



CFATF Monthly Article

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The International Framework: Asset Recovery Strategies.



International Standards on the tracing of assets

UNODC publication

**FATF Report - Operational
Issues – Financial
Investigations Guidance**

**The process for recovery
of stolen assets**

**The Council of Europe Criminal Law
Convention on Corruption, Article
23(1) UNODC Manual on
Confiscation of Proceeds of
Crime**

**(FATF) Report - Operational
Issues – Financial
Investigations Guidance**

In this article



International Standards on Tracing of Assets

International conventions on the fight against corruption provide that countries should:

take measures as may be necessary in order to identify and trace proceeds of corruption or other property; the value of which corresponds to that of such proceeds or property, equipment or other instrumentalities used in or destined for use in corruption offences; for the purpose of eventual confiscation.



Source: UNCAC, Article 31; UNTOC, Article 12; Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw Convention), Article 4.



The UNODC – Technical Guide to the United Nations Convention against Corruption

The power to identify and trace property that is subject to confiscation, including the ability to access financial accounts and bank records, should be considered a basic investigative tool for all law enforcement agencies



Financial Action Task Force (FATF) Report - Operational Issues – Financial Investigations Guidance

In discharging their law enforcement duties, such entities should be able to carry out parallel and proactive financial investigations for the purpose of identifying the extent of criminal networks, identifying, tracing and securing proceeds of crime for eventual confiscation, as well as developing evidence that can be used in criminal proceedings.



Source: [Operational Issues Financial Investigations Guidance](#)

The Council of Europe Criminal Law Convention on Corruption, Article 23(1)

Special investigative techniques are essential for identifying and tracing assets subject to confiscation.



Special investigative techniques include wiretapping, tracking devices, video or physical surveillance, witness interviews, seizure orders, monitoring of bank accounts and online activity, and undercover operations (For example: controlled deliveries).



UNODC Manual on Confiscation of Proceeds of Crime (2012) (1)

The UNODC Manual on International Cooperation for the Purposes of Confiscation of Proceeds of Crime's primary purpose is to facilitate asset recovery in accordance with the provisions of the Organized Crime Convention. It is to be used in close conjunction with the companion Manual on Mutual Legal Assistance and Extradition.

This Manual is organized into six chapters.

Chapter III provides a general overview of the asset recovery process and legal avenues for recovery.

Chapter IV presents some strategic considerations for developing and managing an asset recovery case, including gathering initial sources of facts and information, assembling a team and establishing a relationship with foreign counterparts for international cooperation.

“Robust and efficient international cooperation is essential to enabling law enforcement authorities to trace assets in foreign jurisdictions.”



UNODC Manual on Confiscation of Proceeds of Crime (2012) (2)

Chapter V introduces the techniques that practitioners may use to trace assets and analyse financial data, as well as to secure reliable and admissible evidence for asset confiscation cases. The provisional measures and planning necessary to secure the assets prior to confiscation are discussed in chapter VI.

Chapter VII introduces some of the management issues that practitioners will need to consider during that phase.

Confiscation systems are the focus of chapter VIII, including a review of the different systems and how they operate and the procedural enhancements that are available in some jurisdictions.

The issue of international cooperation is dealt with in the Manual on Mutual Legal Assistance and Extradition.

“Robust and efficient international cooperation is essential to enabling law enforcement authorities to trace assets in foreign jurisdictions.”



GFAR Principles

The Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases were agreed at the first GFAR in 2017.

- Principle 1: Strong Partnership between transferring and receiving countries promoting trust and confidence.
- Principle 2: Mutual Interests in achieving a successful outcome thus arrangements for transfer should be mutually agreed upon.
- Principle 3: Early Dialogue between countries and continuing throughout the process.
- Principle 4: Transparency and Accountability in the return and disposition of recovered assets.
- Principle 5: Assets recovered should benefit the people of the nations harmed by the underlying corrupt conduct.

Source: <https://uncaccoalition.org/learn-more/asset-recovery/#What to do about asset recovery>

International Framework— Global Forum on Asset Recovery (GFAR) [1]



GFAR Principles- (continued)

- Principle 6: Strengthening Anti-Corruption and Development by encouraging actions which fulfill UNCAC principles.
- Principle 7: Case-Specific treatment for the disposition of confiscated proceeds of crime.
- Principle 8: Consider Using an Agreement under UNCAC Article 57(5)- The transferring mechanism(s) should, where possible, use existing political and institutional frameworks and be in line with the country development strategy in order to ensure coherence, avoid duplication and optimize efficiency.

Source: [https://uncaccoalition.org/learn-more/asset-recovery/#What to do about asset recovery](https://uncaccoalition.org/learn-more/asset-recovery/#What%20to%20do%20about%20asset%20recovery)

International Framework— Global Forum on Asset Recovery (GFAR) [2]



International Framework– Global Forum on Asset Recovery (GFAR) [3]

GFAR Principles- (continued)

Principle 9: Preclusion of Benefit to Offenders- the disposition of confiscated proceeds of crime should not benefit persons involved in the commission of the offence(s).

Principle 10: Inclusion of Non-Government Stakeholders should be encouraged to participate in the asset return process, including by helping to identify how harm can be remedied, contributing to decisions on return and disposition, and fostering transparency and accountability in the transfer, disposition and administration of recovered assets.

Source: [https://uncaccoalition.org/learn-more/asset-recovery/#What to do about asset recovery](https://uncaccoalition.org/learn-more/asset-recovery/#What%20to%20do%20about%20asset%20recovery)

The Requirements of FATF Recommendation 30 [1]



Countries should ensure that designated Law Enforcement Authorities (LEAs) 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, associated predicate offences and terrorist financing. This should include cases where the associated predicate offence occurs outside their jurisdictions.

The Requirements of FATF Recommendation 30 [2]

Countries should ensure that competent authorities have responsibility for expeditiously identifying, tracing and initiating actions to freeze and seize property that is, or may become, subject to confiscation, or is suspected of being proceeds of crime. 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.



The International Framework in Action

The United Nations Convention against Transnational Organized Crime, together with the work of the FATF and other initiatives such as the StAR Initiative, provides broad guidelines on how to respond to the movement of criminal profits.

- Essentially, they illustrate how States should establish the tools to undertake organized crime investigations, prosecutions and confiscation applications that target the instrumentalities and proceeds of crime.