc.) should be avoided.

Moreover, to the extent that the AR priority can be made sustainable and well-funded, this will increase success of the system and embed as a pillar of the approach to preventing and fighting crime. The effectiveness of AR efforts and the accomplishment of any related policy or strategy absolutely depend on a sufficient and reliable source of funding. Finally, reinvestment in asset recovery means that confiscation can be pursued no matter what budgetary pressures or conditions are affecting the country. Insulating the AR system from austerity measures, competing priorities, and difficult decisions about funding cuts or expansion allows it to continue thriving independently and autonomously.

In terms of the possible uses of recovered funds to support the execution of a national AR priority, the following entities and activities can be funded or supplemented with confiscated money:

- **Specialised Teams:** Effective agency structures and specialised teams are critical for ensuring successful AR outcomes. To the extent a country has or is considering establishing agencies, teams, or units focused on asset recovery, these entities can be funded in part with confiscated assets. This may include the cost of establishing the unit or team, to include recruitment, office space, overhead, salaries, case-related travel, and supplies. For example, some countries pay the salaries of AROs with confiscated funds, to include police and investigative agencies who have an AR mission, and prosecutors who pursue CBC and NCBC cases. If there is sensitivity around funding personnel directly with confiscation proceeds, then other support staff can be funded such as paralegals, assistants, and analysts. Other indirect support can also boost AR outcomes (e.g., staff from the central authority handling international co-operation related to AR may be funded through confiscation). Countries may also use confiscated funds to finance specialised ML or economic crime courts, currency detection squads, or other appropriate bureaus with an AR mandate.

- **AR-Related Travel and Expenses:** Jurisdictions may consider using confiscated funds to take part in activities that contribute to AR regionally and globally. This this may include using confiscated funds to pay: FATF or FSRB membership dues; expenses related to participation in an ARIN or similar body; travel to AR meetings.

- **Equipment and Technology:** The use of increasingly sophisticated technology is critical for financial investigations and to pursue AR. The hardware, software, licences, and contracts needed to support LEAs and other competent authorities to identify, trace, and pursue AR can be funded through confiscation. This may also include the acquisition of special equipment (vehicles, scanners/x-ray machines, computers, cameras, cash sniffing dogs, etc.).

- **Vendors supporting AR:** Government agencies often do not have the capacity to provide all necessary or desirable technology needed for financial investigations. Therefore, governments may contract with third-party provider for certain services. Such contracts can be paid with confiscated funds (although a good practice is not to disclose the source of funds to the contractor, as this can lead to overcharging).

- **Training:** Training activities to build and reinforce the capabilities needed to pursue AR can be financed through confiscated funds.

- **Litigation Costs:** Jurisdictions may consider using confiscated assets to comply with judicial orders where an adverse costs order is made against the State in an AR matter. This 'fighting fund' recognises the potential for significant costs orders, particularly in high value cases, that may dissuade the State from commencing worthy proceedings.

- **Costs Associated with Confiscation:** This type of funding is arguably the most critical for the long-term sustainability of an AR policy or strategy. Confiscation generates money, but it also costs money. Assets need to be appraised and evaluated; stored or maintained; auctioned or liquidated – all of which necessitate cost outlays. Expenses associated with safekeeping and preserving the value of assets subject to confiscation can be costly. As discussed throughout this Guidance, asset management is a serious logistical endeavour, requiring specific skills, and potentially unanticipated experts from outside of government. Therefore, countries may use their previously confiscated funds to pay the regular and exceptional costs associated with AR. This may include asset maintenance and management throughout all phases of the AR lifecycle, as well as the costs of associated personnel, trustees, administrators, managers, and any tertiary litigation (i.e., not necessarily the main confiscation or criminal case, but other legal actions needed to resolve claims and close out prior liabilities or obligations).

There can be downsides and risks to the approach of reinvesting in AR. Where a government authority, such as law enforcement, is funded directly from forfeiture, this can distort the focus of law enforcement activities away from a pure focus on public safety and security. There is the risk that such directed funding leads to prioritising confiscation without sufficient regard to the original objectives of deterring crime or compensating victims. Some states that have chosen to transfer confiscated funds to the general revenues do so precisely to avoid politicisation of asset recovery, decisions around the uses of confiscated property, and potential conflicts of interest. If reinvestment is permissible under domestic law, all appropriate steps should be taken to avoid a conflict, or even a perceived conflict, with the use of recovered funds to compensate victims.

Steps should also be taken to avoid conflicts of interest or the perception thereof in the direction of investigation, prosecutions, and positions taken in litigation, testimony, and other venues. Furthermore, it is risky to tie case outcomes (i.e., asset recovery) too closely to domestic resourcing, as it may impact the integrity of cases and cross-border asset recovery processes. One of the ways that the FATF seeks to prevent this perverse incentive is to indicate that a "fund" could be established into which all or portion of confiscated money is used. If LEAs, certain offices, or even specific positions are funded through confiscated assets, there should be (1) back-up plans in the event that confiscation intake is unstable or becomes unavailable, (2) several layers of removal between the officers funded and those making the decisions about the use of confiscated funds (explaining why the confiscated funds might be pooled at a national level), and (3) safeguards to ensure that individual officers do not know who or what is funded by confiscated assets, to avoid any skewed incentives to act/not act in cases.

Recovered criminal property may be allocated to the general revenue fund of a state, as permitted by law. In this way, funds can support the general priorities of public safety, education, etc., without incurring any risk that such funds influence decision-making in the criminal justice system. Likewise, there are risks with directing confiscated property into general government revenues. The main downsides are that the benefits are not seen by citizens as directly, the asset recovery system is not relatively self-sufficient, and potential efficiencies are lost for law enforcement (e.g., in using confiscated funds to pay the expenses incurred in carrying out future confiscations or in repurposing assets directly for official use). The public perception issue is mitigated where a government is democratically elected, and where general programmes to benefit victims of crime are established, and where restitution to victims of particular crimes is prioritised from forfeited proceeds.

2.2.2. Domestic co-operation and co-ordination

Another prong in a national AR system is domestic co-operation and co-ordination. R.4 specifies that "consistent with Recommendation 2, [countries should] ensure that the necessary domestic co-operation and co-ordination frameworks and agency structures are in place to enable effective use of their asset recovery regime."[3] This section will focus on how these different agencies and structures can work together for AR. Some agency structures, by nature, are collaborative (e.g., task forces), but in each country there are several competent authorities that play different roles in the AR system, and they differ in the powers they hold and the information they have access to. Ideally, information and expertise would flow seamlessly between all relevant entities. But normally, this must be actively encouraged and facilitated, for both legal reasons (e.g., jurisdiction over certain types of offences, or rules and conditions around data) and practical reasons (e.g., institutional or agency cultures, competition or rivalry, siloing, or dysfunction).

For the purposes of the AR Standards, *co-operate* means to work with a common goal or purpose. Usually, this takes the form of information sharing; sending or responding to requests; and seeking or providing advice. It can include joint action. *Co-ordinate* means to work separately towards a shared goal, suggesting alignment of tasks, division of labour, and optimising efficiencies. The FATF does not define these terms, so they are given their accepted international meaning. Both terms ultimately signify a relationship between two or more entities working together as their organisational missions overlap. The co-operation and co-ordination may be formal or informal, but it should be timely, pro-active, and available upon request.

a. Operational and strategic purposes

For definitional purposes, operational co-operation and co-ordination will occur in specific investigations and cases, and strategic co-operation and co-ordination will relate to bigger picture trends and phenomena. In the asset recovery context, operational co-operation will take advantage of all sources of information to develop the financial profile of individuals and offences. The goal is to identify and trace actual assets linked to crime, the natural or legal persons associated with or handling the assets, and the flow of funds constituting criminal property and corresponding value. Operational co-operation, in this setting, will pinpoint assets over which to impose provisional measures and confiscation and identify persons who may be concealing, disguising, possessing, or using criminal proceeds (including persons who may have been involved in the predicate offence (or not) and persons who may be charged with ML or TF (or not)). This consists of following the specific flow of funds from their illicit (or licit) origin through all of their ultimate uses, and understanding the trail of specific transactions and financial activities. "Operational" means – in short – the people and property involved in a specific matter, including all investigative targets (and some non-targets) and all possible crimes involved in the events under inquiry.

By way of comparison, "strategic" co-operation and co-ordination does not relate to particular targets, people, or assets or seek to conduct fact-finding for the purpose of any particular case. It is used to identify larger ML and TF trends and patterns, and it helps uncover and understand threats and vulnerabilities. In the context of asset recovery, strategic analysis may be used to identify certain areas of focus; sectors of concern; methods of fund transfer or concealment; or other trends (e.g., investment trends, geographic trends) which may be indicative of the presence of dirty money and therefore, potential locations and categories of assets to recover. Strategic analytical products useful for detecting and analysing ML and the movement of funds or any type of property will overlap with and complement products that may be useful for asset recovery. For example, studies on the use of auction houses to process largely anonymous transactions; third party wire transfers made to yacht brokers; changes in regional cash remittance patterns; or the mechanisms used to invoice, pay, and ship goods, may offer valuable hints on where to

3. See INR.2, para. 4: "Countries should ensure that there are mechanisms in place to permit effective operational co-operation, and where appropriate, co-ordination and timely sharing of relevant information domestically between different competent authorities for operational purposes related to AML, CFT and CPF, both pro-active and upon request. These could include: (a) measures to clarify the role, information needs and information sources of each relevant authority; (b) measures to facilitate the timely flow of information among relevant authorities (e.g. standard formats and secure channels), and (c) practical mechanisms to facilitate inter-agency work (e.g. joint teams or shared data platforms)."

look for assets linked to crime, or to characterise the sorts of criminals or criminal organisations who typically use certain methods to launder and invest their proceeds or raise funds for terrorism.

For operational co-operation, it may be enough for agencies to allow each other access to certain systems maintained or hosted by each agency, depending on the agency's unique function in the AML/CFT system. This can include allowing access the agency's managed databases and the information they may have proprietary access to. APIs may be useful in this regard, to minimise the need for specific queries. The access allowed may be direct or indirect, and accompanied by appropriate safeguards. Alternatively, the ability to send and respond to requests certainly enables co-operation in real-world investigations. This ability may be endowed in the enabling legislation of the agency, in its internal rules and regulations, or in MOUs agreed between specific agencies. MOUs can envision standing information exchanges, or one-off and "as needed" requests. While some countries will need to have a legal basis for domestic exchanges and co-operation, the *absence of a prohibition* on such co-operation may be sufficient to ground the engagement between institutions in other countries. Finally, other formats may facilitate co-operation in particular cases, such as task forces, LEA working groups, financial intelligence review teams, or specific "targeting" apparatus which are multi-disciplinary in nature. Broad-based sharing of personal information should align with data protection and privacy laws and incorporate safeguards related to the necessity of access, control of access, limitations on use, and consequences for misuse of personal information.

To foster strategic level information sharing, countries may rely on bilateral or multilateral meetings between agencies, working groups and other interagency forums, or even public-private partnerships. These may be topical (i.e., countering cyber-enabled fraud, financial flows linked to human trafficking, or about a specific foreign country or region), or general in nature. Considerations when co-ordinating on strategic trend analysis include determining which agencies have information that may be useful to others, and how others can enrich that data with their own. For example, customs may hold significant data that may be of interest in understanding trade-based money laundering or cash smuggling; the banking supervisor may hold information that is relevant to police in identifying unlicenced activity; the tax authority may hold BOI in fact, even if this is collected elsewhere by a public or private sector entity. Creativity and a deep knowledge of a domestic AML/CFT/CPF regime is key to selecting strategic projects and executing them for maximum utility. An FIU may play this leading role in line with some of its functions per R.29, or other bodies may do so, such as an executive or national co-ordinating committee or police service. Ideally, the potential for AR outcomes would be taken into consideration in the process of selecting trends or patterns to study.

Moreover, a venue or avenue for sharing the conclusions of strategic co-ordination projects with the agencies carrying out the daily work of asset recovery should exist. The authorities responsible for selecting strategic projects under the AML framework and those responsible for the national AR framework may differ. Therefore, it is essential to ensure that all necessary requirements for their co-ordination are in place – including, where necessary, a clear legal basis – to facilitate effective co-operation and alignment of efforts.

No matter the basis for the co-operation, there are elements which should be negotiated, understood, and memorialised to avoid conflict or potential damage to each agency's mission or operational equities. These elements include access and confidentiality; use (and onward use) of the information including by whom, in what circumstances, and for what purpose; attribution and sourcing; any conditions or restrictions related to secrecy, privilege, or data protection and privacy restrictions; and the return, destruction, safekeeping, or any other records requirements attached to the data and information exchanged in particular cases. There is also a need to clarify at the country or agency level whether information could or should be used for evidentiary purposes in confiscation proceedings and the link between domestic and international information flows.

BOX 8 – COUNTRY EXAMPLE: Domestic Co-operation and Co-ordination in India

In an investment fraud case, an Indian entity lured innocent investors by introducing a scheme wherein it promised that upon maturity investors would get either land parcels having much higher value than the total investment or get very high return on their investment. Initially, the company used the money from new investors to pay back the old investors with interest to attract more investment. The company later diverted the invested amounts to various unconnected fields like power, infrastructure, software, mines, etc. The company also used the invested money to purchase various properties in the name of its directors and associates. During the course of investigation, various assets of the accused were attached by Directorate of Enforcement (ED). In the same case, several assets were also attached by another agency in India, the Crime Investigation Department (CID) under other justifications. The attachment by both agencies led to overlapping attachments between CID and ED, therefore, meetings were held between both to co-ordinate the matter and arrive at a common ground for the smooth restoration of properties to the victims. The entities agreed that ED would restore the properties worth INR 60 billion (USD 690 million) to CID so that after the disposal of the properties CID could return the money back to the victims in the case.

Operational information will usually be more sensitive than strategic information because it relates to individuals, companies, accounts, and properties. In TF and extremely sensitive cases, it may also entail classified or secret information, which carries its own set of handling issues and legal protections. Countries should consider, if they do not have them, appropriate protections for information stemming from financial intelligence processes or criminal investigations (e.g., by including specific provisions on confidentiality in their criminal procedural codes or other relevant laws). Many jurisdictions have such legal restrictions regarding tax information already. However, strategic information also may be sensitive because of the trends it discloses or the topics covered. Information and communications pertaining to cases will generally be law enforcement sensitive and entail protection from disclosures which can jeopardise the investigation, prejudice the people named, or be used for improper purposes (such as political advantage or financial gain). However, non-case-related and strategic information may also warrant specific protection from disclosure to foreign adversaries, economic competitors, and, of course, would-be criminals.

b. Co-operating and co-ordinating with tax authorities

One of the new inclusions within R.4 and INR.4 is the explicit mention of tax authorities in the context of asset recovery. The Interpretive Note to R.4, para. 13, reads: "Countries should enable their competent authorities and tax authorities to co-operate and, where appropriate, co-ordinate and share information domestically with a view to enhancing asset recovery efforts and supporting the identification of criminal property." Jurisdictions have differing conceptions of the role that tax authorities could play in asset recovery or in conducting complementary activities, and this new text and corresponding addition to the Methodology reflect that. Here, the first clause specifies the purpose of the interaction and the second clause establishes that countries should "enable" the interactions to include co-operation (mandatory as a general matter) and co-ordination (where appropriate in a specific matter).

The use of the word "enable" underscores that engagement with tax authorities may not be necessary or desirable in all AR matters, but that it should be possible and accessible as needed. The premise of the sentence is that tax authorities may hold information of critical necessity for financial investigations and such authorities are (generally) adept at such investigations. It also recognises that tax authorities may be able to add more value to AR efforts than simply providing tax return information to police. Through this Standards change, the FATF acknowledged developments which have been occurring in countries which are finding that a co-ordinated approach to AR which includes tax or revenue agencies is effective in their systems. It also respects some of the various ways in which tax authorities and

LEAs co-operate within jurisdictions within the parameters of their legal context (e.g., criminal enforcement versus administrative revenue collection frameworks).

Before providing guidance on the ways that tax authorities can be integrated into a strong AR regime, the following clarifications on the purpose of the addition to the standards are necessary.

- Jurisdictions do not need to tax criminal proceeds. Some countries do, on the theory that all income is taxable regardless of whether it is legitimately earned, and some countries do not, viewing tax obligations as owed only on legitimate sources of income.

- Jurisdictions do not need to give their tax authorities *new* powers to recover assets. Likely, these authorities already have the tools they need to enforce tax code, e.g., administrative measures related to tax debt collection and criminal powers related to criminal tax violations (evasion, fraud, etc). The former measures may include wage garnishment, repossession, forced sales, interest, fines, and other penalties (including the inability to carry out certain transactions, claim certain credits or benefits), etc. The latter measures may include seizure and confiscation or confiscation-like measures.

- Tax and revenue authorities need not be involved in each case or all asset recovery matters. This does not mean that tax information cannot be used by LEAs in carrying out financial investigations. Co-ordination remains optional and subject to the discretion of the country in any particular case.

- Tax crimes are one of the designated categories of offences which should be included as ML predicate offences, per the FATF glossary.[4]

The principles and ideas animating the new text in INR.4 are the following. **First**, that FATF should collaborate in the effort to join up what are perceived as two "different worlds" – tax and AML – alongside other international organisations. There is a growing synergy between these two fields, and as the global standard setter in AML/CFT, FATF is doing its part in concert with bodies focused mainly on tax. This is increasingly relevant as some tax agencies are turning to confiscation and NCBC tools to carry out their missions (e.g., Italy, South Africa, and the United Kingdom).[5] **Second**, tax is already present in other parts of the FATF Standards, including tax crimes as predicate offences for ML (FATF Glossary, R.3), national co-co-ordination of AML/CFT policies (INR.2 notes that interagency frameworks could include tax authorities), tax information which should be accessible to the FIU or investigative authorities which may be held by tax authorities (see, e.g., R.31, IO.6 Methodology Core Issue 1, INR.8, and INR.24, INR.25), and international co-operation (requests for assistance cannot be refused solely on the ground that the offence involves fiscal matters, per R.37 and R.40).

Third, that the relationship between traditional AML/CFT authorities and tax authorities can be a two-way street. Co-operation is the baseline, which should be possible all the time, whereas co-ordination of actions should be possible on a case-by-case basis. On one hand, tax authorities (and their information) can be essential in helping non-tax AML authorities identify assets and beneficial owners, and develop financial profiles (including assets and liabilities and overall wealth). On the other hand, financial analyses or investigations conducted by FIUs or LEAs will reveal activities generating income – both legal and illegal – which may result in tax liability. The interactions are based on a simple

4. The FATF has acknowledged that the line between continued tax evasion and ML can be blurry. The proceeds of crimes such as tax evasion or fraud are the amounts that were owed and should have been paid, had it not been for the essential concealment of income, wealth, or transactions which caused a tax liability to exist. Proceeds may also include the benefits or credits unlawfully earned through tax crime. Tax evasion is a criminal offence in almost all jurisdictions. Some countries require that it is carried out through certain wrongful acts in order to rise to the level of a criminal offence. In some countries, tax evasion is not always a crime, but can be a non-criminal offence. In this Guidance, tax evasion and tax fraud are used as typical examples of "tax crime" predicates contained in the FATF General Glossary.

5. See also OECD, *Fighting Tax Crime – The Ten Global Principles*, 2nd Ed. (2021) (principle 4 – have an effective framework to freeze, seize, and confiscate assets; principle 7 – make tax crimes a predicate for ML; principle 8 – have an effective framework for interagency co-operation). These principles are non-binding.

truth: the recovery of taxes owed or evaded (plus penalties) may encompass "criminal property". Tax debt can be satisfied by clean money or proceeds.

As highlighted above, tax agencies have specific jurisdiction and specific legal regimes; they are not required by FATF to have broad AR powers beyond what is needed to enforce tax law (in fact, they may have different types of collection powers that are unlike to AR tools). However, tax enforcement and revenue collection may play an important role in the fight against organised crime and related ML. Tax authorities are among "competent authorities" in the AML/CFT system according to the Glossary definition, and they are (or should be) involved in both policy and operational AML/CFT activity to a greater or lesser extent depending on the country. Revenue agencies are particularly adept at following the money, a core requirement of their enforcement work. In some countries, tax authorities may be the primary ML investigative authority. Collecting taxes owed and evaded also has a functional similarity with enforcing forfeiture judgments (including against corresponding value) – both activities may share similar techniques – e.g., recovering amounts owed or ordered to be paid as a result of misconduct and using financial investigations and legal tools to accomplish this. That said, it is clear that the technique of the work can be shared, but the amounts seized for tax purposes serve the primary objective of the tax authorities.

ADDITIONAL CONSIDERATIONS

In terms of best practices, co-operation and co-ordination may cover information sharing; co-ordinating case strategies between agencies, when possible; considering when to leverage tax powers; considering when to leverage asset recovery tools, e.g. NCBC; including tax examiners, revenue agents, and other tax specialists with unique expertise (including those with accounting and auditing backgrounds) into their multi-disciplinary team or task force; and joint training activities. For example, the Japanese Prosecutor's Office organises annual joint training sessions with the Criminal Investigations Division of National Tax Agency in order to exchange know-how on tracing financial flows and detecting tax and financial crimes.

Criminals do not tend to be scrupulous taxpayers, meaning that tax crimes could be considered as a predicate act for ML charges, an alternative charge to ML, and/or a basis for asset recovery. It is also fairly common for reporting entities to flag suspicions transactions as generic "tax crimes" because they may not be able to determine a specific predicate for ML, but they can see income discrepancies or changes in a business's turnover that may indicate, among other possible offences, tax evasion. Consider, for instance, the use of fraudulent invoices for non-existent transactions and its potential nexus with offences such as corruption, usury, and money laundering. In such instances, the co-operation with tax authorities may serve as either a catalyst or the genesis of an investigation, and the initial disclosure from the reporting entity may be tagged, generically, as tax-related. Both private sector reporting entities and competent authorities, at first, may have trouble distinguishing between tax crimes and related ML, and ML linked to other offences. This is one reason why, at first, they are often considered together in initial stages of investigation, and why there needs to be a fluid exchange of information between tax authorities, FIUs, and LEAs. Authorities should remain attuned to all possible charges and associated opportunities for asset recovery. But taxes have their own raison d'être to fulfil nation's fiscal needs and should not be regarded merely as a lead or substitute for other serious crimes.

Moreover, as is often the case when investigating dangerous criminal organisations, it may be difficult to pursue the "main" charges if witnesses are unlikely to testify and the leadership of the organisation is able to distance itself from actually committing offences through the use of subordinates. But the strategy of pursuing tax offences can be a viable one, where other criminal charges are impossible or unlikely to succeed. Because, criminal organisations frequently invest in cash-heavy businesses, and putting tax pressure on such entities can (1) bring out potential co-operators or collaborators, (2) disrupt the laundering model or cash flow for operations and living expenses, (3) bring to bear certain powers only accessible to criminal tax enforcers.

BOX 9 – COUNTRY EXAMPLE: Timing of Periodic Reviews in the United Kingdom

The UK Government must review legislation five years after commencement. The Home Office review of the Criminal Finances Act 2017 exemplifies this practice of post-legislative scrutiny. The Act gave LEAs new powers and capabilities to recover the proceeds of crime and combat ML, corruption, and TF. In the course of the review, the Act's several AR-related measures were scrutinised and it was concluded that account freezing orders and asset forfeiture notices have been particularly well received and have been used extensively, helping to drive a significant step change in rates of civil recovery of criminal assets. The review also concluded that UWOs presented challenges to use and implementation which were (and will be) addressed through subsequent legislation. The five-year mark defines a timeline for review and prompts amendments, if necessary, and represents a good practice.

2.2.3. Periodic review of regime

Asset recovery systems must be reviewed and adapted in light of the outcomes achieved. Recommendation 4 specifies that jurisdictions should "periodically review their asset recovery regime to ensure its ongoing effectiveness." This is a flexible provision without firm time limits, but it is important for the upkeep of the priority placed upon AR. In other words, the legal measures and operational frameworks require ongoing attention and cannot be simply set-up and left unattended or put on autopilot. Like any complex government undertaking, it is essential to constantly assess, question, test, and reconsider policies or practices which are no longer serving the purpose or which can be done cheaper, better, or more efficiently.

Countries may wish to formalise this review process for the sake of managing the work and obtaining institutional buy-in, but countries can demonstrate the periodic review without a formalised process. In other words, the fact that a review of the AR regime is happening periodically may be evidenced by consistent legislative amendments to improve laws over time, fixes to operational processes and procedures, and tweaks to the organisations involved in carrying out asset recovery. Continual "progress" over years would indicate the periodicity of reviews without organising a formal working group or work stream.

a. Relationship to national risk assessment and AML/CFT/CPF strategy

ADDITIONAL CONSIDERATIONS

One good practice could be to plan or schedule an interagency reassessment of the overall functioning of the asset recovery system in a staggered manner after the "completion" of a country's NRA. Although the understanding of risk is a constant and iterative process, there are certain milestones, such as the publication of an NRA or an AML/CFT Strategy. Aligning the periodical review of asset recovery measures in the off years between NRAs or NRA updates has several benefits. It allows asset recovery policies and mechanisms to be informed by the latest understanding related to ML, TF, and predicate risks. It allows AR to be a responsive tool to mitigate some of these risks. It also ensures that the measures related to AR are calibrated and targeted to fight the most current and relevant ML/TF threats facing the country.

Additionally, it is typical for agencies to be tasked with carrying out specific tasks, items, of parts of strategies which result from the NRA or corresponding AML/CFT strategy or action plan. These tasks may include making any necessary changes and adjustments to AR laws, practices, and policies. The momentum generated by the NRA process can be

leveraged by similarly assessing AR measures or carrying out relevant reforms, and it is important that the AR system is guided by and/or connected to the NRA. By conducting the AR review in the off years between NRAs, the competent authorities with AR mandates can continue to be engaged and actively involved in shaping and optimising the broader AML/CFT system.

Tying the periodic review of the AR system to the NRA could also allow countries to triage resources. For example, one way to respond to ML, TF, and PF threats is to counter that threat via confiscation. Countries should seek to remain nimble in using AR as a response: this may mean moving personnel around, adopting new laws or administrative measures, or focusing on different threats as they come to prominence.

Whether a country has a standalone AR Strategy/Policy or a constellation of AR policies or measures which collectively function as the country's AR priority, the review of that strategy or approach should be scheduled periodically. A good practice would be to review this at intervals. One year is likely too frequent, whereas ten may be too long. Waiting a decade between reviews would be a bad practice, especially because mutual evaluations of a country's AML/CFT/CPF system will likely take place in shorter intervals, and the country may wish to respond to recommendations stemming from the MER (or other peer reviews). But equally, over a ten year period, entire classes of assets may emerge, country context may drastically change, and different administrations may hold power, each bringing their own priorities and leaving different legacies.

Criminals are constantly adapting and evolving, and the practices of LEAs and competent authorities which form part of the AML/CFT/CPF system also need to keep a (reasonable) pace. If a country's tools and powers have not changed at all since the last round's MER it may be time to consider conducting a review and making necessary adjustments.

BOX 10 – COUNTRY EXAMPLES: Measuring the Effectiveness of an Asset Recovery Regime

AUSTRALIA: Australia, at the Federal level, uses a range of indicators to assess the effective performance of its AR regime. These performance indicators include, among others: the value of restrained assets; the value of confiscated and realised funds paid into the special purpose fund created and administered under Commonwealth legislation; and the costs of LEAs and related agencies performing their asset recovery functions in a given year. Significant reductions in the value of restrained assets, realised funds paid into the special purpose account, or significant or unplanned increases in the cost of performing AR functions can prompt consideration and potential change to ensure that the legislation is operating as intended and that AR is being adequately prioritised.

NEW ZEALAND: New Zealand set a financial target in 2017 for AR tied to restraints and seizures. This had a positive effect of raising the visibility of confiscation as a key strategic priority in targeting ML and criminal wealth. However, this country and several others no longer use financial targets for confiscation in recognition that they can drive perverse outcomes. Competition among LEAs can be positive, but it can also bring about behaviour that is incompatible with the overall purpose of asset recovery. New Zealand, for instance, shifted to a qualitative outcome focus. It still sets a target, but this is not widely known or published and is no longer a stated goal. A financial target has benefits including communicating to LEAs that confiscation is a priority – however its implementation needs to be carefully deployed to minimise the risk of undesirable outcomes such as over-restraining assets. Both of these examples could be considered an ongoing and live review of the effectiveness of the jurisdiction's AR regime.

b. Reassessment and improvement of legal tools and operational practices

As a consequence of the requirement to periodically review their asset recovery regime, countries should also re-evaluate the laws and regulations governing the asset recovery process at regular intervals. External factors may trigger this – such as changes in the FATF Standards or supranational measures – but internal factors are often determinative. For example, not all provisional or confiscation measures will work in all countries depending on fundamental principles of domestic law or a changing legal landscape (binding precedents of national, regional, or international courts dealing with criminal law or human rights, or other new laws which do not directly relate to but have an effect on asset recovery). The FATF encourages trials and innovations, and one reason there is flexibility incorporated into the Recommendations is so that countries can experiment and determine what works best in their systems to increase AR outcomes. The law is not static, and legislation focused on or affecting asset recovery may be introduced, expanded, repealed, and amended, as needed. Improvements need not mean sweeping new AR powers, but may include, for example, enhancements to protect individuals' rights, court and procedural reforms, or mechanisms for information sharing which can have favourable effects on AR. In common law systems, the law may evolve in a positive direction through case law, and this can also be incorporated in statutory law to give it wider reach. On occasion, judicial decisions may prompt the need for legislative action to correct or clarify issues related to asset recovery.

Not every periodic review (as discussed above) will result in massive changes or legislative overhauls to a country's AR system. Small, well-targeted changes can have a major impact, especially if, for instance, they increase the capacity of law enforcement to identify and trace assets or make judicial processes more efficient. As an example, in response to its identification of illegal gold mining and logging as a major source of criminal proceeds and ML risk, Brazil established in 2024 a small centre for international police co-operation in Manaus, a city in the heart of the Amazon region. The centre will bring together LEAs from seven countries to share intelligence and identify criminals and their assets, including through technology that enables the tracing of illegally mined gold. This is the type of response that can be brought about by a periodic review, correlates well to documented ML/TF risk, and results in new or different operational practices.

Furthermore, countries are advised to respond not only to internally raised issues, but to address recommended actions made in assessments (MERs and other peer or expert reviews), recommendations from practitioners (including the defence bar and private sector who are affected by AR measures), and to address problems identified by citizens and civil society. Good ideas can come from many places, and countries may listen to informed advice on asset recovery from their domestic environment, and may seek to learn from other countries' experience. For example, some countries conduct study visits with lawmakers or competent authorities from other countries who are seen to have advance AR systems. Such openness to outside expertise (as well as responsiveness to legitimate criticisms) can help calibrate legal tools and refine operational measures.

2.3 Strengthening partnerships

Strengthening partnerships is critical for successful asset recovery outcomes and can be considered in the development of AR policies. Engaging partners and co-operating in the asset recovery space can likewise strengthen relationships between competent authorities and external stakeholders, making them more valuable, sustainable, and fruitful over time, for both asset recovery and other purposes. The section discusses the types of partnerships that have proven useful in asset recovery, particularly international partners, private sector, and civil society. It also spotlights some ways for authorities to address typical challenges in forming and handling these relationships.

a. International and foreign partners

As criminal proceeds travel across borders, countries need to strengthen relationships with international partners at regional and global level. As such, asset recovery is a major theme for global and regional agreements, treaties, and

conventions. Given the limited results recovering criminal proceeds, AR has been an increasing focus of the FATF, multilateral groups, development banks, and the United Nations. For example, UN Sustainable Development Goals agreed in 2015 lasting through 2030, specifically include a target under Goal 16 that underscores the importance of asset recovery, and it has also been the topic of G20 High Level Principles in 2023, high-level political commitments, and development finance goals. [6]

International partnerships often rely on ratifying and implementing agreements, abiding by multilateral and bilateral obligations, and working towards building more robust and functional AR systems. For example, states have a duty to co-operate on AR cases based on their obligations under international conventions such as UNCAC (Chapter IV and V) and UNTOC. They also work together to develop principles and guidelines to improve and standardise asset recovery, including through the FATF's Global Network, the G20, various summits, and specific asset recovery fora.

Still, successful cross-border confiscation is particularly dependent on the working relationship between the states, and the specific agencies within them requesting and providing assistance in a particular case. Good results often depend on the scope of assistance legally and practically available and the trust developed between two states and their relevant competent authorities. Building a pattern of productive co-operation with foreign partners on asset recovery can benefit future cases and generate a willingness to co-operate again, or more closely the next time. If a requested country knows that its foreign counterpart has, for example, enforced a confiscation order and shared all or a portion of the confiscated assets in the past, not only can the next confiscation case be smoother, but the requested country may be willing to put in additional effort and explore creative solutions when co-operating with that jurisdiction. Not all cases are bilateral, and many asset recovery matters involve multiple jurisdictions. This can increase the complexity, but also the opportunities for partnership.

The process of building trust between agencies from different countries may be difficult, requiring an investment of time and resources and usually some trial and error. It takes time to establish a track record of successful co-operation in formal and informal co-operation, as well as specialised expertise as a subset of international co-operation. The working relationship between agencies across borders may be complicated by competing priorities, differences in law and languages, resource constraints, operational urgency, differences in safeguards for the rights of affected individuals, and diverging views on how to split or allocate the costs of asset recovery. In situations where there is a constant flow of cases involving two countries, authorities may wish to invest in ongoing, in-person contacts. For some countries, the establishment of in-country liaison officers and joint investigative task forces or teams are worthwhile investments to build these relationships and to improve the chances of AR success (see more on this in Ch. 6). Overall, partnerships on asset recovery can pay dividends for all countries involved, and globally, as criminals find fewer places to hide and store their ill-gotten gains. It can play a role in improving the common fight against transnational organised crime and finding new avenues for partnerships and information-sharing to combat illicit finance.

In addition to developing relations directly with other countries, national competent authorities can also enhance international partnerships by participating in other international bodies that facilitate formal and informal international co-operation, such as the Egmont Group, INTERPOL, the UNODC's GlobE Network, and the several Asset Recovery Inter-Agency Networks (ARINs) as well as regional versions of such bodies such as Europol and Eurojust. These entities have their own membership rules and conditions regarding information exchange, but they are important for establishing ties between countries. This is especially true for those countries who may not

6. The UN target urges all UN members to "significantly reduce illicit financial and arms flows, *strengthen the recovery and return of stolen assets* and combat all forms of organized crime." The recovery and return of stolen assets have been referenced in UN Financing for Development outcomes since the *Monterrey Consensus*, para. 65 (2002). The topic has also been identified in *the Addis Ababa Action Agenda*, para. 25 (2015), as a crucial element towards the financing of the 2030 Agenda for Sustainable Development.

BOX 11 – COUNTRY EXAMPLE: Building Partnerships on Shared Strategic Interests

In Jamaica, the prevalence of the lottery fraud targeting US citizens has resulted in the establishment of the Lottery Scam Task Force comprising both US and Jamaican LEAs. Agencies use the task force to conduct investigations, asset seizures and recovery, and other operations of shared interest. The police and investigators know the problem set, the typologies related to the crime in this geographic corridor, and, importantly, each other. The positive experience of collaborating on operational matters within this task force has also resulted in strategic level co-operation, specifically, legal reform related to extraditions between the two countries.

have had the occasion to work bilaterally before and may not have developed the ties which can smooth the way for asset recovery co-operation. These bodies help create networks, including personal relationships, which may be tapped when the case arises. Generally, the more countries use and engage in these types of networks, the more they will receive in return when assistance is sought in asset recovery matters. They can also generate familiarity not only with key individuals in different countries, but with the legal system and requirements of the jurisdiction. Even some basic knowledge can make working collaboratively on highly technical asset recovery matters more efficient.

In the context of these working partnerships, the success of the AR endeavour can be a matter of reputation. The requested agency is staking its reputation on the strength and validity of the information and evidence provided by the requesting agency. The requesting agency, on the other hand, is putting the prospects of its recovery in the hands of another country. For networks like Egmont and ARINs and agencies like Eurojust and INTERPOL that enable operational co-operation between countries, they uphold their reputations when they incubate casework between countries which is swift, secure, and successful. Assets recovered as a result of co-operation aided by these bodies makes them more attractive to new and existing members, which begets more co-operation and recovery results. Co-operation on asset recovery is based on trust between partners, developed over time and often under conditions of urgent operational need and legal or logistical complexity. It can yield significant benefits for the countries, their citizens, and victims of crime, and it can help build reliable partnerships.

b. Private sector (FIs, VASPs, DNFBPs)

Building partnerships with the private sector can significantly help the authorities recover criminal assets. Competent authorities may benefit from private sector's inputs at both the intelligence gathering stage and the investigative stage and can consider how to build an effective partnership.

In **intelligence gathering stage,** the FIUs receive information from the private sector (FIs, VASPs, and DNFBPs), such as STRs and information gathered in the course of customer due diligence processes, which is critical for them to develop actionable financial intelligence. Without information from the private sector such as bank and transaction records and the STRs, asset recovery, particularly at the asset identification stage, would be more complicated, as this information often serves as a catalyst for additional analysis, investigation, and tracing.

Although the private sectors' contributions are spurred by legal obligations, a high degree of genuine co-operation and feedback is needed to ensure that suspicious transaction reporting is comprehensive and of investigative value. This requires consistent outreach by the authorities towards these sectors, including advice on observed typologies, priority risks, and avoiding issues such as incomplete or defensive reporting. This could come from their supervisory authorities, but also from LEAs and/or FIUs on account of their operational and practical experience with criminal patterns and activities.

It is a good practice for FIUs and other authorities who may be looking into certain suspects to engage with reporting entities directly on STR filings. While the FIU will have the ability to request additional information related to the STR and may be the authority with the power to suspend transactions, if an LEA is already investigating the subject individuals or entities, communications could be opened between the LEA and the reporting entity to informally exchange information. This is one reason why the STR template in many jurisdictions lists a bank or institutional contact point as well as any known investigator already interested in the suspicious activity or subjects of the STR (if known). Co-operation from reporting entities can also be facilitated through the risk-based approach they are expected to apply to their customers. Subject to domestic legal provisions, an FIU or LEA may provide these entities with additional risk intelligence – such as the fact that a customer is imminently due to be charged with money laundering – which could lead the institution to determine that allowing further transactions or activities on the account may constitute being a party to money laundering. This, in effect, results in the freezing of the asset.

This partnership between FIUs, supervisors, and LEAs and the reporting entities is mutually beneficial. Sustained contact and information exchange between the government and private sector is essential to create a sense of buy-in to the mission of preventing and combatting ML/TF/PF. This is particularly important for alerting authorities to crimes – past, ongoing, and attempted – in a timely manner (see further details in Ch. 3.2.1(b)).

Beyond ad hoc or regular cooperation, some countries have sought ways to structure the relationship with the private sector for the purpose of enhancing information-sharing and developing strategic and operational intelligence. Some countries have formalised public-private partnerships (PPPs). Others have created space to allow institutions to communicate more freely amongst themselves, which in turn enriches the information produced by reporting entities. Still others have created ongoing, strategic dialogues with important bilateral partners. These dialogues may include private sector component with major FIs or DNFBPs from both countries. Additionally, PPPs can be used for partnerships between AROs, police services, or prosecutor's offices to support financial investigations, asset tracing, and financial crime litigation with partners in the private sector. This does not entail help on specific cases or investigations, necessarily, but can encompass everything from sharing red flag indictors, information about emerging risks and trends, feedback on STRs, discussion of common terminologies, or the way information is provided to LEAs by the private sector (and how it may better enable asset tracing). PPPs and similar initiatives contribute to asset recovery writ large; intermittently, they may even place a focus on matters concerning seizure and confiscation.

Developing partnerships with the private sector (especially PPPs) can be beneficial for both the authorities and the private sector. In addition to receiving risk information from the authorities (e.g. the NRA or other risk assessment products), the private sector in many countries is desirous of more detailed and specific information from LEAs, FIUs, and other competent authorities that can inform their risk and compliance functions. More tangible information about law enforcement priorities helps the private sector carry out their role as the first line of defence and can make their reporting (and their investment in compliance) more worthwhile. At the same time, this partnership helps FIUs and LEAs receive better intelligence that is more aligned with their areas of focus and risk-based/thematic priorities.

Developing partnerships with the private sector is beneficial for tracing assets and securing them also at the **investigative stage**. While responses by reporting entities to lawful orders for the production of information is mandated by law, there is room for further outreach and sensitisation, particularly with respect to important issues such as tipping-off and compliance with investigatory or freezing orders.

The private sector, when compelled to respond to legal process in the form of a suspension, freezing, seizing, or restraining order, need to fully understand what is required of them. A delay of hours can be the difference between successfully securing assets for confiscation or losing them to asset flight or dissipation. In this regard, fluid communications between authorities and reporting entities, and in particular their leadership (e.g., chief compliance officers, heads of investigations,

BOX 12 – COUNTRY EXAMPLES: Public-Private and Private-Private Partnerships Aiding Asset Recovery

SOUTH AFRICA: In South Africa the Government, and the Asset Forfeiture Unit (AFU) in particular, is allowed to engage in PPPs to achieve specific objectives. As such, the AFU has engaged with the private sector through an organisation known as Business Against Crime (BAC). This is for the rendering of services such as additional forensic auditing services and access to a cyber forensic laboratory. The engagement can also provide for the funding or provision of training to AFU staff and the secondment of expert investigators, auditors, and litigators from the private sector. This arrangement can be particularly helpful when dealing with very large and complex matters where additional resources are required to finalise investigations and ensure the tracing of assets promptly. In a similar vein, the South African Police Service Directorate for Priority Crime Investigations (DPCI) has entered into a partnership with SABRIC, a structure established by the South African banks to combat banking crime. SABRIC established a cyber forensics lab where SAPS members have access to the full complement of cyber forensic services. These engagements can be very helpful in emerging economies to secure highly specialised services quickly and efficiently, and without huge expense to Government.

UK: The National Crime Agency and a number of UK banks have launched a project to identify and take action against organised crime. The participating banks are providing the NCA with account data indicative of potential criminality. Subject matter experts and investigators from the NCA and the banks have formed a joint team to analyse the data, alongside the NCA's own data. Intelligence outputs inform law enforcement's investigative work and helps the banks to identify risk. Use of financial intelligence in such a way is better protecting the public from serious and organised crime and helping protect the integrity of the UK's financial system. Between May 2024 and December 2024, this capability delivered over 200 intelligence packages in support of both NCA and wider LEA investigations. In addition, over 50 disseminations were provided to participant banks to assist risk identification and to increase their understanding of the threat and to improve their defences against serious and organised crime.

SINGAPORE: In April 2024, the Monetary Authority of Singapore (MAS) established a digital platform promoting public/private partnership named Collaborative Sharing of Money Laundering/ Terrorism Financing (COSMIC), which allows for information sharing between six major banks in Singapore to combat ML, TF, and PF. The Financial Services and Markets (Amendment) Act 2023 and subsidiary legislation were expressly amended to facilitate this initiative. It allows the sharing – with appropriate safeguards – of customer information when it meets defined indicators of suspicion or red flags, between banks and ultimately, to the authorities. The initiative is currently focused on three key illicit finance risks in Singapore and complements the existing collaboration between MAS and LEAs with the private sector.

EU: Article 75 of Regulation (EU) 2024/1624 enables the setting-up of information-sharing partnerships allowing the exchange of information between private sector entities and AML/ CFT competent authorities for the purposes of complying with the obligations to carry out CDD and report suspicious transactions. Authorities having the function of tracing, freezing or seizing, and confiscating criminal assets fall within the definition of 'AML/CFT competent authorities' and, as such, may participate in information-sharing partnerships. Subject to specific appropriate safeguards, information exchanged in the framework of such partnerships may pertain to, e.g., information on customers, customer transactions, higher and lower risk factors associated with the customer, and information on suspicious transactions.

and general counsel), can ensure that such orders can be carried out expeditiously, with minimal risk of tipping-off and maximising the opportunity for interventions which can make confiscation more likely. Informal assistance from FIs can be critical in asset tracing, especially when funds are being transferred in real-time, when suspects are traveling abroad, when new persons gain access rights to accounts, or when transactions are being ordered from mobile and other devices, for example. Even when LEAs are sending more ordinary records requests (e.g., subpoenas, production orders), open lines to bank officials can help ensure that necessary documents are preserved, requests are processed promptly, and any questions about production can be handled quickly and efficiently.

BOX 13 – **COUNTRY EXAMPLE: Informal Co-operation with Financial Institutions in the US**

In the United States, LEAs and prosecutors have the ability to request FIs to "keep open" specified accounts when the bank's compliance processes would normally counsel closing them. This may seem counter-intuitive, but if law enforcement is already aware of and is investigating whether the account is being used for illicit activity, keeping it open can serve numerous purposes: (i) it can keep the investigation covert, as the owner would have no indication (due to account closure of questions from the bank) that anyone suspects him/her; (ii) it can preserve assets for seizure or restraint, allowing a few more days or weeks for law enforcement to build the requisite level of evidence needed to apply to a court for an order; (iii) it can allow additional transactions to occur unchecked (within reason), providing key insights into counterparties, other linked accounts, or the network of the accountholder; (iv) the request informs the bank that LEAs are looking into the specific account, which will prompt a review of activity and the client, likely prompting the filing of an STR. Ideally, prosecutors and the FI involved would agree on a timeline, any extensions, and any additional steps to be taken by the bank. While FIs often honour these requests, they are not obligated to do so. FinCEN has published Guidance on U.S. requirements for such requests.

With respect to suspensions, freezing and restraining orders, or other provisional mechanisms to secure assets, the leadership of these institutions must emphasise to staff the implications and consequences of anything less than full compliance with the terms of the compulsory order. In the case of discretionary freezing, there should be appropriate consultations to ensure that the action does not have negative consequences such as tipping-off or potential threats to staff.

Moving on from the traditional private sector partners, some governments (and individuals) take the approach of entrusting asset recovery investigative and legal claim responsibilities to private firms. These firms may be able to provide certain services related to AR, particularly when the government is unable to pursue a case due to time limitations, or other legal or resource constraints.[7] Although these are commercial arrangements based on contracts, lawyers hired for asset recovery purposes are another type of non-traditional partner for the government.

The relationship between government authorities and firms doing hired AR work will vary, if there is any interaction at all. However, competent authorities should be familiar with the existence of firms providing such services and how they operate. Authorities may encounter these firms when investigating and litigating cases, as it is not uncommon for more than one state, government agency, entity, or individual to lay claim to the same assets, particularly in scenarios involving corruption and fraud. Precautionary steps should be taken to ensure that no outside entity or third-party dealing with this firm believes that it is a representative of the government (if it is not), or is working in partnership with the FIU, LEAs, or public prosecutors (if it is not). Collaboration may be possible between the competent authorities

7. In some jurisdictions, private prosecutions can be carried out by private individuals or legal entities, rather than a state authority with statutory powers to prosecute.

BOX 14 – **PRACTICAL TIP: Other Examples of Direct Partnerships Available for Asset Recovery**

Other examples of direct partnership at the investigatory stage could include:

- LEAs working with FIs in facilitating controlled delivery operations, permitting legal surveillance, turning over in-house audio-visual recordings or location data based on consent, or the opening of accounts or facilitation of transactions for undercover operatives. This may require the waiving of usual customer due diligence measures to facilitate such transactions and would require a trustful relationship between the institution and law enforcement, a compelling case, and following any applicable disclosure rules.
- LEAs co-locating with FIs to monitor activity, stop payments, and verify, in real time, transactions ordered by customers who may be victims of ongoing fraud. There are already examples of this, such as among the ten anti-fraud and anti-scam centres established by countries around the world. However, it is important to ensure that the private sector is responsive within the bounds of the law and not risking acting as an agent of the state without appropriate authorisation or oversight.
- LEAs partnering with FIs or other entities to enhance their investigative capacity and even to build proprietary systems. Today, there are a growing array of services offered by the private sector to aid in the development of financial intelligence, investigations, and the location of assets. This is especially common with respect to virtual assets. The range and potential utility of these services to competent authorities is explored in many sections of this Guidance, and is a type of partnership that is expanding due to the increasing digitalisation of crime and compliance.

and such firms, but it is a good practice not to allow the lines to blur between them. Moreover, investigative and intelligence information that is obtained by the government and protected from disclosure or gathered through law enforcement powers, should not fall into the hands of outside firms without authorisation.

Finally, in the **prosecutorial or litigation stage** (including non-conviction based confiscation), banks and other private sector actors may need to play an additional role. This may include the provision of affidavits or other documentary evidence and attending court to provide evidence. This may be reluctant task for private sector employees, however, discussions with the leadership of these institutions can assist in helping staff to understand that such activities are part of the institution's compliance and legal duties.

After the court has ordered confiscation, the private sector may play a pivotal role in helping the government realise the assets. These are often specialty firms, as opposed to FIs, VASPs, and DNFBPs. Even at the restraint stage, authorities may engage the services of the private sector for asset management and disposal, including valuation and auction services, maintenance, and storage, as detailed later in this Guidance. Some private sector firms offer software solutions for the management of accurate records for a broad range of assets. Private sector firms play a role as receivers to manage specialised assets or even businesses. In such cases, competent authorities must pay particular attention to the terms of engagement so as to ensure that the costs of the receiver do not escalate above and beyond the value of the assets under management.

BOX 15 – PRACTICAL TIP: Considerations When Partnering with Firms for Asset Recovery Purposes

The decision to pursue civil proceedings in another state requires the engagement of local legal counsel by the state, entity, or individual claiming property. Such legal counsel must be licensed in the jurisdiction and experienced in the subject matter and procedures implicated by the claim.

Private firms may also offer investigatory services to locate and trace assets. In contemplating whether to outsource all or part of specific asset recovery matters, the following considerations may be relevant:

- There is a difference between pursing cases in the public interest, as the government would, and pursuing them as counsel for one client, whose interests may or may not align with other victims or the public interest at large.
- There is sometimes a contingency fee structure whereby the lawyers are compensated in part through any assets recovered, which could encourage alignment of interests. However, governments and individuals seeking to work with private entities to recover assets may wish to ensure that they hire lawyers and investigators who are careful to avoid any predatory or otherwise inappropriate behaviour.
- If these arrangements (such as hiring outside counsel) are meant to aid the government and be adaptable – especially in smaller jurisdictions where the expert pool may be limited – then the process of obtaining this outside assistance should not be overly bureaucratic. Simple mechanisms to retain help should apply, provided that the necessary safeguards are in place, as often, it is a matter of urgency to supplement the government's legal expertise.

If affected persons or victims are considering engaging firms for AR purposes, they may wish to consider the pros and cons of so-called "litigation financing" arrangements, where an aggrieved party agrees to a third-party funding the litigation for asset recovery in exchange for handing over the conduct of the case and a portion of the sums recovered. While this can address the lack of financial means necessary to mount such claims effectively (e.g., expensive litigation with defendants, travel and evidence gathering abroad), the arrangements can cause conflict of interest, uneven bargaining positions, lack of transparency, and a loss of control of the direction of proceedings by the victim/affected persons. The more proficient the government can be in its asset recovery efforts, the less risk that its citizens will seek out potentially expensive or possibly predatory alternatives.

BOX 16 – COUNTRY EXAMPLE: Use of Private Counsel for Asset Recovery in South Africa

Section 38 of the National Prosecuting Authority (Act 32 of 1998), provides for the appointment of outside counsel to prosecute criminal matters on behalf of the National Prosecuting Authority. This section has been extended to include the appointment of outside counsel in complex matters involving *inter alia* complicated legal and constitutional principles and highly complex or sensitive cases. The Asset Forfeiture Unit has been using outside counsel, such as constitutional experts, in the development of case law and the asset forfeiture law since 1999. This approach has proven its worth over the past 25 years. However, the process to appoint counsel requires ministerial approval. The process was amended to become a procurement process and other changes are being considered to cater for urgent situations, particularly as relevant court judgements are awaited on the applicability of different acts to the Section 38 process.

c. Civil society

Even though in the context of asset recovery, neither civil society organisations (CSOs) nor non-governmental organisations (NGOs) are mentioned in the FATF Standards, AR systems would benefit from developing partnerships with civil societies. Recognising civil society's role in asset recovery, UNCAC Article 13 provides that States Parties should promote the active participation of individuals and groups outside the public sector, such as civil society, in the prevention of and the fight against corruption.

In fact, in terms of the sources of information which may be relied upon to initiate investigations and identify assets for confiscation, CSOs often shine a light on unknown illicit financial flows and potential cases for competent authorities to pursue. Advocacy organisations, NPOs, and investigative journalists and others may be a source of valuable information which LEAs could consider in their pursuit of criminal assets. CSOs and journalists have also mounted their own investigations, which has prompted government responses and asset recovery. The Pandora, Panama and Paradise papers are well-known examples. In-country investigations by CSOs have also highlighted potential criminal activity to the authorities. Civil society and NGOs may exert pressure on governments to enact reforms that support AR through research and public advocacy. Public campaigns can increase expectations among the public for action; however, given the many variables involved in asset recovery, particularly cross-border cases, it is possible that governments cannot meet these high expectations. Nevertheless, partnerships and some outside pressure from the third-sector can be beneficial. Civil society may also participate in the judicial phase of asset recovery or act as litigants in civil court recovery proceedings.[8]

BOX 17 – **COUNTRY EXAMPLE: Use of Beneficial Ownership Information by CSOs in the Slovak Republic**

The Slovakian BO register was established in 2015, first for companies participating in public procurement. Companies can be banned for up to three years and face fines reaching one million euros if they participate in procurement without first registering.

CSOs in Slovakia have used the register to analyse available data, including identifying networks of companies with the same BOs. They determined that 190 of the listed BOs were in fact public officials, potentially representing conflicts of interest and investigative leads. The register is also used by local organisations to verify whether companies were indeed providing information on their BOs as part of winning public contracts. For example, they uncovered that a public news agency had signed a contract worth 110,000 euros with a company that had not disclosed its BO. The same was true for two contracts awarded by a local government. A state-run rail operator was forced to withdraw from a 50-year lease of the country's main train station when citizens discovered that the contractor did not provide information on its BO. CSOs and the media have also used Slovakia's registry to reveal an allegedly serious conflict of interest involving a high-level domestic official, who was listed as one of the BOs of a company in the Czech Republic that has received EUR 75 million in EU subsidies for delivering various public works.

Such use of BO information by CSOs with the ability to research them and make previously unknown links and connections can generate the potential for criminal investigation or prosecution if offences have been committed, or asset recovery with or without a conviction (including on a theory of illicit enrichment).

8. See Arab Forum on Asset Recovery, *Guide to the Role of Civil Society Organisations in Asset Recovery* (2013).

For successful and sustained asset recovery, authorities may wish to earn the trust of civil society. This can be done by increasing transparency with respect to the activities of the agencies involved in asset recovery. This could include the publication of procedures relating to asset recovery, making available clear and accessible information on how to make claims and contest confiscation, and publication of annual reports on their activities, including audits of its financial records and uses of confiscated funds.

Governments may also wish to engage with CSOs who work in or around the field of asset recovery to share learning and understand issues of concern and potential, out-of-the-box solutions. For example, the Civil Forum for Asset Recovery (CiFAR) is a CSO dedicated to ending cross-border corruption and ensuring transparency and accountability in asset recovery and supports civil society across the globe to be a strong and effective actor in the recovery of stolen assets. The UNCAC Coalition, as another example, is a network of more than 400 CSOs committed to promoting the implementation of UNCAC, including its AR provisions. Additionally, the International Centre for Asset Recovery (ICAR) provides independent technical support to LEAs throughout the world in guiding them through the entire AR process (e.g., including assistance on conducting financial investigations, engaging in formal and informal co-operation, supporting prosecutions, utilising legal mechanisms to restrain and ultimately confiscate assets, and in facilitating repatriation in cases where assets have moved across borders). Engaging with these or other similar entities can enrich the authorities' policy-making and operational practices.

Finally, CSOs can play an intermediary and monitoring role in protecting victims' rights and safeguarding the return of confiscated assets. CSOs can agitate for greater transparency in the return of assets and distribution among victims. This type of partnership promotes effective endings to the pursuit of asset recovery. Partnership with CSOs may be particularly valuable in the recovery and repatriation of criminal property across borders.

BOX 18 – **COUNTRY EXAMPLE: Involvement of CSOs in Returning Assets to Nigeria**

In the case of former Nigerian leader General Sani Abacha, based on an agreement signed by Switzerland, Nigeria, and the World Bank, USD 800 million in recovered assets have been repatriated from Switzerland to Nigeria. Nigeria agreed to use the repatriated funds for specific projects, the implementation of which were agreed to be monitored by the World Bank. Nigerian CSOs also engaged in monitoring the projects to promote greater transparency in the use of the returned assets. In the case of the most recent repatriation via the World Bank's National Social Safety Nets project (2017), the involvement of civil society was enshrined in the trilateral agreement.

3. Financial Investigations

Suggested audience:

- **Policymakers**
- **LEAs, investigative agencies, FIUs, and prosecutorial or judicial authorities with responsibility over asset recovery**
- **Asset managers**

KEY GUIDANCE IN THIS CHAPTER

Financial Investigations

Making Asset Recovery Part of Investigations	p. 65
Technology, Access to Data and Public-Private Partnership	pp. 69, 72 & 74
Case Initiation & How to Identity Assets	p. 76
Asset Tracing & Investigative Techniques	pp. 91 & 94
The Goal: Criminal Property and Corresponding Value	p. 103
Evaluating Assets & Pre-Seizure Planning	pp. 120 & 133

Chapter 3 Summary

This Chapter discusses the foundation upon which asset recovery is built: financial investigations. It relates to operational and law enforcement issues covered by R.29, R.30, and R.31, which set out the agencies and institutions responsible for AR as well as the powers they should possess. In addressing case origination, it discusses R.32 and R.40, while R.24 and R.25 are also discussed in terms of access to various information necessary for financial investigation. This Chapter focuses on R.4(a) and (c), part B of INR.4 related to scope (criminal property, third parties, gifts) and the initial phase of asset management (pre-seizure planning). It also covers IO.8, specifically Core Issue 8.2, with elements of IO.2, IO.6, and IO.7, as relevant.

Chapter 3 discusses incorporating financial investigations into criminal investigations, and making asset recovery a key goal of investigative activity alongside identifying offences and criminal networks, and developing evidence for use in prosecution. Identifying and tracing criminal property for confiscation proceedings sits equally among these important objectives. LEAs and investigative authorities must be primed to carry out this work by having all necessary legal tools, basic and special investigative techniques, access to information, and technology at their disposal. The Chapter highlights the criticality of using financial intelligence and being able to trace asset ownership through legal persons using accessible BOI. Key points in this Chapter include the importance of LEAs developing the technological capacity to identify and trace VA, including blockchain analytics, and obtaining communications and digital evidence that illuminates financial transactions.

Chapter 3 also focuses on the meaning of proceeds, instrumentalities, and corresponding value – in other words assets which may be subject to confiscation if located through financial investigations. The Chapter details how authorities can distinguish between interested third-parties, foresee potential claimants or intervenors, and understand the implications of gifts and transfers. It also addresses pre-seizure planning, which paves the way for effective asset management.

In summary, financial investigation is the critical and iterative process underpinning asset recovery. Authorities should have many diverse avenues to initiate these investigations; enrich them with financial intelligence and other information to identify assets, trace transactions, and uncover ownership; and begin already at this stage to spot legal and practical issues which may impact subsequent steps in asset recovery.

3.1. Incorporating and streamlining asset recovery into criminal investigations

FATF Recommendation 30 makes clear that countries should ensure that designated LEAs have responsibility for ML and TF investigations and that, in at least all cases related to major proceeds-generating offences, these LEAs should develop a "pro-active financial investigation". This applies whether authorities are investigating ML, predicate offences, or TF, and when the predicate offence occurred beyond their borders but has resulted in domestic money laundering transactions or property within reach of their jurisdiction. Crucially, the definition of financial investigation now reflects an important addition. A "financial investigation" is the enquiry conducted into the financial aspects of criminal activity with the purpose of identifying the extent of criminal networks and the scale of criminality (e.g., all related offences); identifying and tracing criminal property and property of corresponding value; and developing evidence which can be used in *either or both criminal and confiscation proceedings*. The goal has expanded: it is now not only the pursuit of criminal charges, but the recovery of assets.

To do so, countries should ensure that competent authorities are empowered to expeditiously identify and trace criminal property and corresponding value. They also need to designate authorities to initiate actions to freeze and

seize the same. The pursuit of criminal charges has been rightly emphasised; however, there has been a pronounced lack of emphasis, or prioritisation, placed on recovering the proceeds and instrumentalities of crime not only at the policy level, but at the operational level.[1] Financial investigations have been underemployed. This is a factor of many issues: the complexity of financial investigations, the resources they may involve, the availability of data and information to feed them, a lack of training or specialised skills, cultural expectations centred around imprisonment of offenders to ensure public safety, and the perceptions of the role of police. An arrest represents a quick, tangible "win" for law enforcement. A successful prosecution is – largely – someone else's job. But conducting a financial investigation with a view to confiscation requires co-operation between both sets of authorities. Unravelling the financial components of illicit activities may seem like a massive additional effort with uncertain payoff. But it is not. The centrality of asset recovery to seeking justice, plus the extensive list of other benefits discussed in Ch. 2, make confiscation not just worthwhile, but something to actively strive for to disempower criminals, compensate victims, and combat the ills of allowing criminal wealth to run rampant in economies.

Fighting money laundering and the financial and other offences associated with it necessitates a mindset shift and dual focus. It is not enough to simply convict and sentence an individual or fine a company, and confiscation ensures a holistic approach is taken to crime. But how can LEAs and judicial authorities be reoriented to follow the money when their focus has habitually, in many countries, been on other goals? The simplicity of the answer, to incorporate financial investigations alongside – or in the context of – a traditional criminal investigation deserves unpacking.

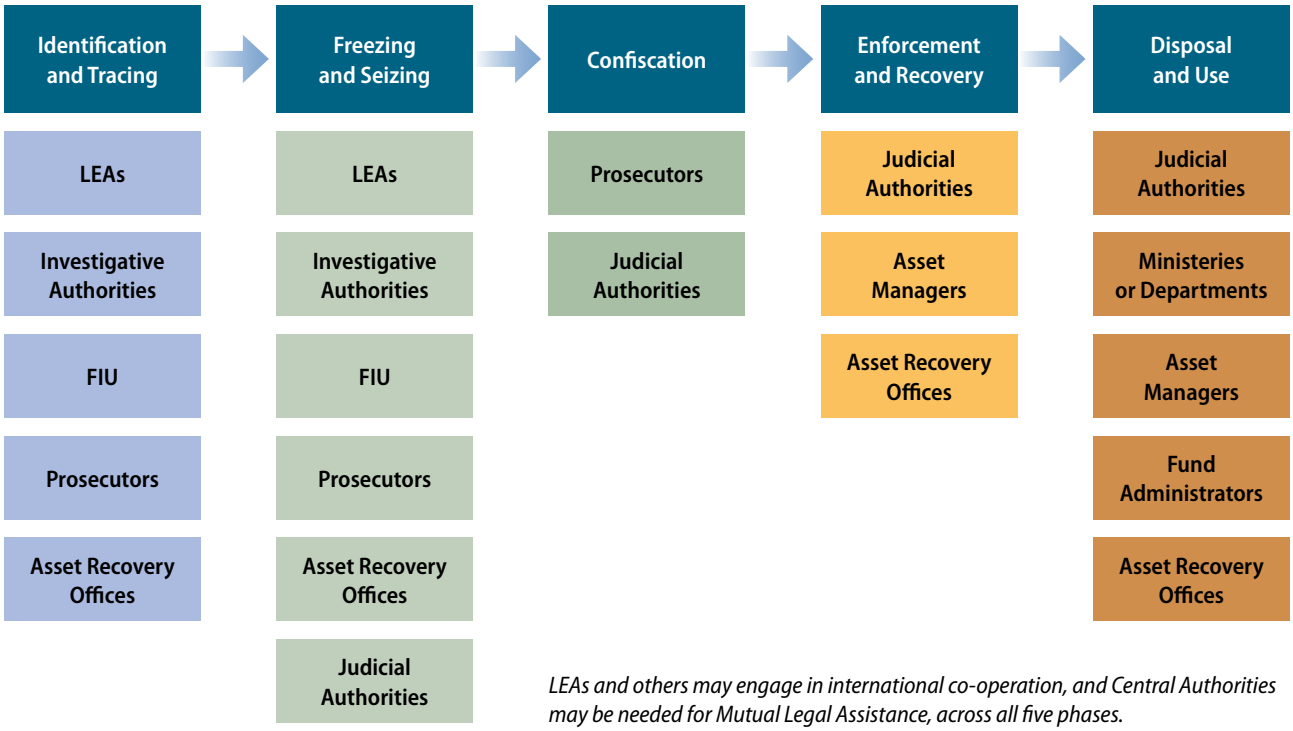
First, there are many FATF products providing guidance on conducting a financial investigation effectively. These include the 2012 Financial Investigations Guidance,[2] which largely stands the test of time, and the more recent, 2019 Guidance on Financial Investigations Involving Virtual Assets.[3] There is also an abundance of useful information in the FATF's 2018 Report on Professional Money Laundering, including on how investigate, disrupt, and confiscate the assets of such networks.[4] The 2021 FATF Report on Operational Challenges Associated with Asset Recovery also contains investigative tools and techniques that have been used to overcome the identified challenges, and a host of threat-specific reports address the details of conducting financial investigations involving those crimes (e.g., on wildlife trafficking; cyber-enabled fraud; money laundering from fentanyl and synthetic opioids; and detecting, disrupting and investigating online child sexual exploitation). Around the Global Network, FSRBs have also undertaken relevant work, such as EAG's 2023 financial investigations guidelines.[5] Finally, StAR's Asset Recovery Handbook second edition is a practical how-to manual for practitioners.[6] This Chapter aims to signpost the basic components of financial investigations grounded in the FATF Standards, and how they can be streamlined into existing practices, for the overarching purpose of asset recovery linked to any type of criminal conduct.

Asset recovery is a process that involves five major phases, although the process may not necessarily be linear: tracing and identification of assets; freezing and seizure; confiscation; enforcement and recovery; and disposal and use (including return). Financial investigation is the process that facilitates the effective identification and ultimate confiscation of assets, but it can also significantly enrich a traditional (non-financial) criminal investigation, by identifying new suspects, offences, and evidence. Thus, financial investigation should be the norm for countries

1. One example of prioritisation at the policy level is EU Directive 2024/1260. Article 4, no. 3, of the Directive stresses that "…[t]o ensure that financial investigations are sufficiently prioritised in all Member States, so as to address a crime of cross-border nature, it is necessary to require competent authorities to launch asset tracing from the moment there is a suspicion of criminal activity that is liable to generate substantial economic benefit."
2. FATF, *Operational Issues – Financial Investigations Guidance* (2012).
3. This report is non-public and not for further distribution, but can be accessed on FACT by delegations or provided by the FATF upon request to competent authorities and other interested parties.
4. Ibid.
5. Eurasian Group on Combating Money Laundering and Financing of Terrorism (EAG), *Methodological Guidelines on Organising and Conducting Financial Investigations in the AML/CFT Sphere* (2023).
6. StAR (World Bank/UNODC), Brun, Gray, Scott, Stephenson, & Sotiropoulou, *Asset Recovery Handbook: A Guide for Practitioners*. 2nd ed. (2021).

pursuing any investigation of income-generating crimes for many reasons, not the least of which is asset recovery. When this approach is ingrained and becomes second-nature among investigative and other authorities, confiscation results can improve.

FIGURE 2 – **Phases and Key Agencies Involved in Asset Recovery**



LEAs and others may engage in international co-operation, and Central Authorities may be needed for Mutual Legal Assistance, across all five phases.

As to the first phase, asset recovery must be incorporated into criminal investigations as early as possible. Early integration of asset recovery in investigations helps to prevent assets from being (further) moved or concealed. This phase involves the collection of, intelligence, evidence, and all useful information to trace and identify assets involved in the criminality. To establish this link investigators must "follow the money" until the connection between the crime and assets can be determined. This process can move forward or backwards: *from* a suspected offence (to find out if proceeds were generated, what property was used to commit the crime, where the proceeds have gone, and how – if at all – they have been laundered) and *from* an identified asset linked to a suspect (to determine its origin). In fact, it can also start in the middle, by examining financial flows or by coming across suspicious transactions or activity based on who carried them out, when, how, etc. Most financial investigations do not follow a linear path and may take multiple approaches, even as to the same case, suspect, or asset.

Integrating AR into the early stages of criminal investigations maximises effectiveness and serves several purposes:

- Prevent asset dissipation: Initiating asset recovery early helps prevent assets from being moved, hidden, or otherwise dissipated. This reduces the risk of losing valuable assets before they can be confiscated, ensuring they remain available.

- Enhance evidence collection: Early asset recovery integrates financial tracing into the investigation, creating a clear picture of financial flows and connections between persons, entities, and assets. This often uncovers additional evidence, strengthens the case against suspects, and reveals accomplices, shell companies, or other parties involved in related or separate criminal schemes.

- Identify the need for international co-operation: Early financial investigations can uncover links between the criminal activity and other jurisdictions. This helps kick-start the often time-consuming process of seeking foreign assistance.

- Allocate resources effectively: Incorporating AR early helps streamline investigative resources, reducing duplicated efforts and directing resources towards tracing, freezing, and managing assets. In practice, this may entail the early involvement of a prosecutor or other AR experts. These parties can advise an AR strategy and options available to investigators, which may prevent errors or inefficiencies in the long run.

- Ordering and co-ordinating operational steps: The interplay between criminal investigations, financial investigations, and other case decisions is crucial. For example, co-ordinating simultaneous actions such (searches, freezing, and arrests of suspects at the same time), can be effective. A lack of co-ordination in executing such measures could undermine the success of the investigation and hinder asset recovery. For instance, if searches are conducted without freezing identified assets, these assets may be dissipated. If assets are frozen but no action is taken to preserve crucial evidence, vital information for the criminal case may be lost or destroyed. Communication and integrated planning among all authorities involved, including those focused on AR, is essential to ensure timely, coherent actions that take into account *all* goals of the criminal investigation.

- Facilitating victim compensation: Regaining control of assets early increases the likelihood that victims or prior owners can be compensated.

The first step in identifying and tracing assets is drawing up an investigative plan. This technique establishes a framework for identification of persons, companies, and assets involved in the case and the connections between them, and an analysis of the assets and financial flows. Financial experts, such as forensic accountants or financial crime specialists, may be necessary in investigating certain types of crime to assist in identifying financial patterns, illicit transactions, and hidden assets. The investigative plans can evolve as the investigation progresses, for instance to include new entities and individuals uncovered or close off avenues of inquiry which have not led to useful information (but which

BOX 19 – **COUNTRY EXAMPLE: Integrating Financial Investigations in the Netherlands**

In the Netherlands, in order to integrate financial investigations with a view to confiscation in all relevant cases, investigators are required to use the W system and ensure that all of the following questions are answered: who are the suspects; what are the criminal offences, what is the criminal revenue model; where are the assets; what enforcement (tools) can be used; why is this the right choice of legal redress; which manner of freezing/seizing should be used; and which specialists are needed. These eight Ws are a comprehensive way of approaching a financial investigation.

The Ws serve the criminal revenue model, which has two purposes: to determine (1) the manner in which suspects have obtained their money through criminal acts, and (2) the manner in which the co-conspirators or other parties have also benefited. The Dutch model works because it is relatively simple, adaptable to different crimes, and replicable at scale and by different institutions involved in the investigative process. It is integrated into investigators' routine duties when pursuing any proceeds-generating offences via an SOP (e.g., it is mandatory and must be documented in the investigative file). It allows LEAs to use their expertise and creativity to answer the Ws, without mandating how they arrive at the answers.

can be rekindled if needed). Experienced financial investigations will help identify leads that require delving deeper, and sorting out financial "noise" or transactions and relationship not related to the offences under investigation.

As discussed in Ch. 2, the financial literacy of investigators is very important. Developing specialised training programmes for criminal investigators that teach how to trace assets, detect ML schemes, and use financial analysis tools will support the development of investigations. Capacity building is essential to normalising and streamlining financial investigation. It is a good practice for countries who do not have, or cannot train quickly enough, a sufficient number of financial investigators to be able to seek outside help in major cases. However, regular investment in training for LEAs and others should increase the frequency of AR, and, potentially, the values recovered.

3.1.1. Technology and virtual assets

Technology can streamline the financial investigative process and automate it to the extent possible. During the asset tracing and identification phase, it may be necessary to leverage both basic and advanced technology and data analytics tools (e.g., data mining and artificial intelligence) to analyse large datasets and identify suspicious financial patterns. The volume of records gathered in a financial investigation can be significant, and while analysis by hand is possible in simpler cases, scanning software is likely necessary for the investigators handling even a moderately complex case; more advanced tools are likely necessary for handling complex cases. The ability to produce visual graphics such as link charts showing connections between entities, transactions, and assets is also a practical tool. This technology assists investigators to explain their findings to prosecutors, judges, or others who need to understand the big picture and make important tactical or legal decisions to advance the investigation.

There is an array of technology on the market that can be purchased or software programmes that can be licensed to assist financial investigations. Artificial intelligence and machine learning algorithms can be used to help track illicit transactions and link assets to criminal activities in real-time. However, technology based tools must be carefully assessed, and it is essential for authorities to understand the inputs on which such tools rely and were developed or trained (e.g., when dealing with machine learning-based tools), and whether such tools need to be adapted to the domestic context. Since financial investigations inherently rely on personal information which may be protected except when lawfully obtained by investigators, authorities should be careful not to feed private information into systems that are not closed. Relatedly, OSINT is a fruitful source of intelligence for AR purposes, but access to OSINT, particularly social networks, should not be traceable to the LEAs or investigators and make use of appropriate screening technology or cold computers not identifiable as law enforcement property. Investigators likely also need the ability to access and faculty to navigate the dark web.

As to investigations involving VA, the first and most basic requirement is for LEAs and other frontline public authorities to develop sufficient operational awareness when they encounter this class of asset. The ability to act swiftly and effectively in VA seizure situations often hinges on practical familiarity with crypto-specific evidence and tools. For example, identifying and handling a seed phrase or a hardware wallet requires different knowledge and immediate response protocols than handling cash or conventional documents. If an LEA encounters these elements and is not trained to spot or secure them, the window of opportunity for seizure may close, often within minutes, due to the speed and global reach of VA networks. As the volume and sophistication of crypto-related crime grow, "first contact" awareness is no longer a secondary issue but has transformed into a core operational capability.

Additionally, due to the unique way that VA operates within laws that are often not drafted with modern concepts of remote access or transferring crypto in mind, investigators need to have a sound understanding of their own domestic search and seizure powers to ensure that they are complying with the when seizing VA. While this is an obvious point, it is one that continues to prove to be an operational challenge, causing confusion and delays among LEAs as investigators gain familiarity with the relevant legal powers and their sequencing to search for and seize VA.

Jurisdictions could alleviate this learning curve by mapping exactly how their legal and criminal procedural codes would apply to VA and training a wide and increasing number of LEAs on this topic, as even the non-ML or financial specialists are bound to encounter offences involving virtual assets.

Generally, there are three main pathways for LEAs to seize VA: (i) direct acquisition of private keys (e.g., via seized hardware or legally compelled access), (ii) recovery from exchange-based wallets, and (iii) the use of freezing functionality in cooperation with stablecoin providers. For crimes involving VA, integrating blockchain analytical

BOX 20 – **COUNTRY EXAMPLE: Using Blockchain Analysis as Evidence in Court**

The District Court for the District of Columbia, an influential federal court in the United States, recently examined the question of whether blockchain analysis is sufficiently reliable to be admitted as evidence in a criminal case under the *Daubert* test. See *United States v. Sterlingov*, F. Supp. 3d, 2204 WL 860983, 21-cr-00399-RDM, Memo. Op. and Order (D.D.C. Feb. 29, 2024).

In the case, the defendant was alleged to have operated a virtual asset tumbling business which commingled bitcoin in pooled accounts, thus making it harder to trace bitcoin belonging to different customers. The defendant was charged with ML and running an unlicenced money services business, among other offences. The prosecution put forward as an expert witnesses who relied upon software developed by a blockchain analytics firm. The Court considered the methods, or heuristics, used by the government's blockchain expert to "cluster" transactions and identify whether they originated from a single sender using blockchain records (i.e., computational functions to identify patterns on the blockchain suggestive of a fact, such as common control). Due to the volume of transactions, over 900 000 and USD 400 million in this instance, investigators used software developed by a private firm to analyse the transactions across multiple addresses and link them to the defendant as well as several darknet markets.

The Court analysed the blockchain evidence under Federal Rule of Evidence 702 on the admissibility of expert testimony and the *Daubert* test. In general, to be admitted under Rule 702, an expert witness' testimony should: (a) help the trier of fact to understand the evidence or determine a fact, (b) be based on sufficient data or facts, (c) be the product of reliable principles and methods, and (d) the expert's opinion reflect should reflect a reliable application of the principles and methods to the facts of the case. Under *Daubert*, the court looked to four factors to examine reliability, namely, whether the expert's theory or technique: (i) has been tested; (ii) has been subjected to peer review and publication; (iii) has a known or potential error rate; and (iv) has gained acceptance within the relevant scientific community. The defence challenged the blockchain analysis as junk science, asserting that it had no known error rate and was not peer reviewed.

The court described the main methods used for clustering:

- In the co-spend heuristic, there were controls in place to detect and avoid the use of services that CoinJoin or allow different users to contribute to a single transaction.
- In the digital fingerprinting heuristic (which was disclosed in private to the court and defence), observing and tracking an entity's on-chain behaviour and patterns led to the creation of an algorithm which could be used to cluster transactions and test them with addresses known to belong to the entity.
- In the last method, the software looked at intelligence gathered off-chain from sources such as data leaks, court documents, data partnerships, VASP exchange information, and manual merges to show "direct attribution."

The Court determined that the use of blockchain analytical software in this case was **highly reliable** because:

- The software analysis could be corroborated, and while the software was important evidence, it was not the only evidence adduced by the prosecution linking the defendant to the tumbling service and was in fact a small part of the government's case.
- Reams of material describing the clustering was provided to the defence and the court (i.e., the methods were explained and underlying data and work shown).
- Traditional blockchain analysis confirmed the software's findings and the defence could have done its own tracing to refute the software's findings.
- The clustering was used to gauge a magnitude of illicit activity, not correctly identifying single addresses, in which case a handful of errors would be immaterial.
- The software was routinely used in investigations and validated through legal process such as subpoenas to VASPs.
- The clustering tended to be underinclusive, not overinclusive.
- A review of the findings by a confidential cooperating defendant found that the software was 99.9146% accurate.
- The findings were validated through undercover transactions with the tumbler (e.g., manual tracing).
- The defendant previously stated that the software was accurate in linking the tumbler to his accounts.

As to the *Daubert* factors, court found that the methods had been tested, including by manual tracing and software of competitors showing similar outcomes. It acknowledged that full peer review of the methods had not occurred but that the underlying techniques of the software had widespread academic approval. It found that while the software did not calculate an error rate, it had no false positives. Finally, the Court highlighted the extensive use of the software and others like it in law enforcement, FIs, and business settings. Thus, the court decided on a preponderance of the evidence standard to admit the government's evidence under Rule 702, where it could be subject to cross-examination before the jury at trial.

tools is essential to trace transactions and identify and attribute asset ownership, control, and movement. Blockchain-based investigation can clearly facilitate confiscation. Public blockchains provide immutable, real-time ledgers that may support rapid tracing and recovery. It is even possible that assets in virtual form might be easier to seize and track than traditional high-value goods, such as yachts or vehicles, and all competent authorities involved in AR need knowledge, capacity, and the technology to investigate and handle this class of assets.

Aside from the blockchain analytical tools available, there are also novel technological solutions that allow investigators to identify VA holdings, or traces thereof, within terabytes of seized data that may be stored in evidence lockers in digital form and which are too big to search for by hand (i.e., solving the needle in the haystack problem). Additionally, LEAs increasingly benefit from off-the-shelf tooling for linking wallet activity across chains and recovering keys or credentials under judicial orders.

In this area, there is a gap between countries who have some internal capacity for blockchain analysis, often using self-designed systems, and countries who need to look externally for such capacity. While costs vary, blockchain analytical tools need not be cost-prohibitive. The value and success rate of AR operations involving VA can *significantly* outweigh the costs of tracing VA, particularly when measured against the scale of losses in many cases. Jurisdictions may wish to

invest in blockchain analytics capabilities that are proportionate to their exposure to virtual assets, whether in-house or externally-sourced.

ADDITIONAL CONSIDERATIONS

It is a good practice for countries to consider and assess their requirements in this regard, including their risk and materiality related to offences involving virtual assets, and determine which model better suits their financial investigative needs. This way, they can plan to contract with or retain firms in advance, and not after there is operational urgency. There are few countries around the Global Network who will not have any need for investigative capacity in this area, so making flexible arrangements early will enable the streamlining of this activity into financial investigations when they become necessary. As an example from the Global Network, the Russian Federation provides self-developed blockchain analytical technology to the eight other members of its FSRB, free of charge, which enables them to conduct financial investigations into VA that they otherwise may not have.[7]

3.1.2. Access to data

Some of the longstanding problems that have held back the in-depth financial investigations are (1) the scattered nature of the data needed in the investigations; (2) the lack of availability of this data entirely, such as BOI and banking relationship indicators, and (3) the time and effort it takes to access this data if it does exist.[8] Data that is essential to a financial investigation may not be available domestically; if it is, numerous domestic entities may hold pieces of information. Options to open up data possibilities include LEAs having direct access, fusion centres, or the secondment of staff between agencies. However, countries can leverage digitalisation, web-based platforms, and integrated databases to allow investigators to access current information on assets and financial movements, which may be able to significantly streamline the AR process. This information may be found in several different places, and the more APIs and technical bridges that can be built between systems, the easier they will be for investigators to use.

One best practice is a national bank account registry or database which shows whether and where suspects have relationships with FIs. This does not summon transaction records, but answers the critical question for investigators of "where is the suspect likely to have financial and banking relationships?" which can point the way forward for additional investigative steps. Some countries use central registers for this purpose, while others utilise a query system by submitting names/identifiers to FIs and seeking positive hit responses from the entities within a certain timeframe.

Jurisdictions are also developing centralised AR platforms which can reach into various databases across a country and pull information in a single query. FIUs often have some version of this which can serve as a mega-database and provide a helpful snapshot of assets of all types linked to suspects. Another innovative practice is for countries to regulate or work with the private sector to control the methods of access and format of financial records. This makes them more user-friendly for investigators and courts, among others For example, Brazil has made significant advancements in this space despite its vast size and federated system. There, records from any FI can be ordered and accessed in a uniform format from the judiciary and then directly used in financial investigations with the aid of technology interacts with the formatted source material.

Building a financial profile for individuals and entities that are (major) suspects in a financial investigation is critical. Through this profile, investigators develop an understanding of suspects' assets, liabilities, and direct and indirect

7. The FATF suspended the membership of the Russian Federation on 24 February 2023.

8. Access to information and intelligence from abroad is covered elsewhere in this Guidance and this section only relates to domestically available information.

financial interests. The easier this task is for investigators, the better the results. If they normally need to search fifty databases and that figure can be reduced down to ten, or if they can search a series of topical databases in one-stop, this will represent a tangible streamlining. Of course, not all necessary information is in digital format, but it is increasingly so. To the degree that data can be condensed e.g., from the locality level to a broader level, or be centrally collected and maintained, the burden will be lighter. FIUs may be core to this endeavour, particularly when there are STRs available on relevant subjects, although it would strain resources to expect the FIU to provide financial profiles for every minor player in all cases under consideration.

Public data and records should be accessible without impediment if they are to be meaningfully deployed in financial investigations to build financial profiles. Countries should look for ways to streamline and consolidate databases to make them more user-friendly for financial investigations, which should in turn, make financial investigations less time-intensive. But not all databases that the investigators will need are publicly available or sourced, so access to proprietary databases and the more sensitive/controlled data held by other government authorities will also need to be accessible in a timely fashion. Consideration should be given to limits on access to and uses of data. Such limits are important to maintain citizens' trust in public institutions. Countries need to balance human rights, including privacy rights, with the pursuit of a thorough financial investigation and enforcement measures.

There is obviously a need for investigators to use non-desk-based investigative techniques to access data. Privately held data from companies, persons, and suspects will also be important to the investigation. This generally requires accessing information through legal processes entailing justification and approval (e.g., email content, telephonic records) and is discussed in more depth later.

From the early stage of investigations, investigators endeavour to collect all necessary and basic financial information as targets are identified. LEAs may establish a checklist approach for this initial collection exercise, or the approach can be tailored to the needs of the case (e.g., as set out in the investigative plan).

Recommendation 31 requires, that, at a minimum, LEAs and investigative authorities "have timely access to a wide range of information…[which] may include, but it is not limited to basic and beneficial ownership information, information held by tax authorities, information held in asset registries (such as for land, property, vehicles, shares, or other assets), and information held in citizenship, residency, or social benefit registries." Immediate Outcome 8, Specific Factor 13, further elaborates on the range of information where jurisdictions can show if "e.g. financial information from reporting entities, basic and beneficial ownership information, criminal databases, information held by tax and customs authorities, information held in asset registries (such as for land, property, vehicles, shares, or other assets), and information held in citizenship, residency, or social benefit registries etc." is "available to support the identification and tracing of criminal property and property of corresponding value" and the extent to which the information is "rapidly and easily available and searchable (while paying due regard to data protection and security), enabling **rapid and routine** tracing".

Countries can seek to ensure this information is collected, without significant gaps, and consider pursuing projects which use technology to either source, search, or consolidate this data for use in financial investigations. This may be done with a view to reduce steps in the tracing process and the need for individual queries to multiple different databases.

ADDITIONAL CONSIDERATIONS

More broadly, intelligence, evidence and all useful information could be collected from a range of sources: publicly available sources (for instance the Internet and open records), government agencies, reporting entities, businesses, relatives, employees, and associates of the targets, the targets themselves (where feasible without compromising covert investigations), and the estates of targets. All available investigative technique should be considered and used (as needed) to collect as much relevant information as possible on the suspects of the investigation. Some techniques may require authorisation by a prosecutor or judge (e.g., electronic surveillance, search warrants, production orders, or account monitoring orders), but others may not (e.g., physical surveillance, information from public sources, some subpoenas for records, and voluntary witness interviews). The depth of the financial profile will vary depend on the importance and characteristics of the suspects to the criminal activity, but this is a helpful practice to embed in the routines of investigators and – importantly – can provide insight into potential assets for confiscation down the line.

The financial profile of a target can include his or her dealings with FIs, including account numbers, annual credit and debit turnover, balances, etc. It may be enough to hold some of this information before seeking full bank records later, but it should be updated periodically and monitored for major changes as the investigation proceeds. Eventually, account and transaction records should be collected in such a way that financial flows can be analysed and compared with the financial profile. Comparing the assets held by a target with his or her reported/known income through a net worth or source and application of funds analysis is a useful investigative technique. This task need not turn every investigator into an accountant, but it can be assigned to analysts or other agency personnel with the appropriate expertise (and be aided by technology).

Financial investigations can be big, time consuming, and potentially intimidating undertakings. LEA teams benefit greatly from a diversity of backgrounds and skill sets on a case, and not all members will have tax, math, or accounting backgrounds. This is why Ch. 2 emphasises specialisation, so that not every investigator needs to work with spreadsheets, complicated software, or have a degree in forensic accounting to reap the benefits of financial investigation. In many countries, the cases which can benefit from this type of financial deep-dive far exceeds the number of people trained to do this work. This is one of the well-known obstacles to widespread AR. In addition, there are other pressures exerted on LEAs – to clear cases quickly, to constantly receive and sort through leads and complaints, and to respond to crises. This is why countries should consider developing a pool of specialised experts, or use multidisciplinary task forces – including with specialists from other agencies – to integrate financial investigation more easily into cases where they are critical to AR outcomes.

3.1.3. Partnerships

Finally, public-private partnerships are increasingly recognised as helpful to effective asset recovery. The private sector, such as banks, fintech, and real estate firms, have substantial insights into financial transactions and flows, suspicious activity trends, risk indicators, and other information which can help elucidate criminal methods and guide financial investigations. This is true at a strategic level, but may also approach the operational level. Frequent and open contacts with the financial and non-financial sectors can serve to streamline financial investigations, by building familiarity with the private sectors' business lines and products, compliance and investigative capacities, and developing trusted relationships between LEAs and the firms. Collaborating with FIs enables authorities to access these insights, which can speed up the asset identification and tracing process. Technology firms and data analytics companies can also contribute by providing advanced tools for monitoring and analysing complex data patterns.

BOX 21 – COUNTRY EXAMPLES: PPPs Aiding Asset Recovery Efforts, Including for VA

EUROPOL: The Europol Financial Intelligence Public Private Partnership (EFIPPP) was set up in 2017 as a co-operative mechanism between private sector stakeholders, FIUs, and investigative authorities to develop and share structured threat information (e.g., financial crime typologies) between members.

In 2025, EFIPPP released its "Practical Guide for Operational Co-operation between Investigative Authorities and Financial Institutions", whose aim is "to realise the potential of public-private co-operation and to share lessons learned from existing partnerships with law enforcement more widely" and "to build awareness among policymakers and relevant authorities about the potential value of operational co-operation", by analysing different methods and scenarios of co-operation between investigative authorities and financial institutions.

In addition, EU Regulation 2024/1624, art. 75, provides within the EU a common, detailed legal basis for 'partnerships for information sharing'. According to the Regulation, such partnerships can be set up on the initiative of obliged entities for the purpose of sharing and processing information between obliged entities and other competent authorities, including LEAs and FIUs. The new legislation:

- defines the legal requirements information sharing partnerships for in detail;
- requires obliged entities, before joining a partnership for information sharing, to notify the competent AML/CFT supervisory authority, which will ensure compliance with applicable laws including data protection;
- lists further conditions for the setting-up of a partnership, by defining the types of information that may be shared and requiring an impact assessment and measures to ensure an adequate level of security and confidentiality in the exchange of information.

T3: The T3 Financial Crime Unit is designed to expand public-private collaboration to combat illicit activities on the blockchain. Since its inception in September 2024, T3 FCU has worked closely with law enforcement agencies worldwide to identify and disrupt criminal networks. The unit has analysed millions of transactions across five continents, monitoring over $3 billion USD in total volume. This comprehensive monitoring capability enables T3 FCU to work across borders, identifying and disrupting criminal operations in real-time, making it an invaluable resource for law enforcement agencies worldwide. Since, T3 FCU has frozen over USD 250 million in illicit assets globally, including almost USD 6 million frozen in a successful co-ordinated first effort with the world's largest VASP via T3+ to thwart the proceeds of a pig butchering scam. The founder of T3 FCU are a major VASP, a blockchain analytics firm, and a stablecoin technology firm and creator. T3+ is a new pillar of the T3 FCU and it consists of a global collaborator programme. One material private sector firm in the crypto-ecosystem has joined up, and as others join, this PPP will be able to partner with more LEAs and in larger VA-related cases, including to support freezing, seizure, and confiscation actions.

BEACON NETWORK: A new PPP established formally in August 2025 aims to enable "real-time crypto crime response". The impetus for the network is the persistent wave of scams, fraud, hacks, and other illicit activity draining billions from everyday people each year. In many cases, stolen funds are quickly moved through exchanges or off-ramped into fiat before LEAs can intervene, preventing suspension, freezing, seizure, or other measures to stop and ultimately recover assets. If its objective is achieved, collaboration between the public and private sector through this network can tangibly increase the prospects of AR action.

... Box 21 continued

More than twenty exchanges, stablecoin issuers, and other members of the cryptocurrency ecosystem are engaged in the Network, alongside law enforcement agencies and security researchers and blockchain analytics firms. The Network will focus on high-impact areas such as: DPRK IT worker and hack fund disruption; ransomware payment interdiction; terrorism financing prevention; recovering scam victims' funds; and online child sexual exploitation-related financial flows.

The Network aims to distinguish itself as an interdiction-oriented PPP and the first end-to-end "kill chain" for illicit crypto assets, moving from detection to action in minutes rather than days. The difference lies in what happens after an address is flagged. In real time, the Network automatically traces those funds across the blockchain and propagates that intelligence to its connected services. When flagged funds hit a participating platform, the system immediately sends an alert, all without human intervention. This automated tracing and real-time notification means that illicit funds can be identified, tracked, and acted on before they can be withdrawn or laundered. Only verified "Flaggers" can flag addresses, including certain members of vetted law enforcement agencies (so far including from the US, Canada, the UK, Ireland, Germany, the Netherlands, Switzerland, Spain, Portugal, Australia, the Republic of Korea), partner level members of the Network, and security researchers.

Above are some examples of ways to streamline and integrate financial investigation, and, by extension, AR into existing investigative practices. The process can begin early, and will be only as thorough as the time, training, tools, and techniques afforded to the investigators allows. By integrating AR as a goal of the criminal investigation process, leveraging technology, fostering expertise and collaboration among agencies, modernising access to data, and building partnerships, jurisdictions can root asset recovery as a co-equally important goal of criminal investigative work.

3.2. Case initiation and initial identification of assets

While the opportunity to freeze, seize, or eventually confiscate assets sometimes presents itself in the course of an investigation, LEAs should always consider the financial motivation behind the majority of criminal activity, and what criminal property may be connected to, or have been obtained through offending. While sometimes the criminal property will be obvious, it will often take dedicated financial investigation to ensure all criminal property associated with a person's offending is traced, identified, and subject to confiscation.

Above, the five major phases of AR are discussed (see Figure 2). It is also helpful to consider the AR process in its three segments: investigative, legal, and consequential.

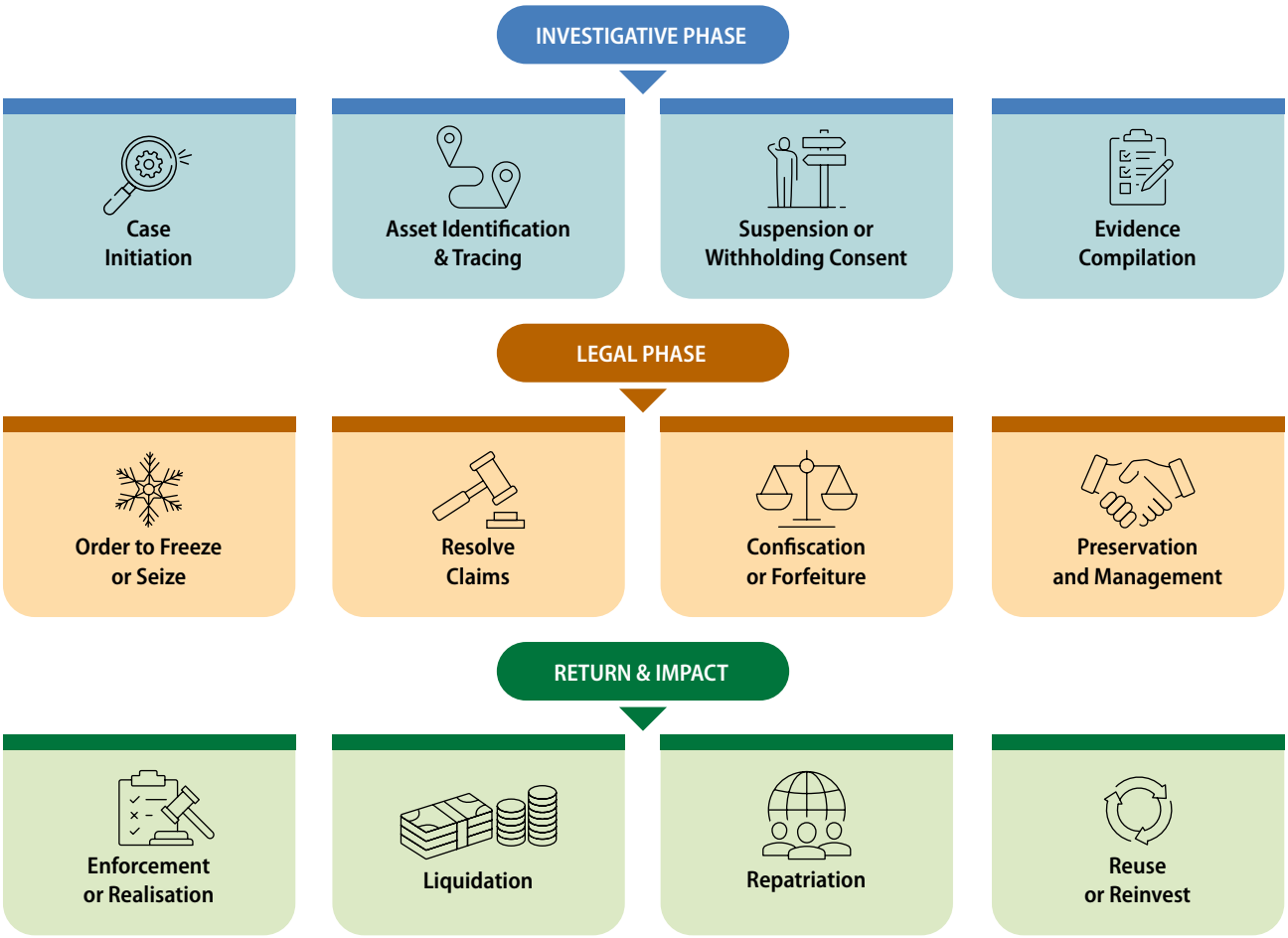
3.2.1. Domestic origin

a. Ongoing investigations

In many ongoing investigations – whether they have been launched formally or are in some preliminary, intelligence-gathering stage – there are opportunities for using financial investigation to uncover assets which may be considered criminal property (e.g., proceeds, instrumentalities, property laundered) or corresponding value. This is done through the pursuit of a "parallel" financial investigation which is either integrated with or conducted alongside of the main criminal investigation, per INR.30, paragraph 3.

The majority of offences are financially motivated, meaning the perpetrator is directly or indirectly motivated by the possibility of financial gains. Some crimes clearly fall into this **first category**, including fraud/scams and theft (including of the cyber-enabled variety), embezzlement, insider trading, tax crimes, corruption, etc. However, there is **second category** of crime where the financial motivation is very strong, but the offence is not one carried out

FIGURE 3 – **Phases and Key Agencies Involved in Asset Recovery Process**



in or through the financial system inherently, such as a drug trafficking, arms trafficking, forgery, counterfeiting currency, and piracy. These crimes – particularly drug trafficking, are big business and generate billion in proceeds. Drug trafficking was the phenomenon that prompted the first money laundering statutes in the world, which were developed in order to allow another angle of attack and shut down the financial infrastructure associated with large-scale trafficking. Finally, there is a **third category** of crimes which should be covered as ML predicate offences, but where the public's and (sometimes) the investigator's perception is that these are less likely to generate profits and therefore significant assets for confiscation. In these instances, financial investigations are conducted deliberately to uncover financial flows and support prosecution efforts. This is where LEAs may also closer look for potentially missed opportunities to deepen financial investigations and identify assets for possible confiscation, assuming they are doing so many in the first two categories.

Crimes, regardless of the categories in which they may fall, are more serious and relevant from an AR perspective when they are carried out not in isolation, but by OGCs. For example, a network trading in child abuse material may be very profitable and deserve heightened attention, notwithstanding the fact that individual trades do not generate major proceeds.

The definition of "criminal property" in the FATF Standards includes not just directly traceable proceeds, but also indirect proceeds, including income or other benefits derived proceeds. It also covers instrumentalities which are used in or intended for use in ML or predicate offences.

Instrumentalities are an area where confiscation results have tended to be inadequate. Typically, the focus on instrumentalities has been to seize them for evidentiary purposes, but they are equally viable for confiscation as assets for recovery, and their potential value should not be overlooked. For example, some countries define instrumentalities broadly, to cover property that facilitates the crime in any way. While there can be some pitfalls associated with this approach when applied too expansively (see Ch. 8), it is also a powerful tool to reach assets that are involved in or contributing in some way to the crime, but which would not be considered by any stretch of the term a benefit derived from the crime. Some examples include the ship that is used to carry out a sabotage of critical infrastructure; the rural property that serves as stash house; or the business that is used as a front company for a major hacking operation. Instrumentalities may hold sufficient value to be worthwhile pursuing for confiscation, but can also be of low value and therefore overlooked.

Equally, ongoing investigations into the third category of crimes, described above in para. 171, should be mined for opportunities for asset recovery by LEAs. For instance, a law enforcement operation may be considered a success if it frees the victims of trafficking and resulted in the arrest of several individuals. The same is true for liberating smuggled migrants, who may have paid for their travel. The financial gains here are often less obvious on the surface and the investigators dealing with these sensitive offences may be focused on other aspects. However, networks supporting these offences can be lucrative and larger than they appear after an initial arrest or police raid. There are unexplored financial links in many crimes – from wildlife trafficking to environmental crime to online child sexual exploitation. These are ML predicates by law, thus, they should be considered for their asset recovery potential, even if they have traditionally not been seen as major proceeds-generators. Investigators should think creatively about how to approach each matter from an AR point of view, including whether there are any instruments of the offending suitable for confiscation (e.g., properties where victims of trafficking are held, vehicles in which they are transported, or facilities where children are subjected to abuse).

The pursuit of AR should be geared towards the areas of relatively higher risk as identified by the jurisdiction, including their AML/CFT/CPF risk assessments. But offences that are not the attention-grabbing threats can also present opportunities for confiscation. Indeed, risk as an AML/CFT concept is not only a function of the number of quantifiable proceeds generated, but it can also consider societal impact, characteristics of the victims, or health, stability, and security consequences, among others. There are significant non-financial risks which may be addressed and mitigated via confiscation.

There are cases where a holistic approach to enforcement may require a closer look at the possibilities for financial investigation and confiscation, even if the assets to be recovered do not add up to large amounts. Sometimes, confiscation is pursued to maximise deterrence, deprive criminals of assets of symbolic or even sentimental value, or to find new ways to combat certain offences. Other times, the offence is so horrific or has such a detrimental impact on society or the community, that confiscation should rid the community of the remnants of the crime or ensure that the perpetrator has not gained even a penny from an atrocious act. Compensation of victims of crime may counsel a multifaceted approach that includes confiscation among other options, such as restitution and compensation. The financial angle of offending should not be discounted only because significant monetary amounts are not produced. Ongoing cases, across the spectrum of crime types and levels of gravity, may provide unique opportunities for asset recovery. This may counsel taking a broader view of residual risk and consequence in certain circumstances.

There are practical ways to mine ongoing investigations for potential confiscation opportunities and to make sure that cases where confiscation could be pursued are not missed (e.g., because they did not involve ML charges).

- First is to integrate financial investigations into a wide variety of predicate offences, including those that are less "obvious" drivers of criminal wealth.

- Second is to change the mindset of leadership and ensure that supervisors, police chiefs, chief prosecutors, and the heads of units are aware of the benefits of AR and remind their reporting officers/agents/prosecutors of it often.
- Third is to establish a team or task force with the goal of targeting ongoing cases for their asset recovery potential and allocating resources accordingly.
- Fourth, and building on this, is to target a few demonstrative cases of high impact in new fields.
- Fifth is to ensure that the FIU has AR top of mind in its analytical work and disseminations, and to encourage the FIU to identify assets in their cases to a broader variety of LEAs.

As to the concept of targeting, this is a unique skill set which is common in the counter-terrorism world, but can be used to good effect in AR as well. This may involve setting objective criteria or indicators that may be present in a case with good potential for AR. It may also involve intentional focus on a particular type of criminal activity or trend, and seeking AR related to that activity. In terms of demonstrating the impact of AR – a major recovery outcome linked to a drug trafficking organisation or crypto fraud scheme would not be unusual, but a well-publicised AR outcome linked to the disruption of a human trafficking ring or a large corporation engaged in fraud in relation to fuel efficiency standards may expand the public's perception of the benefits of asset recovery. This can have an echoing effect – if positive AR outcomes are recognised, more will be pursued.

BOX 22 – **COUNTRY EXAMPLE: Identification of a Virtual Asset Case in Japan**

Based on information provided by a VASP (a cryptoassets exchange), Japan was able to identify an illegal underground banking service facilitating fund transfers from Japan to Vietnam. The VASP alerted police to accounts with unusually large transaction volumes. The scheme involved the following steps:

- The suspects let customers in Japan transfer Japanese yen to a Japanese bank account controlled by them. The funds were then moved to a cryptoasset account registered under another person's name, but controlled by the suspects.
- Using the funds in this cryptoasset account, the suspects purchased cryptoassets in yen. The purchased cryptoassets were then transferred to an account in a foreign VASP.
- The cryptoassets were exchanged for other types of cryptoassets, which were then used to buy Vietnamese dong. The Vietnamese dong was transferred to Vietnamese bank accounts designated by the customers.
- By intermediating the above transactions for approximately JPY 2.8 billion, the suspects earned substantial profits from the transaction margins.

Although the initial information from the VASP was about several cryptoasset accounts registered under names other than Persons A and B, investigators discovered additional facts, including the fact that a mobile phone number linked to Person B was registered across multiple accounts, which contributed to Person A and B's identification as the suspects. Authorities froze the cryptoasset account registered under another person's name, but controlled by the suspects. The suspects were ultimately convicted for violations of the Act on Punishment of Organized Crimes and Control of Proceeds of Crime, and the court ordered for collection of a sum of equivalent value for approximately JPY 11 million of criminal proceeds.

If the country is one where there is one main LEA which has a case tracking system of all ongoing investigations, or one that exists at the national level, this can be considered as a potential source of cases. For example, some countries have systems which encourage financial investigation through the way they are structured, with data fields that capture assets of relevance to the suspects or defendant. Other countries may be able to do a pairing exercise, for instance by taking names from STRs and matching them to suspects in investigations still in the covert stage. Not every investigator is checking for financial intelligence in every case, as much the FATF Standards may encourages this practice, and sometimes, the financial intelligence that could lead to asset recovery has to find the investigator, not the other way around.

ADDITIONAL CONSIDERATIONS

Finally, although this section has focused on criminal cases, it is highly likely that other types of ongoing investigations, such as by tax authorities, anti-corruption authorities, election commissions, and securities or commodities commissions can reveal the existence of assets which may be subject to confiscation. LEAs should be open to and aware of the possibilities that administrative and regulatory investigations may, from time to time, result in referrals which open potential paths for AR. For example, in many jurisdictions, regulatory offences typically have lower *mens rea* or are strict liability, and they typically do not carry any or a lengthy penalty of imprisonment. However, there are regulatory offences that can generate a significant amount of proceeds, such as a company ignoring regulatory requirements relating to the disposal of effluent (i.e., an environmental offence). This may be a regulatory offence, but will generate a significant amount of unlawful benefit due to the money saved by the company.

Countries may consider the appropriate scope for the use of AR measures in the regulatory or administrative space. Ideally, this is defined in legislation. Some jurisdictions may bring these offences into the scope of AR by designating them as predicates for ML. For example, in New Zealand, asset recovery is allowed where any offence punishable by five years or more has been committed (including regulatory offences) or for any offence where at least NZD 30 000 in unlawful benefit is suspected. See Ch. 2.2.2(b) for guidance on co-ordination and co-operation with tax authorities, specifically, as related to asset recovery.

b. Financial intelligence

The next source of potential identification of assets and case initiation is financial intelligence. The Egmont Group studied this topic in terms of the role of the FIU in AR. FIUs may be a valuable source of intelligence which may prompt, lead to, or initiate asset recovery or expand an ongoing financial investigation (among other support they can provide to AR efforts).[9] Both spontaneous disseminations and disseminations to LEAs and other competent authorities upon request can be the piece of key information that expands a criminal investigation into a criminal *financial* investigation and opens up the possibility of restraint or confiscation. The use of financial intelligence to initiate wholly new investigations, as opposed to enriching ongoing investigations, is a hot debate, but there is no doubt that a well-written, timely, and informative STR and ensuing analysis can ignite a chain of investigative steps that directly leads to the freezing and confiscation of assets. The domestic legal framework should authorise and specify the possible uses of financial intelligence by LEAs and or other authorities, including use as intelligence/lead information or (in some jurisdictions) actual use in a case.

In addition to STRs, other sources of intelligence received and analysed by the FIU may include information from cash transaction reports, wire transfer reports, cross-border declarations or disclosures related to currency and BNIs, geographically targeted or special regulatory purpose reports, BOI declarations, unusual transaction reports, and other

9. Egmont Group, *Asset Recovery - The Role of FIUs* (2022) (containing a sanitised version of the report).

types of filings from the regulated sectors, as required by the laws of countries or supranational blocs. In addition to the FIs, DNFBPs, and VASPs that file certain reports in accordance with the FATF Standards, some countries have opted, based on their risk and context, to expand STR or other reporting requirements (e.g., for cash transactions over a certain threshold) to additional sectors, such as art and antiquities dealers, auction houses, large-value dealers, luxury goods dealers, firms facilitating citizenship/residency by investment, firms providing services to high-net worth individuals, pawnbrokers, offshore VASPs, and football clubs and agents. From FIs, DNFBPs, and VASPs and (any) such additional reporters, there is a wealth of information flowing from the financial and non-financial sectors that can point to new assets for potential confiscation, including the customer due diligence information collected by these entities.

It should be noted that the new definition of financial intelligence in IO.6 "refers to the product resulting from analysis or work done to add value to available and obtainable information. In the case of the FIU, financial intelligence is the product of its operational and strategic analysis." This means that the STRs and other pieces of information are not the financial intelligence – the financial intelligence is the added value which draws from, analyses, and synthesises these raw materials or underlying products. This is an important concept for understanding the value that should be provided by financial intelligence in the AR context.

Moreover, IO.6 on the whole has been significantly amended in the new Methodology. It emphasises that one duty of the FIU is to use a wide variety of financial intelligence and other information which should be used to, among other things, to "develop evidence, [and] identify and trace assets, criminal proceeds or instrumentalities" (see Characteristics of an Effective System). One of the core operational needs that should be supported by the FIU includes asset identification and initiating cases (ML, TF, predicate offences, and encompassing confiscation, per Core Issue 6.2). However, IO.6's sole focus is not only the FIU, but the use of financial intelligence by competent authorities. Core Issue 6.4 asks to what extent competent authorities are using financial intelligence to identify and trace criminal proceeds or instrumentalities. Statistics on when financial intelligence was used to identify and trace assets are suggested in IO.6, Example of Information 3.

In addition to asset identification, FIUs may also play a major role in asset tracing, collecting information on criminally obtained assets through the use of intelligence, tracing financial flows, and information gathering.[10] Additional information gathered by an FIU, as mentioned in INR.29(C), can be key in this regard; in fact, additional data gathered from reporting entities is often rated more highly by FIUs as source of relevant information for identifying assets that the STR itself. Moreover, transactional information can be analysed independently or in addition to STRs by FIUs, and having such information available within an FIU may eliminate the need to make a request to reporting entities in the early stages of a case. It positively impacts timely access to information, since the FIU does not need to wait to retrieve this information. Storing such information in an internal database can enable the FIU to integrate other data sources and harness technology for information analysis. The ability to request flow of funds information allows for the continuation of analysis after the initial search of FIU databases or other information sources.

The work done by analysts to obtain all available sources of information and analyse it is critical for LEAs, whether they have made a specific request or are receiving a spontaneous dissemination. Statistics gathered by the Egmont Group show that the primary purpose of asset searches done by FIUs is to identify assets. Some FIUs lack the necessary powers for tracing (as opposed to locating) potential criminal property.[11] A sample study of 62 FIUs showed that 44 had tracing powers, while 18 did not.[12]

10. Typically, information generated and obtained by FIUs is considered intelligence, but some FIUs, particularly those that are LEA-FIUs, may have some evidence gathering functions. It is usually the responsibility of investigators or prosecutors to convert financial intelligence into useable evidence.
11. Locating or identifying means the initial finding of heretofore unknown assets or property, whereas tracing refers to the process of analytically following financial transactions which may lead to information about asset acquisition or disposition and, ideally, connects the proceeds of crime to assets which may be subject to confiscation.
12. Egmont Group, Information Exchange Working Group, data provided in January 2025.

The ability of FIUs to access BOI, which can strongly influence the identification of assets, is mixed. In the sampling exercise discussed above, 24 FIUs had access to BO registry information upon request, 28 had direct access, and 10 had no access whatsoever. A slightly larger ratio of FIUs could access BOI collected by FIs, mainly upon request.

Altogether, FIUs can be an integral source of asset identification for confiscation purposes, including by potentially disclosing intelligence which can lead to the opening of CBC or NCBC cases. Although in later chapters, FIUs are also a key partner for seeking information and intelligence abroad to support AR efforts (see Ch. 6), as well as in identifying circumstances and/or carrying out suspensions or postponements of transactions (see Ch. 4). Finally, if FIUs can disseminate their products to asset recovery offices, this can yield good and direct results in terms of confiscation. Countries should consider incorporating their ARO – if they choose to establish one – into their LEA community for the purposes of collaboration with their FIU. Effective cooperation between FIUs and AROs can significantly increase the chance of successful AR efforts, particularly in the identification of assets that could be targeted for immediate actions, such as freezing.

c. Other sources

There are other possible domestic sources of asset identification. These include media scanning, including investigative journalism which can be a detailed and rich source of potential leads in asset recovery matters. PPPs, as mentioned above, are also potential sources of information relating to assets, as they can be a venue for informal information

BOX 23 – **COUNTRY EXAMPLE: FIU-Initiated Investigation Results in Confiscation**

The case at this anonymous FIU was initiated based on domestical notification of ML suspicions.

A taskforce was established formed by four relevant competent authorities (including the anti-corruption agency, stolen assets agency, the confiscation commission, and the FIU). During a search at premises often used by the high ranking governmental official and his relatives and close associates, large sums of cash in several currencies, jewelry, diamonds, gold bullions and valuable goods, including archeological pieces hidden in two safe deposit boxes behind a mural library, were found. The search also uncovered many files regarding real estate and several banking documents and contracts related to bank accounts held domestically and abroad, including a bank statement of an account opened in a foreign country from the same region.

Then the FIU was notified of money laundering suspicions and the potential existence of foreign bank accounts of the former high governmental official and his relatives and close associates. The FIU used the FIU-to-FIU co-operation and information exchange regarding the bank account in the foreign country and requested the identification of any other accounts or assets owned or under the effective control of the ousted high governmental official, his family members and close associates, who are suspected of misappropriation of public funds and abuse of functions that constitute corruption. The FIU requested its foreign counterpart to freeze any identified movable and immovable assets to prevent their disposal and transfer to third parties, pending the judicial decisions on the case in the domestic court. The foreign FIU conducted a sector-wide search and identified the existence of a bank account in the name of the official's wife with a USD 28 million balance. The foreign FIU froze the funds.

The FIU promptly disclosed to the judicial authorities the information received from the foreign FIU (after the due dissemination consent), including information about the freezing of assets held in the foreign bank account. A court procedure was initiated. The process also included the filing of an MLA request for the identification and freezing of the bank account and the assets held therein and two complementary requests for additional information. A first instance sentence and a supplementary sentence were handed down and confiscation of the property of the former official and his wife in favor of the country was ordered.

exchange between the private sector and public authorities, including the pre-filing disclosure of suspicious transactions or activity. For the countries which have BO registers, is it also possible that these entities or agencies can contribute to asset identification efforts. If they have a high level of capacity and resourcing, registers can even generate potential cases based upon discrepancies uncovered or major red flags linked to particular legal entities. It is considered a good practice to establish open channels between such registers and LEAs and other competent authorities for the potential transmission of such information.

Likewise, regulatory agencies and supervisors may occasionally be able to provide valuable leads to law enforcement, such as information from unreported suspicious activity that has been recorded and documented in the course of their examinations of reporting entities. While this is an unusual source of case initiation, it is possible. The ability of supervisors to share unreported suspicious activity (such as successive account opening/closure or removal of payment information) may vary depending on the legal framework, but countries should enable supervisors to report potential criminal activity to law enforcement where warranted, subject to confidentiality limitations.

Victim complaints, tips from the public, whistleblower disclosures, media reports, investigative journalism, and various open sources, including detailed reporting from NGOs and anti-corruption bodies may also be a font of information that could prompt an asset recovery investigation. For example, Australia has previously commenced asset recovery action based upon information provided by these types of sources, including reports from NGOs and the media. A number of these cases did not involve a criminal referral or MLA request, and an NCBC action was instead pursued in relation to assets identified in Australia. In these situations, information from these sources helped alert LEAs to potential avenues for pursuit of asset recovery.

OSINT is also being increasingly to initiate AR investigations, even if that was not the purpose of the information. For instance, drone footage, social media posts (especially with geolocation) or construction permits with names have all been atypical reasons to commence or expand AR investigations. In one example, a suspects' motor-yacht was located precisely when it appeared in the background of a marina's social media post about available berths. Investigators who suspected the general but not precise location of the vessel were able to seek immediate assistance from the country where the marina (and the asset) were located.

Whistleblowers can play a pivotal role in supplying actionable intelligence in both criminal and AR investigations. In some jurisdictions, there are distinctions between the term whistleblower, co-operating witness, informant, etc., but the word whistleblower is used here to signify someone with material inside information that can start or enhance an investigation. From their vantage point inside ML/TF networks and/or the companies, whistleblowers can provide first-hand information about the individuals running them, operational dynamics, schemes, and so on, and they may be able to greatly assist investigators in locating assets and dismantling criminal organisations. However, in doing so, whistleblowers face a double risk: on one hand, their previous involvement with criminals and illicit money may result in investigations against them too, potentially discouraging them from co-operating with LEAs; on the other hand, their collaboration may lead to retaliation from their former associates.

ADDITIONAL CONSIDERATIONS

Thus, countries may consider implementing laws about whistleblowing, in order to encourage people within ML/TF networks to disclose any useful information they may possess. Such laws generally provide for some form of immunity (or, at least, a reduced sentence) for any past criminal acts directly linked to the networks/individuals they are providing information about, to make the collaboration more appealing and convenient. Such laws may also exempt them from paying damages for violating NDAs and/or from being sued for providing

information to LEAs and other competent authorities. The law may also provide some form of protection (witness security, new identities, etc.) in the most dangerous cases (e.g., a whistleblower disclosing information on a terrorism financing network). Confidentiality guarantees and safe channels for reporting crimes and misconduct directly to competent authorities (as an "only internal" report) may not be enough, especially in cases where the business or institution is complicit in the criminal activity. For example, EU Directive 2019/1937, on the protection of persons who report breaches of EU law, provides a common standard for protecting whistleblowing and whistleblowers and contains many of the features described above, all of which can facilitate both criminal prosecutions and AR. In some contexts, i.e., foreign bribery, international conventions such as that of the OECD (ratified by 46 jurisdictions) may require protections for whistleblowers who report relevant offences.

In terms of domestically-originated asset identification, the main avenues are ongoing investigations (both criminal and administrative/regulatory); FIUs and the information they receive, access, and analyse; open sources; and other governmental sources further afield from law enforcement who may occasionally identify assets in the course of their activities.

3.2.2. International origin

In terms of potential avenues for the identification of assets and opportunities to pursue AR, international sources can be equally fruitful. Chapter 6.1, on informal international co-operation, also discusses some unique avenues presented in INR.40, paragraph 19, and should be read in conjunction with this section. Countries should empower their respective LEAs with an AR regime and pro-active policies which will serve to enhance the ability of authorities to identify, trace, freeze and confiscate criminal property. This may include looking at, or beyond, a country's borders.

a. Currency and border controls

Countries must implement Recommendation 32 on cash couriers by implementing a declaration or disclosure system for currency or BNIs transported across a country's borders exceeding a pre-set, maximum threshold of USD or EUR 15 000 (or lower) covering all physical, cross-border transportation (e.g., by passengers at airports, ports, border-crossings, by armoured vehicles engaged in commercial transportation), and by mail and cargo. Importantly for this discussion, in addition to making cash smuggling a criminal or administrative offence with effective, proportionate, and dissuasive penalties, countries must be able to confiscate the currency or BNI when it is related to ML, any ML predicate offences, or TF. Thus, there are two operational arms under R.32: (1) enforcement for false/non-declaration, and (2) confiscation of cash/BNI linked to ML, TF, and predicate offences.

Many jurisdictions focus primarily on issuing administrative fines for false or non-declaration of currency. These fines are often low and non-deterrent, undermining the effectiveness of R.32. The sanctions under R.32 must be effective, proportionate, and dissuasive for *both* false and non-declaration or disclosure *and* if the currency or BNIs are related to ML, TF, or predicate offences (see INR.32, para. 6). For non- and false-declaration, the sanctions are not specified in the Standard, but for "relation to" ML, TF, or predicates, there is a callback to R.4 and confiscation must be possible. In practice, many countries have translated these requirements into a domestic power to confiscate all or part of the amounts not declared or falsely declared (or the amount exceeding a partial declaration). Some countries additionally impose penalties or fines in relation to a cash smuggling offence.

Per R.32 and to improve financial investigations linked to cross-border smuggling, countries must ensure that the information obtained through the declaration or disclosure system is available to the FIU, either directly (whereby all currency declarations are available to the FIU) or through a system where the FIU is notified of suspicious cross-border, currency-related incidents. This enhances the FIU's ability to use this unique category of information as a prompt for, among other things, identifying opportunities for asset recovery. Moreover, per R.32, countries must be

able to engage in international co-operation related to enforcing these controls and to co-ordinate with relevant domestic authorities (e.g., such as customs, immigration, and other related authorities). This co-operation and co-ordination should help make the connection between the detection of individual instances of illegal cash courier activity and investigations which can reveal opportunities for larger prosecution and confiscation actions.

"Recommendation 32 was developed with the objective of ensuring that terrorists and other criminals cannot finance their activities or launder the proceeds of their crimes through the physical cross-border transportation of currency and bearer negotiable instruments" (INR.32). The movement of cash across borders is still a major threat in terms of the way money is laundered, the way predicate offences are carried out, and the way that funds destined for use in terrorist acts or by individual terrorists or groups reach their intended destinations. The risks of ML through cash and other illicit cash movements depend on the unique circumstances of the country, but tend to increase when the country has lengthy, porous, uncontrolled borders; a significant volume of movement across those borders (including for trade, tourism, or daily commuting purposes); when the country is a destination for laundering of foreign proceeds or when domestically generated proceeds are primarily laundered abroad. Detection of smuggled cash and the ability of authorities to make further inquiries, in these circumstances, helps competent authorities determine whether the movement of cash is suspicious, may be linked to an offence, and if further investigative steps are warranted (in addition to the detention of the currency).

Countries should place greater emphasis on the confiscation of cash linked to criminal activity, but customs officers often lack awareness of the link between cash and crime, limiting the effective use of R.32 powers. The enforcement of this system of controls can be a valuable source of investigative leads. It can originate cases far more complex than they may appear when a smuggler is caught. Although individuals travel with cash for their own purposes and many legitimate reasons, an individual smuggler whose transportation of currency is tied to criminal activity may be part of a larger criminal network. It is also possible that a person who makes a truthful declaration routinely (e.g., once a month), or consistently travels with amounts just under the declaration threshold may be exhibiting red flags warranting stopping and questioning by the authorities.

R.32 directly gives rise to two possibilities for confiscation – either the smuggled currency is confiscated on the basis of the commission of the discreet offence of smuggling or making a false declaration (often with an accompanying fine), or a larger investigation is launched which may result in CBC or NCBC actions linked to other offences (e.g., ML or predicate offences) of which the cross-border transport of cash of illegal origin is only a part. Countries should remain alert to both possibilities. LEAs could be reminded through training that there may be more extensive criminality afoot in any suspicious cross-border currency incidents and that appropriate co-ordination with other competent authorities or foreign counterparts can help confirm or dispel suspicions. Countries may consider providing guidance to relevant authorities on how to distinguish situations that warrant moving beyond smuggling offences into a full-scale ML investigation. Clear indicators or criteria could assist practitioners in recognising when the scope of the investigation should be expanded.

Even that small amounts of undeclared cash may be significant in criminal contexts. Some countries, such as the UK, apply a de minimis threshold for seizure of crime-linked cash (GBP 1 000). Others allow seizure of any amount if intelligence suggests criminal intent (e.g., the cash is intended for purchasing a firearm).

The enforcement of cross-border controls in line with R.32 also gives rise to an indirect possibility for confiscation in that the declarations may provide valuable financial intelligence for investigators. Even truthful declarations can contain useful information about the location, habits, patterns of travel, and associates of subjects in criminal or NCBC investigations, and can help identify other assets and unknown connections.

Moreover, the revised IO.8 puts more emphasis on this issue when compared to the prior version of the Methodology. Core Issue 8.7 reads: "How well is the country's declaration or disclosure system identifying and seizing non-declared or falsely-declared cross border movements of currency and BNIs and to what extent are border, customs or other relevant authorities applying effective, proportionate, and dissuasive sanctions? To what extent is the system leading to the confiscation of currency or bearer negotiable instruments related to ML/TF or predicate offences?". The second sentence spotlights the R.32 regime as a potential wellspring of AR matters. Countries are advised to track "information relating to how the system has been implemented including data on the number and value of cross border declarations/disclosures and actions taken, how information is shared between border/customs and other relevant competent authorities, and the value of criminal property and property of corresponding value identified and confiscated" (IO.8, Example of Information 7).

Whatever model is chosen by a country to deal with the illicit cash moving across borders, the country should ensure that its relevant authorities have all necessary powers to share information with other LEAs and agencies at home and with other jurisdictions, promoting timely notifications of suspicious cash border transactions. In implementing such a declaration/disclosure system at the entry/exit points of a country, including at the airports, seaports, and road and rail crossings on a land border, a country should ensure that they have the relevant powers to intercept the illegal cash and to stop its progression into or out of the country, whether the cash is illegal by virtue of being concealed and smuggled or because it is linked to other criminal offences.

The exact mechanism for restraining the currency or BNI may vary among countries, or possibly even among institutions present at the border (if there is more than one relevant authority). However, the country should ensure that the illegal cash is swiftly intercepted and secured for investigation by the competent authority, either directly or via a prompt referral to another LEA.

The link between R.4 and R.32, particularly as related to the Core Issues of IO.8, is not emphasised enough. The movement of currency in the cross-border context presents an opportunity for law enforcement to tackle one of the most persistent and insidious ML techniques, to initiate investigations, and to identify assets for potential recovery based on immediate offences like smuggling, or on broader criminal activity which has only come to light on account of a random or targeted border enforcement action. Countries may consider investing more in cross-border currency detection as part of their AR framework and making use of the many investigative leads that can arise in this setting. In addition, through implementation of robust measures to implement R.32, countries can foster trust with international partners, deter financial crimes, and ensure that proceeds and instrumentalities are effectively recovered.

However, jurisdictions should also take care to respect the rights of all persons entering or exiting their territories. R.32 requires countries to ensure that "strict safeguards exist to ensure proper use of information collected through the declaration/disclosure systems, without restricting either: (a) trade payments between countries for goods and services; or (b) the freedom of capital movements, in any way." This reflects a concern that the system in place should not inhibit commerce or capital flows, but there are also weighty concerns related to implementation of systems in a way that interferes with the rights of individuals traveling across borders.

First, it is not illegal to travel with cash, even large amounts of cash (barring any country-specific capital flight restrictions). Second, the borders are a sensitive area where individual rights may be tempered on account of an array of security concerns, ranging from public safety and counterterrorism to border and immigration controls. However, this does *not* mean that all individual rights are suspended, that rights only apply to citizens, or that individuals do not have privacy rights and property rights, including the right to not be subject to unreasonable searches or seizures. Border searches, seizures, detentions, and interviews should be carried out in a manner consistent with domestic law. Third, points of entry tend to be places where persons feeling conflict, claiming asylum, or facing other crises interact

with competent authorities. Thus, authorities should be sensitive to the fact that individuals may be in vulnerable situations. It is also a place where the authorities have a heightened interest in monitoring suspicious activity and preventing crime. Countries should ensure that any law enforcement actions, including initial targeting and profiling of individuals to detect smuggled cash, are in line with domestic law and the protection of rights under international law, as applicable.

ADDITIONAL CONSIDERATIONS

A country's AR strategy (a stand-alone product or a combined series of policies), should address the issue of cash couriers through its policies, objectives, and activities. If the country has a border security strategy, then the detection of illicit cash can feature in it as well. The border is not simply of concern for immigration enforcement, but it presents an inherent vulnerability as a site for the movement of people, goods, and money. FATF states in R.32 that gold, precious metals, and stones are not yet in scope of the Recommendation.[13] Yet these items – along with pre-paid value and storage cards – may raise similar concerns to cash in that they represent movable value, a means of exchange, have high liquidity, and are used for money laundering. R.32 states that countries may optionally cover these items under customs laws and regulations. Depending on the risks of the country, it may be advisable to do so.

The borders (including airports and seaports) can be an untapped opportunity to detect potential criminal activity through the smuggling of cash and to interdict cash of criminal origin or destination, thus increasing AR outcomes. It also presents a valuable opportunity to monitor a person who has crossed the border (whether they declared truthfully or not) for operational reasons, in a covert manner, if that person is of interest to law enforcement. This ties into a requirement of R.40, which is that competent authorities investigating ML and TF cases should be able "to postpone or waive the arrest of suspected persons and/or the seizure of the money, for the purpose of identifying persons involved in such activities or for evidence gathering." Without these measures, the use of methods such as controlled deliveries and undercover operations are precluded.

It is a good practice for countries to give due focus to both the import and export of cash, and calibrate their measures and investigative efforts in this area based on risk, as appropriate. Countries may emphasise one aspect or the other (without neglecting either). Notably, the outbound flow of cash derived from crime, beyond a country's borders, does not absolve the country of responsibility to act in appropriate cases. If the cash moves beyond a country's jurisdiction or reach, responsible actions by competent authorities may include (i) notifying counterpart LEAs abroad through formal or informal channels of relevant suspicions related to the courier, and (ii) potentially pursuing the investigation and confiscation of funds located abroad. The obvious attraction of using cash for ML is its movability, fungibility, and relatively "anonymous nature" (although bills are numbered), and its ability to be passed to multiple hands quickly and be converted or exchanged rapidly. It is often necessary for countries to work together and combine their information and intelligence to unravel a cross-border smuggling or ML scheme.

The ability to use cross-border currency controls as a potential source of confiscatory actions depends on several factors. The authorities administering the system must be able to detect suspicious activity indicative of smuggling using their training and experience in monitoring the behaviour of persons, the characteristics of likely smugglers and their vehicles or baggage, and the circumstances of the travel. To take a truly pro-active approach to enforcing the declaration or disclosure system, LEAs will need to use both soft skills (their knowledge and training to judge behaviour and interpersonal interactions) and hard technology (x-rays, sensors, cameras, etc). Many countries utilise

13. INR.32 provides: "[i]f a country discovers an unusual cross-border movement of gold, precious metals or precious stones, it should consider notifying, as appropriate, the customs service or other competent authorities of the countries from which these items originated and/or to which they are destined, and should cooperate with a view toward establishing the source, destination, and purpose of the movement of such items, and toward the taking of appropriate action."

technology to facilitate their initial profiling and targeting and then engage in exchanges with the persons who made declarations or who appear likely to have avoided doing do. Countries for example, utilise trained canines and a variety of surveillance techniques, including infrared and remote monitoring.

In cases where outbound money is seized, the traveller may never return to the territory. In cases where inbound money is seized, the person may or may not be a resident in the country, and may soon depart if they are a traveller. Accordingly, the finalisation of a seizure into a confiscation *may* be able to be concluded in some jurisdictions regardless of whether the individual ever returns again after the seizure. Notice and information on the procedures for contesting cash seizures at the border should be shared with the traveller at the time of seizure (in some countries, the "notice" is simply the act of the seizure from the person or luggage of the traveller, and the receipt of the seizure contains information on making a claim to recover the money). Not contesting this seizure can result in forfeiture by default, which is often the case if the person crosses the border and does not return. In some countries' legal frameworks, the seizure at the border is legally considered as a final confiscation.

The following steps can be taken by countries or authorities to help enhance the use of cross-border currency controls to drive AR outcomes:

- Mandatory Declarations: Countries may consider the advantages of switching to mandatory written declarations for persons and legal entities transporting cash or BNI over a specified threshold at all entry and exit points. This will enable real-time reporting of significant currency movements and alert authorities to the transport of potentially tainted funds and the need for intervention. Unlike an oral system, it creates a documentary record that can be referenced later. Unlike a passive disclosure system whereby the passenger is only expected to report if he or she is queried, mandatory written declarations are more pro-active. A declaration system can be largely automated, present opportunities to detect other offences (e.g., entry without a visa, smuggling of prohibited items) or locate dangerous or wanted individuals, and connect to government-run biometrics systems. In-person enforcement of a declaration system can be adjusted depending on the nature of the border crossing and be deployed by authorities as needed.

- Enhanced Monitoring at Entry Points: Countries can consider installing surveillance and scanning technologies at airports, seaports, and border posts, and consider upgrades to more advanced systems, funded by confiscated currency. They can utilise risk profiles to screen individuals who may attempt to bring in undeclared or illicit funds. They can consider using trained canines with handlers for cash detection. They can explore partnerships and arrangements with other countries to collaborate on and fund shared border systems aimed at cash interdiction.

- Training for Relevant Competent Authorities: Countries can establish a full behavioural and circumstantial collection of red flags which may indicate smuggling or suspicious activity at the border. They may provide specialised training on identifying red flags associated with ML, such as transporting currency in certain patterns. Training for customs authorities could also cover protocols for engaging FIUs and LEAs when suspicious activities are detected.

To enhance AR mechanisms while countering illegal cash couriers, countries may also consider:

- Risk-Based Approach to Processing Currency Reports: Using a risk-based model, continuously monitor and analyse data on cross-border currency declarations and high-value transactions. This can be done by the relevant competent authority, at the border, or by the FIU.

- FIU Link: Countries could consider facilitating direct access to currency reports/declarations by the FIU, even if on a (slightly) delayed basis. This ensures that the FIU is able to use and integrate this data in its strategic analysis, particularly to spot anomalies and identify any trends or changes in patterns.

- Efficient Confiscation: Operationalise both CBC and NCBC tools to confiscate assets linked to seizures of non-declared or falsely declared cash. If a country legally allows administrative or agency-based confiscation or forfeiture, which does not require a judicial ruling unless the seizure is challenged, the border may be an appropriate area to authorise it.

- Strategic Use of International Co-operation: Countries should pro-actively send formal or informal alerts to foreign counterparts pertaining to suspicious cross-border cash incidents, particularly if the requested country is able to investigate or take necessary action more quickly or directly. Likewise, they should be responsive to incoming requests or cash smuggling alerts. Countries should consider establishing MOUs between the LEAs of countries sharing borders about the parameters of co-operation for R.32. They should also ensure that currency reports are retained and searchable in response to foreign requests.

Some countries have also found it useful to impose limitations in the use of cash (and BNIs) for domestic transactions. Prohibiting above-threshold cash transactions and seizing cash in cases of infringements can potentially help detect financial-related crimes and foster AR. However, such limits should not be implemented without a thorough consideration of financial exclusion implications by policymakers. Some jurisdictions have found that the implementation of policies aimed to create a cashless society have driven more transactions underground and away from the view of competent authorities.

b. Incoming requests pointing to the existence of criminal property or conduct

One under-explored avenue which can lead to asset recovery is incoming MLA requests and other informal requests which may not directly relate to confiscation (see INR.40, para. 18). While the primary response to incoming MLA and other requests should be to evaluate them and provide the requested assistance in line with treaty obligations, it is also possible that they may contain valuable intelligence or lead information that can point to domestic suspects or domestically located assets. They may not be central to the main purpose of the request, but the persons and entities named in such a request have already surfaced in the course of another country's criminal investigation. When notified by a trusted partner, this involvement can be considered a reasonable and credible basis to conduct some further diligence on the matter, in appropriate cases, and where there is a domestic connection.

The primary purpose of reading any request (MLA, Egmont, informal, etc.) is to see what the requesting country is asking for, but a possible secondary purposes can be to see if the facts and circumstances described in the request have (or should have) any domestic implications. It is possible to commence an investigation or a domestic confiscation proceeding based upon information contained in a request. It is good practice for countries to consider this possibility; however, before launching a domestic investigation, they should promptly consult with the requesting country, especially to avoid infringing on the requesting countries' operational equities. The receiving country should obviously not take action which could compromise in any way the original foreign investigation, but there may be links to explore domestically which are simply out of focus for the requesting state. If a financial or asset recovery investigation stems from information contained in an MLA request, there may be obligations to seek permission from the requesting country regarding the onward use of the information in the requested country, as well as an advisable discussion about which investigation has primacy if any conflict arises.

Countries are not expected to mine incoming MLAs or other types of requests for potential criminal property or corresponding value, but, if there are hints in a request about possible domestic offences or persons involved in the criminal activity with substantial connections to the requested state, they are encouraged to consider such information as potentially actionable. In some circumstances, in consultation with the requesting country, there may even be a rational division of investigative labour that can be discussed, including the possibility of AR efforts being pursued domestically in the requested state, co-ordination, or the formation of a JIT.

It is a good practice for central authorities, or other external-facing units within competent authorities who receive and process requests on a regular basis, to consider requiring the consideration of the possibility of domestic investigation in their checklist of items when absorbing new foreign requests. The possibility of asset recovery actions should be flagged as a secondary consideration during the intake process. This would not add a huge burden to such authorities, but ensure it is at least a consideration in reviewing incoming requests. If a request is promising in this regard, domestic asset recovery experts or financial investigators can be consulted. If central authorities are not best positioned to this task because they are more focused on the formal aspects of requests, then the executing authorities may be better placed to assess their substance for potential deeper, domestic investigation.

Incoming requests may be an indication of potential criminal actors and property in the requested state, not all of which will be in scope of the original (foreign) investigation. Such a request may even be a strong indicator, as the requesting country had enough confidence in the case's relevance to the requested state to send the inquiry in the first place, and it has been pursuing an investigation which is mature or promising enough to justify seeking MLA. Incoming requests may be a valid "source" of potential cases, including actions to freeze, seize, or confiscate assets, as long as proper procedures are followed to seek consent of the requesting country. Competent authorities should also hold open the possibility that even if the request does not suggest these domestic connections (or assets) on its face, they may come out during the execution of the request. An open and pro-active approach is suggested towards this avenue of potential asset identification, with due regard for potential sensitivities.

c. Other sources

Without receiving a prior request for such information, INR.40 encourages countries to be able to share spontaneously relevant information regarding potential criminal property or corresponding value abroad with foreign counterparts. Even if the country making the disclosure plans to take no action domestically with respect to these assets, this permits the receiving country the option of doing so. This type of spontaneous exchange or disclosure may occur at several levels, including FIU-to-FIU, police-to-police, or judicial authority-judicial authority.

Finally, open sources can permit the initiation of investigations which may lead to AR. Open sources information, such as investigative journalism or exposés, can also be intended to prompt governments to investigate and take action against potential criminal property in their jurisdictions. As in the domestic context, victim complaints, tips from the public, whistleblower disclosures, and various open sources, including detailed reporting from NGOs and anti-corruption bodies, may be a font of information that could enable asset recovery. It does not matter whether these sources are foreign (e.g., international press). Indeed, some disclosures, such as the Panama Papers, may prompt dozens of countries to begin asking questions which can lead to the opening of investigations and potential cases. LEA liaison officers or diplomatic staff stationed in countries abroad may also provide a window into open sources, including in the local language. They read foreign press and may flag items to domestic LEAs, or they may receive "walk-ins" from persons in-country who have information about criminal offences which may be of interest to the authorities at home. Chapter 6 contains further guidance on these issues, including in relation to INR.40, paragraph 19.

3.3. Timely access to information and databases for competent authorities

As required by R.31, competent authorities should "have timely access to a wide range of information, particularly to support the identification and tracing of criminal property and property of corresponding value." This "may include, but is not limited to, basic and beneficial ownership information, information held by tax authorities, information held in asset registries (such as for land, property, vehicles, shares, or other assets), and information held in citizenship, residency, or social benefit registries." Immediate Outcome 8 suggests that there should be a wide variety of information available to support the identification and tracing of criminal property and property of corresponding value (Specific Factor 13).

The available databases will vary by country, but as discussed above in Ch. 3.1, this could include relevant government-run databases, whether sourced from public records or non-public information held by various agencies and institutions, including the FIU, and private or commercial databases, which may be subscribed to or accessed by licence.

3.4. Asset Tracing

3.4.1. Investigative measures and techniques

Asset tracing plays a pivotal role in financial investigations, as it allows authorities to locate and evaluate assets derived from criminal activities with a view to potential restraint. Recommendation 4 highlights that countries must have legal frameworks which empower competent authorities to identify, trace, and evaluate criminal property and property of corresponding value. This must be supported by measures to promptly freeze or seize such property, without prior notification, to prevent their dissipation. The accompanying Interpretative Note further underlines the importance of implementing provisional measures, including legislative measures; they should be efficient, flexible, and capable of addressing the risks associated with criminal property.

In line with these principles, asset tracing requires a multi-faceted approach that integrates investigative techniques, timely access to data, and interagency co-operation, as emphasised in R.30 and R.31. The success of asset tracing heavily relies on timely access to a broad range of data. This includes access to ownership information held in various registries – covering real estate, vehicles, corporate shares, and other asset categories.

a. Financial investigations

According to INR.30, a financial investigation as conducted by law enforcement or investigative authorities entails a "thorough inquiry into the financial affairs related to criminal activities." This type of investigation serves multiple objectives, per INR.30:

- identifying the extent of criminal networks and the scope of their operations;
- tracing and identifying criminal property and assets of corresponding value; and
- developing evidence to support criminal prosecutions and asset confiscation proceedings.

Additional objectives not specifically named in R.30 include disrupting the use of the financial system for ML/TF/predicates and preventing the dissipation of criminal property.

A parallel financial investigation complements traditional criminal investigations by focusing on the financial dimension of crimes such as ML, TF, and predicate offences. For some offences, this will already be a core or inherent aspect of the criminal investigation, particularly for financial or economic crimes. For other offences, the investigation may take place next to or alongside the other fact-finding and investigative activity. Functionally, there is no difference between a parallel financial investigation and a financial investigation, but countries tend to use one term or another.

Financial investigations typically follow a structured, multi-phase process. The objective is to reconstruct the financial and asset holdings directly or indirectly linked to suspects, whether and which property is criminal in nature, and determine the legal grounds for applying confiscatory measures. These investigations go beyond the mere collection and analysis of financial data; they should be treated as comprehensive investigative processes, comparable in importance to traditional criminal investigations aimed at identifying those responsible for illicit activities. Such inquiries are the foundation for AR actions and require specialised expertise, not only in law enforcement but also in legal and financial analysis.

b. Key concepts of financial investigations

Data Collection: This involves the systematic acquisition and organisation of economic, financial, and asset-related data. This includes:

- analysis of the biographical and criminal profile of targets; and
- determining the existence of the account and/or financial relationships and identifying the FIs where they are held; and
- determining the existence of legal entities or arrangements affiliated with the target.

To this end, countries may consider establishing efficient mechanisms, such as databases or request and response systems, with all domestic FIs to survey the landscape to determine whether suspects (natural or legal persons) maintain accounts or relationships with those institutions, in line with R.31 and INR.24(B). This can greatly assist in narrowing the field of the financial investigation. Once the relevant intermediary institutions have been identified, they must be requested or compelled to provide documentation related to the specific financial relationships associated with the suspects. Careful selection of the information requested from intermediaries is crucial. Given the substantial volume of data held by FIs, accessible under the terms and conditions set by law, it is essential to make informed choices at this stage to avoid burdening the investigation with excessive information. It is advisable to preliminarily assess the opportunity to refine and filter the scope of the requested information, deferring broader data collection until later, if subsequent investigative needs arise.

Since not all financial transactions pass through traditional banking institutions, it is also critical to verify the potential existence of other financial movements (e.g., remittances, instant payments, mobile money movements, or VA transactions) and other non-financial transactions, including through DNFBPs and other sectors. This includes:

- Identifying real estate and registered movable property.
- Cataloging other significant "real world" assets, including safe haven assets such as precious metals, artworks, jewelry, and or other collectibles.
- Reviewing economic activities and financial relationships (e.g. basic and BO information, shares, bonds, other securities and capital markets instruments).
- Reconstructing and assessing the income profile of the individuals (e.g., information held by tax and customs authorities or in social welfare registries).

To obtain a complete picture of the financial and asset situation of individuals under investigation, it may be beneficial to identify any benefits received, such as grants, subsidised loans, or other similar forms of financial assistance, regardless of their designation, provided by the state or public entities.

Financial analysis and suspicious transaction analysis: This involves taking the data collected and applying human and machine skill to conduct financial analysis. These are not linear phases, and investigators and analysts will often collect, analyse, recollect, and re-analyse successively.

In the case of the FIU, financial intelligence is the product of its operational and strategic analysis. Under the FATF Methodology, financial intelligence refers to the product resulting from analysis or work done to add value to available and obtainable information. At the operational level, this generally means to identify specific targets (e.g. individuals, legal entities, assets, criminal networks and associations), to follow the trail of particular activities or transactions, and to determine links between those targets and possible proceeds of crime, ML, TF, or predicate offences.

The analytical work, whether done in-house by the FIU or complemented by an LEA, involve both pattern recognitions and deep-dives into financial transactions, including by scrutinising STRs and other sources of financial information, to uncover illicit financial flows and asset movements. The connection between this informational input and financial analysis proves highly valuable for the following reasons:

- It enables the immediate identification of accounts on which to focus investigative efforts, with the possibility of expanding the scope of the investigation through further inquiries.
- It facilitates the acquisition of information related to the use of funds and other resources, highlighting the purpose of individual transactions and potential forms of investment.
- It allows the identification of connections with other entities (both individuals and legal entities), some of whom may serve as intermediaries. This opens the possibility of uncovering additional evidence that could lead to the development of more complex investigative avenues.

Awareness of concealment and evasion: As data is collected and analysis is conducted and revisited from time to time, it is critical for investigators to recall that suspects have actively hidden and concealed assets to shield them from possible recovery using these (and many other techniques). Asset concealment and evasion strategies refer to the myriad methods used by criminals to hide or transfer assets to avoid legal claims or obligations. These strategies can range from simple bank transfers to complex offshore investments, shell companies, and forged documents. Understanding these strategies is crucial for investigators conducting financial investigations. Typical concealment and evasion strategies include:

- Offshore shell companies: using companies in jurisdictions with lax transparency regulations to hide assets.
- Front companies: using legitimate businesses to mask the true ownership of assets.
- Complex financial transactions: utilising intricate financial movements or instruments to obscure the flow of funds.
- False documentation: creating or altering documents to misrepresent the ownership or origin of assets.

c. Targeting assets held by third parties

It is likely that persons (or entities) besides the suspects are the nominal owners of assets that are in fact controlled or held by the suspects. It is rare for suspects of a certain level of sophistication to keep property directly in their own names. This obfuscation, through simple and more complex means, is deemed essential by criminals to retain their anonymity and evade detection.

Thus, it is encouraged to extend financial investigations to include the property of third parties that may be under the effective control of a suspect, such as immediate and cohabitating family members of the suspect (including romantic partners who are not spouses), close friends and associates, business partners, as well as individuals authorised to operate accounts or those on whose behalf the transactions have been carried out by the suspect. Financial investigations should also address assets held under third-party names, through front persons, straw persons, or indirect ownership structures. These may include interpositions through individuals or legal entities, such as shell companies, and legal arrangements, such as trusts. See more on beneficial ownership in Ch. 3.5.2, below, and note the distinction between third parties (bona fide and not), discussed in Ch. 3.4.5.

ADDITIONAL CONSIDERATIONS

Fictitious interposition is a specific type of subjective simulation, occurring when an individual or legal entity who is formally unrelated to a contract between third parties effectively becomes an ostensible party to it. Essentially, the contracting parties intend for the effects of the contract to apply not to the interposed party (the contractual counterparty), but rather to another individual (the principal). An example of this is a buyer who, in order to conceal ownership of an asset from external entities (creditors, tax authorities, judicial authorities, etc.), uses a trusted and willing individual as the nominal purchaser. These forms of concealment can manifest in various ways, ranging from simpler methods – such as when shares are directly registered to cohabitating family members – to more complex ones, where interposed parties are unrelated individuals (e.g., nominees). In some cases, even more insidious methods are employed, involving the use of corporate chains specifically designed to obscure the connection between the ownership of the business entity and its management.

When legal entities are interposed, to determine the true ownership of assets they hold, it is essential to first verify and analyse the financial structure of the entity. This step is crucial to uncover the mechanisms through which fictitious interposition may be concealed. The suspect's financial involvement in the business must necessarily occur through the provision of financial resources, albeit in a concealed manner. For investigative purposes, particular attention should therefore be given to reconstructing the financial flows affecting the business's operations. It is helpful to consider at least the following items:

- Share capital, verifying the individuals responsible for the corresponding payments and/or contributions, including any capital increases. The aim is to determine which resources were effectively contributed, their true contributor, and their origin.
- Tangible, intangible, and financial assets, focusing on the identification of the sources of funding for their acquisition and any guarantees provided by third parties other than the shareholders.
- Investigations into guarantees provided by third parties should also cover the acquisition of capital goods through leasing contracts.

The historical breadth of asset control and ownership can be ascertained. This can be done via an extended temporal audit. However, such an audit must necessarily be confined within a reasonable time frame, and it will be the investigator's responsibility to determine the most appropriate range. This assessment should be based, among other factors, on the findings gathered during the course of the investigation.

In targeting assets held by third parties, there should be careful focus on the means and timing of acquisition of the property; the means of the third party to acquire this asset on his or her own; and whether other parties (i.e., the main suspects) exercise use, enjoyment, benefit, or control of the asset notwithstanding that they are not the legal owner. It is essential to recognise that individuals may be innocent of any crime and unknowingly holding criminal property. Strong protections for their rights are important in this context.

d. Standard and special investigative techniques

Recommendation 31 outlines the main investigative techniques which should be available to LEAs in conducting financial investigations. The standard and special techniques should be available when investigating ML, associated predicate offences, and TF.

BOX 24 – COUNTRY EXAMPLES: Criminal and Asset Recovery Treatment of Concealed BO

ITALY: There are two laws which address the use of fictitious ownership structures under Italian law:

- Penal Code, art. 512bis – It is a criminal offence to falsely attribute to others the ownership or availability of money, assets, or other utilities in order to evade the law on asset prevention measures (i.e., NCBC) or smuggling laws, or to facilitate the commission of the crimes of fencing, ML, or the use of assets of illicit origin. It is also an offence to evade the provisions related to anti-mafia compliance documentation by falsely attributing to others the ownership of enterprises, company shares or stock, or corporate offices, if the contractor or the company participates in public bids or tenders. The penalty for both modes of offending is 2-6 years in prison.
- Anti-Mafia Code, art. 26 – Under the NCBC framework, in cases of fictitious ownership, the court shall declare any acts null and void which transfer ownership to third parties through:
  - Transfers and registrations, including gratuitous ones, made in the 2 years preceding the proposal to apply NCBC to the ascendant, descendant, spouse or person permanently cohabiting, as well as to relatives, within the sixth degree and relatives-in-law within the fourth degree;
  - Transfers and intestacy, whether gratuitous or in trust, made in the 2 years before the proposal to apply NCBC.

The burden of proving the legitimacy of the transfer is on the third party, the formally registered BO, who must prove the actual, not fictitious, character of the disposition by demonstrating a sufficient source of funding to justify the purchase with his own resources and which is commensurate with the value of the property. If the proof is provided, there is no confiscation because the asset is deemed to actually belong to the third party (although the proposed party may suffer equivalent value confiscation). If the proof is not provided, the court orders confiscation because the asset is presumed to belong to the proposed party and declares the transfer null and void (Italian Supreme Court: Joint Sections, Sent. 12621/2017).

UNITED STATES: Under 31 U.S.C. § 5335, it is a criminal offence to knowingly conceal, falsify, or misrepresent, from or to a financial institution, (1) a material fact concerning the ownership or control of assets involved in a monetary transaction if the person or entity who owns or controls the assets is a PEP, family member, or close associate and the aggregate value of transactions involved is USD 1 million or more; or (2) a material fact concerning the source of funds in a monetary transaction that involves an entity of primary money laundering concern or is an entity subject to certain prohibitions (i.e., certain foreign FIs designated by FinCEN). The penalty for the offence is a maximum of 10 years imprisonment and CBC or NCBC of the funds involved in the offence.

R.31 mainly refers to criminal investigations including financial investigations. However, the Standard enumerates the powers that should be available to LEAs and investigative authorities to obtain documents and information "for use in those [ML/predicate/TF] investigations, and in prosecutions *and related actions*" (emphasis added). Related actions may include a variety of AR actions, including NCBC. On asset recovery, specifically, R.31 states that "[c]ountries should ensure that competent authorities have timely access to a wide range of information, particularly to support the identification and tracing of criminal property and property of corresponding value."

Countries should incorporate all of the R.31 techniques in the criminal context, and as many of them as possible in the pursuit of non-criminal asset recovery actions. Not all investigative techniques, particularly the more advanced special techniques, need to be available for non-criminal investigations, such as those underpinning NCBC actions or civil forfeitures. Some of the tools that are indispensable and generally accepted in the realm of prosecution may not be warranted for NCBC, but what starts as a criminal investigation (using full investigative powers) may not necessarily end with a criminal prosecution and may in the end lead to NCBC, even if that was not anticipated at the outset. In practice, a criminal investigation may lead to CBC, NCBC, or the use of other investigative tools, and as such, all investigative tools may be on the table, at least initially. See also Ch. 5.4.3. on parallel or dual-track confiscation.

It is important to clarify that the evidence used to inform the judicial basis for one type of freezing or seizing measure taken against property should not predetermine the type of confiscations proceedings that follow. The initial investigative steps or even provisional measures should not lock in the nature of the subsequent confiscation or forfeiture proceedings. In other words, the initial rationale may evolve, and the case may proceed on a criminal, civil, asset-based, value-based, or hybrid approach, depending on the direction of the investigation post-restraint/freezing.

Going into further depth on R.31, it requires countries to have effective mechanisms in place to identify, in a timely manner, whether natural or legal persons hold or control accounts, and that they can identify assets without prior notice to the owner(s). Competent authorities need to be able to obtain access to all necessary documents and information for use in AR investigations and proceedings, which, according to R.31, should include the ability to request all relevant information held by the FIU, as well as powers for compulsory measures for:

- **The production of records held by FIs, DNFBPs and other natural or legal persons:** This may be achieved using tools such as subpoenas and production orders. In practice, this often requires reason to believe that the person or entity compelled is in possession of documents or other records of relevance to an ongoing investigation. The scope of the order should be broad enough to secure the information needed, but not overly-broad so as to be considered a fishing expedition. It should be as specific as possible, providing all names and personal or corporate identifiers, and the nature of the information expected. Generally, it should be limited by dates of the suspected criminal activity (e.g., covering a range of time between a date when the transactions of interest are expected to have occurred and the end date, if known, or the present day). The more specific and targeted the request, the more effectively a response may be provided.

  Additional legal process may be needed to supplement this information once the initial production is analysed. A deadline for a response should be included, and it is a good practice to accept "rolling" production, so as to allow investigators to proceed as quickly as possible (e.g., not to wait for all account records for all persons or entities of interest, but to take them as they are produced, especially for extensive production orders). These orders should also be enforceable, meaning there are penalties for persons or entities that do not comply. Additionally, if needed for processing and analysis by the LEA, a common technological format should be specified for the production of records or documents. A related measure deemed valuable by countries is the real-time (authorised) monitoring of bank accounts as a potential tool for detecting and preventing illicit financial activity.

- **The search of persons and premises:** Generally, this will require LEAs to meet some legal threshold, for example, probable cause. There should be reason to believe that the evidence to be obtained will be with this person or at this premises. The proof shown by LEAs should be current, and not stale. A warrant or other type of prior judicial authorisation will usually be required under domestic law and procedure, and should be acted upon quickly after it is issued. Usually, the search will be limited to specific items expected to be at the location and which have relevance for the investigation. There may be other allowable searches, depending on what is authorised in domestic law (e.g., if, during the authorised search, evidence of crimes not currently under investigation, or otherwise subject to

the initial search warrant, is found at the premises, such as large amounts of cash alongside obvious contraband or weapons).

- **Taking witness statements:** While witnesses may be interviewed on a voluntary basis, it is sometimes necessary to compel the appearance of a person for questioning in connection with a criminal/financial investigation. The specificities will be governed by domestic law and procedure, and may require the person compelled to be able to speak in the presence of their lawyer. Countries may require the witness to sign a statement, or may record the substance of the witness' statement in a report of investigation.

- **Seizing and obtaining evidence:** This is a catch-all provision for evidence not covered above and it should allow investigators to seize evidence which they find in the course of their operations. In addition to documents and records, investigators must be able to obtain other types of information, including electronic evidence. Phones, hard-drives, computers, laptops and other devices and equipment may be seized or copied for extraction and analysis by investigators. A warrant or other type of prior judicial authorisation will usually be required under domestic law and procedure.

A concept closely related to witness statements is the interviewing of suspects, targets, subjects (in criminal matters) or respondents or claimants (such as the putative property owners in NCBC matters). The classification of such individuals differs by country, and may in fact change over time in relation to an individual's classification in the context of a specific investigation. In some jurisdictions, suspect interviews are voluntary. These individuals can be invited in to speak with authorities, and attend or decline, and speak in-depth or not at all, on their own volition. It is considered a good practice to have police or LEAs lead these interviews, although this does not preclude others from being present or preparing them (including prosecutors, investigating magistrates, et al). One investigator/party should be designated to ask questions, and another should record the answers. Particularly when the topic is related to asset tracing and financial matters, dates, details, and numbers should be recorded carefully. The suspect may also be presented with transaction records or other information by the interviewers for the purpose of explaining transactions, the parties to them, or the purpose of certain money movements.

In other jurisdictions, suspect interviews are not voluntary and can be compulsory. The suspect may have fundamental rights which they may be able to assert (e.g., the right to remain silent or not to incriminate one's self), but the rules may

BOX 25 – PRACTICAL TIP: Method in New Zealand for Interviewing Suspects in AR

Once an asset has been restrained or frozen under a judicial order, the Asset Recovery Unit can apply to the High Court for an Examination Order under section 106 of the relevant legislation. This order compels the respondent to undergo an interview. If the respondent refuses to answer questions or provides false information, the court may draw an adverse inference at the forfeiture hearing. This process is conducted in secret, and any admissions made during the examination cannot be used in parallel criminal proceedings.

Additionally, if the respondent is overseas and cannot be interviewed or examined, a Disclosure of Source Order may be sought. After the property has been restrained or frozen, the High Court can issue this order, requiring the respondent to answer specific questions within two months. If the respondent fails to respond or provides false information, the assets in question are presumed to be tainted or proceeds of crime. The burden then shifts to the respondent to rebut this presumption at the confiscation hearing.

require the person to attend the meeting at the time and place appointed and answer factual questions. Compelled interviews of suspects may be a valuable tool in financial investigations. Additionally, countries may consider if and when to require "suspects" to produce statements of assets, liabilities, and/or sources of wealth in the context of AR proceedings or investigations.

It is a good practice for LEAs to carefully consider the **phasing of investigative steps**, or the order in which they are taken. While the investigation is still covert, some of these steps are more noticeable than others, while others may be controlled in terms of limits on disclosure. For example, a subpoena or production order may require the person or entity who receives it not to disclose the existence of the order, or the fact of their compliance with it, to any third party – at least for a certain amount of time. However, calling a witness to appear before investigators for questioning, or conducting a search of a premises, will likely alert the subjects of the investigation that they are under investigation. Some of these steps will have the consequence of turning a heretofore covert investigation into one that is known to the suspect(s), their associates, and the general public. In moving to the use of more overt investigative measures, this may be a last chance for LEAs to pursue domestic information-sharing to ensure there is a full picture of different (related) investigations underway and to engage in de-confliction, as needed.

Moreover, when seeking the judicial or other authorisation necessary to carry out some of these investigative techniques, it is important for the LEAs to be able to act on an *ex parte* basis. The application for a search warrant, for example, needs to be protected from disclosure in some fashion, or the process of asking for permission can jeopardise the search and remove the necessary element of surprise.

ADDITIONAL CONSIDERATIONS

Seizing hardware or devices may not result in any investigative insights unless the systems can be intruded. When dealing with electronic or digital evidence, investigators should ensure that they have the appropriate authorisation and technological capacity to break passwords and encryption, where possible. This is not a simple endeavour, and can be complicated by a lack of technological ability to do so, even within the companies providing the telecommunication service. Passwords and codes may need to be sourced from other investigative steps, as encryption may not have a "backdoor" for law enforcement even with legal process (e.g., a warrant or order). It may be possible to obtain passwords from suspects through their voluntary co-operation or through measures by which they are obliged to tolerate by law, so long as the right against self-incrimination is respected, as applicable.

Rules of evidence should provide efficient pathways to introduce and authenticate digital evidence in court, ideally without lengthy technical explanation. It is also important to maintain a strict chain of custody related to digital evidence of assets, and to ensure the data are not altered or corrupted. Finding weighty evidence that may lead to conviction or confiscation and having it excluded because it was improperly handled could be detrimental to a case.

Aside from the standard techniques discussed above which are highly useful in AR matters, R.31 also requires competent authorities conducting investigations to be able to use certain more sophisticated techniques. These methods provide investigators with the tools to penetrate sophisticated criminal operations, uncover hidden assets, and disrupt illicit financial flows. Moreover, the intelligence gathered through these methods often leads to broader investigative breakthroughs, uncovering additional assets and participants in criminal schemes. R.31 provides that "[c]ountries should ensure that competent authorities conducting investigations are able to use a wide range of investigative techniques suitable for the investigation of money laundering, associated predicate offences and terrorist financing." These techniques include:

- **Undercover operations:** Undercover operations involve law enforcement officers or authorized agents infiltrating criminal networks to gather intelligence from within. There are a wide variety of undercover operations which can be employed by LEAs. Some use undercover LEAs, officers who go undercover as civilians and interact with suspects. Some use confidential human sources or informants who have agreed to co-operate with LEAs and who are either introduced or are already familiar to the criminal suspects.

  These are sensitive operations and should only be undertaken by highly skilled officers. They may require internal approvals at a supervisory or higher level within the LEA. This may be paired with recording of conversations through concealed devices. This method is particularly effective in identifying the key players, understanding the structure of criminal enterprises, and uncovering assets that might otherwise remain concealed. Through direct engagement, undercover agents can also facilitate controlled transactions, providing critical evidence for asset tracing and prosecution. An example where undercover operations would be particularly useful is when LEAs are investigating organisations involved in underground banking or a hawala system.

- **Intercepting communications, also known as wiretapping:** The interception of communications, including wire-tapping, is a powerful tool for gaining real-time insights into criminal activities. By monitoring calls, emails, and messages, investigators can identify the flow of instructions related to the movement or laundering of assets; map the network of individuals involved in financial crimes; and gather evidence of transactions or agreements made to conceal illicit funds. This technique is especially useful for uncovering complex schemes, such as coordinated transfers of large sums through multiple jurisdictions.

  The ability to listen in or intercept ongoing communications between criminal targets represents a significant invasion of privacy or other rights which would require a correspondingly compelling justification. The law in each country will vary in terms of the conditions and requirements for using this technique, i.e., the legal threshold, the offences where it can be considered, the means of minimising the harm to incidentally impacted persons. Interception of telephonic communications require technical skills and tactically trained investigators. A warrant or other type of prior judicial authorisation will usually be required under domestic law and procedure.

- **Accessing computer systems:**[14] In today's digital age, criminals frequently use online platforms and digital payments methods to move and hide assets. Investigators must have the capability to access and analyse data from: personal and corporate computers and other digital devices like iPads, cloud storage services, digital payment platforms, and VA wallets. By tracing digital payments and assets, investigators can follow the financial trail across borders, often uncovering entire networks of hidden wealth. This technique is crucial in cases involving ransomware payments, dark-web transactions, and other cyber-enabled crimes. A warrant or other type of prior judicial authorisation will usually be required under domestic law and procedure.

  This is a broad investigative tool which may involve complex real-time key stroke tracking of a suspect's online activities or a simpler forms of access, such as web-based surveillance camera footage from a specific location (web-based means the data is on the cloud and readily accessible anywhere). It also may include tracking IP addresses, accessing browser and search histories, saved photos and videos, call logs, etc.

- **Controlled deliveries:** This investigative tool allows the authorities to see where products, money, contraband, drugs, material, weapons, or other suspicious items, packages, or consignments are headed. By controlling the delivery (e.g., allowing it to enter or exit a country, or move within a country) investigators can get a better idea of the workings of a criminal scheme or criminal network. This permits LEAs to map structures of organisations, track

14. See additional considerations on p. 98 on password protection and encryption when the information is contained on any devices or systems is secured.

the logistics of criminal operations, and understand how offences are completed, all under the surveillance of the authorities and without prematurely alerting suspects.

The use of this tool necessarily suspends the usual law enforcement obligation to intervene in ongoing offences or stop criminal activity, thus postponing the arrest or seizure that would otherwise occur. The decision to use this tool should consider the potential impact on public safety before proceeding and while such measures are being carried out, given the potential for heightened risks to uninvolved persons. Common uses include following illicit cash movements to identify larger networks; monitoring the transport of contraband or other high-value assets; and collecting evidence on individuals or entities involved in receiving and processing criminal proceeds. Controlled deliveries not only help in mapping out the criminal network but also providing concrete evidence for subsequent legal actions. The technique is commonly used to investigate professional ML organisation, drug trafficking organisations, and other forms of smuggling or trafficking in illegal goods.

The use of the more advanced and sophisticated investigative techniques described above may be warranted especially in ML and TF investigations or investigations into the activities of OCGs. They can provide crucial evidence of completed offences, plans for future offences, the methods used for money laundering, and the connections between criminal associates, among other things. The depth of the investigation and the level of invasiveness of the investigative techniques will be guided by operational needs, but in all circumstances, should be conducted in accordance with domestic law (including when carrying out such activities on behalf of or with foreign partners). Although some of the techniques may represent serious invasions of privacy, countries should ensure they are available for ML, associated predicate offences, and TF, so that competent authorities investigating these offences may seek their use in appropriate cases. R.31, notably, does not limit these techniques only to serious cases. When to use them is decided by the country, and, realistically, they are becoming more mainstream in major financial investigations.

In jurisdictions that operate an NCBC or civil forfeiture system, it may not be possible to utilise the full range of these coercive techniques purely for the purposes of identifying assets that could be subject to confiscation. However, in such systems, legislative frameworks which govern the use and disclosure of information and evidence obtained through the use of criminal investigation powers (for example, in the investigation of a money laundering or predicate offence) should also permit the use of that material for asset confiscation investigations and proceedings. Given this, close consultation and communication between criminal investigators and financial/asset confiscation teams is of crucial importance.

One related issue that is not covered specifically in R.31 but may be implicated by some of the techniques discussed above is **discovery**, or the legal process of turning over and receiving information from opposing parties in the context of litigation or preparations for trial. The precise obligations on each party, including the government, about what needs to be turned over and when is usually set out in law or procedural rules. If a jurisdiction intends to permit advanced or covert investigative techniques in the context of financial investigations conducted for the purpose of NCBC proceedings, appropriate discovery rules should be in place to protect informants and sensitive investigative methods. For example, laws governing discovery in criminal proceedings often provide immediate statutory ability to redact sensitive information. However, NCBC may fall under other (non-criminal) procedural rules. The same or similar discovery rules that apply to regular civil litigation may also apply to asset recovery or NCBC cases.

ADDITIONAL CONSIDERATIONS

Generally, it is considered a good practice to seek to harmonise discovery rules to the extent possible. When a parallel (simultaneous) criminal and NCBC investigations are underway, LEAs often rely on evidence obtained through advanced or covert techniques in the civil proceedings without disclosing the specific methods used to collect that information. In NCBC proceedings, while it may be possible for the government to claim confidentiality over certain documents or portions thereof, the rules often do not take into account that there may have been criminal investigative techniques used in support of the civil litigation. If jurisdictions intend to introduce NCBC frameworks, consideration should be given to establishing additional discovery exemptions for information which the government should not have to disclose for justified operational reasons. This could include a presumptive ability to redact or withhold information in line with criminal disclosure rules, thereby better protecting sensitive sources and techniques.

Financial investigations frequently involve gathering evidence of communications. Information from email service providers, telecommunications companies, and messaging applications is often necessary to access in the course of investigations, and may become important evidence for use in legal proceedings. In setting the rules for obtaining private communications, it may be helpful for domestic legislation to draw a distinction between headline information and content. The legal justification required for accessing more basic information (such as the to/from field, subject line of an email, SMS log, or the date and length of a call) may be relatively lighter than the legal justification needed to access the actual content of the email or the message itself. The former information, in conjunction with other proof, may help to justify the application or request to seek the latter. Seeking and obtaining headline or basic information could thus be easier than seeking more intrusive records of the content of conversations. Paired with information about specific events or financial transactions, access to headline information may provide a guide to the investigators about the potential relevance of content, and whether to dig deeper to obtain it.

Other examples of useful investigative techniques in the pursuit of AR include: traditional surveillance (observing, "stakeouts"), placement of tracking devices, use of cameras and other ambient recording devices, trash pulls (as discarded material would not normally require a warrant or other legal order to examine), and the use of mail covers (conducted in co-operation with the postal service to monitor and record information about mail and packages sent to or from a suspect's address).

AI as an Investigative Technique and Aid: Increasingly, countries are turning to AI to help them detect both predicate crimes and money laundering patterns. The use of AI holds opportunities, but also certain risks. There are often specific legal requirements that must be observed. For a practical example, France announced in 2025 that it has used AI to help detect over EUR 16.7 billion in fraudulent transactions through its Directorate General for Public Finances. Data mining and AI targeting enabled the collection of EUR 2.5 billion in duties and penalties in 2024. Similarly, the UK's FCA is using AI web scraping and social media tools that are able to detect, review, and triage potential scam websites (up to 100 000 per day). When faced with large data sets, AI may help investigators identify lower-risk or transactions which are likely to be legitimate, thus allowing investigators to focus more swiftly on those that may be higher-risk or suspicious.

With all relevant intelligence, evidence, and data collected, it is another matter entirely to analyse it. In most financial investigations, this occurs on a continuous basis, from the beginning of a case often up to the eve of a trial. Obviously having the skilled human resources to process the information collected is important, but technological aids are playing a bigger role, from blockchain analytics tools to financial analysis tools, to sorting tools based on programmed rules and risk-identifiers. For example, in the UK, the Serious Fraud Office is now using technology assistance review to sort through voluminous digital records. This review tool runs on AI to analyse large data sets to identify and flag items that are likely to be important to investigators. Such technology could be deployed by countries to

speed up otherwise labour-intensive and slow processes of sifting through transactional data. In complex financial investigations, this can speed up the identification of assets, the flow of funds used to acquire them, and the seeking of provisional measures to secure them.

3.4.2. International requests

Asset tracing requests to foreign countries are a common part of financial investigations which may lead to identification and eventual freezing or seizing of assets. International co-operation is discussed fully in Chapter 6, as to both formal and informal requests. However, a brief overview is required here in light of the centrality of international co-operation to surmounting a typical obstacle encountered in financial investigations – what happens when the financial trail takes a turn abroad?

Recommendation 40 requires countries to ensure that their competent authorities can rapidly provide the widest range of international co-operation, both spontaneously and upon request. Many asset-tracing and asset-recovery operations involve funds that cross national borders; therefore, competent authorities should co-operate internationally, either through official, informal channels or through bilateral or multilateral agreements to obtain information from counterparts abroad. Requests for international co-operation should fulfil the specific legal, procedural, and practical requirements of both the requested and requesting state. The fruitfulness of the co-operation depends on the completeness, clarity, and timeliness of the requests, as well as on the protection of sensitive data and the availability of appropriate mechanisms for handling the requests.

Requests for co-operation should contain all information necessary to understand the nature and circumstances of the case. This includes details on the assets to be recovered, their origin, and any evidence linking them to the crime. The request should also include the legal basis for the recovery operation (i.e., which laws and treaties justify the action), as well as provisional measures already taken or needed.

Competent authorities should use efficient, streamlined procedures for the execution of co-operation requests, with mechanisms to monitor and track the status of asset recovery investigations. When appropriate, requests should clarify whether the matter is urgent, stating the reasons and timeframe for a rapid response, i.e. in cases where there is a risk of impending asset dissipation. In these cases, requests for co-operation should be prioritised to ensure a timely and efficient asset recovery procedure. Asset recovery investigations are often carried out in conjunction with other activities in the criminal investigation, such as witness hearings or arrests, both in the requested and requesting state. In such cases, requests should reflect the need to co-ordinate such operations.

Requests should clarify the foreseen use of the information requested. For example, whether the assets information will be used for investigative or judicial purposes, or for repatriation to their rightful owners. Exchanged information should be used only for the purpose for which the information was sought or provided. Any dissemination of the information to other authorities or third parties, or any use of this information for administrative, investigative, prosecutorial, or judicial purposes, beyond those originally approved, should be subject to prior authorisation by the requested competent authority. Countries should establish controls and safeguards to ensure that information exchanged by competent authorities is used only in the authorised manner.

Requests for co-operation should comply with international agreements as well as any regional regulations or MOUs, which clearly establish operational modalities of co-operation between competent authorities. In this context, competent authorities should be able to exchange with foreign counterparts, also for intelligence purposes, "all information that would be obtainable by them if such inquiries were being carried out domestically" (R.40) to identify and trace criminal property and corresponding value. Countries should take part in and actively support multilateral networks to better facilitate rapid and constructive international co-operation in asset recovery.

International requests for co-operation should comply with regulations on privacy and data protection, ensuring that information is transmitted in a secure way through reliable channels or mechanisms for safeguarding data. The competent authorities should maintain appropriate confidentiality for any request, protecting the integrity of the investigation or inquiry or received information in a similar way as they would with domestic data. Requested competent authorities may refuse to provide information if the requesting competent authority cannot protect the information effectively.

International requests for co-operation should respect the basic principles of human rights and the legal processes of the recipient country. In particular, any abuse in the use of requested information or assets should be avoided. Likewise, competent authorities should not prohibit, refuse or place unreasonable or unduly restrictive conditions to international requests for assistance. If the request for co-operation is refused, the authorities should provide adequate justification, e.g., if the co-operation could interfere with ongoing legal proceedings in the recipient country, the request as executed would violate domestic law, etc.

Upon request, competent authorities should provide feedback to the requested competent authority on the use and usefulness of the information obtained, specifying how it was used in the investigation, and thus contributing to improving future co-operation.

More detailed guidance on international co-operation is contained in Chapter 6.

3.5. Criminal property and property of corresponding value

The FATF Glossary provides a new definition of criminal property. This is an encompassing term which is a form of short-hand to capture the various categories of property which may be "subject to confiscation" in a particular case, but which must be legally subject to confiscation along with corresponding value. The Figure below illustrates the categories of property which should be subject to confiscation, as well as their definitions and characteristics pursuant to R.4 and the FATF Glossary. Generally, financial investigations should be aligned with the specific categories of property likely to be subject to confiscation. This ensures that investigative efforts match with legal confiscation powers. Such alignment also helps prevent unnecessary or disproportionate investigations.

In terms of the objectives of confiscation, jurisdictions are free to go beyond the above categories, set out in the definition of criminal property, and to imbue these terms with more specific meanings either through legislation or the development of case law precedents. Within the criminal property definition, FATF does not define "instrumentalities" or "property laundered", but it does define "proceeds" in the General Glossary as: "any property derived from or obtained, directly or indirectly, through the commission of an offence."

Broadly speaking, the objectives of confiscation may be either proceeds of crime (also called products, gains, or fruits in different jurisdictions), the object of an offence (*corpus delicti*), the product of an offence (*productum sceleris*), or the instruments with which the offence was committed or intended to be committed (*instrumentum sceleris*). These categories are distinct, and countries have the flexibility to define them in national law, to use generally accepted common or legal definitions, or to refer to definitions contained in other instruments, such as multilateral agreements like the Vienna, Palermo, and Warsaw conventions. The categories are also distinct in terms of how confiscation of property belonging to any of them can be justified. For example, while the confiscation of crime proceeds predominantly serves a restorative purpose ("gain neutralisation"), the purpose of confiscating instrumentalities and corpus delicti is largely preventative.

FIGURE 4 – **Property Subject to Confiscation**

For example, where a company has been a vehicle for money laundering it may be confiscated as an instrumentality of money laundering, while the gains generated by its operation may constitute proceeds. Moreover, a distinction can be made between property which has been the object of money laundering and proceeds generated by money laundering, at least in cases where the money launderer functions as a third-party intermediary who merely handles the gains generated by predicate offences committed by someone else. In these cases, property which constitutes the object (or subject-matter) of money laundering should not necessarily be equated with proceeds generated by money laundering. In principle, only the fee that the money launderer obtains as renumeration for his or her services constitutes gain, or advantage, generated by the money laundering, although it may constitute proceeds of other (unspecified) offences. This distinction will be relevant, for example, where the laundered assets are no longer retained by the money launderer, and when the authorities are pursuing corresponding value for confiscation instead of the exact money made in "commission" by the launderer. For example, in 2023 a money mule was sentenced to 60 months in prison for money laundering and identity theft in the United States. Evidence showed that he laundered the proceeds totalling more than USD 2.5 million over three years for an individual he had met online and whom he believed was a woman, but who was actually a Nigerian man engaged in several scams. The forfeiture of USD 100 000 did not reflect all proceeds, but the money mule's profits.

3.5.1. Direct and indirect proceeds, instrumentalities, and commingled property

a. Proceeds

When crimes are committed and result in financial gain, the proceeds of the offence should be subject to confiscation. In the FATF Glossary, proceeds refers to "any property derived from or obtained, directly or indirectly, through the commission of an offence." Direct proceeds can include the immediate, traceable benefits that would not have existed but for the commission of the offence. These are the ill-gotten gains, or the fruits of the offence. Indirect proceeds are indicated in the FATF Standards as income or other benefits derived from direct proceeds. With indirect proceeds, the proceeds are not obtained directly or primarily from the offence, but from the benefit of the direct proceeds. These are longstanding requirements of Recommendation 4, but jurisdictions have the ability to define and distinguish between direct and indirect proceeds and the implications of these definitions under national law. The connection between the offence and downstream, indirect proceeds can extend quite far. Some countries rely on caselaw to circumscribe the parameters of how far direct and indirect proceeds can logically and legally extend.

Direct proceeds involve a clear, unquestionable relationship between the offence committed and the asset to be confiscated. All or most of the asset sought for confiscation will have been obtained by means of the offence. This can be a positive gain – such as stolen cryptocurrency in a cyber hack – or an amount retained illegally because of the offence. The concept of proceeds includes savings, i.e., money that would have otherwise been expended by the perpetrator had he carried out his actions legally (e.g., in an illegal dumping case, the savings is the amount it would have cost to dispose of the contamination legally, without the commission of the environmental offence). Proceeds also include the illicit benefits realised by the perpetrator through tax crimes (e.g., evading taxes that would have been properly due but for the illegal behaviour).[15] Usually, proceeds are more obvious, for instance, the profits of a drug transaction. However, it is more complicated to, for example, calculate the proceeds of an entire drug trafficking organisation over an extended period of time. This can be estimated using accounting techniques.

Proceeds can change their form many times, but the conversion into different types of property does not change or dilute their provenance. A cash bribe, for example, may be invested in the purchase of a house, and the house is eventually sold for a sailboat. In some jurisdictions, the sailboat can still be considered the direct proceeds of the offence, despite having changed form. Other jurisdictions may consider the sailboat as indirect proceeds. But the property should nonetheless be confiscatable because the money eventually used to acquire the sailboat has a criminal origin in bribe-taking. Generally, as long as there is a traceability back to the offence, demonstrable through financial evidence, an asset can be considered direct proceeds and subject to confiscation. However, as outlined above and in Ch. 3.5.5, the permutations of confiscation may vary by national law.

ADDITIONAL CONSIDERATIONS

Whether the property is derived from the offence and is therefore to be considered proceeds is frequently a matter of national law and a question to resolved by the court based upon the law as applied to the facts of the case. Here is how one court in the Netherlands conceived of the answer: "The Court has (...) established that the accused deposited a part (i.e. EUR 43 000) of the amount he obtained by means of the proven offence…into the trust account of the office of his former counsel and that this amount of money belongs to the accused. Under the circumstances, this…money in that third-party account should be considered as belonging to the accused which the accused obtained through the proven offence. Therefore, the Court's opinion that the money deposited on the third-party account is liable to forfeiture does not show an error of law, nor is it incomprehensible."[16]

15. See, e.g., *Laundering the proceeds of tax evasion in real estate* (August 2024). This strategic intelligence alert issued publicly by the Canadian FIU (FINTRAC) and the Canadian Revenue Agency (CRA) provides an overview of how the proceeds of tax evasion are laundered in the real estate sector.

16. Supreme Court (Netherlands) judgment of 10 June 2008, ECLI:NL:HR:2008:BC9196.

The extent to which indirect proceeds fall under the umbrella of criminal property will vary by national law, and even by application in a particular case. Countries are encouraged to consider the following examples. Take for instance an illegal lottery which results in hundreds of thousands of dollars of ticket sales. The proceeds of this activity are direct and in cash. This cash is invested in car wash: its building, its equipment, its operating capital, even the salaries paid to its employees. The revenue from this business, which was funded exclusively or mainly with illicit capital, may be considered indirect proceeds of the illegal lottery. The same is true for the rents derived from an apartment building purchased with proceeds traceable to embezzlement. But for the embezzled funds, there would be no apartment building, and even though the sums paid in rent by the tenants are completely clean, the perpetrator would have no right to them without his initial investment of proceeds in the building. Generally, there is some causal relationship from the indirect proceeds, back to the offence. Indirect proceeds can also mean capital gains, or the difference between purchase and sale prices if the value of an asset has increased. Here is how various courts in the Netherlands conceived of indirect proceeds and indirect revenues:

- "The court found…that the person concerned bought the properties…in 1998 from the proceeds of offences and that those properties increased in value…from 1998 to 2013. The court ruled that this increase in value could be included in the estimation of the unlawfully obtained benefit as subsequent profit because this increase in value would not have been realised without this earlier use of the said proceeds."[17]

- "Quite a few of the properties managed and rented out by the accused were…purchased with money derived from crime. This means that the rents generated from the rental of those units - purchased with money derived from crime - as subsequent proceeds are also derived from crime."[18]

- "The computer equipment deployed by the accused to mine bitcoins was supplied with electricity that was (… stolen)…. The mining of bitcoins involves a large consumption of energy by the computer equipment deployed for this purpose…. By mining bitcoins with stolen electricity, the accused generated bitcoins at a lower cost than would have been the case if he had not stolen the electricity used for this purpose. As a result, the accused obtained - to be regarded as subsequent profit - benefits from the theft of electricity. Based on the above, the court concludes that the bitcoins mined by the accused using stolen electricity are liable to forfeiture."[19]

The definition of proceeds can also encompass proceeds as a value (such as the use of a property or other limited rights short of ownership) or the saving of expenses. Given that the proceeds are not necessarily linked with a property right, there may be other advantages connected with a criminal offence that should also be confiscated. One example is found in the definition adopted by EU Directive 2024/1260: "'proceeds' means any economic advantage derived directly or indirectly from a criminal offence consisting of any form of property and including any subsequent reinvestment or transformation of direct proceeds and any valuable benefits" (Art. 3(1)).

b. Instrumentalities

Instrumentalities are considered "criminal property" under Recommendation 4. They are attended by a deceptively simple description as "instrumentalities used in or intended for use in, money laundering or predicate offences." These items are those which bring about the commission of the offence, without which its completion would have been impossible. They are "tools" of the offence.

Instrumentalities may not necessarily extend to contraband, or that which is illegal to have and the possession of which is a crime in and of itself. This is why the cocaine in a drug offence or the arms sold in a weapons trafficking offence

17. Supreme Court (Netherlands) judgment of 10 July 2018 ECLI:NL:HR:2018:1154.
18. Hague Court of Appeal (Netherlands) judgment of 23 April 2019, ECLI:NL:GHDHA:2019:869.
19. Hague Court of Appeal (Netherlands) judgment of 24 October 2018, ECLI:NL:GHDHA:2018:2821.

are not considered instrumentalities of the crime. They are the subject, or object, of the offence. From the inclusion of property laundered in the "criminal property" definition – which is the subject of the money laundering offence – it is implied that the subject of a predicate offence is not similarly subject to confiscation as an instrumentality. MERs, for example, have briefly noted confiscations of drugs and weapons to demonstrate capacity and willingness of the competent authorities to conduct some confiscations in the broad sense of the term, particularly where other confiscation achievements were lacking.

But these contraband confiscations have not been weighted at all (or heavily) in terms of ratings on IO.8 because they were not recognised as instrumentalities in the FATF-sense of the term. The reasoning is that if the opposite conclusion is reached, the country which takes the most drugs off the street could be considered highly effective at confiscation. However, the FATF concept of confiscation is a result that requires some financial investigation; it attacks the financial consequences and underpinnings of crime. Depriving criminals of contraband is a worthy goal, but is not necessarily or always within the FATF's definition of criminal property. A country may make confiscation available for the subject or object of the offence under its domestic laws. This is often considered as *corpus delictus*, or the object relating to which the offence was committed (literally, the body of the offence). But the status of these items or objects as "instrumentalities" in FATF precedent is doubtful.

The traditional criminal law understanding of instrumentality can include an item or object which was used in the preparation or execution of an offence, the objects by means of which the detection of the offence has been concealed (e.g., a vehicle with secret compartments for smuggling cash), and objects manufactured or built for use in the commission of the crime (e.g., the stamps used to forge passports, the 3D printer with which the gun was printed in a murder-for-hire). Some countries take an expansive view of instrumentalities, including items used to obstruct the detection of the crime, whereas for others, they would not view items used after the completion of the offence to be an instrumentality of the crime.

ADDITIONAL CONSIDERATIONS

Here is a sample of how some courts have described the characteristics of instrumentalities subject to confiscation in real cases:

- "The court of appeal (...) has established that on the hard disk of a seized Toshiba computer Skype conversations were found in the proven period between the accused and the persons mentioned in the proven charges, which conversations concerned, among other things, the sending of one of the proven amounts of money to those persons and the manner in which the money was to be divided among those persons. In view of this, the court's opinion that the proven facts were committed with the help of the confiscated Toshiba laptop is…also adequately reasoned."[20]

- "[A] search took place under the direction of the examining magistrate at the defendant's residence…. During the search, items, including mobile phones, were seized by order of the…magistrate…[T]he court is of the opinion that the items…(including the aforementioned PGP phone) in the list of seized items are forfeited…because the objects belong to the accused and with the help of these objects, the proven offences were committed or prepared."[21]

20. Supreme Court (Netherlands) judgment of 16 February 2021, ECLI:NL:HR:2021:229.
21. Court of Appeal of The Hague (Netherlands) of 23 February 2023, ECLI:NL:GHDHA:2023:324.

- "Defendant was guilty of a violent robbery of an elderly man in his home and an attempt to withdraw money with the stolen bank card…. The offence proven…was committed with the aid of the seized…steak knife, while its detection was impeded with the aid of the seized…bottle of cleaner. The court has not been able to establish to whom they belong. They will therefore be forfeited."[22]

- The accused was guilty of hemp cultivation at various locations over a long period of time and participating in a criminal organisation. "The charged and proved offence was committed with the help of the seized… items, namely a Jammer, diary and several transformers/lights. Moreover, the detection of the charged and proved offence was obstructed with the help of the confiscated jammer…. The objects belong to the convicted person. They will therefore be forfeited."[23]

As a counterexample of a case involving instrumentalities, the Court decided in B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi v. Slovenia, App. No. 42079/12 (ECtHR 17 Apr. 2017), that property sought for confiscation as facilitating property did not meet the threshold. The Court noted "there can be no doubt that the protection of human health and life – the grounds cited as justification for the measure – requires decisive action on the part of the Contracting States to reduce drug related criminal offences. That said, the confiscation of property used in the commission of such offences may, as in the present case, impose a significant burden on the third parties to whom the property belongs." The Court stated that "[t]he exercise of balancing the general interests of crime prevention and the protection of the affected individual's rights in these circumstances thus means that imposing such a burden on the owner of the property concerned can be justified only if his interest in having the property returned to him is outweighed by the risk that its return would facilitate drug trafficking and undermine the fight against organised crime." Thus, the Court concluded that "it does not appear that the lorry was adapted for smuggling drugs, nor were there any previous incidents caused by a failure on the part of the applicant company to prevent illegal shipments from being transported by its vehicles which would raise the question of the applicant company's own responsibility for the commission of the criminal offence in question. This, coupled with the fact that the lorry driver was convicted of drug trafficking and sentenced to nine years' imprisonment, hardly allows for the conclusion that the lorry might be used again for transporting illegal substances."

Finally, there may be some benefits or rights subject to confiscation which do not fall neatly into any of the categories above. They may be considered indirect proceeds, windfalls, or other adverse results which should be prevented through confiscation. For example, imagine a convict has a mortgage right established on the immovable property belonging to him via a "loan back" arrangement. If only confiscation of the immovable property takes place (e.g., because it represents the proceeds of an offence), this will lead to repayment of the criminal mortgage loan upon foreclosure and thus indirectly allow the convict to dispose of his criminal money again. Therefore, as has long been required by R.4, jurisdictions should have measures for the freezing, seizure, and confiscation of both primary proceeds directly derived from criminal activities and secondary proceeds indirectly connected thereto.

c. Commingled property

The extent to which commingled property falls under the umbrella of criminal property will vary under domestic law, and even by application in a particular case. Commingled property is that which may have both a legal and illegal origin simultaneously. For example, an account which contains clean *and* dirty money, or a piece of real property acquired with proceeds of an offence *and* legally earned salaries or savings. Commingled property could be subject to confiscation under two theories: (1) that it is "property laundered", or (2), that it is the instrumentality of a money laundering offence.

22. Arnhem-Leeuwarden Court of Appeal (Netherlands) judgment of 20 August 2015, ECLI:NL:GHARL:2015:6115.

23. Arnhem-Leeuwarden Court of Appeal (Netherlands) of 04 February 2013, ECLI:NL:GHARL:2013:BZ6764.

Commingled property can be an instrumentality of money laundering "used in the offence" by lending a veneer of legitimacy to the asset, as a "half legal" investment or acquisition. If a bank account or crypto wallet, for example, was commingled for the purpose of concealing and mixing the proceeds of crime such that they become indecipherable from legitimate funds in the washing process, it may be an instrumentality. If legal source funds are used to conceal the proceeds, they can be considered an instrumentality of that subsequent offence, money laundering (even if they are decidedly not proceeds of the predicate offence). The entirety of the property – proceeds and non-proceeds – may be subject to confiscation. Similarly, the authorities may be able to prove that the commingled property is "property laundered". Some countries have legislation which sidesteps this issue, making property that is involved in a money laundering transaction in any way subject to confiscation. This is considered a good practice because it avoids having to prove that it enabled, facilitated, or made possible the ML offence.

ADDITIONAL CONSIDERATIONS

If an asset obtained with both tainted and untainted money can be subject to confiscation as "property laundered" or as the instrumentality of a money laundering offence, this may suggest that the entirety of such an asset should be confiscated. While this approach may be appropriate in some cases, the proportionality of it can be questioned in others.[24] Starting from the premise that it would be proportionate to confiscate the tainted assets and not the untainted assets, countries may wish to consider putting in place their own policies or rules on the approach toward confiscation of commingled assets.

In this context, it is also helpful to distinguish between different cases where the property has been the object of money laundering and cases where this has not been true. For example, where the property has been obtained only in part with proceeds of crime, and where the beneficial ownership is hidden behind shell companies or other arrangements, the property may nevertheless be considered to constitute the object of money laundering, and thus be liable to confiscation, in its entirety. This might also be the case where funds are seized from the hands of the money launderer, but where only parts of those accounts represent proceeds of crime. In contrast, where, for example, the proceeds of crime have been used to finance the refurbishing of a property which is lawfully acquired by and registered on the defendant, it may be disproportionate to confiscate the property in its entirety.

BOX 26 – PRACTICAL TIP: A Model for the Confiscation of Commingled Assets

The Stanford Law Review analysed the different approaches of U.S. courts as to the tracing required under specific ML statutes when the ML offence was committed with commingled funds. The article advocates for the "proportional approach" discussed in *United States v. Loe*, 248 F.3d 449 (5th Cir. 2001). It explains: "Under the proportionality approach, courts would treat a specific withdrawal as containing fractions of clean and dirty money in proportion to the amounts of clean and dirty money in the account as a whole. In *Loe*, approximately 21% of the funds in the account at issue were dirty funds ($470,790.22); applying this 21% proportion to the relevant withdrawal ($776,742) would yield $165,842.42 in dirty funds, a sum exceeding the monetary threshold under [the ML statute]." Thus, the property "involved in the money laundering offence" could then be subject to confiscation, but not the whole of the account. See Audrey Spensely, *Untangling Laundered Funds*, 75 Stanford Law Review 1157 (2023).

24. Some standards, such as the Palermo Convention (art. 12(4)) and Warsaw Convention (art. 5(b)-(c)) limit the confiscation of commingled assets to the assessed value of the intermingled criminal proceeds. This is not to imply that countries may not consider more expansive confiscation authority, but they should consider impact of this approach on proportionality in confiscation and implications for property rights.

3.5.2. Effective control and beneficial ownership

The importance of first uncovering and then proving beneficial ownership of assets in the context of AR cannot be understated. FATF Recommendations 24 and 25 require countries to make the true owners of legal entities and arrangements transparent, thus preventing criminals, terrorists, and other bad actors from using anonymous shell companies and other entities to hide their criminal proceeds and illicit activities. With amendments to R.24 in 2022, the FATF requires countries to ensure that competent authorities have access to adequate, accurate, and up-to-date information on the true owners of companies. The Standard entails a multi-pronged approach, which consists of combining information from, among others, companies themselves, public authorities in a registry, or an alternative mechanism if it ensures rapid and efficient access to BO information (BOI). Importantly for those tracing criminal property, this "adequate, accurate and up-to-date information on the beneficial ownership and control of legal persons" must be able to be obtained or accessed "rapidly and efficiently" by competent authorities, including LEAs, the FIU, and other authorities that have an asset recovery function.

Immediate Outcome 2, Core Issues 2.3 and 2.4, specifically ask to what extent different competent authorities seek and provide "other forms of international co-operation to seek information or assistance from foreign authorities in an appropriate and timely manner…including in asset recovery…and [including] basic and beneficial ownership information." BOI is also specifically mentioned as one of the categories in the "wide variety" of information which should be "available to support the identification and tracing of criminal property and corresponding value" (IO.8, Specific Factor 13).

The fact remains, however, that despite advances on the preventative side, investigators still face challenges when trying to prove that certain assets are in fact owned or controlled by the defendants, or that the property sought for confiscation in an NCBC proceeding is connected with an offence despite its seeming appearance as owned by anunrelated entity. The hallmarks of beneficial ownership are (1) ownership through control (i.e., through shares) or (2) effective control, (i.e., who has the ultimate power or authority to determine what happens to assets, and who benefits from them). In fact, many AR proceedings turn on demonstrating the difference between legal or apparent ownership and beneficial ownership. Proof of effective control or benefit can be a robust form of evidence linking the property subject to confiscation to the wrongdoer. Legal ownership will frequently need to be distinguished from beneficial ownership in confiscation proceedings.

Perpetrators of criminal offences will often try to conceal the fact that they possess assets. They do so partly to avoid seizure, freezing and confiscation. In doing so, they use legal entities to disguise the fact that they actually control and own assets. Nominees may be given titles and the trappings of ownership, but someone else is ultimately profiting from the assets. Criminals take deliberate steps not to disclose the natural person who is actually the beneficial owner. This human is kept as far distant from the entity that "owns" the assets as possible in a bid to remove that person from any plausible claims that he or she is affiliated with the asset.

It may be possible to deduce from the facts that the perpetrator of offences has such control over (and interest in) an asset such that his relationship with that asset can be equated with that of owner, despite the fact that an asset may admittedly not be registered in their name. If a company or assets that it owns come into the scope of an investigation, then there is already some connection suspected. Here, access to BOI by law enforcement is key. Even though the BOI may not be valid and may have been intentionally falsified, it may provide some lead or new piece of information to investigate further. In some jurisdictions, intentional concealment or falsification of BO may even be an offence. In practice, a registry rarely gives the answer investigators wish it did, and other investigative techniques will have to be used to uncover the BO that is not declared, or has been falsely declared. If a suspect's financial dealings are already under investigation, finding heretofore unknown assets they may possess or control is difficult to solve by looking at BO information alone. The direct connection is unlikely. But once financial investigative techniques are used, the BO

information may indicate, for example the use of common addresses, TCSPs, nominees, places or dates of company formation, or known associates of the suspect. It can enrich the picture or display patterns that give investigators reason to believe an asset may be connected, and a reason to investigate further.

It may not be possible to confiscate property at the expense of the offender. In that case, prosecution of the nominee or legal entity who claims to be the owner of the assets may be considered, on the grounds that the ultimate beneficiary of the assets obtained through criminal activity remains concealed or unknown. The question will be whether the nominee or entity representative knew or should have known about the criminal origin of the property, or how it was being used to commit offences.

Moreover, the concealment of criminal assets through more complex corporate and trust structures remains a substantial obstacle in AR efforts. While domestic BOI) may be increasingly available, it is rare for transnational criminals to base all of their legal structures in one jurisdiction. Many jurisdictions are improving the accessibility of BOI for domestically created companies, which in theory makes it more accessible across borders, but verification is still a challenge. In addition, BOI collected in one country as related to foreign-formed companies cannot be expected to be highly reliable. Moreover, several major challenges persist which can slow down asset tracing efforts.

First, there are still jurisdictions with lower levels of technical compliance with R.24 and R.25, jurisdictions struggling with effectiveness as outlined in IO.5, and jurisdictions which still permit secrecy and anonymity, if not through the characteristics of legal structures available by law, than through the lack of regulation or supervision of their DNFBP sectors (especially lawyers, TCSPs, accounts, and real estate professionals).[25] Second, when nested doll structures are used, or webs of companies and trusts that are extremely difficult to unravel, LEAs can hit roadblocks in their quest to reach the ultimate BO. Legal changes, purchases and acquisitions of companies, and restructuring the ownership of assets can also complicate the investigative process. Thirdly, international co-operation on legal person (and arrangement) transparency has not approached a level of interconnectedness, fluidity, and efficiency for competent authorities to do this unravelling work quickly enough to promptly restrain and seize assets. If they are frozen, the claimants who can challenge confiscation will benefit from the sheer complexity and size of the ownership arrangements and the transactions occurring therein (which may also be intertwined with real business activity).

BOI is critical across all stages of asset recovery – identification, tracing, freezing, confiscation, and repatriation. It enables competent authorities to:

- Pierce corporate veils and expose true ownership;
- Demonstrate effective control over assets held by third-party entities;
- Support legal actions such as freezing orders by linking suspects to illicit assets;
- Facilitate international co-operation by providing clear ownership trails across jurisdictions;
- Prevent asset dissipation through early detection of concealed ownership.

Despite the establishment of BO registries in many jurisdictions, challenges persist due to false declarations, outdated records, lack of verification and active maintenance, and the misuse of nominee arrangements or offshore structures. Therefore, reliance solely on registries is insufficient. As mentioned in R.24 and above, to address these challenges, countries are expected to adopt a multi-pronged approach that combines legal measures, investigative techniques, and collaborative frameworks.

25. See FATF, *Horizontal Review of Gatekeepers' Technical Compliance Related to Corruption* (July 2024).

ADDITIONAL CONSIDERATIONS

Accordingly, countries may consider measures on the front-end which can assist financial investigations and asset recovery efforts later:

- **Robust verification mechanisms:** Ensure BO registries are not merely passive repositories but that the authorities (within or outside of the registry) have mechanisms for verifying submitted information, penalising false declarations, using tools and intelligence to identify suspicious companies, and striking off inactive entities.

- **Inter-agency collaboration:**
  - Establish formal channels for co-operation between BO registries, FIUs, tax authorities, LEAs, AROs, and prosecutors, as relevant;
  - Facilitate real-time information sharing to cross-validate BO data with STRs, tax filings, and TCSP provider records.

- **Use of advanced analytics and technology:** Deploy network analysis tools, AI monitoring, and blockchain analytics to detect hidden ownership patterns and sudden changes in BO structures.

- **International co-operation:** Set up one (or more) mechanism for receiving, sending, and processing BO requests from abroad, if the information is not contained in a publicly available registry.

While mechanisms for co-operation do exist (e.g., FIU exchanges, ARINs, MLA requests, etc.), the process by which competent authorities can most effectively and immediately provide BO-related assistance is not usually known to foreign partners. Therefore, inefficiencies and a lack of responsiveness are common, especially when domestic LEAs are uncertain if they can make certain inquiries or share BOI with foreign requestors, and under which parameters. To facilitate not only asset recovery but AML/CFT enforcement, countries should consider defining their preferred method of receiving BO-related requests, the requirements for doing so, the process, and the length of time expected for a response.

In line with best practices, countries may also seek to establish mechanisms to facilitate inter-agency collaboration between BO registries, FIUs, tax authorities, LEAs, law enforcement, and the private sector to enhance the accuracy, reliability, and operational utility of BO information. This collaborative framework will reinforce the integrity of BO data and enable a more effective response to asset concealment tactics.

The effectiveness of BO transparency hinges on political commitment, a solid legal framework, operational policies that promote accessibility, and the dedication of adequate resources. Governments may consider emphasising BO reforms within their national priorities, ensuring adequate capabilities for verification and enforcement, and fostering a culture of collaboration across agencies and sectors. Without high-level support, even the best-designed BO frameworks risk underperformance. The first line of R.4 states that "countries should ensure that they have policies and operational frameworks that prioritise asset recovery in both the domestic and international context." Domestic BO transparency and functional cross-border co-operation on this topic is vital to actualising this priority. Conversely, a lack of BO transparency, and the continued existence of corporate havens, provides a vulnerability that criminals will exploit to frustrate law enforcement. Additionally, although corroboration will always be required even if BOI is available, the tracing of beneficial ownership through traditional investigative techniques is time-consuming. It can slow down cases and decrease AR outcomes in specific cases, and dent AR outcomes overall even if competent authorities have all the other legal and operational tools they need to be effective.

3.5.3. Gifts and transfers

The proceeds of offences are also made available to other persons by criminals. Examples are gifts and transfers of those proceeds to legal persons (e.g., as part of a cover-up), or to family members and associates. In the case of gifts, the assets in question will now belong to another person. In that case, it will have to be examined whether the receiver/beneficiary was acting in good or bad faith. In the latter case, it can be argued that the receiver/beneficiary enjoyed direct proceeds from an offence or perhaps was handling criminal proceeds and therefore committed an offence him or herself. The assets in question are thus liable to confiscation. In the case of a gift where the recipient was acting in bad faith, it can also be shown that the recipient's assets increased as a result of the criminal offence. If the recipient then no longer possesses the gift or disposes of the gift received, value confiscation can be considered (see Ch. 3.5.5. below). In fact, in some jurisdictions, courts may be able to nullify any kind of gift/transfer from a suspect to his/her spouse, parents, children, and other close relatives, given certain conditions are met, and pave the way for confiscation based on direct ownership.

If the gift recipient was acting in good faith and had no reason to believe the property might have been subject to confiscation or was criminally derived (as determined by LEA investigation, interviews, evidence, etc.), it may not be appropriate to pursue confiscation. Faced with such a scenario, the recipient may willingly relinquish a gift but should not be pressured to do so by authorities. If a confiscation action is pursued, the person may have a claim of innocent ownership, and the cost/benefit of seeking to recover this property (even if it is proceeds) should be weighed.

Another option is for the suspect/convict to transfer the assets obtained through or from the proceeds of the offence to another person (who can be either a natural person or a legal entity). In this case, the accused/convicted person will receive compensation for this or obtain a claim against the other person. This compensation and claim are indirectly derived from the criminal offence and susceptible to object confiscation. The person to whom the criminal proceeds are transferred, if in bad faith, may also be guilty of an offence. It should then be possible to initiate proceedings against this (legal) person with (among other things) object confiscation of the transferred assets. If the compensation (to the person who transfers the assets) for the transferred assets is much lower than the actual value and the recipient of the transferred assets is in bad faith, it can also be argued that the recipient's assets have increased in a criminal manner. If object confiscation is no longer an option, value confiscation procedures may still offer a solution (see Ch. 3.5.5. below).

3.5.4. Differentiating between bona fide and non-bona fide third parties

According to Recommendation 4, confiscation should not prejudice the rights of bona fide third parties. Bona fide, in legal terminology, generally means that someone acted in good faith and was a purchaser who paid real value in exchange for property or has received a gift without knowing or assuming that it has an illegal nature. The Interpretive Note clarifies that "[c]riminal property and property of corresponding value extends to property owned or held by third parties, but without prejudicing the rights of bona fide third parties. Examples of circumstances where property is owned or held by non-bona fide third parties and could be criminal property or property of corresponding value include: (a) property under the effective control of the defendant or person under investigation and, for example, held or owned by family members, associates or legal persons and arrangements; or (b) where the property has been gifted or transferred to the third party for an amount significantly above or below market value."

These are only two, non-exhaustive examples, but the core of the inquiry is whether it can be established that the third-party knew of or about the criminal origin of the assets or could have reasonably suspected it, when the objects are not directly in the possession of the defendant. The investigators will have to look for proof that the transfer of the asset to the third party was, in fact, a sham, or a ruse used to obfuscate the true ownership of the asset. This can be done by eliciting facts related to the nature of the third party's relationship to the offender and the circumstances surrounding the transfer. For instance, once the investigation was closing in on the offender, did he or she transfer

assets quickly, through a rushed process, where the consideration supposedly paid was nominal, or not valuable. Transfers to certain third parties may be questionable – especially minor children. And if the third party was a newly-established legal entity, information on persons responsible for the registration of that entity can be relevant (e.g., the same service provider who knowingly assisted the offender in establishing corporate entities in the past). If the third party, especially legal persons, is associated with or involves the same entities used in the criminal scheme (for instance, they share a mailing address or manager), this may indicate foul play.

Moreover, countries are increasingly facing the threat of money mules used for money laundering activity. Money mules are customers of FIs who lend or transfer control of their accounts to others for the purpose of laundering money. Money mules are common in ML schemes in the traditional banking sector, but are increasingly seen in other sectors, including MVTS, payment services, and card payments. From a R.4 perspective, countries should be able to confiscate the funds in a money mule accounts because they are not the real, beneficial owner of those funds. Thus, the nominative owners of the accounts likely do not qualify as bona fide third parties because they lack a legitimate ownership interest. They are, essentially, aiding and abetting money laundering on behalf of another person, but, even if they lack the knowledge of criminal proceeds to be prosecuted for ML, countries may consider that confiscation is a viable option for combatting this threat. The confiscation can also be linked to the prosecution of the controller who recruits the money mule.

Furthermore, there may be facts indicating that the mule does not have a legitimate ownership interest in the funds transacted in their account. Even if they do (rarely) make a claim to contest the seizure or forfeiture action, investigators can find proof that they do not have the financial means to justify the activity or funds; show that the amounts are disproportionate to their known legal income; demonstrate that the account was recently opened and inconsistent with other activity of the mule; and use CDD records to prove gaps or inconsistencies. Mules are often recruited among students or persons in the "gig economy", and they provide a valuable service to criminals in renting their access to the financial system for a fee. This is another example of a situation under INR.4 where a person would not be considered a bona fide third party or innocent owner. The money mule modus operandi should not generally be seen as an obstacle to confiscation.

It is not always possible to distinguish between bona fide and non-bona fide third parties during the investigation. If a provisional measure is used to secure the asset, it may take a challenge, or litigation, to draw out the facts which support the claimant's argument that he or she is a bona fide third party. It is not considered a good practice to seize assets only for this reason, without a reasonable belief that the property is subject to confiscation, but it is also possible that

FIGURE 5 – **Distinguishing Between Third Parties**

CRITERIA	BONA FIDE	NON-BONA FIDE
Knowledge of Crime	Unaware of the criminal origin	Knew or should have known
Intent	Good faith, no concealment intent	Intent to assist or benefit
Consideration	Fair value exchanged	Received as gift or undervalued
Legal Protection	Protected from confiscation	Subject to seizure
Due Diligence	Checks conducted properly	Neglected source verification

the true owner is not known until a step is taken towards confiscation. Whether a third party is bona fide or not is case specific, which is precisely why countries should have broad powers to seize and confiscate assets that are not directly owned by the defendant in a conviction-based confiscation situation, and why the courts should be empowered to swiftly release assets that are mistakenly seized and turn out to have been owned by bona fide third parties.

3.5.5. Corresponding value

Alongside criminal property, the FATF Standards require countries to be able to confiscate *and* seize or freeze corresponding value. Jurisdictions may choose to have value-based confiscation as their main conviction-based confiscation mechanism, but jurisdictions which have object-based confiscation as their primary mechanism *also need to have the ability to confiscate corresponding value*. Therefore, this sub-chapter deals with corresponding value in its own right, but contains principles which may also apply in the context of a value-based confiscation system. Value-based confiscation is a distinct approach, covered in this Guidance at Ch. 5.3.2. Countries should keep in mind that some legal frameworks *only* use a value-based approach to confiscation, and do not delineate between traceable and untraceable assets whatsoever once the criminal benefit is calculated.[26] When discussing corresponding value, there is some conflation of terms. Countries should have at least corresponding value in the FATF-sense of the term, but they may have a value-based system where they do not need to show that the proceeds or instrumentalities are unavailable. The former is mandatory, and the latter is encouraged.

Corresponding value is not a defined term in the FATF Glossary, but corresponding value is generally understood to mean those assets which could be confiscated when the assets traceable to the crime are unavailable. While the FATF uses the term "corresponding value" to signal that the value confiscated should correspond to, or have some relationship with, criminal property, countries may refer to this as "equivalent value," "substitute assets," or another similar term. The concept remains the same: the assets which would have been forfeitable as criminal property – most commonly the proceeds of the predicate offence and the funds laundered – are no longer available by reason of dissipation, asset flight, removal from the jurisdiction, or simply an inability to identify their destination or location via financial investigation. Thus, the corresponding value is recovered as a way of substituting some *available* asset(s) owned by the defendant, for the asset(s) he or she would otherwise have been deprived of through confiscation. Corresponding value may consist of "clean money" which is not connected in any factual way to the offence of conviction. It "stands in" for the assets which would have been confiscated under an object-based confiscation regime.

As with criminal property, the FATF Standards do not distinguish between corresponding value owned or held by a non-bona fide third party. Corresponding value can be confiscated from a non-bona fide third party, per R.4, when it is beneficially owned or controlled by the defendant (see R.4, Note to Assessors).[27] Some jurisdictions struggle with this concept, but like criminal property, corresponding value should not be shielded from confiscation simply because it is not held in the name of the defendant if it is established that the defendant owns and/or controls the asset. Except in the most straightforward cases, it is commonplace for criminal property *and* corresponding value to be hidden behind shell companies, nominees, front persons, etc. A criminal who has proceeds may choose to keep a low profile and distance their name from any properties they may own or control, even legitimate assets of legal origin. Again, as with criminal property, corresponding value should not be confiscated from bona fide third parties, e.g., persons acting in good faith who have no knowledge of the criminal activity at issue.

Corresponding value, as a concept, relates in different ways to the different categories within the scope of the definition "criminal property". As noted above, while it can hardly be unfair to confiscate corresponding value in

26. For instance, the UK's criminal confiscation framework is *in personam*, against an individual, and can be satisfied by any means. However, assets can be identified and restrained that are not linked to the criminal conduct, but "correspond" to the calculation of criminal benefit.

27. The Note states, in pertinent part that "for all criteria where there are requirements regarding criminal property and/or property of corresponding value, these apply whether the property is owned or held by a criminal defendant or by a third party."

BOX 27 – **COUNTRY EXAMPLE: Securing Assets of Corresponding Value in India**

Under the Prevention of Money Laundering Act (2002), the proceeds of crime is defined as any property derived or obtained, directly or indirectly, by any such person as a result of criminal activity relating to a scheduled offence or the value of any such property or when such property is taken or held outside India, then the property equivalent in value held within India.

A real estate company duped the innocent buyers by promising them to deliver flats, plots, or commercial spaces, however, they neither delivered the projects nor returned the buyers' money. India's Directorate of Enforcement (ED) initiated a criminal investigation which revealed that the directors of the company in connivance with others siphoned off money collected from buyers in the form of buy-back of shares, redemptions, and debt securities, etc.; giving loans and advances to associated entities/persons; and giving excessive incentives and advances to key managers to fudge the books of account, who in turn, invested it in purchasing immovable properties and shares of companies within and outside India. ED identified other immovable properties controlled by the defendants and subsequently attached properties worth INR 17.77 billion (USD 204 million), corresponding to the monies siphoned off outside of India.

relation to proceeds of crime which the perpetrator no longer retains, it may be different in the case of the "object of money laundering." Confiscating the value of laundered assets which are no longer retained by the perpetrator may be disproportionate in a case where he or she has mainly acted as a third-party intermediary, such as a courier, money mule, or middle person. Moreover, confiscation of value corresponding to instrumentalities owned by others may not always be justified in view of the preventative purpose that the confiscation of instrumentalities from the hands of the perpetrator serves to achieve. In these instances, it can be helpful to conceptualise the confiscation of corresponding value as targeting the *benefit* obtained by the person from crime. In the case of the money mule, while it may be disproportionate to confiscate the total value of the laundered assets, it appears reasonable and proportionate to confiscate the value of any fee or 'cut' (a benefit) received for performing their role in laundering the money.

Recommendation 4 is clear that provisional measures must also be able to cover corresponding value (R.4(d) and INR.4(5)-(7)). Ideally, if corresponding value will be pursued for confiscation, competent authorities will seek to secure these on a provisional basis, thus increasing the chances that they will be available for recovery. In some countries, if the authorities are turning to corresponding value, it is likely that they have previously been unable to locate or secure assets falling under the category of "criminal property". Here, corresponding value is often the next best option, after criminal property is exhausted or unreachable (i.e., plan B). In other countries, value-based confiscation is the default method, and the law does not require that property derived from criminal activity is sought first or preferred for confiscation (i.e., plan A). In these systems, it does not matter if the property is traceable to the offence; it only matters that a certain amount of criminal wealth was gained, and that sum can be satisfied through any assets owned or held by the defendant, based on the concept that all assets are fungible.

Corresponding value may thus be thought of as a first choice (plan A), or a second choice (plan B). Under both plans, it is vital to pro-actively seek and use provisional measures to secure corresponding value starting from the moment the authorities conclude that this is the likeliest path to successful asset recovery.

StAR recently published a study on equivalent value (EV) confiscation.[28] It sampled 22 jurisdictions, examining their frameworks for confiscating and provisionally freezing and seizing EV. It found that seeking the confiscation

28. StAR (World Bank/UNODC), Stefano Betti & Yael Bitton, *From Loss to Gain: Unlocking the Potential of Equivalent Value Based Measures in Asset Recovery* (2025).

of equivalent value is massively beneficial to the effectiveness of a country's asset recovery regime. However, it also concluded that there remain several obstacles to using this important tool, including in the form of technical compliance deficiencies (e.g., there is no confiscation of EV, no provisional measures are available, or only some offences allow for EV confiscation). There was also a substantial gap in awareness among LEAs, prosecutors, and the judiciary about EV (e.g., authorities did not actively use laws on the books, or noted that judges were hesitant to grant EV confiscation as it was seen as unusual or unconventional). Of the 22 jurisdictions studied, all had some form of EV confiscation, but only one-third of them were familiar with the relevant measures *and* used them regularly. There was also a limited use of EV measures in international co-operation.

For the purposes of providing and seeking MLA, requesting countries may wish to be clear about whether their theory of confiscation rests on corresponding value, as this may answer questions about traceability before they are asked by the requested country. Countries also may wish to self-assess how they can provide assistance to countries who solely or mainly operate value-based confiscation systems, and to those countries who seek to confiscate corresponding value located abroad. This is especially salient in cases where the only possibility of recovery is corresponding value. It would create a significant gap in global asset recovery efforts if countries could not provide assistance with respect to corresponding value, a key pillar of R.4(e). This is a highly technical topic, but this Guidance encourages co-operation between countries with vastly different domestic regimes, and suggests that countries try to find commonality for the sake of international co-operation where possible.

Take the example of a case where a country is asked to enforce a lawful confiscation order against assets confiscated in a foreign country which only or primarily relies on value-based confiscation. In this scenario, imagine that the confiscation of corresponding or equivalent value in the requested country would have to be justified if it were to be done domestically. If the law of the requesting country does not require such justifications, then there may be a perceived impasse to co-operation. The requested country may try to deny enforcement on the basis that if the confiscation had occurred there, its own law would not have allowed confiscation under a corresponding value there without justification. However, the FATF Glossary defines "confiscation" to include "deprivation through an order for corresponding value, where receipts from the sale of property rather than title are transferred to the State." As such, corresponding value orders are no less enforceable for the purposes of R.38 than object-based confiscation orders. So long as both countries recognise corresponding value, in line with R.4, that should be enough of a basis for co-operation in most cases. Since R.4 requires countries to be able to confiscate corresponding value, countries may endeavour to find common ground in specific instances of co-operation, even if the laws permitting confiscation of corresponding value (or any applicable theory of confiscation) do not align perfectly between the two countries.

Dual criminality can be a condition for rendering MLA for coercive actions such as seizure or confiscation. When dual criminality is required for MLA, R.37 provides that this requirement "should be deemed to be satisfied regardless of whether both countries" place the offence within the same category, or denominate the offence by the same terminology, provided that both countries criminalise *the conduct underlying the offence*.

Some countries, in practice, have expanded the evaluation of dual criminality to include the notion of "dual confiscatability." Under this approach, and expanding on the example in the paragraph above, the analysis may include (1) whether both countries recognise the offence giving rise to confiscation and (2), whether both could have confiscated the property using corresponding value confiscation. However, an in-depth inquiry into *the circumstances justifying the use of value-based confiscation* in a specific case may exceed the usual parameters of the analysis of "dual criminality" and "dual confiscatability". Dual criminality is the only named "condition" which may be considered by countries when analysing requests for coercive MLA measures in R.37, and by extension, R.38. Therefore, additional considerations, such as an analysis of whether the confiscation powers exactly match up between two countries, may go beyond what is allowable under the FATF Standards, particularly if they are "unreasonable or unduly restrictive"

conditions as mentioned in R.37. Unless there are specific articles addressing this topic in the relevant MLAT, the key inquiry is whether the criminal conduct is a crime in both countries for which confiscation is enabled, not whether the same case domestically would have resulted in the *exact same type or amount of confiscation*.

The laws on corresponding or equivalent value of the requesting and requested states do not need to align precisely. Otherwise, countries without identical laws on corresponding value would not be able to co-operate in many cases. In considering requests related to corresponding value, countries may also note IO.2, Specific Factors 9 ("What are the reasons for refusal in cases where assistance is not or cannot be provided?") and 20 ("Are there aspects of the legal, operational or judicial process (e.g. excessively strict application of dual criminality requirements, reliance on unreasonable or unduly restrictive grounds for refusal)…that impede or hinder international co-operation?"). These considerations may be relevant if requests are rejected solely on the basis that they rely on value-based confiscation,

BOX 28 – **PRACTICAL TIP: Confiscating Corresponding Value**

What problems can confiscating corresponding value address:

- The low rate of recovered assets, compared to the total value of known proceeds
- Difficulty in linking specific assets to criminal activity
- Quick dissipation and spending of tainted property
- Enhancing compliance with international standards (FATF, UNCAC art. 31(1)(a), etc.)

Why countries may not be confiscating corresponding value:

- Lack of awareness of measures available domestically
- Lack of practice using the tool (i.e., among prosecutors, judges, or both) linked to a lack of training or capacity
- Issues in scope (provisional measures not accessible for corresponding value, or it is only available for some predicate offences)
- Limited use internationally and in MLA

Possible solutions:

- Countries should review their provisions related to corresponding value and amend laws to fix any gaps
- Consider removing requirements that the proceeds be unavailable in order for corresponding value to be sough (NB: this is not required by the FATF, but can be the difference between EV as a "primary" versus "secondary" consideration)
- Awareness-raising should be conducted on the utility of seeking correspondent value
- Provisional measures of corresponding value should be sought early and often, including and especially if other assets may pose challenges in realisation
- Countries should track restraints/seizures/confiscations of corresponding value as a separate category of statistics, to monitor effectiveness over time
- MLATs and other agreements that are negotiated or amended should specifically mention and allow for co-operation linked to corresponding value
- Barriers linked to terminology should be removed (i.e., countries and central authorities should look beyond the name of the tool and consider the nature of the value sought for confiscation in considering request for assistance)
- Countries should consider authorising (by law if needed) competent authorities to launch financial investigations (or more limited asset tracing investigations) post-conviction to locate assets to satisfy corresponding value judgment. This possibility may be especially relevant where no assets or insufficient assets are located in the initial financial investigation. See examples in EU Directive 2024/1260, arts. 12(2) and 17 and Mali's Code of Criminal Procedure, art. 1198.

since this is one of the core pillars of R.4. Certainly, countries are not required to grant any specific request or all requests involving corresponding value, but they are encouraged to seek to co-operate widely and in accordance with their treaty obligations, even with countries whose *default* is "value based" confiscation. Since there is flexibility to approach confiscation in this way under the FATF Standards, there can also be flexibility in providing international assistance based on such confiscations. The use of corresponding value in a certain case is a matter of domestic law – sometimes mandatory, and sometimes discretionary. Even if the requested state would not have approached the case in the same way, they may still entertain how to provide assistance assuming they both acknowledge the principle of corresponding value.

Seeking corresponding or equivalent value confiscation has several benefits. Countries should ensure that they are fully compliant with the FATF Standards on corresponding value, including R.4, R.30, and R.31 (specifically c.4.2 and c.4.4-c.4.7 of the Methodology) on the domestic level, and R.38 and R.40 (specifically c.38.1) when it comes to international co-operation. Shortcomings in the legal framework related to corresponding value can reduce the overall effectiveness of confiscation measures, and, as such, deficiencies may be given additional attention and weighting. These are not a new part of the Standards, but the revised recommendations and Immediate Outcomes 8 and 2 give them more attention. Core Issues 8.2, 8.3, and 8.5 mention corresponding value by name and it is featured in several examples of information and specific factors which may contribute to conclusions on effectiveness ratings. It would advance asset recovery for jurisdictions to increase the use of this tool and eliminate obstacles or perceived reticence to use it among the competent authorities and judiciary.

3.5.6 Asset dissipation and wealth reduction

Understanding the difference between asset dissipation and asset acquisition is important for effectively disrupting criminal financial activities and securing assets for confiscation.

Asset dissipation refers to the deliberate actions taken by criminals to hide, transfer, or deplete assets, making it difficult for authorities to trace or recover them. This sets criminal asset management apart from normal, standard asset management and explains in part why it cannot simply be outsourced without proper oversight. Asset dissipation acts as a countervailing force against asset recovery and may frustrate it entirely. The objective of asset dissipation is to obscure the proceeds of crime and render them inaccessible to law enforcement. The goal of asset dissipation is to frustrate asset recovery efforts by diminishing or fragmenting the value of assets. In response, R.4 highlights the importance of provisional measures, like freezing and seizing assets, to prevent dissipation and asset flight. Authorities are required to act promptly to secure assets once identified, thereby minimising the risk of value erosion or concealment.

Common techniques include rapid transfer, where funds are moved swiftly between jurisdictions or through multiple accounts to obscure their origin. Liquidation is another tactic, involving the conversion of tangible assets, such as real estate or luxury items, into cash or easily transferable financial instruments. Excessive spending is used to diminish the traceable value of illicit funds by purchasing consumable goods, services, or high-value items that depreciate over time. In contemplation that assets may be seized, those involved in crime may spend lavishly on unrecoverable items such as luxury holidays, first class flights, high value drink and consumables. Increasingly, tuitions at prestigious schools and universities can quickly dissipate assets, and diplomas are not recoverable. Additionally, criminals often engage intermediaries or set up complex legal structures, such as shell companies or trusts, to further disperse or dissipate assets.

Asset acquisition, on the other hand, involves the process by which criminals invest or convert the proceeds of crime into valuable assets. This method is used in the money laundering cycle to integrate illicit funds into the legitimate economy, making them appear lawful. Techniques include investing in real estate, where properties are often purchased through

complex ownership structures to store or grow the value of illicit funds. Acquiring businesses is another method, which provides a legitimate front to generate lawful income while blending proceeds from crime with legitimate revenues. Buying high-value assets, like artwork, vehicles, yachts, or jewellery, allows criminals to recoup value later while obscuring the origin of the funds, with the occasional added advantage of portability. Financial investments, such as placing illicit funds in stocks, bonds, or other financial instruments, are also common, as they generate returns and further "legitimise" criminal proceeds. Asset acquisition represents a strategic step in ML operations, aimed at establishing a legitimate appearance for illicit wealth. Criminals often prefer assets that appreciate over time or offer protection against inflation, thereby maximising the financial security of their criminal gains.

The interplay between dissipation and acquisition is complex, as criminals may use both strategies simultaneously to safeguard their interests. For instance, while a criminal may acquire real estate as a long-term investment, they might dissipate other assets through rapid transfers to complicate recovery efforts. This interplay makes it essential for AR to be flexible and comprehensive. Asset dissipation is aimed at frustrating recovery efforts by hiding or depleting value, whereas asset acquisition seeks to legitimise and secure criminal gains within the economy.

From an AR perspective, distinguishing between dissipation and acquisition is critical for formulating effective countermeasures. Preventing *asset dissipation* requires the swift implementation of freezing and other provisional measures, as outlined in R.4. These measures may include securing court orders for *ex parte* freezing and suspension by FIUs or others based on credible intelligence. On the other hand, tracing and evaluating *acquired assets* involves thorough financial investigations to uncover complex ownership structures.

Asset dissipation and asset acquisition represent two opposing but interconnected strategies used by criminals to manage and protect illicit wealth. Effective AR frameworks must address both criminal strategies, ensuring that assets are swiftly secured and identified.

3.6. Evaluation of assets and pre-seizure considerations

Recommendation 4 and its Interpretive Note outline several key requirements and guidelines that inform the evaluation of assets and pre-seizure considerations for the purpose of asset management (AM) and strategic planning. While the Recommendations do not detail every pre-seizure consideration, they establish a strong framework for ensuring the effectiveness, transparency, and accountability of asset recovery efforts. This sub-chapter addresses seizures which are planned for, not those which are unanticipated and arise during the course of other investigative or operational activities (e.g., instrumentalities discovered during an arrest or seizure). However, many of the steps mentioned herein can also be applied post-seizure and adapted to fit the situation.

Recommendation 4 mandates that jurisdictions have measures in place to identify, trace, and evaluate assets that may be subject to seizure or confiscation, and to ensure effective management of property that is frozen, seized, or confiscated. R.30 and R.4(c) emphasise the need for pro-active measures, highlighting that LEAs, prosecutors, and judicial authorities should work together to identify assets early in the investigative process. The timely seeking of provisional measures (R.4(d) and INR.4(C)) ensures that assets are preserved and protected from dissipation, as acknowledged in INR.4(6).

The FATF's general approach throughout the Recommendations emphasises a risk-based approach. A similar approach should inform how authorities prioritise and manage assets during the pre-seizure phase. An effective risk-based approach allows for strategic allocation of resources and ensures that high-risk assets are managed appropriately.

The FATF emphasises that mechanisms for managing and preserving assets must be effective (INR.4(14)). By nature, this means they should be transparent and well-documented to guarantee the integrity of the AR process. Authorities

are encouraged to keep detailed records of the rationale behind seizing particular assets, the valuation methods used, and any risk assessments conducted. While INR.4 does not mention the word "documentation" specifically, it implies the necessity of proper record-keeping to maintain accountability and to ensure that measures taken in the course of AM are transparent and defensible. IO.8, item 17, asks whether there are other aspects of the AR process which promote or hinder the identification, tracing, freezing, seizing, confiscation and enforcement of orders. This presumes proportionality and reasonableness in actions taken, and suggests that authorities need to have a clear, documented rationale for their decisions. This implicitly requires maintaining detailed records of decisions and actions taken, as this documentation would be important for defending these actions in a court of law or for audit purposes.

Jurisdictions should take a balanced approach to pre-seizure planning that combines efficiency with adherence to legal standards. This includes evaluating whether asset seizure is appropriate based on the nature of the asset and the anticipated outcome of the criminal investigation or proceedings (e.g., the rights of bona fide third parties should not be prejudiced, per INR.4(3)). While efficiency in AR is important, measures taken should not violate the rights of individuals or entities (IO8, factor 19). Authorities must ensure that pre-seizure planning respects the principles of due process and proportionality.

Pre-seizure evaluation requires a shift in focus, moving the planning process from a reactive stage at the time of asset acquisition to a pro-active stage that runs concurrently with the criminal investigation or even earlier, when the FIU considers and analyses STRs or financial information that shows promising indications of confiscatable property. Rather than waiting until assets have been seized to consider how they should be managed, LEAs and prosecutors should anticipate asset-related issues early in the investigation. This involves assessing whether there are assets likely to be connected to the crime and whether a plan should be developed to address their identification, tracing, management, and disposal needs. The early integration of AM considerations into investigative plans can help authorities mitigate risk, prevent asset dissipation, and ensure that assets are preserved in a manner that supports their eventual recovery.

Specifically, at the outset of an investigation, LEAs should evaluate the types of assets that may be implicated, and the strategies required to secure them. For example, if the crime involves high-value properties, a tailored plan can be implemented to manage those assets in a way that maintains their market value and prevents deterioration. Similarly, financial assets may require immediate action, such as the freezing of bank accounts or the tracking of electronic transfers, to prevent funds from being moved out of reach. These considerations should be documented and continuously updated as the investigation progresses, ensuring that AM efforts remain aligned with evolving circumstances and legal requirements.

Asset management strategies need to be highly adaptable and responsive, considering the wide array of asset types that authorities may encounter in confiscation cases. Each asset category presents its own set of challenges and opportunities, necessitating an approach that is tailored to the unique characteristics of the assets in question and the specific context of the investigation. The ability to develop and implement flexible management strategies is essential for maximising the value of seized assets and minimising potential liabilities or risks associated with their upkeep.

a. Timing

One issue to address alongside planning for the logistics of the seizure is whether and when the seizure should be conducted. Seizures, like arrests, are a key operational action that results in the investigation becoming overt (if it was covert previously). In the context of the wider investigative strategy, there may be benefit in maintaining covert status for longer. That does not necessarily mean that pre-seizure planning should not begin – this helps prepare the way for when the time is right to seize assets. But the timing of a seizure will always be a key consideration in the pre-seizure phase.

The topic of pre-seizure planning has sometimes been an afterthought within countries' AR systems. However, it is nearly as important as the financial investigative work justifying the legal restraint in the first place and is a major predictor of the overall success of confiscation efforts in a case. Pre-seizure planning is an important phase in the AR process that shapes effectiveness and efficiency of confiscation and subsequent AM decisions (usually by making them easier). This stage should be viewed as a strategic exercise that sets the foundation for successful AR outcomes, rather than a formality or mere procedural step.

b. Suitability

Conducting a comprehensive assessment before seizure is necessary to determine the appropriateness of targeting specific assets, ensure alignment with broader policy objectives, and optimise the assets' eventual value and utility. It is important to establish, as early as possible in an investigation, considerations that will guide asset identification and management. This can be achieved by profiling both the nature of the crime and the individuals involved, as well as examining any demonstrated tendencies regarding the acquisition and use of assets. These include:

- Determining the types of assets typically used by that crime type.
- Assessing how criminals might conceal or disguise assets to evade detection.
- Establishing procedures for handling complex assets such as racehorses, ships/yachts, or high-value, but rapidly depreciating items.
- Evaluating whether investigators possess the necessary skills to identify luxury items, such as recognising high-value artwork or luxury watches, or complex land transactions or financial instruments.
- Considering issues related to victim recoveries and who might be considered the owner or victim in a particular situation.

An important element in pre-seizure planning is assessing the suitability of assets chosen for seizure. This should be a separate exercise from the legal and evidentiary considerations and justifications for the seizure. Assets vary in their potential contribution to AR objectives. Some may possess substantial financial value but come with legal or practical complications that make them difficult or costly to manage. Conversely, assets that appear less valuable might hold strategic significance, such as those linked to influential criminal networks or those that could be repurposed for public benefit. Other assets may appear valuable, but upon closer evaluation, they are highly leveraged or mortgaged and may lack equity sufficient to justify seeking confiscation.

Conducting a thorough pre-seizure evaluation assists authorities in distinguishing between assets that are worth pursuing and those that may consume resources without providing meaningful returns. This distinction is essential for optimising resource allocation, as the seizure and management of assets often require significant logistical and financial investments. While some items can be considered "evidence" in a criminal investigation, not all evidence warrants being managed as an asset for recovery. Furthermore, not all assets warrant management, as there are times when pre-seizure planning indicates that it may be more economical or advisable to have the asset remain with the defendant, subject to constraints on transfer or certain conditions for reporting to the relevant agency or court. The framework should be flexible enough to accommodate this "hybrid" between a restraint and a full seizure in appropriate circumstances.

Pre-seizure planning also addresses the alignment of AR efforts with broader policy goals. Asset recovery is not an isolated activity; it is a means to serve larger societal and legal purposes. Whether it is depriving criminals of illicit wealth, compensating victims of crime, or reinvesting recovered assets into community projects, the ultimate aim is to ensure that asset recovery contributes positively to society. Comprehensive pre-seizure evaluations allow authorities to assess whether seizing a particular asset will advance these objectives. For example, assets that can be quickly liquidated or repurposed for public use may be prioritised over those that require extensive management or

have limited resale potential. By aligning asset recovery with policy goals, authorities can reinforce the legitimacy and social value of their actions, fostering public trust and confidence in the justice system.

c. Preparation

Allocating resources, including suitably skilled personnel equipped with appropriate IT systems for AM, and engaging in thorough planning at this stage allows authorities to address potential risks and challenges effectively. Postponing AM planning until after a seizure can restrict investigations to assets that are readily accessible, while also creating complications related to asset retention, management, and disposal. Pro-active pre-seizure planning expands the scope for identifying and pursuing a broader range of assets and ensures that management strategies are in place to support the preservation and eventual use of recovered assets. Such planning can be conducted by AMOs, LEAs, or other competent authorities tasked for this activity.

Good pre-seizure planning involves the anticipation and management of **logistical challenges** associated with the seizure and upkeep of various types of assets. Different assets have different requirements for preservation and security, and these must be carefully considered before an enforcement action is taken. For example:

- Seizing a commercial property necessitates an understanding of the operational needs to maintain its value, such as property management, lease administration (including tenant retention strategies, rent collection, lease renewals, and handling vacancies), security, and compliance with local regulations and licensing particularities. There are examples of governments temporarily running businesses from ski hills to adult entertainment venues to ensure they do not lose seasonal income opportunities or alcohol service licences that make them profitable. Seizing a business may require appointing temporary administrators to keep operations running smoothly, prevent asset degradation, and protect the interests of employees and creditors.

- Digital assets, like cryptocurrencies, pose their own set of challenges, and may require cybersecurity measures to prevent loss or theft.

Without thorough pre-seizure planning, authorities risk asset devaluation, increased management costs, and the possibility of operational setbacks that could compromise the viability of the AR process.

Another significant aspect of pre-seizure evaluation involves **risk assessment and mitigation**. Identifying potential risks early (such as legal disputes from third parties, rapid depreciation of certain asset types, or challenges in securing physical or digital assets) enables authorities to develop strategies to manage these risks pro-actively. This may include obtaining expert valuations to determine an asset's current and projected market value, consulting with legal advisors to understand any encumbrances or potential claims, and implementing security measures to safeguard the asset. Valuations can be more challenging when physical inspection is not possible during the pre-seizure phase. Risk assessment during the pre-seizure phase ensures that authorities responsible for AM are better prepared to address unforeseen challenges and adapt their strategies as circumstances evolve. Additionally, this pro-active approach can help streamline legal proceedings, reduce administrative burdens, and prevent the misallocation of resources.

ADDITIONAL CONSIDERATIONS

Countries may consider forming panels of experts or cadre of service providers who can provide assistance in anticipated areas of concern. This could involve specialists in valuing luxury items, professionals skilled in analysing financial data, or those experienced with complex land transactions. Experts engaged may need to be security vetted, accredited or licenced by their relevant professional industry body or regulator, and demonstrate AML/CFT and tax compliance to when they enter into a contractual relationship a retainer arrangement with the government. While not every potential issue can be predicted, delays caused by national or agency public procurement regulations can impede the prompt engagement of such expertise, hindering effective response. Ensuring that mechanisms are in place for timely access to specialised knowledge supports risk management strategies and aids in the efficient handling of assets throughout the pre (and post) seizure phase, especially if issues with certain asset classes are likely to recur.

By thoroughly evaluating assets and documenting each material decision and action taken during the pre-seizure phase, authorities can ensure that their operations are legally sound and defensible. This is particularly important when dealing with cross-border AR cases where co-operation may include justifying measures in foreign courts or negotiations between countries over splitting costs. A comprehensive and well-documented pre-seizure plan helps provide a robust framework for justifying asset seizures, both domestically and internationally, and minimises the risk of assets being returned to offenders or disputed in court (assuming the seizure is also legally justified).

Furthermore, pre-seizure evaluation allows for the **strategic allocation of resources**. Managing seized assets requires financial, human, and logistical resources, and these must be allocated efficiently to avoid overextending the capacity of AR teams. By understanding the requirements of each asset before seizure, authorities can develop a resource plan that outlines the personnel, funding, and infrastructure needed to manage and preserve the assets. This level of preparedness can also support better decision-making about whether to engage external asset managers, partner with other agencies, or invest in specialised training for LEAs or AM officials.

Effective pre-seizure planning fosters interagency collaboration and information sharing. Asset recovery often involves multiple stakeholders, including LEAs, AMOs, FIUs, FIs, legal experts, and external AM specialists. Coordinating these efforts domestically requires a shared understanding of the asset recovery strategy and clear communication channels. The pre-seizure phase provides an opportunity to establish these collaborations, define roles and responsibilities, and set expectations for how different agencies will work together. This collaborative approach not only enhances the efficiency of AR but also ensures that all parties are aligned in their objectives.

d. Managing evidence vs. managing assets for recovery

Historically, LEAs have managed objects as evidence, primarily for the purpose of securing materials that are essential to prove the crime in court. Evidence management is fundamentally different from asset management, as the former is primarily concerned with ensuring the integrity of the chain of custody and preserving items needed for trial. Some assets, mainly instrumentalities, may have value as evidence *and* for confiscation. In this case, pre-trial sales may still be an option (for instance, in order to prove drug trafficking or human smuggling, the boat used to transport the drugs or the persons is not needed, but a statement from the police about the boat and its conditions may be). Contraband – including narcotic drugs or illegal weapons – may clearly have evidentiary value. Such property may be object of an offence, and therefore fit the definition of "criminal property". But it may have very little monetary value, represent a threat to public safety (e.g., illegal weapons), or may be toxic (e.g., precursor chemicals or certain drugs). Such property should be destroyed.

Countries should maintain a clear distinction between managing evidence and managing assets intended for confiscation. Each requires tailored strategies and practices. The management of assets for confiscation serves a distinct

purpose that extends beyond merely safekeeping evidence, and extends to depriving criminals of the economic benefits gained through unlawful activity. This is rooted in the principle of disrupting the financial infrastructure that supports criminal enterprises. Consequently, the approach to AM in this context is both corrective – taking the ill-gotten gains away from perpetrators – and preventative – preserving value and thus ensuring that assets or their value are available to be returned victims, repurposed, or allocated for other lawful uses.

Achieving the objectives of AM may require a dual approach, as AR efforts may be carried out simultaneously with ongoing criminal investigations. The necessity for this dual approach arises from the risk that assets may be dissipated, concealed, or otherwise rendered inaccessible if immediate action is not taken. Law enforcement and AR teams must therefore work in close co-ordination, sharing intelligence and aligning their strategies to safeguard assets from the outset. This often involves the use of suspension or freezing orders, injunctions, or other provisional measures to secure assets while criminal proceedings are underway. As underscored earlier in this Chapter, by acting early and decisively, authorities can ensure that assets are available for confiscation once legal determinations are made, thereby maximising their potential benefit.

e. Model plans for asset classes, including VA

For commonly encountered assets, developing model management plans can streamline operations and promote efficiency. These standardised plans provide clear, procedural guidance on issues such as securing, transporting, and maintaining these assets. However, while model plans are beneficial for routine cases, they must be flexible enough to accommodate assets with unique or complex attributes. This flexibility is critical because the characteristics and value drivers of more specialised assets can differ significantly from standard items.

It is a good practice to recall that the asset intake process (the seizure) is not the time to opine on the value of assets. Asset inventories should be drafted in as neutral terms as possible, to prevent future litigation issues. For example, officers should not guess at qualities ("a gold watch" v. "a yellow watch") as the government may be liable later for replacing this value should any assets need to be returned or replaced if lost.

For example, **standard vehicles** might be stored in secure lots to prevent damage or theft, with regular checks to ensure they remain in good working order. Similarly, **jewellery** can be stored in vaults to preserve its condition and prevent degradation. By having these pre-established management protocols, AR teams can respond swiftly and effectively when such items are seized.

High-end luxury vehicles often require more than just secure storage; they may also need regular maintenance to prevent mechanical deterioration, especially if they are intended to be resold at a premium or are still subject to manufacturer's warranties. Factors such as attending to manufacturer recalls, battery conditioning, climate control, and periodic operation are necessary to maintain the vehicle's high value. Neglecting these considerations can lead to significant depreciation, undermining the AR effort.

Similarly, **fine art, wine, antiquities, and antiques** present a different set of challenges. These assets are highly sensitive to environmental factors, such as humidity, temperature, and light exposure, which can cause irreparable damage if not properly managed. Fine art pieces may require specialised storage facilities equipped with climate control systems and security features to protect against both environmental damage and potential theft. In some cases, regular inspections by art conservation experts may be necessary to ensure the artwork's condition remains optimal. Additionally, fine art and rare collectibles often have fluctuating market values that depend on auction trends, artist reputation, collector demand, and aging. Asset managers should stay informed about these market dynamics to make well-timed decisions regarding the asset's disposition or sale.

BOX 29 – COUNTRY EXAMPLES: A Bespoke Approach to Virtual Assets

UNITED KINGDOM: New technological capabilities and the rising use of cryptocurrencies presents new challenges to the asset recovery system principally designed for cash and tangible property. In April 2024, the UK introduced a bespoke regime for the search, seizure, and recovery of cryptoassets. This includes novel powers including the ability to put wallet freezing orders in place, and convert or destroy cryptoassets. This legislation is an example of a pro-active approach in terms of: (1) adapting legislation to new technologies, (2) preserving value of assets as cryptoassets are converted to fiat to reduce vulnerability to fluctuating values; and (3) a co-ordinated enforcement response to track and trace cryptoassets, including by uplifting FI resources and working closely with the private sector to improve the response.

ROMANIA: Since 2018, ANABI has been managing seized cryptocurrencies, gaining solid experience in this rapidly evolving field. At present, the Agency is responsible for over 75 different types of crypto assets, ranging from major ones such as Bitcoin, Ethereum, Tether to more niche tokens. ANABI is the only public institution in Romania legally mandated to manage seized digital assets. All operations are carried out under judicial authority, with strict security measures in place. Assets are stored using a combination of hardware wallets and secure exchange platforms, ensuring protection against cyber threats. In certain cases, and with judicial approval, ANABI has also published public announcements on its website to promote transparency. Ultimately, ANABI ensures that seized cryptocurrencies are securely managed, transparently administered, and, when necessary, liquidated under the supervision of judicial bodies.

Virtual assets such as cryptocurrencies are relatively more complicated from a pre-seizure planning and AM perspective. Their form and storage present challenges, and the volatile nature of cryptocurrency markets means that the value of some of these assets can fluctuate dramatically over short periods.

To manage these assets effectively, authorities need to implement (or have available) robust cybersecurity measures to protect against hacking, fraud, and other cyber threats. This might involve storing cryptocurrencies in cold wallets (for example in offline storage solutions), using multi-signature authentication to prevent unauthorised transactions, or engaging VA custodians who specialise in safeguarding such holdings. Given the popularity of cryptocurrencies and the increasing need to seize assets of this class, countries may consider establishing their own national or agency-specific wallets to provide LEAs and/or courts with a way to securely store seized or confiscated VA. Alternatively, because of the unique custodial challenges, countries may choose to hold VA through trusted, regulated custodians, as some self-custody solutions may be vulnerable to operational errors or cyberattacks. Custodianship need not require extraordinary cybersecurity capabilities if institutional-grade custody partners are regularly engaged. Either way, it is essential to set out clear procedures for all aspects of seizure, handling, custody, and conversion of VA. Failure to secure VA appropriately can result in significant financial loss, as well as reputational damage to the managing authority.

Other types of VA may be subject to seizure in the course of investigations, including stablecoin or central bank digital currencies (CBDC). In the case of centrally issued stablecoins, issuers often retain the ability to freeze assets or even reverse transfers based on legal orders. In addition, CBDCs issued or managed by a government, may present relatively fewer asset seizure or management complications. On the whole, centralised VA or token architecture may be slightly easier to handle from an AM perspective than decentralised VA, but all categories of virtual assets are considered complex and require specialised expertise in pre-seizure planning and AM.

Additionally, asset managers must keep abreast of changes in cryptocurrency regulations, as legal developments can influence the asset's liquidity and potential resale value. Additionally, so-called meme-coins, non-fungible tokens (NFTs), or very obscure coins may have little to no market, especially if the investigation resulting in the seizure relates to the fraudulent issuance, sale, or promotion of such assets. Authorities must accept that conditions change and these assets may have little to no value, whereas the value of some coins may bring a windfall gain at final sale.

Furthermore, when considering whether to seize infrastructure or devices associated with virtual assets in the first place, consideration should be given to (1) how authorities will access the VA (such as whether they have or can obtain the key/seed), and (2) whether seizing a physical item will actually result in property which can benefit victims. For example, cryptocurrency ATMs have become more common and can be used in schemes where victims are encouraged to deposit fiat currency in exchange for VA which is then immediately transferred to criminals. If LEAs seize the machine or its contents on the grounds that it has been a repository or transfer point for the proceeds of fraud, the funds recovered may not ultimately be available for fraud victims if they are finally confiscated. Instead, the owner or operator of the kiosk may be considered the legitimate owner or a bona-fide third party who is legally entitled to the funds. In this example, the seizure would be more effective if directed toward other custodians such as the suspects themselves or the VASPs who are holding, hosting, or exchanging the stolen monies in their VA form.

f. Special considerations for complex assets

In the pre-seizure phase, it may be helpful to determine whether the asset is considered complex. Some categories of assets are usually simple (cash, bank accounts), and some tend to be complex (operating businesses, commercial real estate, live animals). Ultimately, each asset considered for its confiscation value will have to be evaluated on its own merits, as the distinction between simple and complex is not straightforward and can even change over time – assets can become complex.

The classification of complex assets most often refers to those assets which involve considerable management challenges, whether from a cost, manpower, or legal standpoint. For example, the management of enterprises, firms, organisations, banks, insurance and other business or non-profit entities are easily characterised as "complex." Some hallmarks of complex assets are they employ people, provide goods or services to the public, require various licences or permits to operate, or are regulated entities. An initial determination will have to be made whether the government would continue operating the business or conducting the licensed activities of the entity, or whether it might liquidate the firm (and the steps each option would require). At the pre-seizure stage, it is already necessary to consider and plan for the need to appoint external service providers. In the early phases, the first steps will usually be an audit, along with assessments of viability and profitability, followed by obtaining legal counsel to ensure compliance with licensure and other regulatory requirements, and taxes. If employees are present, pre-seizure planning include preparations to take over payroll, and contingency planning for temporary business closures or disruptions.

The overarching principle governing these diverse strategies is the need to apply or adapt existing guidelines thoughtfully and with clear justification. Asset managers should have the discretion to modify standard procedures when dealing with unusual or high-risk assets, but these decisions must be thoroughly documented. This documentation should include the rationale for any deviations from standard protocols, the specific actions taken, and the expected outcomes. By maintaining a detailed and transparent record of these decisions, AM practices become more accountable and defendable in legal and administrative reviews. Moreover, well-documented processes facilitate audits and help ensure compliance with national and international standards, such as the FATF Recommendations.

Transparency and consistency in AM are also vital for maintaining public trust and demonstrating that assets are handled responsibly. The clear documentation of decision-making processes not only provides a solid foundation for

defending AM practices in court but also allows for continuous improvement and meeting community expectations for government. Lessons learned from managing complex assets can be used to refine and update model plans, making them more robust and effective over time. This iterative process ensures that AM strategies remain current and aligned with evolving best practices, technological advancements, and legal requirements.

g. Decision-making

In some areas, the FATF looks to ISOs when developing its own Standards (e.g., as to payment processing). There are some potentially relevant ISOs related to AM which competent authorities may wish to note.

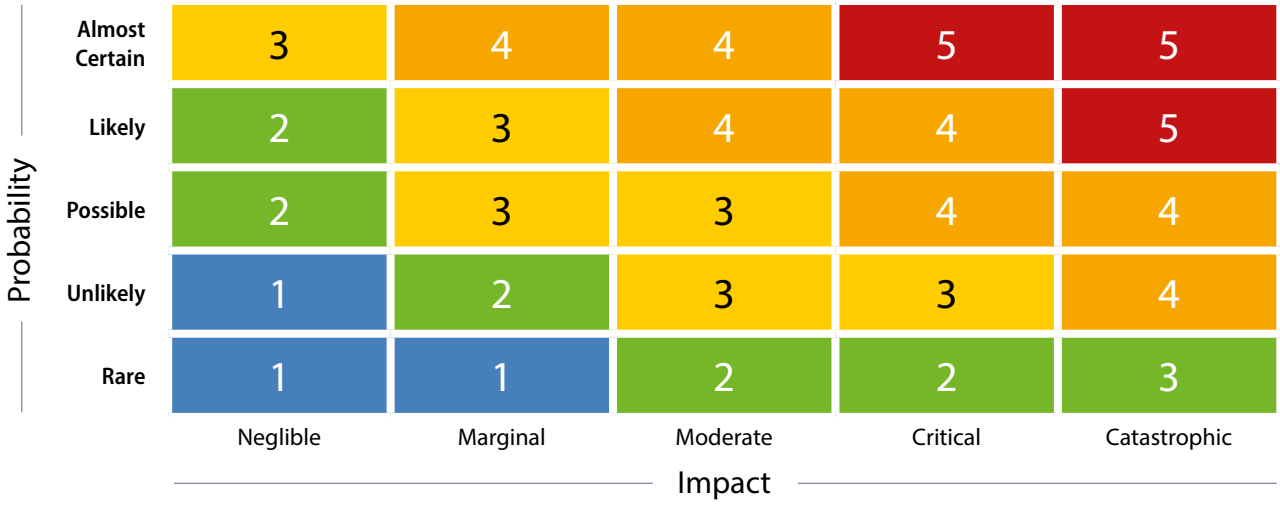
ADDITIONAL CONSIDERATIONS

Practitioners may note ISO 55000, 55001, and 55002 which emphasise a structured, clear, and objective approach to AM decision-making. Many countries already have their own AM legislation, policies, and processes which may be similar to, but not entirely aligned with the ISOs. These governments may have no need to embark on the ISO certification process that applies to the private sector, which may be onerous, expensive, and unnecessary for jurisdictions. Thus, these ISOs are mentioned merely for awareness and not to suggest adherence. Whatever process is chosen, it should take into consideration principles of value maximisation, risk management, and informed decision-making that supports the government's overarching AM objectives. Each decision should be underpinned by reliable data, established criteria, and a consistent evaluation of alternatives to ensure that outcomes contribute to both short-term operational efficiency and long-term strategic goals.

h. Risk mitigation

As one possible "effective mechanisms" referenced in INR.4, paragraph 14, a risk matrix can be a strategic tool to identify, evaluate, and manage the risks associated with the process of seizing and managing assets. This sample table is offered as a framework for competent authorities to map out potential challenges and develop mitigation strategies. A risk matrix table can be organised with risk likelihood on one axis (e.g., from "rare" to "almost certain") and the impact or consequence of the risk on the other axis (e.g., from "negligible" to "catastrophic"). Each risk associated with the recovery process, such as financial, legal, operational, or reputational issues, is placed within the matrix based on its assessed likelihood and potential impact. This may be useful both in the pre-seizure planning stage and later in AM processes.

FIGURE 6 – **Sample of a Risk Table**



ADDITIONAL CONSIDERATIONS

The following points highlight some examples of risks in the AR context.

- High Likelihood/High Impact Risks
  - Significant Maintenance Costs: The ongoing expenses associated with maintaining seized assets could deplete potential returns and leave little for repatriation or public benefit. If not managed effectively, these costs can surpass the asset's value.
  - Public Perception of "Policing for Profit": The risk of public backlash if AR appears profit-driven rather than justice-focused can damage the credibility of law enforcement and judicial authorities.

- Moderate Likelihood/Moderate Impact Risks
  - Complex Ownership Disputes: Legal challenges from third-party claimants or disputes over asset ownership (or rights to use) can delay or prevent the final disposition of assets, incurring additional legal costs and impacting the effectiveness of recovery efforts.
  - Depreciation of Assets: The risk that assets will lose value while in custody, which can occur due to delays in the AM process or lack of appropriate maintenance.

- Low Likelihood/High Impact Risks
  - Criminal Retaliation or Intimidation: The risk of criminal networks attempting to reclaim their assets, either directly or through intermediaries, poses serious security threats to AM processes.
  - Inadequate Due Diligence: Failure to properly vet potential buyers during pre-confiscation sales could result in assets being reacquired by criminal entities, undermining the asset recovery process.

- High Likelihood/Low Impact Risks
  - Administrative Costs: Incidental expenses, such as accessing databases for asset tracing, can cumulatively pose financial challenges if not budgeted for, though they generally do not severely impact the overall AR outcome.

There are several benefits of using a risk matrix. First, this allows enhanced strategic planning. By visualising risks in a matrix, authorities can prioritise areas that require immediate attention and allocate resources effectively to mitigate high-impact risks. Second, it promotes balanced decision-making. A risk matrix helps ensure that decisions about asset recovery take into account not just potential financial returns, but also broader social and justice impacts. Finally, it fosters transparency and accountability. The use of a risk matrix supports clear documentation of the risk assessment process, contributing to transparent and defensible decision-making.

In terms of integrating the risk matrix into asset recovery, AR teams may update their risk matrix as circumstances change and as more information becomes available. The matrix serves as an ongoing reference to help authorities adapt their approach, ensuring that assets are managed and disposed of in a way that meets both legal standards and public interest goals.

3.6.1. Appraising value

Recommendation 4 has long included the phrase "evaluate" in the list of measures related to confiscation. It is situated alongside the tasks of identifying and tracing criminal property and property of corresponding value. These three issues are clearly first-order concerns for financial investigations aimed at confiscation, and they are priority matters for the authorities pursuing provisional measures, but the meaning and purpose of "evaluate" has not been articulated in depth by the FATF before. Recommendation 4 does not explicitly outline the process for appraising

BOX 30 – PRACTICAL TIP: Key Points on the Pre-Seizure Evaluation of Assets

- Focus on planning asset management from the start of the investigation, ensuring asset-related issues are identified early.
- Develop model plans for common assets, while allowing flexibility for unique or complex items.
- Ensure strategies include appropriate documentation and adaptation to specific asset characteristics.
- Integrate asset management as a parallel process to evidence management, avoiding conflation and ensuring each is handled appropriately.
- Identify risks arising from asset dissipation and wealth reduction.

the value of seized assets, but it emphasises the importance of having effective mechanisms in place to preserve the value of these assets. The application of AR measures also should prioritise proportionality and reasonableness, which implicitly necessitates accurate and reliable appraisals of asset value. Valuation is one consideration among many that will factor into the decision whether to pursue assets for confiscation, and it can determine their handling and treatment throughout the entire process, which can take a year or more in most jurisdictions.

The appraisal process should be designed to ensure that the value of an asset is accurately determined to support decisions regarding its seizure, management, potential liquidation, or confiscation. It is a best practice to use objective and market-based valuation methods wherever applicable. The focus is on ensuring that the appraisal process is transparent, defensible, and reflective of the asset's true worth in the current market. This approach helps prevent disputes over asset value and ensures that assets are not undervalued or overvalued, which could either undermine the effectiveness of AR efforts or unfairly penalise the asset owner.

As part of their mechanisms to evaluate assets in the context of R.4 and R.38, the Interpretive Notes suggest jurisdictions should employ experts or specialised agencies where necessary (see also IO8's reference to specialist skills in example of information 1). This may be especially relevant to conduct valuations, especially for complex or high-value assets such as real estate, financial instruments, or unique items like artwork or IP. This is not an everyday task for LEAs or judicial authorities, and even AMOs where established, may face limitations and need outside help.

The appraisal of an asset's value before initiating seizure, if possible, is a key step in the AR process, influencing strategic decision-making and resource allocation. Accurate and well-documented valuations ensure that authorities concentrate their efforts on assets with meaningful value, avoiding the inefficient use of resources on items that may not justify the costs involved. Additionally, having reliable and defendable appraisals can prevent legal disputes and reinforce the legitimacy of AR measures. Clear valuation practices are fundamental for promoting transparency and operational efficiency throughout the process.

Some assets cannot be appraised prior to seizure, such as property seized in urgent circumstances, i.e., an arrest or search. Other assets can only be appraised with assumptions and broad estimates (e.g., an antique, piece of art, or collectible whose condition must be closely inspected). But having a sense of value prior to seizure is the ideal scenario. As mentioned later in Ch. 4.3, periodically re-evaluating assets under management may also be considered good practice.

Conducting a **market-based valuation** is typically the starting point for assessing the worth of assets with well-established market values. This method involves analysing data relating to comparable assets to produce realistic and evidence-based estimates. Valuing assets like real estate, vehicles, and financial instruments requires a comprehensive assessment of factors that may influence their market value. For instance:

- Real estate appraisers consider not only the physical characteristics of a property but also external elements such as zoning regulations, infrastructure developments, and the prevailing demand in the local market.
- Appraisals of vehicles must account for the make, model, mileage, and adherence to environmental standards, as these aspects significantly impact market desirability.
- Financial assets assessments may include performance histories, economic conditions, and anticipated shifts that could affect their valuation. Relevant sources of data may include share prices, histories of sales for like-assets, advertisements, and a whole host of other information.

During the seizure phase of an asset, a replacement cost valuation (rather than market value) is often necessary for insurance purposes and in the event the asset may need to be returned should it not proceed to confiscation. Given the objective of eventual disposal of criminal assets, alternative valuation methods such as value-in-use (present value of future cash flows expected to be derived from an asset) are inappropriate. This is because there is a clear difference between general investment objectives, insurance requirements, and AR objectives.

Consideration also needs to be given to the unique challenges associated with assets subject to confiscation. Unlike assets held by lawful investors, who typically take steps to protect their interests through measures like formal title registration, criminals may deliberately obscure ownership or neglect regulatory requirements, thereby complicating the asset's valuation and future marketability. For example:

- Real property that has been acquired through illicit means or used in criminal operations may have title records that are incomplete or intentionally obfuscated, creating significant legal hurdles for asset recovery. These complications can reduce the property's market appeal, as potential buyers may be wary of purchasing assets with unclear ownership or unresolved encumbrances. In some cases, disputes over title may necessitate lengthy and costly legal proceedings to establish rightful ownership, further diminishing the asset's attractiveness.
- Aircraft require tail numbers issued by a country, flight logs, and detailed maintenance records, including related to manufacturer recalls and updates. Without these, the plane may never be cleared to fly again. Missing or incomplete records, typical obfuscations by criminals seeking to fly under the radar, may frustrate not only valuation, but the appetite for confiscation. Jurisdictions reported legal and operational obstacles pertaining to missing maintenance records and flight logs, demonstrating the need to ensure that such documentation is specifically included in court orders or seizure warrants for aircraft.

Moreover, properties involved in criminal activities are often subject to additional regulatory challenges. For instance, the failure to adhere to planning or zoning laws is common when properties are used for illegal purposes, such as unapproved modifications to buildings or the use of land for activities that violate local regulations. These non-compliances can significantly lower the asset's resale value, as a new owner might have to invest in expensive remedial work to bring the property up to code. This could involve structural repairs, environmental clean-ups, fire safety modifications, or even complete reconstruction to meet safety and planning standards. As far as possible, such potential costs should be factored into the valuation process, as they can affect the overall profitability of recovery for certain asset classes.

Additionally, the criminal context of an asset often leads to an inflated perception of its value for those involved in illegal enterprises. For example, a piece of land used for clandestine operations may be of extraordinary strategic value to the criminal owner, who sees it as a vital component of their illicit activities. However, this subjective value does not translate to the open market. The asset might be worth significantly less, especially if it comes with legal and regulatory baggage. Prospective buyers will likely account for the risks and additional costs associated with rectifying mismanagement or addressing regulatory breaches. As a result, the process of appraising and marketing such assets requires a thorough understanding of both the financial and legal challenges involved, as well as strategies to manage or mitigate these factors to optimise recovery outcomes.

Further, standard market comparisons may fall short when **valuing unique or rare assets**. In these cases, involving specialised appraisers is necessary to achieve a refined and accurate assessment (if this is not possible pre-seizure, then this step can be taken later). Experts with deep knowledge of specific asset categories, such as fine art appraisers or gemmologists, are critical for determining the true value of unique items, which is often a function of their vintage, rarity, or even cultural shifts. For instance, the valuation of rare artwork depends on the artist's reputation, recent auction sales, and trends within the art market. Such detailed appraisals are essential in cases where the value may be contested, as robust and defensible valuations are important for withstanding legal challenges. These experts should generally also be able to assist with verifying that a specialised asset such as jewellery or artwork is not counterfeit. Still, even counterfeit assets may have some realisable value, but infringing IP laws and the risk of making false representations may be considered before attempting to sell such assets. Engaging specialists helps mitigate the risks of selling counterfeit goods as well as undervaluation and overvaluation, which could have serious repercussions for AR efforts and decision-making, especially when disputed in a legal setting.

Once the initial valuation is complete, a **cost-benefit analysis** can help determine whether it is financially sensible to proceed with the seizure and subsequent management of the asset. This analysis compares the costs of maintaining, securing, and insuring the asset with its potential recovery value. The analysis should also consider the interests of third-party secured creditors and the resulting equity or surplus proceeds available for confiscation, assuming the third-party interests are legitimate. High-value or complex assets often come with significant expenses. For example, maintaining a luxury yacht could require ongoing dockage fees, regular maintenance schedules, and comprehensive insurance coverage, which might diminish the asset's net value. It may necessitate the retention of a crew or hundreds of thousands of dollars of fuel to bring it into custody. Similarly, highly specialised assets might need specific storage conditions to prevent depreciation. In such cases, authorities should evaluate whether early liquidation or a negotiated settlement might be more economical than maintaining the asset over time.

Income-generating assets, such as rental properties or operating businesses, introduce additional complexities. Evaluating the long-term benefits and associated risks of holding these assets is key to their best management. For example, a commercial property that generates consistent rental income may seem attractive, but only if the revenue surpasses costs like property taxes, maintenance, financial costs, and administrative fees. Indeed, unforeseen liabilities or market fluctuations could pose significant risks, potentially undermining the asset's profitability. Authorities need flexible strategies to adapt to changing conditions and ensure that assets are managed in a way that maintains or maximises their potential value over time.

Valuing complex assets, such as operating businesses, IP, or VA, requires a sophisticated approach. Business valuation entails a comprehensive review of financial statements, the company's market position, and projected earnings. Authorities must also account for external influences, such as regulatory changes or pending litigation, which could greatly affect the business's future worth. IP valuation involves assessing factors like market exclusivity, potential licensing income, and the enforceability of legal rights. The value of these assets often depends on forecasts of future revenue streams and competition, as well as technological advancements that might impact their market relevance.

Virtual assets like cryptocurrencies pose unique challenges due to their inherent volatility and the evolving regulatory landscape. Valuing VA demands careful consideration of market conditions, trading volumes, and security measures to safeguard the assets. The value of cryptocurrencies can fluctuate rapidly, requiring ongoing monitoring and analysis to maintain an accurate assessment. Authorities must also remain aware of regulatory developments that could affect the asset's liquidity or future value. Properly understanding and managing these factors is essential for effective AR, especially given the unpredictable nature of markets for digital or digital assets. When valuing tokenised real-world assets, two key considerations are the underlying value of the real-world asset and its accessibility and the saleability of the tokens.

The purpose of pre-seizure asset valuation exercises is to influence the decision to proceed with seizure. For instance, when valuing real estate assets – particularly in cases of co-ownership or substantial existing mortgages – the complications may counsel against moving forward, or proceeding with certain precautions. Asset management authorities may consider developing their own methodology used to assess whether assets merit freezing or seizing measures, at least for common asset classes. Providing training on these internal guidelines or considerations to LEAs will help improve their practical understanding of viable v. non-viable assets to target for confiscation. In cases where LEAs are uncertain as to whether an asset is worthwhile for confiscation purposes, they should refer to AMOs or similar bodies who can assist in more precise valuation and provide professional opinions on the basis of industry standards.

ADDITIONAL CONSIDERATIONS

It is a good practice to document valuation findings in a comprehensive report. This report could outline the methods used, the assumptions made, the market factors considered, and any limitations of the valuation. It could identify the experts and any certifications, should they need to be contacted again. Maintaining detailed records supports transparency and provides a clear audit trail. A well-documented valuation process ensures that decisions can be justified and that AM strategies can be adjusted as necessary to reflect changes in market conditions or the legal environment.

BOX 31 – PRACTICAL TIP: Key Points for Appraising Asset Value

- Use market-based valuation methods when applicable, but involve specialists for unique or complex assets to achieve accurate results.
- Perform a detailed cost-benefit analysis to assess whether the potential recovery value justifies the maintenance and management expenses, and consider alternatives, such as settlement or interlocutory sales, if needed.
- Keep comprehensive records of all valuation activities to ensure transparency and accountability.
- For assets such as ongoing businesses or virtual assets, consult experts who can provide thorough assessments and account for potential market or regulatory changes.

3.6.2. Asset management planning (pre-seizure)

In the revised Methodology for IO.8, Core Issue 8.4 asks: "How well are the authorities managing frozen or seized property to preserve its value…". This inherently requires planning to ensure that the value of these assets is preserved from the moment they are seized until they are ultimately confiscated or returned. Asset management planning is indirectly addressed as part of ensuring that provisional measures, such as freezing or seizing assets, do not result in

a loss of value. This implies that authorities should have a strategy for maintaining assets, taking into account the risk of depreciation or other factors that could affect the asset's value. R.4, for its part, requires that criminal property and property of corresponding value "is preserved through effective asset management".

Additionally, on the international side, the Methodology for R.38 points out that countries "should have mechanisms to manage, preserve, and, when necessary, dispose of frozen, seized or confiscated property, at all stages of the cross-border asset recovery process, as set out in R.4" (criterion 38.5). Therefore, the domestic obligations are the same as those that should apply when providing assistance to foreign partners in AR matters. Thus, the FATF emphasises the importance of having clear procedures to ensure that assets are not lost or degraded while MLA processes are underway. In this context, AM planning will involve co-ordinating with foreign jurisdictions to manage assets that may be located internationally. INR.38 recognises that significant costs may arise from international co-operation and the management of assets; these costs should be deductible from asset proceeds, as discussed in Ch. 7.2.3(c). As with any form of law enforcement or legal co-operation, AR may generate costs, but these are necessary to tackle serious criminality.

Effective AM also demands domestic co-ordination between various authorities, such as FIUs, LEAs, prosecutors, judges, and AMOs, to ensure that frozen or seized assets are managed in a manner that maintains their value (see IO.8, specific factor 2, on the amount and nature of co-operation and co-ordination, including between AM authorities and other institutions, and IO.2 Core Issue 2.4). This all requires planning that considers the specific needs and characteristics of different types of assets, whether they are physical property, financial assets, or digital holdings.

Below is a compilation of basic and best practices within the foreseeable scope of the existing FATF provisions on AM. FATF's Recommendations and Methodology imply that planning should be asset specific. For instance, managing real estate requires a different set of strategies compared to financial assets or VA. It is a best practice for competent authorities to consider the nature of each asset when developing management plans to ensure that the assets remain valuable and ultimately usable for their intended purposes, whether for restitution, public benefit, or sale.

Additionally, the need for engaging specialised expertise in AM is also implied. Complex assets, such as operational businesses or IP, may require experts who understand the specific requirements of these types of assets. Recommendation 31 highlights that LEAs and investigative authorities should have the necessary powers to carry out their functions effectively, which includes managing seized or frozen assets or delegating this task to the appropriate domestic agency. Asset management planning is a part of these powers, ensuring that assets are protected from the point of seizure until a final determination is made. The Interpretive Note to R.30 spotlights that "law enforcement authorities and prosecutorial authorities, including those authorities responsible for asset recovery, should have adequate financial, human and technical resources" which necessarily includes the resources to plan for and manage assets.

The following general principles derive from the revised FATF Standards, as related to the "mechanisms" required for AM per R.4 and "effective" AM sought by IO.8:

- Transparency and Accountability: This includes having clear, documented strategies for how assets will be managed to prevent any conflicts of interest, mismanagement, or value erosion. Formal "plans" are not necessary in all cases or with respect to all assets in a case. Materiality, asset value, and potential for diminishment should inform the need for a plan and/or its extensiveness.

- Due Process and Legal Compliance: All activities related to confiscation must comply with national laws and respect the rights of property owners, and bona fide third parties. This suggests that planning must be thorough

and consider all legal implications, such as the need for court orders to maintain control over assets or the use of legal instruments to manage assets effectively.

- Risk Management and Proportionality: Effective AM planning should take into account the proportionality of the measures imposed. Authorities should not only act swiftly to prevent asset dissipation, but also ensure that measures taken are appropriate and justified. This requires assessing the risks associated with different types of assets and planning accordingly to mitigate these risks.

Effective planning can make the difference between preserving an asset's value and that asset becoming a financial burden. The following tips and best practices relate to AM planning, otherwise known as "pre-seizure planning". The post-seizure, interim management of seized assets is covered later in Ch. 4.3.

ADDITIONAL CONSIDERATIONS

Asset management planning begins with developing the **immediate securing strategy**.

As soon as assets are identified for seizure, measures may need to be put in place to prevent tampering, degradation, or dissipation. All serve to protect the asset's integrity and value. Depending on the nature of the asset, initial securing measures may include, e.g.: close monitoring of the asset; taking cash into possession and re-depositing it in a safe location; employing physical security measures to safeguard properties; or placing physical restrictions on the use of vehicles or machinery (locks, car boots, etc). The immediate securing strategy must be well-coordinated to minimise any risk of asset loss, especially in cases where suspects may attempt to damage, move, or conceal assets. Physical assets, such as real estate, may require the installation of security systems, while high-value items like luxury cars or artwork may need to be quickly stored in secure, controlled environments. This approach ensures that assets are preserved in the short-term, until a comprehensive management strategy can be implemented. However, in planning these securing measures, the risk of potentially being noticed and jeopardising an ongoing investigation should be considered, e.g., when conducting surveillance over property or making inquiries to custodians about assets.

Immediate securing measures should align with legal requirements, particularly regarding the rights of third parties who may have a legitimate interest in the asset. This often involves working closely with legal experts to develop securing measures that are effective, yet compliant with existing laws, including local (town or municipal) restrictions. Transparency and adherence to legal standards should be aimed for so as to avoid challenges that could complicate the recovery process.

Furthermore, any actions taken by the authorities or asset managers should be documented. These detailed records may later be needed as evidence of adherence to proper procedures and can be critical in defending against claims of negligence, asset mismanagement, or rights violations, or proving compliance with the steps demonstrating the government's claim or ownership interest.

Moreover, with respect to real property in many countries and localities, property law may require the filing of paperwork with registries or clerks which publicly demonstrates the government's interest in the property. Such a filing alerts the public that there is a legal matter pending concerning that particular piece of real estate. This serves two distinct purposes (1) it is a form of notice to the public, including any potential buyers, owners, lienholders, or occupants, and (2) it prevents further sale or mortgaging of the property, as no legitimate company would execute a transaction concerning this property when title is clouded or a forced change of ownership is pending (e.g., forfeiture). Because such filings can be found by any person or entity searching the property records, they are both a legal and practical requirement for effectuating a proper restraint in many jurisdictions.

Ongoing asset maintenance forms another major component of AM planning.

Assets vary greatly in their maintenance needs, and effective management must be tailored to the specific characteristics of each asset type. For example:

- A high-value property may require regular maintenance to prevent deterioration, such as upkeep of the landscaping, heating, or structural repairs. If the property is left unattended, falls into disrepair, or is trespassed upon, its value can decrease significantly, undermining the recovery effort. In some cases, authorities may need to engage external property managers or contractors with expertise in real estate management to ensure the asset remains in good condition.

- Businesses that are seized or frozen present unique challenges. If an operational business is left unmanaged, its value may diminish rapidly, leading to job losses and a collapse of the business's income-generating potential. In such cases, authorities might need to appoint an interim management team or asset managers who are experienced in running businesses (particularly in distressed or unusual circumstances), thereby ensuring continued operation and minimising any adverse impacts on employees, customers, creditors, or the local economy.

- Financial assets, such as stocks or investment portfolios, may require active management to optimise returns and reduce risk. For these, collaboration with financial experts and investment managers may be prudent in preserving and, where possible, enhancing the value of the asset. Existing authorisations and instructions may need to be reconsidered for financial assets, and asset managers should also consider the costs and benefits of passive and active management (e.g., missed opportunities to profit versus potential transaction fees).

- Complex or higher risk assets, such as IP, VA, or unique industrial equipment, authorities must develop tailored maintenance and management plans. Assets such as patents or trademarks may require legal monitoring to ensure rights are enforced, while VA may need secure storage solutions, such as cold wallets for cryptocurrencies, to protect against hacking or cyber theft. In these instances, it is often beneficial to engage specialists (including from private industry), who can navigate the unique risks and operational needs. It may be possible to come to agreements with such professionals whereby they are paid per engagement, placed on retainer, or paid out of the proceeds of the eventual sale of the asset.

Planning for contingencies and managing risk are also a vital part of an effective AM plan.

Contingency planning involves anticipating potential issues that could impact the asset's value or security after a pre-planned seizure, such as sudden market downturns, physical damage, legal disputes, or interference from external parties. A plan can outline specific actions to take in response to these scenarios. For instance, if there is a risk of market-driven depreciation, authorities may decide to liquidate certain assets sooner rather than later, when legally authorised. Similarly, if a high-value asset is subject to legal challenges from third parties, having a strategy in place to address these claims quickly and efficiently can prevent prolonged litigation and associated costs. For example, motor yachts present a tangible example of property where planning for contingency and risk can keep the value of the asset intact. Yachts require the maintenance of a country flag and certifications which routinely expire, and not tending to these legalities can result in loss of value.

Lastly, risk management should include the establishment of protocols to deal with regular and seasonal patterns – such as weather conditions related to freezes or hurricanes – and irregular emergencies – such as natural disasters affecting assets exposed to the elements or data breaches threatening digital assets. This is especially acute for coastal properties at risk of severe flooding and storms, as such areas are attractive to criminals looking to achieve status

through their asset acquisitions. In cases where significant risks are identified, authorities may choose to insure the asset to provide financial protection against unforeseen losses. Regular risk assessments and updates to the AM plan are central to ensuring assets remain well-protected and that the strategy remains responsive to changing circumstances.

BOX 32 – PRACTICAL TIP: Key Points for Pre-Seizure Planning

- **Immediate Securing Strategy:** Plan and implement measures quickly to protect the asset from tampering, degradation, or dissipation. Ensure these measures are legally compliant and documented to uphold transparency and procedural integrity.
- **Ongoing Maintenance:** Develop asset-specific management plans to maintain value, whether this involves property upkeep, business operations, or investment management. Consider hiring external managers if specialised expertise is needed, and conducting diligence on selected vendors and storage locations.
- **Contingency Planning:** Prepare for potential risks by having protocols in place for market fluctuations, legal challenges, seasonal changes, or emergencies. Insure high-risk assets when appropriate and regularly update risk assessments to adapt to new developments.
- **Engagement of Specialists:** Where assets are complex or require niche expertise, collaborate with professionals who can manage the asset effectively, from financial advisors for investment portfolios to legal experts for IP rights.

3.6.3. Identifying likely claimants or intervenors

According to INR.4, para. 7, "[c]ountries should have measures, including legislative measures, that enable their competent authorities to take steps that will prevent or void actions that prejudice the country's ability to freeze or seize or confiscate criminal property and property of corresponding value." This implies the need for vigilance to potential actions that can impede confiscation, legally, practically, and at any time in the AR process.

Identifying likely claimants or intervenors is an important aspect in the pre-seizure AM process, ensuring that competent authorities are prepared to handle legitimate claims and potential disputes over seized assets. Properly recognising and addressing third-party interests not only helps safeguard the rights of bona fide claimants, but also strengthens the legal basis for AR efforts. This step plays a significant role in preventing protracted legal battles, reducing the risk of setbacks in confiscation proceedings, and supporting the overall integrity of the AR process.

While the validity of any given claim or intervention will be decided by the court in a transparent and open process, AM agencies have practical reasons for identifying these parties. This section primarily addresses *non-victim* claimants or intervenors, but of course victims may also appear and engage during any stage of the AR process (including at the provisional measure or final confiscation stages). To the extent there are likely to be victims in a case, this should be noted in pre-seizure planning, even if these claims are not fully defined or dealt with until a later time. Their existence suggests the need for even more careful planning during the early stages.

One of the main challenges in this area is dealing with **assets that have complex and deliberately obscured ownership structures**. Criminals frequently use sophisticated methods to hide the true ownership of assets, employing layers of shell companies, trusts, or nominees to distance themselves from their holdings. These complex ownership structures require extensive investigation. Authorities may need to review public records, corporate filings, financial disclosures, and property registries to trace the real owners and any parties with potential legal claims. In many cases, this involves working closely with FIUs, corporate transparency registers, and international asset tracing

specialists to uncover the complete network of ownership. In complex cases, LEAs and prosecutors can expect that trust beneficiaries and managers, family members, known and unknown associates, business rivals, and even governments and unrelated persons will appear seemingly out of nowhere to claim interests in property once it is seized or identified as subject to confiscation. Anticipating the potential circle of outside interests helps in sorting out legitimate interests and ownership claims from bogus claims in the future.

Additionally, **assets may be encumbered with financial or legal obligations**, such as mortgages, liens, or security interests held by FIs or other creditors. These encumbrances can significantly impact the AR process, as the claims of secured creditors often take precedence over those of the state or other parties. For example, a seized property might have a mortgage attached, giving the lender a legal right to recover the debt before the asset can be used for other purposes. Understanding these encumbrances is vital for assessing the net recoverable value of the asset and for planning how to address or settle these claims. A thorough legal review is necessary to ensure that secured interests are properly managed and that all relevant parties are notified according to legal requirements and can participate, as needed, in the relevant legal proceeding.

Distinguishing between bona fide and non-bona fide third-party interests is also a critical part of this process. Bona fide claimants are individuals or entities with legitimate claims to an asset who were unaware of its connection to criminal activity. For instance, a co-owner of a property who had no involvement in the crime may have a valid claim. Conversely, non-bona fide claimants might be those who knowingly assisted in hiding or laundering criminal proceeds. Authorities must be able to differentiate these claims to ensure that only legitimate interests are recognised and protected, while fraudulent or complicit claims are appropriately challenged. This distinction is necessary for upholding the rights of innocent parties and for ensuring that AR efforts are both fair and effective. See additional guidance on this topic in Ch. 3.5.4, above.

Due diligence investigations can be used to accurately identify and evaluate potential claims to property that is or will be subject to provisional measures or confiscation. Conducting due diligence in this context means exploring the relationships between the asset owner and other parties who may have a stake in the asset, such as family members, business partners, or creditors. Investigators should be aware of signs of suspicious transfers, granting of security interests, or ownership structure changes designed to cloud title or ownership. When asset transfers have occurred under questionable circumstances, such as those made well below or above market value, authorities should be prepared to scrutinise the legitimacy of these transactions.

ADDITIONAL CONSIDERATIONS

Establishing a transparent process for claimants to present their interests is also key. This involves setting up a clear mechanism for third parties to file claims and submit supporting documentation. The process should be fair and allow for proper evaluation, ensuring that each claim is carefully reviewed. Providing a structured framework for claims management upholds principles of due process and can help prevent future legal disputes. Detailed records of claims and the rationale for accepting or rejecting them should be maintained to ensure accountability and facilitate any necessary legal reviews.

One potential claimant, and potentially the most obvious, is the defendant him or herself. The law may provide access to a seized or restrained asset for living expenses, legal expenses, or extraordinary expenses. A strategy to deal with such applications should be developed to ascertain the likely effects of such applications and how they can be fit for purpose. While these measures may be critical for the protection of rights, they can also have an effect of diminution of the asset over time, which should be weighed prior to seizure in the planning phase and as needed thereafter.

BOX 33 – **PRACTICAL TIP: Key Considerations for Identifying Likely Claimants or Intervenors**

- **Complex Ownership Structures:** Examine and map out all ownership layers, including shell companies, trusts, or nominees, to identify potential claimants and assess the legitimacy of their interests.
- **Financial and Legal Encumbrances:** Review any mortgages, liens, or other secured interests to understand how they may impact the asset's net recoverable value and determine the priority of claims.
- **Bona Fide vs. Non-Bona Fide Interests:** Distinguish between legitimate claims and those with links to criminal activities, ensuring that innocent parties are protected and fraudulent claims are contested.
- **Due Diligence Investigations:** Conduct comprehensive checks on claimants, exploring their connections to the asset owner and looking for red flags that may indicate complicity in criminal conduct.
- **Transparent Claims Process:** Develop a fair and structured procedure for managing claims, with proper documentation and evaluation protocols to ensure all decisions are transparent and legally sound.

4: Provisional measures to swiftly secure assets

Suggested audience:

- FIUs
- LEAs, investigative agencies, and prosecutorial or judicial authorities with responsibility over asset recovery
- Asset managers
- Policymakers

KEY GUIDANCE IN THIS CHAPTER

Provisional Measures: Swiftly Securing Assets

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Chapter 4 Summary

This Chapter discusses an essential step to unlock asset recovery: provisional measures. It focuses on R.4(b) and (d), part C of INR.4 related to suspension and various freezing and seizing mechanisms, and the interim phase of asset management in part F of INR.4. It mentions R.40 on international requests to suspend transactions. It also covers IO.8, specifically Core Issues 8.3 and 8.4, with elements of IO.2, as relevant.

Chapter 4 highlights that the use of provisional measures early and often in financial investigations leads to better asset recovery outcomes. It begins by addressing suspension and withholding of consent to transactions, a key preventative step that is newly required by the FATF and can be taken in response to a suspicion of ML, predicate offences, or TF. The elements of suspension, including when to use the power, who should use it, and how long it should last, are analytically discussed. Whatever model is chosen – via the FIU or other competent authority, direct or indirect – suspension is a limited-duration measure that should enable analysis of the transactions involved and allow sufficient time to obtain and justify a more lasting provisional measure, where needed.

Chapter 4 also addresses a new LEA power: an expeditious freezing or seizing mechanism that is deployable in urgent situations when assets are discovered and they are at risk of immediate dissipation if not secured. The key point is this measure should be flexible enough to allow the possibility of future asset recovery when LEAs uncover assets, but it should be reviewable in short order by a court or judicial authority. The Chapter then addresses the traditional provisional measures which can take many forms (restraining orders, seizing orders) and the characteristics of these mechanisms which make them practicable and useable. Measures to prevent, void, unwind, or even criminalise actions which interfere with asset recovery or jurisdiction over property are highlighted. Chapter 4 closes by discussing interim asset management and emphasising the concept of preserving asset value and the occasional need for pre-confiscation sales.

In summary, competent authorities need a toolkit of measures ranging from the shortest, least intrusive postponements to the more lasting provisional orders, and they should select which measure or combination thereof best fits the circumstances of the case.

In the revisions to the FATF Recommendations and Methodology in 2023-2024, FATF answered the need for a stronger toolkit for provisional measures. The right tool or tools will be determined by the competent authorities on a case-by-case basis; however, a range of options helps countries to be more effective in this all-important precursor to confiscation. The rate of assets confiscated which are not first provisionally secured is extremely low. Early, effective actions are key to increasing the prospects of successful AR, particularly since money can move with the tap of a screen on a mobile phone and be sent across borders in an instant.

This Chapter deals with actions to "swiftly secure assets" on an immediate basis and an expeditious basis (both in a standard timeframe and when urgent action is needed). It also highlights additional features which a country should have (or should avoid) when implementing effective provisional measures. Provisional measures should be able to cover *both* criminal property and corresponding value whether held by the defendant/respondent or a third party (R.4(d) and INR.4(5)-(7) (regarding corresponding value) and INR.4(B) (on property owned or held by third parties).

This Chapter on provisional measures advocates for a pragmatic approach. The tool or tools suited to each case will vary. For example, the suspension power may be useful in the intelligence phase particularly to help determine whether a transaction may be linked to ML (hence the frequent involvement of the FIU). But suspension could also be utilised later in the case, particularly in those moments where confiscation proceedings may be imminent, but

there is a delay while final relevant inquiries or applications are completed or an order is issued by a court. In such a case, an expeditious freezing measure may be beneficial (as discussed in Ch. 4.2), or even a power to freeze based on a reasonable belief of a pending restraint (as opposed to a suspension based on preventing or halting anticipated transactions).

The revised FATF Standards expanded the possibilities for provisional actions so that the gap between asset identification and securing an order can be closed or shortened. Any legal means available under a country's legal system should be considered to prevent the flight, concealment, or disposal of the targeted property. For instance, some countries have the option to work on a voluntary basis with FIs who may be willing to conduct internal, discretionary freezes if LEAs can disclose sufficient information about the forthcoming restraint and circumstances of the case or property. Such voluntary actions may result from an entity's assessment of its risk exposure as a potential party to a ML transaction, in light of the facts disclosed. In fact, FIs and other reporting entities are required in several jurisdictions to refrain from executing transactions that they suspect may be related to ML, predicate offences, or TF. In this case, the "refraining" action is mandatory, not voluntary, and can greatly aid (later) suspensions or restraints. When a conventional restraint or seizure order is imminently expected, any and all legal avenues or encouragements to temporarily secure assets should be considered. When provisional measures are needed, any combination of domestic powers should be contemplated to disrupt ongoing criminal financial activity and increase the likelihood of confiscation.

Throughout the remaining Chapters of the Guidance, the term "affected person" is used frequently. This refers to any person foreseeably affected by a suspension, provisional, or confiscation measure whose property rights may be implicated by the state action. As a helpful reference, EU Directive 2024/1260 definition of affected person in art. 3 covers: (a) a natural or legal person against whom a freezing or confiscation order is issued; (b) a natural or legal person that owns property that is the object of a freezing or confiscation order; (c) a third party whose rights in relation to property that is the object of a freezing order or a confiscation order are directly prejudiced by that order; or (d) a natural or legal person whose property is subject to an interlocutory sale. An affected person would usually not include someone who has a future interest, but not a fully developed right in property (for example, if a real estate transaction is suspended, the buyer or seller who is preparing to transact with the suspect would not normally be considered an affected person).

4.1. Immediate Action: Suspending or withholding consent to transactions

Suspension has been newly introduced into the FATF Standards.[1] This tool has proven effective in most countries where it was already in use, of which there were over 100 when the FATF revisions were agreed in late 2023. The domestic power to suspend or withhold consent to transactions (collectively referred to in this chapter as "suspension") is contained in R.4(b) and elaborated in INR.4, part C, paragraph 4. International requests related to suspension are covered in R.40, and INR.40, paragraph 10.

Recommendation 4 requires countries to have measures, including legislative measures, enabling their competent authorities to suspend or withhold consent to a transaction. It is worth reproducing the exact words of INR.4 for clarity and because the various components of this text will be dissected in this sub-Chapter. It states: "In response to relevant information, countries should enable the FIU or other competent authority to take immediate action, directly or indirectly, to withhold consent to or suspend a transaction suspected of being related to money laundering, predicate offences, or terrorist financing. The maximum duration of this measure should be specified and allow sufficient time to analyse the transaction and for competent authorities to initiate, where appropriate, an action to freeze or seize."

1. For brevity, the word "suspension" is used throughout this Chapter, but it should be read to include "withholding consent", as explicitly recognised in R.4/INR.4. Some jurisdictions use other names for this power, including "postponement" or "freeze" in some limited circumstances. Not all freezing powers wielded by FIUs or other competent authorities will fit under INR.4, para. 4, which has several required elements.

The power to take action to directly or indirectly suspend or withhold consent to transaction is typically a short-term measure that provides time for the FIU or other authorities to analyse the transaction(s) and assess the suspicion that funds or assets involved are potentially related to illegal activity, and for the competent authorities to initiate freezing or seizure measures, when appropriate. As such, the overall objective of this measure is, on the one hand, to prevent the dissipation of funds or assets of criminal origin and increase the overall effectiveness of the asset recovery framework and, on the other, protect the integrity of financial institutions and the global financial system.

Not every investigation or case will give rise to the opportunity to use this tool. The occasions to use this tool depend on a confluence of factors including the speed with which the private sector identifies and alerts to suspicious transactions and attempted transactions (which they should refrain from executing pending the suspension procedure), the pro-activeness of the FIU and LEAs, and good inter-agency (or international) communication. Depending on the suspension system in place in a country, opportunities to intervene may be highly dependent on reporting from regulated entities, complaints and tips from victims or the public, or information from LEAs that is quickly actioned. Although it is not, alone, a tool that will allow the authorities to detect and prevent ML or TF in every instance, it can be a valuable temporary measure. In those moments where quick action stemming from credible information or intelligence is advisable, suspension can be the difference between successfully recovering assets or having them slip away. Suspension is also not an end in and of itself, but should be considered by countries as a stop-gap, or a mechanism to buy time to seek more lasting provisional measures of greater duration requiring stronger proof.

Countries should ensure that the authority to suspend a transaction is provided for in its AML/CFT framework. In practice, many jurisdictions have included this power in law, but other "measures" may suffice as well in line with R.4. Countries may give different names to this type of immediate action, including suspension, withholding consent, FIU freezing power, or postponement of transactions. The terminology is less important than the characteristics of the law and the willingness to use the tool. In many countries, suspension is considered to be a preventative measure and not part of the penal, or repressive, toolkit.

Suspension should extend to all reporting entities, including DNFBPs and VASPS, and not only FIs. Suspension under R.4/INR.4 should reach all reporting entities because (i) there is an absence of any specification in the Standard that it only applies to FIs, and (ii) the Standard is transaction-based, not sector-specific. Any entities subject to AML/CFT obligations and required to file STRs should also be obliged to comply with an order to suspend or withhold consent from a competent authority. While suspension has typically been used by countries in relation to banks, it is equally important that payment service providers, MVTS, VASPs, card processors, and other entities involved in offering or processing instant payments should be covered by the requirement to suspend, particularly in light of the risk of fraud and scams. While most suspensions today appear to occur in banks or other FIs that file significant numbers of STRs, it is conceivable that any transaction could be ordered suspended, including e.g., when real estate agents are

BOX 34 – **COUNTRY EXAMPLE: FIU Freezes in Latvia**

Latvia has an FIU suspension power which allows it to temporarily freeze assets for 40 days after receipt of a report from a reporting entity on refraining from executing a transaction. This may be extended for by an additional 45 days in cases where assets subject to confiscation are identified and forwarded to the LEA for further analysis (and seizure). In recent years 2018-2023, FIU Latvia has frozen more than EUR 1.5 billion. Of the temporarily frozen assets by the FIU, almost all of them (98%) were eventually seized by investigative authorities and the prosecutor's office to secure confiscations where possible.

involved in transactions for their client concerning the buying and selling of real estate, as envisioned under R.22. Moreover, sectors offering services with relatively longer transaction times and more friction, such as real estate and legal services, may in fact have a longer opportunity, or window, in which to accomplish a suspension.

While countries should require all reporting entities to adhere to their suspension requirements, the requirements should be clearly defined and technically implementable, which may mean tailoring the requirement by sector. For example, VASPs often operate across borders and rely on smart contract logic or automated settlement tools. Legal orders that are not interoperable with technical infrastructure may be ineffective or introduce liability risks. Therefore, jurisdictions should encourage regulatory-technical alignment when implementing suspension powers in each sector. For instance, there are requirements under R.15 and R.16 to refuse the execution or reject "undocumented" or improperly vetted fund transfers. Such refusals are a possible precursor to STRs and AR actions.

Some countries have multifaceted suspension powers in that the FIU can refuse permission or consent to carry out a transaction suspected to be related to money laundering, its predicate offences, or TF and it can suspend or freeze transactions due to suspicions. For some jurisdictions, the suspension entails a freezing accounts involved in the transaction, and for others, all funds in the account may be functionally frozen for the duration of the suspension. There may also be a legal prohibition which prevents reporting entities from executing transactions reported in STRs, wherever possible. This feature is a positive one which ensures a future suspension can be effective and that the whole AR chain can be effectively deployed.

This Chapter will address the various models of suspension and its use in both the domestic setting (Ch. 4.1.1-4.1.5) and international context (Ch. 4.1.6).

4.1.1. Various models of suspension

a. Direct and indirect

Countries have the discretion to grant the FIU or another competent authority with the power to directly or indirectly suspend or withhold consent to transactions. Using the power 'directly' would entail that the FIU or the other competent authority is enabled to instruct the reporting entity to suspend a transaction without the involvement of an intermediary (e.g., another competent or judicial authority or a ministry) while executing this measure 'indirectly' entails communicating the instruction or request to suspend to the reporting entity through an intermediary actor, or subjecting it to certain conditions.

The national AML/CFT law of some jurisdictions may require reporting entities to refrain from carrying out for a defined period of time transactions which they know or suspect to be related to money laundering, its predicate offences, or terrorist financing. The transaction is not to be executed as long as the suspicion remains and the FIU or the other competent authority withholds its consent.

When deciding whether the FIU or the competent authority should be able to exercise the suspension power directly or indirectly, countries should consider factors such as the need to swiftly instruct a reporting entity not to execute a suspicious transaction to avoid that the funds are transferred to another account or jurisdiction and, thus, dissipate beyond competent authorities' reach. There may be legal considerations which determine whether the direct or indirect model of suspension is appropriate in a given country and how suspension will be implemented in line with domestic law. Divergence among national authorities can present a challenge for private sector compliance, particularly among regions with otherwise similar legal regimes. Accordingly, countries may consider the advantages of adopting an approach for suspension that is well-defined and communicated, consistent (including potentially consistent across sectors), and which sets out obligations and expectations, especially for novel or newly covered sectors.

BOX 35 – **PRACTICAL TIP: Indirect Model of Suspension by an LEA**

As an example of an indirect model, assume that the police hold the suspension power and reporting entities must enforce a suspension order promulgated by a certain unit within the police. Meanwhile, the security service in the country has been using lawful tools to monitor the online activity of a terrorism suspect, who has convinced individuals, through social media, to contribute virtual currency to a certain wallet. It would be ideal to have the VASP which hosts this wallet, or the exchange which is facilitating the transfers, suspend the transactions (either to hinder donations or prevent onward transfers by the suspect once the funds are received). In this example, the intelligence service would go to the police, explain the situation, and ask them to employ the suspension power promptly. Another example takes the same factual premise, but might include a requirement to obtain prior authorisation from a court. Here, the police do not have the power directly, but seek the permission of a court (for example, an on-duty magistrate who deals with urgent requests). The court takes the action to suspend by issuing a legally binding order to the VASP, but the applicant is the police, and the originator or prompt for the suspension is the security service.

The advantage of the direct model of suspension is efficiency, especially in a situation where time is of the essence. It may be that the authority which develops or receives the suspicion is also the one that is legally empowered to "take immediate action". The immediate action, in this regard, is the administrative order to a reporting entity to do or omit from doing something, such as suspending the execution of the transaction.

The indirect model of suspension is also a valid way of implementing the revised FATF Standards. Naturally, because it is indirect, the possibility of inefficiency should be accounted for and confidentiality issues should be considered (e.g., related to implications of disclosing STRs). Any potential delays resulting from bureaucratic processes can be mitigated by countries ensuring that there are extremely clear roles and responsibilities for all parties involved as well as mechanisms for the fluid exchange of information. Similar to the direct model, in an indirect model, it is a good practice to make the process as streamlined as possible, and certainly to avoid convolution or bottlenecks. Where a country puts in place an indirect model, it is a good practice to establish a hotline, emergency number, or monitored email or online portal, to allow other authorities to "call in" a request for suspension in relation to an ongoing investigation. It is essential to define who holds the power, who can request it, through which means, and in what timeframe. These features are critical, but the country may also consider the suitability of which authority plays which role, how responsive they can be, and seek to avoid over-complication of a process which should be easily accessible and usable, considering its limited purpose and duration.

Whether suspension is indirect or direct, once the decision is definitively made by the issuing authority to suspend, it should be binding on the reporting entities to follow and execute it. This ensures that suspensions are enforceable and not left to voluntary compliance or discretion of the reporting entities. Otherwise, in the words of INR.4, paragraph 4, the FIU or competent authority is not "enabled to take immediate action" but allowed to suggest suspensions which could result in someone else taking action.

If competent authorities can "take immediate action…indirectly" for the purpose of INR.4, para. 4, then this could allow for court involvement in the process if the "taking action" is interpreted to mean *starting the process* of suspending the transaction by approaching a court. Taking immediate action can also be construed as actually *issuing the order* that binds the reporting entity. The second interpretation is more in line with FATF suspension requirement; otherwise, there is little distinction between a suspension as stop-gap, preventative and administrative measure and a traditional *ex parte* restraints or provisional measures. The difference may be one of quickness and immediacy in

terms of whether the FIU/competent authority can act on its own power, or whether it must await prior authorisation from a court. Courts, in principle, could be involved in decisions to suspend or extend a suspension under the FATF Recommendation. This would likely be an "indirect" type of suspension, after another authority has *started the process*, as referenced above. However, judicial involvement in the suspension work-flow may not be the most efficient means of executing this power. Countries should therefore consider how to balance the interests at play – the need to act quickly and take "immediate action" while preserving rights consistent with their legal principles.[2]

However it is structured, the suspension power should be readily available. This is because it is intended as a short-term measure and with a focus on immediacy, per R.4. The FATF incorporated this power partially to equip countries to respond to the exponential growth of fraud and scams, particularly those that rely on fast or instant payment mechanisms and transactions wherein money is exchanged for virtual assets. Thus, countries may seek to avoid imposing a structure for suspension with many layers of review, permissions, and approvals, within the bounds of its domestic law. Although suspension is a temporary measure, it does interfere with the property rights of the affected person, but not for a long time as compared to traditional provisional measures. Because the impact of suspension is more fleeting, less pre-suspension review and/or approval may be warranted for the sake of ensuring situational responsiveness and a speedy process. Generally, the more a legal power or tool intrudes on rights, the more scrutiny and review it should be given; for relatively more minor intrusions, the review and barriers to obtaining the measure can be lower on the sliding scale of scrutiny.

b. Financial intelligence unit

Pursuant to Recommendation 29, countries are required to establish FIUs which serve as national centres for the receipt and analysis of suspicious transaction reports and other relevant data and the dissemination of information to the domestic competent investigative and/or prosecutorial authorities. As such, FIUs, depending on their model and positioning in a country's legal framework, may be well placed to effectively suspend or withhold consent to transactions suspected of being related to money laundering, its predicate offences, or terrorist financing. FIUs are the only direct recipients of STRs submitted by the reporting entities and therefore have access to one of the most important sources of information which may trigger a suspension.

FIUs themselves differ in their models, ranging from administrative FIUs, law enforcement FIUs, judicial FIUs, and hybrid FIUs. A survey by the Egmont Group carried out in the context of a report on the role of FIUs in the asset recovery process shows that a significant number of FIUs across the globe have been granted the power to suspend or withhold consent to a transaction. This survey also takes data from the Egmont Biennial Census from 2019, which reveals that already more than 100 FIUs have suspension powers.[3] Approximately 95% of law enforcement FIUs have a postponement power of some kind, which can be equated to a suspension power. Around 70% of administrative FIUs have a postponement power of some kind, and around 90% of judicial FIUs have the same (per the Egmont Group).

The vast majority of entities in the world that have a suspension power as encompassed in the FATF Standards are FIUs. Suspension can be thought of as one step in a chain reaction which may ultimately lead to the recovery of criminal property, and in many countries, this value chain begins with information received, assembled, or considered at the FIU. Postponement, suspension, and withholding of consent originated as an FIU concept and in countries that already have the power, it is predominantly situated in the FIU. FATF members acknowledged this point, but provided a degree of flexibility for countries to assign the power to another authority if the FIU was not the right choice in their

2. For the purpose of suspension, INR.4 states that "countries should enable the FIU or other competent authority" to take action. Competent authority is a defined term in the FATF General Glossary. It does not clearly include courts or judges as "competent authorities." They are "public authorities" under the FATF definition of "competent authority," but courts and judges may not be considered competent authorities unless they have "designated responsibilities for combatting money laundering and/or terrorist financing" – i.e., the hallmark of a "competent authority" under the FATF definition.
3. Egmont Group, *Asset Recovery - The Role of FIUs* (2022) (containing a sanitised version of the report).

country context. Hence, there is optionality built into R.4/INR.4. Although the FIU is the first-named authority which should have this power, "another competent authority" may exercise the power in the alternative.

One reason that the FIU may be well-suited to have this power is that it is the institution that will be the closest to the financial intelligence which may prompt consideration of suspending a transaction, in many situations. The FIU receives STRs and other types of information from reporting entities, quickly and securely; FIUs must, under R.29, also have the power to obtain and use additional information from the reporting entities as needed to perform their analysis property (see INR.29, Part C). This means that the FIU is the first and exclusive recipient of a major source of "relevant information" which may trigger the use of suspension, and it has the power to revert to the reporting entity (such as an FI, DNFBP, or VASP) to understand further information surrounding the activities or client that led to the filing of the STR in the first place. It is thus logical and efficient for the FIU to have the suspension power. It is also an established practice now in more than half of the countries in the Global Network who have implemented a form of suspension. In line with the FIU's mission to spontaneously disseminate information to law enforcement authorities, investigative authorities, and prosecutors who can then use this information to identify assets and restrain or confiscate the proceeds of crime, it makes sense from an operational standpoint that the FIU should be able to

BOX 36 – PRACTICAL TIP: Suspension & Withholding Consent Approaches

ITALY: The FIU has had the power to suspend transactions since 2007 per Legislative Decree No. 231. The FIU can suspend on its own accord transactions suspected of being related to money laundering, associated predicate offences, or terrorist financing. Suspension can also be ordered upon request of (1) the special currency unit of the Guardia di Finanza; (2) the anti-mafia investigations directorate, (3) a judicial authority in Italy, or (4) a foreign FIU. The suspension can last for no more than five business days and can only be used if it implies no detriment to ongoing criminal investigations. Determining this requires significant interagency co-ordination; to this end, the FIU is routinely and swiftly in contact with the relevant LEAs.

The following table shows the frequency of use of the FIU's suspension power and the values involved:

Postponements	2019	2020	2021	2022	2023
Number of postponements	43	37	30	32	25
Total amount in millions of EUR of postponed transactions	11.4	13.0	18.0	108.7	8.7

Source: FIU Annual Report – 2024

Some prevalent typologies for suspended transactions in Italy include:

- Redemptions/liquidations of insurance policies
- Domestic and cross-border wire transfers
- Ordering or cashing (cashier's) cheques
- Cash withdrawals

GUERNSEY: The Bailiwick of Guernsey uses a withholding of consent model to postpone suspicious transactions. Reporting entities seek consent from the FIU in respect of an act that may constitute an ML and/or TF offence and the FIU maintains responsibility for addressing these requests as a result of a SAR being submitted. The Bailiwick consent regime has regularly been used by the FIU to prevent the dissipation of funds. The refusal of consent thus operates as an informal freeze on the relevant funds which, after 12 months, and in the case of funds at a bank, can be the subject of a summary forfeiture procedure.

... Box 36 continued

Consent Response Types	2019	2020	2021	2022	2023
Consent Granted	1 178	1 071	992	1 297	1 606
Consent Refused	31	29	50	34	102
N/A or Insufficient Information	339	322	263	309	232

Most refused content transactions stemmed from TCSPs (39%) and private banks (30%) between 2018-2023, and the most consents granted related to the e-gambling sector. These measures resulted in the repatriation of USD 120 million to international partners, but fewer domestic restraints and confiscations.

Case Example: In 2017, the FIU received a SAR from a private Bank A. Bank A held funds in three accounts on behalf of Guernsey TCSP A, acting as trustee of a Guernsey trust, and its underlying company, managed by TCSP A. Person A was the sole beneficiary of the trust. Bank A discovered that Person A had been indicted in Country A for conspiracy to pay and receive healthcare bribes and kickbacks. Bank A suspected that the trust funds might be linked to this criminal activity.

The FIU requested documents from TCSP A to clarify the relationship between Person A and the trust, including account details, current assets, values of the trust and company, details on any other linked companies and trusts, and file notes, notes from meetings and conversations, emails and manager's notes. FIU analysis confirmed Person A as the sole beneficiary of the trust, whose settlor was a foreign company owned by person A, with funds purportedly sourced from his earnings as a plastic surgeon and intended as a retirement fund. The FIU refused consent to release any funds.

In 2017, the FIU shared its findings with Country A's FIU, leading to extensive co-operation and information exchange. In December 2017, the FIU disseminated a report to Country A's tax authority. Person A was later charged with tax evasion in August 2018. The FIU also referred the case to Guernsey's civil asset recovery team, ICART, but civil forfeiture was overtaken by the eventual repatriation of the funds to Country A.

Later in 2017, Guernsey received an MLA request from Country A for evidence related to Person A and their financial holdings. Guernsey provided the requested material obtained via production order from Bank A and TCSP A, which helped Country A link the funds at Bank A to Person A's bribery scheme.

In 2018, Person A pleaded guilty in Country A to charges including conspiracy to pay and receive healthcare bribes, offering or receiving illegal remuneration. He had received approximately USD 4.5 million in kickbacks. The results were custodial sentences ranging from 1 to 12 years for co-defendants. As part of a plea bargain, Person A agreed to transfer the entirety of the funds held in Guernsey (USD 2.7 million) to Country A authorities for victim compensation. A second MLA request from Country A facilitated the transfer, and the FIU consented to Bank A making the transfer.

Source: MONEYVAL Mutual Evaluation Report of Guernsey (2024).

press pause, and hold the transaction while further analysis is conducted, consultations with LEAs are undertaken, or authorities proceed to initiate a more lasting action to freeze or seize the assets in question.

c. Law enforcement

Pursuant to the FATF Standards, countries may also grant the power to suspend or withhold consent to a transaction to an LEA with competencies in the area of preventing and fighting money laundering, its predicate offences and terrorist financing.

ADDITIONAL CONSIDERATIONS

If a LEA holds the suspension power in a country, it is a good practice to have dedicated staff, or a specific unit, dealing with suspension across all types of cases and suspicions. If for example, only the anti-fraud or economic crimes section has this power, it may be utilised less by other police components which may benefit from suspension in their investigations.[4] Furthermore, countries should consider and define how financial intelligence could prompt suspensions where an LEA holds the suspension power. For example, in some countries, LEAs have direct access to the FIU database of all types of reports from obliged entities, but whether they can access or easily identify just-filed STRs or STRs flagging attempted transactions (i.e., those most likely to warrant the use of the suspension power) is another matter.

Therefore, if the LEA holds the suspension power, there could be a channel established which would allow the LEA to receive information on such incoming, urgent STRs from the FIU (likely through automated systems). In a sea of millions of filings, only a few might involve information that is current and therefore actionable for suspension, and only in a subset of those filings would a suspension be warranted and effective. Still, if the LEA cannot filter this information on its own, mainly because it does not share or possess the IT infrastructure that the FIU has to connect with reporting entities, it may miss out on valuable opportunities to secure assets. Thus, it is a good practice to put in place channels for the effective co-operation between the FIU and the LEA granted with suspension power for the purposes of exchanging time-sensitive information promptly.[5] This would be generally at the discretion of the FIU, so as not to impinge on its independence or autonomy. On the reverse side, in cases where the suspension power is within non-FIU agencies, the FIU could be informed of any step taken to suspend. This is important as the decision would have an impact on the relationship between the FIU and the interested reporting entities, particularly as regards the process of analysing reported STRs.

If a LEA holds the suspension power in a country, it could be advantageous because the LEA is likely staffed 24/7/365, and possesses, in-house, broad categories of information besides financial intelligence. For instance, it may possess intelligence gathered through its own sources and methods, as well as operational information obtained in ongoing investigations. Both, potentially, could comprise relevant information which may trigger a suspension.[6] This is especially true in the CTF context, where suspension can serve as one of many methods to concretely disrupt TF activities. These instances could be covered by permitting or requiring the FIU to suspend transactions upon request of other, well informed, agencies.

Additionally, around the Global Network, many LEAs have set up complaint centres to process victim complaints of fraud and scams. Others have tip lines and access to reports from citizens about crimes that have, will, or are occurring. For example, the IC3 platform run by the US Federal Bureau of Investigation (FBI) for reporting internet fraud receives more than 2 300 complaints on a daily basis, and has received over 8 million complaints since its inception.[7] In fact, the US has several tip-based sites for various categories of predicate offences, including terrorism.[8] These tips may reveal useful information for the purpose of suspending transactions.

4. Suspension that is limited in scope (e.g., covering only some ML predicates or not terrorism financing) would not be fully in line with the new Standard.
5. Although there are some LEAs who receive STRs first, before the FIU, this would not be in line with INR.29, Section B. The extent to which STRs are a trigger of suspension may also be considered by countries. If STRs and their subsequent analysis by the FIU are going to be a main source of suspension, then it would be logical to house the suspension power at the source (i.e., the FIU). Conversely, if other relevant information is going to be the main source of suspension, then it may be logical to give the power to an LEA.
6. FIUs, particularly law enforcement-model FIUs, may also have access to criminal intelligence held by LEAs which could be used to inform its decisions on suspension.
7. U.S. Department of Justice, FBI, Cyber Division, *Information Brochure 2023*. The IC3 reviews and analyses data submitted through its public website, and produces intelligence products to highlight emerging threats and new trends.
8. FBI Electronic Tip Form.

BOX 37 – COUNTRY EXAMPLES: Law Enforcement Suspension in China and Singapore

CHINA: In 2022, China implemented the Law on Combating Telecom and Online Fraud. Article 20 of the law stipulates that "the public security authority of the State Council, in conjunction with relevant authorities, shall establish and improve the system for the instant query, emergency suspension of payment, expeditiously freezing, timely unfreezing, and return of funds involved in telecom and online fraud cases, and clarify the relevant conditions, procedures, and relief measures". In accordance with this law, the public security agencies of China, in conjunction with relevant authorities, have established and improved the emergency fund suspension mechanism, optimised and upgraded the platform, and made every effort to suspend the funds defrauded from victims in a timely manner. From January to October 2024, a total of CNY 235.9 billion (USD 32.5 billion) defrauded from the public was urgently suspended, preventing numerous victims from suffering major financial losses.

SINGAPORE: Between February and March 2024, an 82-year-old man experienced three attempts by scammers to defraud him, amounting to a potential loss of SGD 3.7 million (USD 2.77 million). However, due to the swift intervention of the Anti-Scam Command (ASC), CIMB Bank, and Hong Leong Finance, these attempts were thwarted.

On 6 February 2024, CIMB's fraud management team detected transactions amounting to SGD 2.1 million made from the victim's bank account. Responding promptly, the ASC and CIMB officers visited the elderly victim at his home. While CIMB's fraud management team suspended the victim's bank account to prevent further losses, the ASC provided support to the victim through his son. Although SGD 1.3 million was recovered, the remainder had already been transferred overseas before the police report was made.

On 7 February 2024, the victim's son alerted the ASC about three cheques amounting to SGD 1.2 million issued by Hong Leong Finance under the victim's instruction to three individuals. The ASC promptly requested Hong Leong Finance to withhold the cheques, averting a potential loss. On 9 March 2024, the scammers attempted another scheme, accompanying the victim to CIMB's branch office to purchase a cashier's order of SGD 1.2 million. The vigilant CIMB team promptly alerted the Singapore Police Force (SPF), leading to the arrest of the scammers. This further prevented the loss of SGD 1.2 million.

The close collaboration between SPF and the banks, combined with quick action to engage the victim and suspend transactions, proved instrumental in preventing the loss of a total of SGD 3.7 million. The vigilance of the victim's son and CIMB officers was crucial in detecting suspicious transactions.

d. Other competent authorities

In some countries, reporting entities themselves may have the discretion or the legal obligation to refrain from executing transactions while awaiting instructions, usually from an FIU, and potentially from a court. Whether this constitutes a country "enabling" a competent authority to take immediate action to suspend will depend on the model in place.

There are no known examples of other types of authorities besides FIUs or LEAs wielding a suspension power, such as an AML/CFT supervisor. It is not likely that a supervisor or central bank would be mandated with this type of quasi-operational task, or that it would necessarily have asset recovery, or the identification of proceeds of crime, among its competencies. Even if a country utilises a withholding consent model, the competent authority making the ultimate determination is (usually) the FIU. The decision-making authority is an important element of suspension under R.4.

BOX 38 – **PRACTICAL TIP: Types of Relevant Information that Could Trigger Suspension**

A transaction may be suspended or consent to its execution withheld:

- upon receipt of a suspicious transaction report (STR) from a reporting entity regarding a transaction that it is in the process of being executed;
- upon the results of preliminary analytical activity (drawing on STRs but also potentially other sources of information like cash transaction reports or wire transfer information;
- upon receipt of information regarding a suspicious transaction from a public authority, for instance, an authority tasked with monitoring reporting entities for compliance with their AML/CFT obligations;
- upon information provided or a request by a judicial authority or a law enforcement authority;
- upon receipt of tips from the public or complaints from victims of crime;
- upon information uncovered in the course of ongoing investigative activity (including but not limited to surveillance, wiretapping, monitoring, interviews, and results of searches and seizures of evidence to include electronic evidence such as from mobile phones) provided that it does not entail a risk of prematurely disclosing the existence of an ongoing/covert investigation;
- upon intelligence gathered or developed from all sources by LEAs or other competent authorities (non-financial intelligence);
- upon the receipt of customs declarations or disclosures;
- upon reports of border crossings, checks, detentions, inspections, or arrests (and reports thereof);
- upon information provided or a request by a counterpart FIU or competent authority;
- upon information that a transaction is related to a person placed on the (domestic) sanctions list of another country which the initiating country follows closely (note: this would not include individuals or entities subject to UN targeted financial sanctions, as the FATF requires different freezing obligations imposed without delay as related to such persons under R.6 and R.7).

As an example of internal co-operation among different authorities, in 2022, the European Public Prosecutor's Office (EPPO) signed a MOU with the Luxembourg FIU (the CRF). Under Article 3 of the MOU pertaining to requests for the suspension of suspicious financial operations, the Luxembourgish European Prosecutor or any Luxembourgish European Delegated Prosecutor may request the CRF to issue an instruction not to carry out operations relating to a transaction or a customer in accordance with Article 5 (3) of the AML-CFT Law. The CRF retains the decision-making power, even though another authority may prompt the suspension through a request.

ADDITIONAL CONSIDERATIONS

Some countries have mechanisms whereby a transaction is paused for a set number of days by the reporting entity when that entity is informed that the STR is being forwarded from the FIU to a prosecutor's office for further evaluation or possible action. Here, neither the FIU nor another competent authority, such as a prosecutor, decides to take an immediate action to suspend a transaction, as mentioned in R.4. Some countries may also have a

possibility of suspension or postponement based on an objective fact, occurrence, or event, other than the forwarding of an STR. The "pause" is not directed by a government authority, nor based on a suspicion developed or confirmed by a government authority; it is more automatic in nature. Such mechanisms can buy time when there has been a STR or SAR filed, which can be beneficial to competent authorities contemplating follow-on action. Such mechanisms differ from suspension as laid out in R.4, and they may not have international utility in line with R.40's requirements in dealing with foreign requests for suspension. However, such mechanisms function similarly to suspension in that they have the effect of preventing money from being transferred or transactions from being executed.

4.1.2. Identifying appropriate circumstances for use

a. Relevant information

The relevant information triggering the suspension of a transaction will vary from one jurisdiction to another and there may be a multitude of factors that are considered when determining whether to suspend or withhold consent to a transaction. Furthermore, the relevant information triggering the use of this power may differ depending on the nature of the competent authority (an FIU or another competent authority) issuing the order.

When deciding whether to exercise the power to suspend a transaction, FIUs or other competent authority should have, e.g., reasonable grounds to suspect that the transaction is related to ML, its predicate offences or TF. This should also be the case when FIUs or competent authorities receive a request from a counterpart FIU or competent authority to suspend a transaction. Countries may set out the applicable threshold for using the suspension power, but the one provided within INR.4 is suspicion, which for the purposes of R.20 (requiring the reporting of suspicious transactions) means that the FI "suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing."

If an STR triggers the suspension power, a reporting entity has already made the determination that this threshold has been met. But it is then up to the FIU or competent authority to confirm that suspicion, and consider other pertinent factors (legal or factual) that may aid its decision whether or not to suspend. For example, relevant considerations would include that: the funds or the owner of the funds in question might leave the jurisdiction; the financial trail might be lost; the assets involved in the transaction might be sent to a country or institution from which they are unlikely to be recovered; and factual circumstances indicating that asset flight or dissipation is likely (e.g., communications between the bank and the client, patterns of transactions, physical movements and ISP locations, new access to third-parties or signatories to control the assets, the closure of affiliated accounts; the emptying of other accounts; the near-completion of the transaction).

Depending on the type of assets involved in the transaction to be suspended, the need for immediate action may be heightened or lessened. For example, the settlement or closing of a real estate transaction may allow more time for deliberation, while the transfer of funds in bank accounts or the sale of securities can be effectuated quickly and would thus necessitate a quicker response time.

When a country entrusts the FIU with the power to suspend or withhold consent to a transaction, the FIU should have the independent right to take a decision regarding the use of this power (or not), irrespective of whether it is issuing the suspension order on the basis of a reported transaction, its own suspicion and analysis, or upon request of another domestic competent authority, e.g., a judicial or law enforcement authority. This holds true for any authority having the final say on suspension. This body can receive and evaluate the relevant information including any requests from domestic or foreign sources, and should decide a course of action quickly. But it cannot be compelled to use the power, as the suspension of transactions is done on a discretionary basis. As discussed below, the decision may also depend on tactical considerations, such as the possibility of tipping-off, and it may be later challenged by affected persons and potentially subject to review.

ADDITIONAL CONSIDERATIONS

Countries may consider developing specific indicators (or red flags) to help authorities decide when a transaction should be suspended. Such indicators could be prepared by the competent authorities in close collaboration with reporting entities. They may also be informed by the results of national risk assessments, other AML/CFT risk assessment exercises, sectoral risk assessments, or reports from international organisations or regional bodies active in AML/CFT.

b. Communication

Countries should ensure that the decision to suspend a transaction is swiftly communicated by the FIU or the competent authority to the reporting entity involved with the suspicious transaction. The decision should be communicated in writing, e.g., through a secure electronic communication channel. In urgent cases, where the nature of the transaction does not allow sufficient time to issue a written order, the decision may be communicated orally, over the phone. A written order should, however, be issued post-factum in such cases.

The FIU or competent authority should specify the duration for the suspension in the communication (which itself may be contained in law or regulation), or, alternatively, the agency may provide guidance to help the reporting entity establish whether the suspension is still required (note, the reporting entity should not make the decision unilaterally lift or extend a suspension, but may be instructed to contact the issuing authorities at certain intervals or in certain circumstances). This clarity, where possible, would help the reporting entity to deal with customers whose transactions have been affected, mitigating the risks of tipping-off.

c. Avoiding tipping-off

Tipping-off, for the purposes of the FATF Standards, means that a financial institution, its directors, and its officers and employees should be prohibited by law from disclosing the fact that an STR or related information is being filed with the FIU (see R.21(b)). This concern is clearly implicated by suspension. If an STR results in an immediate suspension per order of a competent authority, then this should not be disclosed to anyone by the reporting entity. The reporting entity would be expected to comply with the order or other legal mechanism that gives force and effect to the decision to suspend. It will execute and carry out the suspension, using whichever technical or practical means are required to do so, depending on the nature of the transaction. This may range from not transferring funds from an escrow account for a real estate transfer to inserting an immediate stop order (or even claw back order) into the bank's operational system. But the fact that a suspension has been effectuated should not be disclosed to anyone, especially the accountholder, relevant client or customer, or a counterparty that would otherwise have been on the other side of the transaction. In this sense of the term "tipping-off", countries should ensure that reporting entities are prohibited from informing their customers that an order to suspend or withhold consent to a transaction has been imposed.

ADDITIONAL CONSIDERATIONS

Countries should consider putting in place measures to reduce the risk of tipping-off. Such measures may include:

- ensuring that reporting entities are in close contact with their respective FIU or LEA and instructed as to how to handle a particular situation when in contact with the affected customer;
- issuing specific guidance on the manner in which reporting entities should communicate with customers during the period of suspension or withholding of consent to a transaction;

- considering whether a shorter maximum duration of the period to suspend or withhold consent to a transaction would suffice to achieve the objectives;
- organising specific training to reporting entities on the procedures for use and application of suspension powers and on how to avoid tipping-off;
- ensuring, including through supervision, that reporting entities set high ethical standards for hiring and retaining employees carrying out AML/CFT programmes, such as suspension and investigations.

In the non-FATF sense of the term tipping-off, care should be taken not to undermine ongoing investigations accidentally or unintentionally through the use of suspension. Investigations largely have two phases, covert and overt. When the investigation is still covert and the suspect does not know that he or she is under investigation, the use of a suspension power can risk turning the secret investigation into an open one. This risk may be completely *tolerable* to the authorities, especially if it is near the end of this phase of the investigation, the suspect is unlikely to attribute the consequence of not being able to complete a transaction with the actual cause, or the consequences of not suspending could be damaging to the safety and security of persons. This risk may be *intolerable* in certain investigations, as it could expose years of painstaking work for very little gain.

This is why it is considered a best practice for whichever authority decides on the suspension power to consult, as needed or prudent, with law enforcement authorities. Ideally, if the transaction involves a person who is already under investigation, this would be known to the police or investigative bodies (e.g., through a database of cases, suspects, or subjects of investigations), confirmed to the FIU, and deliberations can ensue. Practically, this may not be confirmable, but the deciding authority should make all efforts to ensure that its decisions do not interfere with criminal investigations, including by establishing contact with LEAs or using existing avenues for deconfliction.

For instance, a practical way the FIU could deconflict would be to check incoming requests from LEAs and prosecutorial authorities to see whether this account or individual has ever been the subject of a request for financial intelligence. Likewise, the FIU could contact any LEA to which it has specifically disseminated information about this account or individual before, on the theory that this LEA would be more likely to potentially have an open investigation pertaining to this person. Alternatively, many FIUs have seconded personnel from LEAs who can run a name check, or process the account numbers or names through particular databases or fusion and/or deconfliction systems. Some FIUs also have direct access to information held by LEAs. Ultimately, countries should be cautious in exercising suspension, consult broadly, if there is time, and be able to revoke suspension as swiftly as they enacted it if it would have the unfortunate impact of interfering with an ongoing investigation, disclosing its existence in the covert stage, or diminishing the chances of other successful outcomes (such as arrest of a suspect).

Just as precautions should be taken to avoid interfering with ongoing investigations, it is also possible that analytical work can be disrupted by a suspension. To this end, LEAs or FIU conducting financial analysis outside of an ongoing investigation may benefit from a consultation as well to check whether they have equities which may be put at risk.

Finally, the decision to use suspension based on relevant information *not* from an STR should consider the potential that the reporting entity could be involved in the criminal conduct or ML activity. If there is any indication that this is the case, suspension should be avoided, as it could tip-off complicit actors within the reporting entity.

4.1.3. Maximum duration of the measure

a. Initial duration

Countries should specify a maximum duration of the suspension measure in their national law, regulation, or applicable sectoral rules, and ensure that the suspension period is sufficiently long to allow the FIU or the other competent authority to perform a preliminary analysis or, where appropriate, to initiate an action to freeze or seize criminal property and property of corresponding value. At the same time, it should be as short as possible to avoid a negative impact on legitimate customers and transactions and to ensure that the person whose transaction is suspended does not become aware of the order.

In terms of current approaches observed across the globe, the period of suspension varies significantly across jurisdictions. In some jurisdictions, the maximum duration is very long – up to 180 days or 6 months – while in other jurisdictions the duration is shorter, ranging from one to five working days. Some countries measure the suspension in hours, ranging from 24 to approximately 72 hours. After a certain length of time, a suspension can begin to resemble a different tool entirely.

Shorter and longer durations for suspension have their advantages and disadvantages. A shorter period to suspend a transaction carries less risk when it comes to tipping-off and retains the character of a quick and flexible tool, while a longer period, on the other hand, provides the FIU and the competent authority with the opportunity to confirm

BOX 39 – **COUNTRY EXAMPLE: Duration of Suspension in Uzbekistan**

Under the AML/CFT/CPF Law of Uzbekistan, Article 9, the FIU holds the power to suspend transactions in funds or other assets for a period not exceeding 30 business days. The power is executed without a court order or permission from the public prosecutor, but there are several conditions for its use. The suspension can be triggered by the financial analysis of an STR involving ML, TF, or PF; the request of an LEA in the course of operational activities or criminal cases; or a request from a foreign competent authority. The suspension can be ordered if one or more of the following indicators is present:

- The detection of "clear facts" of ML, related predicate offences, TF, or PF
- The existence of a criminal case (ML, related predicate offences, or TF)
- The existence of well-grounded information that criminal proceeds will be transferred out of the country
- The detection of facts that proceeds have been laundered from the commission of crimes classified as high threat in the NRA
- The detection of facts that a legal person is registered in one place, the management is located in another, and the servicing bank is located elsewhere, or significant changes in bank account activity in a short period of time.

Uzbekistan situates the suspension power in the FIU because it has access to a wide range of information, can obtain additional information from reporting entities quickly, and many suspension requests are prompted by STRs (which relies on analysis by the FIU). The FIU can act with due haste to conduct financial analysis, and that speed was the critical policy consideration for the suspension power. The country also picked 30 business days as the appropriate duration of its measure. This allows sufficient time for analysis of STRs or incoming requests from LEAs, to enable follow-on actions by LEAs (e.g., time to seek a more permanent restraint), and to allow for the delays involved in international co-operation.

or dispel suspicions, and to potentially take more lasting procedural actions to secure the assets. A longer period can result in an increase in the quality of the analysis conducted by the FIU or other authority, allowing it to obtain information not only from its databases, but also information that may be held further afield, by other FIs or separate government agencies. In the realm of international co-operation, a slightly longer duration for suspension may also provide the requesting jurisdiction with adequate time to seek informal assistance or MLA (or for the requested jurisdiction to pursue a domestic restraint). Not every suspension will necessarily extend to the statutory maximum duration, and so the ordering entity may tailor the instruction to the reporting entity to meet the needs of the case. It should also be recalled that suspension orders can be lifted before their natural expiration. For example, a suspension issued for one month can be revoked after two weeks if the need for a restraint has ceased to exist because the suspicion has been cleared or a seizure has been adopted.

However, from a fundamental rights point of view, a longer period to suspend may have a more substantial impact on fundamental rights, interfering more vigorously with the property and other fundamental rights of the client or suspect and other persons who may be affected by the suspension. Furthermore, suspending a transaction for a long period raises concerns related to tipping-off as it may alert the affected person or suspect that their transaction has been reported as suspicious and that some adverse action has been taken, whether by the reporting entity or the government. Friction and delays in large transactions may be foreseeable and can be explained away or rationalised, but the longer the transaction is suspended, and the closer attention the affected person is paying, the more likely that questions will arise. These questions can put the reporting entities in a predicament which is not sustainable for a prolonged period of time.

The Interpretative Note to R.4 is clear that the duration should be specified, but does not set a threshold or a range. Duration is for each country to determine, and a country may also decide that it is appropriate to vary the duration by sector or type of reporting entity. One of the reasons that the duration should be specified is to provide certainty to all parties, including the entity executing the suspension and the affected person(s). Another reason to specify the duration is that the level of proof required is relatively low (suspicion) and the suspension is usually not subject to review by a judge. Generally, the less review and legal formality involved in the measure, the shorter its duration should be. A short suspension period can be effective to buy time, mobilise the relevant competent authorities, and gather information and evidence sufficient to justify a more durable restraining order. But without court review, suspension should be a less restrictive and less limiting precursor to more heavily justified and lasting provisional measures, such as a restraining order, seizure order, or freezing order (e.g., the standard measures covered in Ch. 4.2.1 below).

Countries should thus take into account several principles when setting out the maximum duration of suspension measures:

- the power to suspend a transaction is an **interim measure** of preventive nature, and as such, it should not be used indefinitely, or as a final measure;
- the duration of the suspension should not be longer than necessary to achieve the **preventive** objective nor so short that it does not enable the possibility of future interventions;
- the **impact of the measure on the fundamental rights** of affected persons. If the country provides for longer duration, it should ensure that the rights of affected persons are protected (see below);
- the relationship between duration and the ability of the country to seek or provide **international co-operation** on suspension requests.

Although FATF did not set a duration in the Standards and does not recommend a particular duration in this Guidance, jurisdictions should seek convergence on duration. There is currently a wide durational variation among countries, from one banking day to indefinite. Given the increasingly international nature of AR and digital finance, harmonisation is advisable. Members of regional or supra-national bodies may seek to promote co-ordination (e.g., within the EU) to minimise legal fragmentation for cross-border service providers. Once suspension is more wide-spread among the Global Network, it will be possible for the FATF to examine duration and its implications for effectiveness in more detail. For countries that are establishing new measures, an Egmont survey published in 2022 showed that most respondents clustered around the 2-30 day duration.

b. Extension

ADDITIONAL CONSIDERATIONS

The possibility of extension of a suspension may not be necessary, particularly when the country's system provides the handling authority with sufficient time to assess the case. If, at the end of the deadline, the time is still too short, the prosecuting authority may have gathered enough evidence to seek and obtain a more durable restraint. On occasion, the FIU or competent authority may have analysed the transactions prior to ordering the suspension, so the next steps can proceed more quickly. However, for some countries, especially those who have a suspension of short initial duration, it may be a good practice to consider providing for express possibilities and conditions for the FIU or the competent authority to extend the duration of a suspension order. Such possibilities and conditions should be laid down in law or regulation.

The question whether to extend the measure depends on the case at hand. If, for example, an FIU needs more time to analyse a suspicious transaction and disseminate a more comprehensive and detailed analysis to the competent authorities, or a competent authority needs additional time to undertake appropriate action and freeze or seize criminal property, it may be appropriate to request an extension of the duration of the suspension.

In terms of current approaches, in some countries, an FIU or another competent authority that has initially suspended a transaction for a limited period may have the period of suspension extended following judicial authorisation. In this circumstance, the FIU or the competent authority may have sufficient indications that the funds are of criminal origin, but may need more time to build a convincing case for the competent authorities to issue or apply for an order freezing or seizing the funds or assets. An extension of the suspension period may also be warranted if key information is expected to be obtained by the FIU or the other competent authority in short order, such as information requested from abroad.

Countries should consider providing for the extension of a suspension order or its replacement by an action to freeze or seize. Without such follow up measures, suspension may only introduce delay in the flow of funds, or at worst, tip-off a suspect. It could defeat the primary purpose of the suspension power, which is to allow the possibility of additional provisional measures to secure assets in a fast-moving payments situation. The postponement, conducted unilaterally, may be of little utility, particularly if the suspension expires and the transaction is executed. Indeed, it may generate a report for dissemination to LEAs, which may be actionable in a future scenario, but would be less practical for the purposes of successful asset recovery. This approach is consistent with the notion that the power to suspend or withhold consent to a transaction should be of limited duration and with the objective to prevent the movement of funds for a defined period to analyse the transaction for competent authorities, where appropriate, to initiate an action to freeze or seize the funds or assets in question. To enable the smooth transition between suspension and provisional measures, the FIU or other authority that ordered the suspension may wish to inform the next authority in sequence (e.g., a prosecutor's office) about the suspension, prior to its expiry. This can improve efficiency, allowing the next authority in the asset recovery chain to familiarise itself with the case, gather information, conduct relevant checks, or prepare the necessary paperwork to obtain a more lasting restraint.

4.1.4. Conditions for release and safeguards for affected persons

The suspension process requires careful management. Records should be kept of which transactions are suspended, when and for how long, and of the identity of affected parties or accountholders. Regardless of which agency holds the suspension power, the deployment of the power should be closely tracked and monitored, suspensions should be extended or released in a timely fashion, and appeals or removals should be handled according to a defined set of procedures. Effective communication with the reporting entity that effectuates the suspension order is essential and should cover expectations for compliance and any specific instructions in the pending case.

a. Conditions for lifting the suspension order

Countries should ensure that the FIU or the other competent authority are legally authorised to lift an order to suspend to a transaction prior to its expiry date, when the reasons for the order cease to exist, when the initial suspicion has not been confirmed, an ongoing criminal investigation might be jeopardised, or certain other conditions are not met. These other conditions may include the following:

- there is no longer risk that the funds, the client, or the suspect will leave the country;
- the reporting entity, the FIU or the competent authority can no longer effectively mitigate the risk that the client or suspect is alerted about the suspension order;
- a freezing or seizure order has been issued by competent authorities and it has been served or enforced such that the assets are secured by another provisional measure;
- the legal origin of the funds in question has been proven or the purpose of the transaction which met the threshold of suspicion has been clarified;
- the investigation into the person, transaction, or associated financial flows has been closed.

Allowing the FIU or the other competent authority to lift the order prior to its expiry diminishes the risk of tipping-off, protects the right to property and other contractual rights, and reduces the potential losses of all parties concerned. The FIU or competent authority should notify the reporting entity of its decision as soon as possible so that it may release the hold or carry out the transaction.

The FIU or competent authority's decision not to suspend, or to end the suspension without further action to freeze or seize the assets, does not mean that the transaction is confirmed to be unrelated to money laundering, a predicate offence, or the financing of terrorism. A transaction may still carry risks and reporting entities should be advised to exercise discretion when determining how to proceed. If the rationale for the suspension was not an STR or was not prompted by the reporting entity, then a later STR would be anticipated from the reporting entity after a look-back on the activity surrounding the suspension. This may be useful to the FIU and/or LEAs in the future.

b. Safeguards

Countries should ensure that there are safeguards in place for affected persons to preserve their fundamental rights. The nature of such safeguards largely depends on the perceived impact of the suspension order on fundamental rights and the duration of the suspension order. If the measure is considered to have a substantial impact on fundamental rights due to, e.g., its long duration, countries should put in place adequate safeguards to protect the right of affected persons. This may include granting affected persons a remedy against administrative decisions, including the ability to challenge the action judicially.

Such safeguards could include, for example, communicating the suspension order to the affected customer and/or owners of the suspended funds; granting affected persons a remedy against decisions, including the ability to challenge the action administratively or judicially; and/or permitting persons to be represented by a lawyer in questioning or challenging the measure. It is also a good practice to consider allowing for redress where the order to suspend a transaction results in damage incurred by the affected person through, e.g., the shifting of liability whereby the responsibility for eventual damage is borne by the state. This might be the case where a bank is sued by a third party and becomes liable for losses suffered by a customer as a result of the bank following a lawful suspension order.

As for notice to the affected person, this could be done once the suspension has expired or has been lifted. It is possible that domestic law or regulation may place the notice requirement on the reporting entity to inform its customer or client that an action affecting their account was taken in compliance with a legal order. However, it could be useful to establish an appropriate system to balance, on one hand, the flow of communications to the account holder, and on the other, the risk of premature disclosure whereby the person affected by the suspension becomes aware of the investigations against or involving him or her, thereby jeopardising the confidentiality of the investigation.

Countries should also consider putting in place procedures and measures to prevent the misuse of the suspension power. These may include:

- a decision-making process requiring the validation of the order to suspend by more than one official or level of hierarchy in the FIU or other competent authority (without making the process inefficient or slow);
- contemplating head of FIU or LEA division sign-off for suspensions (along with an appropriate delegation of authority if the person is unavailable);
- express internal procedures and rules regulating the use of the power to suspend;
- internal trainings on the process and grounds for suspension, inclusive of guidance on how to manage the stakeholders and communicate effectively with the reporting entity;
- disciplinary or other consequences for the gross misapplication of the power.

4.1.5. Safeguards for reporting entities, FIUs, and other competent authorities

ADDITIONAL CONSIDERATIONS

Reporting entities may face situations where their relationship with a customer is jeopardised due to a suspended transaction. The customer may suffer a loss as a result of the suspension, and it may seek recourse from the reporting entity, which may in turn seek recourse from the governmental authority that lawfully ordered the suspension. The loss can take several forms, such as pecuniary loss (e.g., lost profits or penalties incurred), reputational damage, or even damage to goods. Actual damages may be limited considering the short duration of suspension actions, but there can be significant unanticipated losses, e.g., if the suspension delays or cancels a business transaction, causes the affected individual or entity to miss payments due (which can incur fees or interest), or a client loses out on an opportunity and this is directly cause by the suspension (such as the cancelation of a real estate transaction).

It is possible that the analysis carried out following the suspension order does not indicate that any illicit activity has taken place. Thus, no freezing or seizing action is initiated, but there might have been a potential adverse effect on

a client, customer, or counter-party as a result of the suspension. When the FATF conducted its consultation on the 2023 revisions to Recommendation 4 involving suspension, many private sector commenters raised this issue. While the FATF Standard does not mandate a safe harbour or safeguards for reporting entities because the specificities of suspension will be set out in national (or supranational) law, it is a good practice for countries to be responsive to such concerns by, for example, implementing protections from liability or loss. If countries incorporate safe harbours, it may also be helpful to consider their reach across sectors. For example, there may be particular challenges interpreting suspicious activity in crypto markets, where algorithmic activity, decentralised protocols, and privacy tools may obscure intent in on-chain transactions. In many sectors, there is a high rate of false positives and some difficulty in establishing intent or finality. Safe harbour protections thus may be considered not only for traditional FIs, but also for DNFBPs, VASPs, and other intermediaries that may receive suspension orders.

Adding in protections for the private sector is a tangible way to enhance co-operation, buy-in, and confidence in the effectiveness of the suspension regime as a stop along the road to asset recovery. This may include putting the onus on the customer to prove any losses to the reporting entity, and that the reporting entity must show to the governmental authority that the losses were caused by the suspension (as opposed to another cause). Compensation to wronged parties could also be considered and funded by the government to discourage frivolous use of suspensions. Another possible safeguard is to encourage reporting entities to include waiver language in their customer agreements and/or contracts for financial services that they will not be held liable for damages caused to the client as a result of compliance with a lawful suspension order. Contracts could also make clear that it is a condition of the client agreement that the client agrees and understands that suspensions may disrupt their services when ordered by competent authorities for legitimate AML/CFT compliance purposes and that the reporting entity would waive liability for related losses if it was acting in accordance with the law.

Furthermore, in order not to have a negative impact on the use of the power to suspend transactions, countries may consider how to ensure that FIUs, other competent authorities, and their representatives are protected from criminal and civil liability for damages suffered by the client, suspect, or a bona fide third party as a result of a suspension order. Affected persons may attempt to hold the FIU or its employees liable for any ill effects of a suspension. Countries are encouraged to consider protections from liability for FIU staff or other competent authorities when they have carried out official duties in the course of their employment. This could be conditioned on the suspension order having been carried out in accordance with applicable law and procedures, in good faith, by the official and institution. It should not be conditioned on the suspicion having been confirmed as correct, or whether it led to further action, such as a seizure or confiscation. Such measures also have the advantage of reducing any hesitation to the report suspicious transactions by reporting entities and to the willingness to suspend transactions by FIUs and other competent authorities.

Additionally, countries may wish to establish technical dialogues with private sector actors, including VA wallet providers and blockchain analytics firms, to explore ways of implementing suspension measures without compromising decentralisation or exposing sensitive metadata.

4.1.6. International co-operation on suspension

The corollary to the domestic suspension power is contained in INR.40, paragraph 10. It states: "[c]ountries should ensure that the FIU or other competent authority is able to take immediate action, directly or indirectly, to withhold consent to or suspend a transaction suspected of being related to money laundering, predicate offences, or terrorist financing, in response to a relevant request from a foreign counterpart. If the competent authorities having this power in the requesting and the requested countries are not counterparts, countries should ensure that the FIU is able to send or receive such requests." The Methodology for criterion 40.12 contains a useful footnote on the complexities

of non-counterpart co-operation on requests for suspension.[9] Regarding effectiveness, IO.2 provides that a country should use examples to demonstrate making requests and providing quality international co-operation, including "in relation to…withholding consent or suspending a transaction suspected of being related to money laundering, its predicate offences, or terrorist financing." (IO.2, Examples of Information 2 and 5, and Specific Factor 19).

The overall approach of Recommendation 40 is to emphasise that "other forms" of co-operation should be utilised (i.e., different from the main forms of co-operation such as MLA, extradition, and asset recovery covered in other Recommendations). It then specifies the underlying principles and types of co-operation to be used by the different authorities mentioned in the INR.40 (namely, FIUs, supervisors, LEAs, non-counterparts). The suspension power is found within the FIU part of the INR because of the role that FIUs may play in sending/receiving suspension requests in the international setting. This differs from the domestic setting, where the FIU may or may not be involved in suspensions, pursuant to INR.4, paragraph 10.

Domestically, an FIU does not necessarily need to be involved, depending on the suspension model adopted by the country. However, internationally, the FIU must at least be "able" to be involved in sending/receiving requests, but will not necessarily need to be in every case or any case. Whether the FIU is actually involved in the processing of international requests for suspension will depend on the parties transmitting or receiving the request and who holds the relevant power in the countries that are co-operating. Moreover, the FIU involvement can be limited to sending or receiving requests, since INR.40, para. 10 specifies that the FIU "or other competent authority" should be equipped to take "immediate action, directly or indirectly, to…suspend a transaction suspected of being related to money laundering…," and countries should ensure that where the "competent authorities having this power in the requesting and the requested countries are *not counterparts*, countries should ensure that the FIU is able to send or receive such requests" (emphasis added).

Moreover, other principles contained in R.40 are equally applicable to suspension, such as language requiring countries to:

- "rapidly, constructively and effectively provide the widest range of international co-operation"
- do so "spontaneously and upon request" and "with a lawful basis"
- using "the most efficient means to co-operate"
- using "clear channels or mechanisms for effective transmission or execution of requests"
- with "prioritisation and timely execution of requests" while "safeguarding the information received"

The text of INR.40(10) represents a balance between different approaches: (i) international co-operation on suspension can be distinguished from the domestic setting and should promote clarity, consistency, and security through the use of FIU channels; however, (ii) "other competent authorities" may carry out suspension at the domestic level, and therefore there should be similar flexibility for international requests (i.e., to not necessarily route requests through the FIU). This section explains how these priorities have both been accommodated in the Standards.

The safeguards described below from INR.40 apply to all forms of international co-operation under R.40, now including suspension. Paragraph 3 states that information should be used only for the purpose for which it is sought or provided, by the sending or receiving country. Onward dissemination or use by authorities other than the intended recipient, or for additional purposes, should be done only with consent of the requested country. Paragraph 4 protects

9. The note states: "Competent authorities should be able to co-operate diagonally (i.e. with non-counterparts) on an indirect basis. If the authorities responsible for the suspension power differ in character (e.g. LEA, FIU) in the requesting and requested countries, the FIU should be able to send to and receive from counterparts requests for assistance to allow indirect diagonal co-operation, and any associated domestic exchange of information with other competent authorities needed to facilitate such co-operation should be permitted."

the confidentiality of information so that operations, inquiries, or investigations are not compromised. There is an exception for disclosures *necessary* to execute the request, which – in the context of suspension – may be highly relevant if more than one body or agency in the requested country needs to be involved. There should be controls and safeguards in place to ensure that information exchanged is only used in the manner authorised. Furthermore, paragraph 4 reflects that foreign information exchanged should be protected with the same rigour as domestic information of the same type and nature. Finally, and importantly for suspension: exchanges of information should be "secure" and made through "reliable channels or mechanisms". Requested countries or their agencies may refuse to provide information if the requesting country cannot protect the information effectively.

Examples of secure and reliable channels in the suspension context would be the use of Egmont Secure Web or FIU.net (for FIUs), an encrypted email system, the use of password protections (including in connection with secure sites and drop boxes), the deployment of a scattered or staged information-sharing method, and access logs (showing who accessed the information and when).

Another set of safeguards are contained in paragraphs 21 and 22 of INR.40. These address information exchanges between non-counterparts (e.g., agencies that are co-operating, but which are not of the same type). These principles are especially relevant to co-operation on suspension. First, the Note states that countries "*should permit* their competent authorities to exchange information *indirectly* with non-counterparts" and they "*are encouraged to permit* a prompt and constructive exchange of information *directly* with non-counterparts" (emphasis added). This means countries must permit non-counterparts to exchange at least through an interlocutor, but ideally, amongst themselves without the involvement of another authority. Co-operation between non-counterparts is considered "diagonal", whereas co-operation between like agencies is considered "horizontal."

These provisions acknowledge that there may be limitations about which types of agencies a domestic agency can deal with, including restrictions in law or regulation, or MOUs which make clear that only horizontal co-operation is permissible or envisioned. In this situation, INR.40 permits the "passing" of information "from the requested authority through one or more domestic or foreign authorities before being received by the requesting authority."

In other words, the information may flow through several points of contact in foreign or domestic agencies to meet its counterpart. This may create inefficiencies, but the Standards permit it so long as it is clear for what purpose and on whose behalf the information is provided or the request is made. In this scenario, it is a good practice to use phone calls and cover notes over the raw information to alert all agencies in the request chain of the existence of the request, and to enable the passing of the information without wider exposure and distribution.

a. Relevant requests

For the purposes of international co-operation on suspending or withholding consent to a transaction, the notion of "relevant requests" is basically the same as "relevant information" that may trigger a domestic suspension pursuant to INR.4, paragraph 10. On this topic, please refer to Ch. 4.1.2(a), above. However, there are some additional issues raised in the international context. The requested country should apply its usual threshold for what information is relevant to trigger a suspension, i.e., whether the transaction is suspected of being related to ML, its predicate offences, or TF. This does not change. However, the source of the information and the type of information may be different. The requested country will receive information that is not sourced from its own domestic agencies; it may also receive information from abroad which would not necessarily be the type of information that would trigger a suspension in its own domestic setting.

For example, if Country A exclusively uses financial intelligence as a trigger for suspension (e.g., STRs containing information on ongoing or attempted transactions), and it receives a request from Country B, which has a law

enforcement model of suspension, the information supporting the international request for suspension may be different and less familiar. It may consist of information gathered by police about proceeds being moved offshore, reflecting a tip received from a confidential human source in an ongoing criminal investigation. Perhaps information of this variety would not typically be considered for suspension in Country A and would never even come to the attention of the FIU. A request for suspension based on such information from Country B may not fit the typical pattern for suspension in Country A, but it would be a best practice to still consider such a request.

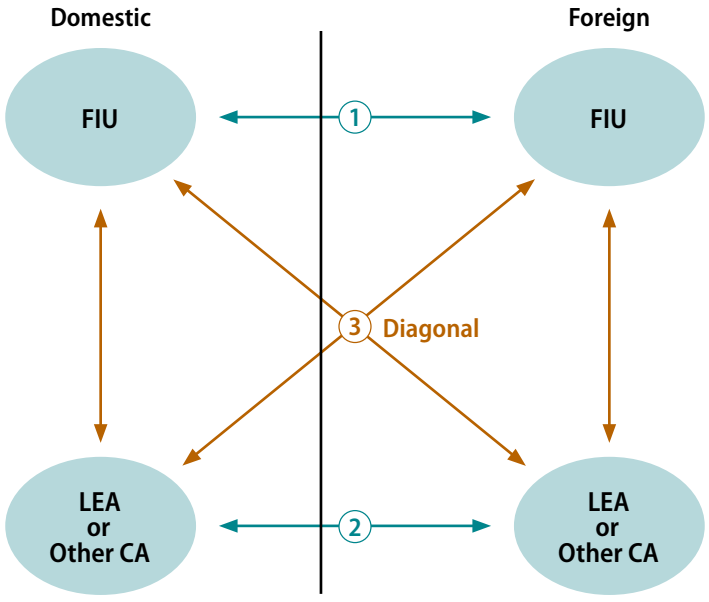
Firstly, unless there is a national law or regulation defining relevant information which excludes certain classes of information or provides only an enumerated list, then almost anything *could* be considered relevant information. The FATF, in both INR.4 and INR.40, left this to the discretion of countries and did not specify or exclude any types of information. This is a purposefully flexible standard. Secondly, it is a good practice for countries to be open to different types and sources of information, perhaps even those which differ from those which usually trigger a suspension in their country. Thirdly, it is possible that the relevant information from Country B may be verifiable, from a trustworthy source, and extremely compelling. In this example, Country B may be able to corroborate the information from the confidential human source and may be able to point to numerous instances where information from this source has proven reliable. Fourthly, it is a good practice for Country A to seek more information from Country B, as needed, which can help Country A determine if the information is relevant. Ultimately, Country A has discretion – as in all international situations – whether to grant or deny the request for suspension. But it is a good practice to consider requests promptly (as suspension is grounded in the concept of "immediate action") and to maintain an open approach to applying the relatively low standards of relevance and suspicion, which are the only prerequisites of suspension under INR.40.

b. Three scenarios of relational co-operation

There are three possible scenarios for co-operation on suspension requests. They are presented in order of complexity, from the simplest request scenario, to the most complex.

- Scenario 1: FIU-to-FIU
- Scenario 2: LEA-to-LEA
- Scenario 3: LEA-to-FIU or FIU-to-LEA

FIGURE 7 – **Relational Co-operation**



The first sentence of INR.40, paragraph 10, covers action in response to a request "from a foreign counterpart," i.e., direct, horizontal co-operation. This captures scenarios 1 and 2 related to FIU-to-FIU and LEA-to-LEA requests, in both cases building upon established, secure channels of communication. The second sentence covers situations where the authorities who would engage are not counterparts, i.e., indirect, diagonal co-operation. This captures scenario 3, related to FIU-to-LEA or LEA-to-FIU requests. Here, INR.40 spells out that "[i]f the competent authorities having this power in the requesting and the requested countries are not counterparts, countries should ensure that the FIU is able to send or receive such requests."

The second sentence of paragraph 10 envisions a non-counterpart situation, which likely means that one of the parties will normally be an FIU, but the other party – either the sender or the receiver of the request – may be an LEA or other type of competent authority. **The intent of this sentence in paragraph 10 is that the FIU should ensure counterpart-to-counterpart communication in a situation where there would *otherwise* have been a diagonal request.** It is intended to address concerns around requests that may be deemed problematic from a practical standpoint by the sender or, more often, the receiver, usually related to unsecured co-operation between non-counterparts. This may be especially relevant when one party is an FIU with restrictions on how it can share information or with whom it can deal. There may not be an obvious or existing channel for communication between non-counterparts for the secure transmission of a suspension request.

The first sentence of paragraph 10 addresses situations where FIUs are communicating with other FIUs, or LEAs are communicating with other LEAs. This is more straightforward. The second sentence ensures that FIUs can play an intermediary role when there is an LEA or other authority on only one side of the co-operation. Therefore, the FIU is not forced to play a role in every scenario, but should be "enabled" to send or receive a request, as needed in the situation, to bring co-operation to a horizontal level. This text prioritises predictability, security, and efficiency, and is intended to avoid any confusion that could arise from non-counterparts interacting in this space. Whichever authority has the power to decide on or order a suspension in the domestic setting would still be able to do so when it comes to making or acting on requests in the international setting, but there may be an extra step involved to align the communication by putting it at the same level.

The FATF Standards do not entail any requirement to set-up communication channels for the direct exchange of information between FIUs and LEAs from different countries in order to send and receive requests to suspend transactions. It also does not create the expectation that FIUs must suspend transactions on behalf of LEAs, which could impinge on the FIU's operational independence and autonomy (it was underscored that, per the text of paragraph 10, the request must be "relevant" so as to provide an adequate basis for action, such as a credible suspicion that would prompt the authority to suspend the transaction on its own accord if the transaction had occurred domestically). It is good practice for jurisdictions to **publicly specify which competent authority should receive requests** to suspend transactions in each country and that the relevant agency should describe the process it would use to consider acting on foreign requests on its website, or make this known by other means (e.g., through the Egmont Group or INTERPOL). This allows for quick reference to the contact points in the relevant competent authority for various requests for co-operation.

For horizontal co-operation, FIUs, LEAs and other competent authorities could establish channels and working arrangements with their counterparts to facilitate information exchange and suspend suspected transactions. If the requested competent authority assessed the request to be credible and actionable, the competent authority should follow its domestic processes to postpone the transaction. Jurisdictions can also leverage international and regional networks, such as the Egmont Group (for FIU to FIU requests), ARIN/CARIN (for asset recovery agencies) and INTERPOL (for LEA to LEA), for information exchange between direct counterparts. For FIU-to-FIU co-operation, the use of Egmont Secure Web or FIU.net, for instance, may be mandatory with regard to suspension requests. Apart

from suspending the transaction, the private sector may also need to be engaged to monitor the persons/suspects/accounts. This may entail brokering communications between the relevant competent authorities and the private sector.

BOX 40 – **COUNTRY EXAMPLES: Co-operation on Suspension and Operational Results**

SINGAPORE: The country adopts a facilitative approach where competent authorities should facilitate and redirect requests from non-counterparts to the relevant domestic competent authority. Singapore has an internal referral system where if a foreign national central bureau (NCB) (INTERPOL channel) makes a request to NCB Singapore and when the Singapore LEA checks and there are traces of financial intelligence, the Singapore LEA will inform STRO and STRO will then send out a spontaneous exchange of information (SEI) pro-actively to the jurisdiction's FIU for sharing with the foreign LEA.

ITALY: The FIU in Italy can receive requests from foreign FIUs to postpone transactions in Italy. The following case demonstrates co-operation on suspension resulting in more lasting seizure measure:

In May 2023, the Italian FIU received a disclosure from FIU Hungary related to a possible fraudulent wire transfer by an Italian public entity to a company in Hungary. The disclosing FIU highlighted that the transfer amounted to EUR 1 036 000, referred to the payment of an invoice, and was credited on an EUR account held by the local company. The local company on the same day sent four interbank payments for the equivalent of EUR 275 000 on its HUF account. Then, from this account, the equivalent of EUR 53 000 was forwarded to other two Hungarian accounts held by different local companies. Including these sums, significant part of the funds credited from Italy (about EUR 1 034 000) was suspended by the financial institutions and FIU Hungary on suspicion of fraud. Swift interaction between the Italian FIU and the relevant ordering intermediary confirmed that the first transfer was originally directed to a German counterpart, but was funnelled to the Hungarian company through a business email compromise scheme.

A criminal complaint was submitted by the victim to Italian LEAs. Additional information gathered by the Italian FIU was disseminated to the Hungarian counterpart, which confirmed the suspension order on the accounts involved. A criminal investigation then was launched by the Budapest Metropolitan Police. With the international co-operation of the Italian LEAs who launched a parallel investigation, the Budapest Police obtained a seizure decree in order to secure the funds and return them to the Italian entity.

ROMANIA: In November 2024, ANABI received a request from ARO Malta to freeze EUR 128 194. ANABI then forwarded this request to FIU Romania, who acted in accordance with their legal powers. Information obtained from the reporting entity was supplemented with information from FIU Romania's own databases, and this was forwarded to FIU Malta along with the agreement to disclose it to the requesting LEA.

In March 2025, ANABI received a request from ARO France to freeze EUR 249 841. ANABI then forwarded this request to FIU Romania, who acted in accordance with their legal powers. Information obtained from the reporting entity was supplemented with information from FIU Romania's own databases, then forwarded to Europol alongside the agreement for dissemination to ARO France and other relevant French authorities. The full amount requested by ARO France was returned to the French bank account.

BOX 41 – **PRACTICAL TIP: International Suspension Requests between Non-Counterparts**

- The LEA in country A wishes to send a request to suspend a transaction in country B, and country A knows that the FIU in country B has the suspension power (due to clear information on the website of country B's FIU). Instead of the LEA in country A going directly to the FIU in country B, the FIU in country A should be able to send the request on behalf of its LEA, so that it can securely exchange information with a direct counterpart.
- The opposite is also true. If the FIU in country A wishes to send a request to country B, where the suspension power lies with an LEA, then country A has two choices: (i) approach the FIU of country B because that FIU should be enabled – in line with sentence two of INR.40, para. 10 – to receive requests, or (ii) country A's FIU could pursue the request at the level of its own LEA (the counterpart to the LEA in country B), to position itself in a direct and non-diagonal relationship.
- The LEA of country A would like to request that country B suspends a transaction; the FIU of country B has the power to suspend the transaction. The LEA of country A approaches the LEA of country B, which ultimately forwards the suspension request to FIU of country B. However, if the FIU needs additional clarification before it executes the request, does the FIU of country B have the flexibility to decide whether to approach the FIU of country A and request additional information, or does it have to revert back to its domestic LEA which then requests the additional information from the LEA of country A. In this situation, the executing authority would have the flexibility to decide how to route requests for additional information, but could endeavour to keep all relevant agencies in the loop to prevent miscommunication.

For diagonal co-operation, a competent authority, including the FIU, may need to play an intermediary role when the requesting party is a non-counterpart. Jurisdictions have flexibility in determining and assigning the relevant competent authority to send, receive or facilitate requests to suspend or postpone a suspicious transaction domestically. But if the authorities responsible for the suspension power differ in character (e.g. LEA, FIU) in the requesting and requested jurisdictions, the FIU should be able to respond to and receive counterparts' requests for assistance to allow indirect diagonal co-operation. Any associated domestic exchange of information with other competent authorities needed to facilitate such co-operation should be permitted. This possibility under INR.40 for the FIU to become involved builds on the notion that the FIU should already be enabled to interact with domestic competent authorities (see, e.g., c.31.4 of the Methodology, where competent authorities conducting domestic investigations of ML, associated predicate offences and TF should be able to exchange information with the FIU).

c. Examples of how to bring diagonal co-operation to the horizontal level

Scenario 3 described above involves non-counterpart co-operation on the potential execution of suspension on behalf of a foreign country. In this situation, there may be a need for the two countries to meet on the same level. There are several points worth clarifying here, followed by examples.

- In this situation, the FIU does not need to be involved, but if the country sending the request can only deal with its own counterpart – another FIU – then the FATF requires the FIU to be able to receive such a request. It is possible for an LEA to be used to "level" the co-operation as well (if an LEA in country A with the suspension power can only deal with another LEA in country B, who then engages with the FIU in country B).
- The ability of the FIU to send or receive requests for suspension of transactions in diagonal scenarios, as required by INR.40, and depending on the exact requirements of the two countries seeking to co-operate, does not necessarily

give the FIU any other role in deciding whether to accept or reject the request. If the FIU does not normally have this power when implementing domestic suspensions, the fact that the request originates abroad does not automatically endow it with this power. Domestic co-ordination, to shuttle an incoming request from the FIU to the competent authority that normally decides on suspension, is key. Of course, countries may choose to involve the FIU in the substance of the decision so that it is not merely acting as a mailbox, but this is not required by the FATF Standards.

- Likewise, the country's FIU should be able to send a request to a counterpart FIU on behalf of a domestic LEA, even if the LEA in the country is the entity that has the relevant information underlying the request and is the entity that wishes to request the suspension of a transaction in a foreign jurisdiction where the FIU has the power to suspend. The recipient FIU abroad may require that any international requests for suspension arrive via Egmont Secure Web or another designated and secure channel.

d. Secure communication

A key factor in facilitating the swift exchange of information to stop suspected transactions is the use of secure and/or encrypted channels. This is in accordance with R.40, where jurisdictions should establish controls and safeguards to ensure that information exchanged by competent authorities is used only for the purpose, and by the authorities, for which the information was sought or provided, unless prior authorisation has been given by the requested competent authority. This is because information required for requests to suspend suspected transactions often involve personal and sensitive information such as bank information.

In addition, competent authorities should maintain appropriate confidentiality for any request for co-operation and the information exchanged, consistent with both jurisdictions' obligations concerning privacy and data protection. At a minimum, competent authorities should protect exchanged information in the same manner as they would protect similar information received from domestic sources. Competent authorities should be able to refuse to provide information if the requesting competent authority is unable to protect the information effectively.

Part of the rationale for (potentially) requiring more FIU involvement in the international setting than the domestic setting is to ensure that requests for suspension or withholding of consent are securely transmitted. The information supporting the request may constitute financial intelligence or law enforcement information which is considered secret or sensitive in the sending or receiving country. In line with INR.40's requirements on the safeguarding of information (as discussed above and contained in INR.40 paragraphs 3-4, and 21), countries should protect information received in line with the requests and specifications of the sending country. In order for international requests for suspension to work, there must be safe channels of communication, but these should not be inefficient or overly burdensome.

With over 100 FIUs around the world who are already the primary points of contact for domestic suspension, it is practical to leverage existing connectivity between FIUs, such as Egmont Secure Web or FIU.net. Countries are not required to develop new, special channels for communication on suspension requests with foreign partners. They may consider doing so with very frequent partners. However, it is a good practice to clearly signal when a request submitted through Egmont involves suspension and therefore requires urgent attention. A point of contact should be provided for questions and communication about the status of the request. This would preferably include an individual point of contact, with phone and/or email, and not only a generic or shared email account.

Jurisdictions can leverage international and regional networks with secured communication channels such Egmont Secure Web, FIU.net, ARIN/CARIN networks, Sienna (Europol), the GlobE Network's Secure Communication Platform (SCP), or INTERPOL's I-24/7 global secure communications network. For exchange of information between competent authorities without such secure channels, authorities should use encryption to safeguard the information. There is flexibility in how encryption could be implemented into the request process depending on jurisdictions' legal and data systems. For

example, jurisdictions may have a data/communication system for all communication on the request, or the initial request could be an email alert while the full details of the request are accessible through a data/communication system that requires verification, logins, passwords, etc. Jurisdictions could also consider building a "suspension clause" into any MOUs agreed between foreign partners and their domestic agency holding the power to suspend or stop transactions.

However, requests for suspension are considered an informal type of co-operation, hence their inclusion in R.40, and not R.37. They do not require a treaty basis and including suspension as a type of assistance available within MLATs could further complicate their routing (as most treaties require the central authority to be involved, which is often a justice or foreign affairs ministry or department that would otherwise not be involved in suspension). It is considered a bad practice to use MLA for exchanging suspension requests. The systemic need for speed and nature of suspension as a tool to prevent the dissipation of assets means that suspension is not well-suited to formal channels. Although MLA requests can be prioritised and allow urgent responses by some countries, it would not routinely be swift enough for suspension or a large volume of suspension requests could potentially overwhelm this channel.

It is entirely possible that formal co-operation may follow the successful execution of a suspension request. It would be a likely next step toward enforcing a more lasting order for restraint or seizure, and increase chances of eventual asset recovery. The suspension may be the bridge between asset identification and provisional measures. As with domestic suspension, the possibility of extending the suspension measure for an additional and limited amount of time should be considered and provided for in law or regulation. This may be especially relevant in the international context where the request and justification to prolong the suspension would involve a foreign country. On extension, see Ch. 4.1.3 (b). It would also allow for sufficient time for a requesting country to prepare and submit an MLA request seeking the imposition of a longer-term restraint of the funds or assets involved in the suspension.

BOX 42 – **PRACTICAL TIP: COE Mechanism for Co-operation on Suspension**

WARSAW CONVENTION: In addition to the domestic suspension power contained in COE's Warsaw Convention (16 May 2005, CETS no. 198) in article 14, article 47 requires signatories to be able to co-operate across borders. It provides:

(1) Each Party shall adopt such legislative or other measures as may be necessary to permit urgent action to be initiated by a FIU, at the request of a foreign FIU, to suspend or withhold consent to a transaction going ahead for such periods and depending on the same conditions as apply in its domestic law in respect of the postponement of transactions;

(2) The action referred to in paragraph (1) shall be taken where the requested FIU is satisfied, upon justification by the requesting FIU, that: (a) the transaction is related to money laundering;* and (b) the transaction would have been suspended, or consent to the transaction going ahead would have been withheld, if the transaction had been the subject of a domestic STR.

* In accordance with article 2 of the Warsaw Convention, the same measures apply to the financing of terrorism.

ADDITIONAL CONSIDERATIONS

Finally, requests for suspension should be targeted to the specific country of receipt and blanket requests should be completely avoided (e.g., "Dear FIUs of the World, please suspend all transactions related to X", copied to 25 countries). Suspensions should be tailored and contain relevant actionable information, and a clear and credible basis for suspicion. Mass mailings would not only be antithetical to this requirement, but could potentially expose banking or personal information which should be protected, and water-down the utility of international co-operation on suspension.

4.2. Expeditious Action: Freezing and seizing

Freezing and seizing are core provisional measures well-established in the FATF Standards. In the revised Recommendations, they are contained in R.4(d), which requires countries to enable their competent authorities to "expeditiously carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer, or disposal of criminal property and property of corresponding value" subject to asset recovery. The Interpretive Note to R.4, in the provisional measures part C, makes a distinction between standard or traditional measures, as set out in paragraph 5, and the more urgent "expeditious" measures as set out in paragraph 6. These are dealt with, in turn, in this sub-Chapter.

As a preliminary matter, the FATF has revised the definitions of both "freeze" and "seize" in the FATF Glossary. They entail:

- "In the context of confiscation and provisional measures (e.g., Recommendations 4, 32 and 38), the term **freeze** means to prohibit the transfer, conversion, disposition, or movement of any property on the basis of, and for the duration of the validity of, an action initiated by a competent authority or a court under a freezing mechanism, or until a forfeiture or confiscation determination is made by a competent authority or a court."[10]

- "In all cases, the **frozen property** remains the property of the natural or legal person(s) that held an interest in them at the time of the freezing and may continue to be administered by third parties, or through other arrangements established by such natural or legal person(s) prior to the initiation of an action under a freezing mechanism, or in accordance with other national provisions."

- "The term **seize** means to prohibit the transfer, conversion, disposition, or movement of property on the basis of an action initiated by a competent authority or a court. However, unlike a freezing action, a seizure is effected by a mechanism that allows the competent authority or court to take possession or control of specified property. The seized property remains the property of the natural or legal person(s) that holds an interest in the specified property at the time of the seizure, although the competent authority or court will often take over possession, administration, or management of the seized property."

Practically and legally, seizure means the taking of a thing from a person by a public authority without that person's consent. The prohibition on transfer, conversion, disposition or movement is more associated with the concept of a freeze or restraint, but nonetheless is the consequence, or result, of the seizure.

Whether discussing the standards measures in Ch. 4.2.1, the expeditious measures in Ch. 4.2.2., or the measures to prevent or void actions in Ch. 4.2.3, provisional measures should be able to cover *both* criminal property and

10. Note that the term "freeze" for the purpose of implementing targeted financial sanctions in accordance with Recommendations 6 and 7 has a different definition in the FATF Glossary which is not relevant here.

corresponding value whether held by the defendant/respondent or a third party (R.4(d) and INR.4(5)-(7) (regarding corresponding value) and INR.4(B) (on property owned or held by third parties).

4.2.1. Standard measures

The FATF Recommendations continue to emphasise the importance of provisional measures. Recommendation 4(d) requires countries to have measures, including legislative measures, to enable their competent authorities to, among other things "expeditiously carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer, or disposal of criminal property or property of corresponding value. The Interpretive Note to Recommendation 4 provides further clarity on these points in Part C. While new forms of provisional measures are covered here as well, the standard or traditional provisional measures are set out in paragraph 5. In addition to requiring these provisional measures to be capable of being carried out "expeditiously", paragraph 5 states that the initial application for freeze or seize should be allowed to be made on an *ex parte* basis, in other words, without prior notice to the affected person, owner, or target of the restraint.

Freezing and seizing assets are important tools in the fight against financial crimes and money laundering. These measures help ensure that ill-gotten gains are not hidden or spent before law enforcement can take action. By temporarily blocking the movement of funds or transfer of assets, authorities can effectively prevent criminals from benefiting from their illicit activities. It is important for countries to have robust laws and mechanisms in place to enforce freezing and seizing measures effectively. By preserving assets, authorities can ensure that property is available for compensating victims of crime through various legal mechanisms. The use of freezing and seizing powers should be initiated as promptly as possible in the course of the investigation or legal proceeding procedure. Provisional measures should be used "early and often" when an appropriate point is reached in a financial investigation to justify the action legally and strategically.

a. Ex parte in nature

For any provisional measure to work in practice, it will usually require an element of surprise. This is the intention behind the requirement that orders to freeze, seize, or restrain assets on a provisional basis should be, in the first instance, obtainable on an *ex parte* basis, without notice to persons who may be affected by the restraint. This is for obvious reasons, namely, if the suspect has notice that an order will be sought, has been sought, or an application for an order is pending consideration and decision of a court, then the suspect can easily move the asset beyond the reach of the court, law enforcement authorities, and potentially beyond the reach of later confiscation measures. Assets subject to preventative measures are more likely to be recovered, but notice to the suspect, persons involved in the offences, or potential claimants (in NCBC matters) defeat the likelihood of success of the provisional measure.

Countries' frameworks vary greatly in how they permit the seeking and issuance of an *ex parte* order. In some jurisdictions, the authorities (namely, the case agent or investigating officer) must appear in person before the judge and seek the order in a private setting or closed proceeding. The judge may require testimony from the investigator, including facts showing why the threshold for the restraint is met. The judge may ask for facts known to the officer about the suspected offence and why the property is thought to be connected to or the proceeds of that offence, or what facts support the conclusion that the property is owned by the suspect and/or traceable to his or her wrongdoing. The basis for the information known to the officer, as well as the officers experience in investigating similar cases, may be the subject of inquiry in a face-to-face proceeding. In other situations, a sworn affidavit or statement of facts, containing the factual and legal justifications for the provisional measure, may be sufficient to enable the court's decision. The court in this situation is a neutral party and fact-finder, but because only one party is represented – the government and not the suspect or defendant – the judge will conduct its analysis to ensure the measure is warranted and the rights of affected persons are protected in accordance with relevant laws and procedures. Often, a legal filing is required; this could be an application, a motion, a request, a statement of facts, etc.

Aside from a proceeding that occurs out of public view, the *ex parte* nature of the process can also be guaranteed by filing any and all required paperwork or briefings under seal or under secrecy, as appropriate in the jurisdiction. In some countries, the application for a provisional measure may in fact be the first time the court has ever heard of the investigation or matter, and this request may "initiate" the case. Even the name and number given to the case should be protected from disclosure (i.e., the name of the case should not allow a person with access to public records to know what assets is about to be seized, or contain the full name or identifier of the suspect or defendant).

Ensuring the secrecy of the action is critical from a logistical and strategic perspective after the court order is issued but before it is executed. It is common for there to be some delay between the issuance of the order and the time it actually results in the freezing, restraint, or seizure of the assets. Although the provisional measure is likely "in force an effect" the moment it is signed or approved, it is not effectuated sometimes for hours or even days afterwards. There may be distances for LEAs to travel to the physical location of the asset, or there may be closures of banks on weekends holidays which inhibit serving a freezing order on a custodian bank branch. Continuing the secrecy of the order until all named assets are successfully secured is considered a best practice. As mentioned above, there may be limited circumstances (in multiple defendant bases or internationally coordinated actions) where secrecy may need to continue for operational security reasons.

Where the initial proceeding to obtain the measure is in person, on paper, or even electronically carried out, it is also important for the LEA and the prosecutor to be notified that an order has been issued immediately (if it is not signed on the spot, or after a hearing). Judges may deliberate, unless an urgent request is made, and it is a good practice for LEAs to check back often as to the status of the application for provisional measures.

The process, rules, and requirements for obtaining provisional measures are often laid out in criminal codes, procedural codes, or occasionally AML/CFT laws. These processes and their trappings – including the form and substance of the application, the levels of review, the examination of evidence and possible the applicant, and the judicial decision on the law as applied to facts meriting the seizure – are all "safeguards" as referenced in INR.4, footnote 7. They are specified in domestic law and help ensure that the interests of justice are being served and rights are protected. Even though there may only be one party present in the proceeding – the state that is arguing in favour of the restraint – the result of the proceeding can still be fair if it is subject to appropriate scrutiny and due consideration, in compliance with all applicable laws and rules.[11] A capable, independent, and efficient judiciary is a prerequisite for upholding the fairness, impartiality, and objectiveness of proceedings to seek *ex parte* provisional measures.

After the assets are secured via lawful order, notice to affected persons ensues under the specificities of national law. As mentioned in footnote 7, the restraint or seizure of the asset will likely trigger notice or inter partes review of the measure, meaning that the matter is no longer *ex parte*, or one-sided. From this point on, individuals and entities affected by the provisional measure may come to court and contest or complain about the measure, or seek to modify or amend the terms of the order (e.g., to allow some continued use or occupation of the asset). They may seek to overturn it completely and question the allegations or legality of the measure. This is expected, envisioned, and a natural consequence of a compulsory legal order, and moves the proceeding into a different part of the criminal prosecution or confiscation proceeding. However, it is good practice for countries to allow the full challenge of the order and its merits to occur *after* the implementation of the provisional measure to increase the chances of effective AR.

11. As a practical example, the Australian Federal Police's in-house litigation lawyers, who are responsible for bringing any *ex parte* applications for restraint under Australia's Proceeds of Crime Act 2002, are subject (as government lawyers) to the Commonwealth's (federal) Legal Services Direction 2017, which includes an obligation to act as a "model litigant", meaning to act with complete propriety, fairness and in accordance with the highest professional standards. This goes beyond merely "acting honestly" and in accordance with court rules and ethical obligations. In the context of *ex parte* obligations, these lawyers also have an obligation/duty of candour, noting the absence of the party whose property will be subject to the restraining order. Acting with candour in these situations would include providing the court with an account/explanation of what the defendant/respondent would likely argue in response to the restraining order application (such as any known evidence or information to explain why the property was not proceeds of crime or the relevant offences grounding the restraining application were committed). The duty of candour applies to all lawyers on *ex parte* applications (as officers of the court) and may apply in other jurisdictions.

b. Various models

Depending on the legal system, provisional measures may be decided upon or issued by a court, or, in some countries, by a prosecutor. In civil law countries with investigating judges, a magistrate or judge may be able to issue the order, but this person is also the entity investigating the criminal activity (at a later point the file would be transferred to a trial judge). It is also possible that lower level judges or court officers can issue provisional or interim orders over assets, and not necessarily the district or higher level judge who may ultimately handle the case. In some countries, once a criminal financial investigation is formally commenced, usually with judicial consent, the competent authority may be able to issue provisional measures concerning criminal property or corresponding value in connection with the investigation or the suspects, and this may include orders pertaining to specific assets or standing orders for all assets stemming from the offences or owned by the suspects under investigation.

Even LEAs may have the authority to effectuate provisional measures. Such measures are premised on the legal powers endowed to law enforcement or other agencies to freeze or seize assets without the need for a prior court order (this is known as administrative forfeiture in some countries). Investigative or administrative agencies may have the power to freeze or seize property based on their own investigations and enforcement actions under their statutory competence, but eventually, and definitely if contested, these orders may be judicially reviewed. All of these models are encountered around the Global Network.

However, the issue of delay in the issuance of provisional measures has been an issue of effectiveness raised in several evaluations (i.e., an unreasonable long amount of time between when the request is sought and when it is granted). Restraining or seizing orders should be issued promptly after a complete application is made by the appropriate authority or institution. There is a balance to be struck between the timeliness of measures and the proper legal and factual scrutiny of a request and the operational imperatives to prevent criminal property from fleeing or losing value. While judicial independence is imperative, and courts and judges may take time to consider requests and fashion them to protect the rights of the affected parties, there are limits. If, for example, it takes months to secure provisional measures, on a systematic basis and in routine or simple matters, then this may indicate the need for reforms.

Restraint or restraining orders, as they are called in certain jurisdictions, can be imposed by a court or a competent authority to freeze assets until a final determination on confiscation is made in a legal proceeding. With restraining orders or freezing orders, the assets are secured in place, and not taken into the custody or control of competent authorities. In some countries, such as Brazil, the court may be able to directly transmit the order to a reporting entity and confirm the freeze in near real-time. On the other hand, seizing orders, or attachment orders or seizure warrants, as they may be called in some jurisdictions, generally authorise a competent authority to physically seek out, obtain, secure, and take possession of the asset, bringing it into the government's custody and physical control. The use of either a freezing measure or a seizing measure to preserve and secure assets will depend on the law and the facts and circumstances of the case, including any doubts about the integrity of the potential custodian in a restraining order scenario, and the nature of the asset at hand.

Standard provisional measures should be tailored to the asset and to the facts of the case. The more unusual the asset, the more bespoke the provisional measure may need to be. It is best practice for countries to make accessible sample orders, for an array of assets and circumstances, that can be consulted and used as templates by prosecutors. A standard operating procedure, manual, or guidebook with practical instructions based on the country's legal framework will also ensure that the orders are legally compliance, effective, and narrowly drafted, i.e., not going beyond what is needed for the intended purpose.

ADDITIONAL CONSIDERATIONS

Special types of orders may occasionally be considered, such as orders to "seize" a website by taking it down and replacing it with a blank page or a page which redirects to a public notice issued by a law enforcement authority. This is especially useful in cases involving darknet marketplaces, forums for online exploitation, or platforms where illegal or unlicenced activity is offered (e.g., an unlicensed exchanger of virtual currency or a market for stolen identities and the fruits of hacking operations). Additionally, special damming orders can be sought which are so-named because they create a dam: allowing funds to come in, but not come out. This can be useful in an ongoing investigation involving co-ordinated actions in multiple jurisdictions. Intangible assets, such as trademarks, copyrights, or the rights to other IP, may require special orders to prevent their commercial use or licencing. Seizing orders for vessels, such as ships, may require specific provisions authorising a hired crew or government officials to fuel, staff, and relocate the vessel. To seize aircraft and store them in a hangar, certain flying permissions must be obtained; at least one flight will be required to effectively secure it.

Some countries have limited or unlimited orders. Limited scope seizing and freezing orders typically refer to a specific timeframe in which the authorities have the legal right to seize or freeze assets believed to be obtained through criminal activity. This could be a set period of time, such as 90 days, during which the assets are held pending further investigation or legal proceedings. On the other hand, unlimited scope seizing and freezing orders may allow authorities to hold or seize assets without a specific end date, potentially indefinitely until the conclusion of proceedings. This is useful in cases where there are ongoing investigations or legal proceedings that require the assets to remain frozen or seized for an extended period of time. It is important for authorities to balance the need to protect assets linked to criminal activity with the rights of individuals to have their property returned in a timely manner if no criminal activity is proven. The time and scope of seizing and freezing orders should be carefully considered and justified to ensure fairness and legality in the process.

Thresholds for obtaining a freezing/seizing order should be reasonable and not too high, in particular, should not require the proof of prior dissipation or a risk of dissipation (see Ch. 4.2.4 on this point). For example, in Liechtenstein, threshold to issue a domestic provisional order is relatively low and it can be satisfied based on the foreign request or even based upon media reports as long as they are plausible and there is no evidence to the contrary. Per the Criminal Procedure Code Art. 96, there should be a reasonable basis to believe the property may be important to the investigation.

Jurisdictions should ensure that freezing/seizing orders have an adequate period of validity. If the order is not valid and in force for a sufficient period of time, the perpetrators can freely sell or move the assets before the final judicial decision regarding the asset is taken. Therefore, jurisdictions are encouraged to carefully consider the adequacy of the initial duration of orders and ensure that laws do not contain exceptionally short timeframes. The ability to extend an order can also be contemplated, with conditions for the same set out in law. For complex cases, the possibility of extension may be essential to adequately preserve assets. In some jurisdictions, orders may have sufficient flexibility from the time they are issued, and in others, criminal procedural rules may dictate the timeframes of charges and trials, which could obviate the need for extensions.

The scope of a freezing/seizing order should not be more restrictive than the scope of a potential, subsequent confiscation order. If the scope is more limited, there is a risk that the later confiscation order will not be successful because the assets may be moved, dissipated, or transferred to third parties. The principle of proportionality dictates that when freezing or seizing assets, only those that are directly/indirectly linked to criminal activity, e.g., criminal property or equivalent value, can be subject to restraint. It is important to ensure that the actions taken are legal,

necessary, proportional to criminal conduct or benefit obtained, and do not result in undue harm or deprivation to the individual or business in question. In essence, the principle of proportionality seeks to strike a balance between the need to combat crime and secure the proceeds thereof, and the protection of individual rights and property that should remain inaccessible to the authorities.

In order to secure effective restraint, LEAs and prosecutors (and, where appropriate, asset managers) should consult closely on and be as specific as possible in the language used in the operative document. In many countries, it is the prosecutor who proposes a draft seizure or restraining order, which may be adopted verbatim or modified by the court at its discretion.[12] It is a good practice for the orders themselves to contain, as relevant:

- All information describing the asset, in detail, fit to be included, including legal descriptions of property and specific account names and numbers;
- Any information about the location of the asset or the current custody of the asset, including any caveats for what should occur if the property is not where it was thought to be (e.g., language such as "wherever found at X premises" or "all assets contained in the safe deposit box 123 at X bank belonging to Mr John Doe");
- A general prohibition on dealing with, handling, disposing, transferring, leveraging, moving, or selling the asset (the precise verbs will be dictated by the nature of the asset);
- A specific prohibition (e.g., forbidding Mr John Doe and any of his relatives, associates, partners, companies, or other persons acting at his direction or on his behalf from accessing the asset);
- A penalty or enforcement mechanism indicating the consequence for violation of the order;
- An effective date and duration;
- A citation to the crime or crimes under investigation (unless the restraint is allowed in relation to criminal conduct more broadly or a specific offence cannot yet be cited);
- The legal basis for the order (e.g., the specific provisions which allow the order to be issued, such as the code provision that discusses the type of provisional measure used);
- An issuing court or judge, relevant case number and name, and the name and contact information of the prosecutor's office (or specific prosecutor) who obtained it (e.g., for clarity and for questions about the scope of the order);
- Any other instructions to the executing officers, agents, or police (e.g., whom the order should be served upon or any persons or institutions who should be provided with notice).
- Any other instructions to the executing officers regarding the appointment of a trustee or administrator to exercise custody and control of the property.

12. The motion, application, or pleading seeking the order will likely need to contain much more information, including the link between the asset and the criminal activity, as required by domestic law. This list only addresses the topics that could be addressed in the order resulting from a legal proceeding, not the materials justifying the issuance of the order. In other words, this list does not include what the prosecutor may need to show/prove to the judge to obtain the provisional measure.

Meanwhile, it is also a common practice to use broad language in restraints, particularly where this is permitted by law (e.g., "all assets of X" or "all property wherever situated of Y"). This is the opposite of the more granular style of restraint described above. While it can have clear benefits, such as covering later-discovered property or even property abroad, it can also be considered too sweeping or potentially even subject to misuse, without the inclusion of robust safeguards. If allowed, such global restraining orders could be narrowed or amended overtime to name assets subject to them, such as through an appendix, for the sake of completeness, precision, and clarity, including among members of the public who are not certain if they are holding assets which should be preserved.

To accelerate the freezing and seizing process, it is important to utilise both formal and informal communication channels, meanwhile ensuring information is securely exchanged. This expedites compliance and co-operation, enhancing overall efficiency. For instance, the collaboration of law enforcement with the private sector in freezing and seizing criminal assets is essential in the ongoing effort to combat financial crime and protect the integrity of the global financial system. This may entail the LEAs consulting with reporting entities about their procedures to implement lawful orders, the particularities of serving process, access to certain facilities, and the retention of records in connection with frozen or seized assets. By seeking to work with, and not in opposition to, the private sector, LEAs can ensure they have a partner in compliance and that all necessary steps are thought of and taken to fully preserve the asset.

The FATF Standards are agnostic in terms of how a country's legal framework conceives of the provisional mechanisms – including what they are called, who issues them, and how they are styled. The key points are that they must be accessible, at least initially, without notice to the suspects or affected persons, and they must be obtainable expeditiously. It should not take weeks, months, or years to obtain them, and, as discussed in Ch. 4.2.4, they should not be subject to unreasonable conditions or restrictions.

4.2.2. Expeditious measures

As differentiated from the standard provisional measures discussed above in Ch. 4.2.1, expeditious measures are a new addition to the FATF Standards on asset recovery. Recommendation 4(d) is a broad heading and requires countries to have measures, including legislative measures, to enable their competent authorities to "expeditiously carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of criminal property and property of corresponding value." The Interpretive Note to Recommendation 4 – in addition to suspension and standard provisional measures – now includes a requirement aimed at situations where especially urgent action is required. Paragraph 6 of INR.4 states: "[w]hen necessary to act as expeditiously as possible, countries should enable competent authorities to freeze and seize criminal property and property of corresponding value without a court order, with such action reviewable through judicial proceedings within a period of time. If either or both freezing or seizing without a court order is inconsistent with fundamental principles of domestic law, a country may use an alternative mechanism if it enables their competent authorities to systematically take action quickly enough to prevent the dissipation of criminal property and property of corresponding value."

The hallmark of this action is that it is to be used in exigent circumstances or on an emergency basis, where preventing asset flight or dissipation is critical for the prospects of any future recovery. The FATF sought to promote the development of more flexible tools so that countries could respond more effectively to the fast pace of criminal activity and money movement. Cyber-enabled crimes are a flourishing threat in many countries, and money laundering techniques are increasingly making use of rapid payment methods, borderless cryptocurrencies, and networks that operate largely "online" from many countries. Of course, the full array of ML techniques is still used by criminals, including slower processes such as cash smuggling and trade-based money laundering, but even these can be combined with sophisticated techniques that can be accomplished electronically. There are also situations where LEAs are faced with crimes in progress (*in flagrante delicto*), or the unexpected discovery of criminal property, including

in the course of making arrests and conducting routine checks or inspections. LEAs and investigative authorities are more likely to encounter assets that need to be urgently secured; therefore, they need mechanisms which essentially allow for action now, and approval later.

However, it must be underscored, that this is another method, similar to suspension of transactions, which buys time. Because expeditious measures may be carried out without a court order, such as a warrant or a seizure order, they should be reviewable by a judicial authority within a period of time. If not, such broad freezing and seizing authorities could be unchecked and subject to rampant abuse. See Ch. 8 for additional guidance on risks to fundamental rights which may be implicated by AR measures and how these should always be mitigated against when designing and applying the AR tools, especially this one.

a. Identifying appropriate circumstances for use

The inclusion of this requirement in the Standards responds to the ever increasing speed of global transactions, and the ability of criminals to rapidly transfer wealth. In such situations, where time is of the essence, competent authorities should be given the tools with which to respond at speed to prevent property from being dissipated. Drawing out the trends from the examples submitted by jurisdictions, it is clear that the need for jurisdictions to be able to take expeditious action is being accelerated by the uptake of new technologies, particularly faster payment systems and virtual assets. However, the use case for these powers does extend to a broader range of situations.

Importantly, such measures are not a substitute for standard freezing and seizure measures and are intended as short-term or interim measures, only to be used in urgent situations where it is necessary for LEAs to act as expeditiously as possible.

When expeditious measures should be used is a question for national authorities, but examples of circumstances in which it may be necessary to freeze or seize property as expeditiously as possible include:

- **Fraud and scams** – Due to the speed at which the proceeds of fraud and scams can be sent from a victim to the perpetrator, and then dispersed beyond the sight and reach of law enforcement, it is often necessary to act as expeditiously as possible. In such circumstances, the ability for law enforcement to rapidly institute a temporary freeze on transactions and/or accounts administratively (without a court order) can be crucial in order to recover the proceeds of the fraud or scam activity, and to prevent further loss by victims. Some countries may have the ability to reverse or clawback certain transactions, including wires, for limited period of time after their execution.[13] The private sector and other institutions (e.g., the central bank) may have a role to play in this regard.

- **Where property is identified during a search** – For example, during a stop and search of a vehicle or conveyance, or in relation to a specific premises to be searched under a warrant, law enforcement may identify property suspected of being the proceeds of crime, such as a digital wallet containing virtual assets. Given the speed at which virtual assets could be transferred, it may be necessary for law enforcement to expeditiously seize the wallet (seizing a device alone will not be sufficient). However, that wallet may still be at risk of having its funds transferred by a third party. If the LEA does not have access to the private keys, it may seek consent to transfer the values to a government-controlled wallet immediately.

- **At the border** – There is also a strong use case for expeditious mechanisms to be available for authorities at international borders to prevent the cross-border movement of criminal property, including cash and other property. Time is often of the essence in such situations, and while many jurisdictions already have well-defined

13. Note: For the purposes of assessments of technical compliance, suspension tools will be dealt with under Methodology c.4.3(a) whereas expeditious measures will be handled separately under c.4.5. If the only expeditious measure available to a jurisdiction is suspension, criterion 4.5 is unlikely to be considered fully met.

powers enabling the seizure of falsely or non-declared cash or bullion, authorities may intercept other types of property reasonably suspected of being criminal property as it enters or leaves the jurisdiction. Particularly in cases where that property is highly transmissible, use of an emergency power to prevent its dissipation could significantly aid law enforcement.

Jurisdictions should determine the scope of this power and the appropriate circumstances to give rise to its use in the context of their jurisdiction. The decision to apply expeditious measures is one for the competent authorities to decide on a case by case basis.

It is also possible that a wholly new power is not needed, but that some pre-existing powers (1) may qualify as expeditious measures, or (2) may need some augmentation to expand their utility for asset recovery purposes. For example, countries may already allow for:

- seizures "incident" to lawful arrests (for evidentiary or confiscatory purposes);
- the stoppage or restraint of currency and bearer negotiable instruments at the border (in line with R.32) and other similar powers;
- freezing and seizing of the domestic assets of a person who is arrested or charged abroad, pending receipt of an MLAT;
- obtaining judicial order to justify a seizure conducted on an emergency basis (e.g., from an on-call magistrate or duty judge, available overnight, and in front of whom police may appear within X number of hours of a warrantless seizure);
- administrative/agency-level seizure, which may be limited by either type of asset (e.g., personal property or cash) or a monetary amount (e.g., not to exceed an equivalent of EUR 50 000) and which is reviewable by a judge, if contested;
- an investigator is allowed to seize property with the authorisation of the prosecutor (not the court), but he or she must inform the prosecutor within (usually) 24-72 hours of taking the action. The prosecutor then examines the legality and reasonableness of the seizure and, if unlawful, annuls it. If the seizure is lawful, no additional authorisations is needed (but the affected person may appeal the measure either to the prosecutor or a court);
- urgent measures to seize criminal property in order to prevent its loss, concealment, or use to facilitate further offending; e.g., the investigator may seize property in the course of an inspection of the crime scene, or the search of buildings, premises, vehicles, and persons, and this is followed by formal ratification (or release) of the seizure in accordance with the procedure established by law.

These examples are just a few of the many expeditious measures a country may have in place. However, it is a good practice to (1) gather and catalogue existing powers, (2) conduct a gap analysis, and (3) seek from the legislature additional or expanded tools, as needed. Unlike other parts of the revised FATF Standards on AR which are more specific in their requirements, this provision is intended to encourage innovation within countries. It may be adapted to specific areas of higher risk and allow authorities to act quickly to attach both criminal property and corresponding value. It should be differentiated from traditional freezing and seizing powers by its nimbleness and lack of strict requirement for prior authorisation by a court or judge.

BOX 43 – COUNTRY EXAMPLES: Use of Expeditious Measures

SINGAPORE: The benefits of expeditious action to freeze an account linked to scam activity were demonstrated in a recent case from the Singapore Police Force's Anti-Scam Centre. Here, direct co-operation with the anti-scam teams of relevant Singaporean and Hong Kong banks led to the proceeds of the scam activity being frozen and ultimately returned to the victim.

AUSTRALIA:

- In addition to searching for evidence, search warrants issued under the Commonwealth (federal) Crimes Act 1914 and the Proceeds of Crime Act 2002 (POCA) also authorise the executing officer to seize any other 'thing' which they believe, on reasonable grounds, to be tainted property (i.e., the proceeds or instruments of an offence). The executing officer must also believe on reasonable grounds that the seizure is necessary to prevent the thing's concealment, loss or destruction, or its use in committing an offence. This seizure is effected without any further court order and enables law enforcement to seize criminal property which was not necessarily contemplated or expected to be found when warrant was issued – for example, physical currency hidden on the property, or vehicles and luxury jewellery reasonably believed to be tainted property. However, seizure pursuant to a search warrant is a temporary power, and an application for restraint or forfeiture must be made in the usual manner; otherwise, the property is returned to the person from whom it was seized.
- Crimes Act and POCA search warrants also authorise the executing officer to seize a digital asset (for example, cryptocurrency) if the officer reasonably suspects it to be tainted property, and (similar to above) the officer reasonably suspects that the seizure is necessary to prevent the digital asset's loss, concealment, or use in committing an offence. This seizure is also effected without any further court order, and the executing officer is able to use a range of electronic equipment to seize the digital asset, including moving any digital assets contained in the seized wallet to a wallet controlled by the LEA. Digital assets seized in this way must then be subject to the usual restraint and forfeiture process in order to be confiscated as proceeds or instruments of crime. Note, the threshold for seizing a digital asset under a search warrant is "reasonable suspicion", rather than "reasonable belief". This reflects that digital assets are a unique type of property increasingly owned by the general population, and so may require further analysis post-seizure to definitively determine whether it is tainted property. However, enabling the digital asset to be seized under warrant ensures it is secured, and cannot be moved or dissipated before that further analysis is conducted.

INDIA: Under the Prevention of Money Laundering Act (2002), an officer authorised through a warrant issued under the Act can effect the seizure of property without any prior court order, and also issue an order to freeze property where it is not practical to seize it. The investigative agency can retain the property for 180 days by passing a retention order and filing an application before the independent adjudicating authority for confirmation of retention order. For example, in a crypto Ponzi scheme, on specific grounds of intelligence regarding web wallets and digital devices containing cryptocurrencies, India's Directorate of Enforcement (ED) took expeditious action by seizing various cryptocurrencies worth approximately INR 16.46 billion (USD 190 million) unearthed during the search and seizure action. The seized VA was transferred to a cold wallet held by the Directorate. Further, ED attached the accused's assets in the form of movable and immovable properties worth INR 4.89 billion (USD 56 million) connected to the crypto scam.

b. Relationship between duration of measure and judicial review

There is a corresponding relationship between, among other factors, the duration of the provisional measure and the level of scrutiny and difficulty required to obtain it. Measures which more severely restrict property rights, for a longer period of time, should be reviewed more carefully. The quantity and quality of evidence justifying their imposition would be expected to be relatively higher than that required for a short-term restraint. Equally, a restraint or seizure that is more temporary in nature should, all other things being equal, be easier to obtain, require a lesser showing, and be subject to less "process" because it will not impinge as fully or as permanently on the affected person. Emergency measures – like this one – should therefore be subject to less scrutiny in the moment and days following the action, but this changes "within a period of time" to be determined by the country, per INR.4, para. 6. Although the length of this period is discretionary, existing "expeditious measures" usually provide for review within a matter of days, with 1 to 14 days being the average and 30 being the outer boundary. Multiple weeks or months would remove this from the realm of urgent measures accompanied by fewer procedural protections.

Freezing or seizing a person's property, even temporarily and for a short period of time, constitutes an interference with the person's property and other rights, and requires judicial oversight. Recognising this, the FATF determined that while expeditious freezing and seizure should be able to be done without a court order initially, jurisdictions may provide for that action to undergo judicial review within a period of time. Whether to include a requirement for judicial review and the relevant period of time in which it must be sought is a matter for jurisdictions, but reflects that this is intended as an emergency power for use in urgent matters. This, "reviewable" for the purpose of INR.4, para. 6, does not mean that review is mandatory in all circumstances, but rather that there needs to be provision for the possibility of review. If the freeze or seizure is completed, then it should be *able to be reviewed*. If the property is immediately released by the authorities, there may be nothing to review.[14] Equally, if the person or entity from whom the assets are taken does not challenge the measure, then it is possible that a review need not be carried out. The Standard provides flexibility, using the term "reviewable" instead of "reviewed". As the emergency which may initially justify the warrantless action fades, the requirements of due process take on greater importance. If the measure is to be maintained, review becomes not optional.

In addition to safeguarding individuals' property and other rights, limiting the time period in which property frozen or seized administratively can be held before reviewed by a court, or some such other judicial officer (such as a magistrate or judge in *persona designata* or registrar), also protects law enforcement from litigation risks associated with holding property without a court order. For example, if the value of the property rapidly depreciates during the period in which it has been administratively frozen or seized (for example, shares), the seizing authority may face some liability which, had the property been restrained under a court order, would not have been the case. It is a best practice to convert any measure that is not likely to be discontinued into a "papered" measure with judicial approbation, as soon as possible.[15] For example, in Ghana, a court must examine an order initially issued by the Economic and Organized Crime Office (ECCO), and it may confirm it if satisfied that the affected person is being investigated for a serious offence. The ECCO expeditious measure to freeze or seize has an initial duration of fourteen days, after which the court must confirm the order or release the assets in a specified timeframe.

c. Alternative mechanisms: systematic and quick

In circumstances where freezing or seizing without a court order is not permitted under the FPDL, jurisdictions may have recourse to alternative mechanisms that systemically enable the expeditious freezing and seizure of criminal

14. Note, the FATF does not address the possibility that the manner in which a law enforcement action was carried out may violate a person's civil or human rights. "Review" here refers only to the judicial approval or confirmation of the action as legally warranted. Countries may have other laws that allow a challenge, lawsuit, or private right of action based on rights violations or other misconduct. The Recommendations are concerned with a judicial review "on the merits," as to whether the action was justified in a given case with a view towards later confiscation.

15. The FATF Standards recognise that in some systems, the judicial authority competent to issue such an order may in fact be a prosecutor or investigating magistrate, and not a fully commissioned judge, as is required in other systems.

property. The precise text of INR.4, para. 6, says "if either or both freezing or seizing without a court order is inconsistent" with FPDL an alternative mechanism can be used if it is both systematic and quick enough for urgent use. For full guidance on the issue of FPDL, see Ch. 5.2.

There are several implications of the language used. The FATF recognised that the situation in countries will vary: some will have no (relevant) FPDL; some will have FPDL related to freezing; some will have FPDL related to seizing; and some will have FPDL which impacts their ability to conduct *both* freezing and seizing without a court order or warrant. Therefore, the FPDL asserted by the country, which bears the burden of showing how and to what extent it is prohibitive, should be specific. Where an FPDL is not implicated, countries would be expected to have the expeditious measure. Additionally, the FPDL, as discussed in Ch. 5.2, may not entirely foreclose the possibility of using expeditious measures, but require some precautions and rules around it. This is when the alternative mechanism can be used. However, the mechanism must still be fit for purpose when it is "necessary to act as expeditiously as possible."

Still, the FATF recognised that in some jurisdictions, it may be forbidden to take possession or control of another person's property without a court order, regardless of the strength of the justification. While freezing may be less problematic in this regard (as it does not require a physical taking), similar concerns may be raised. It is extremely important that the measures taken to urgently secure assets without *prior* court approval are not causing unintended consequences or leading to abuses of power, particularly in countries with a high level of corruption, a biased judicial system, non-transparent institutions (including LEAs), or other weaknesses in their structural elements as defined by the FATF Methodology (paras. 10-13). While the goal of these expeditious measures is to enable swift action – especially to secure funds stolen in an instant or those immediately destined for foreign shores – an alternative is provided in the FATF Standards for those countries where it is not possible to use expeditious measures without a court order.

The alternative mechanism should enable the competent authority to "systematically" take action. This means it is not a one-time-only or exceptional event, but that it is replicable and usable in the regular course of business. To be systematic, it is a good practice to ensure the mechanism is in the control of the authorities, and not left to the discretion or voluntary compliance of the custodian of the assets (e.g., through voluntary relinquishment by the suspect, or an informal/non-binding freeze imposed by a bank). Additionally, while it need not happen instantaneously, it should

BOX 44 – **PRACTICAL TIP: Types of Alternative Mechanisms**

- **TECHNOLOGICAL SOLUTIONS:** Jurisdictions may permit competent authorities to apply for freezing orders and seizing orders to a magistrate or some other kind of relatively low-level judicial officer via telephone, video-link, or electronic means. Such a mechanism can allow officers that are operationally familiar with the matter to apply directly to an on-call magistrate available 24/7 for an order. In contrast, were the order required to be made administratively, senior managerial approval may be needed given the potential for interference with property rights, which may not be available as quickly as an on call magistrate.
- **STANDING ORDERS:** Jurisdictions may be able to make use of a "standing order" related to known suspects in an ongoing investigation. This builds on the fact that the person is already under an authorised or formally opened investigation (or a criminal financial investigation) known to and endorsed by a court. A standing order can allow the freezing of any and all assets owned by this person and uncovered during the course of the authorised investigation. After a period of time, the investigation may need to be renewed, and the court would have to reconsider and reissue any standing orders. It should also be informed of any freezes carried out under the prior order so that they can be formalised and turned into a more typical provisional measure.

still be expeditious, even if additional process is required to approve its use. Freezing and seizing without a court order can be executed nearly immediately, whereas the alternative mechanism may understandably take longer to secure. As a matter of best practice, the difference should not be appreciable. When jurisdictions rely on such mechanisms for expeditious freezing and seizure, it is important to demonstrate they can be systematically used – i.e. not a 'one off' – to freeze and seize criminal property with near-equivalent speed to an administrative mechanism.

Where both administrative expeditious mechanism and alternative mechanisms using a court process exist, it is for the country to determine which mechanisms to apply as appropriate on a case-by-case basis.

4.2.3. Measures to prevent or void actions which may diminish chances for asset recovery

The Interpretive Note to R.4, paragraph 7, requires countries to have "measures, including legislative measures, that enable their competent authorities to take steps that will prevent or void actions that prejudice the country's ability to freeze or seize or confiscate criminal property or property of corresponding value." This is not a new requirement, but one which has not been elaborated upon before. No specific measures are spelled out in the text of the INR.4, so it is up to countries to come forward with laws and other measures which they believe contribute to protecting against actions which prejudice the country's abilities to freeze, seize, or recovery assets. Based upon the review of mutual evaluation reports and input from the Global Network, these measures have generally taken two forms, discussed below.

Some important points to clarify are that these measures are not themselves provisional measures such as restraining orders, seizure orders, or freezing orders; nor are they final confiscation orders or judgments. If this were the meaning of paragraph 7, it would be duplicative of other paragraphs within INR.4, Part C and D. These are also not asset management mechanisms, which have their own section in INR.4, in Part D. These instead are measures – potentially including measures which are not related to asset recovery, per se – which can be used to stop actions which may endanger the government's ability to confiscate property, whether by removing it from the jurisdiction or taking another intentional act which makes it less available for recovery. Although asset management has many objectives, including to protect property from depreciation in value and theft – the actions which are the subject of these measures will normally be intentional actions. Countries have wide flexibility in how they might insure against actions that will hurt their chances of confiscation. Therefore, when considering what measures may fall under criterion 4.6 in the Methodology, countries should keep in mind that the main asset restraint or seizure provisions will not be relevant. What may be relevant are other tools that may be applied post hoc to ensure that restrained or frozen property can be kept status quo and that any adverse actions which may harm the ultimate goal of confiscation, or the court's assertion of jurisdiction over the asset, can be undone, reversed, or penalised.

a. Unwinding contracts and transfers

Most jurisdictions have provisions to void actions that could obstruct the seizure or confiscation of property under a provisional or confiscation order. This is often achieved by nullifying (or "unwinding") transfers or contracts that violate laws or court orders. For example, if a real property is subject to a restraint, but it has not been finally confiscated yet, the government has signalled its interest in the property. If there were actions taken to impede that interest, laws may prevent this, or the court that asserted jurisdiction over the asset may intervene and make any necessary orders. In the example of real estate, the court or competent authorities may need to:

- Prevent a pending sale, for which a contract was agreed prior to the restraint;
- Undo illegal transfers after the restraint, including fraudulent deeds;
- Prevent foreclosures by banks or other creditors;
- Block the assertion of new legal easements or allowances on properties (e.g., permissions to neighbours to access the premises);
- Unwind new mortgages or loans taken out on properties which can drain them of value;

- Prevent post-facto confiscation by another sovereign government (e.g., in federal systems, the state, province, canton or local entity may have claims against the property, including for unpaid taxes, and countries will need to determine whose confiscatory action takes precedence under law).

These are only some examples related to one asset type, but another type of action that can frustrate the recovery of any assets is the transfer of ownership of the entity that owns the property. Companies are bought and sold frequently; they merge, they establish new subsidiary entities; they change their legal owners and shareholders; and they change their beneficial ownership. If, for instance, an investment account is owned by a shell company, and that company is sold to an offshore entity, which is itself held by a legal entity in another country, which is in turn considered an asset of a foreign trust in a third country, then recovery may have become much more complicated. Post-restraint sales of the corporate owners of property should be able to be unwound. In most countries, judges or courts are empowered to void or nullify transfers made to third parties, particularly once the asset has been made subject to the jurisdiction of the court through a legal order.

Another instructive example relates to leases. Many assets when restrained can be subject to rental agreements. While countries will undoubtedly have to take care not to dislodge tenants from their homes, there are situations where damage to an asset by potential renters needs to be prevented. If an organised criminal group owned commercial real estate – a factory – and the factory and its equipment were leased to a third-party that was mistreating it, violating local codes, or causing unsafe environmental conditions, measures should be taken to either prevent further damage (e.g., not renewing the lease, even though it may have generated income) or void the lease (on the basis of legal or regulatory violations). A possible way to mitigate the risks associated with tenants and renters is to use specifically drafted legal contracts or agreements signed directly between the government, as de facto landlord, and the lessor.

Legal frameworks governing measures which can be used to undo actions which prejudice confiscation vary. Some countries have civil laws which prohibit illegal contracts, including contracts made for unlawful purposes. The government or competent authority may need to threaten civil litigation. Other countries will rely on the inherent power of the court to issue lawful orders (i.e., judicial discretion). Other countries may rely on the government or prosecutor's office to draw attempted interference with assets subject to confiscation to the attention of the court, the result of which could be a court order of injunction or a summons to the party seeking to interfere with the court's jurisdiction over the asset.

Once the asset is under a legal freezing, seizing or confiscation order, and assuming that sufficient notice of the action has been provided to the public and affected parties, there can be no more claims of bona fide third party interests newly established. It is not possible to be a bona fide party (legally) vis-à-vis a restrained property which is already the subject of confiscation proceedings. Factually, there may be innocent persons who interact with an asset and may prejudice the ability of the state to recover it, but they would have no claim to the asset or any of its proceeds or equity, and measures to void actions may still be pursued. Once the property is secured through valid provisional measures, individuals or entities that engage with the asset do so on a "caveat emptor" or buyer beware basis.

b. Criminal consequences

Countries may consider establishing criminal offences in relation to dealing with property which is sought for confiscation pursuant to the lawful provisional order of a court, or property which has been ordered confiscated but has not yet been liquidated.

Countries can consider designating such contracts or transfers as "illegal" under their domestic laws. In these cases, perpetrators or third parties who fail to comply with provisional or confiscation orders may be charged with a criminal offence. Possible sanctions can include imprisonment, fines, or the seizure and confiscation of properties, including

benefits they may have obtained from interfering with the asset. The severity of punishment would vary, depending on the circumstances of the case, but should be proportionate to the gravity of the offence.

In some countries, violations of provisional or confiscation orders themselves constitute criminal offences. For example, in the US, it is a crime to destroy or remove property to prevent its seizure or to impair the Government's lawful authority to take the property subject to confiscation into its custody or control.[16] If the property is subject to non-conviction based confiscation, there is a similar offence for knowingly and without court permission destroying, damaging, wasting, disposing of, or transferring the property, or taking any action for the purpose of impairing or defeating the court's jurisdiction. It is also an offence to give notice to a person that their property will be searched or seized with the aim of confiscation. Similarly, in other countries, a contempt of court or obstruction of justice proceeding could be initiated against individuals who attempt to frustrate seizure or confiscation orders. In Japan, actions that obstruct provisional measures or prejudice the ability to preserve moveable property may be prosecuted as the offence of "obstruction of public duty."[17] Additionally, a person who conceals the property to evade a provisional order may be charged with a money laundering offence.[18] In Singapore, the law permits authorities to seize or prohibit the disposal of or dealing in suspected criminal property, including property no longer in possession of the perpetrator.[19] This is another way of ensuring the authorities' power to confiscate dissipated properties and voiding actions that may prejudice final recovery.

4.2.4. Unreasonable or unduly restrictive conditions on obtaining provisional measures

An important feature of provisional measures under INR.4(5)(b) is that they should "not have unreasonable or unduly restrictive conditions for effective action". One example is provided in the INR, i.e., a requirement "to demonstrate[e] the risk of dissipation" of the asset to obtain or prolong the restraint. There are additional examples of unfavourable conditions which may attached to seeking or retaining provisional measures which can (1) diminish their effectiveness as a tool to reliably secure assets for confiscation, (2) set the bar too high legally or practically to obtain them. Both features would discourage the use of provisional measures by competent authorities and can create the perception that they are not effective, straightforward, or easily applied tools in the asset recovery kit.

Provisional measures typically require judicial authorisation by a court (or in some cases, by the prosecutor or investigating magistrate). The evidentiary and procedural requirements for obtaining freezing, seizing, or restraining orders differ across countries. To obtain provisional orders in common law jurisdictions, these requirements are generally based on the "reasonable grounds to believe" or "probable cause" standard of proof, though the specific formulation varies by jurisdiction. In civil law jurisdictions, the decision is typically based on the prosecutor's or judge's determination that a freezing order is necessary to secure the property during the investigation or to prevent dissipate or damage to the property which may be subject to confiscation. In both circumstances, the showing will rely on the government making some showing that the property fits the legal requirements for possible confiscation, either because it is owned by a suspect or connected with an offence in some way (e.g., that may represent the proceeds of crime).

The potential problem that Interpretive Note seeks to address is when countries require extra, burdensome, or impractical requirements in order for the competent authority to obtain a provisional measure. Determining what may constitute such an "unreasonable" or "unduly restrictive condition" in obtaining provisional measures will depend on an analysis of the specific law and the context of the legal system in question. One such requirement mentioned in the Note is demonstrating a "risk of dissipation." This is above and beyond any requirement that the asset could,

16. 18 U.S.C. § 2232.
17. Japanese Penal Code, Art. 95(1).
18. Act on Punishment of Organized Crimes and Control of Proceeds of Crime, Art. 10.
19. Singapore Criminal Procedure Code § 35(9)(b).

hypothetically, be dissipated; here, there would be a requirement to show a particularised, imminent, or credible *actual* risk of dissipate of a specific asset, in the present. This would require the government to show evidence which, for example, demonstrates that the perpetrator has (or has expressed) the intention to further conceal or dispose of property, especially when the nature of the property – such as funds in a bank account, cash, virtual assets, or movable property like vehicles – makes them inherently susceptible to being relocated or concealed. It may not be sufficient to show that other properties have been transferred or squandered in the past, and such a requirement may call for proof that this unique asset is subject to the risk of dissipation. Some assets, by their nature, are more difficult to dissipate, such as a large piece of land. There is a possibility that if a risk of dissipation is required, some entire categories or types of assets could be unavailable for provisional measures.

A risk of dissipation requirement relies on considerations of the nature of the asset, the characteristics of the suspect, and, on some level, attempting to predict future behaviour (whether of that person or others acting on his or her behalf). It may be challenging for the government to identify the evidence that substantiates the risk. For the sake of proving a risk if dissipation, further intrusions on the rights of the suspect should not be needed (for example, a lawful warrant to access the person's communications). Whatever rights are marginally protected by having to show a risk of dissipation would be further infringed by seeking evidence that may not already be in the possession of the competent authority undertaking the criminal investigation. It would be easier to secure the asset without having to show the risk than to justify the need for, e.g., communications interception, and it would also be less restrictive from a fundamental rights perspective.

The requirement to prove a risk of dissipation can present significant challenges, potentially delaying the implementation of provisional measures and increasing the likelihood of property dissipation. While this concept is commonly found in bankruptcy, insolvency, and civil proceedings, it can be an obstacle in the asset recovery context, where provisional measures are integral to securing future confiscation. The revised FATF Standards clearly point to the risk of dissipation test as but one example of unreasonable or unduly restrictive condition. Whether the conditions in place in a country are *in fact* unreasonable will depend on the specificities of the law and its actual implementation.

In some jurisdictions, the targets of provisional measures (and other parties) may contest or appeal these orders prior to their issuance. As a result, the application process for provisional measures can turn into a mini-trial. This can lead to substantial delays in freezing or seizing the properties, undermining the efficacy of the provisional measures,

BOX 45 – **COUNTRY EXAMPLES: Conditions for Seeking a Restraint**

In some countries, the risk of dissipation as a condition for seeking or obtaining a restraining order is seen as a safeguard so that rights are not compromised and interfered with unnecessarily. For instance, in the UK, the risk of dissipation test developed in case law, and it helps the prosecution to assess the likelihood that assets will be dissipated that could otherwise be used to satisfy a confiscation order. The test seeks to ensure that a restraint will only interfere with the right to enjoyment of property when such interference is necessary, in line with ECHR Art. 1. Protocol 1. Prosecution authorities in the UK and the Cayman Islands reportedly do not find it a challenge to demonstrate a real risk of dissipation. The courts in those jurisdictions retain discretion as to whether a restraint should be granted and which specific assets should be included or excluded. Because the UK criminal confiscation system is value-based and routinely restrains assets that are not specifically shown to be proceeds of crime, but which may satisfy an eventual confiscation order, the test operates in a different context. In a system where "clean money" is commonly subject to restraint, the application of such a condition should be examined in practice. If assets are not necessarily linked to crime, it is possible that restraining them may warrant additional protections.

and consuming judicial resources. The inability to act on an *ex parte* basis or without prior notice, in line with INR.4, paragraph 5, could also be an unreasonable condition. As another example, immediate notice requirements may not be appropriate in all cases, for example, when law enforcement operations involve multiday "take downs" or seizures of assets in several locations and belonging to different suspects, or the simultaneous or successive restraint of assets across jurisdictions. Notice should follow quickly, in order to trigger review and the ability to contest a provisional measure (as reflected in INR.4), but should not jeopardise the success of the operation. Other conditions that may be unreasonable include a requirement to show grounds to believe that the properties are subject to confiscation by too high a threshold, or a requirement to show undertakings as to damages or criminal benefit, particularly at an early stage of the investigation.

Moreover, there may be unreasonable or unduly restrictive conditions put upon extending a provisional measure, such as a very short duration for restraint, or a requirement that the authorities must constantly seek extensions of the orders at intervals that are very close in time. In the course of complex criminal and financial investigations, including most money laundering cases, such a requirement may deter the authorities from seeking the provisional measure until they are at or near the point of charging the crime, which may not be an effective approach for pursuing successful asset recovery. Additionally, it may simply be too late, and the properties which once could have been confiscated may be gone if there are aspects of the law which over-complicate or disincentivise the use of provisional measures. Considering the extensive investigative efforts often required in money laundering cases, including the likelihood of international co-operation and the amount of assets that could be seized or restrained in large-scale cases (either in number or in value), laws that require too frequent reapproval of measures, or new proof after the initial restraint, may be considered as unreasonable or unduly restrictive. This judgment, particularly by assessment teams, will necessarily include a degree of subjectivity within the context of the country and legal system in question.

Practitioners should also keep in mind the procedural hurdles that may arise during the process. For example, in establishing reasonable grounds, prosecutors should encourage courts to focus on whether the provisional measure is justified, rather than deliberating on the ultimate merits of the case – an issue that should be determined at the trial phase.

4.3. Effective interim management of frozen or seized property

Once the asset is secured through the use of provisional measures, interim management of frozen or seized property becomes a chief concern. The "interim" refers to the period after identifying and securing the asset and the time that a final judgment orders either the confiscation of the asset or its release (see Ch. 3.6 for pre-seizure AM issues). In most countries, this interim period includes additional investigation, arrests, motions and hearings, trials, and other legal procedures.

This is typically a period of heavy litigation in both criminal and non-conviction based confiscation proceedings, and it is possible that the case could take some drastic turns during this interim: additional criminal charges or allegations may be included, thus expanding the case and potentially bringing additional assets into play. Likewise, the case or charges against certain defendants may be dismissed at any stage, thus closing or contracting the case and prompting the release of seized or frozen property (unless they are secured through a concurrent NCBC proceeding). It is also possible that the case may be paused or stayed – pending foreign evidence for example – for a significant length of time. In any of situations described above, competent authorities must prioritise the security of detained property and preserve its value through effective AM during this period and through the last phase in the cycle (see Ch. 7.1 for post-confiscation AM issues).

Under R.4(h) countries must have measures to enable the management of assets that are frozen or seized. The Interpretive Note to R.4 is clear on this point: "[c]ountries should have effective mechanisms for managing, preserving,

and, when necessary, disposing of, frozen, seized, or confiscated property. Preservation of the value of property should include the pre-confiscation sale of property, where appropriate."

The interim management of frozen or seized property is critical to the eventual success of the AR process. Here, authorities are urged to concentrate on maintaining the value of assets until final disposition, or where preserving value is not possible, mitigating any losses. Enhancing value is not necessarily an objective of interim AM, but if increases do occur through pro-active management practices, this beneficial (but not mandatory). During this interim phase, the management of assets should seek to prevent significant depreciation, ensure that assets continue to function (as appropriate for their category, from companies to racehorses), and remain compliant with all relevant legal and procedural standards.

ADDITIONAL CONSIDERATIONS

According to principles outlined by the Institute of Asset Management (IAM), effective AM requires a systematic approach that includes both strategic and operational planning to preserve asset value. This approach involves clear delineation of roles and responsibilities, comprehensive risk management, and the establishment of performance metrics to ensure that assets are managed in line with best practices. Reference may also be made to the ISO standards discussed in Ch. 3.6, including ISO 55000, 55001, and 55002. The interim management of assets, guided by standards such as these ISOs, and supported by the principles of the IAM, can ensure that assets are managed in a structured, transparent, and risk-aware manner. The objective is to protect and maintain the value of assets, ensuring that they remain viable for their eventual use in restitution, public benefit, or other designated purposes.

It is noteworthy that European Union Directive 2024/1260, which must be transposed in domestic law by EU Member States by November 2026, will significantly impact the AM structures and practices of several FATF and FSRB members, including at the interim stage. EU Member States are required to have AMOs, pursuant to article 22. Article 20 contains detailed provisions on AM planning, management costs, and preservation of assets. Article 27 advises countries to create one asset central register or other registers or tools, and ensure that relevant authorities are able to obtain information about frozen and confiscated assets. Moreover, Regulation 2018/1805 regulates judicial cooperation between EU Member States for the purpose of assets freezing and confiscation, including the management and disposal of frozen and confiscated assets.

4.3.1. Roles and responsibilities

The effective interim management of frozen or seized assets likely involves a co-ordinated effort among multiple stakeholders, each with specific roles and responsibilities. Clearly defining these roles is necessary to ensure that assets are managed efficiently, legal requirements are satisfied, and the process is transparent. Key stakeholders may include AM offices or agencies, LEAs, AROs, the judiciary, external service providers, and FIUs, depending on the context and criminal justice system of the country. The different legal systems, institutional arrangements, and cultures across jurisdictions may mean that a particular arrangement that works well in one country may not be suitable for another.

The purpose of a co-ordinating body, such as an AMO, is not necessarily to centralise AM. Countries may rely on a range of co-ordinating mechanisms, and should adopt a framework that suits their domestic system. But the ultimate result should be coherent, replicable, and reliant on adequately skilled and specialised personnel. For instance, if a multitude of bodies are responsible, practices may differ drastically depending on the local practice or court. If the judiciary (i.e., judges) are solely responsible for interim AM, they may be less inclined to seize complex assets, as they may not have the time, resources, or tools necessary to manage them while cases are pending.

Below are the institutions that are normally or occasionally involved in the interim AM phase and their typical roles and responsibilities:

- **Asset Management Offices:** These are government agencies, agency components, or specialised units responsible for the overall management of seized or frozen assets. Their duties may encompass strategic planning, securing assets, overseeing maintenance, and making decisions about asset use or potential sale, and liquidation and disposal. They also manage and monitor external service providers who may be contracted for their expertise in handling certain types of assets. AMOs must ensure that all activities and expenses are documented thoroughly to maintain transparency and create an audit trail. In some jurisdictions, AMOs might establish divisions to specialise in handling different asset categories such as real estate, financial instruments, or businesses. In other jurisdictions subject matter experts may be utilised for different purposes (e.g., property management experts may deal with structural maintenance and market valuation; financial analysts may focus on managing investment portfolios to prevent value loss, etc.).

  Not every country will have or need a dedicated AMO, however, those jurisdictions handling an increasingly large AR caseload may consider establishing one, or a component of another institution with similar, suitable powers. The extent and scope of the decisions that AMOs can make with respect to assets may be set out in domestic law and policies and may be dependent to some extent on the procedural stage in the confiscation process. For instance, during the preliminary phase, extraordinary transactions involving the assets may be restricted, the scope of management powers may increase in the interim stage, and definitively confiscated assets may fall under the full jurisdiction and control of such offices.

- **Law Enforcement Authorities**: LEAs may play a key role in the initial stages of asset freezing or seizure and may continue to be involved throughout the AM process, especially if the assets are part of live investigations. Their responsibilities include securing assets at the point of seizure, ensuring safe transfer to management authorities, and addressing security risks related to the assets, such as threats from criminals or vandals. Criminals and their networks may actively seek to repossess, damage, or destroy assets to obstruct justice, making security measures a critical consideration to protect against such attempts. LEAs also provide intelligence about the asset owner's connections, which can aid in risk assessment and the identification of additional assets. Co-ordination between law enforcement and AM authorities is essential to ensure that assets remain secure and that any investigatory requirements are met. For instance, if a seized property is needed as evidence in a trial, LEAs must ensure the property remains protected and undisturbed until the trial concludes. They also play a role in enforcing freezing orders and ensuring compliance with all relevant legal procedures, thus maintaining the integrity and safety of seized assets.

- **Judicial Authorities**: Courts and judicial officers are often tasked with overseeing and authorising actions related to seized or frozen assets. Their role is to ensure that all AM activities comply with legal requirements and that the rights of all parties, including bona fide third-parties, are respected. Judicial authorities may issue the initial freezing or seizure orders and may be required to approve significant management decisions, such as pre-confiscation sales or the use of seized funds for asset maintenance. Courts may also be called upon to distinguish between assets which are simultaneously found to be as evidence *and* instrumentalities of crime. If the assets constitute evidence, judicial authorities may find that pre-confiscation sale could jeopardise trial outcomes and decide against it, or that a police description or assessment of the asset will suffice for evidentiary purposes. In addition to authorising various AM steps, as needed, judicial authorities may adjudicate disputes over seized assets. These disputes can arise when creditors or co-owners assert legitimate claims. Courts must carefully evaluate these claims, often relying on detailed evidence from AMOs and LEAs, to determine the appropriate course of action. In some countries, judicial authorities, such as clerks, bailiffs, or marshals may play a more direct role in actually managing the assets and not just overseeing the process carried out by other entities.

- **External Service Providers**: AMOs often rely on external service providers to manage special, unusual, or high-value assets. These providers may include property management companies, financial asset managers, business consultants, auction houses, and security firms. Engaging these experts is often necessary when assets require skills or resources beyond the capabilities of government agencies. For example, property management firms may handle the day-to-day operations and maintenance of real estate, while financial managers oversee investment portfolios to maximise returns and minimise risks. Business consultants may be brought in to run or stabilise operational companies, ensuring they remain viable until a final decision is reached. Government authorities must adhere to public procurement rules in contracting with these providers and should actively monitor them to ensure effective management and compliance with legal standards. Contracts with these service providers should clearly outline their responsibilities, performance expectations, and accountability measures.

- **FIUs**: FIUs may support AM efforts, especially when dealing with complex financial assets or cross-border transactions. They may assist in analysing financial data related to the seized assets and ensure that AM activities align with AML regulations. An FIU would not be expected to play a role in AM in every jurisdiction, however they could, depending on the legal framework, and they should be consulted on an as needed basis.

ADDITIONAL CONSIDERATIONS

In addition to the primary entities likely to be involved in asset management, several other stakeholders may play significant roles, such as:

- **Environmental Agencies:** Special care should be taken to engage with authorities with appropriate knowledge and skill in the handling of flora and fauna, particularly if the assets rare or endangered. In addition, if a seized property is located in a sensitive ecological area, environmental agencies may need to be consulted to ensure that AM practices comply with environmental laws and regulations. For example, real estate assets near protected habitats might require oversight to prevent environmental degradation or to adhere to conservation requirements. These agencies can provide guidance on how best to manage such properties without causing ecological harm, ensuring that AM is both legally compliant and environmentally responsible. Such agencies may also be useful to consult when the seized asset could be hazardous to the environment, such as a polluting factory, mining operation, energy generation plant, etc.

  Similarly, it may be necessary to involve wildlife management or control services, and potentially state-run or private zoos, if any animal is or may be seized. This is a common occurrence in cases of wildlife trafficking, smuggling in violation of animal protection laws, or illegal animal fighting. But different types of offenders have been known to invest criminal proceeds into farms, fisheries, livestock, racetracks, stables, etc., and these assets will likely require agricultural or husbandry expertise.

- **Cultural Heritage Organisations:** When the asset in question has cultural or historical significance – such as ancient artifacts, heritage buildings, or art – cultural heritage organisations may become involved either in the valuation stage or the interim stage of asset management. They may advise on the preservation of these assets, ensuring that their historical or cultural value is not diminished. In some cases, these assets might be temporarily placed in museums or cultural institutions until a final decision about their ownership is made. Such organisations can also be consulted regarding additional security measures regarding transport, storage and prevention of liability, namely insurance. This collaboration helps to safeguard patrimony or assets of unique cultural value while legal proceedings are ongoing and often involves co-ordinating with relevant government ministries responsible.

Asset recovery involving looted or stolen patrimony or cultural and religious objects – particularly from former colonies, native populations, or foreign countries – is a burgeoning focus area of confiscation activity. It is a good practice for knowledgeable representatives from the affected communities to be consulted by competent authorities for proper safekeeping and non-desecration of assets.

- **Tax Authorities:** Tax authorities are another important stakeholder, especially when assets come with outstanding tax liabilities. They may work alongside AM authorities to assess and address any tax obligations, such as unpaid property taxes or other fiscal encumbrances. In certain cases, seized funds or proceeds from asset sales may be used to settle these tax liabilities. Co-ordinating with tax authorities ensures that all legal obligations are fulfilled, preventing complications that could arise from unpaid debts and ensuring that the government recovers any lost revenue associated with the assets. It is a best practice to consult national tax authorities as well as state/provincial, county, department, town authorities as appropriate.

  The payment of property or other taxes during the interim seizure stage can present a legal grey area. The owner is unlikely to pay taxes because they are no longer in possession of the asset, whereas the asset manager administering the asset is not generally liable for tax obligations. Some jurisdictions have addressed this issue through specific provisions regulating the tax status of assets during seizure and management. For example, Portuguese law governing the AMO explicitly provides that property tax is not payable while real estate is under AMO administration. Countries may consider clarifying the legal treatment of tax liabilities on seized assets during the interim period within their AR framework to avoid uncertainties and ensure consistent treatment.

By involving these diverse stakeholders, the interim AM process is more holistic and aligned with broader legal, social, and environmental objectives. This inclusive approach ensures that AR efforts have a meaningful and lasting impact, addressing the needs of victims and protecting the public interest. There are other stakeholders that may be involved in later phases, where appropriate, to include victims of crime (or victim support representatives and agencies) and community benefit initiatives (if the assets or funds are destined for social re-use). Even in the interim phase, there is time contemplate potential disposal and use options and to start making contacts in advance of the conclusion of the case. However, to avoid creating false hope or expectations, communications with these entities should be preliminary, and caveated to say that the legal process must be finally resolved and not subject to appeal to commence disposal.

BOX 46 – COUNTRY EXAMPLE: A Modern Asset Management Agency in France

The *Agence de gestion et de recouvrement des avoirs saisis et confisqués*, or the Agency for the management and recovery of seized ad confiscated assets, known as AGRASC, falls under the dual supervision of the Ministry of Justice and the Ministry of Public Accounts. Its mission and activities include:

Assistance: In accordance with Article 706-161 of the Code of Criminal Procedure, AGRASC provides criminal courts and public prosecutors, at their request or on its own initiative, with guidance and useful legal and practical assistance for the implementation or management of seizures and confiscations. Since its creation, AGRASC's assistance mission has been a top priority, aimed at supporting investigators and magistrates in developing asset management strategies, assessing the feasibility of a seizure or confiscation, justifying the legal grounds for it, and drafting the related decisions. The agency operates both in domestic judicial cases and within the framework of international co-operation. In addition to AGRASC, France's MOJ has designated a magistrate in each public prosecutor's office as a "seizure and confiscation" specialist. AGRASC relies on this network to successfully carry

... Box 46 continued

out its missions. The magistrate ensures the diffusion of best practices within the jurisdiction and serves as a key contact for AGRASC. The general public prosecutor also organizes regular meetings with specialist officers from various courts within their jurisdiction to coordinate actions, address challenges, and review activities. This specialisation allows for tailored training sessions adapted to local issues.

Training: AGRASC has a training function for judicial staff, investigators, and institutional and foreign partners. It offers training for professionals involved in seizures and confiscations, either onsite or at any relevant institution. In partnership with the National School for the Judiciary (ENM) or the National School for Clerks (ENG), the agency regularly trains future professionals (initial training) or experienced professionals (continuing education). AGRASC regularly collaborates with foreign institutions and is often approached by countries seeking to replicate its structure. The agency frequently welcomes foreign delegations or travels abroad to present its operations and share best practices it has developed.

Operational Missions:

- AGRASC is responsible for the management of seized assets across the national territory. Its activities include:
  - Centralized management of seized funds (cash and bank accounts).
  - Publication of real estate seizures and criminal confiscations.
  - Sale of movable property before judgment. By court decision and in exceptional situations, AGRASC's movable property department may be tasked with selling confiscated movable assets.
  - Optimization of seized items.
  - Allocation of movable property to investigative and judicial services.
- AGRASC is responsible for the compensation of civil parties from compensated assets.
- AGRASC is responsible for the execution of confiscations. Its activities include:
  - The transfer of confiscated funds to the general state budget or to special funds (such as the drug trafficking fund, the fund for the fight against prostitution, or ill-gotten assets).
  - The sale of real estate properties (see our sales).
  - Restitution: when the restitution of assets seized and managed by AGRASC is ordered, Article 706-161, paragraph 4 of the Code of Criminal Procedure authorizes the agency to inform individuals and administrations potentially interested in the returned assets. Thus, before returning funds, AGRASC consults with various public creditors.
  - Social allocation.

International Co-operation: As part of its assistance, the agency supports French jurisdiction in matters of seizures and confiscations that involve an international element, whether for incoming or outgoing requests. It advises French magistrates on the proportionality, legal basis, and appropriateness of the proposed measure. To do so, it can rely on a network of French liaison magistrates abroad and works closely with the Delegation for European and International Affairs (DAEI) and the International Criminal Assistance Office (BEPI) within the Department of Criminal Affairs and Pardons of the Ministry of Justice. AGRASC's mission is "to manage seized assets, handle the sale or destruction of seized or confiscated property, and distribute the proceeds of the sale in response to any request for MLA or co-operation from a foreign judicial authority." AGRASC may discuss and negotiate, at the end of a procedure, the terms of financial sharing with the requesting or requested state.

4.3.2. Preserving value

Maintaining the value of seized or frozen assets is an important aspect of interim management, requiring strategies that are carefully adapted to the specific type of asset. These strategies should strike a balance between seeking to maintain or even enhance asset value and managing associated costs to ensure efficient resource use. There are several reasons why value should be preserved to the extent possible.

- First, there is a duty of care placed upon the state when it is holding another person's property, both legally and morally. If confiscation does not ensue and the property is returned to its owner, that person or entity should not be left in a materially worse position due to the seizure or subsequent, improper interim management.

- Second, preserving asset value will ensure that if confiscation ensues and there are victims, that they will receive the maximum possible value out of the liquidated property when the case concludes and compensation is made.

- Third, if the central aim of AR efforts is to deny criminals economic benefits gained through their illegal activities, then the government serves the public interest by preserving asset value such that the funds/asset can be put to the best possible use after confiscation (e.g., by repurposing criminal proceeds to benefit society).

a. Fees, deductions, and access to funds

Managing seized assets incurs a variety of expenses, which must be carefully managed to preserve the asset's overall value. The primary costs which may be encountered are discussed below. Managing these expenses efficiently prevents them from eroding the asset's net worth, especially when an asset needs to be maintained over a long period before final resolution of the case. Costs are typically driven by the duration of the seizure and tend to mount over time. It is challenging to foresee how much time will elapse between the provisional and the confiscation order, but if an estimate is possible based on similar cases in the court, this should be factored into the pre-seizure planning and seizure phase.

Storage Costs: The cost of storing physical assets, such as vehicles, artwork, or high-value machinery, can vary based on the level of security and environmental control required. For example, luxury cars might need climate-controlled garages to prevent damage, while rare artwork could demand specific conditions to maintain its integrity. Authorities must evaluate these storage options to ensure that funds are used wisely and that the asset's condition is maintained without incurring unnecessary expenses.

Insurance Premiums: Providing insurance for seized assets is a fundamental part of responsible AM. Insurance helps protect against potential losses from theft, damage, or unforeseen events such as natural disasters. Premiums can be significant for high-value or complex assets, and they must be reviewed, renewed, and justified regularly. Authorities should ensure that insurance coverage is comprehensive enough to protect against the most plausible risks, but not so extensive as to burden the asset's value. Detailed records of policies, premium payments, and any claims made should be maintained to ensure transparency and accountability.

Security Measures: Proper security protects seized assets from tampering, theft, or sabotage. Real estate may require security guards or advanced monitoring systems, while high-value movable items may need secure transport and guarded storage facilities. Though these measures are necessary, they must be balanced against the asset's value and the potential risks involved. Regular assessments should be conducted to ensure security arrangements are effective and cost-efficient. Any changes in security measures should be well-documented for future reference.

Maintenance Costs: Keeping seized assets in good condition often requires ongoing maintenance. Real estate, for example, may need structural repairs, regular utility payments, and routine inspections to prevent decay. For buildings, tenant needs and requests must be handled, and vacancies filled. For operating businesses, costs could include staff

wages, compliance with industry regulations or tax obligations, or maintenance of essential functions. Machinery or specialised equipment may require servicing to prevent depreciation. Authorities must develop maintenance plans tailored to each asset type to ensure they remain in marketable or usable condition. These plans should be reassessed periodically to adapt to changing circumstances or asset needs.

Periodic Fees: Fees associated with bank accounts, investment accounts, and other financial assets continue post-seizure. It is responsible AM to review the fees and negotiate with the FI as to whether extraneous deductions may be waived during the seizure. In some legal regimes, fees applied to bank accounts can be considered dealing with the property, which may breach any restraining order in place and therefore be disallowed when attempted by a third-party custodian. Countries may consider specifying the treatment of fees and other regular deductions in law or procedures. Mailings will also tend to accrue concerning seized accounts, and these may be numerous. To avoid missing important statements or communications, asset managers may wish to ensure electronic delivery.

Administrative Costs: The administrative side of AM includes managing paperwork, co-ordinating with service providers, and ensuring compliance with legal obligations. These costs should be tracked and justified to ensure efficient use of resources. Clear procedures must be established for recording administrative expenses, and these should align with the broader AM strategy to maintain proper oversight. When funds are needed to cover these expenses, countries may consider legal provisions that allow the use of seized assets' financial resources. This is often done to prevent assets from losing value due to neglect. For example, liquid funds obtained during an investigation could be allocated to pay property taxes, avoiding additional liens or penalties that would complicate the eventual sale. Rental income could be used for upkeep. Seized bank accounts might be used to finance necessary repairs or pay insurance premiums. The use of such funds should be with permission (usually of a court), and a comprehensive record of income and expenditures should be maintained for auditing and oversight. Finally, jurisdictions should note that even if the asset were not restrained or seized, the criminal would have to use some source of cash to pay necessary, associated costs. Thus, the policy justification behind allowing the use of the defendant's liquid assets to cover the cost of maintaining other assets is sound.

Detailed Documentation and Compliance: Proper documentation of expenses is critical for maintaining accountability and legal compliance. Every deduction should be recorded with specifics about the expense, the amount used, and the legal basis for accessing the funds. Maintaining such records not only supports transparency but also provides an audit trail, which is necessary for defending AM decisions if they are challenged in court. Proper documentation serves to uphold public trust and ensure that the management of seized assets is beyond reproach.

b. Basic asset maintenance considerations

Basic asset maintenance refers to routine actions taken to preserve the condition and value of seized assets. For physical properties, this may include ensuring structural integrity, maintaining utilities, and protecting against environmental damage. Vehicles, for instance, should be kept in secure storage and periodically checked and driven to prevent mechanical deterioration. Simple financial assets, like bank accounts or stocks, must be managed to ensure no unnecessary loss occurs due to inaction or lack of oversight.

For these straightforward assets, jurisdictions should establish regular inspections and maintenance schedules, with all actions thoroughly documented. The aim is to keep the asset in a condition where it can be easily sold or repurposed, avoiding preventable depreciation.

c. Complex asset maintenance considerations

Certain assets require more sophisticated management approaches due to their complexity or value. These may include operational businesses, IP, or VA, to name a few.

BOX 47 – PRACTICAL TIP: In-House Asset Management v. External Service Providers

Advantages of In-House Management:

- Direct oversight and control over the management process, allowing for alignment with legal and procedural requirements.
- Potential cost savings, as there may be no need to pay external service provider fees.
- Easier integration with existing government AM systems and procedures.
- Greater security control, as assets remain within governmental oversight, reducing risks associated with third-party access.

Disadvantages of In-House Management:

- May require significant investment in staff training and infrastructure to manage complex assets effectively.
- Limited specialised expertise in managing diverse asset types (e.g., luxury goods or businesses).
- Higher risk of inefficiency if the agency lacks the required knowledge or resources.

Advantages of Using External Service Providers:

- Access to specialised expertise in various asset types, such as art conservators, luxury real estate professionals, or business management experts.
- Can streamline processes and enhance asset value retention through industry knowledge and best practices.
- Allows authorities to focus on core responsibilities while outsourcing complex AM tasks.

Disadvantages of Using External Service Providers:

- Potentially higher costs due to professional service fees.
- Risks related to reliance on third-party providers, including possible breaches of confidentiality or conflicts of interest.
- Need for rigorous vetting and oversight to ensure that service providers meet security and tax compliance standards.
- Challenges in maintaining full governmental control over the management and decision-making processes.

In-house management and external service providers

For assets such as ongoing businesses, authorities may decide to either manage them in-house or employ external service providers with expertise in business operations. Businesses may require experienced management teams to keep operations running, protect employee interests, and maintain financial stability. This may be a nearly full-time task. Service providers should be chosen based on their proven ability to manage such assets effectively and must work under well-defined contractual obligations that specify their responsibilities and expected outcomes. Properties like luxury estates or valuable collections (e.g., artwork or rare cars) may require specialised handling. Authorities may need to bring in art conservators, high-security storage solutions, or real estate professionals experienced in luxury markets to maintain the asset's value until disposition.

Virtual assets

Managing virtual assets in the context of asset recovery presents distinct challenges and opportunities that require careful consideration and tailored approaches. Virtual assets, such as cryptocurrencies and non-fungible tokens (NFTs), are characterised by their digital nature, rapid value fluctuations (minus stablecoins), and susceptibility to

cybersecurity threats. Given these attributes, authorities must develop specific strategies to ensure that virtual assets are properly secured, maintained, and managed throughout the AR process.

The first consideration is the secure storage of virtual assets. Unlike traditional physical assets, VA are stored in digital wallets, which can be vulnerable to cyber-attacks, theft, or loss if not properly safeguarded. It is a bad practice to seize information related to virtual assets (such as the private key) and not take possession of the asset itself into a government-controlled (or contracted service provider) wallet. This is the equivalent of having the keys to a car, but not the car, which risks that the car can be opened by other means and taken. Crypto can also still be accessed, transferred, or swapped by persons who possess a recovery seed which allows last-resort access into crypto. Authorities must implement robust cybersecurity measures for virtual assets, such as using cold storage solutions that are disconnected from the internet, to minimise risks. This may involve partnering with specialised custodians who have experience in handling and securing digital assets. Selecting these providers should be based on stringent criteria, including their reputation, security protocols, and compliance with regulatory standards. Such providers should be security vetted and demonstrate AML/CFT and tax compliance to further safeguard the integrity of the AM process.

Another important aspect of managing virtual assets is maintaining their value over time. The volatility of digital assets can pose a challenge for authorities if they aim to maximise recovery outcomes. Monitoring of market trends and seeking expert advice on the optimal timing for the liquidation or retention of these assets can help mitigate the impact of market fluctuations, or even obsolescence of certain coins. Selling an asset during a market peak could yield a significantly higher return compared to liquidating during a downturn. This strategic management may counsel collaboration with financial analysts and experts who understand the intricacies of digital asset markets. It is a luxury that not all countries will be able to have in terms of the effort and resources needed to "time the market" and it is certainly not a requirement of the FATF, but one issue of many to consider if a country is actively managing VA. Interim sales, in particular can be tricky, potentially leading to claims for compensation if assets were sold at what appeared to be a high point in the market, but a better price could have been obtained later.

Virtual assets also present legal and procedural complexities. The regulatory landscape for cryptocurrencies and other virtual assets is still evolving, and authorities must stay informed about any legislative changes that could affect AM practices. Ensuring compliance with relevant laws, both domestically and internationally, is crucial to avoid potential legal challenges. This includes understanding jurisdictional issues that may arise when assets are stored on platforms based in foreign countries or subject to different regulatory frameworks. Ideally, VA held abroad by foreign exchanges could be (legally) brought onshore, into government wallets or those of trusted and regulated providers, especially if the country at issue prohibits virtual currencies, but individuals in those countries still possess them.[20]

The transfer and liquidation of virtual assets must be approached with caution to maintain transparency and prevent allegations of mismanagement in the pre-confiscation phase. Comprehensive documentation of every step – from the initial identification and seizure of the asset to its final disposal – must be maintained to support transparency and accountability. Clear protocols should outline the decision-making processes involved, the rationale for timing asset liquidation, and any relationships with external service providers.

20. Note that jurisdictions may view the movement and transfer of virtual currency as a "law enforcement activity" in their territory, which may violate sovereignty, even if it occurs in cyberspace. All necessary court orders should be obtained, and countries should consult with the foreign government about any planned transfers, seeking permission or sending any necessary MLA requests. Alternatively, suspects and defendants can agree to voluntarily onshore the asset legally ordered to be seized, pending the outcome of the case.

ADDITIONAL CONSIDERATIONS

Given the public's increasing awareness of cryptocurrencies and their (occasional) association with speculative investments, it is essential to demonstrate that these assets are managed responsibly. This includes not only securing the assets but also ensuring that any actions taken align with the broader objectives of justice, restitution, and public interest. Additionally, in large cases where many millions of virtual currencies are seized, it is a good practice for asset managers to be sensitive to the liquidity of the market and not overloading it in a way that decreases the value of the asset. This may entail phased liquidations, so the market is not flooded all at once.

4.3.3. Pre-confiscation sale of property

Under INR.4(14), FATF explicitly requires countries to have mechanisms that enable the pre-confiscation sale of property for use in appropriate cases. The FATF Recommendations do not provide explicit step-by-step procedures for pre-confiscation sales, but INR.4 emphasises the importance of safeguarding asset value, and, notably, IO.8 has new core issue on this topic. Core Issue 8.4 inquires: "How well are the authorities managing frozen or seized property to preserve its value, *including through pre-confiscation sale or disposal, where appropriate?*" (emphasis added).

In certain situations, it may be advisable to sell seized assets before the final confiscation, particularly when holding the asset could result in significant depreciation or untenable maintenance costs. This action is not intended as a punitive measure against the individual from whom the asset was seized, but serves as a strategic measure to protect the asset's value and secure the future availability of the proceeds of the sale, if the asset itself is not one that warrants specific preservation. Pre-confiscation sales, also known as "interlocutory sales" may play a critical role in AM, enabling authorities to conserve the worth of assets and mitigate the financial and logistical challenges associated with their prolonged management. Assets held over an extended period are susceptible to depreciation, rising maintenance expenses, and potential deterioration. Therefore, the timely sale of such assets prior to final confiscation can be a necessary and effective solution for value preservation. An interlocutory sale can help preserve value for governments and potentially for victim compensation during protracted confiscation proceedings, and can diminish unintended consequences of these proceedings, such as the harm to communities when real property lies vacant during lengthy cases. They can also be helpful when assets are restrained in response to MLA requests because the need for additional enforcement proceedings in the requested state can greatly extend the confiscation process.

Although countries have different criteria for when such a sale may be warranted, some countries only pursue it when strictly necessary and, generally, as a last resort, because the unique character of an asset or its sentimental value cannot be replaced. Other countries take a more flexible and situation-specific approach to pre-confiscation sale, while yet other countries may allow it as a matter of course for certain categories of assets (e.g., if all virtual assets are liquidated upon seizure to avoid future litigation about value fluctuations). Countries have discretion in determining where pre-confiscation sale is appropriate and setting the specific procedures to be followed. Interlocutory sales may potentially interfere with property rights (e.g., as enshrined under Art. 1 of the ECHR, Protocol 1), as they take place at the provisional measure stage and before any final decision on confiscation has been made. As explained further below, countries can mitigate such risks by statutorily authorising the possibility of interlocutory sale and requiring judicial approval before such action can be taken.

The finality of an interlocutory sale is evident and irreversible, even if final confiscation is not ordered by the court at the conclusion of the case. In that situation, for example, if the defendant is acquitted by their property was previously ordered to be sold by the court, the proceeds of the property sold (i.e., money) would be returned to the owner. For some asset types, such as perishable property that may spoil, interlocutory sale is likely a necessity. However, when assets are unique, such as an antique car, or represent a particular value for the respondent, a pre-confiscation sale

may warrant additional consideration (likely by a court). In this situation, it may be possible to substitute the desired sale of the irreplaceable asset with the deposit of corresponding value by the (consenting) affected person. These funds could serve as a sort of a bond or guarantee whilst the confiscation proceeding continues.

It is a best practice for countries to strike a balance between ensuring that assets remain accessible and retain their worth, and not tolerating disproportionate management costs. Pre-confiscation sales provide the means to mitigate risks related to the prolonged holding of certain assets, particularly those prone to rapid value depreciation or those that incur high upkeep expenses. For example, EU Directive 2024/1260 requires member states to allow interlocutory sales in the following circumstances: (a) the property subject to freezing is perishable or rapidly depreciating; (b) the storage or maintenance costs of the property are disproportionate to its market value; (c) the management of the property requires special conditions and expertise which is not readily available (Art. 21). It is also a best practice to ensure that such an interference with the owner's property rights of the kind that an interlocutory sale represents must not only serve to achieve a legitimate aim, but also be proportionate.

a. Judicial authorisation

Maintaining transparency and ensuring strict legal compliance are key components of conducting pre-confiscation sales. Judicial authorisation (i.e., a court order) and oversight are often required to permit these sales. Domestic laws and processes may require the prosecuting authority or the moving party urging the sale to convincingly demonstrate that such actions are necessary and/or serve the public interest. Courts, when involved, should be presented with comprehensive justifications for the sale, supported by evidence that underscores the potential financial or operational risks of retaining the asset. The requirement for judicial authorisation ensures that decisions are made by an impartial, outside party and that the sale process aligns with the principles of fairness and accountability.

It is possible that the suspect, defendant, or putative owner of the asset and others who may claim and interest in it could be involved in the process to decide on the government's application for an early liquidation. However, competent authorities should be prepared to contest opposition that is based on provably false claims of harm to the asset or sentimental value (e.g., through evidence of who used the asset and how often, if attainable). Defendants understandably tend to reject moves to seek a pre-confiscation sale, but their counsel may be able to persuade the defendant. It is often in the interest of *both parties* to obtain such a sale. If the government recovers the asset, it will have experienced a significant cost or burden-savings. If the defendant prevails and eventually has the asset (or its equivalent returned) the value of the cash in place of the asset may well be worth more than the asset itself would have been had it been subject to costly maintenance and upkeep while the case was pending. In some instances, a defendant/respondent may request an interim sale.

Generally, such sales should not be conducted without a judge's permission, as this process fundamentally and permanently changes the nature of an irreplaceable asset. A court order gives the competent authorities the right to legally sell the item and pass title to it, such that the defendant cannot contest ownership later from the new, bona fide purchaser, who paid value and received an asset in exchange which he or she now legally and indefinitely owns.

b. Mechanisms

In executing pre-confiscation sales, authorities must adopt clear, regulated mechanisms to maximise asset value while ensuring procedural fairness. Methods such as public auctions, sealed bids, or negotiated private sales are commonly used. The specific form of the liquidation should be chosen based on the type of asset and prevailing market conditions. The goal is to achieve the highest possible return, while maintaining transparency and preventing disputes that could arise from contested sales. Proper documentation of the entire process, from the rationale for the sale to the method chosen and the results achieved, serves as an audit trail, reinforcing the credibility and integrity of the AM process.

After the liquidation event, the proceeds from pre-confiscation sales must be managed with stringent safeguards. Third parties may have an interest in the property, subject to the later adjudication of their claims. Additionally, should the confiscation of the property not ultimately be granted, the person from whom it was seized may seek compensation for mismanagement. Typically, funds generated from these sales can be placed into protected government accounts, ensuring that they are securely held until the final resolution of legal proceedings. This practice aligns with the FATF's emphasis on maintaining asset value and ensures that any funds derived from these sales remain available for legitimate distribution – such as victim compensation or state revenue – once judicial processes are completed. Clear and transparent records of how these proceeds are managed bolster trust in the system and enhance the accountability of asset recovery processes.

Pre-confiscation sales, when conducted with proper diligence provide a practical solution for AM. They help mitigate the financial and operational strains of long-term asset retention, maintain, or enhance asset value, and contribute to the overall effectiveness of asset recovery efforts. By integrating these practices into their asset recovery frameworks, authorities can align with both FATF Guidance and global best practices, ensuring that the confiscation process is effective, fair, and capable of achieving its broader policy goals, including justice and the disruption of criminal enterprise.

ADDITIONAL CONSIDERATIONS

Pre-confiscation sales mechanisms are not without certain risks. There is potential for criminals to attempt to regain control of their assets. They may directly participate in sales under false identities or employ intermediaries to purchase their assets on their behalf. In some instances, criminal networks may use intimidation or coercion to discourage legitimate bidders, undermining the integrity of the process and posing security risks to participants. To mitigate this risk, measures to vet potential buyers could be implemented to ensure that buyers are not linked to the original owners or involved in related criminal activities. Vetting procedures, including background checks and the verification of bidders' identities, can help prevent the asset from being reclaimed by those from whom the asset is recovered. While an AMO may not have this capability, close cooperation with law enforcement can be useful to enable this vetting to occur.

Additionally, ensuring the safety and impartiality of the sales process may involve implementing enhanced security protocols during auctions or sales events. This can include limiting access to authorised participants, employing security personnel, and using technology to anonymise bidder identities in sealed bid or online auction formats. Such measures can deter criminal influence and foster a competitive and fair bidding environment.

The proceeds from pre-confiscation sales should be managed responsibly and held securely, such as in government account, to maintain their value until the final legal determination is made. This approach prevents misuse of the funds and ensures that they are available for legitimate allocation or restitution. By implementing these robust mechanisms, authorities can safeguard the asset recovery process, support public confidence, and uphold the principles of justice and procedural fairness in AM.

5. Comprehensive Range of Confiscation Measures

Suggested audience:

- **Policymakers**
- **LEAs, investigative agencies, and prosecutorial or judicial authorities with responsibility over asset recovery**

KEY GUIDANCE IN THIS CHAPTER

Comprehensive Range of Confiscation Measures

Fundamental Principles of Domestic Law	p. 201
Conviction Based Confiscation	p. 204
Extended Confiscation	p. 210
Non-Conviction Based Confiscation	p. 223
Other Measures and Unexplained Wealth Orders	p. 247
Enforcement and Realising Assets	p. 255

Chapter 5 Summary

This Chapter discusses the culmination and purpose of the prior stages of the asset recovery process: confiscation. It focuses on R.4(e), (f) and (g), and part D of INR.4. It also covers IO.8, specifically Core Issues 8.5, with elements of IO.2, as relevant.

INR.4 stresses that countries need a *comprehensive range of measures* to confiscate criminal property and corresponding value. This is the starting point for Chapter 5, which explains in detail the types of confiscation covered by the FATF Standards. It explores their permutations and examples of implementation, and compares and contrasts the different strategic advantages associated with each. Although R.4 requires countries to have three main forms of confiscation – CBC, extended confiscation, and NCBC – one key point of the Chapter is that there is significant fluidity between these forms, with recurring concepts that feature across legal regimes.

Other key points are that countries should be encouraged to innovate with their AR mechanisms and enact confiscation powers that respond to their risks. As an example of this, Chapter 5 covers UWOs and other innovative asset recovery tools, including those which require offenders to demonstrate the lawful origin of their property. Importantly, this Chapter begins with a discussion of fundamental principles of domestic law, and then within relevant sub-chapters (on extended confiscation, NCBC), mentions how these FPDL may be accommodated. It also provides Guidance on how several confiscation regimes have been challenged in court and were upheld because they either did not implicate the principles alleged or they accommodated them sufficiently through legal protections and procedural safeguards. The Chapter also briefly covers measures which, while helpful, may not fall under the FATF definition of confiscation.

In summary, this Chapter presents analysis and practical examples of confiscation measures which are newly incorporated in the FATF Standards or which have not been the subject of extensive FATF guidance in the past. Regardless of the mechanism used in any given case, competent authorities are urged to focus on enforcement and realisation – such that criminals are in actuality deprived of assets ordered confiscated.

5.1. Types of Confiscation

According to the FATF Glossary, "the term confiscation, which includes forfeiture where applicable, means the permanent deprivation of property by order of a competent authority or a court. Confiscation or forfeiture takes place through a judicial or administrative procedure that generally transfers the ownership of specified property to the State. In this case, the natural or legal person(s) that held an interest in the specified property at the time of the confiscation or forfeiture loses all rights, in principle, to the confiscated or forfeited property. Confiscation also includes deprivation through an order for corresponding value, where receipts from the sale of property rather than title are transferred to the State."

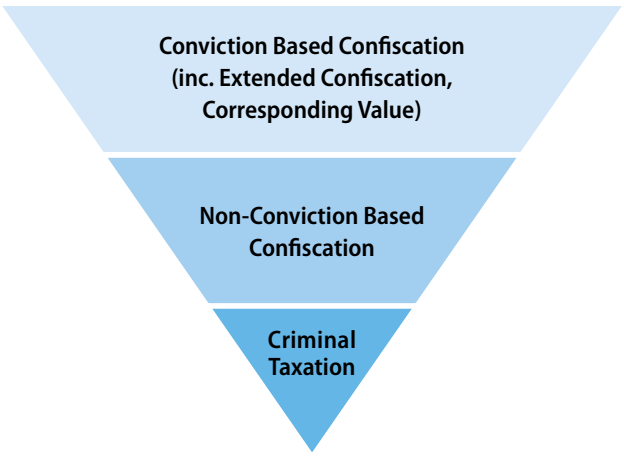
The Interpretive Note to R.4 specifies that "[c]ountries need a comprehensive range of measures, including legislative measures, available to confiscate criminal property and property of corresponding value, including those measures in paragraphs (9)-(13)" of the Note. These measures include criminal confiscation (conviction-based confiscation, or CBC), extended confiscation, and non-conviction based confiscation (NCBC). Some additional types of confiscation which have proven to be effective in the countries that have implemented them are encouraged by the FATF, but optional under the Standards. These include measures which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation (INR.4, paragraph 12). They also include measures that require criminal defendants to disclose their assets; unexplained wealth proceedings; reversal of the burden of proof post-

conviction; forfeiture of uncontested seized cash (IO.8, specific factor 10). Furthermore, in terms of measures which may aid, supplement, or result in the recovery of assets, the FATF encourages co-operation and co-ordination with tax authorities which have the effect of depriving criminals of funds in situations where there is a pre-existing tax liability (INR.4, paragraph 13). Finally, it is worth noting that some countries have tools such as administrative or agency-forfeiture applicable to assets besides cash and often with a limitation on the value that can be confiscated in this way. Other countries use an abbreviated or expedited administrative power, where the confiscation is handled by a relevant agency unless and until it is contested, at which point the challenge is heard by a court.

The main forms of permanent deprivation, in contrast to the provisional and temporary measures discussed in Ch. 4, will be covered below. The chapter is broadly divided into CBC and NCBC, but the lines between the two may blur and the stark decisions between CBC and NCBC forms of confiscation are not as stark as in the past, and some hybrid systems also exist. Often, the main difference is nature of the court where confiscation takes place (criminal or civil), how it is implemented (the procedural rules to be applied), and what is at stake (e.g., the proceeds of an offence or offences from a defendant, or assets having provable criminal origin or connection). These differences are apparent at the national level, but may have an impact for international co-operation.

FIGURE 8 – **Confiscation Range of Measures**

From the broadest coverage and scope to the narrowest



Note: This does not imply that one form of confiscation is preferred over any other under the FATF Standards or that certain forms of confiscation necessarily bring about greater or lesser levels of effectiveness when applied in the context of a country. See IO.8 Methodology, Core Issue 8.5, and footnote 193.

Conviction-Based Confiscation – Top Tier, Widest Reach: A fully functioning AR framework begins with CBC, which offers the broadest scope for asset recovery. Following a criminal trial, where the defendant is found guilty to the criminal standard of proof ("beyond a reasonable doubt"), the court may order the confiscation of assets. Key features:

- Corresponding Value Confiscation: The confiscation of assets equivalent in value to the criminal benefit, even if the original assets are unavailable, must be enabled.
- Extended Confiscation: Allows recovery of assets not directly linked to the specific offence, often based on rebuttable presumptions. Newly required by R.4.
- Separate Confiscation Assessment: Often conducted post-conviction, this may involve a reversal of the burden of proof, requiring the defendant (now a convicted criminal) to demonstrate lawful origin of assets.

This is an in personam action (against the person) and represents the most comprehensive legal mechanism for asset recovery.

Non-Conviction Based Confiscation – Middle Tier, Targeted Recovery: NCBC allows for the confiscation of specific assets without the need for a criminal conviction. It is typically used when prosecution is impractical or impossible (e.g., suspect is deceased, absconded, or immune). Key features:

- Based on a judicial determination that the assets are "tainted" or criminal in origin.
- The standard of proof is lower than in criminal cases – typically "on the balance of probabilities" or "preponderance of the evidence".
- This is often but not always in rem action (against the property), focusing on the illicit nature of the asset itself.

NCBC is a flexible and increasingly essential tool in modern AR regimes.

Tax Related Recoveries – Bottom Tier, Narrowest Scope: Criminal taxation enables some jurisdictions' revenue authorities to impose tax liabilities on income derived from illegal activities, treating it as taxable income. The FATF *only* considers within the scope of AR those results related to the co-operation between tax authorities and competent authorities which results, in specific cases, in criminals being deprived of criminal proceeds or property of corresponding value (see IO.8, footnote 193 and Example of Information 4). This is because revenue collection and confiscation serve two very different purposes. Key features:

- Can be based on presumptive or estimated assessments, often using lifestyle indicators or unexplained wealth.
- The burden generally shifts to the taxpayer to rebut the assessment.
- Liability can include tax on illegal-source income, plus penalties for late payment, non-co-operation, or fraud.

While not a confiscation tool per se, tax recoveries are a complementary mechanism that can deprive criminals of a portion of their illicit gains and support broader AR efforts. See more on this topic in Ch. 2.2.2(b) (co-ordination) and Ch. 5.3 (effectiveness issues).

Before discussing confiscation in detail, this Chapter touches upon fundamental principles of domestic law, which may affect the implementation of different types of confiscation by jurisdictions.

5.2. Fundamental Principles of Domestic Law

When revising the Recommendations, the FATF was aware that certain of the new additions would not be feasible in all legal systems. Since the FATF Recommendations are applicable to all countries equally, caveats or exceptions were built-in to accommodate those jurisdictions which may be unable to use certain tools, wholly or partly. This section discusses in broad terms the fundamental principles of domestic law (FPDL) that may relate to various types of confiscation. If FPDL are implicated by a specific type of confiscation covered in the FATF Standards, those principles and relevant safeguards are mentioned in the relevant section (see Ch. 5.3.3 on extended confiscation and 5.4.4 on NCBC).

Taken as a whole, FPDL may appear to be a loophole, but it is not. It is an allowance for countries not to implement certain parts of the FATF Standards when fundamental principles prevail over the requirements of the Recommendations, or when such principles dictate a modified approach. However, there is a threshold to qualify for this accommodation. A country must have a compelling, non-trivial reason not to implement certain new measures contained in R.4, and extended confiscation is one area where this accommodation may apply.

It is important to highlight that the FATF has a definition of FPDL and this definition has not changed. The FPDL definition applies across other, specified FATF Standards which have nothing to do with asset recovery whatsoever, and so the meaning of the term must be clear and applicable for several purposes. For all purposes, as applied to AR

and otherwise, the FATF has declined to change or revise the General Glossary's sole elaboration of FPDL, as it has been fit for purpose and flexible enough to be used by countries in practice.

The FATF General Glossary provides that FPDL "refers to the basic legal principles upon which national legal systems are based and which provide a framework within which national laws are made and powers are exercised. These fundamental principles are normally contained or expressed within a national Constitution or similar document, or through decisions of the highest level of court having the power to make binding interpretations or determinations of national law. Although it will vary from country to country, some examples of such fundamental principles include rights of due process, the presumption of innocence, and a person's right to effective protection by the courts."

Several aspects of this definition should be emphasised. First, it covers fundamental principles which are essential to or underpin a country's legal system. The three examples given are all expressions of major tenets or values upon which the justice system operates. These are not laws, regulations, or code provisions adopted through regular legislative processes and subject to regular amendment processes by states. This is because they "provide a framework within which national laws are made and powers are exercised." Therefore, they are usually going to be based in deeply held beliefs which are axiomatic and essential to the enforcement of laws and judicial processes in the country. Not every legal right conferred in domestic law or jurisprudence will qualify as "fundamental." Second, FPDL are normally written, not unwritten norms or beliefs. Thirdly, they are normally contained or expressed within the highest or one of the highest sources of law within a country of primary importance. The examples provided in the FATF General Glossary of FPDLs are those contained in a constitution, charter, or similar document, or a supreme court or other high court decision having highest level of court "having the power to make binding interpretations or determinations of national law." FPDL are not unchangeable, but may be refined over time, e.g., through high court decisions.

Additionally, the FATF has used several formulations through its Recommendations (within and beyond AR) when referring to FPDL. The various phrases are "to the extent that it is consistent with", "if required by", and "if not inconsistent with" FPDL. These words were selected intentionally and express different degrees of deference and expected consistency between the requirements of the Standards and FPDL. FPDL are not viewed as an obstacle to be overcome, and should be respected, but may also not be erected as default obstacle to alignment with the FATF Standards. Indeed, "to the extent consistent with" is intended to signal that countries should seek to go the greatest length or furthest position possible to implement the standard in a way that does not offend FPDL – i.e., to the line, but without crossing it as determined by the country.

The question countries are urged to ask is what can be accomplished within the FPDL, and what adjustments can be made to implement the Recommendation fully, but while accommodating FPDL. The approach countries are urged not to take is that FPDL prohibits, blocks, or forbids implementation of any aspect or component of the Recommendation. A more flexible approach is encouraged whereby the country could attempt to adjust the proposed laws or measures to the specificities of the country's fundamental principles; countries may also seek to ensure that the underlying outcome or goal of the Recommendation is achieved through some means or measure. Countries may wish to document how FPDL impacts their implementation of certain requirements in R.4 and R.38 (and elsewhere), and any efforts undertaken to assess the feasibility of meeting the requirements in a way that does not implicate or impinge on the boundaries of the FPDL.

BOX 48 – PRACTICAL TIP: Asserting FPDL in the Context of Asset Recovery

The following considerations may be noted by jurisdictions considering how FPDLs may apply in their context:

- The country should articulate and explain if it is asserting an FPDL as a deviation from the FATF requirements.
- The FPDL must be an essential or fundamental principle of sufficient importance in the context of the country. The reason or basis for an FPDL may vary among countries, even those which share a common legal system, framework, history, or source of law (e.g., the European Convention on Human Rights).
- The FPDL must be contained in a high-level or first-order source of law, such as a constitution or high court decision.
- In addition to specifically identifying the FPDL, countries may wish to gather background or context, such as constitutional interpretations, legal scholarship, or support from legal treatises and experts. The scope of protections and application of an FPDL may be debated within a country's institutions, including its judiciary. It is noted that non-mainstream political actors may dispute the existence of FPDL, but the existence of the principle should generally be accepted, well-founded, and/or grounded in norms or history.
- FPDLs are specific to the country's unique legal system, but there are many that are common across jurisdictions, contained in supranational court decisions binding on groups of countries, and/or are typically found in common or civil law systems, for example.
- The FPDL must be impacted or impinged by the measure (e.g., NCBC or extended confiscation) in a specific, not a general, way. The impact must be articulable as it relates to the part of the FATF Recommendations where FPDL are acknowledged.
- FPDL, when established, allow a country not to implement components of the FATF Standards, where specified in the Recommendations. However, if countries with similar legal systems and domestic laws have found a way to accommodate the FPDL and fully implement the Recommendation (or part thereof), the country could take inspiration to explore ways to attempt to implement the Standard. If a country has not yet considered how to implement the Standards while respecting FPDL, this could indicate a lack of political will or commitment.
- If there are exceptions to the FPDL in other scenarios (e.g., in criminal law more broadly or outside the space of asset recovery), the country should be able to distinguish why the FPDL would apply in the confiscation setting, but not elsewhere. Consistency of application may be an element of a FPDL.
- If the states, districts, provinces, or components of a country have enacted laws which do not violate the FPDL, it is less likely the principle is considered to be fundamental to the entire country (unless it relates to the separation of powers between the national/federal system and its sub-parts, or if the sub-national laws have not yet been challenged in court).
- Countries should understand how their FPDL may apply to prevent the use of a certain measure or tool. This may include a self-assessment to examine the relevance of the FPDL vis-à-vis the FATF requirement at issue and keeping an internal or agency record of views, clarifications, and interpretations of the FPDL that affects compliance with certain FATF Standards.

... Box 46 continued

- A country can implement the AR requirements "to the extent possible". An FPDL may not mean that an entire topic is off-limits or prohibited, or that no legislation can address it. The FPDL may restrict *full* implementation, in some circumstances, but it may not restrict any implementation whatsoever (e.g., NCBC or extended confiscation may be available in limited circumstances, not prevented outright; or certain parts of a FATF requirement would not offend an FPDL, but other parts might). Effective safeguards can be incorporated into laws and procedures which *do protect* the FPDL implicated, while still allowing the tool to be utilised in some form.

- The FATF Standards encourage respect for fundamental principles of domestic law and the protection of the rights of individuals. The FATF's adoption of a Standard signifies consensus among the FATF that the requirement does not inherently disrespect such principles and rights. However, the implementation of FATF Recommendations will look different in each jurisdiction, and FPDL may play a role in the specificities of implementation.

5.3. Criminal Confiscation

Criminal confiscation, or conviction-based confiscation (CBC), is the most prevalent and familiar type of confiscation. It has been established for decades in the FATF Standards, multilateral instruments, and domestic laws of jurisdictions. While commonly an *in personam* process (i.e., an action against a person, and tied to a criminal prosecution and conviction), some jurisdictions may also implement CBC as an *in rem* action directed at property owned by, or under the effective control of, a person convicted of an offence.[1]

Countries differ in the way confiscation is carried out through the criminal judicial process. In some jurisdictions, the decision is made at sentencing, when the defendant would also receive his or her custodial sentence and any other fines or applicable penalties. In other jurisdictions, confiscation is determined separately from the part of the criminal proceeding involving the determination of guilt. In this scenario, the court conducts an entirely separate hearing on confiscation after the conclusion of the trial on the merits, assuming the first portion results in conviction.

ADDITIONAL CONSIDERATIONS

This can be a good practice because it allows not only for a specific focus on confiscation (among the many goals of criminal prosecution), but it permits the use of detailed financial evidence, including bank or transaction records, and certain types of witnesses, including experts who can explain the money trail or confiscation theory. While case-in-chief may include such detailed financial evidence, particularly if money laundering is one of the offences charged, it is not always necessary to cover the flow of funds in such detail to prove the elements of the predicate offence. Therefore, it is a good practice for countries to consider allowing a separate confiscation hearing or session, to permit the court to hear granular evidence and focus on asset recovery issues, without distraction. In some legal systems, before commencing such a separate proceeding, the court may dismiss the jury or the defendant may elect not to retain the jury for the confiscation portion, which reduces the resource and manpower burden in the second phase. That said, it should also be noted that a combined hearing covering both sentencing and confiscation could facilitate more efficient use of criminal justice resources and allow the courts to have a more holistic view of the total penalties imposed.

1. In a criminal case, countries may allow confiscation as an action against the person (in order to punish the offender) and an action against the ill-gotten assets (in order to recover them), but use different rules and requirements for each. The second action is, in certain cases, very similar to civil confiscation. Sometimes, the only difference is the place where it is done (the criminal court or the civil court).

From the perspective of criminal proceedings in countries with a civil law tradition, the idea of a separate proceeding may be considered duplicative. The asset and its circumstances are in many cases an element of the criminal offence, and are therefore discussed together with the proceedings against the accused. In these systems, confiscation is a measure, rather than an accessory penalty. Therefore, it could be ordered within the criminal proceedings themselves (rather than subsequently), or in parallel in the form of incidental proceedings. Some countries apply this principle (e.g., Switzerland), while others are contemplating it, particularly in relation to the proceeds of crime (with appropriate affirmative defences designed for actions that restore the status quo ante).

Some countries also use mandatory confiscation in the CBC context. These forms of confiscation, which do not impinge on the independence of the judiciary, are also envisaged in the international framework, as in article 3(3) of the Warsaw Convention.

Universally, the burden of proof is on the government during main criminal proceeding, and the threshold, in most countries, to find the defendant guilty of the offence charged is often the highest in the judicial system (e.g., beyond a reasonable doubt). As mentioned in INR.4, para. 12, countries may "adopt measures which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation." This is often done by altering the burden and/or the threshold when conducting the confiscation phase of the criminal proceeding, or so do in some (but not all) cases based on established criteria or conditions. Countries may reverse the burden of proof, thus placing the burden on the defendant, post-conviction, to show why the assets at issue should not be confiscated by demonstrating that the assets had a legal or legitimate origin. When countries reverse the burden in this way, some require the government to make a *prima facie* or preliminary showing of forfeitability, in other words, to set out initial proof that the property is indeed the proceeds of crime (or that it meets the legal theory for confiscation under law). If this threshold is satisfied by the government, then these countries would allow the burden of proof to shift, thus requiring the defendant to show why the asset should not be confiscated.

Another method of implementing INR.4, para. 12, apart from reversing the burden of proof, is allowing for a lower burden of proof for confiscation than for the guilt phase of the criminal proceeding. After the defendant is judged to be guilty of offences which give rise to confiscation, or offences which in the case are alleged to have produced criminal proceeds, then the threshold may be dropped to a lower threshold (i.e., balance of the probabilities, preponderance of the evidence, more likely than not, or the "civil" standard). This lower threshold for confiscation requires something less stringent than the high standard required for criminal conviction, and it can vary by degrees. In addition to making the showing that the property to be forfeited is the proceeds of the offence for which the defendant was convicted, some countries also allow for forfeiture of property that is proceeds of an offence for which the defendant was not convicted *if* the state establishes that the property is proceeds beyond a reasonable doubt. This expands the scope of possible forfeiture in the context of criminal proceedings, veering into a type of extended confiscation. It is mentioned here because it is possible that in the context of CBC, more than one burden of proof is utilised.

The FATF Standards encourage countries to consider whether it is possible to decide confiscation based on a reversed burden of proof or relatively lower evidentiary threshold, particularly if a judge has already found in proceedings for provisional measures that the assets likely or probably represent the proceeds of crime (see IO.8, n. 196). Countries may have FPDL which affect their adoption of lowered thresholds or reversed burdens. Lowered thresholds or reserved burdens tailored only to confiscation, and which do not impact the guilt phase of the trial, may implicate such FPDL to a lesser extent.

The precise moment when countries may seek confiscation also varies. For the purposes of this Guidance, jurisdictions are encouraged to use provisional measures so that by the time the final confiscation is determined, there are already one or more assets secured for the intended purpose final confiscation. However, there may be later-discovered

assets, or no assets uncovered, meaning that the remaining options could be (1) seeking a judgment for value (e.g., a sum certain) having a factual basis in the calculation of criminal proceeds or benefit obtained, or (2) pursue the confiscation of corresponding value. Some countries require notices of confiscation to be filed with the court, or require that any confiscation sought should be added to the charging document or indictment at the initiation of the prosecution. No matter how this notice is provided, countries should ensure that such a notice can be amended or supplemented, should additional assets be located or become available for confiscation.

In the context of CBC (and NCBC), countries should address the claims of third parties who may contest the forfeiture for various reasons. They may assert that they, in fact, own the property at issue (not the defendant) or that they have a superior title or legal right to it. These issues can be resolved by the court only after a notice is given to potential claimants, including, for example, by a notice being issued to the general public.

BOX 49 – **PRACTICAL TIP: Methods to Provide Notice of Confiscation**

An intent to confiscate particular assets or the initiation of criminal confiscation proceedings should prompt the competent authorities or the court to provide notice both to the general public and to known or foreseeable third parties, including potential claimants. This can be accomplished, as appropriate, through:

General notice can be accomplished through publication in:

- An official gazette
- A dedicated website for all national confiscation activity **
- A government or agency website where public notices are posted
- A newspaper of broad circulation (including online posting)
- A newspaper of local circulation for assets located in a certain geography/district (including online posting)
- Posting in a dedicated, central location where similar notices are posted and widely visible

Direct notice can be addressed to known or potential claimants via:

- Mailings **
- Emails **
- Phone calls

** *indicates a recognised good practice*

Notices can contain **basic and specific information**, including:

- The name and details of court or agency where the confiscation proceeding is underway
- The case number and name of the case and/or defendant
- The specific assets at issue in the confiscation, including a sufficiently detailed description and legal description, where relevant
- The name(s) in which the assets are held or owned
- The current location of the assets and time/date/place of seizure, if any
- The manner and mode of contesting the confiscation, including a citation to the relevant law, rule, or procedural code
- Any relevant deadlines to file a claim or challenge to the confiscation
- Any other relevant instructions and points of contact (including, as needed, the prosecutor or case agent or officer)
- Information about how to access information about the case for persons with disabilities

CBC should reach criminal property and property of corresponding value, as discussed in Ch. 3.5. There are a number of different models of criminal confiscation which countries can consider, and some countries may have systems which incorporate more than one form of CBC. Three models of criminal confiscation are set out below. Although the FATF Standards are not prescriptive about which model to use or how traditional CBC should be carried out, countries should have (1) well-defined procedures, including for how to protect the rights of both defendants and bona fide third parties, and (2) strive to have as much optionality and flexibility as possible, as AR is rarely a straightforward path.

ADDITIONAL CONSIDERATIONS

Some countries employ a legal doctrine known as fugitive disentitlement which may have implications for CBC. In brief, this rule puts certain limitations on what motion or petitions may be heard from criminal defendants who are considered fugitives. The policy rationale is simple: if the defendant is a fugitive from justice and has intentionally made themselves unavailable to face charges, they should not have the ability to contest certain decisions made by the court. The defendant in this situation would intentionally be placing themselves beyond the jurisdiction of the court (and potentially country) where they are wanted and so would therefore not have the full benefit of all the protections available to a defendant who shows up to face the charges. The applicability to confiscation follows this logic. Legal provisions can be used to bar the defendant from contesting confiscation of his or her assets, since the person is not present to answer the charges against him or her and the potential consequence of imprisonment.

Although the doctrine has many other features and purposes (i.e., to prevent the waste of judicial resources on absent defendants), it can be helpful in confiscation as a (1) a tool to deprive individuals of criminal property regardless, and (2) to use confiscation as leverage to encourage the person to attend the criminal proceeding and submit themselves to the jurisdiction of the court where they have been charged. For example, India's 2018 Fugitive Economic Offenders Act empowers India's Directorate of Enforcement to attach and confiscate proceeds of crime and properties associated with economic offenders in the event of such offenders absconding to foreign jurisdictions. Some jurisdictions may have similar rules related to criminal proceedings in absentia that can also result in confiscation.

A similar issue may arise when considering the interplay between NCBC proceedings, chosen particularly because the putative defendant is a fugitive, and CBC proceedings. If the defendant returns or is brought back into the jurisdiction of the country where he or she is facing charges, countries should consider tools to allow them to pause, or stay, NCBC proceedings which have been commenced in relation to the same assets that would be sought in the criminal case. This ensures conservation of court and prosecutorial resources, and guarantees that there are no evidentiary inconsistencies. Moreover, if a country has a fugitive disentitlement doctrine, this could also be expanded to NCBC proceedings (i.e., to bar claims from individuals who are wanted for prosecution in the same country). If a person is successfully evading criminal proceedings, they should not be allowed the advantage of litigating civil claims to maintain their assets in NCBC proceedings in the same country. Further, in some countries, NCBC can be pursued within criminal cases when the suspect has absconded. These measures seek to guarantee that persons who are not present cannot indefinitely delay the confiscation of their proceeds.

5.3.1. Object-based confiscation

Object-based confiscation refers to the confiscation of specific items of criminal property. Property, for the purposes of the FATF Standards, is defined expansively to include "assets of every kind, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in such assets." Object-based confiscation rests upon the relationship between the "object" to be confiscated from the defendant and the criminal conduct alleged to have been committed (or indeed proven, post-conviction). It typically

requires that a link be established between the identified property and the offence, offences, conspiracy, or criminal organisation. As an example, countries having object-based confiscation, as a concept, may scope in the following non-exhaustive list of items, some of which may overlap:

- objects belonging to the convicted person or objects they can use in whole or in part for their own benefit and that have been obtained entirely or largely by means of the proceeds of the criminal offence (e.g., proceeds, products);
- objects in relation to which the offence was committed (e.g., bribe money, or an artifact illegally smuggled and sold away from its owners);[2]
- objects used to commit or prepare the offence;
- objects used to obstruct the investigation of the serious offence;
- objects used by the criminal organisation or conspiracy to facilitate their offences, whether owned collectively or individually;
- objects manufactured or intended for committing the serious offence.

This tracks fairly closely with the FATF definition of "criminal property" and would include, broadly, proceeds, instrumentalities, and objects of offences. For instance, it would include direct and indirect proceeds, in situations where the immediate proceeds of e.g., a drug trafficking scheme, are invested in commercial real estate, and rent from the tenants of that building paid would be considered indirect proceeds of the offence. This encompasses any asset or financial benefit which would not otherwise have been obtained by the criminal if not for the commission of the offence.

As another example, object-based confiscation would also include, in many countries, money which is used in the laundering process even if it is not itself proceeds of crime. Although the money laundering phases of (i) placement, (ii) layering, and (iii) integration to be somewhat simplistic, object-based confiscation could capture the funds or other assets used in the layering process to obscure the proceeds. When bank accounts are used for laundering purposes, it is possible that 60% of the funds transiting an account may be, in fact, proceeds, and 40% of the funds may have a legitimate source. Mixing as a part of the ML process can involve the blending of legal and illegal source monies, and often the rapid movement of funds through accounts. When confiscating assets linked to a money mule network, for example, the law may allow the authorities to confiscate all contents of the accounts used to disguise the origin, source, location, or true ownership of the proceeds, which may include money that itself is not criminally derived but which is used for layering and effective concealment (see more on commingled assets in Ch. 3.5.1(c) above).

As a result of confiscation, the state becomes the owner of the physical or virtual "object" in question. Practically, this means that title passes to the government, fully and clearly, and other claims against the asset are either extinguished or decided upon such that the government takes possession of the property minus the claims that have been substantiated or recognised. The property would be free from further ownership contests once the confiscation is final and not subject to appeal. The object itself – whatever form it takes – belongs to the state and it can only be transferred again, alienated, sold, or disposed of by the state, whether it is bitcoin or cash, a priceless painting or a skyscraper, a stocks or bonds, or shares in a privately held family business.

5.3.2. Value-based confiscation

In comparison to object-based confiscation, a value-based approach allows the court to confiscate property that corresponds to the benefits acquired by a person in the course of their offending. The legal theory underpinning the confiscation is not the nexus between the specific property and the crime (as in object-based confiscation), but the computation of the criminal benefit or proceeds generated by the offence(s). Some jurisdictions refer to value-based

2. What constitutes the object of an offence is a concept best illustrated by example. In a AGOSI v. United Kingdom, App. No. 9118/80 (ECtHR 24 Oct. 1986), the objects of the offence subject to confiscation were gold coins seized by customs authorities of which the applicant was defrauded and which the buyers subsequently attempted to smuggle into the United Kingdom.

confiscation as "money judgments" or "confiscation amounts," among other terms. As with object-based confiscation, value-based proceedings can be incorporated into, or separate from the trial on the merits. As mentioned above, bisecting the criminal proceeding into guilt and confiscation phases can benefit the government (in presenting complex financial evidence); the defendant (so confiscation is proven separately from questions of guilt); and third parties (who may have a better opportunity to participate in a proceeding that is solely dedicated to confiscation issues). It can also bring challenges of its own, such as efficiency or holistic penalty considerations.

A value-based judgment always names a certain and specific sum, but is enforceable against any property belonging to the individual, or under their effective control. There is no requirement that the confiscation order should be satisfied with property that represents proceeds, is directly or indirectly traceable to the crime, or is even connected with the crime. However, this does not absolve the competent authorities of the need to conduct a thorough financial investigation. The benefit must be calculated in credible manner and justified through evidence. The amount may be contested by the defendant and the judge or factfinder may disagree with the benefit figure proposed by the government (potentially adjusting it downward or upward, in some legal systems). It is a good practice to conduct the **same in-depth and comprehensive financial investigation regardless of which type of confiscation is used for CBC** – object, value, or a hybrid model. A value-based judgment may be constructed to remain in force, accruing as a debt to the State, until the amount is fully satisfied, and can be relied on to confiscate property lawfully obtained by the subject of the judgment even after the date it was issued.

The simple contraposition between object and value confiscation presented here in sections (a) and (b) does not encompass all possible situations, as there are some cases where the proceeds are themselves a value. This is evident in the case of spared expenses (for instance, the expenses needed to comply with a legal framework against pollution in order not to commit an environmental crime) or where a bribe paid to an official takes the form of use of real estate, motor vehicles, or enjoying luxury travel and leisure activities free of charge. In these cases, where the proceeds are values, the proceeds are already "value based" and cannot be taken from the criminal in-kind. The most important aspect is therefore the precise quantification of the value of the proceeds, profit, or benefit.

BOX 50 – COUNTRY EXAMPLES: Value-Based Criminal Confiscation in the UK and NZ

UNITED KINGDOM: In the UK, a confiscation order is an order made personally against a defendant to repay a sum of money equivalent to some or all of their benefit from crime, depending on the assets available to the defendant at the time of making the order. The concept of "tainted gifts" also allows gifts made by the defendant to other persons to be recovered in satisfaction of a confiscation order. An order is made for a sum of money and is effectively a debt owed to the state. Confiscation orders do not "confiscate" assets and therefore a defendant may satisfy a confiscation order from assets of their choosing. Powers can be introduced over certain assets to pay the confiscation order, for example, restraint or receivership powers.

NEW ZEALAND: New Zealand's system includes profit-based forfeiture, which is where criminal's profit (or benefit) can be calculated, then a forfeiture order can be sought to recover the value of the profit. An example is where a criminal's income is calculated, but the criminally-derived (traceable) assets are less than the calculated profit. This means that a criminal's legitimately acquired property (such as a house or vehicle) can then be restrained and forfeited to satisfy the calculated profit. The unlawful benefit calculated by LEAs creates a presumption; therefore, the respondent/defendant has to refute the amount of illicit income that the State alleges they have generated with evidence.

ADDITIONAL CONSIDERATIONS

It is also possible that CBC can include aspects of joint liability, and this would most commonly be used when value judgments are sought. Some countries have confiscation provisions enabling joint and several liability. For example, if there are multiple defendants in a case and the charges include membership in a criminal or terrorist organisation, or acts committed in furtherance of the aims of such an organisation, this may trigger new or different confiscation powers. Countries may have laws providing that the proceeds of a criminal group can be confiscated from any or all the members of that group, and that each member of the group or conspiracy is jointly and individually liable for the confiscation ordered. It is a good practice for countries to consider how the charging of conspiracies or the designation of a case as involving organised crime/crime committed in association could bring wider confiscation powers.

This is one way to strengthen the disruptive element of confiscation and to deter individuals from joining criminal groups, gangs, and networks. It can reduce the power of OCGs and terrorist organisations, which is usually deemed more dangerous and corrosive to a society than most acts committed on an individual basis. For instance, in the United States, CBC can extend to the defendant's entire interest in a "racketeer influenced and corrupt organisation (RICO)" enterprise, if the conditions of the RICO Act are met. Also in the United States, CBC is wider when criminal charges include terrorism offences, even if the property is not used in any act of terrorism. Note, this is a different practice from extended confiscation, covered below in Ch. 5.3.3.

5.3.3. Extended confiscation

Another tool newly incorporated into the FATF Standards is extended confiscation. Extended confiscation, in simple terms, is a form of criminal confiscation which allows a court to "extend" the reach of confiscation to other/additional property of defendant that is not specifically related to the offence for which the person has been convicted, if the court is satisfied the requirements of domestic law have been fulfilled. Such requirements usually entail the prosecution service submitting or showing certain proof or facts which may activate pre-set legal conditions or presumptions. Confiscation may then be extended, at the discretion of the court, if the defendant does not rebut this evidence with their own proof or facts, which usually relate to demonstrating the legal origin of property acquired under certain conditions or during a certain period, for example, when the defendant did not have or cannot show that they had the financial resources justifying the acquisition of property.

Extended confiscation, in practice, is often limited to cases involving habitual offenders, serious offences, or organised crime. It is not a new phenomenon, and many countries have the tool, but because it can be quite far-reaching, it will not be appropriate for use in all cases. Thus, prosecutors and courts should consider invoking it when the characteristics of the case or the defendant warrant it, including where there is a high probability that the defendant possesses significant unexplained wealth suspected to originate from serious or serial criminality.

Generally speaking, extended confiscation may have the following elements:

- It allows for the confiscation of assets/property;
- The assets do not need to be linked to the criminal offence that is the subject of the case or a specific predicate offence;
- However, an inference can be drawn that the assets are derived from criminal activity.

The most nuanced aspect of the above definition is the **inference**. This should be quite well-defined and prescriptive in domestic law to prevent overreach. For example, such an inference may be drawn based upon:

- Association with an organised criminal group (e.g., three or more individuals committing crimes with a common purpose such as obtaining material benefit);

- Unexplained wealth; or
- Convictions for serious offences that involve a profit or acquisitive element, subject to a defined threshold.

Extended confiscation has evolved differently in several legal traditions, such as:

- The German model, where the judge must be convinced that the assets in question were obtained through criminal conduct;[3]
- Extended confiscation using a lower standard of proof (e.g., a court being satisfied on the balance of probabilities instead of beyond a reasonable doubt); and
- Extended confiscation with a shifting evidential burden of proof.

The FATF Standard accommodate variations of extended confiscation, as detailed below.

Extended confiscation is a CBC mechanism gaining traction around the Global Network and proving particularly effective at tackling so-called career criminals. Recommendation 4 broadly references the need to have both CBC and NCBC, but the Interpretive to Recommendation 4, paragraph 10, provides more granularity: "[t]o the extent that such a requirement is consistent with fundamental principles of domestic law, countries should have measures, including legislative measures, which enable confiscation to be extended to other property of a person convicted of money laundering, predicate offences, or terrorism financing where the court is satisfied that such property is derived from criminal conduct." This is the basis in the FATF Standards for extended confiscation. Additionally, footnote 8 within INR.4 specifies that countries *may limit* the application of extended confiscation to serious offences, consistent with R.3. Finally, footnote 9 states: "[i]n determining whether the property in question is derived from criminal conduct, this could include, for example, whether the value of the property represents the proceeds of a criminal lifestyle or is disproportionate to the lawful income of the convicted person."

Extended confiscation may reach criminal property or corresponding value. It is effectuated by means of a value-based judgment or a pecuniary order. It is, in brief, a form of confiscation which goes beyond confiscating assets linked to a specific offence for which a person is convicted. A direct link between the property and the offence is not necessary if the court concludes that all or part of the person's property was obtained through other unlawful conduct. In some jurisdictions, the type of extended confiscation contained in INR.4(10) is considered "indirect confiscation" of criminal property, and terminology may vary.

FATF members decided to require extended confiscation to expand the asset recovery toolkit and promote progress in legal frameworks, which, as stated earlier, had been stagnant in several countries and not yielding effective results. They recognised the utility of extended confiscation, and that adding NCBC as a requirement of the FATF Standards may not necessarily be enough to increase outcomes. Additional tools were needed. Furthermore, as will be discussed below, both extended confiscation and NCBC have carve-outs for FPDL which may cause some jurisdictions to be unable to implement one new tool or another. Thus, the more types of provisional measures and confiscation available to countries in the Standards, the stronger the arsenal against criminal property and the more countries can tailor their AR systems to the domestic context.

Extended confiscation has several unique and positive attributes:

- it can deprive offenders of criminal property or property of corresponding value beyond that which was linked to the specific offence for which the person was convicted;

3. To elaborate, Germany's Fifth Criminal Senate of the Federal Court of Justice stated on 3 March 2025 (Case No. 5 StR 312/23): "The unlawful origin may, according to the intention of the legislator, be established solely with regard to the economic circumstances of the person concerned – in particular taking into account lawful income. According to the legislator's design, the judicial inquiry is therefore primarily to be directed at circumstances that can regularly be established without particular effort, namely lawful income and financial circumstances, which are generally documented. From the absence of the possibility of a lawful origin, the incriminated origin may be inferred. The legislator expressly did not intend to require the court to undertake a more detailed inquiry into the circumstances of the acquisition of the asset in question, or even to specify the predicate offence of acquisition."

BOX 51 – COUNTRY EXAMPLE: Extended Confiscation in the United Kingdom

In 2018, an individual was convicted for a serious offence (drug trafficking). The economic benefit from the offence the individual was convicted for was GBP 2.3 million. A subsequent investigation under the UK's criminal lifestyle provisions, encompassing assets obtained over the previous six years, identified a further GBP 9.5 million held by him or hidden in the names of third parties. This included a large property portfolio and cryptocurrency. The defendant was unable to legitimately explain the source of these assets, and as a result, a confiscation order was made for GBP 11.8 million.

- it can disrupt a pattern of offending, organised criminal groups, or recidivist and "multi-faceted" criminals who engage in a variety of illegal acts but may only be charged with some acts in a given proceeding; and
- it allows the targeting of assets obtained through unlawful acts if the court is satisfied that the value of the property sought is disproportionate to known lawful income.

INR.4 itself merely lays down a marker for extended confiscation as a tool. It does not mandate how a country should design and apply extended confiscation in its domestic context. Extended confiscation – based on the experience of countries already using the measure – tends to operate by means of conditions or presumptions which may be activated after an initial showing is made by the prosecuting authority. These provisions would be set out in domestic law and can be quite detailed. It is a good practice to specify every aspect of the process of extended confiscation, and to make the law as explicit as possible, to increase predictability for affected persons and to guarantee clarity for practitioners and the adjudicating courts.

The benefits to law enforcement of extended confiscation are clear, as set out above. But there are also principled concerns related to extended confiscation from the perspective of the defendant. Extended confiscation is a potentially very powerful instrument which may enable the confiscation of the defendant's entire possession. A key concern with extended confiscation is therefore the risk, due to watered down legal safeguards and a focus on efficacy-oriented features, that property is confiscated beyond what is necessary to restore status quo ante, and therefore also targets property which the respondent holds lawfully. The risk for abuse is also evident. Countries can reasonably limit the scope and availability of extended confiscation schemes, and build in sufficient safeguards, while also complying with Recommendation 4.

a. Serious offences

In revising the FATF Standards, members agreed that it was preferable to scope offences to which extended confiscation should apply. The Interpretive Note explains that confiscation should be able to be extended to other property in situations "where a person is convicted of money laundering, predicate offences, or terrorism financing" under certain conditions. The "or" in this case means that all three types of crimes need to be eligible, and was used instead of "and" to clarify that extended confiscation should not apply *only* in the rare situation where a person is convicted of all three offences. As to predicate offences, the meaning is spelled out in footnote 8, which in turn refers to R.3. The FATF indicates that countries *may* **limit the occasion to use extended confiscation to ML or TF offences, and serious (predicate) offences in line with R.3**. The FATF chose not to tie the use of extended confiscation to a certain penalty threshold (e.g., an offence punishable by a minimum of 3 or 4 years imprisonment) or a value-based threshold (e.g., an offender derived X amount of criminal benefit). Yet it also did not leave the issue completely to the discretion of countries, as the tool should be applicable to a broad variety of serious offences as required under R.3, not only a narrow group of crimes or single predicate category (e.g., drug trafficking). The Standard thus incorporates a reasonable and objective scope for extended confiscation – covering ML, TF, and serious offences – because (1) it corresponds to the FATF's mandate, and (2) the concept of "serious offences" is well-understood and defined in the FATF lexicon.

"Serious offences consistent with Recommendation 3" refers the reader to Recommendation 3 which requires countries to criminalise ML. It states: "[c]ountries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences." To understand what is meant by "serious offences", one must look to INR.3, paragraphs 2 and 3. The preference is that predicate offences include all offences. However, if a country differentiates among serious and non-serious offences for the purposes of establishing predicate crimes for ML, it can do so using a threshold (linked to penalties), a list approach, or a combination approach. As explained therein, serious offences can be defined by countries:

- By creating a **category** in national law setting out which offences are considered "serious" (e.g., whether "serious" in the context of the ML law, or when countries tie this category to non-specific criminal conduct based on types of offences rather than specific offences),

- By using a **list** of serious offences,

- By using a **threshold** linked to the penalty of imprisonment applicable to the offence, or
  - If this method is chosen it should include:
    - Offences punishable by a maximum penalty of more than one year in prison (e.g., a felony/misdemeanour line); or
    - Offences punishable by a minimum penalty of imprisonment of more than six months.

- By using a **combination** approach taking elements from the above.

Offences punishable by less than six months, or considered less serious or even misdemeanours, would not normally, as a matter of fairness and proportionality, be expected to trigger the significant power of extended confiscation. This opens the door to potential abuse, whereby governments could extend confiscation to an unreasonable amount of property by convicting defendants of petty crimes. It may not represent an efficient use of investigative and judicial resources to wield extended confiscation in minor cases, and potentially against persons who do not have a history of other crimes or who have not significant, suspect wealth.[4] On the other hand, offences punishable by more than a year in prison (a maximum penalty of one-year plus one-day through 99 years, or even life in prison) are considered to be of sufficient seriousness that they *could* warrant the use of extended confiscation.

Serious offences should include the "widest range" of predicates, per INR.4, paragraph 2. These predicate offence groupings are laid out in the FATF Glossary and cover twenty-one different categories of crime. For the purposes of R.3, to apply the crime of ML to all serious offences, countries should include "the widest range". The Glossary notes: "[w]hen deciding on the range of offences to be covered as predicate offences under each of the categories listed above, each country may decide, in accordance with its domestic law, how it will define those offences and the nature of any particular elements of those offences that make them serious offences." If the twenty-one categories represent diverse types of crime, a wide range of offences should also be subject to extended confiscation under R.4. As a matter of practice, having a wide range of serious offences potentially subject to extended confiscation is "consistent with Recommendation 3" in line with the footnotes which caveat extended confiscation in INR.4. As a matter of practice and implementation, it is advisable to use extended confiscation in serious cases, potentially involving more grave violations of these criminal offences and in situations where the offender is one whose history or asset profile warrants extended confiscation. In other words, though the authority should cover all serious offences, the power of extended confiscation as deployed may be more limited and prioritised.

4. For example, Liechtenstein limits the use of extended confiscation to persons who are convicted of any offence that gives rise to an economic benefit.

Some countries inevitably will not cover some serious offences that should be in-scope of extended confiscation. But the revision of the FATF Standards should prompt countries to expand the scope of coverage, where there is already some form of extended confiscation, and to cover all serious offences, where the law on extended confiscation is drafted anew.

ADDITIONAL CONSIDERATIONS

Several countries initially introduced extended confiscation as a way of targeting specific crime types, including drug trafficking and organised crime. Others allowed it for all crimes considered felonies punishable by more than a year of imprisonment. Yet others permitted extended confiscation, but tied it to a certain number of prior convictions, or convictions for offences which generated a substantial amount of proceeds. The EU minimum rules, for example, require member states to permit extended confiscation for those offences with a maximum penalty of at least four years in prison, but member states have discretion to include a broader range of offences. Canada allows a version of extended confiscation of property that is proceeds of an offence for which the defendant was not convicted if the state establishes that the property is proceeds of crime to a higher standard of proof, i.e., beyond a reasonable doubt.

Going forward, countries should strive to cover serious offences as mentioned in the Standard, and in doing so, are encouraged to not have, or minimise, limiting factors (apart from FPDL, discussed below). If limiting factors exist in a country's regime, the seriousness of those shortcoming(s) for the purpose of technical compliance with the extended confiscation criterion will be weighed by assessment teams considering the risk and context of the assessed country.

For example, if the country is a sizeable drug-trafficking source country, or if fraud is considered a major predicate threat per the country's national risk assessment, the deficiency may be weighted more heavily if a country did not include these offences within the reach of its extended confiscation law, but did include other offences of lesser risk relevance. Conversely, if there is very little piracy in a land-locked country, and virtually no ML linked to it, this may be deemed lower risk, and if a country did not attach the possibility of extended confiscation to piracy, this may be weighted less. While all jurisdictions are subject to the same FATF Recommendations, they implement them in a manner consistent with their national legislative and institutional systems, such that the methods by which compliance is achieved may differ. Assessors do, in practice, consider how significant any deficiencies are given the country's risk profile and other structural and contextual information (see, e.g., Methodology para. 44). Ideally, extended confiscation extended to all serious offences in line with R.3; if there are limiting factors, their weighting and impact may vary, including for purposes of the effective use of this tool as part of the "comprehensive range of confiscation measures."

The FATF built a limiting factor into INR.4 (serious offences). In using extended confiscation, countries could consider using extended confiscation against major predicate offences prevalent in the country, in addition to money laundering and terrorist financing. Nonetheless, it would not be expected or appropriate to utilise extended confiscation in every possible case. As with most of the FATF Standards, it is incumbent on countries to have the measures and tools, but it is their choice to use the tool on a case-by-case basis.

b. Various models of extended confiscation and international co-operation

There are number of ways in which extended confiscation can be put into practice, such as by applying different presumptions or conditions or concepts of unexplained wealth. Extended confiscation and unexplained wealth confiscation, in their different permutations, are powerful tools to tackle the proceeds of the crime and to recover ill-gotten gains. In some regards, NCBC in a non-hybrid form or basic civil forfeiture are more limited mechanism by comparison, because prosecutors may need to demonstrate the relationship between a criminal activity and an asset. A few variations of extended confiscation are set out in the Box below.

BOX 52 – PRACTICAL TIP: Extended Confiscation Models

MODEL 1:

In the UK, the criminal confiscation regime introduces a reverse burden of proof where a defendant is found to have a "criminal lifestyle". Under these assumptions, all property obtained or expended by the defendant in the six years before the proceedings that led to the conviction were started are assumed to constitute their benefit from crime – unless the defendant can show otherwise. It is important to note a presumption based on criminal lifestyle is separate from an offence of illicit enrichment.

There are various safeguards which ensure the reverse burden of proof in this context is justified:

- Confiscation orders may only be imposed once a defendant has been convicted of a criminal offence, i.e., where the prosecution has already proven guilt beyond a reasonable doubt that the defendant is a serious criminal. The burden of proof at the criminal prosecution is still on the prosecutor.
- It is only used where the defendant has been convicted of the most serious offences or has a history and pattern of offending indicating that their only income is from criminality.
- In England and Wales and Northern Ireland, the benefit must be more than GBP 5 000 unless convicted of a serious offence.
- It should not be too difficult for a defendant to discharge the reverse burden of proof to show that particular funds were obtained legitimately (the applicable threshold is balance of probabilities).
- The court must consider whether there would be a serious risk of injustice if the assumptions are made.
- [Pending a legislative amendment under consideration] In England and Wales and Northern Ireland, the prosecution will have discretion to disapply the criminal lifestyle assumption.

MODEL 2:

When considering confiscation, the court can, on the basis of an action brought by the public prosecutor, in a procedure separate from the criminal case, decide that a convicted person must pay an amount of money to the state because of unlawful vested benefit. There are three conditions:

- a person is convicted for a serious offence (punishable with the highest fine);
- during the criminal investigation against that person, a criminal financial investigation was started; and
- the criminal financial investigation (report) shows it is plausible that the offence the person was convicted for or other criminal offences resulted in any way to unlawful vested benefit.

The substantiated calculation of the unlawful vested benefit can be based on a comparison of income versus spending for a certain period. That period can be based, for instance, on the start of criminal conduct though the arrest of the criminal for that conduct. The onus would then be on the convicted person to make a well-reasoned case to refute the arguments of the prosecution.

It is foreseeable that when there are many models and varieties of a confiscation tool, international co-operation may become more challenging. On one hand, countries may simply accept that extended confiscation is a type of CBC, and provide assistance without further questions, pursuant to the relevant MLAT or convention covering criminal matters. On the other hand, co-operation may become complicated if jurisdictions demand more information about the application of extended confiscation (and, in addition, unexplained wealth confiscation).

Apart from the mutual recognition of confiscation decisions taken in "proceedings in criminal matters", orders stemming from extended confiscation and unexplained wealth confiscation may face obstacles when countries try to enforce them abroad. Many MLATs and international conventions demand dual criminality checks, which is by nature harder to verify in extended confiscation and unexplained wealth confiscation. These confiscation mechanisms were created, precisely, to avoid probing the offence that gives rise to the property confiscated. In both cases, the offence or offences that generate the proceeds is, to some extent, unknown. In extended confiscation, even if a conviction is needed, one does not know the exact origin of the assets (they could have nothing to do with the offence for which the offender was convicted). The same is true for unexplained wealth mechanisms. Generally, these confiscation tools were developed after the major international conventions and many MLATs were agreed; thus, they may exceed the scope of assistance available under some (but not all) conventions. Consequently, new protocols, treaties, or conventions may be needed to foster more seamless co-operation in relation to these forms of confiscation. Otherwise, jurisdictions will develop mechanisms that will be efficient only at the national level.

ADDITIONAL CONSIDERATIONS

Taking into account the nature of confiscation as attacking the criminal origin of assets or property, more co-operation should be possible between countries outside of traditional CBC cases. For example, by considering "dual confiscation" instead of "dual criminality," countries may be able to take a broader approach. If it is not possible to assure a foreign partner that dual criminality exists, namely because the origin of the asset, in spite of being criminal, is not well clarified (as may happen with extended and unexplained wealth confiscation), it could still be possible to co-operate on the confiscation. Instead of asking if the crime is recognised in both states, the relevant question is "would this confiscation have been possible" under the law of both states.

c. Fundamental principles of domestic law

Extended confiscation is one of several places in the revised AR Standards where fundamental principles of domestic law (FPDL), are mentioned. FATF INR.4, paragraph 10, states that "[t]o the extent that such a requirement is consistent with fundamental principles of domestic law…" countries should have measures enabling extended confiscation.

When considering models for extended confiscation, countries should ensure that they have procedures that protect the fundamental rights of persons in a confiscation proceeding. Fundamental principles are perceived differently in different legal systems,[5] but countries should articulate when and how fundamental principles of domestic law prevent them from implementing extended confiscation. For instance, in recent case law in the UK, courts have considered the impact of Article 1 of Protocol 1 to the European Convention on Human Rights, in relation to criminal confiscation. It was held in *R v. Waya*, [2012] UKSC 51, that a confiscation order must be proportionate to the legitimate aim of the recovery of the proceeds of crime. The prosecutor's independence and obligation to seek justice is central to the criminal justice system of a democratic society. Prosecutors should only seek such a decision when they are satisfied that the broad extent of the criminality has been determined and that they are able to make a fully informed assessment of the public interest. In relation to confiscation, prosecutors should select charges which allow a confiscation to be made in appropriate cases, where a defendant has benefited from criminal conduct.

5. See Elżbieta Hryniewicz-Lach, *Expanding Confiscation and Its Dimensions in EU Criminal Law*, European Journal of Crime (27 Dec. 2023) (discussing the different conceptions of fundamental rights by member states of the EU, and how terminology or classification of confiscation under law can impact which fundamental rights may be implicated or infringed upon by the expansion of confiscation powers).

ADDITIONAL CONSIDERATIONS

There are several fundamental rights that may be impacted by extended confiscation. The following table outlines some of these rights and features of the law, procedures, and implementation which countries may consider to adequately safeguard these rights:

Right	Concerns Implicated	Possible Safeguards
Right to Remain Silent	The law could force the defendant to speak in order to defend their property against confiscation, and if they do not, the property will be confiscated.	The government or prosecuting authority should have to speak first by (1) specifying the property at issue when the confiscation is sought to be "extended" beyond property directly confiscatable and linked to the offence of conviction. This gives the defendant notice as to which of his/her assets may be in scope/out of scope of the proceeding. (2) The prosecuting authority should make an initial showing as to why the extended property is subject to confiscation, depending on the requirements of national law (i.e., it was accumulated when the defendant had no known income; there is evidence that is traceable to past offences; there is no plausible explanation for its acquisition). Persons who declared income in taxes, or who made asset declarations, can be asked to speak on the details of these documents.
Presumption of Innocence	The defendant should not be punished for crimes for which he/she was not convicted beyond a reasonable doubt.	The prosecuting authority should have to adduce some evidence that the property was derived from crimes, likely through the operation of a presumption. Courts will need to see evidence to activate the presumption. For example, that the person has had no legitimate employment, income, inheritance or savings. The presumption is not enough, however and does not defeat the notion of innocent until proven guilty or the supposed legal origin of the property. The key function of extended confiscation is to allow the government to make a prima facie showing which is weighty enough to shift the burden to the defendant to bring forward explanations and evidence as to why the property is legitimate.
Right to a Fair Trial	The process does not allow sufficient opportunities to challenge the extension of the confiscation to other offences.	The defendant should have opportunities to (1) see and review the evidence put forward by the government (to include any calculations of income v. expenditures, net worth calculations, or other accounting summaries for specified periods), (2) to ask questions or make comments on these calculations and question the government's witnesses and experts, (3) to put forward their own evidence and experts to rebut the government's position. This process may result in assets falling out of scope of the government's sought-for confiscation, where it is shown that the assets had a legal source or origin or were not disproportionate to known and substantiated wealth. This process may have both a written an oral component. Evidence from both sides should be considered by the court. Since extended confiscation occurs in the context of a criminal proceeding, it is fundamental that the defendant may choose to be represented by counsel (either of their choice or appointed) and that this representative is competent to analyse, challenge, and defend against the confiscation component of the case, post-conviction.

Right	Concerns Implicated	Possible Safeguards
Proportionality	The concerns here are two-fold: proportionality in the use of extended confiscation and the application in a particular case.	Even if the prosecution puts forward compelling evidence that the assets to which confiscation should be extended are illegally derived or unexplainable, and the defendant is unable to justify their purchase, the court should always maintain discretion to grant or deny extended confiscation in any particular case. This helps to avoid disproportionate punishment when the crimes that likely generated the property are distant, or the defendant is likely to be left destitute. Other features which can held help guard against disproportionality include: (1) setting a limit on how far into the past (and/or the future) the assets that can be confiscated by extension have been acquired, (2) setting a limit on how old the criminal conduct can be that might have generated the assets, (3) limiting the application of extended confiscation to serious offences as determined by national legislation, meaning that pretty offences should not be cited (nor grouped together to justify the use of extended confiscation). Countries may consider defining serious offences in a way that includes major acquisitive crimes, as opposed to, for example, violent crimes which do not generate major profits.
Non-arbitrariness	Extended confiscation is used randomly or unpredictably, subjecting a assets of criminal defendants to confiscation without reason or in a way that severely impacts others associated with the defendant.	Extended confiscation should not be mandatory. It should be carefully considered and sought by prosecutors only in appropriate cases. Countries should consider using it in only serious cases where it is likely that the defendant has enjoyed a long-term criminal lifestyle or engaged in a series of offences over the years, not all of which may have been prosecuted. It is especially helpful against figures who are well-known to LEAs, such as high-level leaders of OCGs, but who face justice on certain (limited) charges perhaps after a significant accumulation of criminal property or unexplained wealth or span of time. If used outside of major ML or TF cases, consideration should be given to the gravity of the predicate offences, the harms caused by the conduct, and other factors (such as whether the person was a public official or played a major role in serious criminality). Because extended confiscation takes significant time and resources on behalf of the prosecuting authority – potentially to include obtaining old records and evidence, and consulting with forensic accounting experts – countries should be selective about when they use extended confiscation and limit to cases where financially significant, domestically located assets may be confiscatable.

5.3.4 Other issues

a. Fines and other punitive consequences

As mentioned above, confiscation is a defined term in the FATF Glossary. The treatment of fines and penalties is a common issue that arises in mutual evaluations, specifically, the question of whether these can be counted as confiscation. Many offences carry monetary fines or penalties, established within the statute which criminalises them or elsewhere in the country's criminal code and made generally applicable to all or certain crimes. While there is

no doubt that fines are an important part of a criminal justice system and a valid, effective response to combatting offences in line with their gravity, particularly as possible sanctions against legal persons are limited, FATF and Global Network precedent has not considered that fines constitute a form of asset recovery or confiscation.[6]

Some treaties and multilateral conventions in fact require pecuniary fines as one of the sanctions that should be available against offenders for the commission of certain crimes. This includes conventions incorporated by FATF Recommendation 36 (e.g., the Vienna, Palermo, and Merida Conventions, and the Terrorist Financing Convention) and other instruments dealing with ML predicate offences, such as the OECD's Anti-Bribery Convention.[7] However, Immediate Outcome 8, in the introductory note, states: "Assessors should note that when considering the criminal property or property of corresponding value confiscated, they should not take into account amounts, such as fines or other monetary penalties, that are part of the sentence or other sanction for the criminality or misconduct, whether in criminal or civil proceedings."

The main rationale for this is that confiscation has some relation with or connection to the criminal conduct and is, generally, the product of a financial investigation into the financial benefits obtained or tools used to commit the offence. Conversely, fines are usually pre-established by law, or a formula for calculating them is used. They may have no relation to the fruits of the offence, and may be applied to crimes that do not generate proceeds at all. They are, indeed, an important deterrent and just desert for committing a variety of offences, but they are punitive in nature, making them inherently different from confiscation. Although confiscation may be attached to criminal proceedings, it is not itself a part of the sentencing process and judges would not typically take confiscation into account during sentencing, including in the issuance of fines. Confiscation is based on the principle that the person was not entitled to the property, since he or she has acquired it by illegal means or used it in an unlawful way. Confiscation deprives the defendant of property he or she should not have had or did not "truly" own, considering the circumstances in which it was obtained. Confiscation, even when it is employed in criminal proceedings, is not normally a penalty. In fact, confiscation is usually something else. Besides the penalty, it tries to show that crime does not pay, delivering a restitutive effect, not a punitive one: taking the proceeds, putting the person in the patrimonial position they had before committing the offence, is not a punishment (*suum cuique tribuere*).[8] Whereas fines are a form of punishment precisely because they deprive the offender of property they do "own" because they have committed a wrong.

On the other hand, restitution can be considered under the umbrella of "asset recovery" precisely because it does have a causal relationship to the crime committed (i.e., the crime created a loss to a victim). This is clearly reflected in the 2022 Methodology as revised. Core Issue 8.6 asks: "To what extent does the country return confiscated property to victims through restitution, compensation or other measures?" Terminology is not important, as countries use various words to describe the process of returning stolen or otherwise illegally obtained money to victims: compensation, restitution, restoration, return, etc. But two clarifications are required. First, some countries use confiscation and its attendant provisional measures as the primary tool to bring in funds that can be returned to victims; they may make the victims whole later with the sums confiscated. Other countries only use confiscation or forfeiture to bring in funds to the state, and they may or may not be able to use the "proceeds" of confiscation for compensatory purposes. Yet others will prefer their victim recovery mechanism to confiscation, and choose not to pursue confiscation where victims of the crime are identified in the course of an investigation.

6. It may be possible to distinguish between fines issued as part of the punishment for the commission of an offence, and fines imposed where the proceeds have been squandered, for example. In this case, the "fine" would be considered corresponding or equivalent value if it is not punitive, but replaces the hidden/spent proceeds of crime.
7. See UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), art. 3(4); United Nations Convention against Transnational Organized Crime (2000), arts. 10-11; United Nations Convention against Corruption (2003), arts. 26, 30; International Convention for the Suppression of the Financing of Terrorism (1999), art. 5; Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997), art. 3.
8. A simple example: if a child steals a sweet from a store and someone takes the sweet and gives it back to the store, this is not a punishment or penalty, but a restoration of the status quo and removal of the item from the child, who was not entitled to it without payment. The punishment is what comes afterwards, when the authorities or even the parent takes some measure against the child.

BOX 53 – COUNTRY EXAMPLES: Brazilian Agreements and South African Resolutions

BRAZIL: In the 4th Round Mutual Evaluation Report of Brazil (2023), the FATF made the following key finding: "…Brazil is performing better with regard to corruption, crimes involving public funds, and, to a limited extent, environmental crimes. This is due to the use of non-criminal mechanisms to obtain the return of assets illegally subtracted from the state in those contexts. Brazil has achieved significant results through the negotiation of leniency agreements through CGU (Office of the Comptroller General) and AGU (Attorney General of the Union). The damages and losses recovered – which equate to criminal proceeds – amount to USD 1.35 billion between 2017 and 2022. in 25 cases. AGU, CGU, TCU (Federal Audit Court) and administrative bodies controlling public expenses also use a range of civil and administrative procedures to trace, seize, and recover assets."

The MER explains: "… a strong point in Brazil's system is the use of leniency and collaboration agreements to recover assets linked to corruption….The damages and losses recovered – which equate to criminal proceeds and do not include fines – amount to USD 1.35 billion between 2017 and 2022, in 25 cases." It elaborates: "Additionally, AGU has filed civil claims against persons involved in illegal mining worth USD 91 million to recover damages to Brazil's national lands. Between 2019 and 2022, 157 such lawsuits were filed. The Amazon Task Force…has filed 245 public civil lawsuits seeking BRL 4 billion related to environmental damages in a total area of 373,44 hectares in the Amazon (these are all pending)." Source: MER paras. 314, 317.

NPAs, or ANPC as they are called in Brazil, are important mechanisms for consensual dispute resolution, (in principle) entered into by individuals who committed acts of misconduct against the public administration (including acts of corruption which may involve ML). Concluding such agreements, whether in extrajudicial or judicial settings, offers advantages such as swift conflict resolution, reduced litigation costs for both parties, and immediate recovery of public funds.

SOUTH AFRICA: The RSA uses non-trial resolutions (NTRs) in the specific context of asset recovery which has contributed greatly to recovering the proceeds of crime. The Asset Forfeiture Unit (AFU) introduced a mechanism called Corporate Alternative Dispute Resolution (C-ADR) where corporate entities can approach the AFU to disclose and return any benefit the entity may have gained through unlawful activities of its employees. C-ADR allows companies to avoid reputational damage and further local consequences under certain strict conditions (and they may potentially avert additional penalties imposed internationally on the company). These conditions entail full disclosure, including the provision of all relevant documents, full co-operation with any future criminal and other investigations against employees implicated in the unlawful activities, the implementation of measures to avoid recurrence of the events, and full disgorgement of any benefit received through the unlawful activities. No indemnity is provided to natural persons, meaning they can still face individual liability for their crimes.

C-ADR is based on the premise that a legal entity is incapable of criminal conduct but for the actions or omissions of its employees. Thus, C-ADR allows the company to avoid reputational damage and continue to trade and ensures that innocent employees of the company are not unduly prejudiced or impacted.

All of these models are foreseen and none are discriminated against in the assessment of FATF's revised AR Standards. However, not all of these models may have the same level of effectiveness, for various reasons, and the details of the country's system should be duly considered by assessment teams and countries alike. For instance, confiscation may confer certain advantages related to seizure and restraint powers that may not be available if straight restitution is pursued. Some countries cannot use confiscated funds for victims, and can, for example, only use restitution for this purpose. Therefore, it is considered a best practice for countries to broaden their possible uses for legally confiscated funds to allow it to, among other things, be used for victim compensation). This can maximise amounts that can be transferred to victims at the conclusion of the case.

Secondly, what "other measures" are envisioned in the context of Core Issue 8.6., which generally deals with situations involving identifiable or at least theoretical victims? Victims may include the state and its citizenry (e.g., if the country is deprived of revenue or sovereign wealth), individuals, businesses, competitors, the natural environment, and all manner of persons or entities who can suffer losses directly or indirectly. "Other measures," therefore, may include settlements or resolutions which bring in money that is derived from crime. The specific mechanism in the country will need to be examined carefully, and case outcomes may also require close review on a case-by-case basis, but the stronger the tie to the crime, the more likely the resolution can be counted for the purpose of assessing effectiveness. If the country can demonstrate how the amounts are calculated and what relationship the figure has to the crime (e.g., proceeds, value of losses, cost of damages, or amount of unjustified savings), it is possible that these sums can signify asset recovery, and may indeed be considered a good practice on top of the country's regular confiscation framework which can effectively "make crime unprofitable" in the words of IO.8.

Frequently, these agreements are used to address corporate malfeasance. FATF has seen use of them in the context of (1) FI/VASP/DNFBP compliance failings (deferred or non-prosecution agreements); (2) in the context of predicate crimes committed by companies (such as corruption offences and environmental crimes). In both circumstances, confiscation could be a part of the non-trial resolution, or some sort of disgorgement of the benefits obtained through illegal activity. The exact features of these systems and the specific agreements presented by the country *may* be relevant for Core Issue 8.5 or 8.6.

b. Tax recoveries

In the 2012 Methodology, Immediate Outcome 8 specified in a footnote that: "For the purposes of assessing the effectiveness of IO.8, full credit should be given for relevant use of the tax system, namely amounts recovered using tax assessment procedures that relate to the proceeds and instrumentalities of crime. The assessed country should ensure that any data provided is limited to tax recoveries that are linked to criminal proceeds/instrumentalities, or the figures should be appropriately caveated." This suggested that tax recoveries could add to the overall picture of a country's effectiveness on IO.8, but that this credit could only be given if the country could demonstrate a connection between these sums and criminal proceeds or instrumentalities. Obviously, not all taxes collected and revenues generated through the tax system (be it in ordinary assessments or on the basis of a criminal tax investigation) represent criminal property.

In the 2022 Methodology, this footnote in IO.8 was revised to read: "In assessing co-operation frameworks and the extent to which there is co-operation and exchange of information between different authorities, assessors should also assess co-operation between tax authorities and competent authorities, and consider any results related to that co-operation, which may, in appropriate cases, have resulted in criminals being deprived of criminal proceeds or property of corresponding value." The new text emphasises the co-operation and co-ordination component and recognises that results of such interactions may give rise to amounts that could add to the overall picture of a country's effectiveness on IO.8. The connection to crime, including ML predicate crimes, is still required if a country proffers these figures to an assessment team, as many countries have done successfully in their mutual evaluations. As to the advantages and mechanics of co-operation with tax authorities, this is dealt with in Ch. 2.2.2(b), above.

Whilst co-operation and co-ordination is encouraged and relevant results from the tax system can contribute to AR efforts, **tax recoveries should not become a substitute for confiscation**. The Methodology makes clear that only certain recoveries can be credited under Immediate Outcome 8: those that result in criminals being deprived of criminal proceeds or property of corresponding value (see footnote 193 and Example of Information 4 within IO.8). Assets recovered in "appropriate cases where there is a tax liability" and criminals are deprived of proceeds cannot become a country's primary form of AR vis-à-vis other confiscation measures. There are several reasons for this:

- A full financial investigation is necessary to determine the extent of criminal networks and scale of criminality, to identify and trace criminal property, and to develop evidence which may be used in criminal or confiscation proceedings. This may not happen if an assessment of tax liability is the objective of the investigation.

- Co-operation through MLA and other channels may be limited and assistance from other countries may be less likely to be pursued or granted if criminal investigations or investigations with a view of confiscation are not pursued. Countries may have limitations preventing them from using their criminal powers to help other nations collect taxes (as distinguished from assistance available in criminal tax investigations or where tax crimes are a predicate for ML).

- If criminally-sourced income is taxed at all, it may not be taxed at a 100% rate. This means criminal proceeds necessarily will remain in the hands of the offender, or that paying a high (but not full) tax rate becomes simply a cost of committing crime.

BOX 54 – COUNTRY EXAMPLE: Tax Recoveries and Asset Recovery Synergies in the UK and France

UK: The United Kingdom's National Crime Agency details its approach to using civil recovery powers on its website. It states that someone does not need to have been convicted of a crime for NCA to pursue their assets. Asset recovery powers available under the Proceeds of Crime Act are complemented by taxation, which can be a particularly powerful tool for recovering criminal assets. Where NCA have reasonable grounds to suspect that someone has income or assets obtained as a result of crime NCA will raise tax assessments and relentlessly pursue that liability together with penalties and interest. In certain cases, criminals may face losing their property and facing a hefty tax bill – together with interest and penalties.

FRANCE: In the 4th Round Mutual Evaluation Report of France (2022), the FATF made the following conclusion at paragraph 18: "France has successfully deprived criminals of considerable amounts representing criminal proceeds and instrumentalities or property of equivalent value (EUR 4.7 billion per year) using various measures, including confiscation, deferred prosecution agreement (CJIP), tax penalties and repatriation of proceeds moved to other countries.

The FATF explained, at paragraphs 262-263: "The competent authorities have obtained very good results in this area. Criminals were deprived of EUR 23 658 898 123.57 during 2016-2020 (EUR 4.7 billion on average per year) using various measures, primarily confiscation under the Penal Code, but also CJIPs, tax penalties and repatriation of proceeds moved to other countries. The assessment team believes that the amounts related to tax recovery in case of wilful negligence can be taken into account in this context, where tax fraud is the main ML threat. The assessment team also based its conclusions on the review of many cases provided by the authorities."

- Tax powers may lack fulsome provisional powers, asset management possibilities, and the full suite of measures and processes which accompany confiscation. Legal frameworks for confiscation, whether CBC or NCBC, have developed mechanisms making them well-suited to pursuing criminal property and corresponding value. These aspects enable a variety of competent authorities and LEAs, and most countries' tax powers do not come with these helpful features.

There is often a lack of clarity about the nature of the sums recovered through tax powers that can make it difficult to determine if the amounts fit the FATF criteria in IO.8 and therefore should be credited as capturing criminal proceeds or value corresponding thereto.

5.4. Non-conviction based confiscation

Non-conviction based confiscation (NCBC) is another tool newly required by the FATF Standards as one of the components of the "range of measures" for confiscation. Although NCBC has been mentioned by the Recommendations for years in an optional manner, it is now mandatory within R.4(f). The Interpretive Note to R.4, paragraph 11, states: "[c]ountries should have measures, including legislative measures, to enable the confiscation of criminal property without requiring a criminal conviction (non-conviction based confiscation) in relation to a case involving money laundering, predicate offences, or terrorism financing, to the extent that such a requirement is consistent with fundamental principles of domestic law.

Countries have flexibility in how they implement non-conviction based confiscation." The "or" in this case means that all three types of crimes need to be eligible, and was used instead of "and" to clarify that NCBC should not apply *only* in case involving all three offences. Therefore, NCBC is required but with the same two caveats as extended confiscation, described above, in Ch. 5.3.3. This means that countries should have NCBC (1) to the extent that such a requirement is consistent with fundamental principles of domestic law (FPDL), and (2) that NCBC should be authorised for ML, TF, and predicate offences with a footnote specifying that "[c]ountries may limit the application of non-conviction based confiscation to serious offences consistent with Recommendation 3." The only difference between the language formulations in INR.4 related to extended confiscation and NCBC is that for NCBC, countries are explicitly offered "flexibility" in how they choose to implement NCBC. As discussed below, this is because there are almost as many variations on NCBC as there are countries who have NCBC laws, and even within countries, there may be several types of NCBC.

The definition of NCBC in the FATF Glossary is expansive: NCBC is "confiscation through judicial procedures of criminal property in circumstances where no criminal prosecution or conviction is required." The requirement of a judicial procedure was intended to clarify that countries need only have NCBC actions that are judicial in nature, and not administrative or agency-based NCBC. However, there is still flexibility to have administrative forfeiture or similar processes, as they will meet the definition of "confiscation" in the Glossary and can be counted towards the assessment of effectiveness under IO.8. Specific Factor 10 within IO.8, at footnote 196 of the Methodology, confirms this with a specific reference to administrative forfeiture. Administrative forfeiture is not an obligatory type of NCBC for jurisdictions, but it can be a pragmatic approach where small-value forfeiture is uncontested (for instance, of concealed cash in a car when an individual is arrested for smuggling narcotics, or undeclared cash at the border). In the model of most countries using administrative forfeiture, if the seizure is contested, then a judicial process would be initiated. If uncontested, then the agency would be able to directly and finally confiscate the property after a specific amount of time. These cases often result in a forfeiture by default. For instance, when the US LEAs use this tool, no one contests the forfeiture around 80 percent of the time.[9] It is also possible that administrative forfeiture is accompanied by a criminal prosecution, and it simply expedites minor confiscations in the context of the criminal case. Some forms of expedited NCBC are limited to certain asset classes such as cash or money held in bank accounts.

9. Stefan Cassella, *Asset Forfeiture Law in the United States*.

NCBC is increasingly being adopted around the Global Network.[10] A review of mutual evaluation reports from the last round of assessments indicates that most of the countries that rated well on IO.8, i.e., earning a substantial or a high rating, utilised a range of measures, and this often included NCBC in addition to CBC.[11] NCBC has now risen in prominence in the FATF Methodology, as reflected in Core Issue 8.5 (mentioning final confiscation results achieved through NCBC) and Example of Information 4 (inquiring about confiscation through criminal or civil procedures, including NCBC). The use of NCBC is intended to disrupt criminal networks by targeting their financial base and removing the profits from illegal enterprises, thereby weakening the economic underpinnings of criminal activity, and serving the broader goals of justice and public welfare. NCBC measures have gained recognition for their effectiveness in dealing with complex and transnational crimes, where perpetrators often employ sophisticated methods to shield their activities and assets from law enforcement. Documents such as the Handbook on Effective Asset Recovery in Compliance with European and International Standards and the Council of Europe's CETS No. 198 highlight that NCBC is a critical tool in combating corruption, organised crime, and cases where suspects cannot be apprehended.

Cassidy's analysis in *NCB Confiscation: If not, why not?* explores both the benefits and challenges associated with NCBC, advocating for its use while underscoring the need for a balance between effectiveness and the protection of rights.[12] This perspective is echoed in the UNODC's *Revised Draft Non-Binding Guidelines on the Management of Frozen, Seized and Confiscated Assets*, which stress that procedural safeguards must accompany NCBC to ensure adherence to human rights norms and prevent potential misuse.[13] These sources converge on the idea that while NCBC is powerful in its capacity to strip criminals of unlawfully obtained property, its legitimacy hinges on maintaining transparent and fair processes.

In practice, NCBC has been successfully utilised in jurisdictions seeking flexibility in asset recovery efforts and it has enabled authorities to pro-actively target criminal property. Networks like CARIN and other regional asset recovery inter-agency partnerships have contributed to the development of shared best practices in implementing NCBC. These efforts reflect a convergence towards a standardised approach, albeit with differences in execution to suit local legal traditions and policy priorities. For the purposes of the FATF Standards, it is clearly recognised that countries employ NCBC in the context of *either* criminal or civil confiscation (and sometimes *both*), depending on their legal systems. NCBC is intended to close the gap between the criminal and civil processes. This differentiation has been waning in recent years. Therefore, it is foreseeable and acceptable that some countries use aspects of NCBC even in their criminal proceedings or prosecution framework, and that the distinction between CBC and NCBC is less strong than it has been in the past. For the sake of clarity in this Guidance, they are dealt with as separate systems and topics, but the reality in many countries may be a more blended system.

The implementation of NCBC involves nuanced procedures that ensure legal and ethical standards are upheld. This includes judicial oversight and clear procedural frameworks that prevent abuse and promote the legitimacy of the measure (such topics are covered separately in Ch. 8). The potential for NCBC to play a role in compensating victims and repurposing assets for public benefit further reinforces its value as a tool that aligns with broader societal interests. It can also be a pillar of international co-operation, particularly when assets corruptly siphoned from countries are recovered and returned. By addressing the limitations of conventional criminal justice processes, NCBC contributes significantly to comprehensive asset recovery strategies that aim for both deterrence and restitution.

10. See FATF, *Report on the State of Effectiveness and Compliance with the FATF Standards* (2022) (63% of countries out of a sample size of 59 MERs, had NCBC, as of the date of this stocktake report);

11. See FATF, *Operational Challenges Associated with Asset Recovery*, para. 170 (2021) (noting that figures indicate that NCB tools contribute to more effective asset recovery regimes).

12. Francis Cassidy, *NCB Confiscation: If not, why not?* (2015).

13. Conference of the States Parties to the United Nations Convention against Corruption, CAC/COSP/WG.2/2019/3.

NCBC's past reputation as a recourse when CBC is not available is waning. In amending its Standards, the FATF has given NCBC the same level of prominence in the "range of measures" which countries must have in Recommendation 4. It is not only a back-up plan when it is not possible or practical to criminally prosecute the offender and confiscate the assets in that process. It is an equally valid form of confiscation, an alternative to be evaluated for use by competent authorities in accordance with domestic legislation, opportunity, convenience, likelihood of success, and case strategy. It is not envisioned that assessments will prefer any one form of confiscation over another; however, it may be the case that countries are not taking advantage of all forms of confiscation and the benefits they may offer, not using the forms of confiscation which could result in more effectiveness considering their ML/TF risks, or not balancing the approach such that assets are not confiscated when they could have been (perhaps through another method).

In INR.4, the "comprehensive range of measures" highlights a total of five models of confiscation, and explicitly advises that "[w]hich measures, or combination of measures, will be applied depends on the circumstances of the case." This provides countries with choice, and mutual evaluations would not be expected to fault a country for over-reliance without good reason, unless such over-reliance is impeding effectiveness or not reasonable in the context of the country. The possibility of dual-track confiscation (NCBC and CBC), and toggling between the two, is explored further in Ch. 5.4.3 below.

For the purpose of achieving effectiveness, it is noteworthy that there is no hierarchy of confiscation measures in R.4 or INR.4. The FATF Standard is agnostic, only requiring countries to have a menu of measures, the use of one or more of which will be determined by the authorities when considering the specificities of the case. The FATF Standards contain no preference for CBC over NCBC or other types of AR, or vice versa, but the use, non-use, or over-reliance on confiscation types within the "comprehensive range of asset recovery measures", as mentioned in the Characteristics of an Effective System under IO8, can be examined. This is because each AR measure has upsides, downsides, and use-cases when situated in the context of the country and its institutions.

Finally, as with CBC, countries need to address the claims of third parties affected by NCBC. The confiscation of assets held by third-parties (i.e., someone or some entity who was not directly the offender) may be sought under CBC and NCBC systems.

5.4.1. Serious offences

Because the language and footnote relevant to "serious offences" is the same for NCBC as extended confiscation, please see the discussion of this issue at Ch. 5.3(a) above. In short, NCBC should be enabled for predicate offences considered serious offences, tying back to the definition of serious offences in R.3. This definition primarily relates to the severity of the offence as reflected by domestic sentencing norms or the categorisation "serious", as defined by the country.

In the past, some countries limited their NCBC regimes to certain, limited subsets of offences. Often, this meant that in some jurisdictions, only assets connected with OCGs and the types of offences they commit have been subject to non-conviction based proceedings (i.e., only drug trafficking offences, or crimes committed by a group). In line with the revised FATF Standards, the full coverage of all serious offences should be by countries. In some places, this may happen gradually, by enacting different pieces of NCBC legislation which eventually cover the field of all or most serious offences. Countries may wish to ensure that property stemming from their higher-risk predicates offences can be recovered through NCBC, and that ML and TF are covered. Countries may face challenges in covering all serious offences both for the purpose of NCBC and extended confiscation, but should endeavour to expand this list in line with the requirements of the FATF Standards.

NCBC is particularly vital for addressing serious offences, including organised crime, corruption, human trafficking, drug trafficking, money laundering, and terrorism financing. These crimes often involve complex financial networks

and international components that make securing criminal convictions extremely challenging. Moreover, certain characteristics of the offender may make prosecution impracticable (e.g., location, status, age, etc.). In order to be consistent with the scope of serious offences as set out in R.3, countries should seek to cover the "widest range" possible of crimes which generate proceeds that can be laundered. Countries may reference the Methodology for R.3, particularly criteria 3.2 and 3.3 as assessed in their prior MERs, to survey the serious categorisation of serious offences and how they constitute predicates for ML in their systems and which of those, in turn, should be covered by NCBC. Moreover, while a risk-based approach is not explicitly mentioned in the FATF Standards in regard to defining serious offences for NCBC, this may be a factor for some countries in circumscribing NCBC.

ADDITIONAL CONSIDERATIONS

Different types of NCBC, such as unexplained wealth proceedings, may be used when certain assets would not be confiscated because the conditions to use another NCBC law are not met. For example, under EU Directive 2024/1260, art. 15, NCBC is limited to certain scenarios, such as cases of long-term illness, death, abscondment, or the expiration of the criminal statute of limitations for the offence. Beyond these scenarios, it is also possible to recover assets through unexplained wealth proceedings, which are NCBC in nature and provided for under the Directive in art. 16. Therefore, even if the defendant is present in the jurisdiction and well enough to stand trial under unexpired charges, there is still an option for NCBC under a different law pertaining to unexplained wealth (note, UWOs are discussed below in Ch. 5.5). These proceedings must have safeguards, but there are no minimum rules set out in the Directive such as the standard of proof, which is left to the EU Member State's discretion.

As another example, the Russian Federation's Constitutional Court ruled in 2024 that actions to civilly confiscate assets of unexplained origin of public officials are not subject to the statute of limitations applicable to the underlying offences.[14] Therefore, a prosecutor may file a claim to confiscate property acquired as a result of a violation of the law aimed at preventing corruption by a person currently or formerly holding a "publicly significant position," including property into which the initial proceeds are converted. This is an example of applying NCBC for a particular threat (corruption), using an NCBC unexplained wealth model, and where a specific detail of the legal regime (no time limitation on claims) was deemed constitutional by the highest court.

5.4.2. Types of NCBC

NCBC is often but not universally styled as an *in rem* proceeding, meaning that the basis for jurisdiction is the asset or property itself. This can be compared to the usual basis for CBC, which is an action *in personam* when the court's jurisdiction over the person, i.e., the defendant, is essential. However, some countries have established NCBC regimes that are *in personam* in nature. While there are dozens of ways to express the concept of NCBC, the premise is that the property is the subject of the action due to its connection with crime. This connection – through whatever standard of proof and evidential threshold is set out in domestic law – must be proven in order for the asset to be recovered. The need for a person to stand trial, or indeed to even know the owner of the asset, is eliminated. The basis for confiscation, therefore, rests on the relationship between the asset and an offence, but that offence does not have to be proven to a criminal standard or beyond a reasonable doubt. The theory of confiscation may depend on the asset in question being any type of criminal property (e.g., proceeds of crime, property laundered, or instrumentalities). Legal scholars have posited that NCBC proceedings rest on an imagining that the property, not the person, is on trial for a crime. Many NCBC cases have names reflecting this idea, such as State v. One Red Ferrari, but such titles also serve a purpose, which is to provide notice of the exact asset sought for confiscation on the headline of the case.

14. The FATF suspended the membership of the Russian Federation on 24 February 2023.

It is not a requirement of the FATF Standards that NCBC should be available for corresponding value. This was not made an element of R.4 because equivalent value confiscation without a conviction could be seen to break the link required in NCBC – i.e., the property must have been involved or derived from a criminal act. Corresponding value, by definition, has no independent link between the crime and the property. Corresponding value may be (but it is not exclusively) pursued when the defendant's traceable property (e.g., the direct proceeds of crime) are unavailable. (Some countries, meanwhile, have an entirely value-based system so the distinction between proceeds and corresponding value is moot.) In fact, some jurisdictions allow for value-based NCBC.[15] While not a mandatory part of INR.4, paragraph 11, this is part of the flexibility shown in the Standards. It can allow money generated from offending which would otherwise not be recovered due to the way the money is used (e.g. a cash intensive lifestyle, international travel, cosmetic surgery), or who engaged in the criminal activity (a legal entity), to be recovered through the forfeiture of legitimately acquired assets.

Now that it is included in R.4 as a mandatory requirement (assuming there are no FPDL), NCBC should not be considered as a last resort or a plan B. Countries should consider how NCBC might be deployed where it is not possible or practical to pursue the assets in the course of a criminal prosecution (the traditional justification), but also where it might make sense from a tactical standpoint to use NCBC. There may be efficiency gains, particularly in countries where criminal proceedings take an unreasonable amount of time in the court system (e.g., if many appeals are allowed on an interlocutory basis, or if there is a lack of resources in the criminal tribunals creating a backlog or major delays). There may also be ample legal reasons to use NCBC.

The classic examples are that the potential defendant is deceased, incompetent to stand trial, suffering from long term illness, or has absconded from the country. Other examples include that the defendant has immunity from criminal prosecution (useful in cases concerning high-level corruption and related ML, particularly in relation to heads of state), or the defendant is completely unknown (for instance, if there has been a hack of business or a bank, and all that can be determined conclusively is that ransom paid in the form of cryptocurrency is recoverable). Another example of strategic use of NCBC is in a laundromat or similar situation, where there has been an influx of assets of likely illicit origin into a country's banking system, but (i) evidence of the underlying offences is unlikely to be obtained from the source country due to international co-operation challenges, and (ii) attempts to confiscate the assets on an NCB basis are not likely to be successfully challenged if they are owned by shell companies or nominees. As another example, NCBC may be strategically useful in a situation where there is a lack of co-operation from a specific country to which the facts of a case relate in terms of providing evidence or enforcing NCB orders, but there is evidence available domestically or even from third countries to support an NCBC action, nonetheless. In yet other situations, legal persons may not be subject to criminal liability due to fundamental principles, so corporate confiscation derives from a civil action, or via negotiated agreements in such proceedings. While CBC and NCBC may not be interchangeable due to considerations of proportionality or fundamental rights in a particular country, the FATF Recommendations put them on equal footing as part of the available "range of confiscation measures".

Moreover, NCBC can be used when a foreign person is unlikely to be extradited to the country to face criminal prosecution; when evidence of foreign predicate offences is unlikely to be sufficient to bring a criminal case with a higher evidentiary threshold; when the person has been convicted in another country, but the assets in question were not recovered; or the person was found not guilty, yet should not be able to enjoy the fruits of their offence. Because the higher evidentiary threshold cannot be met with accessible and admissible evidence does not mean that the crime did not occur or that the proceeds should be retained by the offender to the detriment of potential victims.

15. For example, the profit-based forfeiture orders described in Box 50 from New Zealand are NCBC in nature. After the calculation of unlawful benefit, a debt is created that can be satisfied by assets of the respondent that have been illegitimately or legitimately obtained. As another example, it may be necessary to confiscate corresponding value through NCBC. In Brazil, legal entities cannot be criminally prosecuted, so civil proceedings are the only avenue to address illegal conduct. There are times when the corporation's assets are no longer available, giving rise to the need to confiscate equivalent value.

NCBC can be especially useful when the property is not owned by the person who would be the defendant. This may occur when another person's property is used to commit and offence and the person who owns the property at issue is not considered an innocent owner who knew nothing about the crime. Finally, there may be practical reasons why a criminal proceeding would be delayed, but it would be preferable to resolve the confiscation issues earlier (e.g., so that they can be recovered to benefit victims in a perilous situation or because the asset would otherwise deteriorate so rapidly it would not be valuable).

Although a criminal prosecution and conviction are not required to initiate an NCBC action, it will often be the situation that a criminal investigation or criminal financial investigation has in fact been conducted, and the outcome of that procedure is a decision to pursue NCBC, not criminal charges. An example of a situation where pursuing NCBC would be justified is when the suspect has a record as a frequent but non-socially dangerous offender, and there is a disproportion between their lifestyle and their known lawful income, or when assets have previously been seized in connection with investigations relating to an offence committed within the framework of a criminal organisation. The financial evidence that might have been used in the criminal proceeding can instead or also be used to prove the connection between the offence and the asset subject to NCBC. Competent authorities may also commence an NCBC action, and then stay or pause it, if a criminal investigation again becomes necessary and a prosecution is likely.

It is a good practice for countries to allow NCBC actions to be procedurally stayed so that related criminal prosecutions can take precedence, if needed (or allow for mutual agreement of the parties on this point). This helps in several aspects: it conserves judicial resources; protects the secrecy of criminal investigations and the integrity of prosecutions, including so that the prosecution is not pre-empted by the NCBC decision; and ensures that claimants in NCBC actions are not negatively impacted by asserted their right against self-incrimination or that compelled civil discovery for the claimant does not prejudice them in a simultaneous criminal case. It is also possible that an NCBC action can be commenced after a criminal case, including in situations where one or more defendants was acquitted, the proceeding was suspended, or the jury could not reach a verdict. A prosecution may be declined, a nolle prosequi decision may be rendered, or a judgment of acquittal may be decided, but these outcomes may be reached for a variety of reasons, of which a lack of evidence of guilt is only one possibility. In such cases, countries would be urged to consider the fairness of pursuing NCBC as weighed against the valid reasons which may justify it.

Countries may perceive that NCBC actions may be "easier" than CBC, but the attorneys or prosecutors bringing the action still must prove that an offence was committed and that the property derived from that offence or was used in the course of committing that offence. The "easier" parts may be that (i) a conviction does not need to be

BOX 55 – **COUNTRY EXAMPLE: NCBC Used in a Tax Case in Australia**

The flexibility afforded by NCBC enabled the Australian Federal Police Criminal Assets Confiscation Taskforce, alongside partner agencies, to confiscate funds suspected of being the proceeds of tax evasion and money laundering in Operation Bassing. The investigation involved extensive domestic co-ordination across law enforcement, FIU, and revenue protection agencies, and the application of innovative asset recovery powers provided for under Australia's NCBC framework (the Proceeds of Crime Act 2002 (Commonwealth)), as well as traditional law enforcement methods. This operation also involved significant international co-operation, after the suspect transferred significant amounts of money to offshore bank accounts. Effective co-operation with that country ensured the offshore funds could also be secured, pursuant to Australian NCBC orders. Ultimately, this operation resulted in AUD 3 million of funds being confiscated, as well as real property worth more than AUD 500,000.

obtained prior to pursuing forfeiture, and, often, (ii) there is a lower standard of proof – such as preponderance of the evidence, balance of probabilities, or some other expression of 51% certainty. There may also be different (but not necessarily "easier") rules of procedure than those applicable in the criminal context. Some countries have established specific procedural rules for NCBC; some use the same rules applicable to civil litigation; yet others relax the criminal procedural rules, while preserving due process protections even though the opposing litigant is no longer a criminal defendant with all of the rights and protections that status entails. Further, many jurisdictions have concepts within their respective laws of evidence which mean that the more serious an allegation is, the more convincing the evidence needs to be to satisfy a court of the relevant standard.[16] However, as a strategic approach, it is a good practice for LEAs and prosecutors using NCBC actions to investigate the case in the exact same manner that they would if the assets would be sought for conviction-based confiscation. Ultimately, NCBC still requires evidence of traceability between the asset and an offence.[17] The financial investigation underpinning the complaint, petition, or application for NCBC may be indistinguishable from a criminal financial investigation.

ADDITIONAL CONSIDERATIONS

There are other types of NCBC which are popular around the Global Network. In Latin America for example, *extinctión de dominio* is (often, but not categorically) a non-conviction based mechanism to target illicit assets.[18] It rests on the idea that the owner's the right, control, and title over the property must be extinguished if the property is used for or derived from illicit acts. It can be faster than accusations filed against criminal defendants and provides a policy solution for combating all manner of criminal organisations. NCBC may also be called *decomiso concena* in Spanish-speaking countries, many of which have adopted NCBC measures in the last decade.[19] Approximately eighteen Latin American jurisdictions (including the non-Spanish speaking ones) have some form of NCBC, but the approaches differ significantly.[20] Implementation of these measures could establish deterrence and weaken some of the criminal organisations by attacking their financial infrastructure. It is a good practice, as emphasised in Ch. 2 and apparent in this region, to ensure that agency structures and resources are focused on asset recovery through NCBC, including through the establishment of specialist investigators, prosecutors, and even courts dedicated to combating illicit economic advantages who are familiar with the procedures, and that these actions remain independent of any related criminal procedures.

At the latest by November 2026, EU Member States will have to comply with the provisions of EU Directive 2024/1260 on asset recovery and confiscation which addresses NCBC in both articles 15 and 16. Article 15 requires countries to have measures to enable NCBC in situations where criminal proceedings have been initiated but cannot be continued due to (1) the illness of the suspect or accused person, (2) the absconding of the suspect or the accused person, (3) the death of the suspect or the accused person, and/or (4) the limitations period for the relevant criminal offence under national law is below 15 years and has expired after the initiation of criminal proceedings. NCBC will be limited to cases where (a) it would have been possible for the proceedings to lead to a conviction for, at least, offences liable to give rise, directly or indirectly, to **substantial economic benefit**, and (b) the national court is satisfied that the

16. See *Briginshaw v Briginshaw*, 60 CLR 336 (High Court of Australia 1938).
17. On this point, countries require different showings, and the legal test may vary significantly in either direction, whether laxer or more stringent. As with many aspects of NCBC, the revised FATF Standards allow for flexibility in implementation. For instance, countries which have an unexplained wealth variety of NCBC will not generally require a strict showing of the link between the unexplained assets and a specific offence. That is part of the attractiveness of such a regime. Most commonly in NCBC regimes, the court must be satisfied that the property in question stems clearly from criminal offences, without requiring proof of the specific offence. A few countries may require more, i.e., proof that the asset is the proceed or instrumentality of a specified criminal offence(s), committed on a date certain.
18. See UNDOC, Model Law on In Rem Forfeiture (2011) for other forms of NCBC as developed by the Legal Assistance Programme for Latin America and the Caribbean (LAPLAC).
19. See Guía de Buenas Prácticas sobre Extinción de Dominio y Decomiso no Basado en Condena – Experiencia regional con los países del GAFILAT (2024).
20. In Brazil, legal entities cannot be criminally prosecuted, so civil proceedings are the only avenue to address illegal conduct. Moreover, there are times when the corporation's assets related to the illegal conduct are no longer available, so NCBC is used to confiscate corresponding value.

criminal property to be confiscated is **derived from, or directly or indirectly linked to, the criminal offence in question**. This represents a situational expansion of NCBC (two new situations having been added).

In addition, article 16 of the Directive requires EU Member States to establish another kind of NCBC that incorporates elements of unexplained wealth. Property, which has been identified during an investigation in relation to a criminal offence, can be confiscated without a conviction when the court is satisfied that the property stems from criminal conduct. The circumstances that can be taken into account when assessing whether the property stems from criminal conduct include: (1) that the value of the property is substantially disproportionate to the lawful income of the affected person; (2) that there is no plausible licit source of the property; or (3) that the affected person is connected to people linked to a criminal organisation. The Directive allows limiting this type of NCBC to specific criminal offences when punishable by a maximum penalty of at least four years; broadly speaking, this encompasses serious offences.

Similarly, Sweden implemented an NCBC law in November 2024 which draws on concepts of unexplained wealth. The initial applications of the law were focused on luxury items owned by members of organised criminal groups, and approximately SEK 80 million (USD 8.3 million) has been confiscated in less than a year. A directive issued by Sweden's Minister of Justice in July 2025 ordered competent authorities to take a collaborative approach, specifically instructing six agencies including the police, tax, and customs authorities, to actively enforce the law by targeting high-profile assets in response to the threat environment.[21] The policy intent behind Sweden's introduction of the NCBC law was to combat organised criminal groups by targeting their finances, to strengthen tools to seize and confiscate virtual assets prevalent in crime, and to ensure that crime does not pay and illicit wealth can be recovered, even if the perpetrator cannot be identified or prosecuted, as may often be the case for complex crimes and money laundering in the digital space.

21. Press Release, Swedish Ministry of Justice (7 July 2025).

BOX 56 – COUNTRY EXAMPLES: The Effectiveness of Diverse NCBC Regimes

ITALY: The Anti-Mafia Code allows for NCBC against the heirs of a socially dangerous individual within five years of their death. Thus, criminal legacies and generational transfer of criminal proceeds are curbed.

In Milan, the Guardia di Finanza (GdF) and the Public Prosecutor's Office (PPO) successfully used NCBC proceedings against the heirs of a tax evader. The investigation originated from the results of analysis aimed at identifying individuals possessing assets unjustified by their official income, in light of prior criminal records for economic and financial crimes, with the objective of applying NCBC. In this instance, a financial investigation was initiated in 2014 against an entrepreneur who passed away in 2011, who operated in various commercial sectors. The investigation focused on verifying the legal grounds for social dangerousness during the deceased's lifetime, which requires proof of:

- habitual involvement in illicit activities and a lifestyle supported, at least in part, by the proceeds of such criminal activities;
- disproportion between declared income, economic activities carried out, and the assets owned;
- the existence of sufficient evidence to suggest that the assets, in whole or in part, derived from illicit activities or constituted the reinvestment of their proceeds.

The investigations focused on identifying the assets held by the legitimate heirs of the deceased entrepreneur, considered a "fiscally dangerous social tax evader", and determining which of these assets originated from the illicit proceeds accumulated over time through criminal activity since at least 2002. The investigation included a thorough review and analysis of the extensive documentation related to the entrepreneur's criminal activities and an in-depth examination of the financial statements from Italian and foreign companies directly linked to him, as well as bank statements and STRs. The investigation uncovered that the proceeds of tax evasion, carried out through a whirlwind of false invoicing and the use of foreign corporate vehicles, enabled the deceased entrepreneur to illegally benefit from tax advantages by reducing taxable income through the registration of fictitious costs in the accounts of his Italian companies. It also located secret "black funds" consisting of significant amounts of money fraudulently siphoned from his businesses. This "stream of illicit funds" was used both to meet personal economic needs (such as under-the-table payments and luxury purchases) and to expand the wealth of certain companies linked to him. These companies acted as "safes" holding family assets, including real estate, boats, aircraft, and vehicles.

The Court of Milan decided that the entrepreneur was dedicated to tax evasion as a genuine lifestyle, rather than an occasional act. It found that the proceeds from his illicit activities enabled him to amass substantial wealth. His socially dangerous conduct was adjudged to be aggravated by the repeated use of criminal methods such as false invoicing, complex corporate schemes, and embezzlement. The Court ordered the confiscation of assets and financial resources accumulated "in life" (directly or indirectly) by the deceased and subsequently held by his heirs and nominees. This included assets valued at over EUR 65 million comprised of: 138 properties, 136 plots of land, 268 vintage cars, 160 motorcycles, 5 motorboats, 3 sailboats, 5 vintage farm equipment, company shares, and financial assets.

None of the assets subject NCBC had been seized during previous investigations into the economic crimes, showing the utility of the process even for matters occurring several years prior. Furthermore, this demonstrates the flexibility of the Italian NCBC framework in connection with a deceased individual whose in-life dangerousness did not stem from affiliation with organised crime of a mafia or violent, nature but rather from habitual involvement in serious tax crimes.

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NEW ZEALAND: The target of the operation was the President of the Mongrel Mob Notorious chapter in Hawke's Bay, JM. JM had been on the periphery of other drug supply investigations, but there had never been sufficient evidence to charge him. He was widely known across his community and by local Police for owning multiple properties and driving a range of motor vehicles. He also flaunted wealth and generally led a lifestyle that seemed in excess of his means. The Asset Recovery Unit (ARU) had earlier investigated JM but were unable to link him to any significant criminal activity. The investigation was reopened once he became the target of a criminal investigation.

JM was suspected to be the head of a network involved in the distribution of controlled drugs from Auckland into the Hawke's Bay for on sale. The criminal investigation lent heavily on electronic interception of the phones of JM, his wife and various associates who were identified as the investigation progressed. Little offending was found through the phone intercepts owing to JM and his associates' tradecraft; never talking openly on phones and utilising in person or encrypted applications for secure communications. JM, a mechanic by trade, was employed at a local auto tinting business. The proprietor of this business, SD, was himself a convicted drug dealer. This salary was fully declared and taxed accordingly. However, investigation established that this job was essentially a cover for JM and his criminal enterprise.

... Box 56 continued

Electronic surveillance showed evidence of drug deals being carried out on inside the auto tinting premises. Though again, the tradecraft was such that it wasn't spoken about openly. Hand signals were utilised and no controlled drugs were actually seen or located during subsequent search warrants. In addition, JM was rarely at work and when he was there, he carried out few tasks that could be considered legitimate work. On average JM showed up once a week for a handful of hours but was paid a full-time salary. Upon review of the financial records from the auto tint business, large numbers of cash deposits were identified. Although some of these were attributable to vehicle sales (SD being a registered motor vehicle trader who ran this business alongside his auto tinting), it was evident that JM utilised the business to launder the proceeds of drug sales in the form of wage payments to himself and others. SD and another employee were also involved in the sale of controlled drugs on behalf of JM.

By virtue of his position within the gang, JM could utilise gang members to register assets in their names and/or physical store them for him. This complicated the attribution of assets to JM as they were initially hard to identify and gang members often kept up their cover stories when spoken to by Police. However, ARU could utilize various methods including:

- Visual Surveillance
- Notes in the Police computer system
- Establishing the provenance of the asset
- Monitoring and tracing the payments of ongoing costs associated to various assets
- OSINT
- Electronic interception of discussion of particular assets

Whilst little criminal activity was openly discussed, JM would speak extensively of his financial arrangements and assets. This allowed the ARU to attribute assets and conduct a comprehensive financial investigation. He would also flaunt his wealth through open social media, which was noted by the ARU.

The criminal investigation had been going for approximately 18 months, including a 15 month electronic interception phase. There was evidence of drug dealing but this was largely circumstantial, and the decision was made to terminate the investigation with a series of search warrants. ARU was able to compile a case for assets held by JM or under his effective control (but registered to a third party). A restraining order was granted by the High Court. This also included a 'global order' allowing for the seizure of assets previously unidentified but located during the search warrants and able to be linked to JM. JM died shortly after proceedings were initiated.

The restraining order was executed alongside the termination of the criminal investigation. Ultimately, ARU located: 6x Residential Properties, 4x Bank Accounts (Approx. $42,000), Cash (Approx. $30,000), 12x cars & trucks, 3x Motorcycles, 1x Boat & Trailer, Dirt Bike and other Equipment. The total assets restrained totaled approx. $3,300,000.

Both SD and the other employee were arrested and charged and convicted with drug dealing and firearm offences. Simultaneous ARU action was taken against SD which resulted in assets seized worth approximately $325,000 (SD's proceedings are ongoing).

A settlement was reached with JM's estate. In exchange for the return of a small amount of seized property he agreed to forfeit all of the remaining assets as part of an Assets Forfeiture Order (AFO): 1 residential property (the

family home acquired legitimately via inheritance by his wife); 2 vehicles (one belonging to a son and one with low equity); and $20,000 cash.

JM's assets are still in the process of being sold so a total figure is not currently available. However, after statutory obligations are met (Per section 82 of the Act) the balance of funds will be transferred to the Crown and placed in the Proceeds of Crime Fund. This fund is open to various government agencies to apply for funding for measures to address the impacts of crime and drug related harm.

Challenges faced and lessons learned:

- *Litigation* – After JM's death, the proceeding could continue against his estate per section 169 of the Act. The effect of his death meant that JM himself could not oppose the proceedings. His wife and the estate claimed no knowledge of his offending and were therefor unable to oppose the proceedings. This left them little option other than to seek a settlement accordingly. Some third parties did provide affidavits disclaiming an interest in a particular asset. However, few would attribute them directly to JM.
- *Asset Management* – One of the properties was subdivided without council consent. There was also an unpaid development levy owed to the local council. This levy was paid out of the restrained funds (the council having registered a caveat over the property). Although the property eventually sold, unconsented work can result in a lower sale price as the purchaser takes on the obligation to obtain consent and the risk of it not being obtained. The vehicles were sold in an open auction. JM's wife was able to purchase one of the vehicles back. ARU did not investigate this but relied on the High Value Dealer to conduct appropriate AML due diligence around this sale. The residential properties were bought by a Hawke's Bay business whose director has familial links with other Mongrel Mob gang members in the area. Again, due diligence would have been performed by the Real Estate agent employed to sell the properties.
- *Investigative* – Good record keeping and file management processes allowed for full utilization and interrogation of a large volume of information collected over a significant period of time. Employing a wide variety of techniques was required in order to build a compelling case of effective control that was ultimately accepted by the Court. Many assets would have been unlikely to have been identified, let alone restrained, if wider techniques were not employed. OSINT techniques proved tricky as some social media sites were unable to be accessed easily from Police systems. Police were also conscious of algorithms etc., that may indicate to the user (JM) that Police were viewing his posts.

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KAZAKHSTAN:

- *Legal Regime* – Kazakhstan actively implements NCBC in cases where criminal prosecution is initiated, but due to certain circumstances, must be discontinued, which precludes the possibility of a court conviction. This occurs, for example, when suspects or defendants are placed on international wanted lists, or when criminal proceedings are terminated due to amnesty, the expiry of the statute of limitations, or the death of the accused. In such cases, if there is sufficient evidence that the property was obtained unlawfully, the investigator may initiate asset confiscation proceedings. The key criterion for a court to issue a confiscation order without a conviction is the presence of sufficient evidence establishing a link between the property and the criminal offence. In 2024, pursuant to motions and evidence provided by the Economic Investigations Service, courts ordered the confiscation of assets valued at approximately USD 350 million within the framework of pre-trial proceedings.

... Box 56 continued

- *Case Example* – The police, in cooperation with the Financial Investigations Service, identified the Telegram channel "KaefMafia," which was involved in the distribution of narcotic substances within the Republic of Kazakhstan. During the course of a parallel financial investigation, it was established that the criminal operation of the channel was organised in the form of "contactless communication." To maintain anonymity among members and leadership of the drug group, communication and coordination carried out through the Telegram messenger, while financial transactions were conducted via bank cards of more than 150 "droppers" and cryptocurrency wallets. Through blockchain analytics of the drug couriers' cryptocurrency wallets, it was determined that most of the VA originated from the cryptocurrency exchange G, and were owned by foreign citizens D and K. D and K used darknet marketplaces (Hydra, Blacksprut, OMG!OMG!, Kraken, etc.) to distribute narcotics and launder illicit funds, employing professional money launderers known as "R.E." which charged a 12% fee of the laundered amount. The cryptocurrency accounts of D and K on the exchange G have been seized, but D and K fled from criminal prosecution, and so were declared internationally wanted. Under the Criminal Procedure Code, in cases where suspects or accused persons are declared internationally wanted, the authority conducting the pretrial investigation, having information about property acquired through illegal means, initiates proceedings for pretrial confiscation. By court order, USDT 5,873,905 (appx. USD 5.87 million) were confiscated from D and K from the exchange G using NCBC.

5.4.3. Parallel or dual track NCBC

NCBC is not merely a plan B or last resort option only when CBC is not available. There are countries which have reoriented their entire asset recovery approach around the practice of NCBC, finding that this system may allow some advantages over the criminal justice system in the context of their jurisdiction (especially as to delays or other procedural benefits). Often, countries that have both CBC and NCBC pursue *both* methods at the same time or in succession. It is a good practice to open several lanes of asset recovery, provided that procedures are in place to ensure co-ordination when needed and the risk of conflicts are effectively managed. Should one become closed off with the passage of time or unforeseen events, recovery through another method is still possible. The facts and circumstances of the case and the suspects involved may dictate when and how to deploy CBC, NCBC, or another tool such as restitution or a negotiated settlement, but the possibility of "dual track" confiscation is an increasingly common choice among countries that have several options. CBC and NCBC may be used in the same case as to different categories of assets, different criminal acts, or different legal and natural persons. Some facts, legal and strategic considerations, or the involvement of certain individuals may support the preference for NCBC over CBC, or vice versa.

However, it is important to consider that there are advantages in seeking CBC rather than NCBC in various circumstances. CBC may be more efficient where criminal proceedings are pursued, since it can be easier to obtain forfeiture in one process, rather than commencing additional proceedings. This may be particularly salient in the several countries where the standard of proof for the confiscation is lower relative to the standard of proof for a finding of guilt for the offence itself.[22] CBC may simply be more direct where there are relevant criminal proceedings involving the defendant who owns or controls the asset, and the confiscation may be (but is not necessarily) part of the penalty or sentence imposed. Separately, depending on the country, CBC may also provide the added benefit of value-based or equivalent value confiscation, or the forfeiture of other property held by the offender in certain circumstances (e.g.,

22. In the context of CBC, the principle of "no penalty without culpability" (*nulla poena sine culpa*) can be respected even in situations where the confiscation part or portion of the criminal proceeding is conducted using a lower standard of proof than the finding of guilt for the criminal offence itself. Some countries apply two different proof thresholds (one for the merits of the prosecution on the charges, and another for the related confiscation) even in the course of the same criminal proceeding. Other countries retain the ability to initiate NCBC following a criminal case, particularly when individuals are acquitted or charges are withdrawn. This reflects the possibility to use a lower evidentiary threshold (like that in a civil proceeding) and ensures that jurisdictions can pursue confiscation, when appropriate, even in the absence of a conviction.

extended confiscation). In contrast, NCBC may be limited to property that has a substantive connection with offences or is unlawfully-obtained property.

BOX 57 – COUNTRY EXAMPLES: Dual Track Confiscation in Italy and Australia

ITALY: This drug trafficking case was led by the Public Prosecutor's Office DDA (Local Antimafia Section) in Calabria and developed by the Guardia di Finanza (GdF) in Catanzaro, with the participation of the American D.E.A. and the Spanish Guardia Civil. It involved one of the most prolific drug traffickers in the world from Calabria. The criminal investigation revealed an organisation structured on three autonomous criminal groups, which shared the profits of their illegal activities. A high-level member of the organisation, who was in contact with many individuals active in the drug business, co-operated with LEAs and provided names, information about schemes, and relational links between criminals. The co-operator also helped confirm that unsuspecting third parties' phones and sim cards were being used by the criminals, as well as the location of voice and data traffic. Five tons of narcotics were seized at four Italian ports, which were hubs for the import of cocaine from South America.

The trial ended with the conviction of 24 individuals. Parallel investigations were aimed at the seizure of assets owned by the drug traffickers and acquired through their illicit activities, based on the application of both CBC and NCBC procedures, following the "double track" model. The informant played a key role in helping investigators to identify the drug trafficker's assets, which were nominally owned third parties and impossible to find using traditional investigative techniques. The investigations were enriched with information from police databases and the analysis of bank records. They revealed a clear imbalance between the individuals' assets and their tax returns, a circumstance that allowed for the criminal extended seizure. Once the "social dangerousness" of the drug traffickers was proven and it was established that they could have never legally acquired their possessions, further provisional measures were applied.

The success of the operation was due mainly to having carried out the asset assessment under the Italian Anti-Mafia Code in parallel with criminal investigations, so allowing:

- the parallel use of two complementary tools (CBC and NCBC measures) that made it possible not to dissipate the assets illicitly acquired by the drug trafficker;
- the GdF units supported the seizures with results from wiretaps and from the informant's statements, which sped up the operations and facilitated the identification of the assets owned by the suspects.

The assets finally confiscated are being administered by the asset management agency, ANBSC, which will allocate them for the public benefit.

AUSTRALIA: In Operation Safadi, authorities commenced proceedings under the Proceeds of Crime Act 2002 (Cth) (POCA) alongside a criminal prosecution (later unsuccessful) for Commonwealth drug offending. However, as the POCA proceeding had been brought on an NCB basis, and on the basis not only of the alleged drug offending, but also on suspicion of ML, fraud and tax offending, the AFP Criminal Assets Confiscation Task Force was able to demonstrate discrepancies between the defendant's legitimate income and overall wealth which could not be explained. As a result, a luxury residential property was confiscated and has since been sold by the Commonwealth, ultimately demonstrating how NCBC can be used to punish and deter criminal activity in the absence of a criminal prosecution.

If a country has NCBC, it should make the commencement, postponement, continuance or closing of an action as seamless as possible. As mentioned above, countries should consider tools to allow them to pause, or stay, NCBC proceedings which have been commenced in relation to the same assets that would be sought in the criminal case. Likewise, a country should have the ability to commence an NCBC proceeding if a criminal case is abandoned. This can be accomplished through laws or rules providing for the tolling or extension in the usual statute of limitations for NCBC actions during the time a criminal proceeding is underway involving the same assets or the same set of facts. Some countries do not permit conviction in absentia, in which case NCBC may be a plausible option. Overall, the use of CBC should not preclude the parallel initiation of investigations aimed at applying NCBC measures to the same individuals.

Countries should also be aware of the potential implications of having dual track or parallel confiscation actions running in the same case. The complications of parallel proceedings are questions of domestic law. This Guidance notes the issue as one for countries to address in their legal frameworks and operational practices. Whether evidence or testimony adduced in one proceeding can be used in the other will likely be subject to special rules. Consideration should be given to potential issues raised by "discovery" processes in civil forfeiture or NCBC cases and how this may or may not be compatible with ongoing or future criminal proceedings. Broadly, countries may wish to consider establishing a firewall between criminal and civil evidence, in light of the fact that financial investigations may use investigative powers based on civil standards for both CBC and NCBC purposes, but evidence gathered through these tools would not normally infect the criminal proceeding. Countries may consider procedural separation to protect due process.

For example, authorities may interview suspects or subjects in NCBC cases. Here, interviewees may not have the same right to silence or legal representation because they are not facing criminal jeopardy. Therefore, in conducting NCBC interviews, authorities should clearly explain the rights of obligations of interviewees to them, and be transparent about the compelled evidence and (possible) lack of protection against self-incrimination.

Parallel proceedings offer adaptability and ensure that assets are, somehow, recovered in the end. Countries are free to choose the most efficient method of recovery as appropriate for each case or asset group. It is possible that litigation strategies may entail more than one method of recovery, or changing methods halfway. Countries should consider building as many bridges as possible between their CBC and NCBC regimes so that transitions can be as smooth as possible.

5.4.4. Fundamental principles of domestic law

As mentioned above, reference should be made to the fulsome FPDL discussion under extended confiscation, in Ch. 5.2 above. The caveat here is applied the same way, in that FPDL *may* prevent some countries from using NCBC in whole or in part, but this assertion would need to be closely considered. One purpose of the revisions to the FATF Standards was to make more elements of a robust AR system mandatory in order to increase effectiveness. Countries having specific FPDL which impact their ability to implement NCBC in its most comprehensive form should consider to what extent they could implement NCBC, even in part. Flexibility is explicitly provided by INR.4, paragraph 11, for the purpose of tailored implementation befitting of each country.

The flexibility and the FPDL carve-out are not intended to completely excuse countries from ever attempting to enact NCBC or explore creative solutions. There are pragmatic alternatives to conviction-based confiscation and countries are free to test the possibilities available within the bounds of applicable FPDL. Many countries which considered for years that NCBC was incompatible with FPDL now have the tool in some form. Some factors which have changed this perception include court rulings (such as from ECtHR), proof of concept at the state or provincial level, or the successful enactment and use of NCBC that comports with FPDL in countries with similar legal systems. The FATF

Standards seek to encourage a broader toolkit in an environment where asset recovery systems are underperforming, while still ensuring that fundamental rights are protected in NCBC settings. Many jurisdictions, as discussed below, have found ways to enact NCBC regimes which respect profoundly important human rights, not in spite of them.

Some of these rights include:

- The rule of law and legality principle
- The right to due process
- The right to property
- The right to a fair trial
- The presumption of innocence
- The right against retroactive punishment or *ex post facto* application of laws
- Principles of proportionality and necessity (e.g., measure should be commensurate with the scale and nature of the offence, and not result in an excessive punishment)

Meticulous attention to applicable and evolving rights – including those enshrined, for example in the American Convention of Human Rights, the European Convention of Human Rights, the judgments of the Inter-American Court of Human Rights, and other constitutions and high court decisions – will strengthen the legitimacy and transparency of NCBC, not diminish its effectiveness. International human rights laws and treaties generally have supremacy over conflicting national laws (including AR laws), but the way this is applied may depend on each country's legal system or constitutional structure. However, in countries with institutional fragility or weak rule of law – those which, in FATF terminology, have less robust "structural elements" – NCBC can be more subject to misuse.

Countries designing a new regime, or expanding an existing regime, will necessarily need to decide two main components, what property will be subject to NCBC and what procedures will be established in the NCBC process. In terms of property subject to NCBC, consideration should be given to how certain categories within FATF's "criminal property" are covered. Furthermore, countries should also give consideration to their policy aims in enacting NCBC, and how these are articulated. NCBC laws' policy aims (restorative, compensatory, etc.) are relevant to assess their compatibility with human rights.

In terms of establishing NCBC procedures, it is critical that these are designed from the beginning (or through subsequent amendments) in a way that incorporates all necessary protections and which accounts for all recognised rights. The following Box contains some of the protections that may be included, as a good practice, to ensure that NCBC proceedings protect the rights all parties impacted:

BOX 58 – **PRACTICAL TIP: Protecting Rights in NCBC**

While NCBC can be an indispensable measure in a country's toolbox, it is essential that the legal framework and operational practices protect the rights of the persons who own the property sought for confiscation and others who may have an interest in it, referred to here as "claimants." A non-exhaustive list of issues which countries may wish to address or include in their frameworks are:

- **Notice of the action** should be sent to all known and potential claimants and allow an adequate time for the person to intervene in the proceeding and make their claim. An amount of time less than 30 days is not advisable, and ideally this period would be two-four months to allow for contingencies. However, this should not be read as preventing the use of *ex parte* applications for freezing/restraint/seizure of assets, with appropriate safeguards, allowing for notice to be given after the relevant order is made.

... Box 58 continued

- The application, complaint, or other initiating document for the NCBC action should be **sufficiently detailed** so as to inform persons reading it of the specific allegation (i.e., the factual circumstances establishing why the property is sought for confiscation and the legal provisions invoked). Without this, a claimant would not have enough specific information to respond in substance to the allegations.
- A **right to challenge the confiscation action** should be explicitly provided for in law.
- In elaborating this, **innocent owner defence** could be established, allowing the claimant to show that they were not involved in or aware of the offences alleged in the application. Even if it is given another name, it essential to distinguish between assets genuinely acquired by third parties without knowledge of criminal connections, and those held to obscure ownership. R.4 addresses the need to safeguard the rights of innocent third parties, providing legal avenues for them to challenge asset confiscations and prove their legitimate ownership. Procedures should ensure that assets are not unjustly seized, and bona fide claims are given full and fair consideration.
- **Provisional measures associated with NCBC should be proportionate**. The extent of the restraint and conditions of seizure should consider the persons practically impacted by the lack of access to the assets.
- An **attorney should be provided to claimants** who wish to contest the NCBC action but do not have the financial resources. Otherwise, NCBC can become a tool for impoverishing people, whereas an attorney may have been guaranteed to them in a criminal case. The choice to use NCBC by the authorities should not disadvantage a claimant because even though their liberty may not be threatened by the action, their property may be.
- **Normal evidence rules should be applied**, whether those contained in criminal procedural codes, civil procedural codes, or rules of evidence (general or specific).
- Depending on the rules of evidence, criminal convictions as well as evidence and information obtained by law enforcement for the purposes of the criminal investigation and prosecution, may be introduced as evidence in an NCBC proceeding to prove, for example, that the offence occurred. Countries may consider limitations so that civil outcomes, such as from NCBC, are not taken into account in the course of later, related criminal proceedings. This way, the NCBC proceeding would not affect or potentially prejudice a criminal trial.
- The **conduct of the trial should be fair** (including but not limited to: timeliness and no undue delays in proceedings; prohibiting secret evidence; relying on relevant, admissible, and authenticated evidence;

  allowing examination (confrontation) of witnesses; prohibiting forced or coerced testimony; being able to call witnesses, introduce evidence, and make arguments; adjudication by a neutral finder of fact; representation of competent counsel).
- The **proceedings should be open** and not conducted in secret or behind closed doors. Sensitive documents should be sealed or protected from disclosure only to the extent necessary to protect a compelling interest, such as to protect sensitive law enforcement methodology, ongoing investigations, or covert sources of information. This should be done sparingly.
- An option for the NCBC action to be heard by a **judge, a panel of judges, or a jury**, could be considered, as fitting in the domestic context.
- **Mechanisms for settlement, if available, should be fair**, and if the government and the affected parties negotiate and reach a resolution in the NCBC proceeding, a **court should have the ability to review the agreement** to ensure it was no coerced or is not patently unfair.

For example, the ECtHR has developed an expansive jurisprudence which has helped to understand how NCBC can co-exist with and account for human rights. The cases balance the legitimate needs of law enforcement in seeking justice through the use of NCBC with the fundamental rights of persons which it can impact. Generally, these cases do not situate NCBC as a punitive measure on par with a prison sentence or a fine, but conceive of it as a restorative process. This distinction may be critical in determining the scope of many protected rights, including the presumption of innocence and right to a fair trial (and whether that trial is civil or criminal in nature and form).

The decisions have examined, among other things, how the country legally classifies NCBC, but the Court has elaborated more criteria beyond mere categorisation to assess laws, including NCBC laws and their application in particular cases.[23] Each NCBC regime would need to be evaluated with all of its features and nuances if a petitioner challenges on human rights grounds. But writ large, NCBC has survived most major challenges to their legality under several different Convention articles and the most stringent reviews. As another example, the individual right to property is not completely unfettered, and there can be tolerable limitations (like NCBC) placed upon this right if certain conditions are met (e.g., there is a legal basis for the action in law, there is public interest served, and there is proportionality).[24]

There are also legal provisions which may temper the application of NCBC, such as laws which require the state to reimburse a successful claimant's attorney's fees. This provides protection by ensuring that well founded and supported cases are brought by the state and that challengers with substantiable claims are incentivised to come forward. However, this may also dissuade the authorities from using NCBC in high-end cases including those against kleptocrats or high-net worth individuals. Cost shifting to the party that initiates the action but does not prevail could also be limited to cases where the competent authorities acted unreasonably.

As to the presumption of innocence, this is encompassed in many countries' FPDL, and under article 6(2) of the ECHR. The general aim of the second (or reputational) aspect of article 6(2) is to protect individuals who have been acquitted of a criminal charge, or in respect of whom criminal proceedings have been discontinued, from being treated by governmental authorities as though they are in fact guilty of the offence charged. According to case law from the ECtHR, the decisions and their reasoning in the subsequent confiscation proceedings, the domestic implementation of NCBC may violate article 6(2) if it amounts to the imputation of criminal liability to the individual.[25] However, ECtHR usually applies the presumption of innocence to criminal proceedings and not to in rem proceedings (as seen in the Gogitidze and Todorov cases). The contours of these decisions may restrict the availability of NCBC as applied to certain cases. The Box below provides select examples of cases where NCBC laws were examined (national courts and ECtHR).

BOX 59 – COUNTRY EXAMPLES: Court Decisions on the Compatibility of NCBC Frameworks with Fundamental Rights

LATVIA: The Constitutional Court recently issued a judgment in a case that posed a major challenge to the constitutionality of the country's NCBC regime as set out in the Criminal Procedural Law since 2005. The law stated that the criminal origin of property should be considered proven if there is reason to believe that the property is "most likely" of criminal, rather than lawful origin, and the presumption of criminal origin could be taken when money laundering activities had been carried out with the property.

23. See, e.g., ECtHR (1976) Engels v. Netherlands.

24. See, e.g., ECtHR (2002) Butler v. United Kingdom.

25. Allen v. the United Kingdom, App. No. 25424/09 (ECtHR 2013); Nealon and Hallam v. the United Kingdom, App. Nos. 32483/19 and 35049/19, (ECtHR 11 June 2024); Episcopo and Bassani v. Italy, App. Nos. 47284/16 and 84604/17 (ECtHR 19 Dec. 2024).

... Box 59 continued

The individual complainants argued that these provisions reduced the opportunity for the person related to the property (for shorthand, "the owner") to be able to effectively challenge the recognition of the property as criminally acquired, and that they would be disadvantaged in their position compared to their legal opponent (the government entity initiating the proceedings) in violation of the equal opportunities article of the Constitution.

The Court decided:

- The burden of proof is not solely shifted to the property owner. It is a shared burden between the government and the owner. The government must provide evidence that substantiates the presumption of criminal origin, and the evidence of the legal origin is to be provided by the owner. The Court recognised that, in such circumstances, the person related to the property may be required to prove the legal origin of the property to defeat the presumption.
- In examining the proceedings under this framework as a whole, the Court decided that owner is provided with procedural guarantees so that they can prove the legal origin of the property.
  - Preponderance of the probabilities is the standard of proof of criminal origin and this does not itself confer a significant advantage on the government.
  - The owner has a right to inspect evidence of criminal origin.
  - The framework requires a connection between the property and a criminal offence to be proven both by establishing the connection between the property and a specific predicate offence for ML and on the basis of circumstantial evidence.
  - The court must be convinced by the state's evidence that the property was most likely obtained from crime.
  - The process is not arbitrary in nature.
  - The owner has the right to participate in the proceeding, including court sessions, in person or through a representative, and has the right to appeal from a city to a regional court (which reviews the evidence de novo / on the merits).
- The framework provides the owner with a reasonable period in which to submit evidence of legal origin. It sets no requirements on the form or content of this evidence, and no time restriction. The owner is not therefore deprived of the opportunity to mount a defence with a right to submit evidence.
- The first instance court must examine evidence on criminally acquired property in a way that ensures compliance with the principle of equal opportunity for the parties. The burden imposed on either cannot be disproportionate in the specific case.

Therefore, the Constitutional Court, whose judgment is final and non-appealable, held that the NCBC framework ensured a fair balance between the principles of equal opportunity for the parties and the public interest so that criminally acquired property can be effectively confiscated, restoring the rule of law. Source: Latvian Constitutional Court, Case no. 2022-32-01 (14 March 2025), English summary.

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ANTIGUA AND BARBUDA: Under English common law, another instructive case is Williams v. The Supervisory Authority (Antigua and Barbuda) [2020] UKPC 15 Privy Council Appeal No 0041 of 2018 - JCPC). This court serves as the final court of appeal for UK overseas territories and Crown dependencies as well as commonwealth countries that have retained the appeal to this court. The court found that the civil recovery regime in Antigua did not contravene the fundamental rights contained in the country's Constitution.

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GEORGIA: In Gogitidze v. Georgia, the ECtHR considered the framework for the forfeiture of illegally acquired property and unexplained wealth owned by persons accused of serious offences committed while in public office and from their close relatives and decided it was twofold, having both a compensatory and a preventive aim. It noted that the aim of the civil proceedings *in rem* was to prevent unjust enrichment through corruption, by sending a clear signal to public officials already involved in corruption or considering so doing that their wrongful acts, even if they went unpunished by the criminal justice system, would nevertheless not procure pecuniary advantage either for them or for their families. The Court found that the forfeiture measure was effected in accordance with the general interest in ensuring that the use of the property in question did not advantage the applicants to the detriment of the community.

As regards property presumed to have been acquired either in full or in part with the proceeds of drug-trafficking offences or other illicit activities of mafia-type or criminal organisations, the Court did not see any problem in finding the confiscation measures to be proportionate even in the absence of a conviction establishing the guilt of the accused persons. The Court also found it legitimate for the relevant domestic authorities to issue confiscation orders on the basis of a preponderance of evidence which suggested that the respondents' lawful incomes could not have sufficed for them to acquire the property in question. When a confiscation order is the result of civil proceedings *in rem* which related to the proceeds of crime derived from serious offences, the Court did not require proof "beyond reasonable doubt" of the illicit origins of the property. Instead, proof on a balance of probabilities or a high probability of illicit origins, combined with the inability of the owner to prove the contrary, was found to suffice for the purposes of the proportionality test under Art. 1 of Protocol No. 1.

The Court reiterated its well-established case law that proceedings for confiscation such as the civil proceedings *in rem*, which do not stem from a criminal conviction or sentencing proceedings and thus do not qualify as a penalty but rather represent a measure of control of the use of property within the meaning of Art. 1 of Protocol No. 1, cannot amount to "the determination of a criminal charge" within the meaning of Art. 6 § 1 of the Convention and should be examined under the "civil" head of that provision. The applicants argued that they should not have been made to bear the burden of proving the lawfulness of the origins of their property. The Court reiterated there can be nothing arbitrary, for the purposes of the "civil" limb of Art. 6 § 1 of the Convention, in the reversal of the burden of proof onto the respondents in the forfeiture proceedings *in rem* after the public prosecutor had submitted a substantiated claim.

Finally, on the right to presumption of innocence contained in Article 6 § 2, the Court held that the forfeiture of property in civil proceedings *in rem*, without determination of a criminal charge, is not of a punitive but of a preventive and/or compensatory nature and thus cannot give rise to the application of the provision in question.

Source: Gogitidze v. Georgia, App. No. 36862/05, paras. 101-126 (ECtHR 12 Aug. 2015).

... Box 59 continued

BULGARIA: In Todorov v. Bulgaria, the ECtHR considered the relationship between criminal and NCBC proceedings. The Court has held that confiscation in criminal proceedings is in line with the general interest of the community, because the forfeiture of assets obtained through illegal activities or paid for with the proceeds of crime is a necessary and effective means of combating criminal activities. Thus, a confiscation order in respect of criminally acquired property operates in the general interest as a deterrent to those considering engaging in criminal activities, and also guarantees that crime does not pay. Article 1 of Protocol No. 1 requires that any interference be reasonably proportionate to the aim sought to be realised. A "fair balance" must be struck between the demands of the general interest of the community and the protection of the individual's fundamental rights. The requisite balance will not be found if the persons concerned have had to bear an excessive burden.

In a series of cases involving Italy, the Court found that the forfeiture of assets of suspected Mafia members was proportionate to the legitimate aim pursued. It pointed out that in Italy the problem of organised crime had reached "a very disturbing level", which justified the measures. In several cases involving the UK, the Court found that the forfeiture of proceeds of drug trafficking did not breach the proportionality requirement under Art. 1, Protocol No. 1. In *Phillips*, for example, the applicant had been convicted of drug trafficking and an inquiry had been conducted into his financial means.

By contrast, in other cases, the Court found confiscation to be disproportionate where no link could be established between the confiscated property and any criminal activity. In the case of Rummi v. Estonia the Court found a violation of Art. 1, Protocol No. 1, as the domestic courts had relied on a provision allowing the confiscation of property obtained through crime, but had not established that the applicant's husband, of whom she was an heir, had committed any crime. Precious metals had been seized from his home, and even though it could be understood that he had been suspected of an offence in relation thereto, no substantial investigation had been carried out and he had never been convicted. Secondly, the domestic authorities appear to have carried out no assessment as to the sums the applicant's husband might have obtained through crime and invested in precious metals. The Court was "unable to see how the property could be confiscated as obtained through crime". The Court has also found violations of Article 1 in a number of cases where assets of the applicants had been confiscated after having been used by third parties for the commission of criminal offences. The Court pointed out in particular that no connection had been established between the owners of the assets and the respective unlawful action; in addition, often the owners had had no effective means at their disposal to oppose the confiscation.

The forfeiture in the present case did not give rise to the determination of separate or new charges against the applicant, and Art. 6 § 2 is thus inapplicable [internal citations omitted], where the Court found that forfeiture measures similar to those of the present case did not involve a finding of guilt, but were designed to prevent the commission of offences, and could therefore not be compared to a criminal "sanction", which excluded the applicability of the criminal limb of Art. 6 of the Convention.

The Court reiterated that "penalty" in Art. 7 of the ECHR has an autonomous meaning. It said the starting point in any such assessment is whether the measure in question is imposed following a criminal conviction. The Court saw no reason to consider the forfeiture of the applicants' assets a punitive measure: as noted, it was not mandatory; moreover, its purpose does not appear to be to punish those convicted of a criminal offence…but to identify and deprive them of proceeds of crime. Source: Todorov v. Bulgaria, Applications Nos. 50705/11 and others, paras. 186-305, (ECtHR 13 Oct. 2021).

ROMANIA: In Telbis and Viziteu v. Romania, the ECtHR considered a case involving confiscation of property from applicants in the framework of criminal proceedings against third parties. It stated that, in considering the compatibility of this kind of confiscation measure with the civil law aspect of Art. 6, the Court must determine whether the way in which the confiscation was applied in respect of the applicants breached the basic principles of a fair procedure inherent in Art. 6 § 1. Accordingly, it must be ascertained whether the procedure in the domestic legal system afforded the applicants, in the light of the severity of the measure to which they were liable, an adequate opportunity to put their case to the courts, pleading, e.g., that the measure was illegal or arbitrary and that the courts had acted unreasonably.

The domestic court duly examined the prosecutor's claim as well as the applicants' arguments in the light of the supporting documents in the case file. That evidence led the domestic court to find that considerable assets acquired by S.T. and his family in the years preceding his indictment could not have been financed by his and the first applicant's salaries alone, whilst the second applicant had had no source of income. The Court observed that all arguments and requests raised by the applicants were analysed and responded to by the domestic court.

The Court thus found "that there is nothing in the conduct of the proceedings to suggest either that the applicants were denied a reasonable opportunity of putting forward their case or that the domestic courts' findings were tainted with manifest arbitrariness." The confiscation by the domestic courts was based on a high probability that the assets had illicit origins combined with the applicants' inability to prove the contrary.

Source: *Telbis and Viziteu v. Romania*, App. No. 47911/15, paras. 49-79 (ECtHR 26 June 2018).

5.4.5. International assistance

Although international co-operation is primarily covered in Chapter 6, a few aspects are worth underscoring in relation to NCBC. First, INR.38, paragraph 1, requires countries to be able to take expeditious action in response to requests for co-operation "in the widest possible range of circumstances" including "requests made on the basis of conviction and non-conviction based proceedings and related provisional measures, as set out in Recommendation 4." This requirement to provide international assistance in NCBC proceedings is accompanied by a footnote clarifying the relation back to R.4: "The reference to Recommendation 4 incorporates references to fundamental principles of domestic law which may relate to certain types of confiscation [NCBC and extended]. With regard to requests made on the basis of non-conviction based confiscation proceedings, countries should have the authority to provide assistance, at a minimum, in circumstances when a perpetrator is unavailable by reason of death, flight, absence, or the perpetrator is unknown, to the furthest extent that such assistance is consistent with fundamental principles of domestic law."

These four categories are required to the extent they are not prohibited by FPDL, but they are also only the "minimum" as mentioned in INR.38, and countries are encouraged to analyse requests on a case-by-case basis and not categorically reject them (1) solely because they stem from NCBC proceedings, or (2) because they stem from NCBC proceedings which differ slightly from those available under the domestic framework. FPDL may not totally prohibit any and all assistance in an NCBC situation, and the INR suggests that countries provide assistance "to the furthest extent" that such assistance is consistent with their unique FPDL, if they have one. NCBC in the context of MLA may not implicate an FPDL the same way as it would domestically. For instance, FPDL may not be as strict with regard to persons who are not present in the country. It is a good practice to consider the specific circumstances of a particular case and not to categorically reject a request for assistance on the basis that it stems from an NCBC proceeding. This is a highly technical topic, but this Guidance encourages co-operation between countries with vastly different domestic regimes, and suggests that countries try to find commonality for the sake of international co-operation on NCBC where possible.

Adding to this, "to the furthest extent" implies that even short of enforcing NCBC orders, at least some assistance might be provided, such as obtaining financial records for use in an investigation, providing access to witnesses for testimony, and other supportive assistance that does not require a country to actually confiscate the asset such as serving notice when requested upon potential claimants in the foreign case. If the country cannot provide the precisely requested assistance in an NCBC matter, all efforts could be made to provide whatever assistance is possible. This may include, potentially, the opening of a domestic criminal investigation.[26] If a country has indications, based on the facts outlined in the MLA request, that criminal proceeds may be present within its jurisdiction, it may be advisable for that jurisdiction to investigate the claims contained in the MLA request and underlying the foreign action, at least to ensure that there are no viable suspects located within the jurisdiction and or alternatives to seizing the criminal property (for example, but commencing a criminal proceeding for a defendant in absentia[27] or pursuing a different type of civil action that could result in recovery).

In short, the point of these revisions to R.38 and its INR were not only to retain the prior version of the recommendation (which also had the four minimum categories of assistances), but to prompt countries to go further on NCBC assistance, where they can. More countries will have NCBC regimes domestically as a result of the changes made to R.4. This suggests that international co-operation in this area should correspondingly improve, as countries find ways to enact NCBC systems that are compatible with their specific FPDL. The outright or complete rejection of MLA requests due to their mere connection with NCBC can be expected to diminish over time as a result of these FATF amendments. There undoubtedly will be situations where the NCBC available in two countries that seek to co-operate does not "match"; however, countries are encouraged to use procedures analogous to their domestic procedures to accomplish whatever recovery is possible under their treaty obligations and in accordance with any applicable FPDL.

ADDITIONAL CONSIDERATIONS

One issue that countries may consider as they negotiate new MLATs or amend existing agreements is whether MLATs specifically intended for criminal matters do or should permit co-operation in NCBC matters. Under the FATF Standards, co-operation is not mandatory in administrative confiscation/forfeiture matters, or in relation to types of NCBC that are optional under the FATF Standards (such as UWOs).[28] However, many existing treaties do encourage the parties to strive to provide co-operation to the greatest extend possible and do not prohibit assistance in relation to NCBC.

Still, some countries have viewed NCBC requests as requiring the use of a different treaty, one concerning MLA in civil matters. It is not considered a good practice to do so. The reasons are simple. NCBC, even if it is not considered a penal measure, targets assets that are criminal in nature. They are subject to confiscation because they have a proven connection with criminal offences (or, in countries where value-based NCBC is permitted, the confiscated assets stand in for spent or unrecoverable assets). NCBC is often invoked when CBC cannot be, or where it is not strategic or practical to do so. It fills the gap between being able to successfully convict a person, and allowing criminal proceeds and instrumentalities to infiltrate the financial system and legitimate economy. NCBC may be the difference maker between a victim receiving compensation, and crime, literally, paying off.

26. The opening of a criminal case would depend on many factors, to include a basis for jurisdiction.
27. One possible way to overcome differences in legal systems is to consider whether a charge in absentia – based at least partially on the evidence in the foreign request and gathered in the foreign NCB confiscation proceeding – would be practicable. If there are assets present in the requested country, it is theoretically possible that money laundering activity or other violation of law may have occurred, thus giving the requested country jurisdiction over some aspect of the conduct. If it is possible to charge persons in absentia in the requested country, it is possible that either (1) the defendant will be located and eventually face justice, or (2) the defendant will be convicted and sentenced while absent, and the assets could then be confiscated criminally. Trials in absentia are not permitted in many legal systems, but if they are, and there is an impediment to providing assistance in NCB confiscation, this could be an alternative.
28. However, UWOs may result in "normal" NCBC actions, in which case, they could be the subject of an MLAT request between countries.

It is a best practice for foreign affairs ministries and central authorities to have lawyers carefully review MLATs as to whether by their terms they may in fact allow co-operation related to NCBC. For instance, many MLATs have articles specifically covering confiscation or actions to recover the proceeds of crime. They frequently do not specify the nature of the proceeding, which means that requests related to NCBC are not barred or out of scope. For example, many modern MLATs dating from the late 1990s onward may contain "proceeds of offences" articles which do not specify whether the confiscation or forfeiture assistance relates to CBC or NCBC. The provisions are agnostic on the modality of confiscation, even though they often require that the request should be based on facts that would constitute offences in both states (i.e., dual criminality). Additionally, most MLATs have a scope of assistance article, and the final line usually includes some phrase indicating that the countries could choose to provide "any other type of assistance not prohibited" by the agreement.

If countries have MLATs with frequent partners which appear to prohibit assistance in NCBC proceedings explicitly, it is a good practice to consider negotiating new agreements, amendments to existing treaties, or new NCBC protocols. Treaties pertaining to "criminal matters" may not require criminal proceedings, per se, and it is a good practice for countries to endeavour to be as open as possible to providing NCBC-related assistance, including if their treaties are ambiguous on the topic.

Interpretations of agreements which would disallow assistance merely because the assistance may not be used in a criminal prosecution risk disregarding NCBC as an important asset recovery tool that addresses criminal capital. Narrow interpretations of MLATs could be reconsidered because (i) NCBC matters stem from investigations sharing many similarities with criminal investigations, (ii) they may be conducted by LEAs and prosecutors, and (iii) they be considered a de facto remedy when criminal conviction is not possible.

If domestic MLA laws used to execute treaty requests only allow for assistance in relation to purely criminal matters, countries may consider reforming these laws to cover NCBC, or amending other laws such as those related to the civil enforcement of judgments. For example, some countries implement MLA requests via domestic laws which require foreign orders to be issued by a criminal court or in a criminal proceeding. Consideration may be given to expanding such laws to allow for enforcement of orders stemming from NCBC proceedings as well, particularly as some countries use NCBC as their primary tool for asset recovery. Moreover, in some jurisdictions the line between criminal and civil confiscation is not so stark. Thus, the courts of Luxembourg and Switzerland have been able to recognise confiscation decisions taken in, for example, Peruvian civil proceedings of the *extinción de dominio* type, showing the benefits that can accrue when a county is willing and able to co-operate in NCBC matters and offer assistance where possible, even if the type of procedure is not akin to its own.

BOX 60 – **COUNTRY EXAMPLE: Legal Assistance Provided by Switzerland in NCBC Cases**

The case was initiated by an MLA request from Peru to Switzerland in 2021 seeking the execution of a confiscation order in the Vladimiro Montesinos complex, a close associate of former Peruvian President Alberto Fujimori, and the return of USD 8.5 million. Peru had ordered the confiscation of these assets as part of a new NCBC procedure known as *extincion de dominio*. This type of law enables the confiscation of assets linked to corruption or other crimes even if the perpetrator cannot be prosecuted.

The Peruvian prosecutors were able to prove in domestic court that USD 8.5 million in a bank account in Zurich derived from corrupt contracts for the purchase of overvalued fighter jets from Belarus during Fujimori's

... Box 60 continued

government. The BO of the account was a German-Israeli businessman, an accomplice of Montesinos. He was not a public servant, so he could not be prosecuted on charges of collusion or bribery.

The BO of the account challenged the forfeiture order at all appeals stages in Switzerland, in the Federal Criminal Court and in the Federal Supreme Court. The Swiss judges agreed with their Peruvian counterparts that the information revealed through a detailed financial investigation was sufficient to prove that the bank account in question constituted proceeds of crime. Second, they rejected the appeals, noting that the NCB forfeiture procedure in Peru had been conducted in accordance with all applicable standards and legal rights.

In 2023, the Swiss Federal Criminal Court recognised the *extincion de dominio* procedure, as well as the Peruvian confiscation order based on this procedure. Switzerland ordered the handover of the confiscated assets within the framework of MLA, based on art. 74a of the Swiss Mutual Assistance Act, IMAC. The funds will be transferred to Peru and used to the benefit of the Peruvian People in a manner to be agreed upon between the two governments.

Over USD 25 million confiscated by Peru previously in this complex of cases (Montesinos) were returned under a trilateral agreement in 2020 between Switzerland, Luxembourg, and Peru that foresees the use of funds to strengthen the country's law enforcement and judicial systems.

There are articles under UNCAC which encourage countries to provide assistance in NCBC matters linked to corruption and laundering of corruption proceeds. Article 54(1)(c) states that countries should "[c]onsider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases." This is complemented by the UNCAC's technical guide, which highlights: "[w]hile the enforcement of foreign judgments is usually preferable to the institution of new confiscation proceedings…there are situations in which the institution of new proceedings may be necessary to accommodate the request to the domestic law of the requested State Party…. A new proceeding for determining against which individuals to enforce the order will be required."

As to NCBC, it advises: "[w]hile several States consider confiscation of proceeds of crime to be exclusively a punitive sanction, many others have also approached confiscation as a remedial, restorative sanction which under some circumstances applies as a non-criminal remedy. The Convention recommends, de minimis, ensuring remedial action for those cases in which a criminal conviction cannot be obtained by reason of death, flight, or absence. In case of death, as it is an established principle that criminal sanctions cannot be passed to heirs, States Parties may portray confiscation as remedial or reparative action on the premise that transfer or conversion cannot alter the illegality of the assets, nor the right of the victim State Party to reclaim them. The European Court of Human Rights, for example, has delineated the criteria that portray a confiscation either as a penalty or as a civil remedy (see European Human Rights Commission, No. 12386/1986 and Phillips v. UK, No. 41087/1998 (ECtHR)). Unlike confiscation in criminal proceedings, civil forfeiture laws do not require proof of illicit origin "beyond reasonable doubt". Instead, they consider proof on a balance of probabilities or demand a high probability of illicit origin combined with the inability of the owner to prove the contrary."[29]

CARIN also reflects the same position in the Recommendations issued at its 2018 Annual General Meeting (the Warsaw Recommendations).[30] They emphasise that CARIN member "jurisdictions which do not have NCB systems are

29. UNODC, *Technical Guide to the UNCAC* (2009).

30. CARIN Annual General Meeting, *Warsaw Recommendations* (2018).

invited to provide mechanisms to execute requests and provide evidence to other jurisdictions with NCB systems" and advocate for harmonisation at the European level which would oblige jurisdictions without NCBC to be able to execute NCBC requests and provide evidence to countries pursuing NCBC. CARIN considered concrete examples of cases wherein countries had their efforts to recover criminal proceeds hampered or frustrated when other countries lacked the legal authority to provide assistance or enforce orders related to NCBC proceedings. Additionally, while there is not an obligation for countries to introduce forms of NCBC contained in the Warsaw Convention, article 23(5) foresees that international co-operation should be provided "to the widest extent possible under their domestic law" to parties "which request the execution of measures equivalent to confiscation leading to the deprivation of property which are not criminal sanctions".

In summary, a total rejection of NCBC requests simply because they are NCBC requests would be at odds with the goals of INR.38, certain articles of UNCAC and the Warsaw Convention, and the policy recommendations of CARIN. Per INR.38, countries should consider providing assistance "to the furthest extent possible", including in situations outside of the four categories mentioned in the INR.38 footnote. As with all international co-operation, countries retain the discretion to reject requests; but they should endeavour to grant them, even in part, and even in situations when FPDL may prohibit them from having a full NCBC regime. If not, alternative ways of pursuing the same property that is the subject of the NCBC request should be explored.

The right of the country to have its NCBC judgments enforced is not a given. But the right of a country to refuse to take action against the proceeds of crime when another country has produced a legal order to confiscate them can frustrate asset recovery systems and the spirit of collective responsibility and co-operation centred in the revised FATF Standards. If domestic action is advisable in lieu of formal co-operation, all efforts should be made by the requested state to seek to deprive criminals of their proceeds, to avoid becoming a haven for the same. The revised Standards seek to prevent the emergence of a two-tiered system, one where countries are encouraged to pursue the confiscation of criminal property located domestically or abroad through CBC or NCBC (as it is in IO.8, Core Issue 8.5), but one of the tools they use to do so is rendered null and void beyond its borders due to an inability to obtain assistance from second set of countries.[31] While countries may, for FPDL reasons, disallow the use of NCBC domestically, there may be different considerations and a more permissive approach when the primary legal action is conducted under foreign laws which do allow NCBC.

5.5. Other effective asset recovery measures, including unexplained wealth

There are several emerging and innovative tools for asset recovery being developed and implemented within jurisdictions around the Global Network. One of the best known examples are unexplained wealth orders, or UWOs. Elements of burden shifting and proving the legal origin of property have been incorporated in the FATF Standards for some time. With the amendments to the Standards, UWOs are now mentioned explicitly by name in INR.4. However, they are optional, and it is not mandatory that countries have such measures. It is mandatory that countries "consider" them. Paragraph 12 of INR.4. states that "[c]ountries should consider adopting measures which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation." In IO.8, the Methodology suggests some specific tools and measures which are not obligatory under the FATF Standards, but which have proven useful. These include (1) requiring criminal defendants to disclose their assets; (2) unexplained wealth proceedings; and (3) reversing the burden of proof, post-conviction (see IO.8, Specific Factor 10, n. 196). This section will focus mainly on unexplained wealth orders and proceedings, or UWOs. For the reasons discussed below, UWOs are encouraged as another tool which a country may consider adding to its asset recovery repertoire.

For clarity, the term as used in this Guidance generally refers to measures based in civil (not criminal) procedures which target unexplained wealth (i) directly for confiscation or (ii) indirectly for explanation where an unsatisfactory

31. FATF, *Operational Challenges Associated with Asset Recovery*, p. 66 (2021). ("The presence or absence of NCB confiscation mechanisms…is an important asymmetry between national systems that can create roadblocks to cross-border co-operation in asset recovery efforts."). See also pages 67, 76-77.

explanation may be the basis for the government to initiate subsequent confiscation proceedings. The first type of UWO commences or is incorporated into a legal proceeding and, ultimately, requires the respondent to prove the origin of the property, usually after some initial showing by the state, whereas the second type of UWO requires compliance with the information-gathering order, but does not strictly require the respondent to provide proof with the certainty of confiscation consequences if they do not.

As discussed in the overview to Ch. 5.1, the concept of confiscation based on proof of illicit activity plus the inability of the respondent to show a licit source for assets can be incorporated in various ways into different types of confiscation, including traditional CBC and NCBC. The rationale of UW proceedings is that the person who accumulates the assets will likely be best positioned to explain their origin, particularly if there is a reasonable belief or suspicion that the assets have a criminal provenance.

ADDITIONAL CONSIDERATIONS

In many UWO systems, the flipped burden of proof can be a helpful tool in addressing the complexities of unexplained wealth. This approach, as emphasised by Council of Europe, underscores the importance of ensuring that assets whose origins cannot be justified are scrutinised and potentially confiscated. The Council's report advocates for the use of such tools as part of a broader strategy to combat corruption and economic crime, highlighting that legitimate financial systems rely on transparency and accountability.[32] This shift means that asset holders must pro-actively prove the lawful origin of their assets, which is a significant departure from traditional AR models where authorities bear the full burden of proof.

It is estimated that, as of August 2025, at least 26 countries have UWOs; around 20 have confiscatory UWOs and 6 have investigatory UWOs. However, many more countries are contemplating introducing UWOs or incorporating elements of UW into existing regimes, and some countries have laws that may qualify as UWOs upon further examination. With the enactment of EU Directive 2024/1260 on asset recovery and confiscation – approved in May 2024 with an effective date for member transposition by November 2026 – EU member states adopt UWOs or variations thereof (i.e., NCBC which may have UW aspects).[33]

There are two main types of UWOs, the **investigatory model and the confiscatory model**. The investigatory UWOs – exemplified by the United Kingdom – are used as an investigative tool. They require the subject of the order to sufficiently explain the legitimate origin of the asset in question, and if the response is insufficient, then an NCBC proceeding can be commenced building on this evidence. These can be thought of as an order for the owner of the asset to show how they acquired or maintain it; a response is mandatory and must be supported by evidence. The question is thus posed to the person, and the next steps are determined by the response.

The confiscatory UWO, on the other hand, commences a confiscating proceeding directly, and it ultimately places the burden on the respondent to justify, or explain, the origin of the asset in question, or else it should be confiscated.

32. Council of Europe, The Use of Non-Conviction Based Seizure and Confiscation (2020).

33. Directive 2024/1260 provides flexibility to allow member states to adopt UW-style proceedings. Article 16 of the Directive permits the confiscation of UW when other forms of confiscation cannot be applied in cases of high-revenue generating crimes, in the context of organised crime, but does not require the initial shifting of the burden of proof nor set a standard of proof. Member states may thus introduce unexplained wealth laws, or laws with UW aspects, but they may vary from the more prevalent model of UWO wherein the respondent is called to make their showing first. The decision to confiscate could be based on several factors, among them the disproportionality of the property to known income, possible connections to criminal organisations, and a lack of a plausible licit sources. The affected person is required to explain where the property comes from once the prosecution convinces the court of the illicit origin of the property. The state must persuade the court that the property in question derived from criminal conduct and the affected person has the chance to rebut.

Under many such laws, the burden is placed on a respondent once certain key criteria are met, i.e., once the state has first demonstrated there is a "reasonable suspicion" or a "reasonable belief" that the assets in question have been derived from crime. Some countries allow UWOs to be used in the course of an NCBC proceeding that is already underway, and some use them to initiate a new proceeding. There are hybrid forms and other variations, but these are the emblematic type of UWOs. Australia, Bulgaria, Canada (British Columbia), Ireland, Kazakhstan, Kenya, Mauritius, and Trinidad and Tobago are examples of jurisdictions from around the Global Network already making use of this tool. The use of UWOs enhances the authorities' toolkit, making it possible to address wealth held by individuals who cannot be readily prosecuted due to insufficient direct evidence linking them to criminal activity.

UWOs largely originated as an anti-corruption measure, but have now been enacted in many jurisdictions to also target assets derived from broader criminal activity, including organise crime offences and drugs offences.[34] Some countries have stuck to the original intent, making UWOs applicable to politically exposed persons (PEPs), their associates, or persons suspected of having engaged in large-scale corruption. The potential of UWOs as a broader countermeasure to money laundering is still under development, but UWOs are gradually expanding both geographically and topically, and moving beyond the realm of corruption to, e.g., organised crime and tax evasion.

The gist of the confiscatory UWO is that the prosecutor or competent authority does not have to prove a specific offence, but the owner of the asset must either disprove the alleged illicit origin, or prove the licit origin, hence the name "unexplained" wealth. For instance, in the British Columbia model, the UWO is an order for information, with a presumption included against respondents who do not comply. It requires a reason to suspect the person or their associates are involved in unlawful activity; reason to believe they hold property exceeding CAD 75 000; and a serious question to be tried as to whether the person lacks sufficient income to be able to acquire or maintain such property. The investigative UWO requires a response, the more thorough the better, but not necessarily proof from the respondent to a specified legal standard.

Typically, an agency applies to the court to issue the UWO, and a court is needed to approve any recovery of the asset through a NCB proceeding and to issue a final confiscation order (there may be rare cases where a competent authority can promulgate the UWO directly without first seeking approval from a court). As with any AR tool, essential safeguards must be in place to allow the subject of the order to respond to it. This entails notice and a sufficient amount of time to adduce evidence and attempt to explain the acquisition of the asset. The respondent may be able to contest the UWO itself, but even more importantly, must have a substantive opportunity to prove that the asset was acquired with funds of a lawful origin. Without this, a UWO can equate to a taking under law and there would be significant potential for abuse. However, during the time period between the order and the response by the apparent owner, the application of provisional measures for the freezing of assets could be used to prevent assets from being dissipated or concealed.

The power of the UWO lies in the fact that the respondent must be truthful. It is generally required that statements made by the respondent should be sworn under oath to ensure that there is a consequence to the compelled response. If the subject does not respond, the asset may be recovered, and if they lie or intentionally misstate the facts or obscure, they may be subject to criminal penalties, to include, e.g., charges of false statements, obstruction, or perjury. This puts teeth into the UWO, ensuring that people do not ignore them, lie, or fabricate evidence after the fact. Again, because this tool can be quite powerful, some countries also place a monetary threshold on the use of UWOs, ensuring they are only deployed in the most significant cases of unexplained wealth.

34. For a current and comprehensive study of the use of UWOs, see StAR (World Bank/UNODC), Brun, Hauch, Julen, Ownes & Hur, *Unexplained Wealth Orders: Toward a New Frontier in Asset Recovery* (2023). For additional background on illicit enrichment laws and how they can be used to target unexplained wealth, see Dornbierer, A., Illicit Enrichment: A Guide to Laws Targeting Unexplained Wealth, Basel Institute on Governance (2021). Countries may note the Annex containing a compilation of UW laws and the Annex on one method that practitioners can use to investigate and apply these laws. There is also analysis on how these laws have been challenged and upheld in the context of legal rights, which will likely be relevant to countries looking to introduce such powers.

BOX 61 – COUNTRY EXAMPLE: UWOs in the United Kingdom

Legal Framework

In the UK, UWOs are investigatory orders placed on a respondent whose assets appear disproportionate to their income to explain the origins of their wealth. A UWO requires a person who is a PEP (or is connected to a PEP); or is reasonably suspected of involvement in serious crime (or of being connected to a person involved in the same); or is the responsible officers of these groups (where the person is not an individual), to explain the origin of assets (minimum combined value of GBP 50 000) that appear to be disproportionate to their known lawfully obtained income or are suspected to be bought through unlawful conduct.

A UWO is not by itself a power to recover assets. However, any response from a UWO can be used in subsequent civil recovery proceedings. A failure to respond will mean that assets can be made subject to civil recovery action. The presumption is raised in the event that a respondent does not comply with an order, or cannot purport to have complied.

UWOs may be most effective where there is not a clear link between the suspected criminal property and unlawful conduct, for example, many years may have passed since the alleged criminality occurred, or where the respondent has accrued assets that cannot be explained by their known income or employment. It is also worth noting that respondents typically have mixture of 'clean' revenues too. They are therefore an invaluable investigate tool that aim to assist agencies to gather crucial evidence at the outset of an investigation, where they may otherwise be unable to do so.

Case Examples

i. In 2020, the National Crime Agency (NCA) used a UWO against an individual suspected of being a major money launderer. While the individual had never been convicted of a crime, as evidence needed for charges of ML could not be obtained. The UWO required the individual to demonstrate that his wealth had come from legitimate sources. As a result of the UWO, GBP 10 million was eventually surrendered as a result of a subsequent settlement.

ii. In 2024, a UWO was used by the NCA for the first time against a person suspected of serious organised crime in Northern Ireland. The Order compels the man and his wife to explain the source of funds used to construct property worth approximately GBP 275 000. It was obtained at the High Court in Belfast as part of an ongoing NCA civil recovery investigation. NCA investigators believe that the man, who is now resident in the Republic of Ireland, has connections to paramilitary activity, cigarette smuggling, and money laundering. The Order was issued following a number of legal challenges by the defendant's legal counsel, including an unsuccessful challenge to the legal standing of the NCA in Northern Ireland. The investigation will continue and may result in the recovery of the property in question.

iii. In 2024, a settlement was reached with the respondent of a UWO used by the NCA in 2018. This agreement could potentially net a nearly GBP 13.6 million confiscation. A golf club and home will be auctioned pursuant to the agreement with the spouse of a state-owned bank from a third country and the proceeds will be split in accordance with the settlement.

Although they are optional, FATF's inclusion of UWOs in the Standards is an implicit recognition of the benefits that can UWO in a diverse asset recovery regime. Among other things, UWOs represent a novel way for a country to combat its ML risks, particularly those stemming from corruption and organised crime, or a broader swathe of offences. UWOs may also mitigate some of the challenges of international co-operation and financial investigations. For example, if the predicate conduct occurred abroad, and the proceeds were laundered into the jurisdiction, the country where they are invested may have limited recourse to investigate the origin of the funds, especially if they cannot obtain the necessary evidence from abroad. A UWO can help illuminate the circumstances surrounding the acquisition of asset. Additionally, while UWOs can be available against a range of assets (to include virtual assets, as in one prominent example from the Province of British Columbia), they have been used frequently in the real estate sector. This may be related to the fact that countries still have (or had) gaps in their regulation or supervision of real estate professionals and other gatekeepers (e.g., lawyers, accountants, and trust and company service providers) who may have too easily allowed funds of questionable origin to pay for the purchase of real estate.

ADDITIONAL CONSIDERATIONS

UWOs can allow countries to focus on high-value assets of unexplained provenance. For instance, under the Mauritian UWO regime, a standalone and specialised unit has been formed within the Financial Crimes Commission solely dedicated to handling these cases. In British Columbia, the introduction of UWOs was the result of investigations involving widespread money laundering operations involving billions of dollars, particularly flowing through casinos and real estate. The Commission of Inquiry into Money Laundering in British Columbia (known also as the Cullen Commission) was a key instigator of the reforms, and underscored the necessity of a new disruptive tactic to undermine the profit motivate of organised criminal groups. There have been four UWOs initiated to date targeting high-value assets. They are all ongoing and pending legal challenges.

Furthermore, UWOs can intersect with tax collection efforts, as unexplained wealth often signals unreported income or fraudulent financial declarations. Tax authorities may utilise similar principles to assess discrepancies between reported income and visible wealth, ensuring that individuals meet their tax obligations and that illicit gains are not sheltered from recovery efforts. This integrated approach bolsters the overall framework of financial integrity and asset recovery.

UWOs can have significant advantages, but they are not silver bullets. They may provide an investigative boost or an entry point to asset recovery. As a good practice, countries should consider the following factors in designing and implementing their UWOs:

- A **thorough financial investigation is still required**. Although the UWO can tease out and verify the theory of the competent authority, the tracing of the property in questions should be as full and far back as possible. Ideally, there are only some facts that will be "explained" to the authorities through the response to the UWO and the LEAs or prosecutors will have a solid hypothesis and as much evidence as possible that the funds originate from crime, even though a specific crime does not need to be proven by the authorities. A detailed financial profile of the beneficial owner of the property should be developed.

- The **potential defences to the UWO should be anticipated** to the extent possible. This includes identifying potential claimants and likely challenges. This may entail an examination of the associates, family members, and legal entities and arrangements connected to the suspected beneficial owner of the property.

- UWO litigation can become expensive and time consuming. Therefore, **dedicated resources should be allocated** towards it. This may include specialised investigators and lawyers and a budget for pursuing and litigating UWOs.

Some UWO regimes mandate that the losing party pays all fees associated with the action, including attorney's costs. Such provisions may result in significant costs to the government if the UWO "fails". This could make them less attractive to use against precisely the types of wealthy suspects who have hidden their wealth in a jurisdiction. Fee-splitting in unsuccessful cases may be a pragmatic solution, or a limiting mechanism whereby the state will not be required to bare all costs unless the court finds that the state has acted unreasonably in pursuing a UWO.

- Property may be owned by overseas companies or shell companies with a minimal onshore presence. There should be a **mechanism to compel a local officer or representative of a company** to answer for the origin of the funds in the jurisdiction where the property is located.

- UWOs may be accompanied by or even trigger a freezing order or restraining order over the property in question. Having this **provisional measure** can prevent sale, dissipation, or asset flight.

- The **statutory time period afforded to the competent authorities to review material provided to them in response to a UWO should be sufficiently long**. The government authorities can expect to be flooded with responsive information, both as a tactic and because the transactions and ownership structure related to the property may be complicated. This timeframe should allow the authorities enough time to thoroughly consider the response, and corroborate it if needed, before a corresponding freezing order over the property in question expires.

- **Targeting is a key consideration**. Competent authorities will have to establish guidelines or practices for identifying cases where it is appropriate and desirable to use the UWO mechanism. Legacy matters, with few prospects of criminal conviction, may be mined, but new investigations can also benefit from the efficiency of a UWO. Potential leads from journalists, civil society organisations, and non-governmental organisations can be examined and considered in favour of using a UWO.

- UWOs should be designed so that they can be used to not only target traditional asset ownership, but also **expenditures relating to lifestyles**. Many UWOs just target traditional property (e.g. cash, bank funds, and real estate) but do not take into account the fact that targets will also use suspected criminal proceeds to fund their lifestyles. For example, under some UWOs, it will be possible to target a person for owning a luxury flat, but it would not be possible to target the same person if they did not purchase the flat but instead rented it for a huge sum every year using suspected criminal proceeds. As an example, in Australia, the Northern Territory's UWO law not only covers property but also "all services, advantages, and benefits" the targeted person has acquired during the relevant time, or any such services, advantages and benefits that someone else acquired at the direction of the targeted person.

- As with any tool related to confiscation, the **rights of the putative owner and bona fide third parties must be protected**. Adequate safeguards for this purpose should be embedded in any UWO regime, including, at a minimum, a fair opportunity for challenging the UWO, due process in attempting to prove the licit origin of the asset, and rights to appeal. Moreover, there should be safeguards in UWO laws to prevent their abuse by the state.

  Examples of safeguards include:

  – the need to specify that the information provided in response to a UWO cannot be used in separate criminal proceedings (to prevent against a violation of the right against self-incrimination)

  – that the laws should be subjected to regular reviews by legislature,

  – that courts should have discretion to not issue a UWO when it would not be in the public interest or it would be a gross miscarriage of justice, and

– that targeted persons should not be expected to provide information for an asset when doing so would be unreasonable.

Finally, the successful use of UWOs will likely require a high degree of domestic co-ordination and co-operation. This may include exchanges of information between the prosecutors or attorneys in charge of UWO enforcement, the LEAs or investigative agencies, the FIU, and the tax authority. Other agencies, such as registrars of companies or properties, or anti-corruption agencies, may also be needed. In fact, some systems where UWOs may be sought only against PEPs may require the involvement of an anti-corruption body, potentially to (1) designate or list those meeting the definition of PEP in a country, and (2) verify any asset declarations required of domestic PEPs. It is precisely the vast inconsistencies between a PEPs known or declared assets, sources of income or salary, and the assets he or she accumulates and conceals which may initiate a UWO in the first place.

As highlighted in R.30, in addition to having agencies to pursue ML/TF "countries should also designate one or more competent authorities to identify, trace, and initiate freezing and seizing of criminal property" and corresponding value. Furthermore, competent authorities, which are not law enforcement authorities, per se, should have sufficient powers to pursue financial investigations to the extent that they are exercising R.30 powers (including asset recovery or confiscation). Anti-corruption authorities with enforcement powers may be designated to investigate money laundering offences arising from, or related to, corruption offences under R.30 – these authorities should also have sufficient powers to identify, trace, and initiate freezing and seizing of criminal property. An authority to handle UWOs should be clearly assigned and have the ability to exchange with all other necessary domestic agencies. As per INR.4, paragraph 2, countries should have the "necessary frameworks and agency structures to enable effective use of [asset recovery] measures. Another issue to consider is what investigative techniques can be used prior to the issuance of a UWO. Sometimes, UWOs are used once a criminal investigation has been conducted but terminated. If there is no likelihood of criminal charges, countries should ensure that there are sufficient powers available for the purpose of pursuing asset recovery in connection with UWOs.

BOX 62 – **COUNTRY EXAMPLES: UWOs in Kazakhstan and Brazil**

KAZAKHSTAN

Kazakhstan has a new framework for UWOs dating from 2023. It has already been used in three instances involving over USD 30 million in value. The UWOs are intended to target assets of unexplained origin that do not correspond to the legal income of the subject. The subjects of a UWO can only be PEPs, their relatives, and their associates, and the PEP registry is maintained by an anti-corruption commission. PEPs must disclose their assets in periodic declarations. To initiate a UWO, there has to be a reasonable doubt raised as to the legality of the acquisition of the asset. There is also a threshold for identifying cases in that the assets belonging to the subject must exceed a certain ratio of ordinary income. Ultimately, property can be confiscated through an NCBC (in rem) action, or through voluntary settlement.

In the case of the Asset Recovery Committee v. Citizen X, a mid-level official of a state-owned enterprise and her spouse, a career law enforcement agent (in fact, the deputy of one of the law enforcement agencies), were the subject of a UWO. In three years, the couple deposited over USD 11 million into their bank accounts and stored valuable jewellery in safe deposit boxes. Both individuals were required to declare their assets annually and had not disclosed the property at issue. Prosecutors had previously conducted a criminal investigation into the couple, but the investigation was terminated due to insufficient evidence of ML. A UWO was issued, and the main

... Box 62 continued

subject responded claiming, that the assets were not hers, but belonged to her mother-in-law who had several small businesses selling goods in local bazaars. The subject unsuccessfully contested the UWO on the grounds that the criminal case was closed and the evidence was therefore sufficient.

The judge considered evidence of unexplained wealth (spending was 6x higher than established income); customs and tax information as to any other business interests (none), known income (only public salaries), and the profile of the mother-in-law. Although she had several companies and verifiable trade, the revenue was relatively low and could not have generated millions of dollars. Finally, the judge considered a power of attorney submitted by the subject showing the transfer of assets from this relative to herself. The court ruled that the subjects had failed to prove the legality of the source of the assets under the applicable civil standard of proof. The assets were confiscated and the recovery was upheld on appeal.

BRAZIL

Brazil has a confiscation provision applicable for serious offences (including ML) when they are punishable by a maximum of more than six years in prison. Under Criminal Code Article 91-A, the proceeds of crime are defined to include "assets corresponding to the difference between the value of the assets of the convicted person" and his or her "lawful income." This includes assets (1) owned by the convicted person, assets over which he or she has domain, and assets from which he or she benefits directly or indirectly, as of the date of the criminal offence or received later; and (2) gifts to third parties (for free or negligible consideration), as of the beginning of the criminal activity, when they qualify as unexplained by lawful income. The prosecutor must expressly invoke of this type of confiscation and, when doing so, they must indicate the difference between the defendant's legal and unjustified property. The defendant can in turn demonstrate lawful origin of any such assets sought for confiscation. This is a type of extended confiscation and UW hybrid.

Although UWOs are a relatively new inclusion in the FATF Standards, countries have some experience using them, as described below.

BOX 63 – **COUNTRY EXAMPLE: The ECtHR Decision on Romania's UWO Regime**

The European Court of Human Rights recently decided a challenge in a UWO case in Pacurar v. Romania, App. No. 17985/18 (ECtHR 24 June 2025). This case centred on a former public official who was subject to asset declarations and confiscation based on alleged illicit enrichment. The analysis in this judgment represents a significant advancement in judicial recognition of UWOs, especially in the anti-corruption context to confiscate the difference between declared and undeclared wealth. This NCBC confiscation did not rest on a theory that the assets had a criminal origin, but centred, per the Romanian law, on the assets acquired when the official held public offence and the difference between income and expenditures during this time. Several explanations were offered by the subject to explain his wealth (gifts, loans, informal commercial activity). Some assets were deemed sufficiently explained and thus removed from the scope of the earlier proceedings, but the courts below and the Court here did not accept as reasonable the proffered explanation for many of the assets. The cash flow analysis was closely examined by the Court, as was the adversarial process wherein competing financial experts put forth their theories and questioned those of the opponent. The court dissected and found credible the financial analysis justifying the confiscation, even accounting for issues such as inflation. The Romanian law as applied was found not to violate Article 6 § 1 (fair trial) or Article 1 of Protocol 1 (right to property) of the

European Convention on Human Rights, in part because it contained several procedural safeguards. The aim of the law and the application to this official was held to be for legitimate purpose, predictable, and proportionate. For jurisdictions seeking clarity on the features of unexplained wealth confiscation regimes which can make them lawful and compatible with universal human rights, this decision is recommended reading.

5.6. Enforcement: Permanent deprivation and realising assets

One of the notable changes in the revised asset recovery Standards is the emphasis placed upon the enforcement of domestic confiscation orders. The Interpretive Note to Recommendation 4, para. 16, urges countries to "ensure that they have measures that enable them to enforce a confiscation order and realise the value subject to the confiscation order, leading to the permanent deprivation of the property or the value subject to the order." The title of Immediate Outcome 8 underscores the centrality of permanent deprivation as a concept, and the "characteristics of an effective system" note also highlights that final confiscation orders should be enforced. Moreover, Core Issue 8.5. specifies that enforcement must be considered in assessing the effectiveness of the AR regime, and one of the "examples of information that could support conclusions on the Core Issues" includes the "value of property realised pursuant to confiscation orders." All other components of the AR system – from both a legal and an operational standpoint – are for nothing if, at the end of the day, criminals do not actually face the consequence of confiscation.

The concept of enforcement is simple, but there have been gaps in implementation. The reason that FATF members chose to include this issue in the revised Standards is because many countries, through their mutual evaluations, were found to have one or more relevant weaknesses. Typical problems included: (i) the country was not actually taking confiscated assets into their possession and control and realising their value; (ii) the country was doing so to some extent, but the success rate was uncertain, as the country provided no or unreliable statistics; or (iii) the country was realising some assets, but due to a lack of proper management and the passage of time, they were severely depreciated and of lesser value than they were at the time of seizure or restraint. Interim asset management of frozen or seized property was covered in Ch. 4.3 above, and management and disposal of confiscated assets will be discussed below in Ch. 7.1. In this chapter, the concern is the phenomenon of "confiscation judgments on paper", whereby the government wins its case and the court orders the assets confiscated, declaring ownership to the state, but this confiscation is in name only and actions are not taken to carry out the order. In this situation, the confiscated assets are never actually realised. The possible causes are: (i) the assets were not restrained to begin with, possibly indicating deficiency in the pursuit of provisional measures, (ii) the assets have been identified, but cannot be located in the country; (iii) there are problems with liquidation, e.g., there is no market for sale or some other logistical obstacle; (iv) there is no individual or authority responsible for the execution of confiscation orders and they simply fall by the wayside once the case is considered to be over; or (v) there is an authority with this responsibility, but it lacks capacity or faces problems such as a lack of resources, inadequate legal tools, or a large backlog of cases. Liquidation and logistical obstacles are often beyond the control of the authorities, so, putting those aside for now, the "judgments on paper" problem can sometimes be attributed to a lack of will or follow-through. Having successfully concluded the prosecution or confiscation, the LEAs and prosecutors who pursued the case may have moved on to the next one, understandably. It may not be within the scope of their duty to deal with the *ex post facto* issues stemming from the case such as hunting down assets to satisfy the confiscation judgment. Similarly, the judge may not be responsible for realising the assets either. In many countries, this task is delegated to a bailiff, clerk, or other marshal of the court. If that person or entity has other demanding duties – such as monitoring defendants or judicial security – this person may not be to prioritise the gathering of assets named in a confiscation order.

Furthermore, weak rates of enforcement can become acute when the criminal confiscation action is value-based. Some jurisdictions which use value-based confiscation as their primary tool have well-developed and detailed laws and procedures. These procedures ensure that the value is carefully calculated to represent the amount of proceeds,

losses, or criminal benefits and to tally up the available, valuable assets of the defendant, or within his or her control, which might be used to fulfil the order. This is often a complex exercise, involving financial declarations or disclosures, searching and verification by investigators, and appraisal of existing assets. Ideally, some or all of these assets will have been restrained or seized already. In developed systems like this, the final monetary figure in the judgment is not merely an empty number, but there is an idea, if not a meticulous plan, for executing the confiscation order up to and not exceeding that amount. The government must then take possession of and liquidate particularised assets, potentially revisiting the list of available assets if the total is not reached. On the other hand, some jurisdictions invest less on the front-end to ensure that deprivation occurs on the back-end. They may lack the tools necessary to collect the assets, especially those that are complex or more difficult to maintain and dispose of. Without a focus on execution, or adequate resources to carry it out, confiscation orders wither and become less valuable every day.

In order to close the loop on confiscations, and ensure that all the hard work leading up to the final order is not wasted, countries should develop laws, mechanisms, tools, or processes to ensure judgments are executed promptly, or that they can collect on unfulfilled or unpaid confiscation orders. Some options for how to do so are contained in the Box below. Finally, also refer to Ch. 8, as the enforcement of confiscation judgments should include considerations of potential unintended consequences in terms of impoverishing individuals (or unduly affecting their innocent family members) and other problems beget by potentially overly harsh enforcement practices.

BOX 64 – **PRACTICAL TIP: Ensuring that Confiscated Assets Are Realised**

- Secure assets that will be sought for confiscation early and often through the use of provisional measures. Avoid the problem of marshalling assets later on which have not been restrained during the pendency of the investigation/litigation.
- **Ensure that confiscation orders do not expire.** Only pursue enforcement of final orders, and wait for all appeals to be decided before gathering heretofore unrestrained assets.
- Consider a requirement that assets must be brought onshore (if feasible) to satisfy confiscation judgments.
- Assign responsibility for enforcement of domestic judgments (i.e., final confiscation orders) to a designated institution, authority, or entity. Once designated, ensure that this entity is adequately staffed and resourced.
- Consider ways to elicit information about assets for the purposes of enforcement. Use rules or criminal procedures **to require defendants likely to face confiscation to disclose their assets**, liabilities, income, and holdings to the court. Attach a penalty for intentionally misstating assets or wealth in this context. (Note – it is not recommended to attach a penalty of imprisonment for failure to turn over assets to satisfy a confiscation order, barring exceptional circumstances.)
- Countries that have successful rates of realisation tend to designate the AMO (if there is one) for the task of enforcement. If there is no such agency, court personnel may be an option. Ideally, they would specialise in this task.
- Ensure that the entity with this responsibility has direct or indirect access to the financial profile of the defendant as developed by the LEA investigating the case and/or the FIU. This will contain leads as to where realisable assets may be located.
- Ensure that the entity has direct or indirect access to databases and a range of information useful in identifying assets (see R.31 for suggestions). This does not necessarily entail a search for criminal property or require a new financial investigation to trace property to a crime – if the mission is to fulfil a value-based confiscation order, "clean assets" may be used.

- Ensure that the entity has sufficient personal information about the circumstances of the defendant, including family members, sentence, probation or parole details, employment history, addresses, travel plans or restrictions, etc. In considering the circumstances of the defendant, determine whether it is possible that they have foreign connections making it possible/likely that assets are held abroad.
- Consider using **INTERPOL's Silver Notice** tool to attempt to locate assets abroad which may be used to satisfy a judgment. Use a Notice in major/significant cases where it is possible that there are assets in several countries, or use a Diffusion to target the request to particular countries where the defendant is likely to have connections and property.
- **Refresh the search for realisable assets periodically.** This should not be a one-time effort, but an ongoing process for a reasonable amount of time after the conclusion of the case. Occasionally refresh searches for assets even in old cases.
- After serving a custodial sentence, the defendant may once again have the legitimate means to satisfy a confiscation order. If he/she shows signs of unjustified or unexpected wealth (e.g., a new lifestyle, luxury asset acquisition) consider whether to reopen dormant matters.
- Allow for **civil enforcement** of forfeitures. Many countries, for example, Canada, allow the provincial or federal attorney general to file a civil lawsuit against an offender who has not paid a forfeiture as required. This can result in a civil judgment (as to the amount of the forfeiture order plus costs) issued by any civil court in Canada. Once a civil judgment is in place, other options for collecting the amount of the forfeiture may become available. In some countries, this opens up garnishment and repossession as options for enforcement, although the law should also have adequate protections so that delinquent offenders are not made destitute.
- Consider whether the law or procedures could provide for a "default status" to be determined by the court, which only applies if the defendant does not pay sums due under a confiscation order and does not make applications to the court for varying the order. The accrual of interest should also apply to sums in default.
- Ensure that post-conviction or post-judgment financial investigations are authorised, by law, if needed. This may be especially relevant when a confiscation order for value is issued and no or insufficient assets have been located to satisfy it.

6: International Co-operation

Suggested audience:

- **LEAs, investigative agencies, and prosecutorial or judicial authorities with responsibility over asset recovery**
- **Ministries and central authorities responsible for co-operation in criminal matters**
- **Policymakers**

KEY GUIDANCE IN THIS CHAPTER

International Co-operation

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Enforcement of Foreign Orders and Judgments	p. 284
Enforcement Models and Considerations	pp. 289 & 294
Relying on Foreign Facts to Enforce	p. 295

Chapter 6 Summary

This Chapter discusses one of the essential ingredients for modern asset recovery: international co-operation. While this topic is a motif throughout the Guidance, this Chapter specifically focuses on international co-operation through the lenses of R.38, R.37, and R.40, as well as INR.38 and INR.40. It covers IO.8, specifically Core Issue 8.5 (which remains relevant for countries in terms of their efforts to confiscate assets located abroad). It also covers IO.2's new emphasis on providing and seeking assistance related to asset recovery, alongside MLA and extradition.

The key point emphasised in this Chapter is the need for a reimagining of international co-operation when it comes to identifying, investigating, seizing, and confiscating assets across borders. The Chapter highlights four notions drawn from the FATF Standards as guideposts for more effective and efficient co-operation: mutuality, pro-activity, suitability, and informality. Just as criminals have erased borders for ML and TF, especially through the use of digital tools to commit and facilitate their crimes and connect their networks, so too must competent authorities. The Chapter provides guidance and practical examples of informal co-operation as a legal and legitimate response to increasingly multi-jurisdictional criminality. It elaborates on how countries can participate in and actively support multilateral networks to better facilitate rapid and constructive co-operation in AR, providing examples of such networks, such as ARINs. It highlights new avenues for commencing AR investigations and addresses the importance of disclosures to foreign partners, non-counterpart mechanisms for co-operation, joint investigations, and liaison networks.

Other key points include advice on previewing and preparing asset recovery requests, and streamlining the processing of formal MLA requests when needed. In light of the FATF Standards revisions, enforcement of provisional orders and final judgments is a major theme of this Chapter, which covers legal issues and practical tips for utilising this process.

In summary, policymakers should enact or expand enforcement statutes to facilitate the efficient recovery of assets, whilst competent authorities should streamline processes which can slow co-operation and result in asset flight or dissipation. A new resolve to find legal ways to engage in informal co-operation – premised on actionable intelligence and information sharing and seamless communication – is needed in each phase of the asset recovery process.

In light of the increasingly cross-border nature of criminal activity and the nearly ubiquitous practice of laundering illicit funds through and to multiple jurisdictions, robust international co-operation is an essential component to facilitating asset recovery. The need for international co-operation in AR can be broader than in international money laundering cases. In fact, effective recovery may require international co-operation even in purely national cases without money laundering components. For multiple reasons linked to globalisation and the circulation of people and goods, the assets can be overseas. Practitioners may be alert to circumstances such as the significant accumulation of ill-gotten gains and the lack of obvious spending by the offender, or when the suspect has lived abroad, is a foreigner, or has many connections abroad, indicating that assets can be located out of the investigating country. In order to achieve successful AR outcomes, it is important that countries approach international co-operation with a view to ensuring that it is well-developed and agile, and can be deployed rapidly and in a more streamlined fashion in order to render asset recovery as effective as possible.

The FATF Standards were therefore revised to encourage more efficient processes, with fewer bureaucratic hurdles and more productivity. In practical terms, as will be detailed below, this means utilising informal co-operation as a

preliminary matter and having strong channels of communication – whether via formal or informal networks or LEA or other agency contacts – at as early a stage as possible. It also entails preparing the groundwork for MLA requests in advance in order to optimise results, including by understanding the legal requirements in the country where assistance is sought and the options available to take actions with the help of the country's competent authorities.

By applying the approach detailed in this Chapter and in other parts of this Guidance, countries will be able to give teeth to the new asset recovery mechanisms enshrined in Recommendations 4, 38, and 40. This will be critical for seeking freezing, seizing and confiscatory actions for assets located abroad (as emphasised in IO.8, Core Issue 8.5, and IO.2, Core Issue 2.2), and taking such actions on behalf of foreign partners (as emphasised in IO.2, Core Issue 2.1). In the past, Immediate Outcome 2 mainly focused on MLA and extradition, with asset recovery as a side issue. Now, there is a more pronounced focus on co-operation that facilitates action against criminals *and their property* and additional references to co-operation *between agencies responsible for asset recovery*. The four guiding principles that define the FATF's new approach to AR co-operation, as seen throughout the Recommendations and Methodology, are as follows:

- **Mutuality**: This is a mindset and a starting point. Countries should be able to do for others at least as much as they can do in their own domestic cases. Asking "how can we find a way" and approaching situations with flexibility is preferred over a response of "no, we cannot do this." [Basis in INR.40, para. 5.]

- **Pro-activity**: Jurisdictions are encouraged not only to provide rapid, constructive, and effective assistance when requested, but also to reach out pro-actively and spontaneously to share information that may lead to asset recovery and initiate new investigations or cases abroad. On the other hand, the practice of seeking assistance through sending an unannounced MLA request, without making preliminary contact or laying a foundation, is less likely to yield realisable assets. [Basis in R.30, R.40, and INR.40, para. 19.]

- **Suitability**: The most efficient means should be chosen to accomplish the objective, and if the specific requested assistance is not available, international partners should attempt to find a way to obtain results through creative collaboration. Similarly, achieving the best outcome in asset recovery may involve dividing up responsibility in complex and multi-jurisdictional cases in a way that maximises asset recovery outcomes and efficiency, and prioritises interests. [Basis in R.37, R.40, and R.40 - Methodology, c.40.2.]

- **Informality**: Communication is key to preparing for cross-border FIU, law enforcement, or prosecutorial action, and information sharing is essential not only to identify assets, but to spot issues and clear the path for additional (and potentially formal) co-operation. Formality is necessary, especially in certain stages of a case, but excessive formality can be a hindrance and unnecessarily complicate co-operation. [Basis in R.38, INR.38, para. 7, R.40, and IO.8.]

One final introductory point is warranted. Chapter 2 discusses the need to designate and empower competent authorities responsible for asset recovery (see, e.g., INR.30). Meanwhile, R.37 requires that the authorities responsible for MLA, such as a central authority, should be appropriately skilled. However, in many countries, largely due to resource constraints, these professionals are generalists because they need to deal with many types of requests, not only those involving confiscation. There are several possible good practices that can be deduced to ensure appropriate prioritisation of co-operation related to asset recovery.

Countries may opt to train their central authority staff on the fundamentals of asset recovery; the basic types of AR assistance available; and the requirements that need to be satisfied to provide assistance in cases with a view to restraining, confiscating, or sharing assets (noting that often the central authority is not executing the request directly, but still needs to be fluent in AR). This may also entail a complementary training on financial investigations, money laundering, and domestic confiscation (to some extent). Even if one or two attorneys or staff members within

a central authority are trained, they can become a go-to resource for others. Countries may also or alternatively opt to ensure that AR specialists can be on call for the central authority, whether or not they ultimately end up executing the request. The ability to seek and obtain specialist advice on requests related to confiscation is invaluable to a central authority and facilitates better service to foreign partners. Asset recovery is a speciality that benefits from unique knowledge and expertise, particularly in international assistance.

Moreover, it is essential for central authorities to possess clearly defined powers related to AR, including the ability to assist executing authorities, develop and disseminate guidelines, and conduct preliminary assessments of incoming and outgoing requests. At the same time, practitioners involved in the operational execution of AR measures also require targeted capacity building to effectively carry out their duties. In some jurisdictions, central authorities have a more residual role, with direct cooperation occurring between issuing and executing authorities. This direct collaboration can enhance the efficiency and effectiveness of AR efforts.

Lastly, as mentioned in Ch. 1, international co-operation has been woven into the other Chapters of this Guidance as needed, especially if there were particular points about co-operation related to the AR measure or tool being discussed. In addition to this overarching Chapter, readers interested in co-operation on a specific topic should refer to that topic, and cross-references are provided.

6.1. Informal international co-operation, including ARINs

According to the FATF Methodology, in the Note to Assessors within IO.2, international co-operation is broadly divided into two types: formal and informal. Mutual legal assistance and extradition fall into the formal category, while informal assistance can range from direct communications between counterparts and non-counterparts, information exchanges, co-operation through the framework of a network, or the countless ways that competent authorities can share factual details which enable the identification, location, evaluation, or valuation of assets and, ultimately, freezing and seizing. It is often true that the imposition of provisional measures as well as the final confiscation of criminal property or corresponding value require formal co-operation, but as will be demonstrated through case examples, these outcomes can sometimes be achieved without resorting to MLA. The exchange of sufficient information at the right moment can enable domestic actions to restrain or confiscate assets even in cases that do not have a domestic origin and would not have been undertaken or accomplished but for co-operation with a foreign partner.

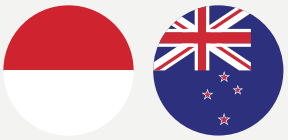
The FATF acknowledges in the same Note to Assessors that "[i]n practice, informal co-operation will often be an essential element that underpins successful formal co-operation." However, there can be highly desirable asset recovery outcomes wrought solely from informal co-operation. Additionally, the word "informal" should not be understood to mean lacking a legal basis, illegal, extraordinary, or unusual. Simply put, even with advances in MLA channels (such as the electronic exchange of requests, human and technological investment in central authorities, and the modernisation of treaties), it is almost impossible to rely solely on MLA. MLA may be crucial when seeking compulsory measures (i.e., those requiring a court order, warrant, or other legal process), when admissible evidence is needed for use in court, or when enforcing foreign forfeiture judgments. However, when there is a need for speed in locating assets or securing them to prevent dissipation, the quickness of informal channels and person-to-person contact can be highly valuable. Even if a case appears to only have been accomplished through MLA, it is likely that informal co-operation did take place in the background to either prepare, facilitate, or close out the assistance provided (e.g., phone calls, meetings, status checks, and actions taken that did not require legal process, but which advanced the case).

Considering the many changes to the FATF Standards on the topic of informal co-operation, it is valuable to highlight them in one place.

Citation	Text	Guidance
INR.38, paragraph 7	"Countries should have measures to enable informal communication with other countries in asset recovery cases, including facilitating assistance before a request is made and updating countries, as appropriate, on the status of their requests."	The measures need not be contained in law, but they can be shown through membership in various bodies facilitating co-operation; the existence of MOUs, agreements, dialogues, partnerships, exchanges; procedures or other policy documents encouraging or enabling such communications; and through practical examples. The first clause indicates that there should be "measures" in place; the second clause indicates that pre-request assistance and status updates on requests are only two examples of common types of informal assistance measures. While the examples imply that there is or will be a "request" at some point, likely a formal request, **there is no requirement in R.38/INR.38 that informal communication in asset recovery matters should be conditioned on, subsidiary to, or in facilitation of formal requests**. Informal communication can occur on a stand-alone basis or in support of MLA.
Methodology c.38.6	"Countries should have: (a) measures to enable informal communication with other countries in asset recovery cases, including facilitating assistance before a request is made and updating countries, as appropriate, on the status of their requests; and (b) the authority to provide further related assistance on an initial request, without requiring a supplemental request, in appropriate cases."	The element emphasised here is that a country should not need an MLA request to check on the status of execution of a prior MLA request. This level of formality serves no purpose, and lines of communication between, for instance, central authorities should be open and easily utilised. As to further related assistance on an initial request, the country will determine when this can or cannot be done without a supplemental request.
Immediate Outcome 8, Specific Factor 18	"To what extent are countries effectively identifying, tracing, seizing and freezing criminal property proceeds and property of corresponding value that has been transferred abroad, including through the active use of informal mechanisms such as the ARIN networks or other bodies supporting international co-operation in asset recovery?"	This example in IO.8 homes in on how well a country is pursuing assets which have been moved abroad in its own cases. This is about actively seeking assistance through outgoing, not responding to incoming requests. Active use and what networks may be utilised aside from ARINs are discussed below.
Recommendation 40	Considered in totality, as it is entitled "other forms of international co-operation" to distinguish it from the forms covered by other Recommendations.	INR.40 highlights the critical importance of informal co-operation on numerous fronts for AML/CFT/CPF, including co-operation between counterparts (horizontal), and co-operation between non-counterparts (diagonal). It does not relate to MLA or extradition (as in R.37), or the subset of MLA related to confiscation (as in R.38).

Recommendation 40 and its Interpretive Note make clear that informal co-operation is important to asset recovery. Since asset recovery inherently requires rapid action, and dissipation or further movement and concealment of assets is a constant threat, informal exchanges allow requesting authorities to obtain information in a timely and efficient manner. This is significant as the formal MLA process is, by its nature, more bureaucratic process. This Guidance does not downplay the importance of MLA, nor the ability of those providing MLA to prioritise urgent requests and act on them with due haste. However, the reality is that MLA can be a slow process, and requests related to asset recovery are merely one type of request in a sea of others. To be more specific, using MLA for the purposes of asset identification and preliminary investigation is not always efficient; using it later in the AR process can be more meaningful. Informal co-operation will often increase the chances of success of formal co-operation, as it will hopefully maximise the chance that assets will be available and realisable when the formal MLA process commences.

BOX 65 – **COUNTRY EXAMPLES: Informal Co-operation Leading to Asset Recovery**



INDONESIA & NEW ZEALAND: Indonesia prosecuted and convicted several individuals for a massive capital markets fraud involving Jiwasraya Life Insurance, a state-owned entity in the life insurance sector. The scheme caused a loss to the state of IDR 16.6 trillion, or the equivalent of USD 1.15 billion. As of January 2025, USD 242 million has been recovered through various confiscation measures. The key perpetrators are BT (main defendant, received a life sentence for corruption and ML); JS (the nominee of BT, received a fifteen year sentence for ML), and CC (JS's sister and another nominee for BT). The following case study describes one portion of AR in this case exemplifying the role an FIU can play and informal co-operation which resulted in the identification of restraint of assets without ever resorting to formal co-operation or the use of MLA. Major events included:

- April 2021: Indonesian Asset Recovery Center (ARC) requests information from Indonesian FIU (PPATK) regarding CC in an informal meeting
- June 2021: PPATK disseminates 1st intel package on CC to ARC, followed by additional informal exchanges
- 2021-2022: ARC begins informal co-operation with authorities in New Zealand; shares intelligence with NZ's Asset Recovery Unit (ARU) via the ARIN-AP network
- Sept. 2022: NZP-FIU sends an Egmont request to PPATK
- Nov. 2022: PPATK responds to NZP-FIU's request and sends detailed intelligence report about CC's finances

In its analysis, PPATK made use of reports of numerous international wire transfers and information indicating the acquisition of real estate. It also used the domestic database of customer due diligence information, showing that CC had extensive relationships with local FIs and DNFBPs (involving cash transactions over USD 30 000), as well as bank records, transaction records, interviews, and observations. Upon receipt of the report, NZP-FIU traced the flow of funds to the purchase of a property through a multinational real estate company and a NZ law firm (a luxury home developed in Queenstown, NZ).

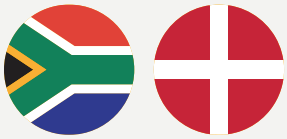
NZ executed search warrants based in part on information supplied by Indonesia, interviewed the builder of the property and the real estate agent, and obtained the contract for sale. After CC met with these individuals and completed the transaction, the property sat vacant. The owner, CC, attempted to sell it, which prompted AML checks in NZ. CC was never heard from again.

The two countries discuss the possibilities and considering the evidence that CC merely a front person to invest the criminal proceeds, and the need to act quickly, decided that it would be more efficient for NZ to open a

... Box 65 continued

domestic investigation rather than waiting for a court order from Indonesia for the property. Using its network of liaison police officers, NZ was able to take witness testimony in Jakarta in the form and manner useable in NZ court proceedings. In 2022, NZ succeeded in obtaining a restraining order to secure the property. There were no challenges, and the matter proceeded to final forfeiture largely based on affidavits taken by the liaison police officers and evidence of the flow of funds (no witnesses were called).

The valuable property was forfeited and liquidated in 2024 for NZD 5.2 million (USD 3 million). International sharing is anticipated. **No MLA requests were exchanged in this case, which was conducted solely through the use of informal co-operation between the relevant competent authorities (police and FIUs).** The counterparts frequently exchanged information and communicated through secure channels, and the success of the case relied heavily on the FIU's spontaneous disclosure, NZ's diligence in investigating the tip, the pro-active approach to seeking restraint (i.e., deployment of liaison officers), and the trust developed between the individual FIU personnel and LEAs involved in both countries.



SOUTH AFRICA & DENMARK: The AFU in South Africa received a request for assistance from the Office of the Danish State Prosecutor for Serious Economic and International Crime via the CARIN/ARINSA network. An individual was alleged to have embezzled over DKK 111 million (USD 16 million) through their official position. Investigations revealed that the individual fraudulently transferred a sum of ZAR 36 million (USD 1.9 million) over 10 years from the individual's employer to an account, held in South Africa. The crime was perpetrated by creating fictitious beneficiaries and paying grants into the bank accounts of these fictitious beneficiaries.

There was an extradition request from Denmark to South Africa seeking the arrest of two persons. Danish Authorities also made a request for asset recovery assistance to the AFU through ARINSA.

The AFU conducted a cash flow investigation and identified various assets purchased with the proceeds of the fraud perpetrated in Denmark. INTERPOL arrested the two individuals involved. The AFU obtained affidavits from both individuals involved in which they confirmed that their assets in South Africa were purchased with proceeds and that they would not oppose any AFU applications related to the assets. To date, the AFU has obtained 5 preservation orders relating to: ZAR 6 million cash in the accounts of one of the arrested individuals and an associate; ZAR 310 000 cash paid to a dealership for the sale of a Land Rover; a farm in Phalaborwa; another Land Rover; ZAR 2 million paid into an attorneys' trust account for a Southbroom property to be registered in the name of one of the individuals; and ZAR 648 000 seized during the arrest of one of the individuals.

The AFU obtained forfeiture orders in respect of all the preservations and a total amount of R 10.8m (USD 624 205) was returned to the Danish Government. South Africa did not insist on an asset sharing agreement or the recovery of costs incurred in the obtaining of the orders. The full recovered amounts were paid over.

SOUTH AFRICA & ISLE OF MAN: Rogers ran a complicated Ponzi scheme. When it became apparent that the scheme was about to collapse, he moved funds to the Isle of Man. The Asset Forfeiture Unit (AFU) approached the FIU in the Isle of Man on an informal basis, who launched a preservation application. In the course of the application, the court required more information. The AFU prepared a formal draft request for MLA. The Isle of Man assisted greatly by obtaining a freezing order for the funds held in bank accounts there, and, once the monies were secured, the AFU had the opportunity to obtain a preservation order and subsequent forfeiture order in South Africa in support of the proceedings in the Isle of Man. The forfeiture order obtained by the AFU in

South Africa was registered in the Isle of Man in August 2024. The recovery process for the funds was completed and the monies were paid back to the victims. The primary value of the initial informal assistance is that the building and fostering of strong relationships with individuals within such frameworks is very effective in ensuring collaboration and quick results.

ITALY & BRAZIL: Italy's Guardia di Finanza issued the first INTERPOL Silver Notice to trace assets belonging to a senior mafia member. Within weeks of its publication, authorities in Brazil identified 88 criminal assets linked to the individual, valued at EUR 1.5 million. These assets included real estate, jewelry, vehicles and a herd of cattle – some of which were also seized. The successful identification of these assets through the Silver Notice helped lay the groundwork for bilateral co-operation between Italy and Brazil on follow-up asset seizure efforts.

Between the lines of Part A of R.40, several important points can be applied to the practice of asset recovery. In paragraph 1, there is a clear responsibility placed upon the requesting state to provide complete and detailed information. There is a calculus here – the need for quick action may counsel reaching out to a foreign partner earlier than anticipated, before the requesting authority has all information about an asset, its owners, its movement, or its destination. On the other hand, reaching out with incomplete or unconfirmed information may result in a less then fulsome response from the requested state.

Therefore, it is a good practice for countries to find a balance between these two concerns in time-sensitive situations. If there is urgency, this should be clearly expressed, along with any caveats that the information contained in the request is preliminary or indicative in nature, but that it is most likely to be confirmable with the assistance of the foreign partner. Sometimes, the key facts that can solidify an investigator's hypothesis (e.g., about who beneficially owns a company or controls a certain asset) are more readily available to the foreign partner. Thus, it takes two partners putting their information together to prove a theory, which is often the proof needed to make the link between offences and the assets or individuals and their concealed interests in criminal property. A request that is well-detailed and substantiated may be more "actionable" by the recipient, but an initial request with less-developed information may be the key that unlocks the puzzle for the requestor. Authorities should strive for a frank conversation about the quality of the information in their requests, providing any "educated guesses" as to the flow of funds, and they should mention any urgency. This should create more fruitful co-operation.

Additionally, Part A emphasises that countries should have openness to (1) helping different types of authorities who may be engaged in asset recovery work, and (2) the possibility that assistance could still be provided, even if there is an ongoing domestic investigation or case, as long as no harm is done to the domestic matter. In each country, and globally, there are an array of competent authorities that have an AR mandate, and they will not necessarily match up when comparing jurisdictions. A request may originate from an anti-corruption authority, a specialised asset recovery prosecution team, an ARO, an investigating magistrate, a security service, or a customs agency, to name a few. The variety of LEAs and judicial authorities pursuing confiscation and the differing legal status of these entities should not deter co-operation.

Moreover, the mere existence of a domestic investigation or proceeding does not render the possibility of providing any assistance impossible. In the AR setting, there could be assets, victims, and offenders located in different countries; there may be places where the predicate offence occurred, the laundering occurred, and the victims were harmed. Many countries may have an interest in a case, and there may be divergence between the countries who primarily have an interest in prosecution (e.g., of their own nationals or persons who committed crime within their borders) and those countries who primarily have an interest to recover or seek return of criminal assets.

It is now commonplace for major cases to have action-points in several jurisdictions. The inflexible response of "no assistance available due to an ongoing domestic matter" may no longer constitute an acceptable answer, especially without further elaboration and understanding. To be clear, jurisdictions are not obliged to provide any assistance that will jeopardise their ongoing investigations or endanger their positions in litigation, but closing the door entirely only because there is a domestic matter concerning the same persons or assets is a strict approach. Instead, it is good practice to first consider whether the case is truly the same, or whether it is merely a related matter whereby certain assistance would not in actuality be problematic. Second, it is a good practice to consider, even if the cases are the same or closely related, how both investigations/cases could be advanced in harmony and how efficiencies might be achieved. As with many aspects of international co-operation, substance should be more important than form. Two LEAs in two countries looking into the same underlying facts is not automatically a conflict: criminals work together across borders, so the power of two LEAs can be leveraged. Protecting a country's interest in a case is integral, but an overly defensive or territorial approach may disregard the benefits that could come from even modest levels of co-operation.

Recommendation 40 mainly addresses "other" forms of co-operation between counterparts that may engage in asset recovery or related financial investigations (for the purposes of this Guidance, mainly FIU to FIU and LEA to LEA). This can raise the question – "other, in relation to what?". R.40 exists in relation to R.37 (on MLA, which is considered to be the main avenue for prosecutorial/legal assistance), and R.38, which deals specifically with asset recovery and can be considered a sub-set of R.37. Finally, R.40 highlights co-operation between non-counterparts, known as diagonal co-operation, and specifies in INR.40, para. 22, that countries are "encouraged to permit a prompt and constructive exchange of information directly with non-counterparts." As to safeguards on information exchange as well as secure co-operation between non-counterparts, as detailed in R.40, see Ch. 4.1.6.

As mentioned above, one of the innovations of the FATF's AR Standards revisions in 2023 was to highlight the role of ARINs and other bodies supporting international co-operation in asset recovery. INTERPOL, Europol, and Eurojust were bodies which were previously mentioned R.40. Egmont Group membership was already a requirement of R.29. But this is the first time that AR-focused groups have been specifically endorsed by the FATF. INR.40, paragraph 20 states: "Countries should take part in and actively support multilateral networks to better facilitate rapid and constructive international co-operation in asset recovery. Countries should apply for membership in a relevant Asset Recovery Inter-agency Network (ARIN) or other body supporting international co-operation in asset recovery."

There has been a proliferation of ARINs since the early 2000s, following the establishment of Camden Asset Recovery Inter-Agency Network (CARIN), officially in 2004. At their heart, these are informal, operational networks which enable and facilitate co-operation in the area of criminal asset confiscation and recovery. They function as "point of contact", membership-based networks whereby countries that are members generally are asked to designate one law enforcement officer and one prosecutor to provide both investigative and legal responses to targeted requests sent by other members of the network. The FATF conducted an exhaustive study of these networks in 2023.[1]

There are now ten ARINs including: CARIN, ARIN Asia Pacific (ARIN-AP), ARIN Central Africa (ARIN-CA), ARIN Caribbean (ARIN-CARIB), ARIN Southern Africa (ARIN-SA), ARIN Middle East and North Africa (ARIN-MENA), ARIN Eastern Africa (ARIN-EA), ARIN Western Africa (ARIN-WA), ARIN Western and Central Asia (ARIN-WCA), and ARIN Latin America (RRAG).[2]

Some networks are regionally based, while others are more geographically expansive in their membership, associate membership, and observership (the rights and access granted to countries holding each status differ). Some ARINs

1. FATF, *Recovering the International Proceeds of Crime through Inter-Agency Networks* (Nov. 2023).
2. In October 2025, MENA-ARIN is hosting its first annual general meeting, at which time it is expected to be formally established.

have secure platforms for the communication of requests, and some rely on contact point emails or encrypted messages for exchanging requests. The ARINs vary in models, funding, governance, etc., but all propose that members can use these direct, informal networks to increase the effectiveness of efforts to deprive criminals of their proceeds though cross-border co-operation that is individualised, timely, and case-specific. ARINs allow co-operation related to all modes of confiscation (from CBC and NCBC to extended confiscation and UWOs), and take a multi-agency approach (meaning the networks can be used by LEAs, police, prosecutors, magistrates, investigating judges, AROs, and AMOs, even if the contact points come from one or two institutions). The requests enabled by the ARINs comprise requests to identify, secure, and confiscate assets, and inquiries can span all aspects of those activities. The ARINs uniquely blend investigative and legal utility, allowing requestors to both trace assets and determine how to restrain or confiscate them. Typically, ARIN requests are used as a gateway to formal co-operation. They can be the basis for drafting more informed, specific, targeted, and answerable MLA requests, when coercive assistance is required. They can also eliminate avenues of inquiry and save time and investigative resources in pursuing assets that are depleted or *de minimis*.

The FATF chose to promote the use of ARINs because they have proven effective over time and have a track record of success in promoting case outcomes; they appear sustainable and have buy-in from many countries and prominent international bodies; and they operate largely based on personal connection, which is often the key to responsiveness in international co-operation. Additionally, since so many FATF and Global Network members were already involved or seeking to be involved in their respective ARINs, the FATF saw the opportunity to increase the network effect and grow the membership of ARINs, thus expanding their reach and usefulness. The networks are only as active as their membership makes them, and ideally, in the future, they could become more interoperable. Another component of the success of ARINs for informal co-operation is the designation of knowledgeable, active, and appropriately positioned contact points from each country. The better the quality of the contact, the better the responses and requests, which will attract more use of the ARIN because it brings good confiscation results.

A question left to this Guidance was what is meant by "take part in and actively support multilateral networks" such as ARINs, as mentioned in INR.40, paragraph 20?

Essentially, this means using the network as intended: authorities should be encouraged to send appropriate requests through the ARINs, and the contact point(s) should follow-up to obtain answers for his or her domestic colleagues. Furthermore, authorities should respond to ARIN requests, promptly and as fully as possible. If requests languish or are never satisfactorily answered, the mutuality and reputation of the network diminishes. If a country is not yet a member of an ARIN, "take part in" can also mean applying for membership or seeking to join a network. Not every jurisdiction has an ARIN membership available to them, which means either using "other bodies" or creating new networks. However, some ARINs allow non-members to send/receive requests, so all possibilities for engagement should be explored if full membership is not an option. "Actively support" is a more advanced form of engagement and can include attending annual or special meetings of the ARIN; providing funding; taking on leadership roles (including joining the steering group); hosting meetings; delivering presentations and sharing good practices with other ARIN members; carrying out work on behalf of ARINs (e.g., drafting documents); and efforts to enhance the ARIN such as through expansion, support to the Secretariat, technical/IT support, or other in-kind or voluntary contributions.

A second question left to this Guidance is, what "other bodies" besides the ARINs might fulfil the Recommendation's goal of co-operation in asset recovery when the option of an ARIN is closed off to jurisdictions?

INTERPOL qualifies as such as body in view of its I-24/7 programme and other capabilities that can be adapted or utilised for the purpose of asset recovery. However, the mechanism offered by INTERPOL with the most direct relevance for co-operation in confiscation matters is the new Silver Notice pilot programme (see Box 66 below). Fifty-one countries are currently members of the Silver Notice Pilot Programme and can send requests, while all 196

Interpol members can receive and respond to Silver Notices. From the FATF perspective, passively receiving Silver Notices is not enough to be active in the body. Otherwise, the criterion would be automatically met by nearly every jurisdiction in the world who merely receives a request. Sending requests through countries' respective INTERPOL National Central Bureaus *and* responding to the Silver Notices by searching for assets as described in the Notice are key components of being active in this context. Responding to diffusions, which are addressed to specific countries, is also considered active use. All substantive responses to such Notices and Diffusions can be valuable, even if no relevant assets are located after sufficient checks are conducted. It is possible that with increasing traction and use (the first request was sent in January 2025), Silver Notices could prove helpful in the investigative stage. Up to 500 requests can be processed during the first year of the pilot programme, and it is likely that this pilot will continue until late 2026. The Silver Notice may potentially be institutionalised alongside INTERPOL's other established colour notices (e.g., Red Notices, Black Notices, etc.).[3]

Practically speaking, once a confiscation judgment has been issued, it needs to be enforced in line with R.4. The search for assets that can be realised to satisfy such orders can be globalised and potentially made more efficient by using the Silver Notice and Diffusion function. This new tool casts a wide net, and it is a good practice for countries to consider whether they have any cases which could benefit from a Silver Notice. Elements which can make a case a good candidate for a Silver Notice or Diffusion include whether the case involves numerous persons, has multi-jurisdictional aspects, and lacks concrete leads domestically but shows indications that assets may be hidden abroad, to name a few.

3. Currently, Silver Notices are for intelligence purposes only. Further evolution might one day include more operational objectives, i.e., if notices could be used to seek the restraint/seizure of assets in other countries.

BOX 66 – **PRACTICAL TIP: INTERPOL Silver Notices**

In January 2025, INTERPOL launched a pilot of its new Silver Notice (and Silver Diffusion), which seeks to target criminal assets. Along the lines of Red Notices and other colour-coded, purpose-driven alerts, the Notices can be sent to all 196 INTERPOL members (e.g., to look out for assets of major criminal figures) and Diffusions can be sent to specific jurisdictions in a targeted manner where it is likely/possible that assets will be located in a particular case.

The purpose of a Silver Notice (or Diffusion) is to enable member countries to:

- Locate assets,
- Identify assets,
- Obtain information about assets, and/or
- Discreetly and/or continuously monitor assets.

INTERPOL supports member countries in ensuring wide access to the Silver Notice from a range of relevant domestic agencies, which can include AROs, FIUs, prosecution offices, and judicial authorities, among others.

Currently, Silver Notices are limited to non-coercive measures, meaning that the freezing or seizure of those assets cannot yet be requested through INTERPOL, but all the information about the assets can be exchanged with a view toward follow-up action – specifically, bilateral co-operation such as requests for financial records, interviews, searches, seizures, restraints, and confiscation. There are 51 countries participating in the pilot programme, including 11 in Africa, 9 in the Americas, 8 in Asia/Pacific, 18 in Europe, and 5 in MENA, which will run until at least November 2025 and may be extended. Italy's Guardia di Finanza sent the first Silver Notice seeking information on a senior member of the mafia.

While large-scale "legacy" cases may be good for initially testing the Silver Notice system, it will also be important to test the capacity of the system with new cases, to see if it can function as an accelerant of ongoing investigations.

In addition to INTERPOL's "police to police" model, other bodies may qualify as those facilitating international co-operation on asset recovery. The Egmont Group and FIU.net certainly play a major role in the exchange of financial intelligence which enriches financial investigations and enables asset identification and eventual recovery. Egmont's "overall goal of strengthening information-sharing mechanisms among its members to combat money laundering, terrorist financing, and associated predicate crimes" is complementary to and can aid asset recovery efforts. However, because the FATF already mandated Egmont membership per R.29, the new Standard in R.40 must mean something different and apart from Egmont, in line with the intent to promote informal co-operation specifically in the area of asset recovery. Otherwise, if Egmont Group could satisfy the new requirement to take part in ARINs or "other bodies", then there would have been no expansion or improvement in this part of the revised Recommendation. This new criterion does not merely duplicate c.29.8 of the Methodology.

If an ARIN is not accessible to a country, the country may be able to show technical compliance with c.40.23(b) by taking part in "other bodies" supporting international co-operation in asset recovery. Such bodies should **have asset recovery as their primary purpose or a major purpose**, they should be **operational in nature** (e.g., not policy, assessment, or academic bodies), and they should be **continuous** (e.g., not a single event or one-off meeting). The FATF specifically endorsed networks where information can be exchanged and co-operation can occur in real cases so that greater AR effectiveness can be unlocked. In the context of a mutual evaluation, countries may wish to explain co-operation networks which have been useful to them in concrete cases, and which may also qualify as "other bodies" under c.40.23 of the FATF Methodology.

ADDITIONAL CONSIDERATIONS

Some examples of bodies which could be considered as supporting international co-operation in asset recovery include INTERPOL (I-24/7 and Silver Notice), the Global Forum on Asset Recovery (Action Series for Practitioners), the Balkan Asset Management Interagency Network, the GlobE Network (Secure Communications Platform for information exchange), the International Anti-Corruption Co-ordination Centre (IACCC, a LEA co-ordination platform for grand corruption cases), or the Southeast Asia Justice Network (SEAJust).

On the other hand, some regional or multilateral bodies would not qualify as operational in nature, even though they may convene practitioners and provide a venue for networking and collaboration among countries on the margins. While convention-based conferences such as the UNCAC CoSP and IRM or and the Global Forum on Transparency and Exchange of Information for Tax Purposes produce relevant peer reviews, they are not considered operational in nature. Likewise, the Anti-Money Laundering Operational Network (AMON) or the International Association of Anti-Corruption Authorities (IAACA), for instance, facilitate relevant work, but are not specifically designed as co-operative bodies having asset recovery as a main or major purpose. While acknowledging the value of all of these forums, they likely do not fit this specific R.40 criterion.

In sum, countries should actively support multilateral networks such as ARINs. Practically speaking, this means to actively engage with the networks in order to make effective and timely use of them in the context of domestic and foreign investigations. This engagement comes about in various ways: **first**, by establishing appropriate points of contact for these networks. It is particularly important to have representation from (prosecutorial) justice ministries/departments as well as law enforcement agencies. This is beneficial as justice representatives can provide a broader

range of assistance, elucidate the legal requirements to be met, and contribute legal information that is complementary to the factual information that may be provided by LEAs.

Second, a country's contact points should make pro-active use of the networks, not merely serve as a post-box or unattended email address for incoming requests. To do so, representatives should seek to promote the use of ARINs and similar networks among their domestic LEAs and/or prosecutors. They will want to familiarise their colleagues with these channels and the helpful tools they can provide to investigations, so that operational and judicial authorities will actually make use of ARINs and other relevant networks to obtain critical information to locate and secure assets abroad. The contact points should consider advocating for how the networks can help advance their country's investigations, and allow for timely freezing, seizing, or confiscation of said assets. At the same time, they will also rely on domestic colleagues to answer requests and incoming ARIN requests, as the networks operate on the notion of mutual benefit.

Obtaining preliminary information informally via ARINs or other multilateral networks will most likely lead to more successful outcomes when utilising MLA channels. This information helps make the MLA requests more targeted and actionable in relation to specific assets, both streamlining efforts and saving time in what can sometimes be a lengthy formal process.

In terms of other forms of informal co-operation, there are several other options beyond ARINs and similar bodies. As set out in R.40/INR.40, informal co-operation can be accomplished through various channels: police-to-police co-operation (whether it be through liaison officers or participation in bilateral or multilateral networks), or obtaining financial intelligence information through FIU channels. According to INR.40, paragraph 17, "[c]ountries are encouraged to join and support existing AML/CFT law enforcement networks, and develop bilateral contacts with foreign law enforcement agencies, including placing liaison officers abroad, in order to facilitate timely and effective co-operation."

In order to render informal co-operation as effective as possible, it is important for countries that law enforcement participate in at least one or more of the numerous, existing law enforcement networks and working groups. While the well-known choices oriented to police are INTERPOL and Europol, other networks exist. Some focus on certain categories of predicate offences and promote confiscation as a major pillar of their work. These networks and working groups make connections between likeminded LEAs and afford important bilateral contacts. This can facilitate the transmission of information in relevant cross-border investigations, either by design or as a by-product of the relationships built within the groups.

ADDITIONAL CONSIDERATIONS

For example, **on tax**, there is the Task Force on Tax Crimes and Other Crimes (TFTC), the Network of Tax Organisations, and the OECD Forum on Tax Administration. **On corruption**, there is the Global Law Enforcement Network against Transnational Bribery (GLEN), the OECD's Working Group on Bribery Network of Law Enforcement Officials (LEO), the ACN Law Enforcement Network (Eastern Europe and Central Asia LEN), the Latin American and Caribbean LEN, the APEC ACTWG's Network of Anti-Corruption Authorities and Law Enforcements Agencies, the European Partners against Corruption (EPAC), and the GlobE Network. In smaller groupings, there is the Commonwealth Network of Contact Persons, the Five Eyes Law Enforcement Group (FELEG), and the EC's Law Enforcement Networks Working Group (LENWG).[4] Beyond police networks, there are also **prosecutorial or judicial networks** that can be leveraged for informal co-operation, including the International Association of Prosecutors

4. See also StAR (UNODC/World Bank), *International Partnerships on Asset Recovery* (2019). This directory examines possible strategies for international cooperation and the distinction between formal requests and informal assistance and lists existing asset recovery networks, along with information about their structure and operations.

(IAP), Ibero-American Network of Prosecutors against Corruption, the Judicial Co-operation Network for Central Asia and Southern Caucasus (CASC), the European Judicial Network, the Southeast Asia Justice (SEAJust) Network, and the West African Network of Central Authorities and Prosecutors (WACAP).

Another channel for informal communication and co-operation is establishing "liaison" or "contact" offices and personnel abroad. Liaison officers can develop important contacts with foreign law enforcement agencies, tax authorities, revenue and customs authorities, and anti-narcotics agencies, among others. Their activities and co-operation remain within existing bounds of co-operation or information sharing. The establishment of these varied liaison networks ensures that at critical moments of a dynamic financial investigation, relevant contacts and relationships are in place and can be utilised to obtain information, contacts, and clarifications readily and rapidly. This may be particularly useful as regards co-operation for freezing, seizing, and confiscating, as well as for seeking and obtaining evidence and advice.

These liaisons can form a bridge to law enforcement databases in their home country, and can also tap into the expertise of asset recovery practitioners and specialists who can provide legal and practical advice on options available. A well-connected liaison can facilitate direct co-operation on a daily basis and may even assist in developing investigative and case strategies that seek to capitalise on the legal and operational strengths of both partners. For example, liaison officers can help foreign partners consider possibilities for expeditious freezing and seizing or quickly answering asset tracing requests. They can swiftly seek information available in their home country, such as BOI, or potentially answer questions about the existence/non-existence of bank/financial accounts.

It is a good practice for countries to consider placing law enforcement liaison officers in the capitals of their key foreign partners with whom the country does significant volumes of joint and co-operative work. If resources allow a sizable presence, this is beneficial, but even one or two officers in strategic locations can pay dividends in terms of co-operation outcomes. Ideally any officers selected would be qualified and experienced, speak the local language, and remain in-country for a sufficiently long period of time to develop trust and establish a reputation for reliability among foreign counterparts. In addition to or in lieu of LEAs, countries may also consider placing prosecutors or liaison magistrates abroad, as has been the practice in France, for example.

Per INR.40, paragraph 18, LEAs "should be able to exchange domestically available information for intelligence or investigative purposes and co-operate with foreign counterparts to identify and trace criminal property and property of corresponding value, and in support of the freezing, seizing, and confiscation of such property through the formal mutual legal assistance process." This is a new addition which builds on paragraph 15, related to ML, TF, and predicate offences. A central use of such informal co-operation is to identify and undertake asset tracing, or asset mapping, at an early stage. The information which can be exchanged – whether it be banking information, real estate ownership information, or blockchain information – will differ from country to country, but should include a wide variety of information and certainly include that which the LEA can access in its own investigations without seeking court approval.

For example, LEAs have access to national/sub-national databases not accessible from abroad, and other non-public, sensitive information. LEAs may have their own analytic, intelligence, and case files; records; and connections to other similar information held by other agencies. Unless the source of the information is truly restricted or indicates that it cannot be shared with foreign partners, it should be shared to the extent possible in response to a valid foreign request. Many databases, systems, and resources available to LEAs require a "legitimate law enforcement purpose" to access them (including occasionally the provision of an affiliated case or file number). It is a legitimate purpose to provide assistance to foreign partners and any bureaucratic obstacles to accessing this information on behalf of foreign LEA counterparts should be addressed (e.g., if a case number is needed, and there is not an open domestic case, then open one for the purpose of providing assistance).

BOX 67 – **COUNTRY EXAMPLE: The US Law Enforcement Attachés Network**

The US has several LEAs that have a responsibility and statutory authority to conduct financial investigations and carry out forfeiture. Without considering those solely serving in a technical assistance capacity, the US has dozens of law enforcement officers from various agencies stationed in foreign jurisdictions to serve as liaisons to the country where they are posted and co-operate with foreign law enforcement partners. These officers play a critical role in information sharing and exchange, helping foreign LEAs obtain investigative assistance and evidence from the United States, and seeking assistance from foreign partners in domestic investigations. They serve as a link between the country and the operations at home, but do not conduct law enforcement activity abroad. They may consult and advise foreign law enforcement and are generally the first stop for any foreign LEA needing to further a case with connections to the US or US persons. International liaison and information sharing are conducted in accordance with executive orders, laws, treaties, Attorney General Guidelines, agency policies, and interagency agreements, and all have the agreement of their hosts. These liaison officers are essential for successful cross-border co-operation, including on asset recovery, and they build deep and lasting relationships (in the local language) in their countries.

The international liaison network includes sworn special agents from the following major LEAs, known as "legats" or legal attachés:

- Federal Bureau of Investigation (FBI) – 62 legal attaché offices and 36 sub-offices in key cities around the globe, providing coverage for more than 180 countries, territories, and islands. FBI has also established a Joint Terrorism Task Force in one foreign country (building on the domestic JTTF model).
- Drug Enforcement Administration (DEA) – 91 foreign offices in 68 countries.
- Internal Revenue Service, Criminal Investigation (IRS-CI) – 11 attaché offices strategically positioned abroad.
- Department of Homeland Security, Homeland Security Investigations – 90 offices in more than 50 countries.

The US Department of Justice also has placed several experienced federal prosecutors abroad to support investigations and prosecutions conducted by US and foreign law enforcement authorities. There are DOJs attaché in Mexico City, Rome, London, Paris, Bangkok, and The Hague, as well as a senior counsel in Brussels. This does not include the dozens of resident and intermittent legal advisors (RLA/ILA) posted abroad on capacity building missions.

ADDITIONAL CONSIDERATIONS

Another consideration for LEAs in responding to informal requests is that they may not be able to share the information they find which is responsive in its raw form. It is a good practice for LEAs to be able to translate this information into shareable form, which may mean repackaging it (re-writing it), summarising it, leaving out some details, or providing a more generic response that still gives a valuable lead. Such a lead can prompt the requesting country to send another request, perhaps in a different form or to another agency. Some examples of this strategy are below.

BOX 68 – **PRACTICAL TIP: Responsive Answers – Translating LEA Information into Sharable Form**

- **Example 1:** The LEA in Country A has direct access to financial intelligence through the FIU database. LEA in Country A receives a request from a foreign LEA in Country B about six suspects. Among other valuable information located, the LEA finds that there have been two STRs filed relating to these suspects by FIs in country A. They disclose the existence of ten bank accounts linked to the suspects, as well as two foreign companies, two domestic companies, and an address in Country A associated with one of these companies. LEA in Country A may not be able to directly transmit these STRs abroad, but it can do several things:
  - Tell the LEA in Country B that it should have Country B's FIU send an Egmont request.
  - Include the names of the companies in a responsive letter or report, without disclosing the source.
  - Mentions the banks and the account numbers so they can be included in a future MLA request for bank records.
  - Conduct additional investigation/research on the address of the property, and share the results.

- **Example 2:** The LEA in Country A is investigating a major organised criminal group and it sends a request to the LEA in Country B for information on the financial profile on one of the leaders of this group. It has reason to believe the suspect has conducted financial transactions with various individuals and entities in Country B. Country B's LEA searches for responsive information, and finds little, but one "hit" indicates that the individual was mentioned in a wiretapped call between two suspects in a domestic money laundering investigation. As a result of this mention, the name was included in Country B's LEA database. Country B knows that there is a connection between these ML suspects and the main suspect in Country A, but the officer may not be able to disclose why or how it knows that. No assets were located, but this is a valuable lead and one which may result in the discovery of financial links or assets later on.
  - A responsive letter or report could be sent to the LEA in Country A stating that the suspects may associated with or share business interests with suspects under investigation in Country B.
  - A secure phone call between the relevant investigators can be proposed to discuss the common figures and the potential overlap in investigations. This may lead to the opening of new lines of investigation or new subjects or targets.
  - The existence of the wiretap, which may be subject to strict controls, is never shared. The source of the intelligence becomes irrelevant once other information exchanged between the LEAs can corroborate the relationships.

As mentioned above, informal LEA contact can help lay the groundwork for a more well-developed and actionable MLA request. Rather than sending an MLA request that can be characterised as a "fishing expedition," which may not be executed, or only in a delayed fashion, using informal co-operation to undertake early-stage asset identification and tracing will normally result in a better MLA request that contains contain concrete, detailed information that can be more rapidly executed by the requested country.

Another practical use of informal co-operation is to obtain information regarding legal requirements (evidentiary thresholds, the legal process, investigative powers, available/unavailable information, rules about disclosure or notice, etc.). Receiving this background in advance can help the requestor to develop their investigative or case strategy. It can also help prime an eventual MLA request to include the necessary information, and can expedite its execution by the requested country. This avoids unnecessary delays caused by the requested country asking for supplemental information.

Also, under INR.40, paragraph 18, LEAs "should be able to commence domestic investigations or proceedings based on such information received from foreign counterparts, in appropriate cases." This can be interpreted two ways: (1) the *requested* LEA, in reacting to information provided by a foreign partner, finds a basis for opening its own investigation based on the discovery of substantial connections its own country (e.g., a domestic offence, a domestically-based suspect, or the laundering of foreign proceeds within its jurisdiction), or (2) the *requesting* LEA receives such valuable information from a foreign partner that this prompts the opening of a domestic investigation or proceeding (the initial request may have been sent during an intelligence gathering phase or was based on preliminary work which had not yet developed into a formal/full-blown investigation).

Developing a multifaceted view of information accessible in different countries can be the catalyst needed to advance or expand an investigation or develop a clearer picture of criminal conduct and networks, financial flows, and the location of criminal property to potentially seize and confiscate. This second sentence of paragraph 18 encourages LEAs to think of the confiscation possibilities when exchanging information with foreign counterparts, including the possibility of approaching prosecutors/lawyers in their country to commence confiscation proceedings (including NCBC, when appropriate). If domestic proceedings are to be initiated based on information received from foreign counterparts at the LEA level, the country opening the investigation should generally consult or inform the requesting country beforehand, so as not to jeopardise any ongoing investigation abroad.

INR.40, paragraph 19 sets out two new purposes of informal co-operation between LEAs. These have major implications. Paragraph 19 states: LEAs "should be able to spontaneously share relevant information regarding criminal property and property of corresponding value with foreign counterparts without a prior request, in appropriate cases" and "should be able to spontaneously identify and trace criminal property and property of corresponding value if they suspect that such property relating to a foreign investigation may be located in their jurisdiction." This is a significant development because it asks LEAs not only to think about their own interests in asset recovery, but the potential interest of other countries.

The first clause is an invitation to alert countries to the existence of potential criminal property when uncovered in the course of regular business, and this will be particularly relevant in situations where the investigation in the disclosing country is going in another direction, or focusing on certain assets or individuals, but there may be assets of interest to other LEAs. It is also an invitation to alert other countries about assets which the disclosing country may have no interest in pursuing for confiscation because they are not connected to the main suspects/defendants, or because they are not connected to any domestic suspects, but the circumstances of their transfer or acquisition raises red flags for ML or predicate offences. One jurisdiction's drug trafficking investigation may often be another jurisdiction's money laundering investigation. For example, the Danish ARO have pursued a case related to a foreign European country where the financial investigation revealed that the perpetrator had placed his criminal profits out of Denmark in this specific country. In addition to sending an MLA request, a Danish delegation was sent to the country to give a case presentation and start planning for an upcoming action day in close co-operation with the country authorities. This led the country to conduct their own ML investigation. During the action day, several assets were seized related to both the Danish drug trafficking case and the ML case as well. A physical meeting prior to the action day led to a closer co-operation between the two countries and most likely more criminal assets being seized.

The second clause is an invitation to be responsive to world events, significant investigations occurring abroad, and to undertake logical and tailored "targeting" of possible criminal property.

ADDITIONAL CONSIDERATIONS

The following are some examples of when LEAs may wish to identify assets that may exist in their own country due to ties or connections between the country and conduct or individuals abroad:

- An exposé is published which sheds light on new, significant conduct which may be criminal in nature, and which likely has financial links to your country, based on reported facts/circumstances;
- A major case is unveiled in a country with which your country has close relations (e.g., former colonial ties, neighbours sharing borders, strong people-to-people, trade, or financial links);
- A cataclysmic event occurs elsewhere, such as a major terrorist attack, the overthrow of a government, the outbreak of cross-border gang wars, the arrest of a kingpin or major figure, etc., and there is reason to believe there are financial links or related assets in your country.
- The next "leaks" are reported (e.g., Panama Papers, Paradise Papers, FinCEN Files, Luanda Leaks, Lux Leaks) and new open source information triggers a closer examination of possible financial links or assets in your country.

In the second clause scenario, the LEA need not confirm that there is a formal investigation occurring in the foreign country, but this may be obvious or inferred. This provision is not intended to prompt countries to act in every possible situation. It is only for "appropriate cases", as identified by the LEA. Moreover, it is not an overarching obligation to chase assets connected to every crime occurring in the world, to become the international police, or to divert resources away from domestic priorities. A country would not be expected to face criticism for not spontaneously undertaking such activity, or for failing to identify, on their own initiative, specific assets linked to foreign investigations.

However, this provision invites LEAs to be openminded to all realistic and reasonably relevant sources of information, and to be pro-active against the threat that assets within its jurisdiction may be derived from crime (even if crimes committed or which appear plausibly to have been committed abroad). This is similar to understanding the ML risk faced by a country concerning the proceeds of foreign predicate offences, but it is more threat-focused, concrete, and geared towards potential confiscation. Asset recovery includes not only the pursuit of assets that have flowed abroad in a country's own investigations, but the pursuit of assets that may constitute proceeds in another country's cases. LEAs will be aware of their country's potential as a destination for criminal property, both broadly, and in specific situations.

For both parts of paragraph 19, LEAs "have discretion on when and under what conditions to share such information, for example, so as not to prejudice domestic investigations." This is an important safeguard which complements the purpose of paragraph 19, which is for LEAs to be as engaged, pro-active, and communicative in asset recovery as they would be in ML or TF cases, and responsive to all reasonable leads indicating the strong likelihood of the existence of assets which may become subject to confiscation. Increased levels of engagement are needed to detain and eventually deter the investment and concealment of criminal proceeds around the world, as asset recovery is now rarely a solo effort.

Although not specifically related to AR, and not a new requirement, LEAs should also "be able to form joint investigative teams, and, where necessary, countries should establish bilateral or multilateral arrangements to enable such joint investigations" under INR.40, paragraph 18. Participation in a JIT or mini-JIT (or parallel investigation, as circumstances require) is a concrete way that countries can use law enforcement co-operation to accomplish tasks and to facilitate formal co-operation. Countries are encouraged to participate in JITs, established independently or through INTERPOL,

Eurojust, Europol, or other regional platforms at both the LEA and prosecutorial level. This allows for pooling of LEA and judicial resources, combining intelligence, sharing information more seamlessly, and for participating countries to obtain evidence informally. These arrangements may allow LEAs to open or advance domestic investigations and identify new AR opportunities. JITs are generally classified as mechanisms of formal cooperation, given that they are established through formal agreements between the involved countries to collect evidence in the context of specific cases. These agreements enable participating LEAs and prosecutors to exchange information and evidence without the need for MLA requests. This exchange is possible precisely because it is grounded in a JIT agreement. JITs can enable cross-border financial investigations, as seen in the second example in the Box below.

Lastly, as related to informal co-operation, it is important to highlight the utility of FIUs exchanging information through Egmont Secure Web, FIU.net, CIS FIU IES and SOINET,[5] and bilaterally, which can aid asset identification and

5. The Council of Heads of FIUs of the CIS Member States was established in 2012 and SOINET provides a secure co-operation platform for its seven member jurisdictions.

BOX 69 – COUNTRY EXAMPLES: Multilateral and Bilateral LEA Co-operation

EUROPOL: Between 13-17 January 2025, Europol brought together 80 financial experts from all around the world to participate in Project A.S.S.E.T. (Asset Search & Seize Enforcement Taskforce), a unique initiative aimed at enhancing the number of criminal assets seized globally. In total, 43 law enforcement agencies from 28 countries joined the operation, as well as authorities from international organisations, including Eurojust and INTERPOL. The specialists pooled their knowledge and expertise to establish a new organisational workstream to identify, freeze and seize criminal assets through all possible means available. This includes sharing expertise in identifying persons and new modi operandi surfacing in money laundering schemes, and planning joint actions to seize assets. Throughout the operation, experts identified:

- 53 properties, 8 of which were valued EUR 38.5 million;
- over 220 bank accounts, including one with a USD 5.6 million balance;
- 15 companies, over 20 yachts and luxury vehicles, 4 of which were valued more than EUR 600,000; and
- 83 cryptocurrency addresses and wallets.

A key result of the operation was the freezing of EUR 200 000 in cryptocurrencies.

More generally, in 2024, Eurojust set up the Judicial Focus Group on Money Laundering and Asset Recovery composed of prosecutors and judges (Contact Points) from Member States, partner countries, and other relevant partners (FIUs, AROs, AMOs, LEAs, crypto-experts, financial experts, etc.) with expertise in ML and AR. The Judicial Focus Group was established as there is an identified blind spot between ML and AR that requires bridging, such as through familiarising judicial practitioners with AML measures, financial investigations, the new powers of AROs, BO registers, freezing and confiscation measures, restitution and compensation, asset management, and costs of execution.

ISRAEL: The DS case is an example of both a parallel investigation and a JIT involving a EUR 50 million business email compromise fraud. Countries X, Y, Z, and Israel formed a JIT, and there was a parallel investigation initiated in Israel. Country Y sought the extradition of a suspect from Israel. Israel opened a fiscal investigation ahead of the planned arrest of the suspect. Multiple properties were seized on the agreed-upon takedown date and following arrest, the suspect was eventually extradited. The properties were seized using tax recovery powers and final forfeiture proceeds are now underway.

tracing on a regular basis. The exchange of financial intelligence is crucial for investigations supporting asset recovery, and FIUs have established bilateral agreements, standing dialogues, and case specific meetings for this purpose. Egmont, in its paper entitled Asset Recovery – The Role of FIUs, concluded that FIUs can have a higher impact and best support global AR efforts in the earlier stages of the process (asset identification and suspension), but there may be other relevance for FIU co-operation, as some FIUs can participate in court proceedings. Of particular note, it is a good practice for countries attempting to uncover ownership to resort to FIUs for BO information. Some FIUs may be the custodians of BO information, but all FIUs, as competent authorities, should be able to access BO information (e.g., through obtaining it from the domestic holder, such as a BO register or a tax authority, or through information supplied by reporting entities) (see R.24). Even if the FIU does not hold or cannot directly access BO information, they are well positioned to assist in identifying the true owners of entities by following the money linked to them using their vast sources of data, intelligence, and other information. FIUs may also have the ability to use a domestically available suspension or freezing power on behalf of a foreign partner.

Informal co-operation between FIUs related to AR has the advantage of being secured, well-defined, longstanding, and generally without obstacles including as to the status of the FIU (administrative, law enforcement, judicial, other). Egmont's membership covers most jurisdictions in the world, meaning that information exchange internationally, both upon request and through spontaneous disclosures, is well established. As with LEAs in paragraph 19, countries are encouraged to set policies or guidelines about when asset recovery issues or opportunities may prompt spontaneous disclosures by an FIU to a foreign counterpart.

The investigation, tracing, and freezing of virtual assets is becoming normalised, but international co-operation for this type of property is still nascent, and increasingly needed. Some practical considerations related to VA in the informal co-operation space are worth mentioning. While MLA may eventually be required, competent authorities may need to act quickly to secure VA in wallets located abroad. As suspension and withholding of consent becomes more ingrained, in line with revised R.4, there is a requirement that these orders will be able to reach not only more traditional FIs and DNFBPs, but VASPs as well. As work by the FATF's Virtual Asset Contact Group has shown (see June 2025 Targeted Update on Implementation of the FATF Standards on VAs and VASPs), the Global Network is making some improvements in compliance with Recommendation 15 as to the registration and licencing of VASPs and imposing and enforcing AML/CFT obligations. As the licenced population of VASPs increases, there may be more opportunities for competent authorities to send requests to suspend transactions to foreign partners, who can then reach out to their regulated VASP sector.

Functionally, some competent authorities reach out to foreign VASPs directly for voluntary assistance with immediate freezing requests. This can work if the VASP is co-operative and receptive to such outreach, but it can also bring up possible issues of sovereignty, unauthorised law enforcement action in a third-country, and data privacy. If LEAs pursue type of outreach, they could consider either channelling the informal request through a local LEA or informing them as a matter of courtesy. The need for a swift restraint of VA may supersede other considerations, and if a particular VASP serves clients abroad and is open to informal outreach from international LEAs, then this may be a logical step in a fast-paced investigation.

Some VASPs are willing to unofficially freeze wallets for foreign law enforcement, especially if legal process is pending, but these internal policies can also change, sometimes without notice. Such freezes may be a stop-gap measure, but they are not guaranteed to secure the assets, which can only be done with legal certainty through the execution of a request in accordance with local law. The countervailing pressure is that such formal assistance may be entirely too late to stop the virtual assets from moving and some VASPs are established in jurisdictions without the capacity to process potentially hundreds of urgent MLA requests per year. Countries are encouraged to build partnerships with VASPs who may be open to liaising with LEAs.

BOX 70 – **COUNTRY EXAMPLE: Assistance Obtained by Peru from VASPs**

There have been examples of direct co-operation provided by certain VASPs, both for access to user information and for the enforcement of judicial decisions on the seizure and confiscation of VA. A notable example is the case of Peru, where, in the context of a financial investigation linked to a procedure for the extinction of ownership, direct co-operation with the support of the FIU made it possible to identify, freeze, and seize VA linked to fraud offences which were hosted by well-known, large VASP abroad. These assets were transferred to the National Programme for Seized Assets (PRONABI) for temporary custody while the final decision is being resolved. The total value of the seized assets amounts to approximately USD 7.5 million dollars in cryptocurrencies. In such cases of direct assistance, it is essential that procedures respect due process and the right to a fair trial.

6.2. Formal international co-operation

Recommendation 37 governs all formal co-operation with regard to MLA, while Recommendation 38 covers MLA specifically related to asset recovery. When applying the components of R.38, R.37 applies equally. Recommendation 37 states that "[c]ountries should rapidly, constructively and effectively provide the widest possible range of mutual legal assistance in relation to money laundering, associated predicate offences and terrorist financing investigations, prosecutions, and related proceedings." It states that countries should have an "adequate legal basis for providing assistance" (i.e., a bilateral treaty or multilateral convention). Reading R.37 and R.38 together helps define the scope of assistance related to asset recovery, as seen in the Box below. The enforcement of foreign orders is dealt with in Ch. 6.3.

As set out above, countries should approach international co-operation with the view of providing "the widest possible range of mutual legal assistance" (per R.37) and "should have in place the widest possible range of treaties, arrangements, or other mechanisms to enhance co-operation in asset recovery" (per R.38). This language is broad and represents some of the strongest terminology in the FATF Standards. In practical terms, this means that countries should have plenty of options. It is also beneficial to seek to make the formal MLA process as streamlined as possible and remove technical impediments or operational practices that may cause undue delay. While this is a guiding rule for all MLA requests, it is particularly important for asset recovery-based MLA requests, which by their nature, must be executed in as timely a manner as possible, particularly when there is a risk of dissipation of assets. The Box below compiles the requirements of both Recommendations.

Generally, MLA requests related to asset recovery will fall unto two buckets: requests related to the gathering of evidence, including financial records, and requests seeking the freezing/seizing/confiscation of assets. The purpose of the first type of request will be to understand the flow of funds, identify money laundering transactions, and identify assets. They may include, among other things, requests for records, confirmation of ownership of various types of property or legal entities, searches, or witness interviews and testimony. They are more investigative in nature. The second type of request indicates that the authorities are ready to initiate the next phase of the process, either towards securing assets through provisional measures or final confiscation. As to the first category, it is advisable to do as much asset tracing as possible informally. As discussed in the previous chapter, the better the informal co-operation, the less necessary or more targeted MLA becomes. If MLA is being used primarily *to conduct* an investigation, as opposed to papering the conclusions of an investigation and obtaining evidence for use in court, this may be a missed opportunity. Additionally, although freezes and restraints can be conducted informally, as highlighted previously, a provisional measure of significant duration and the pursuit of final confiscation will – more often than not – necessitate the use of MLA channels.

Under R.37, countries should, when making MLA requests, make best efforts to provide complete factual and legal information that will allow for timely and efficient execution of requests, including any need for urgency, and should

BOX 71 – PRACTICAL TIP: Requirements of R.37 and R.38 Combined

Substantive requirements – countries should:

- Rapidly, constructively, and effectively provide the "widest possible range" of assistance
- Have in place treaties, arrangements or "other mechanisms" to enhance co-operation in ML, associated predicate offences, TF *and* asset recovery including (1) CBC, and (2) NCBC*
- Have measures to take expeditious action in response to request to *identify/trace/evaluate* criminal property or corresponding value
- Have measures to take expeditious action in response to request to *freeze/seize/confiscate* criminal property or corresponding value
- Adopt measures as may be necessary to enable them to provide a wide scope of assistance even in the absence of dual criminality
- Assess dual criminality broadly (considering the underlying nature of the conduct, not the name/category of the offence)
- Be able to use all powers available to domestic authorities under R.31 and other investigative techniques available domestically (including in response to direct requests from LEAs or judicial authorities, if permitted)
- Consider applying mechanisms to avoid conflicts of jurisdiction if the defendant could be prosecuted in more than one country
- Be able to recognise and enforce (1) foreign freezing/seizing orders and (2) confiscation orders
- Be able to manage property subject to confiscation at all stages of the AR process
- Be able to share confiscated property, in particular when confiscation is the result of co-ordinated LE action
- Be able to return confiscated property
- Be able to make arrangements to deduct or share substantial or extraordinary costs incurred when enforcing orders in view of confiscation

Process requirements – countries should:

- Have clear, efficient processes to timely (1) prioritise and (2) execute requests
- Use a central authority (or other mechanism) for transmission/execution of requests
- Have a central authority with adequate financial, human, and technical resources and staff with high professional standards, integrity, and skills
- Monitor progress on requests through a case management system
- Protect information subject to legal professional privilege or secrecy, as needed
- Protect the confidentiality of a request/information therein to protect the integrity of the investigation
- Inform the requesting country if it cannot protect the confidentiality of the request/information therein
- Provide complete factual and legal information in requests
- State the need for urgency in requests, if any and send request using "expeditious means"
- Make best efforts to ascertain legal requirements or formalities required by the requested country *before* sending a request
- Be able to provide "further related assistance" on an initial request without necessarily requiring a supplemental request

Countries should not:

- Refuse to execute a request on the sole ground that it is considered to involve fiscal tax matters
- Refuse to execute a request on grounds of financial secrecy
- Refuse to execute a request on the sole ground that it is related to NCBC
- Require dual criminality for *non-coercive* assistance

* See detailed guidance on co-operation in NCBC matters in Ch. 5.4.5.

send requests using expeditious means. Countries should, before sending requests, make best efforts to ascertain the legal requirements and formalities to obtain assistance. In practice, most jurisdictions already have or are moving to the electronic transmission of MLA requests, which is highly encouraged. Countries should also make clear, on the websites of their competent authorities, who the central authority is for requests under all of its treaties. Ideally, this is the same authority regardless of the instrument, but some countries, especially with older treaties or conventions, have two or even three or more central authorities, reflective of changing responsibilities and structures over time. Central authorities are often located in Justice ministries, with the attorney general or public prosecution service, in foreign affairs ministries, and sometimes in LEAs.

ADDITIONAL CONSIDERATIONS

It is a good practice to streamline authorities involved in MLA, including to identify one, consolidated central authority for all requests and minimising the number of actors involved to the greatest degree possible. Some requests, for instance, those without a treaty basis and which operate on the legal basis of reciprocity, may need to be transmitted through a ministry of foreign affairs (MFA) by default. MFAs are critical for diplomacy, including the negotiation of MLATs and asset sharing agreements, however, the extent to which they need to be or should be involved in the actual processing and execution of requests will depend on the country. In some countries, there is an MLA or MLA and extradition unit within the MFA, considered to be the central authority. Countries may wish to evaluate whether the designation of an MFA as the central authority is efficient. Such units are usually not operational authorities and they are not judicial authorities, meaning that they may not possess the day-to-day experience with law enforcement issues or case work. Sometimes, these MFA entities may need to – by treaty – be involved with the execution certain types of MLA requests. They may not necessarily need to be involved in all cases.

However the system of processing requests is designed in a country, it should be geared to minimise or eliminate excessive formality, potential intrusions of political interests, and steps which serve no real purpose. It is a good practice to ensure that requests are received, quickly reviewed and prioritised, and assigned to an executing authority as efficiently as possible. The initial receiver of the request should transmit requests with haste, especially if they play no role in executing the requested assistance.

When preparing an MLA request, it is important that requesting countries have clear guidance on not only the routing, but the legal requirements. This helps avoid undue delays in execution of the requests, and is particularly necessary for requests for freezing/seizing/confiscation of property, since these requests are by their nature, coercive measures, which likely require dual criminality.

ADDITIONAL CONSIDERATIONS

One best practice is for countries to prepare easily-accessible guides that clarify the legal requirements that can allow requesting countries to prepare requests that accord with relevant requirements and maximise chances for success on the first attempt.[6] However, as underscored in the previous section on informal co-operation, it is not considered a good practice for countries to be sending completely "cold" MLA requests that arrive without warning, and without any prior consultation on the purpose or particulars of the request. This may be

6. UNODC compiles guides on international co-operation in asset recovery from different countries. For the members of the G20 Anti-Corruption Working Group, these guides were updated in 2023 and are uploaded in the form received from the States. Switzerland, for example, is a country which receives a significant number of requests related to asset recovery. It has published a guide on how to recover unlawfully obtained assets located in Switzerland detailing the process and core legal provisions.
See *BJ Brochure on Asset Recovery* (English).

workable for some forms of MLA, including for precursors to asset recovery (e.g., if simple bank records are sought), but even then, there could be some pre-work which could ease the co-operation between the countries. For example, this may include communications to determine if the account exists, if additional accounts owned by the same parties may exist, any specific transactions or non-suspects of investigative interest, the date range of investigative interest, and the relevance of the records sought to the financial investigation. If a cold request is received for a more complex matter, like the restraint of assets or enforcement of an order, a significant amount of consultation will have to be done after the fact, which may have been accomplished more efficiently through informal channels. At a minimum, it is important to identify any property with as much precision as possible and confirm that it has not been moved out of the requested country.

Moreover, as set out in R.37, in order to make this process as efficient as possible, it is important to "make best efforts to provide complete factual and legal information that will allow for timely and efficient execution of requests." To expedite the processing of the request, it is expected that the request will clearly identify (a) the legal basis on which the request is being made (e.g., the applicable treaty); (b) any confidentiality measures requested; and (c) any time constraints (i.e., if the request is urgent and why). Additionally, describing the factual basis for the MLA request is vital. It should be laid out in as clear, neutral, and informational way as possible, in order to mitigate the need to obtain supplementary information, and thus allow for the most rapid execution feasible. The factual summary in MLA requests is often an area for improvement, as seen in country feedback and mutual evaluations.

ADDITIONAL CONSIDERATIONS

It is a good practice for requesting countries to keep the factual summary concise, yet detailed enough that the underlying offences and suspects are clear. It is a bad practice to muddle the factual section with legal citations. It is a good practice to distinguish between known facts, based on intelligence, information or evidence already adduced in the investigation and facts that derive from suspicions or represent investigative hypotheses. However, suspicions – as to the flow of criminal proceeds, the use of nominees, or the acquisition of assets – can be valuable to the requested country and should be included, but demarcated as such.[7] Facts or suggestions which make the connection between the assistance sought and how it will advance the investigation are likely to be useful to the requested country. Additionally, **sourcing** in the factual summary is important. It is helpful if the requesting country signals when it is relying on intelligence, information, or evidence (i) obtained from another country (via MLA) or a foreign agency (via informal assistance); and (ii) obtained from a domestic agency. Assurances that permission has been received to share this information further are appreciated, and failure to provide this may delay the execution of the request.

With regard to requests for seizure or restraint, it is particularly important to obtain clarity about the legal requirements of the requested country ahead of transmitting the request. These legal requirements differ from country to country, reflecting different legal systems and traditions, in particular with respect to enforcement of foreign orders. The relevant questions include, for example, whether a requirement exists for a court order from the requesting jurisdiction, if equivalent value seizure/confiscation is possible, the evidentiary threshold needed to substantiate the request, the link between the property to be frozen/seized and the alleged crime, and more. Any deficiency in this respect can lead to the rejection of the request, to unnecessary delays in execution, or to the release of funds.

7. The reason for this is that executing authorities or central authorities may review information received and obtained in execution of the request for completeness, among other reasons. As they review, if there are particular names, companies, dates, or types of transactions which appear notable, it may be helpful to flag this information as soon as possible to the requested country. This may only be identified if the incoming request provides detailed background or theories of the case.

ADDITIONAL CONSIDERATIONS

As set out above, this information can often be obtained via informal co-operation, or through advance communication between central authorities and, potentially, asset recovery experts. As highlighted in the introduction to Ch. 6, it is a good practice for central authorities to be able to reach out to and consult asset recovery specialists, asset managers, and/or prosecutors with experience in enforcement of foreign orders, even if they are not the same individual or entity that ultimately executes the request. For example, central authorities may develop in-house, specialised expertise in these areas, or rely on a stable of AR specialists elsewhere. It is helpful of the contact information for the designated point of contact for AR-related MLA requests (which sometimes differs from the country contact that usually deals with MLA requests from certain countries), is readily accessible via institutional websites or other international platforms. Moreover, it is important that correspondence with the central authorities should take place via email communication and not via diplomatic channels, in order to allow for timely exchanges of information.

After the request is consulted with the requested country, prepared, delivered, and accepted, the requested authorities usually review it for compliance with treaty and other legal requirements. Countries are urged not reject requests on account of technicalities of an inconsequential nature. For example, if the incorrect article of an MLAT is cited, or the request is addressed to the wrong authority, a dialogue should ensue, not a complete rejection. In the context of AR, precious time may be lost to fixing clerical errors which have no bearing on the substance of the request. Countries have several options upon receipt and analysis of an MLA request. Generally, they range from accept and process, accept in part and deny in part, seek additional information, or deny outright. The request may be assigned for execution to a competent authority, handled in-house, or assigned to a particular unit specialising in AR. It is a good practice to consider assigning AR requests to AR specialists in the domestic framework, to the extent that this is not prevented by a jurisdictional consideration that requires assignment to a certain location or court.

ADDITIONAL CONSIDERATIONS

In asset recovery and all MLA, it is considered a best practice to enable swift communication if there is a problem apparent on the face of the MLA request or discovered in the course of execution. To resolve these issues, there are a multitude of possibilities, but they centre around real-time, person-to-person contact. Countries providing MLA related to AR may seek to establish direct connections between the prosecutors and/or LEAs working on the investigation or the case in the requesting country, and the specific lawyers and/or LEAs working on the execution of the related request in the requested country, as appropriate.

This direct connection may be the key to resolving problems or misunderstandings. It can also give the authorities in the requested country a more tangible stake in the outcome of the case, and motivate them to provide the fullest assistance possible to their counterpart, who they have met and become familiar with. It can assure the requesting state that its request is being taken seriously and that the recipient is in a responsive mode. Such meetings can take place via video-conference, teleconference, or in person, but they are suggested to establish the close connection, free exchange of ideas, and the professional trust needed in complex MLA. In asset recovery matters, this can be a determinative factor in achieving successful outcomes.

While countries will normally be pro-active in seeking updates and answers to their formal requests, the requested country should attempt to be equally pro-active in providing updates at reasonable intervals, on important occasions, or as frequently as warranted. Paragraph 7 of INR.38 makes clear that these updates are not considered MLA in and of itself, but should be part of the universe of informal communication surrounding it. It states that countries

should "have measures to enable informal communication…in asset recovery cases, including…updating countries, as appropriate, on the status of their requests." For instance, such updates may include case developments in the requesting country such as a partial lifting of the provisional measures, case dismissals, third-party claims, or in the requested country, such as the granting/denial of a measure or new intervenors in enforcement proceedings.

While it is overall good practice, in all matters of formal co-operation, to maintain frequent communication with the requesting countries and provide status updates on the execution of requests, the need to provide such updates become particularly acute in international co-operation regarding freezing/seizing/confiscating criminal property or corresponding value. As a matter of course, countries engaged in ongoing and intensive formal co-operation on asset recovery will need to be in touch at key junctures. These junctures may include planning for law enforcement action, when relevant for execution of the request, or when the requesting country has physically secured or taken possession of the asset. Other examples are when notice is to be given, restraints are to be extended, there is a request for the pre-confiscation sale of assets, or there is an intervention by a third party or claimant in the requested country. In the next sub-chapter, other junctures of heightened communication are discussed, including co-operation in operational planning for the day of a seizure, and in Chapter 7, co-operation on asset management and the costs of asset maintenance are covered.

Furthermore, the asset recovery lifecycle can take a long time, and legal proceedings in the requesting country may extend for years, especially if it involves NCBC through complex civil litigation. Formal co-operation may entail the execution of numerous, related requests in the same case, at different stages. Dozens of supplemental MLAs in complicated AR and money laundering matters are typical. Countries may consider establishing case-specific meetings in appropriate cases, or including asset recovery matters as a standing item during regularly scheduled consultations between central authorities. There should be direct and clear communication between central authorities, and it must be clear how to contact the relevant POC in the central authority (and the executing authority, as relevant), especially if these personnel change over time.

Recommendation 38 also requires countries to have the authority to provide further related assistance on an initial request – without requiring a supplemental request – in appropriate cases. The phrase "in appropriate cases" aims to provide flexibility for a country to determine when a supplemental MLA request is necessary. Instances where supplemental MLA requests may be required include (i) when the request involves a different offence from the one stated in the initial request, even though it stems from the same facts or was committed by the same perpetrators (ii) or when there is a need for further assistance of a compulsory/coercive nature which is not specified in the initial request.

A requested country may consider, on one hand, what is reasonably contained in or envisioned by the initial request, and, on the other hand, what additional assistance may be clearly beyond its scope. A requesting country may even foresee the need for minor expansions in their initial request, and draft accordingly. They may specify, for example, that the requested country should provide bank records for accounts *owned or controlled* by a certain person at a certain FI, including *but not limited to* the account numbers they are already aware of through their investigation. Yet what if the suspect holds an interest in other accounts at the same institution, perhaps as an authorised person on a corporate account, and this critical piece of information is uncovered only later by the requested state? It could reasonably be interpreted to be within the scope of the initial request for the requested state to gather these records as well, without requiring a supplemental request.

The FATF, through this provision, sought to reflect the reality that the country making the request cannot know all relevant facts. It encourages the recipient of requests to take an accommodating, efficient, and not overly-formalistic view to subsequent, related assistance. There will be times when a supplemental MLA is needed, particularly to deliver

requests for seizures and restraints against newly-discovered assets. However, it is a good practice for countries to consider whether a supplemental request is truly and legally necessary, considering the potential for delay, or even miscommunication, that it can create (e.g., if the supplemental is not properly connected with the initial request via tracking number or is mis-assigned to an executing authority different from the initial request).

ADDITIONAL CONSIDERATIONS

Lastly, the FATF Standards elaborate numerous possibilities for FIU-to-FIU, LEA-to-LEA, and formal co-operation between central authorities. They do not, however, mention prosecutor-to-prosecutor informal co-operation, which could be pursued as well (including, where appropriate, judges, investigating magistrates, and counsel or legal advisors). This can be the secret ingredient in successful international co-operation on asset recovery, which is a somewhat niche area and confronts practitioners with a variety of challenging legal questions, practical challenges, and unusual issues in international relations. Asset recovery requires prioritisation and specialisation, and the need for this to extend to international co-operation is foreseeable. To reflect this reality, prosecutor-to-prosecutor informal co-operation, or the opportunity for direct communication, should be encouraged between countries on AR matters.

BOX 72 – **COUNTRY EXAMPLE: Swift Asset Recovery Response to an MLA Request in India**

An MLA request was received from the United States by India wherein the US was investigating two Indian individuals for violation of the US criminal laws, namely drug trafficking and money laundering offences. On the information, India's Directorate of Enforcement took expeditious action by conducting search action on the accused and making seizure of 268.22 bitcoins worth approximately INR 1.3 billion (USD 29 million). Further, an attachment of the accused's assets in form of immovable properties in India worth USD 1.1 million was also made. A criminal complaint has since been filed for prosecution of accused and confiscation of seized and attached assets.

6.3. Enforcement of foreign provisional orders and final judgments

The recognition and enforcement of foreign orders has become an absolutely essential tool in co-operation for asset recovery. It is now a requirement of the FATF that countries be able to do enforce orders on behalf of foreign partners, both those for provisional measures and final confiscation judgments. In enforcing foreign freezing, seizing or confiscation orders, it is a requirement of R.38 that enforcement should not be made conditional on opening or conducting a domestic investigation. The point of enforcement is to implement the legal orders related to confiscation issued in another country, not to replicate the foreign investigation or legal proceedings or prompt a domestic version of the same.

It is possible that some jurisdictions may be able to recognise foreign orders, but do not strictly require them as a condition for assistance, particularly at the restraint phase. In some countries, the MLA request is a sufficient basis for action, even without an accompanying order. In some countries, an exequatur procedure is used. In other countries, such as Liechtenstein, a domestic proceeding is opened in parallel as a matter of course, and a domestic restraining or freezing order can be issued based upon the information contained in the MLA request. While Recommendation 38 does not mandate that countries require a foreign order (they may loosen the requirements), it does require that countries are able to recognise and enforce orders at both the provisional and final stage of confiscation.

There are several advantages to the enforcement of foreign orders as the most significant component of MLA between countries related to confiscation. The first and foremost is efficiency. The enforcement of orders allows the country with the strongest interest in the confiscation to conduct the primary efforts related to that desired outcome, and allows the country that is on the receiving end of the MLA request to take a more secondary, or passive role. This means that the country taking the initiative to confiscate the assets its domestic case bears most of the responsibility of pursuing the confiscation. It is up to the domestic court in that country whether the confiscation pursued by authorities succeeds. The requesting country controls the evidence and calls the witnesses, and it is directly in charge of the main proceeding. On the other hand, the subsidiary enforcement proceeding occurs in the requested state, which does not have the access to the underlying evidence or witnesses, or even first-hand information about the case. Its LEAs did not investigate the matter or trace the assets, and its prosecutors did not put forth the legal basis for confiscation under domestic law.

It is far more efficient for the country that led the investigation and litigation to issue an order for assets abroad, than it is for the country where those assets are located to commence its own investigation and proceedings. This saves resources and avoids duplication of efforts. It ensures that the country with a strong interest, an established legal basis, and which has invested in the case from the beginning is the one where the majority of the work takes place. Once this is done, and either the restraint or final order has been issued by the court, it is a necessary step and logical step to request the enforcement of that order as it pertains to assets located in a third-country.

6.3.1. Enforceability of orders

As is set out in INR.38, in cases where requested countries require a court order for the purpose of MLA, requesting countries should "ensure that their courts have authority" to issue the relevant orders for property located abroad. This is an important point, as courts may be wary of issuing such an order out of concern that they lack the necessary capacity or jurisdiction to issue an order for assets located abroad. It is therefore important that prosecutors or investigators who request such orders are equipped with information to allay their domestic court's concerns and to clarify that such measures are indeed normative, and essentially represent a form of recognition that courts provide one another. As will be clarified below, a court order is often a requirement of the requested country to ensure that the matter has undergone testing and approval, in the form of judicial review, in the requesting country. Moreover, it is important to emphasise that if a country is a party to a relevant treaty that enables international co-operation in asset recovery, the issuance – and seeking the subsequent enforcement – of such an order by a foreign jurisdiction is essentially the concrete expression of this international commitment.[8]

Countries which have asserted jurisdiction over assets located abroad are either criminally prosecuting offenders who own or control criminal property or corresponding value under domestic law, or they have initiated a non-conviction based confiscation proceeding against the proceeds or instrumentalities of criminal offences. It is a prerequisite for any enforcement that a court in the requesting state is able to issue orders for criminal property subject to confiscation located outside of its national territory. This is the purpose of INR.38, paragraph 3, which provides that "requesting countries should ensure that their courts have authority to issue freezing, seizing, and confiscation orders for property located abroad." If a country cannot seek the confiscation of assets located abroad in the context of its own domestic proceedings, then there would be nothing to ask another country to enforce.

Therefore, it is a good practice for countries to review their laws to ensure their courts are able to issue an order that names assets located in third countries, not just assets located in its own territory. This is the basis on which further

8. One such example of an enabling multilateral convention is UNCAC, art. 54. It states, in pertinent part: "Each State Party, in order to provide mutual legal assistance…shall…[t]ake such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party" and "…[t]ake such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation."

action to recover assets can proceed. The purpose of enforcement is not to take action on behalf of another country from scratch, but to recognise and literally give effect to a foreign order against assets located within the physical jurisdiction of the requested state. Even though the requesting country may have the legal authority to order assets seized or confiscated when those assets are located abroad, the order is powerless and exists only on paper until the requested country does something *with* the order to put it in force domestically.

Paragraph 3 of the INR also seeks to address the situation where a competent authority (such as the prosecutor in charge of a financial investigation) is authorised to restrain and seize assets. He or she is empowered as an issuing authority for the purpose of provisional measures, and, in the domestic context, this is perfectly legal and may pose no obstacle. However, it may cause difficulty in the international context if the requested state can only enforce court orders. (Note, final judgments of confiscation are usually issued by courts, so this is mainly a consideration with respect to provisional measures.) While these prosecutor- or LEA-issued orders may be routine when the assets are in-country, it is within the right of the requested state to ask for a court-issued order, especially if, as acknowledged in paragraph 3, this is a requirement related to the FPDL of the requested state. Fundamental principles of domestic law of the requested state may provide that any intrusion on the rights of a person in seizing their property or restricting a person's ability to use, enjoy, or deal with the same, should be approved by a court (i.e. a neutral finder of fact or impartial judge or magistrate).

A requirement that restraint or seizure orders be issued by a court to be enforceable has been accommodated in the FATF Standards. The final sentence of paragraph 3 means that if the requesting country is one where a non-court authority can issue restraints and seizure orders as a matter of course domestically, it *must* be able to seek "judicial review or validation" of such a prosecutor/LEA order so that it can be submitted for enforcement abroad.

This reflects the reality that the requesting country will be able to obtain and seek judicial approval or validation of a domestic order, issued in accordance with the laws of its own country, if needed. It is the party that should bear the burden of making sure its order is "translatable" in a foreign context where court review is necessary to protect the rights of affected parties and is a fundamental factor in the requested state's ability to assist. Many enforcement statutes (discussed below) specify that foreign orders must be issued by a court, even if they are provisional or temporary and not final, in order for them to be considered legally enforceable. It is a good practice for countries to be able to seek even cursory approval of prosecutor/LEA-issued orders, even if it simply results in a covering order on top of the prosecutor's order. For instance, the prosecutor's order may cite the legal basis, may specify the asset and its connection to an offence or defendant, and may even contain the essential language to freeze the asset under domestic law. Yet a court's validation or "stamp of approval" on the measure shows that a judge reviewed the facts, agrees with the prosecutor's order, and confirms that it is legally permissible under domestic law and procedure. With this approval or mere validation, a requested country should be able to consider the package as a whole to be "a court order", which it may then enforce.

The Interpretive Note to R.38, paragraph 2, allows countries to empower their courts in two additional ways, but these are not requirements or pre-requisites. They are optional elements included in the FATF Standards to avoid doubt and assure countries that such practices are permissible and potentially advisable. The first is that "courts in the requested country *may* review the foreign order." The second is that courts in the requested country may "issue any orders necessary to give it [the original order] effect with regard to property located in the requested country." The first element simply allows courts to be involved in the process of deciding whether any given order or judgment should be enforced. Judicial review is permissible in enforcement decisions. As in the requesting country, this involvement of a court may or may not be required at the provisional measure phase, depending on the legal system in place. But unlike that situation, where the requesting state may *need* to obtain a court-issued order to present to a foreign partner, the requested country does not need to involve a court in the review of provisional measure enforcements.

This is optional. However, a court order may be legally or practically necessary to empower other authorities (such as LEAs, court marshals, or AROs) to go out and seize or take possession of the asset, or to impose an effective restraint (to be able to serve a legal order which must be complied with by a FI).

The second element simply seeks to ensure that the court that issues the order *enforcing* a foreign restraint or confiscation *can also issue* all other orders necessary to give it effect. This intended to be a practical measure, but it may also be legally curative if there are minor deficiencies in the foreign order. This may occur when there is some divergence between the order as issued by the foreign court and the way that a similar order would be issued in the requesting country, in a domestic matter. Since the enforcement of the foreign order can be literal (i.e., through operative language pronouncing in the requested state saying that the foreign order is given domestic force and effect) or derivative (i.e., through the issuance of a domestic order containing the main points of the foreign order), or some combination of the two styles, there, on occasion, some small discrepancies, omissions, or misstatements which might lead to practical problems in the carrying out the coercive acts in the requested state.

ADDITIONAL CONSIDERATIONS

It is considered a bad practice for countries to reject enforcement of foreign orders solely on account of their minor defects (which can be ignored or amended by the requested country through its assistance procedures), or matters of form and preference. It may take a significant amount of time to communicate the exact nature of the practical problem, explain it to the foreign partner, communicate this information through central authorities, have the foreign prosecutors go back to court and seek a new order, for the court to issue an amended or new order, and finally for the central authorities to communicate the revision back again (potentially requiring an entirely new MLA request). This could be burdensome, inefficient, and time-consuming. It may also aggravate the risk that the assets have disappeared while they remained unsecured by provisional measures. Therefore, the FATF Standard mentions that it should be possible for the enforcing court to issue "all necessary" orders, in hope of avoiding extensive back-and-forth that can decrease the efficiency of enforcement. This is best illustrated by practical examples:

- Orders in Country A, the requested state, generally need to contain the legal description of real estate. The Order issued in Country B, the requesting state, only contains the mailing or postal address of the real estate, which is sufficient in layman's terms. Assuming the property can be identified by the authorities of both country with certainty and it is, indeed, the same property, the court in Country A that enforces the foreign order should be able to "fix" this minor problem and specify the legal description.

- Restraining orders for real estate in Country A need to be enforced by filing a special document in the state/provincial or other local property records. This simple but important action needs to be taken as a matter of domestic or local law (e.g., the filing of a lien or a *lis pendens* showing the real estate is subject to ongoing litigation). Country B would likely be unaware of these domestic details and be unable to carry them out. Often, the means to block the sale of property or put some limitation on the transfer of title require specificities which only the requested country will be familiar with (and which it would carry out as a matter of routine in a domestic case). Therefore, the court in Country A should direct such actions to be undertaken, even if the court order from Country B did not contemplate them. Without completing minor clerical tasks like this, the foreign order may not be sufficiently "actualised".

- Assume the order in Country B names and restrains "all funds held at Bank Example by John A. Doe, DOB 1 January 2000, and his company, XYZ Limited." This is the standard language for a restraining order in Country B. In Country A, it is typical to list the bank account numbers in full for every account to be restrained. Assuming the property

can be identified by the authorities of both countries with certainty and it is, indeed, the same property, the court in Country A that enforces the order should be able to "fix" this minor problem and specify a list of bank accounts by number and owner. Country B knew which accounts were intended to be covered, and Country A may be able to "fill the gap" with more particular language. This way, the enforcing order is sufficiently detailed for the police officers seizing the property, or for the FI complying with it.

There are two other considerations related to the points above. First, these glitches in enforcement can be largely prevented by informal co-operation between countries, specifically, co-operation that pre-dates the time when the authorities are the seeking original order in the requesting state. Before approaching another country with a request to enforce a court order, it is strongly suggested that the potential requestor engage informally with the authorities in the state to be requested. Additionally, it is possible that the central authority may not be in a position to answer all relevant questions about the requirements of enforcement in the requested country, in which case, it is a good practice for central authorities to put the prosecutors or investigators of the requesting country in touch with the prosecutors who would be tasked with enforcing the order in the requested country. All legal requirements, factual nuances, and details should be discussed beforehand. It is strongly encouraged that whenever possible, Country A should share a draft order with Country B, to determine whether it would be enforceable in Country B *before* Country A approaches its judiciary.

This is a luxury not afforded in all cases, especially when dealing with urgent restraints, when the time to secure assets is short. However, if it is possible, this can lead to a smoother, more effective, and efficient enforcement process. Phone calls, emails, video-conferences, and other informal means of communication should be deployed to ensure that by the time the MLA request is sent with the appended order, the requesting country has obtained an order that is sufficiently detailed and meets the legal and other requirements of the requested country. The more consultation that can occur between the countries prior to the MLA request, the better. The FATF recognises situations where operational needs and urgency may not allow this level of pre-planning and consultation. This is why it suggests in INR.38 that small defects and deficiencies can be cured by the court in the requested state, instead of starting again from step one in the requesting state. Any additional "after actions" that need to be carried out by LEAs in the requested state to give concrete, tangible effect to the order should be set out and ordered by the court with physical jurisdiction over the asset(s) in question. Courts in the requested country may accommodate the order – once it has decided to approve the enforcement of the order – in various ways to translate it into the domestic system.

Second, for certain types of assets that may be sought for initial seizure, the authorities in the requested state may need to undertake significant law enforcement activity. For example, when seizing a mega-yacht or aircraft, or other categories of assets that require careful handling, the two countries involved should engage in consultation and logistical planning in great detail. Frequently, such major operations require the prepositioning of police or law enforcement in-country, at the time when the seizure is expected to occur. Assuming the court in the requested state will issue an order promptly upon an *ex parte* application, the authorities in the requested state should endeavour to provide an estimated timeline of events leading up to the seizure and the operation date.

If the LEAs involved in the case from the requesting state wish to be present for the actual seizure, the authorities in the requested country should attempt to accommodate this and provide a reasonable window of time to permit travel. Countries are certainly not required to allow foreign LEAs to undertake law enforcement operations in their territories; they would be non-active observers and not direct participants. However, it may be extremely helpful to have the interested country present when the seizure of a complex asset is occurring. Decisions may need to be made quickly, and the presence of LEAs from the requesting state can facilitate this. The requesting country also may be willing to provide man/womanpower toward effecting the seizure, if this is acceptable to the requested country LEAs. This may reduce costs and resolve disagreements between the countries before they occur. When executing search

warrants, most treaties allow the authorities from the requesting country to be present for the search, upon their request. If the requesting country consents, the same considerations are present when this type of coercive action is taken, i.e., the seizure of significant or complex assets carried out in the framework of formal co-operation.

Neither of these two elements would have to be contained in a law, and when assessing technical compliance, assessors should not necessarily expect to see them. The court's role (if any) is likely to be spelled out in law, procedures, or other measures, but the ability to issue further orders, including orders for "logistical" purposes may not be enumerated. Such powers may be inherent to the court and the wide discretion afforded to judges to consider and adjudicate matters in accordance with the law.

6.3.2. Legal requirements and discretion

Countries need to have the authority and ability to enforce judgments. This does not mean that countries must grant the request to enforce in every case, nor that every application for enforcement will be approved. As a primary matter, because they are sovereign powers, countries may choose when and how they grant MLA, in accordance with their treaty obligations. The same is true for the decision to enforce foreign orders, which is a form of MLA. As a secondary matter, if courts are involved in the enforcement process, they may reject enforcement applications which do not meet legal requirements, even if the requested country's authorities have decided that they wish to enforce the foreign order and have applied to do so. If that occurs, depending on whether the country believes there has been an incorrect application of treaty provisions or a domestic statute implementing them, the authorities may consider avenues for appeal. But it is within a court's authority to decline to enforce a judgment, for a host of possible reasons, under normal circumstances.

a. Direct enforcement mechanisms

One potential exception to these normal circumstances is when countries, or a group of countries, have agreed to enforce each other's court orders "automatically." Under this construct, the requested country swiftly recognises the court order or judgment from the foreign country *as if it were issued by one of its domestic courts*. It should be noted that the term "automatic" enforcement mechanism is a bit of a misnomer. There is level of presumed regularity to the enforcement, but the process is not automated or without human intervention. The term "direct enforcement mechanism" is likely more accurate. These enforcement mechanisms still include some element of judicial review. Direct enforcement is broader than just mechanically registering the foreign confiscation order, which, it should be mentioned, is permitted among some supranational groups. But in countries adopting such a direct enforcement model, the registration of a foreign order is still dependent on a review (albeit more limited) to ascertain that certain basic conditions have been met.[9]

There are other examples of direct enforcement models that entail more process or review than the mutual recognition system described above. The scrutiny in such a model may not delve deeply or at all into the merits of the case, but the foreign order may be assessed against a limited set of conditions that include, inter alia, the existence of a court order/judicial approval of the measure; due process checks to confirm whether/how the rights of defendants and affected have been protected; and an analysis of dual criminality. Based on this rather limited review, the requested court may enforce the order if it is satisfied that the requirements have been met.

Moreover, under direct enforcement models, the competent authorities in the requested jurisdiction retain the capacity to request supplementary information to help determine the fulfilment of the conditions set out in domestic laws (for example, that the order is final and that the affected person received notice of the confiscation or provisional measure and had an adequate opportunity to contest it). In practice, the EU mutual recognition model can also

9. See StAR (World Bank and UNODC), Stefano Betti, Vladimir Kozin, and Jean-Pierre Brun, *Orders without Borders – Direct Enforcement of Foreign Restraint and Confiscation Decisions* (2022) (specifically sections 3.6.2 and 3.2.3).

accommodate additional requests for information or consultations. In the context of criminal confiscation actions, this may also inquire into process available to the person to defend themselves on the merits of the charges supporting the confiscation (including as to extended confiscation).

However, it is a good practice for countries, when designing an enforcement procedure involving a more limited review, to focus on ensuring an expedited and streamlined process. The emphasis – and indeed the advantage of enforcement – is that all of the trappings of a domestic action should not be required. This is not because they are not important in the requested state, but because they presumably have already taken place elsewhere. It is chiefly the responsibility of the court deciding on the confiscation to resolve challenges and substantive questions. A court in the requested state would not usually be expected to deal with these issues because the rights of the affected parties (including claims from most third parties) should have been dealt with abroad. Of course, remedies should also be available in the requested state, but there is a need for clear provisions delineating what issues can be address and in which jurisdiction, to ensure both legal certainty and the effective protection of affected parties' rights.

BOX 73 – **COUNTRY EXAMPLE: Intra-EU Enforcement**

Legal Framework: An example of a highly direct enforcement mechanism is EU Regulation 2018/1805 which applies to EU member states and ensures that all freezing orders and all confiscation orders issued within the framework of proceedings in criminal matters in one member state are recognised by another. This regulation, which is designed to facilitate speedy action, provides for the mutual recognition of freezing/seizing orders and of CBC, extended, and NCBC orders issued within the framework of proceedings in criminal matters (meaning orders issued following proceedings in relation to a criminal offence) by a court having jurisdiction in criminal matters. It sets out specific time limits for the recognition and execution of such orders. The requested state is bound to recognise and execute freezing orders "without delay and with the same speed and priority as for a similar domestic case." In cases of an imminent risk of dissipation, a time limit of 48 hours for the recognition and another 48 hours for the execution of a freezing request must, in principle, be adhered to. Confiscation orders have to be recognised and executed without delay and, in principle, "no later than 45 days after the executing authority has received the confiscation certificate". Adherence to these time limits is facilitated, inter alia, through the use of standard freezing and confiscation certificates.

Under the EU regime, the requested state can only refuse freezing or confiscation requests based on a limited number of grounds set forth in the regulation. Orders are to be recognised and executed "without verification of the double criminality of the acts giving rise to such orders, where those acts are punishable in the issuing State by a custodial sentence of a maximum of at least three years and constitute a criminal offence under an enumerated list of offences." For offences not in this list, the requested State can apply a dual criminality requirement. Such a direct enforcement system as in the EU is unlikely to be practicable to the same extent outside of supranational entities sharing common legal and judicial norms.

Case Example: At the request of the ARO in Romania (ANABI), ARO Italy provided ANABI with data on two national convicted persons owning a vehicle and concluding a rental contract worth EUR 14 400 per year. ANABI then referred the matter to the enforcement court to initiate the procedure for recognising the freezing and confiscation orders, in accordance with EU Regulation 2018/1805. The national court accepted ANABI's request and initiated the procedure for recognising the freezing and confiscation orders. The requests were then notified to the Italian courts. Following the freezing order being recognised by the competent court in April 2023, the bank accounts of the convicted persons and the aforementioned vehicle were frozen.

The country that originates the confiscation action will generally be the venue better suited to hear merits-based challenges to the forfeiture of the property by that country. If major questions are being raised in the enforcing jurisdiction for the first time, it is a good practice for that country to seek to resolve them by directing the claimants back to the requesting jurisdiction. There are times when parties in the requested jurisdiction may become aware of, for the first time, attempts to confiscate the assets in that country. This may be based on notice sent by the requested country at the restraint phase, or prior to the entry by a court of a final confiscation judgment (i.e., in the final stages of an enforcement process). In such a case, the requested country may have to deal with them. They will have to assess the possibility that this party should have had an opportunity to challenge the confiscation in the requesting state and may therefore ultimately decide to refuse the recognition and enforcement of a foreign order because it would violate the rights of the affected third parties. Due process should be afforded in *both* forums.

It is important to note that in a mutual recognition system, the requested state can generally only decide on the granting or refusal of the recognition of a foreign order. The competent authorities in the requested state cannot change or add to the substantive decision on confiscation. Still, in resolving which jurisdiction is best placed to resolve major questions, it may be appropriate that certain issues are resolved in the requested jurisdiction. For example, there may be cases where certain property is to be confiscated according to a judgment in country A, but where there is a third-party claiming ownership in the enforcing country B that the competent authorities in country A were not aware of and that is only revealed when country B attempts to enforce the confiscation order issued in country A. In this case, it may be appropriate for the competent court in country B to consider the validity of the claims to ownership of the property of the third party. The purpose of this review would be to determine whether the court in country B should refuse the recognition and enforcement of the order issued in country A in order to avoid a violation of the affected third parties' rights.

However, as part of the co-operation between the countries, it should be possible to funnel most if not all substantive disputes to the requesting state, especially as concerns "new" parties who appear in the court proceedings of the requested state. As to a known party who has previously come forward in the requesting country, it should not, in principle, have an additional chance to contest the confiscation, where it has done so in the requesting state and has its claim rejected by the court under the domestic law governing confiscation. The fact that there is country enforcing the order does not automatically entitle a failed claimant to a second bite at the apple, especially when the claimant or third party arguments are based on questions of foreign law which the enforcing jurisdiction's court will be ill-suited to decide.[10]

Indeed, if the appearance of parties in the requested state's proceedings indicate that there have been substantial gaps in the protection of rights in the foreign process, or it becomes evident that there were major questions left unresolved or significant deficiencies in the fairness of the process, it is within the right of the requested state to seek answers from the requesting state. It may need to pause or potentially to dismiss its action until these concerns are resolved. This is one reason it is critical for both countries to communicate openly, closely, and informally during the entire execution of a request to enforce an order. The enforcement of judgments is not a form of MLA that can always be conducted at a distance or only on paper through the exchange of written MLA requests. It is a practice that relies heavily on trust between the parties and close co-ordination. Apart from an understanding of the facts of the case, the competent requested authorities may, when deciding on the application of certain grounds for refusal, also need to develop a certain level of understanding of particular features of the confiscation procedures of the requesting state, including procedural guarantees and safeguards. The competent authorities of the requested state may not be able to effectively assess the compliance of the actions of the requesting authorities with applicable

10. Nonetheless, under the EU's law for mutual recognition, the competent authorities of the requested state always retain the right to consider the application of grounds for refusal. This may, in exceptional circumstances, include the consideration of claims already brought forward by the affected person in the requesting state.

fundamental rights standards if they do not understand them. The requested state may end up referring to certain evidence and explanations about the application of the requesting state's procedures in a specific case, particularly on how it complied with due process of law in obtaining the confiscation order.

Overall, the purpose of this type of formal co-operation is not to duplicate or replicate litigation that has already occurred elsewhere. Under a direct enforcement model, in an ideal situation, the thorny legal and factual questions have been answered in the main forum, and major issues would not be expected to be raised by numerous new claimants at the enforcement stage. It is a good practice for the requested county to seek to understand the factual underpinnings of the case, the legal basis for the confiscation, and the procedures used abroad as fully and completely as possible *before* making the decision to seek enforcement of the order in through its courts to avoid or mitigate litigation risks likely to come before the enforcing court.

b. Enforcement statutes

Many jurisdictions in the last decade have passed domestic laws which authorise the enforcement of foreign orders and judgments and lay out the legal requirements for doing so. Some countries incorporate these laws into their MLA or international co-operation legislation. It is considered a best practice for countries to consider legislation in this area. Having a statute that guides the enforcement of confiscation related orders provides several benefits. First, a clear and detailed law will help the LEAs and prosecutors who are charged with applying it. It will clarify the process and the requirements, ensuring consistency and predictability in application. Second, it will explain to foreign partners what the legal requirements are for enforcement vis-à-vis the law of the requested state (there may be other treaty requirements or formalities imposed by the central authorities or executing authorities). Third, it will provide the court with a clear framework, which is especially helpful if there are questions or doubts about the court's power to enforce foreign confiscation-related judgments. A law addressing the many issues raised by enforcement gives comfort to judges that they have the jurisdiction to act and that they are doing so within law(s) enacted by the legislature in recognition of its international commitments.

In the absence of a law specifically addressing enforcement, courts in some countries rely on the doctrine or practice of judicial comity, which is essentially the mutual respect afforded between courts of different nations or respect for the authority of another court or judge (even, perhaps, when a judge disagrees on the merits and might have decided differently in a case). Comity allows courts in one country to defer to the judicial decisions of another, particularly in situations where the foreign court has applied its domestic law. Although this is a helpful international law doctrine which may bolster arguments for why one court can and should enforce the rulings of another, it is, by nature, less defined and therefore less controlling on the judges of the requested country. It leaves the matter to discretion, or appeal to a principle, and it may or may not result in the recognition of the foreign court's judgment.

Yet other countries prioritise the treaties they have signed, including MLATs, as either equal to or even superior to domestic laws enacted by the legislature. This means that the treaties ranked highly in the hierarchy of laws, and that courts in that country will implement their obligations under those treaties without the need for further, enabling, or specific national legislation. This legally permits the enforcement of orders and judgments, especially when enforcement is specifically mentioned as a type of assistance available under the MLAT. But it also lacks specificity and may leave the authorities and/or the courts grasping for more specific procedures to apply in real cases.

Of all possible methods to enforce orders and judgments, the one which provides the most predictability and clarity is a specific law on enforcement, whether it is standalone or contained in other MLA legislation. Countries may consider passing such a law to enable their courts to enforce foreign orders and judgments more seamlessly, under dedicated rules and procedures.

BOX 74 – COUNTRY EXAMPLE: The United States' Enforcement Statute

The U.S. enacted a specific law for the enforcement of orders in 28 U.S.C. § 2467. The following is a summary of its main features, covering issues which are typically addressed in enforcement statutes:

Forfeiture or Confiscation Judgment: Defined as a final order of a foreign nation compelling a person or entity to pay a sum of money representing the proceeds of an offense described in Article 3, Paragraph 1, of the Vienna Convention, any violation of foreign law that would constitute a violation or an offense for which property could be forfeited under Federal law if the offense were committed in the United States, or any foreign predicate offense described in section 1956(c)(7)(B) of title 18, or property the value of which corresponds to such proceeds, or an order to forfeit property involved in or traceable to the commission of such an offense. This can be a CBC or NCBC judgment, including value-based judgments.

Foreign Nation: Defined as a country that has become a party to the Vienna Convention or a foreign jurisdiction with which the US has a treaty or other formal international agreement in effect providing for mutual forfeiture assistance.

Jurisdiction: The US may file an application on behalf of a foreign nation in district court of the United States seeking to enforce the foreign forfeiture or confiscation judgment as if the judgment had been entered by a court in the United States.

Venue: In the District Court for the District of Columbia or in any other district in which the defendant defendant or the property that may be the basis for satisfaction of a judgment under the statute may be found.

Parties: The US is the applicant and the defendant or another affected person (if any) is the respondent in the case.

Final Orders (requirements):

- A request from the foreign country required including:
  - Summary of the facts of the case
  - Description of the proceedings that resulted in the forfeiture/confiscation judgment
  - Certified copy of the judgment
  - Affidavit or sworn declaration that the foreign nation took steps to comply with notions of due process (notice to all persons with an interest in the property in sufficient time so they may defend the charges or contest the judgment) and the order is in force and not subject to appeal
- Approval by the Attorney General that enforcement is in the interest of justice (subject to delegation)

Court Must Enforce, Unless It Finds:

- the judgment was rendered under a system that provides tribunals or procedures incompatible with the requirements of due process of law;
- the foreign court lacked personal jurisdiction over the defendant;
- the foreign court lacked jurisdiction over the subject matter;
- the foreign nation did not take steps, in accordance with the principles of due process, to give notice of the proceedings to a person with an interest in the property of the proceedings [2] in sufficient time to enable him or her to defend; or
- the judgment was obtained by fraud.

... Box 74 continued

Provisional Measures (requirements):

- Court may issue a restraining order to preserve property subject to CBC or NCBC at any time before or after the initiation of the forfeiture proceeding abroad.
- Some of the rules above applicable to final judgments apply, including (1) due process afforded in foreign country; (2) the foreign court must have jurisdiction over the subject matter; and (3) the order was not obtained by fraud.
- Court may issue the restraining order on the basis of:
  - Evidence set forth in an affidavit from the foreign country describing the nature of the proceeding or investigation underway in the foreign country, and setting forth a reasonable basis to believe that the property to be restrained will be sought for confiscation at the end of the proceeding
  - Presentment of a foreign restraining order for registration and enforcement that has been issued by a foreign court (and reviewed by the AG)

Referral to Domestic Procedures: To rules applicable in civil (not criminal) cases.

Limited Challenges: A person cannot object to enforcement because the property is the subject of parallel litigation in a foreign court. The court shall accept the facts as laid out in the foreign final judgment justifying the confiscation.

c. Other considerations

In enforcing foreign final judgments, countries may also wish to ascertain certain key facts and circumstances about the case. When it comes to final judgments, this includes that they are no longer in danger of being overturned on appeal. If a court deprives a person or entity of their assets located abroad on the basis of a foreign proceeding, it may wish to assure itself that the outcome will not change and the confiscation, or criminal conviction underlying it, is absolutely final and not subject to appeal. This suggests that the enforcement of provisional orders takes on more importance, as the requested country will likely wait until all proceedings have concluded to issue an order finally and irrevocably confiscating property on behalf of a foreign partner. Because the opportunity to appeal may be lengthy (e.g., months or more), and the appellate process may take a long time to conclude (especially if it entails several levels of appeal or appeal to a high court), the assets in questions should be secured while the action abroad is still pending. Thus, it is a good practice for countries to be able to extend or renew the enforcement of provisional measures – assuming this has been done in the first place – for the entire pendency of the foreign proceeding.[11]

Additionally, as these requests are a form of MLA, these requests are subject to the conditions and requirements applicable to MLA requests in general (for example, the provision of assurances of reciprocity, respect for prescribed forms and channels of communication, and document authentication requirements). They are also commonly examined against generally applicable grounds for refusal such as lack of dual criminality, incompatibility with the requested jurisdiction's fundamental principles, discriminatory nature of the request, and so forth. As emphasised above, the requested country should consider the strength of the rule of law and the impartiality and independence of the court system in the country from where the order derived. Similar questions are contained in the FATF Methodology in the form of "structural elements."

11. For instance, when provisional measures granted in one jurisdiction (Jurisdiction 1) are enforced in another jurisdiction (Jurisdiction 2), the enforceability of these orders may depend on the terms of such orders. If such a provisional order is for a limited period, it is imperative that Jurisdiction 1 commit to providing Jurisdiction 2 with all necessary evidence to extend the order in jurisdiction 2, or to simply replace the order with a new (renewed) order with a new term. Often, Jurisdiction 2 is making applications to the court solely dependent on the information provided by Jurisdiction 1. When that information flow is not timely or sufficient, these orders may be discharged with potential reputational damage to authorities in Jurisdiction 2.

It is a good practice for countries to satisfy themselves that the criminal or non-criminal proceeding that generated the provisional measure of confiscation order is not a selective prosecution or political in nature, and that the subject of the confiscation order is not being persecuted by the requesting state unjustly or unfairly. These concerns are pronounced in the area of order enforcement because the recognition of the foreign court's orders in essence extends the power of the requesting state beyond its borders. This is a power that must be wielded carefully and the requested country will want to assure itself that there is no reason to reject the request for enforcement, on the basis of permissible grounds in the applicable treaty or convention. There is no FATF Standard that requires the enforcement of confiscation orders rendered in the course of an illegal, abusive, or procedurally deficient process.

6.3.3. Reliance on factual findings

The Interpretive Note to R.38 at paragraph 2 contains one additional requirement (at least as far as the FATF Standards are concerned) for the enforcement of foreign freezing/seizing and confiscation orders. This is that in the course of enforcing foreign freezing, seizing or confiscation orders, "requested countries should be able to rely on the findings of fact in the foreign order." As explained above, this is to reinforce that the court or competent authority empowered to enforce the order or judgment in the requested state is not expected to do its own fact-finding or test the evidence and testimony supporting the foreign case. For all of the reasons mentioned in Ch. 6.3.2 above, it would be incompatible with the principle of mutual recognition and/or diminish the efficiency of enforcement for the requested court to engage in substantive litigation on the merits of the case.

The merit questions (such as was an offence committed, did this person commit it, did it yield proceeds that should be confiscated, and in what amount) should not be debated abroad. Those questions relate to the law of the requested state, and should be handled in that state's proceeding. The requested court should in principle be able to rely on – or accept as true – the factual basis for the action. It need not call witnesses to understand the financial flows, or seek to trace the funds used to acquire the property in question to offences abroad. The foreign court should be spared from conducting a mini-money laundering trial. In summary, if a requested state has decided it that should grant the enforcement request because it is satisfied that that the requesting county has an impartial and fair judiciary to render the order and it has that met fundamental due process standards, then it does not, in principle, need to delve deeper. In general, it trusts that (1) a neutral fact finder has heard the evidence and arguments for and against forfeiture, (2) there was a process envisioned in the law of the requesting state that respected the rights of all parties (including third parties, if any) and (3) that the application of the law to the facts yielded a reasoned, credible, and justifiable result.

The Interpretive Note to R.38, para. 2, allows the requested country to rely on the facts as contained or summarised in the requesting country's order and take them as decided by the court with primary jurisdiction over the confiscation. It is also possible that these facts are recounted outside the four-corners of the order itself, but in such a way that the order incorporates them by reference.

Indeed, a major advantage of direct enforcement mechanisms compared with indirect mechanisms is to eliminate the possibility of relitigating the case on its merits before the authorities of the requested jurisdiction. Most significantly, this means that the defendant, in principle, cannot argue before the courts of the requested jurisdiction that the judges in the requesting state did not give proper consideration to the evidence that was brought forward for their consideration. Underpinning requests for enforcement of foreign freezing/seizing/confiscation orders, is the basic assumption that the competent authority of the requested country can trust this information because it has been examined by the competent authorities in the requesting countries' legal system, whether it be a judge or prosecutor who is competent to issue such orders. As such the country can place reliance on these findings, there is no need to open a domestic investigation, to obtain evidence, or call witnesses. To recall, in the majority of such cases, the requested and requesting countries are signatories to bilateral or multilateral conventions which assume a level of

trust regarding others' jurisdictions respect for due process and protection of rights afforded in that jurisdiction. As mentioned above, countries may and often do request supplemental information about the case and applicable foreign laws to aid them in their pursuit of enforcement. In cases where there is an evident deficiency, requested countries are in a position to request supplemental information and to ultimately reject recognition and enforcement, if necessary.

But on the whole, the basic premise is that there is an assumption of regularity in the foreign proceedings, allowing for reliance on the fact-finding of the requesting country. This does not mean that the criminal or confiscation laws and theories have to be exactly the same in both states. There may, for instance, be times when a country is asked to enforce a type of order that does not exist in their legal system. However, as a matter of mutuality in co-operation and adherence to treaty obligations, a requested country may grant a request to enforce such a judgment and attempt to enforce it via its own legal powers and judicial system.

BOX 75 – **COUNTRY EXAMPLES: Relying on the Findings of Fact in the Foreign Order**

CYPRUS: Courts in charge of determining if a foreign order shall be registered, "shall be bound by the findings as to the facts in so far as they are stated in the conviction or decision of a court of the foreign country or in so far as such conviction or judicial decision is implicitly based on them."

LATVIA: The Criminal Procedure Law provides that "the factual circumstances established in a court adjudication of a foreign State and the guilt of a person shall be binding to a court of Latvia."*

UNITED STATES: Pursuant to the U.S. enforcement statute highlighted in Box 74, the available bases to challenge enforcement are limited, and arguments challenging the factual findings would fall outside the statute's scope and thus would normally be rejected by the enforcing court.

* The Latvia, Cyprus, and other examples of typical language on this point are available in StAR (World Bank and UNODC), Stefano Betti, Vladimir Kozin, and Jean-Pierre Brun, *Orders without Borders – Direct Enforcement of Foreign Restraint and Confiscation Decisions* (2022).

7 Return, Repatriation, and Use of Recovered Assets

Suggested audience:

- Policymakers
- Justice or foreign affairs ministries
- Central authorities responsible for co-operation in criminal matters
- Asset managers
- LEAs, investigative agencies, prosecutorial and judicial authorities

KEY GUIDANCE IN THIS CHAPTER

Recovered Assets: Return, Repatriation and Other Uses

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Chapter 7 Summary

This Chapter discusses the ultimate stages of asset recovery: disposal, return, repatriation, and use of confiscated assets. It focuses on R.4(h) and portions of R.38 related to asset management, sharing, and return. It also covers IO.8, specifically Core Issue 8.6, with elements of IO.2, as relevant.

This is the most impactful stage of asset recovery for victims of crime and societies, and represents the return on investment by LEAs, prosecutors, and competent authorities in all prior phases. The Chapter begins by focusing on asset management, which, assuming prudent pre-seizure planning and value preservation in the post-seizure stage, will mainly consist of liquidations, auctions, and sales. Once the state has final possession of confiscated property, the Chapter highlights various possible uses for these monies. These include returning confiscated property to its prior legitimate owners or using it to compensate victims of crime.

The Chapter also highlights a longstanding but optional part of INR.4 that countries should consider establishing an asset recovery fund into which all, or a portion of, confiscated property will be deposited for law enforcement, health, education, or other appropriate purposes. Countries may opt to use a centralised fund, but they also may allocate confiscated money to general revenues and budgets. Irrespective of which mechanism is chosen, Chapter 7's theme is that the interests of justice and a victim-centred approach should generally guide the actions of the government in making decisions about the use and disposition of confiscated assets. The Chapter also tackles the international dimensions of this issue, counselling arrangements between countries for sharing funds and agreements on costs when AR is the result of co-ordinated law enforcement actions. There is also a nuanced discussion of special considerations for countries in returning (or seeking) assets in corruption-related cases.

In summary, transparency, oversight, and accountability are key to ensuring the responsible allocation of confiscated funds. This upholds the rule of law and reinforces the legitimacy of the country's AR system as a whole. The public should not perceive confiscation as a profit-driven endeavour, but one which takes the profit out of crime and may benefit the people of the countries involved, whether directly, through reinvestment in law enforcement, or other positive outcomes.

7.1. Effective management and disposal of finally confiscated assets

In the list of measures related to confiscation, R.4 requires that countries have measures to enable their competent authorities to "ensure effective management of property that is frozen, seized or confiscated". The interim management of seized property is covered in Ch. 4.3, while this chapter deals with the actions that need to be undertaken in the final phases of confiscation to make the previous efforts worthwhile. Section F of INR.4 added several new paragraphs to the FATF Standards on the topic of asset management. Interpretive Note 4, paragraph 14, relates to preserving value in the context of provisional measures, but paragraphs 15-17 are reproduced here, for reference, as they relate to the last stages of the process, covered in this Chapter:

- (15) Countries should consider establishing an asset recovery fund into which all, or a portion of, confiscated property will be deposited for law enforcement, health, education, or other appropriate purposes.

- (16) Countries should ensure that they have measures that enable them to enforce a confiscation order and realise the property or value subject to the confiscation order, leading to the permanent deprivation of the property or value subject to the order. (On this, also refer to Ch. 5.6).

- (17) Countries should have mechanisms to return confiscated property to its prior legitimate owners or to use it to compensate victims of crime.

These themes are imported into IO.8, particularly through the *characteristics of an effective system*: "the value of such [seized] property is preserved through effective asset management" and "…where appropriate, criminal property is returned or used to compensate victims." Critically, Core Issue 8.6 has been added to the Methodology. It asks: "To what extent does the country return confiscated property to victims through restitution, compensation, or other measures?" Therefore, asset management, disposal and return form a major part of the new FATF Standards. This rests on two simple premises: (1) one of the main justifications for confiscation and AR is to compensate victims of crime or other legitimate beneficiaries, and (2) the ideal way to accomplish this is careful asset management throughout the process and sound disposal practices at the end of the process.

Managing and disposing of finally recovered assets are important aspects of the AR process. Proper handling from the initial stages through to final disposition helps to maintain asset value, reduce maintenance costs, and align the process with public interest goals. The approach to AM should be pro-active, starting from the pre-seizure phase, through the interim phase, and through final disposition. A comprehensive management strategy (developed prior to the restraint or seizure, if possible) helps prevent value deterioration, reduces the costs of maintenance, and ensures that assets are maintained in a condition suitable for their ultimate use or sale. Additionally, AM may contribute to obtaining the optimal value for confiscated assets when liquidated, which can increase positive outcomes for society linked to AR, whether through repatriation to victims or owners, reinvestment, reuse, or other lawful expenditures.

Proper final disposal practices should align with international best practices, as well as national and international legal frameworks. Asset disposal strategies should be flexible, with clear, transparent procedures to determine the best course of "final" action for different asset types. For instance, perishable or highly depreciative items may be sold quickly through public auctions or other transparent mechanisms, while assets of historical, cultural, or strategic significance may be transferred to public institutions or non-governmental beneficiaries.

Additionally, the disposal process must include safeguards to ensure that assets are handled by professionals of high integrity. Rigorous oversight, including audits and comprehensive record-keeping, is essential to maintain accountability and transparency. The role of independent monitoring bodies, as well as periodic reviews by relevant oversight agencies, can help ensure that the processes for asset disposal are free from corruption and mismanagement. Waste, fraud, or abuse in asset disposal may endanger an AR system, as allowing confiscated assets to enrich government officials would shake public confidence in the system. Government officials assigned to work on disposal should be vetted and of high professional integrity and ethics, especially since the assets they handle may be numerous, valuable, and tempting. Confiscated assets which go missing or are stolen return to their status as proceeds of crime, negating any positive outcomes from confiscation. Vendors and external service providers should be subject to due diligence and potentially background investigations to confirm their propriety.

ADDITIONAL CONSIDERATIONS

A country could consider developing an asset disposal strategy or policy, for use by its (1) dedicated AMO, (2) other specialised personnel within LEAs or the judicial branch, (3) third parties hired by the government to run an asset disposal programme. For example, EU Directive 2014/42/EU underscores the importance of AMOs or equivalent bodies responsible for handling seized assets. These bodies play a pivotal role in preserving the value of assets and preparing them for either return to rightful owners, repurposing for public use, or equitable distribution according to legal judgments or other principled processes. It is a best practice to professionalise AM

and disposal, to the greatest extent possible, as this logistical matter can affect the overall success of a country's AR system.

Furthermore, some jurisdictions consider that public participants in confiscated asset auctions should not be the same individuals from whom the assets were dislodged in the first place. Other jurisdictions consider this rule to be symbolic, and that anyone who can pay fair market value for auctioned confiscated assets should be able to buy them. However, organisers of auctions may wish to consider steps to ensure that potential buyers are uninvolved in the originating case or other criminal activity, and that the persons who bid are not secretly representing criminal interests (i.e., through straw buyers). The use of criminal proceeds to purchase assets at auction from the government can constitute a money laundering offence.

The integrity of sales and auctions could be ensured by collecting personal identifying information about the participants; running simple criminal record, database, and/or open source checks; and asking participants to swear and affirm that they have no connection to the originating case. The policy of allowing criminals to regain their assets, and potentially the reputational damage to the public authorities, may not be worth the risk, even if the criminals were to pay a fair market price for the asset. Typical AML due diligence on a potential buyer may be conducted, and that person's status as a recent convict may not make them a viable purchaser, particularly when other buyers without a criminal record are interested in the property. If confiscated assets are often sold back to criminals, even at a real price and with a legal source income, this could undermine some of the policy goals of confiscation in the long term, such as deterrence.

Normally, preventing the criminals from purchasing back their forfeited assets is a prudent rule, but there may be some exceptions. For example, some jurisdictions allow settlements wherein the asset is returned in exchange for cash, and this may be preferable for both negotiating sides. Consider two situations: while the headquarters of an OCG should not be returned to the gang, as it can provide a gathering point for future criminal activity, there may be a situation when the value of the asset is very restricted to a certain group, or where the offender is unlikely to (mis) use the property again and there is no harm in allowing the offender to pay legitimate cash for the asset.

In other cases, the assets may be so identifiable that members of the public may not wish to be associated with them, or may be wary of the reputation of the asset or the former owner. For example, New Zealand confiscated gold plated Harley Davidson motorbikes from the Comanchero Outlaw Motorcycle Gang. They were too unique to sell as there was a risk of any new owner being intimidated into returning the motorcycles to members of the gang. So, instead of selling them, the motorcycles were destroyed by the authorities. As another example, the United States destroyed Nazi paraphernalia seized from a James Whitey Bulger, an organised crime figure. Countries may decide not to sell offensive or insulting assets, even when there is unfortunately a market for such property.

Ultimately, the aim is to develop and implement asset management frameworks that uphold justice, benefit victims, and contribute to development goals if so defined by the country. The effective execution of asset disposal policies not only serves to remove the profits of crime but also strengthens public trust in legal systems and AR efforts.

7.1.1. Asset management in the final stage

The proliferation of asset management guidelines across various international bodies and professional frameworks reflects the contemporary, collective effort to enhance AR practices. Organisations such as the Council of Europe (COE), through instruments like the Warsaw Convention, have set out detailed standards to guide the confiscation and management of criminal assets, promoting effective measures across member states. Similarly, the United Nations, through conventions UNCAC, has established comprehensive guidelines that urge member states to adopt measures ensuring the preservation and repurposing of seized assets for public benefit. Networks such as CARIN and

other ARINs, work to bridge these practices, fostering co-operation and facilitating the exchange of knowledge to overcome inconsistencies and enhance AR capabilities.

However, the wide adoption of AM guidelines by different organisations across various jurisdictions can sometimes result in variations in procedures and standards, leading to potential inconsistencies. The variation in legal systems and legislative tools given to AMOs can also influence the application of guidelines. These variations, while individually effective, can pose challenges when harmonising practices on a global scale, especially in cross-border recovery cases where a unified approach may yield better results.

A concept that emerges in the comparison of these varied approaches is the "convergent evolution" of AM practices. Jurisdictions, international organisations, and professional bodies often start with different methodologies tailored to their unique legal and operational contexts. Over time, through shared experiences, workshops, and mutual learning initiatives such as those hosted by the ARINs and StAR, these practices tend to align around a set of best practices. This convergence still maintains differences that reflect regional and organisational priorities, but it highlights the collective progress towards creating a more consistent and effective global asset recovery framework. The aim

BOX 76 – **COUNTRY EXAMPLE: Asset Management in Senegal by a New Specialist Office**

On 23 July 2021, Senegal established a specialised agency through the reform of its Code of Criminal Procedure, known as the National Office for the Recovery of Criminal Assets (ONRAC). This entity is responsible for managing and recovering criminal assets. One of ONRAC's first activities after becoming operational in March 2022 was to promote awareness and share information with actors in the criminal justice system and institutional partners regarding the new legal framework for asset seizures, confiscation, and recovery.

To this end, a large-scale initiative was launched to clear out evidence storage rooms in law enforcement agencies and judicial institutions. While overflowing evidence rooms were reported throughout the country, the Kédougou Regional Court's jurisdiction stood out due to the large volume of seized assets with no judicial follow-up, and the nature of these assets. Kédougou is a vast region known for its rich mineral deposits, particularly gold reserves, and its border location with three neighbouring countries. This has led to significant illegal gold mining activities, both artisanal and industrial, and associated ML. Law enforcement and security forces had previously seized large quantities of instrumentalities and equipment used in these offences, as well as the proceeds derived from them.

In co-ordination with judicial and administrative authorities in the Kédougou region, ONRAC deployed the necessary mechanisms to recover and repurpose seized or confiscated assets. A team from ONRAC travelled 700 km from Dakar and spent one week in the region, where they documented and processed over 1 000 items for a public auction held at the Kédougou Regional Court headquarters. The auction was conducted in a hybrid format, with in-person bidding at the venue and online bidding, allowing remote participants to place bids in real-time. The auction resulted in the collection of over USD 773 553, which was transferred to ONRAC's account at the National Treasury Deposits and Consignments Fund.

This case highlights the critical importance of establishing a specialised asset management and recovery agencies in countries to effectively combat money laundering and terrorist financing. ONRAC played a technical advisory role to the judiciary, helping enforce asset seizures and confiscations. It ensured the preservation and monetization of assets, which would have otherwise deteriorated or lost value over time.

remains the same: to disrupt the financial gains from crime, recover assets effectively, and reintegrate them for lawful, constructive use.

Despite these advancements, inconsistencies persist. Collaborative platforms and continuous dialogue between agencies, as seen in multilateral conferences and inter-agency summits, are vital for addressing these disparities. Ensuring that standards such as those from COE and the operational guidelines from CARIN are harmonised with broader professional practices like ISO 55000 can help bridge these gaps. This integrated approach not only advances the alignment of strategies but also bolsters the global community's ability to act decisively in the recovery and management of assets linked to criminal activity.

The asset lifecycle for the management of criminal property and corresponding value involves a number of distinct though somewhat overlapping steps, as addressed in previous sections of this Guidance:

- **Identification and Acquiring the Asset:** This entails the continuous obligation to identify assets as part of an investigation, including taking steps to acquire evidence for use in judicial processes and to target assets for confiscation. The identification of complexities associated with the asset, value appraisal, and pre-seizure planning would occur in this stage.

- **Secure and Manage:** Having located the asset, it is necessary to secure the asset to avoid destruction and/or dissipation. This will require ongoing management of the asset, even in circumstances when it is restrained in place (i.e., in care of an FI).

- **Confiscate and Dispose:** When the process is complete, it is necessary to confiscate and realise the asset and find a secure, reliable, and safe mechanism to dispose of it.

All three of these stages can entail financial costs for the government. However, opting not to invest adequately in any one of them can have significant social and justice repercussions, and the long-term cost of inaction may surpass the costs associated with building well-funded asset identification and management practices which ultimately deprive criminals of their assets and allow the lawful, beneficial use of the resulting funds.

BOX 77 – COUNTRY EXAMPLE: Asset Management Offices in the European Union

In the EU, Directive 2024/1260 on asset recovery and confiscation advances the EU's legislative journey in this area. It places significant emphasis on the establishment/designation and strengthening of AMOs to ensure a consistent and efficient approach to managing confiscated assets across member states. This Directive aims to standardise practices to mitigate discrepancies that have historically impacted the effectiveness of AR within the EU. AMOs are thus tasked with ensuring the efficient management of frozen and confiscated property, either through directly managing it or providing support and expertise to other competent authorities; co-operating with other competent authorities responsible for the tracing and identification, freezing and confiscation of property; and co-operating with other competent authorities involved in AM in cross-border cases (art. 22). The Directive establishes a co-operation network of asset recovery offices and AMOs in article 29. By fostering co-ordinated efforts and knowledge-sharing, the Directive aims to harmonise AM practices across member states, reducing inconsistencies and enhancing operational efficiency. The Directive harmonises that all MS laws need to foresee pre-confiscation sales and AM planning. However, the exact set-up and authorities available for AM remain within the autonomy of the member state.

FIGURE 9 – **Criminal Property Lifecycle**

ADDITIONAL CONSIDERATIONS

A persistent problem in all phases of AM is the financial capacity of jurisdictions to effectively preserve value. As mentioned earlier in this Guidance, one option is to use confiscated funds to pay for such costs. But if the country does not have a sufficient fund built up, the costs can be overwhelming. One option which could be considered by countries is pooling funds with other countries for use on AM expenditures. Such pooled funds can be established by an international or regional body or development bank with sufficient convening power and a reputation for transparency and accountability. MOUs can be signed between countries and the body to establish the terms of the common pool (e.g., rights and obligations of pay-in and pay-out).

Another option is for countries in a certain region to undertake such an arrangement themselves. The pooled model can be helpful because, eventually, authorities in one jurisdiction may need confiscation-related assistance from another jurisdiction. It would benefit all participating countries by ensuring that when assets in their cases need to be preserved through costly management, there is a reserve of funds readily available to be used by their foreign partner to do so. If limited to a financial facility, then administration costs would be relatively low, but the mandate of the body could also be expanded to include a pool of AM experts that could be made available on an ad hoc basis to participating jurisdictions.

7.1.2. Asset disposal

While it is commendable for countries to aim for the return, repatriation, or productive use of recovered assets, it must be recognised that such outcomes are not always feasible, particularly in countries that do not, de jure, prioritise victims restitution or compensation over the confiscation of assets. The process of seizing and confiscating assets can be complex and resource-intensive, and in some cases, the costs involved may consume the entirety of the asset's value, leaving little or no surplus for return or public benefit. But even when financial returns are minimal or non-existent, the social and justice benefits of asset confiscation are not diminished. Denying criminals' access to their ill-gotten gains and disrupting the economic foundations of their operations serve as powerful deterrents and reinforce the rule of law.

Asset recovery strategies must therefore be balanced and reflect a **commitment to justice rather than profit generation**. Prioritising easily liquidated assets to ensure a financial return can lead to accusations of "policing for profit," undermining public trust and distorting the purpose of law enforcement efforts. The primary goal of asset recovery should be to uphold justice, disrupt criminal enterprises, and remove incentives for criminal activity, not to bolster state finances. Effective frameworks for asset recovery should emphasise principles of fairness, proportionality, and the broader social value of law enforcement actions.

The focus on justice over profit ensures that AR initiatives remain aligned with legal and ethical standards. A narrow approach that targets only assets that promise a quick return can lead to public perception issues, suggesting that the seizure process is driven by financial motives rather than the pursuit of justice. This concern is echoed in international discussions on best practices, where the emphasis is placed on comprehensive asset recovery policies that consider both tangible and intangible benefits. The true value of AR lies in weakening criminal networks and reinforcing the credibility of legal institutions.

Moreover, effective asset disposal requires a transparent process that upholds the principles of accountability and public confidence. Allocating recovered assets to benefit society, such as funding social programmes or compensating victims, can enhance the legitimacy of AR efforts and demonstrates the justice-focused objectives behind these actions. However, it is essential to acknowledge that the administrative and operational costs incurred during asset recovery can sometimes outweigh the monetary benefits, highlighting the need for strategic planning and realistic expectations.

The pursuit of comprehensive AR may integrate considerations of both financial return and broader social justice goals. LEAs and policymakers should prepare for scenarios where the primary achievement of AR is the symbolic act of depriving criminals of their assets, reinforcing the state's commitment to combating crime and upholding the law. This approach ensures that AR remains a tool for justice and not an end in itself for revenue generation. For instance, in fraud schemes or hacks involving virtual assets, the disposal method chosen may be a burn, effectuated pursuant to a court order, which essentially sends a token to a wallet where it can never be recovered, thus removing it from circulation and permanently eliminating its value. This does not result in a financial return to the confiscating country, but may serve a purpose of making criminal property worthless (an equivalent value token may later be reissued, if legally permitted, to allow restitution).

7.2. Final disposition of assets

In the final disposition of assets, the confiscated property or the proceeds from its disposal are allocated according to domestic law and/or potentially specific instructions in the judicial confiscation order itself. Proceeds from disposal are typically allocated to (i) victim compensation and other beneficiaries, (ii) the general treasury (national revenue) fund, or (iii) foreign counterparts through international mechanisms, which will be covered, in turn, below.

Compensation, restitution, and other similar measures preferencing victims are important goals alongside the main goal of confiscation, stripping criminals of the proceeds of their crimes. It is important to recognise that laundering the proceeds of crime involves its own inherent costs to criminals, and many criminals spent assets in unretrievable ways. Thus, it is unrealistic to expect full recovery of criminal profits in all cases. Despite this, the act of confiscation effectively underscores a jurisdiction's commitment to dismantling illicit financial structures, even if full monetary recoupment remains out of reach. This approach serves as both a preventive measure and a means of upholding justice, reinforcing the message that crime does not pay. The sub-Chapter below discusses a "victim centred approach" and presents this as a best practice, which it is. However, the primary goal of FATF's broader definition of asset recovery remains deprivation of criminal property, and making victims whole is one positive consequence or intended effect of this effort.

7.2.1. Centring victims of crime and other beneficiaries

As recalled above, INR.4, paragraph 17, provides that "countries should have mechanisms to return confiscated property to its prior legitimate owners or to use it to compensate victims of crime." IO.8 asks countries to demonstrate that "where appropriate, criminal property is returned to or used to compensate victims." Specifically, Core Issue 8.6 examines "to what extent does the country return confiscated property to victims through restitution, compensation or other measures?" Victim compensation is encouraged as a policy objective under several international instruments

incorporated by the FATF intro R.36, including the Vienna Convention, the Palermo Convention, the Warsaw Convention, and UNCAC, not only to provide restitution to those affected by crime, but to increase public support for the rule of law.[1]

In some jurisdictions, restitution of property to lawful owners and compensation of victims of crime is completely separate from confiscation. In other jurisdictions, it is common for the state to first confiscate all relevant assets in the context of its confiscation proceedings and then satisfy claims for the return of property and/or to victim compensation afterwards. Returning assets to victims and/or compensating them may take priority over, or even prevent, confiscation. This ensures that confiscation orders are not enforced at the expense of victims who have a right to have their property returned to them or who are owed some recompense as a result of the underlying criminal conduct. Any variation of these approaches is cognisable under the FATF Standards as long as there is some mechanism to return property to victims or prior legitimate owners.

There may be some benefits to using confiscation as the vehicle to obtain and eventually return property to its lawful owners and/or to compensate victims. These benefits can take the form of the expanded types of provisional measures available in the confiscations setting, resulting in a higher probability that assets will be secured during investigations and therefore available at the conclusion of the process for victims. Another benefit to using confiscation is the expanded toolkit for asset management that may be available in confiscation matters to prevent depreciation, when compared to other mechanisms like restitution. Additionally, confiscation conducted by the state that results in the return of property and/or the compensation of victims, can spare the victims the significant fees or expenses incurred in seeking returns or compensation through private law (civil) channels. On the other hand, systems that provide for separate proceedings to obtain the return of property and/or compensation, may ensure quicker returns or payments of compensation.

Laws or procedures should be established which set out clear steps which need to be taken by victims in order to make a claim to confiscated assets. It is a good practice to place instructions or guides for victims on public websites operated by the government, outlining these legal requirements in simplified terms. Established procedures (and any public guidance about them) should explain the basis or criteria on which claims can be recognised, so victims can understand if they qualify and how to make a successful claim. Unfortunately, confiscated assets may not be sufficient to meet the full claims of all victims in a given case. Therefore, countries should be able to establish schemes of distribution that establish how various claims will be fairly prioritised and distributed, *pari passu*, *pro rata*, or otherwise.[2] It may be necessary or advisable to do so with the express approval of the relevant court.

There are many different ways across the Global Network that the return of assets to victims can be effectuated, and this is highly specific to the legal system in particular jurisdictions. As mentioned above, whether and how victim compensation or restitution interacts with the confiscation system is one question for countries to consider. The interplay may also depend on the specific confiscation regime, as in the Box below.

1. For example, in cases of embezzlement of public funds, UNCAC Article 57, provides that confiscated property be returned to a requesting state. In other cases, the UNCAC obliges requested states to give "priority consideration" to the return of confiscated assets to their prior legitimate owners or the compensation of the victims of the crime. Similarly, Article 25 of the Palermo Convention provides that state parties must take steps to provide assistance and protection to victims, including by establishing appropriate procedures to provide access to compensation and restitution. Victims are also entitled to an opportunity to be heard at appropriate stages of criminal proceedings against offenders. The Warsaw Convention at article 25(2) states that "when acting on the request made by another Party[…], Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated property to the requesting Party so that it can give compensation to the victims of the crime or return such property to their legitimate owners".
2. Pari Passu deals with *priority* or *ranking*: It establishes that certain claims or parties are at the same level, meaning none has a superior right to payment or treatment over another within that class. Pro Rata deals with *distribution* or *allocation*: It describes how something is divided among parties who are, or have been established as, having an entitlement to a share.

BOX 78 – COUNTRY EXAMPLE: A Pragmatic Approach to Victim Returns in RSA

South Africa's NCBC regime under the Prevention of Organised Crime Act (POCA, 1998) does not specifically address victims. It caters to innocent owners, which in many instances are different to victims in that innocent owner must prove their interest in the forfeited property itself. However, because the Asset Forfeiture Unit (AFU) has adopted a victim-centric approach, it relies on the inherent authority of the courts to seek orders which recognise the rights of victims and ensure that forfeited assets can be returned for their benefit. A court making a confiscation order cannot order payment to victims directly under the terms of POCA, because the law prescribes confiscation as a payment to the State. However, in practice, the draft confiscation orders submitted by the AFU specify that any payment to the victim is deemed a payment to the State. A legislative change is being contemplated, but this shows how countries can find a way to recognise victims within the confines of their confiscation system. Moreover, if a defendant or respondent fails to satisfy a confiscation or forfeiture order issued by a South African court, victims can be recognised through a realisation application to the court. As shown here, countries may use constructs outside of confiscation laws to deal with victims.

In the context of asset recovery, victims of crime can be individuals, legal entities, communities, or even states.

ADDITIONAL CONSIDERATIONS

Accordingly, recovered proceeds can be used to support victims in a variety of ways, including:

- Compensating individual victims: Confiscated assets can be used to compensate victims of crime, including by providing compensation for identifiable losses, other financial assistance, housing, transportation, or other forms of support.
- Funding social programmes: Confiscated assets can be used to benefit communities that have suffered the negative effects of criminal activity through funding social programmes, such as drug treatment programmes, education programmes, or community development projects.
- Crime Prevention: Confiscated assets can be used to prevent crime by funding programmes that address the root causes of criminal behaviour, such as poverty, addiction, or mental health issues.

In some jurisdictions, a compensation judgment against an offender may include direct payment to a victim. In certain high-value cases involving many victims (for example, securities fraud and embezzlement), jurisdictions may establish case-specific compensation funds to serve the class of victims harmed by the criminal activity.

Key components of a victim-centred approach can include:

- Recognising victims' rights: ensuring the victims' rights are acknowledged and protected throughout the AR process.
- Providing restitution: returning stolen or embezzled assets to the victims or compensating them for their losses.
- Information disclosure: facilitating access to information regarding the assets and their recovery process.

Protection of victims' identity: ensuring the victim's privacy and safety during the recovery process.

- Compensation for losses: reimbursing the victim for financial damages, emotional distress, or other harm caused by the crime.

To this end, jurisdictions incorporating a victim-centred approach to AR may wish to implement clear claims processes and internal registries/tracking, ensure victims are informed and involved in decisions about asset disposal and use (where appropriate), use digital platforms for victim registration, tracking claims, and transparency, and adopt social impact bonds or dedicated funds with confiscated assets to remediate harms to victims.

Some jurisdictions have established forfeiture funds with the proceeds of crime to, among other things, provide victim compensation, or to use the funds for pre-determined purposes, such as law enforcement, health, education, or other appropriate purposes as set out by law, regulation, or policy. The establishment of such a fund is specifically envisioned in INR.4, paragraph 15. A general forfeiture or confiscation fund, established by the legislature, is considered a good practice and therefore specifically highlighted by the FATF as a possibility. The law could provide the contours of the

BOX 79 – **COUNTRY EXAMPLES: Compensating Victims of Large-Scale Frauds**

UNITED STATES: In the case of a USD 65 billion Ponzi scheme led by Bernie Madoff, among other restitution programmes, a court-appointed trustee was responsible for recovering assets from defendant's estate, pursuing legal actions against those who had profited from the Ponzi scheme, and distributing them to victims. The Madoff Victim Fund was established by the U.S. Department of Justice (DOJ), and, to date, it has assisted more than 40 900 individual victims in recovering 94% of victim losses. Among Madoff's many victims were not only wealthy and institutional investors, but charities and pension funds alike – some of which invested money with Madoff on behalf of individuals working paycheck-to-paycheck who were relying on their pension accounts for their retirements.

DOJ used several asset recovery mechanisms to ensure that funds were available to compensate victims. In the criminal case which concluded in 2009, Madoff was sentenced to 150 years in prison for running the largest fraudulent scheme in history. See United States v. Madoff, 586 F. Supp. 2d 240 (S.D.N.Y. 2009). Of the over USD 4 billion that has been made available to victims, approximately USD 2.2 billion was collected as part of the historic civil forfeiture recovery from the estate of deceased Madoff investor, Jeffry Picower. An additional USD 1.7 billion was collected as part of a deferred prosecution agreement with a U.S. bank and civilly forfeited in a parallel action. The remaining funds were collected through a civil forfeiture action against investor Carl Shapiro and his family, and from civil and criminal forfeiture actions against Madoff, Peter B. Madoff, and their co-conspirators.

The task of the Madoff Victim Fund was so complex that DOJ appointed a special master to oversee it and assist the victim remission proceedings. The special master – whose qualifications included formerly chairing the U.S. Securities and Exchange Commission – along with his team, evaluated over 66 000 remission petitions involving billions in cash flows and computed each victim's fraud losses to enable payments to be made. See DOJ Press Release, 30 Dec. 2024 and Madoff Victim Fund – Reaching Victims.

INDIA: A fraudulent entity raised money from the public illegally through secured debentures, promising high returns. Directors siphoned off funds into shell companies and never returned investors' money. India's Directorate of Enforcement (ED) provisionally attached the fraudulently acquired assets. As requested by ED, the state High Court constituted an Asset Disposal Committee (ADC) for the purpose of restitution. ED and the ADC secured a court order allowing release of attached properties worth INR 5.38 billion (USD 62.8 million) for reimbursement to more than 75 000 investors. The victims were saved from paying lawyer fees, as the ADC established an official website where the investors could file their claims.

possible uses of confiscated funds, and instruction on auditing and oversight. Monies deposited into the fund derive from enforced and realised confiscation orders. Such a fund may also be designed to include other related sources of funding, such as seized money that has not been claimed and is forfeited by default, confiscated assets where the legitimate owner could not be located, and surcharges imposed in cases of delayed payments (e.g., to satisfy value-based confiscation judgments).[3]

Thereafter, the amounts can be used primarily to compensate victims of crime meeting the fund's established criteria, or potentially other secondary uses. The advantage of such funds is that they can allow victim compensation even if the perpetrators fail to meet their responsibilities or a confiscation order is not obtained in a specific case. If other uses are permitted, they allow the public to see concrete and tangible benefits from confiscation. If money from the fund is reinvested into law enforcement, the use of a general fund is beneficial because it breaks the direct link between the LEAs working on specific confiscation cases and their stream of budgetary support, and puts in place outside decision-making and fund oversight which can ease concerns around "policing for profit."

ADDITIONAL CONSIDERATIONS

Beyond general confiscation or forfeiture funds, countries may consider establishing "special purpose" funds for especially complex cases or thematically-related cases. Some jurisdictions have established terrorism victims' funds or funds for victims of organised crime. Assets recovered in connection with terrorism or organised crime would then be pooled, and victims can be made whole even if there are no confiscated proceeds of the offence which specifically impacted them.

General forfeiture funds may also be used to fund or transfer confiscated assets to a domestic government agency, or to its designee, such as a non-governmental organisation, for use to support social welfare. Funds have been used to provide health, education, infrastructure improvements and other community development programmes. Use of recovered assets in this manner is also particularly relevant in jurisdictions where corruption or organised crime have undermined confidence in public institutions, including where law enforcement is met with hostility or even active resistance. Using recovered proceeds of crime for the economic revitalisation of affected communities can mitigate the damage done to society and restore confidence in the capacity of government to support communities.

Furthermore, the domestic legal framework or court authorisation may allow social reuse of specified recovered assets with procedures to ensure that social reuse decisions are efficient, transparent, and provide a clear benefit to the community. Social reuse may be the most appropriate disposal method for low-value property (for example, property located in a high-crime area) or where there is limited buyer interest (for instance, property that was previously owned by a notorious criminal).[4] Social reuse does not benefit a specific victim, but it is still part of a victim-centred approach because it seeks to cure or ameliorate social ills, including those caused by crime. Thus, there may not be a victim to point to, but vulnerable or deserving members of society may benefit from the proceeds of crime in a way that goes some way toward reserving the negative impacts of crime. Social reuse of confiscated assets can take many forms, such as:

3. Countries may also consider bringing abandoned property into such a fund. For example, property may escheat to the state when a person dies without any heirs or beneficiaries under law. If the use of unclaimed property is not already defined it law, consideration may be given to funnelling it into a regulated confiscation or forfeiture fund.

4. For example, in Italy, property recovered from the mafia has been used in social reuse initiatives such as houses allocated for use to families who lost their homes following a flood, manors assigned to a municipality to host women in distress, and housing allocated to refugees and homeless people. For another example, see Tyrone Reid, *Buyers Shun Confiscated Criminal Properties*, the (Jamaica) Gleaner, 23 July 2022.

- **Parks and recreational areas:** Confiscated land can be transformed into public parks and recreational areas, providing a space for outdoor activities, community gardens, and promoting community engagement.[5]
- **Community centres:** Confiscated property can be repurposed for community centres for health clinics, drug treatment programmes, educational facilities, youth centres, or social activities.
- **Housing:** Confiscated properties can be converted into shelters for homeless individuals, or affordable housing for low-income families or victims of crime such as domestic abuse.[6]
- **Transportation:** Confiscated vehicles may be used for community transportation needs, ambulances, emergency services, or outreach vehicles to rural or isolated communities.

For the continued success of a social reuse programme, assistance and resources from a non-governmental organisation or a government agency may be necessary. Managing these funds requires the infrastructure and capacity to document and handle transfers into and out of the government's account. To maintain public trust, it is essential that these funds are administered with appropriate transparency, clear criteria, and accountability through public reporting.

BOX 80 – COUNTRY EXAMPLE: Kazakhstan's Social Reuse of Confiscated Assets

Kazakhstan has established a management company responsible for the safekeeping, administration, and sale of recovered assets, with the proceeds deposited into a Special State Fund. As part of an UWO proceeding, a former official from the quasi-public sector voluntarily returned assets worth over USD 200 million to state ownership. The returned assets are being used for social purposes. For instance, a network of fitness clubs has been repurposed as rehabilitation and educational centres for children. Confiscated paid parking facilities have been transferred to municipal ownership, with all revenues directed to the city budget. Furthermore, the same individual contributed over USD 66 million to an Education Infrastructure Support Fund, which is allocated to educational development, school construction and renovation, and other social sector initiatives across the country.

In summary, countries would be expected to use the tools at their disposal to put victims at the forefront of asset recovery regimes, whether through restitution, remission, restoration, compensation, reparation, or whatever legal tools are relevant under domestic law. Using confiscation for this purpose, and subsequently applying confiscated assets to victims is a worthy objective and, often, an efficient option. The FATF promotes a victim-centred approach for the disposition of confiscated assets. However, it recognises that not all crimes have victims, and not all victims are identifiable, make a timely claim or petition, or qualify as victims under the law (e.g., it is possible that they did not experience direct losses, their loss was speculative, or they cannot demonstrate the financial or other types of damage). Therefore, countries are encouraged to consider the use of confiscated assets for other beneficiaries, especially those who have been affected in some way by predicate crimes, money laundering, or the financing of terrorism.

5. In Jamaica, the National Land Agency has taken over this kind of real estate and then is responsible to turn that property into a positive outcome.
6. For example, in Honduras, buildings have been loaned to be used for the temporary accommodation of displaced families, families affected by natural disaster, and families who need to hide because they have been targeted by organized crime groups. In the United States, confiscated real property has been allocated to non-profit organizations, such as Habitat for Humanity, for refurbishment to provide housing for families.

7.2.2. National funds, budgets, and repurposing assets for official purposes

The Interpretative Note to Recommendation 4 highlights that countries may consider establishing an asset recovery fund, where all or a portion of confiscated assets can be allocated to support law enforcement, health, education, or other appropriate purposes. As victims' primacy was discussed above, this sub-chapter provides guidance on the other possible uses of confiscated assets by the government, unless confiscated assets must be wholly integrated as revenue in a country's general budget. Having national funds for specific purposes (i.e., health or education), supplementing national budgets, and repurposing assets for official or law enforcement use are all valid ways to use forfeited funds. This approach can ensure the sustainable financing of key sectors but also reinforces the notion that recovered assets can serve as a long-term resource. Creating national, provincial, or state funds demonstrate a government's commitment to turning the proceeds of crime into instruments of public benefit, fostering a stronger and more resilient society. Reference should also be made to Ch. 2.1.4 (in discussing the establishment of a policy objective for a national AR regime, one of the components identified is reinvestment in asset recovery; potential uses for confiscated funds in this regard are detailed therein).

ADDITIONAL CONSIDERATIONS

When establishing national funds with recovered assets, there are several practicalities to keep in mind.

- Timeliness and Simplification: The centralised management of financial resources generally enables fast and efficient implementation of judicial and administrative orders, reducing bureaucratic fragmentation. One or more bank accounts (or a central account with sub-accounts) could be established, and this could be maintained in a central bank, separate from other agency accounts, or be placed in a trusted commercial FI within the country. Seized asset accounts could be separately maintained from confiscated asset accounts, depending on national law, the duration of the money's retention in the account, or other considerations.

- Optimisation of Returns: Seized or confiscated funds, managed through a dedicated account, could generate returns which could be used for lawful purposes (e.g., asset management costs or other lawful uses). To this end, if a country has a national fund for seized and confiscated assets, it could contemplate establishing an interest-bearing account, or invest the principal in (very) low-risk investments. Some considerations for such an account are that it is safe, in a low-risk environment, and not attracting high fees or transaction costs. Countries may wish to avoid investing recuperated funds in higher-risk or speculative assets (e.g. virtual assets). The aim of this is not to generate revenue for the state, but to avoid unproductive capital.

- Onward Use: Because money is kept in a fund or a central account for a time does not preclude taking money out of those accounts for use in accordance with the law, for specified purposes. The amount of time that any money spends in the account depends on outside factors, but once in the fund, the pot is fungible and available for its ultimate destination (e.g., allocation to support law enforcement, health, education, etc.)

- Traceability and Transparency: The entity managing the fund or funds could receive regular updates from law enforcement and judicial authorities. This helps to update and keep current the status of seized funds (assuming every amount is tied to a particular case or seizure event). It is a good practice to assign a unique identification number to each asset (or in this case, unit of currency in the fund) and to maintain this from the date of seizure all the way through final disposition. Some countries are incorporating the use of blockchain technology to track assets and ensure accountability.

A centralised fund could also benefit law enforcement and judicial authorities handling cash seizures throughout the AR process, including during investigations, as such seizures can be batched and tallied and assigned a unique number trackable throughout the lifecycle. Upon completing the seizure and completing official documentation in accordance with legal procedures, LEAs may seek to minimise the time spent holding cash by depositing it promptly at any FI, with subsequent transfer to the state's central account.

It is an optional practice to supplement budgets through the use of confiscated assets. Some countries simply allocated all confiscated sums to the general treasury, to be used as any other state revenue would be. This makes the funds accessible for nearly any lawful purpose, as decided by the government entity responsible for general spending powers and appropriations. While this option is attractive, it can weaken causal bond between crime fighting and prevention and confiscation efforts. There is a tangible benefit to the public's perception that confiscated funds are being used for a positive and related purpose. Such funds can be used for roads, bridges, schools, and hospitals, for instance, but they should not supplant regular funding sources, only supplement them.

In fact, managing and disposing of seized and confiscated assets imposes considerable financial demands on government budgets. To mitigate this, many jurisdictions have adopted legislation allowing AR operations to be funded through recovered proceeds, with the long-term goal of making these entities financially self-sufficient. Nonetheless, the government bears the ultimate responsibility for ensuring that adequate resources are allocated from the general budget to support asset management functions, even when a dedicated fund is in place to channel and utilise proceeds from confiscated assets. Regardless of the chosen funding model, it is vital to establish a database for tracking assets in the possession or constructive possession of the government (ideally a centralised database) as well as mechanisms that enable the AMO (or other asset manager) to access funds swiftly for unforeseen or extraordinary expenses. A lack of adequate funding can critically impair the efficiency and effectiveness of the asset recovery system. Chapter 2.2, on national asset recovery regimes, covers in detail how the system can be used to reinvested in asset recovery.

Repurposing confiscated assets allows governments to strategically transform criminal proceeds into meaningful contributors to society. By reallocating these assets for public or institutional purposes, jurisdictions can meet various social, economic, development, and security objectives. As discussed above in Chapter 7.2.1, repurposing confiscated assets can involve direct social reuse, such as converting properties once tied to criminal operations into community hubs, or indirect reuse, where funds from asset sales are invested in public programmes like victim support initiatives.

The effective repurposing of confiscated assets can reinforce public trust in the criminal justice system and law enforcement. When citizens witness the recovery and productive reuse of illicit wealth, it demonstrates a strong commitment to justice and the rule of law, showcasing tangible results. Moreover, reinvesting these proceeds into law enforcement creates a sustainable loop in combating crime. Such funds can be directed toward enhancing investigative tools, officer training, and advanced technology, ultimately improving the overall effectiveness of crime prevention strategies. To this end, the administration of recovered assets should be disclosed to the public through transparent and public communication.

Repurposing assets for official use – as they are, and without first liquidating them – is a practical, environmentally-conscious, and cost-effective measure. Countries are suggested to have the legal authority to convert finally confiscated assets for this purpose. If this option is chosen, it should be conducted with massive oversight, and consideration should be given to establishing value limits so that vehicles/boats/plans used by public officials are not perceived as luxurious by the public. Consideration should also be given to measures to maintain the integrity of a country's AR programme and to remove any opportunities for impropriety or abuse in the administration of such programmes. In the context of official use, countries have implemented, for instance, restrictions on when property can be put into official use by the government (i.e., not until there is final confiscation order, as using seized property may result in

damage, degradation, or wear and tear and reduces the value of the asset). Countries allowing for official use should take care to ensure that no victims would be left uncompensated as a result of applying this practice in a particular case. For instance, the country may consider only granting requests for official use after approved claims and petitions for victim compensation have been processed and paid. Government institutions may also establish that decisions about official use of confiscated assets are made at a higher level or even by an outside advisory council (i.e., to avoid the perception that law enforcement is "shopping" for assets instead of using confiscation for a legitimate purpose).

Vehicles and vessels are suited to such reuse, and there are countless examples of countries who have converted former criminal property into police cars, undercover vehicles, and boats used for maritime police, rescue operations, or the coast guard. Some modifications will usually be necessary (including to change appearance or maximise functionality). Aircraft are another category of equipment which may be repurposed by LEAs, although, confiscated planes should be given all appropriate inspections, safety, and maintenance checks as such craft in the hands of organised criminal groups may be intentionally deprived of regular serving or critical updates. For example, in several countries, seized planes and helicopters from illegal miners and loggers have been repurposed to patrol the protected environments where these criminal activities once took place.

Criminals are increasingly using advanced technology, to include smart phones, computers, cameras, drones, and AI disguising technology. These too can be repurposed in by law enforcement, after ensuring that there are no bugs, surveillance devises, or live transmitters to criminals embedded in the technology. Commonly confiscated asset types including buildings and vacant land, may be appropriate for LEA re-use as police stations or training facilities. More uncommon assets may also be put into government service. Some more unusual examples include forfeited horses and dogs. Other examples include various types of virtual currency and obscure coins (for use in covert, undercover, or sting operations) as well as clothing and accessories (for use by undercover officers). If the jurisdiction is one where some LEAs carry weapons, then it is also possible to repurpose seized and confiscated (and unmodified and traceable) guns for law enforcement use. However, if destruction of the assets is the only safe option, then authorities should have a legal power to do so.

To ensure transparency and prevent misuse, it would be advisable for countries to conduct preliminary checks when re-using confiscated assets. This could be achieved through formal agreements between AMO and relevant law enforcement or judicial authorities, enabling the sharing of data and information on buyers and the assets (if they are sold back to police). Another safeguard could involve the implementation of monitoring procedures, extending for at least five years following the repurposing, and a sunsetting provision on the use of assets, as determined by an appraiser's estimate of its remaining useful life. This would help to prevent confiscated assets from returning to individuals connected to criminal organisations, thereby strengthening risk prevention measures. Finally, any regulation of repurposing assets for official use should account for the fact that the LEA which conducted the seizure may not be the agency which could benefit the most from the asset in its confiscated form. This entails having (i) an equitable decision-making process, and (ii) some legal means for transferring ownership between institutions and taking free and clear legal title. As with any government property, proper liability insurance should be obtained on confiscated and retained assets.

Confiscated assets may also be directed to general revenue fund. The spending of public funds is generally a political decision. Protecting public administration bodies from such political decisions can help ensure that such bodies are not subject to political pressures. This is important where the body's expertise is quite distinct from political decision-making and thus it may not be best positioned, nor wish to, make decisions about the spending of confiscated assets. This protects such bodies such as LEAs or AROs from lobbying and related efforts to influence the body regarding the use of funds. The worst case scenario is the risk of efforts to corrupt such a body to seek certain decisions regarding the use of confiscated property.

By allocating confiscated funds to general revenue, authorities involved in confiscation, management, and disposal can focus on cases that have meaningful community impact as opposed to those that may be more profitable. This protects the agencies from becoming the focus of political discussions such as whether the asset recovery framework pays for itself or does not. The public – victims, community organisations, et al. – can then focus their engagement on public spending on budget processes of the government as a whole and accountability of the government's decision making through these budget processes and at elections.

As discussed in Ch. 2.1.4, countries may consider strategically reinvesting confiscated assets into capacity building programmes that directly enhance future AR capabilities. Given that countries collectively intercept a small slice of the estimated USD 4 trillion global criminal economy, reinvesting confiscated assets into specialised training, technology, and institutional capacity represents a high-yield approach to combating crime. This can create a multiplier effect: every amount invested in investigative capacity and forensic technology potentially yields greater future recoveries. Unlike competing uses of funds, confiscated asset reinvestment ensures criminal proceeds directly fund their own defeat, making AR a self-sustaining system.

Countries could consider allocating a percentage – such as 15-25% – of confiscated assets toward enhancing AR capabilities, prioritising: (a) advanced training for investigators and prosecutors specialised in financial crime; (b) cutting-edge forensic technology, blockchain analysis, and AI capabilities; (c) enhancing ARINs; and (d) specialised AMOs. By institutionalising this practice, FATF jurisdictions can create increasingly capable AR systems, transforming the economic incentive structure sustaining transnational criminal organisations and responding to the economic imperative for breaking the cycle of criminal prosperity.

Regardless of the mechanism chosen, states may provide a structured or tiered framework governing the allocation of confiscated assets and defining priority uses – such as compensating victims, financing crime prevention programmes, allocating funds to government ministries, or building capacity for AR.

7.2.3. International mechanisms

Under revised FATF Recommendation 38, "[c]ountries should have measures, including legislative measures, to take expeditious action in response to requests by foreign countries seeking assistance to identify, trace, evaluate investigate, freeze, seize and confiscate criminal property and property of corresponding value. These measures should also enable countries to recognise and enforce foreign freezing, seizing, or confiscation orders. Further, countries should be able to manage property subject to confiscation at all stages of the asset recovery process and share or return confiscated property."

Although the obligation to share or return assets may be found in multilateral treaties, such as UNCAC or the Warsaw Convention, the legal authority permitting and describing how to share or return assets is governed in most instances by domestic law. It is a common feature of such domestic law to include requirements that there is an agreement in place between the transferring and recipient country to effectuate the transfer. The circularity can be intentionally reinforcing, but it can also be intended to limit asset sharing to only those countries with which the sharing country has significant or formalised relations, such as co-operation in criminal matters. These agreements, where necessary, may take the form of sharing agreements, bilateral MLATs with asset transfer provisions, or ad hoc, case-specific agreements when pre-existing agreements either do not exist, bilateral treaties do not address asset sharing, or other existing agreements do not apply to the recipient country. Multiple-use "standing" sharing agreements are often called "permanent asset sharing agreements" or simply sharing agreements, but they should be distinguished from the one-time use agreements that countries may find the need to sign in relation to particular cases. Multilateral conventions may also form the legal basis for asset sharing and return.

Asset sharing between governments should generally not be pursued when there are victims of crime to be compensated in either country or in third countries. Confiscated money that should be distributed to victims should not be split between state parties in recognition of productive co-operation. Generally, victim considerations should take precedent as a matter of first priority. Any sharing between states may occur as a secondary or later priority (cf. asset return, discussed in section (b) below, or situations where a state can be considered a victim).

a. Standing and case-specific asset sharing agreements

Standing sharing agreements are often contemplated where there is a frequent and routine sharing relationship between governments. These more lasting agreements – not designed for specific cases but for across the board confiscation relations between two countries on a more permanent basis – promote efficiency in asset return by eliminating the need for negotiating agreements in every case where there is an expected asset transfer. Such agreements may address routine matters between the parties, such as how the percentages to be shared may be calculated, how funds are to be transferred (e.g., via wire transfer), victim compensation considerations, follow-up or monitoring of transferred funds, and the types of cases to which such an agreement will apply.

ADDITIONAL CONSIDERATIONS

It is a good practice to negotiate such agreements especially with frequent foreign partners in asset recovery. They set clear expectations (divorced from the often complicated, fraught, or even emotional considerations involved in given case),[7] and once they are in force, can actually have the side effect of promoting more asset recovery co-operation because dealing with the country becomes familiar and predictable. Moreover, the negotiation itself can build relationships, and offering to enter into negotiations for new asset sharing agreement can be a diplomatic tool to enhance co-operation with important and strategic partners in combating ML/TF/PF.

Case-specific (or ad hoc) agreements are also frequently utilised in asset return where domestic law requires an agreement between governments as a precondition of transfer. These agreements may be employed where the existing bilateral treaties between governments do not contain provisions for asset sharing, or there is no standing asset sharing agreement in force between the countries. Even when there is such a standing agreement, governments may choose to negotiate case-specific agreements to address unique considerations. Case-specific agreements may be useful when there is a limited volume of confiscation co-operation with a certain country and resources or circumstances would not justify a longer negotiation of a standing sharing agreement. Case specific agreements may also be useful in multijurisdictional cases, where more than two countries would be involved in the sharing.

A good practice is to publish the agreements reached between jurisdictions where appropriate. Several countries stated that this good practice informs prospective recipient countries about the values prioritise by the country in asset sharing cases, and the features of agreements that the returning country has used in the past. This is beneficial to set expectations, by example, for the negotiation of future agreements.

b. Special considerations in returning assets in corruption-related matters

The FATF Recommendations complement and promote countries' implementation of several multilateral conventions, including UNCAC. Per R.36, four conventions must be ratified and fully implemented by countries, and another three conventions are mentioned as optional.

7. Such considerations can arise when cases relate to the change or overthrow of a government, when the victims are particularly vulnerable or from sensitive groups, where litigation has persisted for years or even decades and the authorities care deeply about the matter, or when the cases involve war crimes, controversial political figures, or other polarising topics. While asset recovery is a legal and operational imperative, human beings with strong interests or national interests are the ones who will carry it out.

ADDITIONAL CONSIDERATIONS

As Recommendations which are voluntarily adhered to by jurisdictions, the FATF Standards can and do go "beyond" these conventions at times. Although they do not conflict with them, practices do evolve, and several of these conventions, including UNCAC, while seminal agreements, were negotiated in some cases decades ago. Additionally, this Guidance on the whole is non-binding, and highlights different ways to comply with the FATF Recommendations and to promote effectiveness in asset recovery. The following text elaborates upon some of the principles contained in multilateral conventions, and it may not be relevant to all countries. It takes a practical approach to real-world considerations when contemplating asset recovery and return as an obligation, a restorative practice, and a potential resource for development.

The FATF recognises the need to promote transparency and accountability in asset return and the responsible stewardship of returned assets, particularly when the offences underpinning confiscation involved foreign official corruption, public funds, or criminal conduct detrimental to public trust (e.g., large scale embezzlement, extortion, misappropriation, bribery). In this category of cases, it is even more critical than usual to ensure that funds returned are properly monitored and used, that the return process and its reasoning are transparent, and that, to the greatest extent possible, the public and civil society can track the subsequent uses of the funds, i.e., through annual or quarterly reports. There are several relevant and helpful guides on this matter more broadly.[8]

In instances of asset return in large-scale corruption cases, a case-specific sharing agreement could contain specific provisions establishing conditions which serve to protect both the sending and receiving countries and guard the interest in the responsible return of the proceeds of corruption. The misuse of shared or returned assets undermines co-operation, trust, and potentially relations between countries, and does not serve the intended beneficiaries. Agreements may include conditions such as requirements for auditing and/or monitoring; designating specific recipients (as opposed to transferring money to a general fund or agency in the recipient country); identifying infrastructure or other public works projects for the investment of returned funds; and requiring that the recipient jurisdiction inform civil society and the public of the uses of returned funds, among others.

Asset recovery practitioners, NGOs, academics, and political leaders continue to debate when and how to return assets recovered in cross-border corruption and related money laundering cases, particularly in situations when: (1) the government in the requested state is substantially the same as the one that engaged in the corrupt acts giving rise to the confiscation in the first place, (2) there is a risk that the funds returned could be misappropriated again, thus defeating the purpose of removing them from the offenders; or (3) there are serious concerns about the accountable and transparent use of the funds if they were to be returned without conditions. All of the above situations may exist in a given case, to varying degrees.

Countries that successfully confiscate assets in such situations will be faced with difficult decisions and an inherent responsibility to ensure the assets do not fall into the wrong hands again.[9] For developing countries, the return of confiscated criminal property can help promote rule of law, build more sustainable economies, and renew trust in institutions. For the largely developed countries where these funds are located, it is incumbent on them to ensure that their financial systems do not become safe havens for criminal proceeds. It should be underscored that this is a

8. See Basel Institute on Governance, *Online Course: Guidelines for the Efficient Recovery of Stolen Assets* (contributions from the Swiss Federal Dept. of Foreign Affairs, ICAR, and with the support of StAR).

9. For example, as a major international financial centre, Switzerland makes publicly available information on its approach to asset recovery in cases of foreign political exposed persons. See the explainer, video, and links here, as well as the country's 2014 Strategy on the topic and its memoire of recent experiences in returning illicit assets entitled *No Dirty Money*.

global issue which has impacted over 141 countries and involved more than USD 16 billion in assets; these concerns are relevant to many countries, not only a small group of countries involved in major cases.[10]

This topic can be controversial and cases of this nature are complicated. On one hand, the potential recipient country may view asset return as a matter of right. If it requests the assets back, or even if it does not specifically request asset return or sharing, the country may view it as a moral obligation for the confiscating country to give back the funds without strings attached, and an infringement on its sovereignty, if they are not. Potential recipient countries may also believe that it is simply not the role of the sharing country to place any conditions or controls on the return of funds, and that the onward use of those funds, once returned, is not their business.

On the other hand, the country holding the confiscated funds (i) which has expended time and effort to recover them, potentially without assistance from the recipient country, (ii) which is accountable to its citizens for the proper use of public funds, and (iii) which becomes the legal owner of such funds upon entry of a judicial order, may take the view that it should have some input as to the use or destination of the funds so that recovered property does not again become the proceeds or instrumentalities of crime. The country holding the funds typically has a stronger bargaining position in the asset sharing negotiation, but when funds involve the embezzlement of public funds or laundering of the same, it generally has an obligation to ensure the return of confiscated funds to the requesting country. UNCAC contains a legal obligation along these lines in art. 57(3). Even in situations beyond embezzlement, there may be ethical reasons to return stolen funds as nearly to 100% as possible.

However, unconditional return may be too risky in certain situations. Ultimately, without the investigative and legal actions of the confiscating jurisdiction, the funds would not be able to be returned and would still be enjoyed by the offenders. This investment of resources and physical possession of the assets gives the sharing country a strong interest in the eventual fate of the funds. Further, the state returning the funds has an obligation to its citizens (the taxpayers) to ensure that the significant resources used to investigate criminal activity and successfully recover assets results in the responsible transfer of the fruits of these efforts.

It is a good practice for a country in this position to consider that it may have a duty of care to prevent the funds from being used to enrich the same (or new) corrupt regime or perpetuate the theft or embezzlement of national wealth which should benefit a country, not individual leaders. The completely unrestricted and unconditional return of funds is possible and permitted, but may not serve the larger interests of either the sharing state or the recipient state when serious concerns, such as those described above, are present. It is detrimental to the practice of asset recovery and against the spirit of UNCAC, the FATF, and other standards for asset sharing or return to fuel a cycle of crime, or to be perceived as a waste of time or resources when the same funds are stolen again due to a lack of accountability or oversight. There are a range of duelling considerations which countries engaged in this process may face. Asset return is essential as a matter of fairness, but asset return should benefit people, not government officials.

Additionally, asset return should be conducted as swiftly as possible to the affected country, but it must be carried out with appropriate and deliberate planning, and in an environment where those harmed by offences can be benefited. A delay of (many) years after the conclusion of proceedings should not be the norm, but there are many factors which can affect the swiftness of asset return, from the need to negotiate treaties or agreements, to the cooperation of the destination state, and the conditions that may need to be arranged for accountable return.

10. See StAR's *Asset Recovery Watch Database* for examples of such cases. StAR and UNODC are regularly collecting information on international asset freezes, confiscations, and returns, including challenges, to update the database. Cases can also be submitted directly via StAR's website for inclusion in the database. See UNCAC CoSP, Tenth Session, CAC/COSP/2023/15 (2023) for more information.

Some countries, such as the United Kingdom, have put in place detailed guidelines to deal with such challenging situations.[11] A few common features of these guidelines include the requirement for consultation (including with other domestic agencies, such as ministries of foreign affairs), and high-level approval of all (or certain) asset sharing matters involving substantial amounts of money or corruption. This is distinguished from more routine asset sharing which may be the result of legal assistance or joint law enforcement activity. These guidelines generally state that asset return, with the use of funds agreed by both the returning and receiving state, is the first preference and guiding principle. Not all corruption cases are likely to raise the types of concerns described here related to widespread corruption, and it is often a straightforward matter to return assets from one-off corruption cases to countries that have accountable and stable institutions, transparency and anti-corruption measures, and strong rule of law. Even in a more straightforward return scenario, the guidelines still ensure that monitoring and accountability arrangements are put in place. However, this monitoring would be proportionate to the value of funds being returned and other contextual circumstances. However, in more complex scenarios, when there are concerns about endemic corruption or it is likely that the funds could be subject to further misuse, the guidelines allow for alternative mechanisms of return.

These alternatives may include certain restrictions on the use of the funds;[12] requirements around auditing or oversight; the involvement of neutral third-parties, such as civil society, to implement selected programmes with the funds; or the use of negotiated settlements. When creative solutions for asset sharing need to be explored, all efforts should be made to consult with relevant governments, including, if necessary, through a mediator (e.g., if the sharing and recipient country do not have regular diplomatic relations).

Creative arrangements should emphasise transparency, so that the public, journalists, and civil society can report on the outcomes. The arrangements should strike a balance between respecting the ideals of asset recovery (including to return funds to the place from which they were stolen), and ensuring that such assets benefit the citizens or groups thereof, not the individual public officials. If there is a lack of trust between the parties, specific projects could be funded to this end (e.g., building a railway with agreed-upon contractors who won a competitive bidding process; vaccination campaigns carried out by global health bodies; the repayment of debts owed by the recipient to development banks or other lenders). Ensuring consultation and mutual respect will be key in these situations, and trusted non-governmental or international organisation partners may be called upon to enable, facilitate, or oversee the secure, transparent, and accountable use of the assets.

c. Cost-sharing considerations

The Interpretive Note to R.38, paragraph 6, specifies: "countries should be able to share confiscated property with other countries, in particular, when confiscation is directly or indirectly a result of coordinated law enforcement actions. Countries should be able to make arrangements, where appropriate, to deduct or share substantial or extraordinary costs incurred when enforcing a freezing, seizing, or confiscation". This paragraph builds on the prior one, paragraph 5, confirming that "countries should have effective mechanisms for managing, preserving, and, when necessary, disposing of, frozen, seized or confiscated property as set out in Recommendation 4." Essentially, all of the AM measures, processes, possibilities, and considerations in place in the country when pursuing its domestic asset recovery matters should also be accessible when assisting a foreign partner. Chapters 3.6 and 4.3 cover these issues in depth, but the premise is that what a country can do for itself in terms of preserving value and managing assets, it should be able to do for others.

11. See UK Home Office, Guidance, *Framework for Transparent and Accountable Asset Return* (2022).

12. Note, some countries cannot legally accept conditions or restrictions when assets are returned or shared to them. In this situation, if there is some obstacle to unconditional return or sharing, the sharing country could consult with the country and seek to benefit the citizens of that country, potentially though entrusting the funds to a third-party for mutually agreed expenditure.

BOX 81 – COUNTRY EXAMPLE: Transparent and Accountable Asset Return

UNITED KINGDOM: In 2021 the UK returned nearly half a million pounds of corrupt funds to the Government of Moldova to fund social assistance for vulnerable people.

Former Moldovan Prime Minister Vlad Filat was accused of involvement in the theft of over USD 1 billion from the Moldovan banking system. An NCA investigation uncovered that Vlad Filat's son, Luca Filat, had significant funds and outgoings on luxury goods and services while living as a student in London. Luca Filat was unable to demonstrate a legitimate source for the money, allowing the NCA conclude forfeiture proceedings and recover GBP 466 321.

In line with obligations under UNCAC, the UK assessed these funds as appropriate for an asset return to Moldova. The UK process for returning the proceeds of corruption is published in the Framework for Transparent and Accountable Asset Return (referenced in footnote 11 above). This approach ensures the use to which recovered assets are put is clear. It also aligns with principles endorsed by the Global Forum on Asset Recovery (GFAR), and the spirit of UNCAC.

The UK and Moldova worked together to agree a Memorandum of Understanding which ensures the returned assets are used towards projects which benefit of Moldovan people. The MOU also provided for transparency and accountability through appointment of a monitoring Civil Society Organisation. Keystone Moldova was appointed to design and implement a robust and transparent monitoring programme, including publishing intermediate and final reports on Government websites. As outlined in these reports, the funds were administered as intended to provide 543 personal assistance posts for people with disabilities. This service has been sustained, supporting individuals with severe disabilities to live within the community.'

SWITZERLAND:

- *Karimova*: In 2012, the Swiss OAG opened a criminal investigation concerning allegations of forgery and money laundering based on MROS-reports against the personal assistant of Gulnara Karimova, eldest daughter of the late Islam Karimov, former President of the Republic of Uzbekistan, and the general manager of the Uzbek subsidiary of a Russian telecommunications company. The criminal proceedings were subsequently extended to include two of Gulnara Karimova employees, Gulnara Karimova herself, as well as another person.

  On 22 May 2018, the OAG issued a summary penalty order convicting one of the suspects, a close associate of Gulnara Karimova. The convicted man had opened corporate accounts in Switzerland between 2004 and 2013 that were used to split up money transfers and to frustrate investigations into the origin and true purpose of the funds. He also signed falsified bank documents in order to conceal Gulnara Karimova's identity as the true owner of the funds. Following two decisions by the Appeals Chamber of the Federal Criminal Court on 8 May 2019, the summary penalty order has taken full legal effect. The close associate convicted was ordered to pay a monetary penalty. In a second case, the personal assistant of Gulnara Karimova was also convicted. As a result of these two convictions, the forfeiture of over CHF 313 million was ordered with a view to returning these funds to Uzbekistan.

  Switzerland, having waived a sharing quota in favour of Uzbekistan, concluded a sharing agreement with Uzbekistan in 2022 on the modalities of the restitution of assets that were definitively confiscated in the criminal proceedings in connection with Gulnara Karimova. In the agreement, Switzerland and Uzbekistan have to set

up a UN multi-partner trust fund. This fund shall make a concrete contribution to the implementation of the SDGs in Uzbekistan and to be used for the benefit of the Uzbek population. The restitution solution agreed with Uzbekistan is innovative for several reasons:

i) The Fund will be used not only for the amounts currently available, but also for any assets that may be definitively confiscated in Swiss criminal proceedings relating to Gulnara Karimova.
ii) The architecture and operation of the UN trust fund have been adapted to the particularities of a restitution of illicit assets. Switzerland and Uzbekistan are represented on the Fund's governing bodies, and will therefore be involved throughout the whole restitution process.
iii) Civil society plays an advisory role in this restitution. The involvement of civil society is essential to guarantee the effectiveness and accountability of the Fund.

The Fund is now fully operational and currently endowed with USD 95 million. A first project to reduce maternal and newborn mortality is underway and USD 45 million is being invested in the country's 227 maternity units. Two additional projects in education are currently being implemented.

- *Merceron*: On 15 July 2011, a Swiss bank filed a report with the Money Laundering Reporting Office Switzerland (MROS) concerning two banking relationships, including a banking relationship held by a company incorporated under Panamanian law, whose BO was Frantz Merceron, former Minister of Economy, Finance and Industry of the Republic of Haiti from July 1982 to December 1985, under the presidency of Jean-Claude Duvalier. On 22 July 2011, notified by MROS, the Office of the Attorney General of Switzerland (OAG) opened a criminal investigation against unknown for money laundering under art. 305bis of the Swiss Criminal Code, and ordered that the assets deposited on the account be frozen. On 15 January 2013, the OAG issued detailed analysis on the financial flows in question.

  On 10 October 2012, the Swiss government decided to freeze the account on the basis of art. 2 of the Restitution of Illicit Assets Act (RIAA), an administrative law which only applies in exceptional circumstances. It also instructed the Federal Department of Finance (FDF) to take legal action for confiscation of the assets. In 2015, the Federal Administrative Court (FAC) rejected an appeal against the decision of 10 October 2012 (B-5905/2012). In 2016, the Federal Supreme Court (FSC) rejected an appeal against the decision of the FAC (1C_6/2016). On 13 January 2020, the FDF filed with the FAC an action for the confiscation of the assets deposited on the account of the Panamanian company, based on art. 14 of the Foreign Illicit Assets Act (FIAA), which had entered into force in 2016 and replaced the RIAA.

  With judgment of 15 May 2024 (B-261/2020), after considering the statutory confiscation requirements, the FAC deemed that the assets could be presumed to have been obtained illicitly. According to the FAC, this presumption was validated by the inordinate increase in the wealth of Merceron and his wife facilitated by the exercise of a public function by the former, and by the notoriously high level of corruption in the Haitian State and surrounding the minister during his term of office. Moreover, the FAC took the view that the company had not demonstrated that the assets in question were acquired legitimately and had thus failed to reverse the presumption. The FAC upheld the action and ordered the confiscation of the assets frozen on the Panamanian company's account, amounting to more than CHF 4 million (EUR 4.28 million).

  The FAC also ordered that the assets be transferred to the Swiss Confederation in view of a return to Haiti. The judgment was not appealed and became final. After their realisation, the confiscated assets will be returned in full to improve the living conditions of the inhabitants of Haiti or to strengthen the rule of law in this country, in accordance with art. 17-18 FIAA.

When investigating and litigating a domestic case, the country controls its own timelines and decisions which may have a follow-on impact on AM. It will be well accustomed to the "normal" length of complex cases, including appeals, and may even have some rules in criminal cases which reduce the timeframe leading up to asset liquidation. Ultimately, the country's litigation and AM choices affect only itself (and potentially the victims or claimants in that case). However, a country with which another country is co-operating may have much longer judicial proceedings than the requested country is accustomed to. This means that the requested country should be prepared to manage assets for potentially quite a while, and it may incur costs in doing so.

Moreover, this dynamic of managing assets on behalf of another country may carry a duty of care. When a country is handling assets in view of confiscation abroad, the requesting country lacks not only the physical control over the assets, but the ability to understand the culture, norms, rules, and laws of the country where the asset is situated. It is therefore incumbent on the requested state to do its utmost to preserve the value of the assets restrained and to dispose of them in a way that will secure reasonable outcomes for the requesting country. Reasonable in this case would not be obtaining a maximal value or the best possible outcome, but at a minimum, the country should preserve the bulk of the value of asset(s) and not permit significant depreciation. This may include establishing routine (i.e., monthly), in-person inspections of assets restrained in foreign cases, as agreed between the countries.

It is a best practice to create AM plans in close consultation and communication with the foreign partner, and possibly through one or more case-specific agreements. It should also be recognised that the requesting country (or its competent authority) may not have the experience or knowledge to develop well-grounded opinions on preserving assets located abroad. It will not know all the options available, and so the requested country may be advised to anticipate needs, educate its counterpart, and help them identify potential problems. Navigating legal issues in a foreign land can be challenging enough, but more so when the logistics of asset recovery are involved.

In entering any asset return agreement – whether permanent or case-specific – governments may also consider provisions to address costs associated with asset recovery action. In such cases, inevitable costs often accrue such as litigation expenses associated with the proceeding (e.g., legal fees, fees associated with hiring experts, travel, etc.) as well as expenses associated with preserving property until a confiscation order has been obtained. As to the latter category of expenses, there may be significant costs that may accrue given the type of property subject to confiscation. For instance, if real property has been restrained, the restraining government may face tax and related expenses, litigation expenses, financing-related expenses, and other costs that may be ripe for reimbursement. Addressing how costs will be handled in the sharing agreement promotes transparency and efficiency in the return process.

Maintaining property for however long it takes a foreign case to conclude can be an expensive endeavour. This is why regular costs should be factored into the negotiation of permanent sharing agreements, and why substantial or extraordinary costs are specifically mentioned in R.38. These issues should be anticipated and considered as early as possible, potentially even before the requested MLA or enforcement of foreign judgment is granted or executed (so as to prevent a country from being on the hook without having broached these topics with its counterpart). This means that knowledgeable personnel with AM experience must be reachable by central authorities and assigned attorneys handling foreign requests for MLA in the form of seizure, restraint, or confiscation. The FATF does not specify what the arrangements should be to deduct or share substantial or extraordinary costs, only that countries should be able to make them where appropriate. This will generally be done through consultation and mutual agreement of the involved states.

ADDITIONAL CONSIDERATIONS

There is no preference that such costs should be borne by the requesting or requested country, or that they should always be split evenly, or netted out in cases conducted over time between the partners. However, as a matter of fairness, it is a good practice to consider that the requested state – the one providing the assistance – especially when it goes above and beyond ordinary costs and requires outlays and expenditures of domestic government funds – should be made whole or reimbursed, ideally out of the confiscated assets before finally transferring them. While spending money to help foreign partners confiscate criminal property may be in the interest of a country, minimising these costs can also induce them to help the requesting country in future cases. The notion of keeping a portion of recovered assets, as agreed between the countries, is efficient in terms of minimising payments and transaction fees, but also because all costs will have occurred already including those incurred during liquidation.

As discussed elsewhere in this Chapter, countries may consider establishing a confiscated assets fund or forfeiture fund. Aside from other dedicated purposes (law enforcement, health, education, as mentioned INR.4), such a fund can also be a logical option for paying (extraordinary) expenses – at least upfront – when providing international assistance in asset recovery matters. Countries without such a fund may lack options, or need to seek payments directly from the foreign country. Without proper maintenance, which can exceptionally cost significant sums of money, the whole confiscation effort may fail, and countries may internalise the lesson that it is simply too difficult to pursue assets located abroad. Early and open communication between the partners is a key part of planning successful international confiscation and negotiating the necessary agreements. If a country outlays the expenses upfront, it may be reimbursed by the requesting country later on.

BOX 82 – COUNTRY EXAMPLES: Asset Recovered and Reused for Social Benefit

MONGOLIA: Mongolia's first successful international asset recovery case demonstrates a creative use of recovered proceeds to benefit victims.

- **Case:** A former manager of Erdenet Mining Corporation (EMC) embezzled millions of dollars by issuing false procurement invoices and laundered the stolen money in Mongolia, the UK, and Latvia. The Mongolia Independent Authority Against Corruption (IAAC) initiated a criminal case in February 2019, which was finalised with restitution orders being enforced in early 2022. Unrelatedly, since 1992, EMC has supported the Enerel Orphanage Center in northern Mongolia as part of its commitment to corporate social responsibility.
- **Asset recovered:** The IAAC, operating within the framework UNCAC, successfully recovered USD 1.3 million in misappropriated assets. Among these assets was a London apartment which was generating approximately USD 3 300 in monthly rental income.
- **Ultimate use of asset:** Rather than liquidating the recovered asset and recuperating its losses, EMC (which was considered the victim in the case due to the actions of its employee), in consultation with the MIAAC, elected to retain the London apartment. The rental income from this property now provides a sustainable funding source for the Enerel Orphanage Center.
- **Impact:** A London apartment, acquired with stolen funds, now generates a steady stream of income, 100% of which now supports the orphanage, enabling essential upgrades to provide modern amenities and learning tools for its children. The orphanage has served more than 300 children ranging from four to twenty-two years of age, many of whom have gone on to secure jobs with EMC or make significant contributions to Mongolian society.

... Box 82 continued

This case highlights the tangible societal benefits of asset recovery and how it can benefit persons and entities beyond those traditionally considered victims. Normally, the company that experienced the fraud would seek and accept direct restitution, but in this case, the criminal property was used to support vulnerable individuals and further the company's charitable work. It is also noteworthy that the asset was confiscated from the perpetrator, but retained in the name of the company despite being located in a foreign country. Despite its upkeep, the London apartment reliably produces a profit that benefits the Orphanage.

INDIA: In a cheating and bank fraud case, the officer of a co-operative bank entered into a criminal conspiracy with the then auditors of the bank and manipulated the books of accounts of the bank, fraudulently reported profit, and caused a substantial loss to the bank. The accused employees accessed the computer database of bank to open benami accounts which were used by the accused to siphon off investors' money (benami accounts are similar to front accounts, held by one person and controlled by another). These funds were used to purchase assets under the benami name. The benami properties including INR 2.9 billion (USD 33.2 million) were attached by Directorate of Enforcement (ED). ED handed over the attached assets to the Maharashtra Protection of Interest of Depositors (MPID), so that MPID could use the money to compensate victims after disposing of the properties. Further, the properties confiscated in the case have been identified as a site for construction of new airport, to build infrastructure in India for the benefit of the society at large.

UNITED KINGDOM: CashBack for Communities is a Scottish Government initiative which has been running since 2008. It takes funds recovered through the Proceeds of Crime Act 2002 and invests them back into communities. CashBack supports young people (age 10-25) at risk of entering the criminal justice system and the communities most affected by crime. Funded delivery partners provide a spectrum of interventions which promote safe spaces, trusted adults, and a range of positive diversionary and support activity. The programme has strong links to the Scottish Government's Vision for Justice in Scotland (2023-26), the youth justice Whole Systems Approach, and the Divert strand of the Serious Organised Crime Strategy. CashBack-funded organisations deliver a range of projects that support young people most at risk of being involved in antisocial behaviour offending or reoffending; provide support for young people and families impacted by adverse childhood experiences; and support health, mental health, and youth wellbeing.

7.2.4. Transparency, oversight, and accountability

In the **domestic context**, the final disposition of confiscated assets – whatever the method chosen based on the particularities of the asset – needs to be conducted with sufficient oversight. As mentioned, it is a best practice to assign each asset (or group of assets) a unique identifier or number, ensuring that it is trackable for the entire time it is in the government's possession. This should aid the asset manager in determining where each and every asset came from, where and into which government-controlled accounts it transited, and where it ultimately went post-liquidation. Final uses should be recorded. To ensure transparency and accountability in these last stages, countries can consider issuing guidelines on topics such as restricting the use of such property awaiting confiscation or disposal; preparations required for selling different types of assets; and liquidation (inter alia, to restrict government personnel from purchasing property subject to liquidation to avoid conflicts of interest).[13]

13. An example of such guidelines can be found in the United States' Asset Forfeiture Policy Manual (2025), Ch. 12, Use and Disposition of Forfeited Property.

ADDITIONAL CONSIDERATIONS

In some countries where an AMO has daily oversight over seized and confiscated assets, that agency may be monitored by a different, external, or independent body. This may include, based on country examples, a court of accounts, an agency's inspector general, or an independent accountant or auditor.

It is also a good practice for any country with a designated fund for confiscated assets to require (i) outside auditing by a certified, independent firm; and (ii) reporting to parliament, congress, or a similar body on an annual or quarterly basis about the activity of the fund. This is critical not only for preventing fraud, but ensuring there is regular monitoring of confiscated funds and that the fund is not being mismanaged in a way that jeopardises its financial health or potential legitimate uses of its amounts under management. The public release of such information – in sanitised form, if necessary – instils confidence in the public that the AR system is responsibly managed and overseen.

In the **international context**, as noted in Ch. 7.2.3(a), case-specific agreements may, given the underlying offences leading to confiscation, include unique measures designed to promote transparency and accountability in the final disposition of assets returned. As previously noted, such agreements may include measures for auditing, requirements for notice to civil society, requirements that returned funds finance specific development projects, etc. One example of this in practice involved the return of over $308 million in confiscated corruption proceeds from the United States and Jersey to Nigeria. The returned funds were confiscated by the United States through non-conviction based confiscation. As alleged in the United States' asset confiscation proceedings, the confiscated funds represented corruption proceeds derived from embezzlement, misappropriation, extortion, and money laundering committed by General Sani Abacha, who assumed the office of the president of the Federal Republic of Nigeria through a military coup on 17 November 1993, and held that position until his death on 8 June 1998. Given the need to ensure that disposition of the returned funds met international principles of transparency and accountability, the case-specific asset return agreement, among other things, identified specific projects to be funded by the returned monies and included express provisions indicating civil society organisations that would aid in the monitoring and disposition of the returned assets.

8: Safeguarding Rights When Implementing the FATF Standards on Asset Recovery

Suggested audience:

- Policymakers
- National AML/CFT co-ordinating bodies
- Senior leadership of LEAs, investigative agencies, and prosecutorial authorities with responsibility over asset recovery
- Judicial authorities

KEY GUIDANCE IN THIS CHAPTER

Safeguarding Rights and Avoiding Unintended Consequences

Fundamental Rights Affected	p. 325
Ensuring Due Process	p. 326
Ensuring Proportionality	p. 328
Incentives and Abuse of Authority	p. 333
Responsible Asset Recovery	p. 336

Chapter 8 Summary

This Chapter moves away from the highly technical guidance preceding it and examines how the FATF Standards on asset recovery can be implemented in a way that safeguards the substantive and procedural rights of persons that may be impacted by confiscation. Policymakers will be aware that confiscation can be subject to misuse and potentially breed unintended consequences. As a result of the changes to the FATF's Standards on asset recovery, many countries will be assessing and expanding their asset recovery toolkits. It is critical that *laws and procedures are designed from the outset with sufficient protections for fundamental rights*. This is not only advisable in light of internationally recognised principles, domestic laws, and/or constitutional precepts, but it ensures that the new freezing, seizing, and confiscation powers can pass judicial scrutiny. It is equally important that these *laws and procedures are implemented by competent authorities in a way that respects due process and the principle of proportionality*.

Chapter 8 highlights the structural elements in the FATF Methodology that are the baseline for countries in enforcing their AML/CFT/CPF and AR systems and promotes fairness in the application of confiscation, depending on the specific circumstances of the case or offender. This Chapter helps countries identify both positive examples and negative practices, and it presents several considerations and issues which countries may wish to incorporate or avoid in their systems. Effective asset recovery takes place only in an environment that respects human rights and freedoms, has sufficient checks and balances, and provides notice and a fair opportunity to challenge the actions of the government to confiscate property.

8.1. Fundamental rights affected by confiscation

Asset recovery and the mechanisms associated with it are powerful tools. This Guidance and Best Practices Paper promotes the use of the revised AR FATF Standards in recognition that they are an essential component of an effective AML/CFT regime and response to crime. However, as highlighted in the chapters describing each tool in the AR framework, countries should take into account fundamental human rights and the principle of due process of law both **in the design of the components of the system** and **in actual implementation**. If not, these tools can be misused, resulting in miscarriages of justice and undermining the entire premise of asset recovery as a preventative and corrective measure in fighting money laundering, predicate crimes, and terrorist financing. This chapter highlights some of the risks of asset recovery in generating unintended consequences (or intended consequence if the tools are wielded in an unjust way), and some safeguards which countries may consider to prevent and avoid these negative outcomes.

The FATF Standards require that an AML/CFT/CPF system in any country must be grounded in certain structural elements, including the rule of law, an independent judiciary, and institutions with accountability, integrity, and transparency (FATF Methodology, para. 10). Adherence to relevant international obligations and fundamental principles of domestic law is a pre-requisite. Such FPDL include, but are not limited to, the legal right to "due process, the presumption of innocence, and a person's right to effective protection by the courts" (para. 10 and FATF Glossary).

In the context of asset recovery, there are several rights enjoyed by individuals and legal entities that may be engaged. These include, but are not limited to, the right of ownership or use of private property, the right not to be subject to unreasonable search or seizure, the right to a fair trial and to mount a defence, the right of protection against arbitrary actions of the state, the right not to be deprived of property without due process of law, the presumption

of innocence, the right against self-incrimination, and the right to privacy.[1] These rights should be built into asset recovery laws and procedures, and their infringement – either by the existence of the law generally or through its operationalisation – should be challengeable within a reasonable time before an independent and impartial tribunal previously established by law, such as a court.

Immediate Outcome 8 inquires as to whether there are "independent and effective safeguards, checks and balances in place to protect substantive and procedural rights implicated by the legal measures in place to freeze, seize, confiscate and enforce orders in relation to criminal property and property of corresponding value" (Specific Factor 19) and whether "the rights of bona fide third parties are protected" (Specific Factor 20). These measures should be considered as part of effectiveness in AR and not a minor issue or afterthought. Failure to do so undermines the rule of law and damages the integrity of the AR framework, and could be considered a critical weakness in a country's AR framework.

Taken together, the components of the Methodology described above act as a critical reminder that asset recovery at all costs is not effective, but that the ultimate objective of IO.8 – to make crime unprofitable and reduce and disrupt money laundering, predicate crimes, and terrorist financing – can only be achieved through the pursuit of just outcomes through sound processes which extricate criminal property and deprive criminals of their ill-gotten gains.

8.2. Ensuring due process and effective protection by the courts

The specific features of due process will vary based on the FPDL in each jurisdiction, but the broadest articulation of due process, common among many countries, is notice of an action and an opportunity to challenge it. Due process applies to all defendants and/or respondents in confiscation actions, to third-parties affected by the confiscation (bona fide or not), and any person (such as a claimant or challenger) who may have a legal or equitable interest in property.

Such individuals and entities must have a clear and timely opportunity to lodge a challenge, ensuring that no property rights are impinged without the opportunity to be heard in a fair trial. This could include ensuring that all parties who should be a part of the proceedings receive timely notice of the action and the specific property subject to confiscation; that they have the opportunity to be present for the proceedings; and that both the government and any respondents are able to make motions, put forward and challenge evidence, and call and cross-examine witnesses, as appropriate.

In the case of provisional measures, notice may be delayed or postponed for operational reasons and to secure the assets (the ability to act on an *ex parte* basis is a requirement of R.4). But, eventually, as set out in INR. 4, para. 5, notice should be triggered and the court process will transition from *ex parte* to inter partes (i.e., from with only one party present (typically the state), to between two or more parties). On some occasions, notice may be provided to affected persons during an operational step, such as a seizure of property upon arrest or a seizure of smuggled cash at the border. But the presence of the affected person at the seizure does not provide all pertinent information they may need to challenge the measure, even if it does constitute actual notice. For all provisional measures, including those which are initially *ex parte* in nature, timely notice should be provided.

For example, an *ex parte* restraint may become inter partes, upon notice, when the affected person is free to challenge the measure, reduce its scope, seek exemptions, etc. The point at which this may occur may reasonably depend on the circumstances of the matter. Notice may be given at the point which the restraining order is sought, or it may be reasonable to give notice at a later date, once the order has been made or given effect (i.e., once measures are put

1. As seen in prior chapters, many challenges against AR laws, particularly those not requiring a conviction, are based upon an alleged violation of the presumption of innocence (although these arguments largely have not been successful, as noted in Box 53). Additionally, the privilege against self-incrimination has been a common avenue of challenge against certain civil-procedure based AR proceedings. Countries can minimise the risk that the application of a civil procedure-based AR law is successfully challenged in this context by including a provision in the relevant law that specifically guards against the subsequent use of any information arising from proceedings under the law in any separate criminal proceeding.

in place to secure the property). For example, where the delay in notification is necessary to prevent asset flight or dissipation, or to protect the integrity of any related investigation or prosecution. Later, other milestones in the case may also serve as an opportune moment for notice of the government's intention to confiscate criminal property, such as (i) the formal opening of an investigation or parallel financial investigation; (ii) the filing of a charging document (e.g., a complaint, indictment, etc.); (iii) a summons issued to a suspect by the prosecution authority; or (iv) the initial or first appearance of the defendant in court (i.e., the moment where the charges and possible penalties are explained to the defendant and where, potentially, a plea is entered).

In NCBC cases, the moment for notice may come after the imposition of a provisional measure – when *ex parte* proceedings are no longer necessary to execute the seizure or restraint and secure the property – or when the document initiating the case is filed (e.g., the application, complaint, UWO, etc.). In any event, the notice should be as precise as possible in identifying the property sought for confiscation, the legal authority upon which the state's action rests, and how to contest the action (notice is dealt with in detail in Chapter 5.1.2, including in Box 49).

The second main aspect of due process is an opportunity "to be heard". The essentials here are that the proceeding, hearing, venue, or forum provided represents a meaningful opportunity to challenge the seizure or the confiscation proposed before an independent and impartial tribunal established by law (i.e., a court). The specific details of the procedure to bring such a challenge will vary, but some considerations for countries in designing and implementing confiscation regimes include:[2]

- Timelines for initiating the challenge, including whether these are long enough to effectively allow a person to contest the action (or at least to stop the clock), and whether any exceptions should apply for late filings;
- Process for initiating the challenge, including whether the procedures are relatively simple and straightforward such that an average person could understand them and take advantage of them, including, potentially, without the advice of counsel;
- Whether the person can be represented by a lawyer in the proceeding, or have one provided if they cannot afford one and under which circumstances (e.g., a criminal defendant in a CBC matter that cannot afford counsel v. a creditor with an interest in an NCBC case). Note that countries may wish to consider legal provisions around the use of restrained property to pay for legal fees, as this is a commonly used tactic to frustrate recovery;
- Whether the person can present evidence to rebut that of the state, including rules of admissibility for such evidence and relative evidential burdens;
- Whether the person can call witnesses who can attest to their ownership interest, knowledge, or involvement with the property;
- Whether the person can examine in sufficient time the government's evidence supporting the confiscation;
- Whether the government must or should disclose any evidence in its possession which may aid the person in contesting the confiscation (e.g., information indicating questions of other ownership of the property or a lack of connection between the acquisition or use of the property and criminal activity);[3]

2. While these considerations may be dealt with in a country's asset confiscation legislation, some of these issues could be provided in broader legislation about the country's judicial process or the powers of its courts.
3. This could be relevant under criminal confiscation frameworks in relation to domestic provisions on turning over exculpatory information, or civil frameworks in relation to the concept of "discovery" or the exchange of information supporting the contentions of both parties.

- Who should hear the challenge and the availability of judicial review (e.g., an initial petition may be considered internally by the agency, but this should not be the only recourse available, as the LEA is not an independent or neutral fact-finder);

- The use or derivative use immunities for information obtained from compulsory powers (for example, in countries with compulsive examination in civil confiscation matters) from being adduced in criminal matters;

- The possibilities for appeal;

- The overall suitability of the process, including applicable deadlines and the individual and collective functioning of all procedural rules, in ensuring that persons can truly challenge the confiscation.

Many of these considerations are similar to those which are indicative of a fair trial, and may differ somewhat depending on whether a country's forfeiture framework is criminal or civil in nature. While most countries have had CBC confiscation in their criminal context for a long time, the civil CBC and NCBC systems in many countries are newer or in planning. However, there are some well-established examples in operation for several decades. Criminal and civil (both CBC and NCBC), as well as any administrative or agency-based confiscation processes, extended confiscation procedures, and UWOs, should ensure due process and the protection of both substantive and procedural rights of affected persons including third parties.

8.3. The principle of proportionality in asset recovery actions

Some jurisdictions consider confiscation to be a punishment for criminal activity or penal in nature, even if it is non-conviction based. Other jurisdictions consider it restorative or even preventative and thus de-linked from the notion of a criminal sanction.[4] Regardless of the approach in a country or even a certain form of confiscation under national law, the principle of proportionality is applicable across the spectrum of AR tools. Proportionality is enshrined in many constitutions, charters, and other fundamental principles of domestic law. It is recognised in nearly every legal tradition in the world, reflected in international instruments, and contained in the FATF Standards, such as through the often-repeated refrain that penalties, criminal or otherwise, should be "effective, proportionate, and dissuasive".

Under the FATF definition, where property is confiscated from a person, "the natural or legal person(s) that held an interest in the specified property at the time of the confiscation or forfeiture loses all rights, in principle, to the confiscated or forfeited property". In any situation where rights are lost by an individual in a judicial or administrative process, whether criminal or civil, the principle of proportionality is implicated. Proportionality is relevant because a person is deprived of property as a result of the offences they committed, or property is taken because of proven connection between the property and criminality. Without proportionality, all of a person's property may be subject to forfeiture, regardless of mitigating circumstances (e.g. the gravity and seriousness of offending and other public interest factors). There should also be a rational and justified relationship between what criminal property or corresponding value should be subject to confiscation and why, in a particular case, and this should be no more than necessary to ensure benefits gained from or involved in the offence are recovered, and, where appropriate, victims are made whole.

In considering impositions on human rights, actions of the government can only be considered lawful and therefore proportional if the infringement on rights which they cause is necessary in light of legitimate public interests and in balance to the harm they seek to address. Proportionality connotes consideration of the scale or severity of the

4. The application of the principle of proportionality when confiscation is considered penal in nature can be summarised as ensuring the punishment fits the crime. When confiscation is non-punitive, proportionality ensures that the measure is appropriate, necessary, and balanced relative to legitimate aims such as restoration or crime prevention. This involves tailoring confiscation to target only illicit gains without imposing excessive burdens, maintaining fairness and procedural safeguards, and allowing effective challenges.

offence or illicit enrichment as balanced against the deprivation imposed, and a presumption against excessive or unduly harsh or severe consequences. This concept is inextricably linked to the principle of necessity, meaning that the act of seizing or confiscating property is essential to achieve a legitimate aim, justified on the basis of law and objective evidence, and done only to the extent proportionate to achieve the aim.

In asset recovery, proportionality should be a guiding factor in all aspects of the design of a legal framework, as exemplified in the Box below.

BOX 83 – **PRACTICAL TIP: Applying the Principle of Proportionality**

Countries should incorporate the principle of proportionality when enacting asset recovery measures, to include:

- Laws permitting the identification and tracing of assets in a financial investigation through methods that impinge on a person's privacy, property rights, or autonomy (balanced against the government's imperative to detect and prosecute crime and criminal property);
- Laws defining the scope of property subject to confiscation and how far it can extend:
  - Beyond the proceeds, instrumentalities, and object of the offence (e.g., property laundered);
  - Beyond the immediate possessions of the defendant to property under their effective control, and
  - Beyond the convicted person, to family members, associates, or third parties.
- Laws defining the nature and level of proof required for obtaining provisional measures (temporary) as compared to confiscations (final);
- Laws defining the duration of provisional measures and the possibility of periodic review/renewal of the measure (balanced against the need to secure assets and prevent dissipation and the length of actions which prevent a person's use or enjoyment of property);
- Laws defining the scope, reach, and frequency of notice of an intent to confiscate property (balanced against best efforts to inform affected parties);
- The availability and relative simplicity of methods to contest confiscation (balanced against the swift resolution of judicial matters);
- Laws shifting the burden of proof to the defendant/respondent (balanced against the government making a certain initial showing before any burden is reversed);
- Laws and procedures allowing the person to present evidence of his/her innocence or innocent ownership of the property;
- Laws defining the factors considered by courts when imposing provisional measures and confiscation, in light of:
  - The right to shelter and a home (though not necessary to the same standard as was funded through criminal means),
  - The right to counsel and/or a means to remunerate counsel (though countries may wish to prevent the use of restrained property from funding legal expenses),*

* Some jurisdictions have provisions allowing access to restrained or seized property for legal fees in specified circumstances (such as proof that no other resources are available). Other jurisdictions have found that unintended consequences were created such that legal defences were mounted with multiple rounds of applications and challenges to (i) frustrate proceedings, (ii) deplete the resources of the court or enforcement agencies, and (iii) completely absorb the value of the property sought for confiscation through expensive legal fees.

... Box 83 continued

  - The right to retain funds for reasonable living expenses,
  - The effect upon innocent parties, including family members, young children, and
  - The right to have lawful source of income after paying dues to society for the commission of crimes or possession, handling, or use of criminal property.
- Laws or policies setting out guidelines on the confiscation of commingled property;
- Laws permitting the pre-confiscation sale of assets to preserve their value for confiscation and potential later uses – including for victims – balanced against:
  - The right to return of the status quo ante when property is not ordered confiscated by the court, and
  - The right to return of property in a form not substantially different at the end of a proceeding, particularly for irreplaceable and non-fungible property.
- Laws surrounding the right to counsel to contest forfeitures, particularly in situations where no-contest results in a default conclusion of final confiscation;
- Laws setting out schemes for compensation/awards of legal fees to successful challengers and access to legal aid for qualifying persons affected by confiscation (including in non-criminal settings);
- Laws and procedures setting out clear and accessible mechanisms for the return of property in situations where there was a wrongful seizure (balancing the goal of achieving final confiscation with the need for LEAs to be able to make timely determinations to return or release property from seizure, with court approval if required).
- Laws and procedures setting out enforcement mechanisms for the state to take ultimate possession of confiscated assets and fulfil confiscation judgments (balancing the legitimate interest of the state in ensuring the confiscation is actualised with the steps taken against individuals to do so).

ADDITIONAL CONSIDERATIONS

The laws in Box 83 can be complemented by practice guides or model litigant obligations for litigants in asset recovery matters which set out good practices, practical and procedural advice, and highlight obligations unique to the practice (such as how to disclose assets and liabilities if required by court order). This can help ensure that all parties before the courts are adhering to high ethical standards and promote proportionate outcomes.

Additionally, to ensure proportionality in the pursuit of confiscation, countries may wish to address the need to create a structured hierarchy of debts, obligations, and proceedings. A few key considerations arise in this regard:

- Ensuring that a confiscation does not override other legitimate debts without due consideration as to the appropriateness of overriding these obligations, particularly where the fulfilment of otherwise legitimate law enforcement objectives can otherwise be achieved (e.g., disrupting the flow of criminal proceeds, compensation of victims, etc). For example, consideration may be given to the prioritisation of obligations such as unpaid child support ahead of confiscation. Other examples include taxes or creditors' orders, which may be paused or overridden, particularly while confiscation is pending, or property settlements and spousal maintenance, which may be varied if needed;

- Avoiding double recovery, where the same set of circumstances gives rise to multiple claims or liabilities across different domestic legal processes;

- Preventing double confiscation or double recovery where two sovereigns pursue asset recovery against the same subject (i.e., two separate countries or two entities within the same country, such as the federal government and a province or state).

Double recovery may create significant risk of disproportionate confiscation. For example, where tax evasion is the premise for asset recovery, two liabilities or penalties can be created: a confiscation order and a tax debt. This raises the risk of recovering the same value twice from the same set of circumstances – once through asset forfeiture and again through tax enforcement. This can be avoided by setting out a general hierarchy of measures that impact a person's rights or possession of property and establishing priorities for situations where more than one avenue of recovery is possible. Additionally, the risk of double recovery can be mitigated in specific cases by taking a holistic approach and balancing the pros and cons of different methods of recovery (including the ultimate uses possible for funds recovered through different legal tools).

The following case studies provide some examples of situations where the principle of proportionality may have been exceeded or should have been adhered to more strictly. These counter-examples vary in type and gravity and spotlight when confiscation mechanisms have been exercised in a disproportionate manner, either as a result of (i) laws which do not adequately protect the rights of individuals, or (ii) the misapplication of legal and proportionate laws, as applied in practice.

BOX 84 – COUNTRY EXAMPLES: Non-Proportional Asset Recovery Measures and Actions

Country A: The law of the country permits confiscation as a punitive measure, as part of a criminal sentence. The law requires no identification or tracing of criminal property and no proof that the property is derived from or intended for use in a violation of the law. Under this confiscation regime, assets such as cars, real estate, and jewellery are routinely confiscated without proof that they are connected to the crime of conviction. There is no obligation for the court to determine that the person profited from the crime for which they are convicted, or indeed profited from any crime. This type of confiscation is not limited only to crimes where there is a financial gain; and is used across all crime types for its supposedly dissuasive effect. In essence, the law permits the authorities to seize, and the court to confiscate, as part of a penalty, any asset of value found and apparently owned by the defendant. There are no specific procedures or legal rebuttable presumptions, as in an extended confiscation regime, and no theory of substitution of traceable assets, as in a corresponding value regime (notably, there is no corresponding or equivalent vale framework in the country). The confiscation law casts a very wide net and is not substantiated by a prior financial investigation linking the property to the crime. It is not proportional in part because it relies solely on two factors: ownership and guilt. It is also not clear if protections are available for persons who claim they may own the confiscated assets, or consideration of the affect the confiscations may have on the family members of the defendant.

Country B: In this case, authorities seized cash from an individual as he was waiting to board a flight. No charges were pursued criminally. There was no applicable currency declaration required or evaded. There was suspicion based on a dog alert that the cash had drug residue on it. The individual contended the cash was an inheritance following the sale of an asset, to be used for a creative business endeavour and travel.

The individual sought to have his money returned and succeeded after a year of court proceedings. No evidence tying the cash to criminality was presented, and evidence from the individual showed the cash was legitimately sourced. The government dismissed its pursuit of the confiscation. However, the individual also sought

... Box 84 continued

compensation for the cost of an attorney to fight the seizure. The law did not provide a clear answer on who should pay the costs when the government initiates but does not conclude a confiscation. The court found that the individual did not technically win the case, but that it was discontinued. The result was appealed, but the initial court outcome meant that the individual spent money to contest the seizure (i.e., twice the amount of the cash seized), or else forfeit the matter. The costs associated with challenging the case would not have been incurred if it had not been for the initial and evidently unjustified seizure.

Country C: In this case, a defendant was charged with social benefits fraud and a confiscation was imposed. The defendant received certain minimal cash benefits related to care she was providing for an elderly dependent, but she failed to declare a minimum wage job apparently inadvertently on advice of a social worker. The defendant previously attempted to cease the benefits when her working hours increased. The defendant inherited less than the equivalent of EUR 18 800 from the elderly parent she cared for, and competent authorities froze her account and sought confiscation of this amount. Four judges in six months considered the case. The last sentenced the defendant to community service for the fraud of not declaring her part-time job while receiving the small weekly benefit stipend. Aside from the minimum wage job, the defendant was the sole and unpaid caregiver to an elderly parent with dementia who had suffered a stroke. The defendant was not represented by counsel and not entitled to free aid due to the inheritance. The full amount of the inheritance was ordered confiscated in full.

As shown by some of the examples above, the following are supplemental factors which countries may consider including in policies or guidelines for their competent authorities considering whether to pursue seizure and confiscation. These factors do not relate to the primary considerations of the application of the domestic law to the facts at hand and the strength of the evidence, but they suggest considerations of whether actions are in the interest of justice, fair, and proportional. The term "affected person" is used to reflect applicability regardless of whether the proceeding affects a defendant (in a CBC case) or a respondent/claimant (in an NCBC case).

ADDITIONAL CONSIDERATIONS

Unlike the list of legal issues contained in the Box above, which are general in nature, the following may be considered in relation to specific cases:

- The relative culpability of the affected person in the offence(s) underlying the confiscation action if the confiscation has a punitive nature;
- Whether, in the case of instrumentalities, the person was aware of the use of their property to commit offences and was in a position to prevent such use;
- The ability of the affected person to mount a defence, challenge, or appeal to the confiscation, and the fairness of the action if default or discontinuation is the likely outcome due to personal circumstances (e.g., age, infirmity, citizenship status, among others);
- The socio-economic conditions of the affected person and whether the action would risk impoverishment, and the potential additional costs to the state as a result;

- The strategic value of the confiscation in the specific case and for overall asset recovery priorities established by the country, including alignment with risk;
- Whether the competent authority/authorities would be able to credibly defend the action if it were subject to scrutiny, regardless of internal approvals obtained or court authorisation; and
- The existence of impermissible political motives: confiscation should not be pursued due to improper considerations of a political nature; this can take the form of selective prosecutions or domestic designations by which certain individuals or groups are targeted based on, e.g., race, religion, association, or political viewpoint.

LEAs, customs officials, and other investigative authorities making quick decisions on seizures in an operational setting may not have time to consider all potentially relevant factors in favour of and against the provisional measure. However, in subsequent, after-action reviews and possibly with the benefit of agency legal counsel or a prosecutor, these discussions can take place. Additionally, these issues can be covered in relevant trainings, such as financial investigations training or any courses offered to LEAs who will be dealing with AR matters routinely.

If mistakes are made and new facts come to light which either weaken or undermine the basis for the seizure or show that it will have or is having a disproportionate impact on affected parties, there should be clear and easy-to-use mechanisms for the return or release of wrongfully seized or frozen property. This can permit LEAs and prosecutors to course-correct as circumstances change. The courts should be able to consider these requests promptly upon the motion of the competent authorities, as needed. Delay in releasing property can be further prejudicial to the affected persons. In addition, the reasonable use of return of property mechanisms should not be considered as a weakness for the purpose of evaluating individual LEA performance, especially if the use is only occasional and justified. The continual use of return of property mechanisms, on the other hand, may signify the need for focused training or other reforms.

8.4. Incentives and abuse of authority – legal and practical considerations

As outlined in Chapter 2, it is important that competent authorities are empowered and supported to pursue asset recovery in the interest of justice, victims' rights, and safety and security. This foundation comes from legal and operational frameworks, training, resourcing, and agency structures which encourage a follow-the-money approach. However, as highlighted throughout this Guidance, there are certain practices which can skew law enforcement incentives and lead to perverse outcomes where confiscation is sought for enrichment or in a way that takes advantage of structural weaknesses in the criminal justice system or individual respondents who are unable to mount a defence.

Just as there should be enabling mechanisms in place to encourage competent authorities to prioritise asset recovery, there should be counterweights which discourage 'policing for profit', the initiation of flimsy and non-credible cases, unjustified seizures, and disincentives for authorities to repeatedly and unnecessarily infringe on the substantive and procedural rights of natural and legal persons. Robust processes, including for procedural approvals, judicial or managerial oversight, proper management and use of confiscated assets, and clear accountability mechanisms, are pillars on which these counterweights can rest. The following case examples appear to represent failures to protect these rights, undesirable incentives, and instances where affected persons were unduly harmed by confiscation.

BOX 85 – COUNTRY EXAMPLES: Instances of Potential Misuse of Confiscation Measures

Country A: A domestic partner of an individual charged with drug trafficking offences was subject to a seizure of currency from their shared apartment during a police search. The defendant was ultimately acquitted at trial and the domestic partner was never charged. The currency represented earnings from the partner's employment. The partner attempted to challenge the seizure but could not afford counsel and was unsuccessful, having missed a petition date. Upon appeal, the court held that a person could not be deprived of property without having her case heard by a judge, regardless of the missed deadline. The procedures, i.e., the calculation of days and what needed to be submitted, were complex and difficult to follow by individuals without the advice of counsel. The court considered the defect minor and allowed the challenge to proceed, ruling that judicial review should have been available. In this case, the potential injustice was corrected by a higher court.

Country B: In this case, there was an apparent abuse of confiscation-related powers. A financial institution was authorised by law to administer a fund for designated purposes with designated recipients. An order was sought by competent authorities to freeze the funds in the account on the basis of alleged fraud, although (i) competent authorities twice declined to seek the restraint, and (ii) a court, once the restraint was eventually sought by other competent authorities, denied the application and refused to issue the order. The court found that the evidentiary threshold for provisional measures was not met, i.e., there was not sufficient proof that a crime had occurred in relation to the assets. The account was nevertheless restrained, according to affected persons. Affected persons were unable to obtain information about accessing the funds in the account or challenging the freeze. It is not clear if there is any undisclosed/secret measure or voluntary action underlying the apparent restraint. This is a potential instance of misuse because LEAs declined to pursue it, a court rejected the application for a provisional measure, yet steps in view of confiscation appear to be being taken anyway without notice or due process to affected persons.

Country C: A traffic stop for a minor violation resulted in the seizure of an amount of cash equivalent to EUR 76 865. The stop turned out to be a pretextual basis for locating illicit drug and weapons trafficking activity. A dog alert on the cash held in the trunk of the vehicle was the basis for the seizure. A search of the vehicle revealed no contraband. The affected individual challenged the seizure, with a lawyer, and contacted the press. The competent authority returned the cash, but the affected individual objected to the practice of traffic police taking cash from drivers for seemingly no reason and then having to prove innocence before a different competent authority.

ADDITIONAL CONSIDERATIONS

As mentioned earlier in this Guidance, there are both advantages and disadvantages in funding a country's asset recovery framework and/or the budgets of its relevant competent authorities through confiscated funds, or using these funds for socially beneficial purposes. The following points may be considered by countries contemplating these approaches to ensure that the practice is not manipulated and does not create incentives for misuse:

- Ensuring that LEAs are not improperly incentivised by the confiscation framework and that measures are in place to ensure that all confiscation actions are supported by a legitimate law enforcement purpose, ensuring that stakeholders in a confiscation action are not exhibiting a pattern of "policing for profit" as demonstrated by thinly supported seizures, evidence that LEAs may be improperly profiling a category of individuals, etc.

- While reinvestment of confiscated funds into law enforcement can be a way to encourage increased asset recovery activity, countries may take heed that LEAs do not profit from confiscation in a "direct" fashion in a way that the confiscation materially benefits the officers who carried it out;
- Ensuring that funding or other supplements to LEA budgets are not decided upon by the LEA directly (or the sub-unit conducting the confiscations), but by a higher-level official with a strategic view and no conflict of interests;
- Ensuring that funds derived from confiscated assets do not make up too large a percentage of LEA budgets such that they become dependent on them (e.g., leading to the pursuit of unjustified cases);
- Ensuring that asset recovery or forfeiture funds, if they exist, are professionally managed, whether at the national, state/provincial, or local level;
- Requiring specific requests, justified and approved by superiors, for uses of confiscated funds over a certain established threshold (e.g., EUR 10 000).
- Ensuring that, to the extent that confiscated funds are reinvested back into LEAs, such funds are used for a legitimate law enforcement purposes and the use of such funds is accounted for and monitored by a separate entity;
- Ensuring that spending decisions with confiscated funds are subject to independent oversight and/or independent auditing, with a view to identifying potential conflicts of interest or self-dealing;
- Ensuring that expenditures of confiscated funds for social benefit is decided upon in a transparent process, with sufficient input, and conducted with oversight to avoid any potential conflicts of interest or self-dealing;
- Ensuring that public perception is managed and that any official use or re-use of confiscated funds by LEAs is not ostentatious, and not perceived as enriching; and
- Ensuring the purchases made on behalf of law enforcement are within their jurisdictional mandate (e.g., not acquiring military equipment for civilian police).

An additional incentive issue relates to the methods of enforcement, collection, and realisation of confiscation judgments. While the state has clear interest in permanently depriving criminals of proceeds and instrumentalities, and countries must, under R.4, have measures to actually be able enforce the confiscation orders issued by its courts and realise the property or value subject to the order, consideration should be given to tempering the lengths to which competent authorities will go to achieve this end.

For example, in some countries, the failure to satisfy a confiscation judgment is punishable by imprisonment. If the confiscation order is low value, or stems from a less serious offence, it may not be proportionate or sensible to pursue this amount at risk of jailing or re-imprisonment an offender, itself a significant cost to the state. In some countries, interest accrues on confiscation amounts overdue. Imprisonment and accruing interest may be problematic measures for ensuring that confiscation judgments are fulfilled, as applied in particular cases. Thus, the accrual of interest or imprisonment consequences related to confiscation could be optional and not mandatory, so that it is a lever available to the court if needed for enforcement purposes. Another good practice could be to consider payment plans which are income-based and forgive or discharge confiscation debts after a time based on established factors (e.g., no re-offending, good faith efforts at repayment, no available assets except a primary residence, need to support minor children, excessive compounding of interest beyond a certain amount). Countries may also contemplate measures enabling the reconsideration of final

confiscation amounts after a certain period of time if the defendant has no realistic prospects of payoff. Countries may wish to avoid policies which may unintentionally motivate a person to commit additional offences to pay off amounts.

While there are recidivists who return to offending upon release from prison and quickly acquire new criminal proceeds, there are also defendants for whom reconsideration or (partial) discharge of confiscation orders could be appropriate after sentences are served. For example, in New Zealand, leave of Court is required to initiate an enforcement process to recover additional assets if six years have elapsed since either an asset-based or value-based confiscation. With permission from the Court, the government then has one year to take possession of the property. Further leave to enforce can be sought, which would recommence the one year time frame. This legal process provides an opportunity for the subject of the application (i.e., the offender) to plead mitigating circumstances as to why the confiscation order should not be enforced, such as rehabilitation, low wage employment, several dependents, etc. While six years may seem like a long time, in practice, the individuals subject to unsatisfied value-based forfeiture orders have typically been sentenced to lengthy periods of imprisonment which in turn reduce this time period.

Other mechanisms supposedly related to confiscation which have the potential for misuse are emergency, temporary, and/or special measures issued by the executive for special purposes (excluding lawful measures implemented in the context of targeted financial sanctions). For example, such mechanisms may take the form of an executive decree or declaration that instantly effects or allows asset freezes, seizures, and confiscations outside of normal processes. Such measures may supplant confiscatory measures which would otherwise be conducted judicially, through the country's criminal justice system. Powers that are outside of the normal criminal and NCBC laws of the country's AR framework which are used on an extraordinary basis to confiscate property may pose an increased risk of violating peoples' rights.

First, such measures may be presented as justified by an emergency or national security imperative. Governments occasionally resort to such measures in crisis situations, but this justification can be misused to target political opponents or other disfavoured groups, or simply last too long. Second, these measures are often irregular in that they are not found in any legislation or were not subject to regular legislative processes and debate. They may lack a legal basis or conflict with FPDL or international obligations. Third, when these measures encompass confiscation mechanisms, they can lack standard due process protections, resulting in abbreviated, irregular proceedings and limited opportunities, if any, for individuals to allege violations of human rights, harms, and other excesses. A good practice is to use only permanent laws subject to the full consideration of the legislature (and other relevant body) to permit confiscation. This helps ensure a strong legal basis, defined procedures, and well-vetted processes for confiscation. The use of emergency powers, particularly by one branch of government without substantive checks from the others, can result in disproportionate and potentially illegal confiscations. Such measures also risk violating the principle of legality in criminal law (i.e., that no one should be found guilty or penalised for a criminal offence or any act/omission which does not constitute a criminal offence under domestic (or international) law at the time when it was committed).

8.5. Responsible asset recovery

There are many opportunities in the AR lifecycle where unintended consequences of the FATF Standards can actualise. There have been legitimate criticisms of confiscation as an unfair practice when it does not build in sufficient protections of rights. There are also many opportunities for intentional abuses of confiscation regimes.

The inherent power exercised by the government in taking private property means that countries should be particularly careful to enact reasonable, fair, and proportional confiscation laws and procedures, and implement them with the utmost professionalism and integrity. The reputation of the practice of asset recovery as whole and as key pillar of an AML/CFT system depends on it. Protecting the substantive and procedural rights of impacted individuals and wielding the significant powers of the confiscation toolkit in a proportionate manner and in a way that respects due process are essential to a strong, lasting, and effective asset recovery regime.

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