



# CFATF Monthly Article

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# Characteristics of a Good Asset Recovery System: The FATF Best Practices [Part 3]

# FATF Best Practices (1)-

Strengthening Legal Frameworks to ensure that Asset tracing and financial investigations can be conducted effectively:



(a) Ensure that appropriate procedures and legal frameworks are in place to allow informal exchanges of information to take place, including prior to the letter of request for mutual legal assistance being submitted. Such procedures and frameworks may include building relationships between practitioners. This practice can help to focus efforts and resources before the request reaches a formal stage.



# FATF Best Practices (2)-



(b) Competent authorities should also engage with foreign counterparts, from a bilateral or regional perspective, and utilise appropriate international bodies such as the Egmont Group, INTERPOL, Europol and Eurojust.



(c) Ensure that appropriate procedures and legal frameworks are in place to allow information deemed to be useful to be shared on a spontaneous basis, subject to controls and safeguards to ensure that the information is used only in an authorised manner, without a request being received to trigger this exchange. The practice of spontaneously exchanging information relating to asset tracing and financial investigation helps to facilitate a culture of reciprocity.



# FATF Best Practices (3)-



(d) Enter into general arrangements, including formal bi-lateral asset sharing agreements, with other countries. Having asset sharing agreements in place should not be a prerequisite for co-operation, but may have a significant bearing on the resources allocated to facilitate asset tracing requests.



Additionally, the existence of a formal bilateral asset-sharing agreement is often a significant incentive to the executing country to execute requests for asset tracing.

# FATF Best Practices

## (4)

Minimising structural impediments to effective asset tracing and financial investigation:

- (a) Ensure that foreign counterparts can easily identify appropriate points of contact.



- (b) At the domestic level, implement mechanisms to co-ordinate asset tracing and financial investigations with a view to ensuring that such efforts are not impeded by regionalised or fragmented systems, or competing local priorities.



# FATF Best Practices (5)

(c) Consider establishing specialised units or dedicated personnel with training in specialised financial investigation techniques. Such personnel should be adequately resourced and trained.



(d) Establish mechanisms that allow for rapid access to high quality information on the ownership and control of such property (e.g. land, vehicles, legal persons). Ideally, such information should be available without the need for a formal request.



# FATF Best Practices (6)

(e) Explore mechanisms, in consultation with the private sector, that would facilitate more rapid access to financial information, including where the requesting countries has only minimal information (e.g. the specific account number is not previously known).



For example, countries could consider, inter alia, the feasibility of establishing a central register of bank accounts or, alternatively, other mechanisms that would offer less fragmented access to financial information which is already being held in a centralized way.





# FATF Best Practices (7)

Streamlining the processes and procedures for conducting asset tracing and financial investigations: \* \* [More information on slide 28- FATF Best Practices (10)]



(a) In the case of both formal and informal requests, emphasise the importance of handling external requests in a timely way, as a policy objective.

Setting targets and monitoring performance in executing asset tracing requests from overseas would be useful to ensure that such policy objectives are met.



# FATF Best Practices (8)

(b) In the case of formal requests, reduce any unnecessary bureaucracy, both in terms of sending out the request (if requests are filtered through central points domestically) and in terms of receiving and processing incoming requests.



For example, agreed standard formats and terminology for submitting requests between countries would go some way to reducing bureaucratic barriers.



# FATF Best Practices (9)

To address cultural issues that may impede asset tracing and financial investigations, it is best practice for countries to promote a culture of reciprocity, based on a mutual level of trust and understanding, whereby each country can expect to receive an acknowledgement that appropriate and timely action is being taken.



This practice would help to strengthen asset tracing and financial investigations at the international level, particularly where effective bi-lateral agreements or informal networks currently do not exist, or where requests are given lesser priority on the basis that the requesting country is poor at facilitating asset tracing.



# FATF Best Practices (10) footnote



\*\* Separate from seizure and confiscation provisions, as laid out in this paper and as required by Recommendations 4 and 38, in some specific cases, the securing and safekeeping of state assets may be required by other international legal instruments, such as certain country based financial sanctions regimes issued by the United Nations Security Council (e.g. United Nations Security Council Resolutions 1970 and 1973).



Other financial sanctions programs target specific individuals and entities and require independent authorities to freeze assets that could be available for confiscation.

# FATF Best Practices (11) footnote

Unlike the confiscation measures required by Recommendations 4 and 38, Targeted Financial Sanctions (TFS) are preventive and involve freezing measures to secure assets without the aim to (ultimately) transfer ownership (as is the case for Recommendations 4 and 38).

While confiscation may rely on criminal proceedings, TFS and procedures are not conditional upon these proceedings.



The implementation of preventive freezing measures pursuant to TFS can be guided by the framework that is required for the effective implementation of Recommendation 6.