

Guidelines for the efficient recovery of stolen assets



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These guidelines are the result of the Lausanne Seminar initiative of the Swiss Federal Department of Foreign Affairs/ Directorate of International Law, implemented in close cooperation with the International Centre for Asset Recovery (ICAR) at the Basel Institute on Governance and with the support of the Stolen Asset Recovery Initiative (StAR) of the World Bank and United Nations Office on Drugs and Crime (UNODC).

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Introduction

The Practical Guidelines are a set of international good practices intended to enhance the effectiveness and efficiency of requesting and requested states in the asset recovery process.

What are the guidelines?

Asset recovery is an intricate and time-consuming process. The Guidelines for the Efficient Recovery of Stolen Assets unravel the asset recovery process, breaking it down into practical, manageable guidelines. This allows the target audience to focus on the asset recovery process in a comprehensive manner.

The guidelines are accompanied by a non-binding step-by-step approach. Together, they are intended to assist practitioners, policymakers and legislators to better plan each step of the process.

The breakdown into guidelines and steps enable the asset recovery process to be viewed outside its traditional thematic streams of: i) intelligence and pre-investigation activities; ii) investigation; iii) prosecution and adjudication; iv) confiscation and restitution. Other topics of core importance to the asset recovery process, e.g. communication strategies, trust building and expectation management, are also included.

The guidelines and steps form an interactive checklist of elements to consider when establishing an asset recovery policy or when devising an investigation strategy.

Who are they for?



Practitioners

(e.g. intelligence officers, law enforcement and judicial authorities) can in the short term gain knowledge and perspectives on the asset recovery process. This may result in medium- to long-term enhanced capacities for both requesting and requested jurisdictions to recover stolen assets.



Policymakers

will have a better understanding of the asset recovery process in a manner that will allow them to propose targeted policies potentially resulting in a meaningful impact.

**Legislators**

will be able to address legal challenges posed by and within the asset recovery process. They will be able to propose, where applicable, legislative solutions for their jurisdictions to recover stolen assets, while ensuring observance of the fundamental, constitutional and human rights of the parties involved.

The guidelines may also reach a wider audience, including:

**General public**

The website can act as a medium for knowledge of the asset recovery process. The general public can gain understanding of the intricacies of the asset recovery process, ultimately helping to manage expectations.

**Academia**

will be able to perceive in more detail and through different angles the problematic(s) involving the asset recovery process. This will assist in research to overcome these challenges.

About

Since 2001, Switzerland has been organising asset recovery expert seminars in Lausanne (Lausanne Seminars) with a view to facilitating an exchange between asset recovery practitioners on emerging issues as well as practical and legal challenges related to asset recovery. The Lausanne Seminars also provide an excellent platform to strengthen international co-operation in combating corruption and recovering stolen assets. Within this forum, asset recovery practitioners (prosecutors, investigators, judges) and policy makers from around 30 participating States are able to share expert knowledge, best practices and practical experience involving the recovery of illicit assets.

Within the Lausanne Process, Switzerland works in close co-operation with the [International Centre for Asset Recovery \(ICAR\)](#) of the Basel Institute on Governance and with the support of the World Bank/UNODC [Stolen Asset Recovery Initiative \(StAR\)](#).

Pursuant to two United Nations' mandates, the most recent seminars focused on the development of the Guidelines for the Efficient Recovery of Stolen Assets and a step-by-step guide to the asset recovery process, which were finalised in 2014 and 2017 respectively. Both mandates arose from discussions during Lausanne Seminars and the participants' recognition that more practical guidance on asset recovery, beyond legislative guidance, is required to reduce the hurdles faced by practitioners, particularly in cases with an international dimension.

Overview

■ **Guideline 1: Preliminary review**

Prior to a criminal investigation, involved jurisdictions should undertake a sufficient preliminary review of any indications and allegations, using all available sources, including financial and law enforcement intelligence and open source, and where appropriate share financial information with concerned FIUs, with a view to support subsequent criminal investigations.

■ **Guideline 2: Restraining assets**

Involved jurisdictions should promptly consider various options for preventing the untimely dissipation of assets, such as government freezes or delaying transactions for predetermined periods.

■ **Guideline 3: Investigation**

Involved jurisdictions should develop a comprehensive investigative and legal strategy for the case in consultation with all concerned public institutions.

The strategy should designate a domestic lead authority, outline responsibilities and consider all legal avenues (including administrative, civil and criminal). Sequencing of the lines of inquiry should be agreed, including the initiation of an investigation, exchange of information and submission of requests for MLA. The strategy should be regularly reviewed throughout the asset recovery process.

■ **Guideline 4: Timing**

Consider – and discuss with the jurisdiction to be requested – the timing of various types of requests for MLA.

■ **Guideline 5: Legal requirements**

Requesting and requested jurisdictions need to understand the legal requirements of one another, as these will become relevant for both domestic proceedings and international co-operation.

■ **Guideline 6: Contacts**

Requesting and requested jurisdictions should establish and use direct contacts between practitioners.

Requesting and requested authorities should consider seeking assistance from international experts.

They should use all available channels for information sharing, such as international and regional networks.

■ **Guideline 7: Communication**

Requesting jurisdictions should promptly discuss relevant elements of the investigative and legal strategy as well as a case outline and subject profile with all involved jurisdictions, where appropriate.

Involved jurisdictions should designate a focal point of contact and inform all concerned parties.

■ **Guideline 8: Parallel investigations**

Requested jurisdictions should consider initiating a parallel investigation into the assets and the facts surrounding these, in order to establish any wrongdoing in their jurisdiction.

Requesting and requested jurisdictions should fully support one another's proceedings by furnishing additional information spontaneously whenever possible and promptly processing valid requests for MLA.

Requesting and requested jurisdictions should assess their potential right of participating in legal proceedings underway in one another's jurisdiction.

Requesting and requested jurisdictions should determine whether to maintain parallel investigations and consider initiating joint investigations.

■ **Guideline 9: Draft request for MLA**

Share draft requests for MLA between the requesting and requested jurisdictions to confirm all requirements are met.

Requesting and requested jurisdictions should ensure follow-up to support the prompt execution of requests for MLA and periodic consultation on progress in domestic processes.

■ **Guideline 10: Execution of request for MLA**

The requested authority promptly proceeds to the execution of the request.

When considering concluding domestic proceedings that may affect related proceedings in another jurisdiction, including settlements, engage in consultation, where appropriate, to minimize obstacles to foreign proceedings or international cooperation.

Guidelines

Guideline 1: Preliminary review

Prior to a criminal investigation, involved jurisdictions should undertake a sufficient preliminary review of any indications and allegations, using all available sources, including financial and law enforcement intelligence and open source, and where appropriate share financial information with concerned FIUs, with a view to support subsequent criminal investigations.

It is essential to obtain and analyse immediately all information available domestically about concerned individuals and their associates, as well as their financial situation and economic ties. The widest range of possible offences should be identified. The information, analysis and possible offences should be summarized to facilitate the exchange of relevant intelligence within and between concerned jurisdictions. This summary will be invaluable to help prepare and prioritise formal investigations.

In order to prevent the possible dissipation of assets, consideration should be given to proactively and promptly sharing this information or summary information with other concerned jurisdictions, through financial intelligence unit (FIU) channels of information sharing, where available.

Step 1: Receive allegation

Potential sources of allegations may include SARs/STRs/financial intelligence, whistleblowers, witnesses, informants, victims, media reports, requests for MLA or (foreign) law enforcement agencies, and referrals from Foreign Affairs Offices.

Prior to determining the appropriate formal investigation and legal strategy, and before transmitting requests for MLA (see Guideline 4 Step 2 “Less formal avenues”), requesting jurisdictions should collect and record all basic information available domestically related to the allegations’ target(s) and their associates. Such information should be obtained from all available domestic sources.

If available to law enforcement, financial intelligence may include suspicious transaction reports (STRs), currency transaction reports (CTRs) or other reports and analysis from FIU. The FIU may be able to seek financial intelligence from other FIUs through the Egmont Group or memoranda of understanding with other involved jurisdictions.

Additional sources of information may also be available through governmental databases (e.g., ownership or registration databases for real property, motor vehicles, marine vessels or aircrafts), tax records, company registries, previous criminal or civil proceedings, immigration records, customs declarations, telecommunication and utility records. Government auditing or regulatory agencies (e.g., offices of inspector general, internal audit departments and anti-corruption agencies), or those that maintain asset declarations from certain public officials may also be sources of information.

Information may also be available through commercial databases (e.g., credit reporting bureaus) or open source information (e.g., information obtained from publicly available sources) such as media reports, blog postings, reports published by governments, NGOs or international organisations, and social networking sites. As internet derived information may change or be removed, steps should be taken to record and preserve electronic information for future admissibility as evidence (see Guideline 4 Step 1 “Consider sending spontaneous transmittal”).

Step 2: Appropriate party to investigate

Determine the most appropriate party to investigate the allegation, in whole or in part. Consider referring the allegation, in whole or in part, to a more appropriate party for investigation or other action.

Involved jurisdictions should consider what action to pursue when determining which jurisdiction or authority to refer the allegation to (see Guideline 3 and Guideline 8). Engaging with the jurisdiction where the assets are located is key.

Step 3: Assess allegation

Assessment criteria may include jurisdiction, investigative mandate, underlying predicate offences, credibility, materiality and resource requirements for successful investigation.

Upon the finding of a suspicion in the context of preliminary investigation or the receipt of an allegation, immediate consideration should be given to the identification of possible offences under domestic law, possible offences in other jurisdictions (if known) and the various avenues available for recovery of assets (criminal or non-conviction based confiscation, civil remedies, proceedings in a foreign jurisdiction, among others).

Step 4: Collect and record basic information

Collect and record in an organised manner all basic information related to the allegation’s subject(s), their associates and assets from all sources readily available. Domestic information may include public or governmental registries, mandatory financial

disclosures, and lifestyle audits. Open source information may include public registries (domestic and foreign), media reports, commercial databases and social media.

To support the ability of involved jurisdictions to undertake preliminary reviews that identify as much relevant information as quickly as possible from other involved jurisdictions, jurisdictions should consider developing and maintaining publicly available registries, such as company registries, land registries and/or registries of non-profit organisations. If possible, such registries should be centralised and maintained in electronic and real-time format, so that they are searchable and updated at all times.

Involved jurisdictions can also support each other in accessing and maintaining information, including through providing technical assistance (e.g. in cases of technical challenges such as low internet speed).

Basic information can also be obtained with the assistance of international and regional partners and networks (e.g. EGMONT, asset recovery networks, etc.) (see Guideline 6).

Step 5: Prepare a subject, financial and jurisdictional profile

For natural persons, include biographical data, work history, familial relationships, known associates, and financial information. For legal persons, prepare a profile of corporate structure and ownership, including jurisdictional connections (e.g., jurisdiction of incorporation, administration, financial accounts and operations). Identify the potential sources of information or assistance from involved jurisdictions.

This information serves as a basis for developing a subject and financial profile for the investigation. Consideration should be given to preparing a basic subject profile that may be provided to involved jurisdictions, subject to any limitations on disclosure.

Providing as much information as possible may help avoid the duplication of investigative efforts and assist in developing new investigative leads. Special attention should be given to providing consistent transliteration of names with clear identifiers (e.g., date of birth, passport or identity card data, titles (e.g., former Minister of Energy from 2000 to 2004) and relationships (spouse of former President X; son of Ministry of Education) (see Guideline 7).

Step 6: Domestic coordination

Subject to confidentiality requirements, domestic coordination on complex cases may begin during the collection of information in the preliminary review.

Subject to confidentiality requirements, for instance with regard to the need to prevent leaks or tip off suspects, the collection of information during a preliminary review may provide an opportunity to begin domestic coordination in complex cases (see Guideline 3 Step 3

“Put in place an operational coordination mechanism”). Doing so ensures the continuity of the investigation and prevents the loss of knowledge (see Guideline 3 Step 1 “Develop an investigative and legal strategy template/checklist”).

National coordination through formal or informal team/taskforce may be considered and FIUs or financial analysts can be involved throughout the process of investigation. FIUs may assess information against open sources at each stage of the process.

Step 7: Identify possible offences

Identify all possible offences under domestic and foreign laws (if known) and consider various avenues for asset recovery.

The assessment of allegations (see step “assess allegation”) is of key importance because a requested jurisdiction may not be able to afford a requesting jurisdiction international cooperation if the legal proceedings in the requesting jurisdiction do not satisfy the requested jurisdiction’s domestic legal requirements (see Guideline 9 Step 2 “Consider consulting the requested jurisdiction on the draft request for MLA”). As admissibility standards vary among jurisdictions, compliance alone with admissibility requirements by the requesting jurisdiction may still be insufficient. Requested jurisdictions may have to fulfil higher evidentiary thresholds required by their courts to comply with requests for MLA. Identification of such issues is recommended as early in the investigation process as possible through consultations among involved jurisdictions (see Guideline 5).

Issues relating to dual criminality, elements of proof, standards of evidence, and legal admissibility of evidence obtained during investigation must be considered.

Step 8: Share information with other involved jurisdictions

Where possible, share information with other involved jurisdictions through FIU (e.g. Egmont channel if available), law enforcement channels and asset recovery networks or on a bilateral basis.

Where appropriate, FIUs should share financial intelligence with FIUs of other concerned jurisdictions, through appropriate channels such as the Egmont Group. Other networks such as the regional-based ones can also be used, in particular when members are not part of the Egmont network and countries may consider the use of MoUs (see Guideline 6).

Involved jurisdictions should also consider providing information spontaneously, and receiving jurisdictions should use information provided to follow-up and pursue investigations (see Guideline 4 Step 1 “Consider sending spontaneous transmittal of information”).

Involved jurisdictions should close the file if determined they do not have jurisdiction. Prior to closing the file, however, the lead agency should evaluate whether there is information relevant to another case or jurisdiction, spontaneously transmitting information where appropriate and possible (see Guideline 8).



Further reading

- UNCAC, Articles 31(2), 48(4 and 5), 52(5) and 58.
- *Technical Guide to UNCAC*, Article 31.
Available at: http://www.unodc.org/documents/corruption/Technical_Guide_UNCAC.pdf
- Financial Action Task Force (FATF). 2012. *Best Practices on Confiscation (Recommendations 4 and 38) and A Framework for Ongoing Work on Asset Recovery*.
Available at: <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/bestpracticesonconfiscationrecommendations4and38andaframeworkforongoingworkonassetrecovery.html>
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Available at: <https://www.baselgovernance.org/publications/tracing-stolen-assets-practitioners-handbook>
- Lasich, T. 2009. The investigative process – a practical approach. In: International Centre for Asset Recovery (ICAR). 2009. *Tracing Stolen Assets: A Practitioner’s Handbook*.
Available at: <https://www.baselgovernance.org/publications/tracing-stolen-assets-practitioners-handbook>

Guideline 2: Restraining assets

Involved jurisdictions should promptly consider various options for preventing the untimely dissipation of assets, such as government freezes or delaying transactions for predetermined periods.

Asset recovery efforts are of little value if, ultimately, no assets remain available for confiscation and restitution. Given that assets can be hidden or moved out of a jurisdiction quickly and that investigation and confiscation processes may be lengthy, it is critical that measures be taken at the very outset of an investigation to secure any assets that may become subject to a confiscation judgment.

Available provisional measures (e.g., government freezes, consent regimes, other restraint orders or delaying transactions for predetermined periods) to prevent the dissipation of assets, should be identified and employed where possible. Involved jurisdictions should consider initiating actions against the proceeds of corruption located in their jurisdiction when requests for MLA have not yet been presented in order to preserve the assets. Involved jurisdictions should inform other relevant jurisdictions of any provisional measures taken, any limitations on such provisional measures (e.g., time limitations, notification provisions) and the additional steps necessary to maintain the provisional measures in place.

In certain cases, it may be decided not to implement provisional measures as part of the investigative strategy to monitor the asset to develop new avenues of inquiry (see Guideline 3), or where the exercise of provisional measures may tip off the subject and allow for the movement of assets in other jurisdictions. In such instances, involved jurisdictions, should seek to coordinate their actions and/or consider whether alternative means of restraining or delaying transactions are possible (see Guideline 4, Guideline 5, and Guideline 7).

Step 1: Identify and secure assets

Take steps to identify and secure assets as early as possible through domestic coordination and use of international and regional partners or networks (see Guideline 6). Assess relations with financial institutions to enhance trust between them and law enforcement for the purposes of inter alia identification of assets and potential delay of transactions.

Available mechanisms that allow for the temporary freezing of assets should be used to the widest extent available and as swiftly as possible, before a formal MLA request is filed. A formal MLA request may be required to retain the freeze.

Depending on their legal systems (civil or common law), jurisdictions will have different approaches to mechanisms for temporary freezes. However, a common priority is to determine whether assets exist at all. Some jurisdictions have no consent regimes as administrative practices to ensure that freezes may be put in place for a certain time or possibly open-ended

when a suspicious transaction report has been filed. In other jurisdictions, prosecutors must file specific applications for judicial orders, though these may be done on an urgent basis. Independent from the applicable legal system, efforts to identify and freeze assets should be made to the maximum extent possible.

If provisional measures are not available or desirable at such time, alternative means of restraining or delaying transactions should be considered. For example, in many jurisdictions, anti-money laundering legislation may provide avenues to secure assets. FIUs may have the administrative authority to restrain or refuse consent to release funds if a STR has been filed, thereby providing authorities with some time to obtain a formal court order. Financial institutions may exercise voluntary and independent restraint to avoid implication in money laundering offences. Other options include requesting the financial institution to delay the suspicious transaction and to inform law enforcement authorities upon receipt of payment instructions relating to the envisaged transaction. This allows for more time to gather information to determine whether a case can be built. Law enforcement should build trust with the relevant financial institutions in order to facilitate cooperation.

Involved jurisdictions should use available contacts, networks of practitioners and international organisations to reach out at an early stage and obtain advice or facilitation for communications. Databases of central authorities and focal point networks are useful in this respect and can establish direct channels of informal communication and consultation between practitioners (see Guideline 6).

Asset management concerns should also be identified and an asset management plan developed, preferably prior to executing provisional measures.

Step 2: Discuss temporary freeze options

Communicate among the involved jurisdictions to determine the available options for the temporary freeze of assets, based inter alia on timing issues, expected outcomes, likelihood of prosecution. Where temporary freezes are not available, discuss the most effective mechanisms available to freeze the assets, e.g., non-conviction based forfeiture (NCBF), and parallel proceedings (see Guideline 6).

Once assets are identified for possible seizure, involved jurisdictions should discuss the timing for applying the provisional measures, taking into consideration, e.g., possible tipping off of the target. Lack of coordination and early action in one of the jurisdictions involved may allow the target to move assets, reducing the overall efficacy of the measure. Involved jurisdictions should moreover assess the timing of communication, e.g., if it jeopardises potential freezes (see Guideline 4 and Guideline 7).

The different timelines in involved jurisdictions may determine whether prosecutors seek to open a case and if there is a sufficient level of suspicion to impose coercive measures, in

particular if the underlying offences were committed abroad. The use of domestic routes or focus on international requests should be discussed. Jurisdictions using NCBF may maintain provisional measures including freezes for extended periods of time.

Step 3: Sequence of communication

Involved jurisdictions should maintain regular communication with each other once provisional measures have been taken. Communication should include mutual understanding of applicable time limits to the provisional measures, any legal challenges to these measures and avenues to proceed with the case.

Provisional measures taken should be promptly communicated among involved jurisdictions.

Involved jurisdictions should detail their requirements and the different steps expected from their counterparts (see Guideline 5 and Guideline 6). Confidentiality requirements should be carefully explained, especially with a view to disclosure requirements in other jurisdictions prior to transmitting the requested evidence (see Guideline 6).

Step 4: Dual criminality

The summary of facts provided should enable the requested jurisdiction to match the alleged conduct to a criminal offence under its legal system.

The criminal nature of the conduct in the requesting jurisdiction should be verified in the requested jurisdiction, in order to avoid the object of the request for MLA falling outside the scope of assistance in the requested jurisdiction. Prior contact should be made with the central authority of the requested jurisdiction and draft requests for MLA should be shared with it, where applicable, to seek advice informally, bearing in mind any confidentiality or disclosure requirements.

Step 5: Prevent leaks

Prevent leaks or premature disclosure of information that may hinder further action.

Involved jurisdictions should promptly and proactively communicate their own domestic confidentiality and disclosure requirements to ensure these have no negative impact on the investigative strategies (see Guideline 7 Step 2 “Provide the requested jurisdiction(s) with any relevant information that impacts the execution of the request for MLA (e.g. confidentiality, timing and other procedural issues”).



Further reading

- UNCAC, Articles 31, 54 and 56.
- *Technical Guide to UNCAC*, Article 31.
Available at: http://www.unodc.org/documents/corruption/Technical_Guide_UNCAC.pdf
- *FATF International Standards on Combatting Money Laundering and the Financing of Terrorism (Recommendations)*, Recommendations 4 and 38.
Available at: <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>
- Financial Action Task Force (FATF). 2012. *Best Practices on Confiscation (Recommendations 4 and 38) and A Framework for Ongoing Work on Asset Recovery*.
Available at: <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/bestpracticesonconfiscationrecommendations4and38andaframeworkforongoingworkonassetrecovery.html>
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Available at: <https://star.worldbank.org/publication/asset-recovery-handbook>
- Stephenson, K. et al. 2011. *Barriers to Asset Recovery* (see Barrier 10 “No Quick Freeze or Restraint Mechanisms”). The World Bank.
Available at: <https://star.worldbank.org/publication/barriers-asset-recovery>

Guideline 3: Investigation

Involved jurisdictions should develop a comprehensive investigative and legal strategy for the case in consultation with all concerned public institutions.

Developing a comprehensive investigative and legal strategy is essential for successful asset recovery. A strategy will assist to ensure that resources may be allocated and prioritised adequately so that the case proceeds in the most efficient manner with the highest likelihood of recovering assets.

In complex and/or high-profile cases, the strategy should be developed in consultation (as appropriate) with all relevant national public institutions (see Guideline 1 Step 6 “Domestic coordination”). These may include law enforcement agencies and prosecutorial authorities, as well as representatives from tax, customs, justice, foreign affairs, treasury, immigration, the FIU, regulatory or supervising authorities, the central authority, and the asset management authority. This consultation allows agencies to work together with a common purpose – the efficient recovery of stolen assets.

The strategy should designate a domestic lead authority, outline responsibilities and consider all legal avenues (including administrative, civil and criminal). Sequencing of the lines of inquiry should be agreed, including the initiation of an investigation, exchange of information and submission of requests for MLA. The strategy should be regularly reviewed throughout the asset recovery process.

A nationally coordinated approach helps in establishing which agency should lead the execution of the investigation strategy, including whether multiple agencies have an interest in submitting a request for MLA.

Sequencing of the lines of inquiry, including methods for collecting information, intelligence and evidence should also be agreed. Where possible informal methods (e.g. open source information (see Guideline 1), intelligence gathering (see Guideline 1) or other sources of information (see Guideline 4)) should be used prior to formal methods (see Guideline 9) (e.g. MLA).

Operational meetings should allow for regular revision of the case strategy, to determine whether the lead investigating agency requires additional assistance or resources, or even to reassign the investigation. Developments and revisions to the strategy should be communicated to all involved agencies as appropriate, including contact points in involved jurisdictions.

Step 1: Develop an investigative and legal strategy template/checklist

Develop an investigative and legal strategy template/checklist that can be used by different national authorities and adapted to their mandates and each case.

To implement an investigative and legal strategy, the national authorities should ensure domestic coordination to define the overarching strategy, its implementation and the expected outcomes.

The investigative and legal strategy should set forth each stage of the investigation and any legal proceedings with explicit sequencing of steps to be taken, timing and responsibilities among involved agencies. The sequencing and expected timing of significant milestones (e.g. request for provisional orders, exercise of coercive measures (such as production orders and search warrants, interviews of targets and key associates, witnesses), requests for MLA, or initiation of legal proceedings) should be agreed.

Available investigative powers may need to be identified, as well as their legal requirements and limitations. Consideration may be given to the investigative powers and capacity of various domestic agencies and their foreign counterparts (if applicable) to identify and assign investigative responsibilities.

Consideration may need to be given when prioritising the lines of inquiry to the available resources and estimated costs of pursuing the case in view of the likelihood and estimated amount of assets to be recovered. Involved jurisdictions should understand the expectations and willingness of counterpart jurisdictions to commit resources as the case develops.

Step 2: Initiate inter-agency communication as early as possible

Authorities may consider forming a case specific (or interrelated cases) task force that comprises the various agencies with relevant law enforcement and prosecutorial authority. A clear lead domestic agency should be designated and agreed among the agencies (see Guideline 1 Step 2 Appropriate party to investigate).

A task force facilitates the exchange of information and skills and assists in discussions and reviews of the latest developments in the case. To avoid confusion or rivalries among agencies, it will be important to clarify from the outset the respective roles of the agencies and their respective team members in the task force. If appropriate, the task force may also consider coordination with private sector actors who have an interest in the prosecution or recovery of assets (or both).

The lead domestic agency should consider consulting with involved jurisdictions on the development of the investigative and legal strategy (see Guideline 6) to ensure that necessary components and sequencing for international cooperation are addressed (see Guideline 8). Such consultation may be necessary to understand the requirements for international cooperation, the capacity of counterparts, as well as the length of time required for various forms of assistance or MLA to be provided by involved jurisdictions.

Developments and revisions to the investigative and legal strategy should be communicated to all relevant parties as appropriate, including contact points in involved jurisdictions.

Step 3: Put in place an operational coordination mechanism

Put in place an operational coordination mechanism enabling authorities to share information, divide tasks, prioritise activities and allocate resources for the investigation.

Involved agencies should identify all potentially concerned national public institutions, and designate a lead domestic agency responsible for strategic leadership and coordination. Roles and responsibilities of each participating national public institution should be clearly defined. Coordination meetings, including at specific milestones should be periodically held. Coordination is especially important to avoid positive or negative conflicts of jurisdiction (see Guideline 1 Step 6 “Domestic coordination”).

As the case evolves through investigation and legal processes, the investigative and legal strategy should be regularly updated and reviewed to ensure momentum is maintained and resources and expertise continue to be allocated and prioritised with a view to asset recovery (see Guideline 3 Step 6 “Review and reassess the investigative strategy”).

Steps should be taken to: (i) ensure continuity in the investigation; and (ii) prevent the loss of knowledge, in the event of personnel changes. The lack of continuity and loss of knowledge hinders effective asset recovery. It further hampers the building up of trust, both domestically and internationally.

Step 4: Ensure parallel financial investigation

Ensure that a financial investigation runs parallel to any other investigative action.

The implementation of an investigation strategy should focus both on investigating the criminal offences and identifying any criminally obtained assets. The financial investigation should whenever possible run parallel to the criminal investigation.

Step 5: Explore avenues to facilitate obtaining evidence

Explore civil or administrative avenues to facilitate the obtaining of evidence, or widen the scope of the asset recovery case.

Consideration should be given to all possible offenses under domestic law and in other jurisdictions (if known). Various avenues may be available for the recovery of criminally obtained assets (criminal or non-conviction based confiscation, civil remedies, or through proceedings in a foreign jurisdiction). For each legal avenue, the evidentiary or procedural requirements and any statutory limitations should be identified both with regard to domestic law and any applicable foreign jurisdiction.

Step 6: Review and reassess the investigative strategy

Review and reassess periodically the investigative strategy, taking into account new evidence, suspects and lines of inquiry.

The investigative strategy should determine both the topic and scope of any investigation. As the case develops the strategy will need to be revised, agreed and communicated among involved agencies.

When advancing the investigations locally and when requesting assistance internationally, potential time limits deriving from the applicable statute of limitations or deriving from the applicable code of criminal procedure, each of which may impact a criminal proceeding need to be considered.

Step 7: Ensure that evidentiary thresholds for international co-operation are met

Ensure that the required evidentiary thresholds for international co-operation with a specific jurisdiction are understood and met prior to submitting requests internationally.

Continuously reviewing the evidence helps in determining at an early stage the jurisdictions involved in an asset recovery case. It further allows commencing communication with foreign authorities at an early stage (see Guideline 6).

Law enforcement should strive to obtain evidence taking into account the highest level of evidentiary threshold required (see Guideline 7). Evidence obtained through civil proceedings may need to be re-obtained to be admissible in criminal proceedings. Nevertheless, information obtained through civil proceedings may indicate leads for the criminal proceedings.



Further reading

- UNCAC, Articles 44 and 48.
- Monteith, C. 2013. Case and Investigation Strategy. In: Fenner Zinkernagel, Gretta et al. (eds.). 2013. *Emerging Trends in Asset Recovery*. Peter Lang. Available at: <https://doi.org/10.3726/978-3-0351-0602-2>
- Strategic Considerations for Developing and Managing a Case. In: Brun, J.-P. et al. 2011. *Asset Recovery Handbook: a Guide for Practitioners*. The World Bank. Available at: <https://star.worldbank.org/publication/asset-recovery-handbook>
- Stephenson, K. et al. 2011. *Barriers to Asset Recovery* (see Barrier 5 “Too Many Cooks in the Kitchen – Lack of Effective Coordination”). The World Bank. Available at: <https://star.worldbank.org/publication/barriers-asset-recovery>

Guideline 4: Timing

Consider – and discuss with the jurisdiction to be requested – the timing of various types of requests for MLA

Requesting and requested jurisdictions should consider the timing of various types of requests for MLA, before their submission, as the timing of the submission of a formal request may impact the proceedings in a range of manners that may or may not be conducive to the efficient recovery of stolen assets. In general, other assistance channels, such as the Egmont Group, CARIN, Interpol or other intelligence sharing networks, should be exhausted among involved jurisdictions prior to submission of formal request for MLA (see Guideline 6).

Why is the timing of requests for MLA crucial?

Information provided to a requested jurisdiction – informally or through a request for MLA – may result in the requested jurisdiction initiating its own domestic investigation. Subsequently, the requested state may be unable to provide MLA as there are “on-going proceedings” in the requested jurisdiction.

It is essential that requesting jurisdictions understand the consequences of request for MLA as some jurisdictions require authorities to provide notice to the targets of a request for MLA and grant these targets the right to appeal a decision to provide the assistance sought through a request for MLA. As a result, premature request for MLA may alert targets of the investigation and thus allow the movement or dissipation of assets by the target to other jurisdictions, or the destruction of evidence. Appeals by targets may lead to delays which impact other aspects of international cooperation. Requesting jurisdictions are advised to discuss the timing of any request for MLA with the designated focal contact point of the requested jurisdiction (see Guideline 7).

Once a request for MLA has been filed, some jurisdictions impose limitations on the further exchange of financial or law enforcement intelligence (see Guideline 6). Thus, requesting and requested jurisdictions should always consider together whether the request for MLA is necessary or if the information sought may be made available through other channels first.

Where there are likely to be multiple requests for MLA to obtain information, evidence, provisional measures, or confiscation orders, requesting and requested jurisdictions should, also as a trust-building measure, discuss sequencing of the requests in the most expeditious manner to ensure, inter alia, that evidentiary requirements are met and unnecessary delays avoided. Such sequencing of requests should take into account existing rules in the requesting and requested jurisdictions.

Step 1: Consider sending spontaneous transmittal of information

This is to enable involved jurisdiction(s) to open or support a criminal investigation. Upon receipt of spontaneous transmittals, the receiving jurisdiction(s) should undertake diligent review and verification of the information prior to responding to the spontaneous transmittal with a request for MLA. Following such review, the receiving jurisdiction should provide a substantive response upon review of the information to the sending jurisdiction.

Spontaneous¹ transmission of information is a proactive manner of disclosing information to an involved jurisdiction (see Guideline 3), to alert that jurisdiction about potentially relevant evidence. This spontaneous information is intended to enable a foreign jurisdiction to either initiate or to further its own criminal proceedings. Spontaneous transmission of information does not provide a jurisdiction with evidence. It requires the recipient jurisdiction (of the spontaneous transmission) to issue requests for MLA in order to obtain evidence. Such requests for MLA should contain additional information which the recipient jurisdiction has obtained in the course of its investigation, and should not merely replicate the information provided in the spontaneous transmittal of information. Spontaneously transmitting information through channels such as Egmont or other practitioner networks is an excellent way to communicate information to relevant authorities, consequently leading to a fertile dynamic within the MLA process.

Step 2: Less formal avenues

Requesting jurisdictions should seek to use other less formal avenues prior to sending a request for MLA (see Guideline 1). Where possible, requested jurisdictions should provide guidance or assistance to requesting jurisdiction(s) regarding less formal avenues to obtain requested information.

Requesting and requested jurisdictions should discuss requests for MLA prior to their submission to determine whether a request for MLA is necessary, or whether the information or material sought is publicly available, could be made available on an intelligence basis or needs not be obtained in a specific form to be admissible in court. Consideration should first be given as to whether other channels (e.g., intelligence sharing networks, Egmont Group) have been exhausted between the jurisdictions.

Step 3: Consider opening parallel investigations

In complex or grand cross-border cases prior and/or in addition to sending a request for MLA (see Guideline 8).

A jurisdiction that is conducting an investigation and which identifies that information may be pertinent to another jurisdiction should strive to share such information proactively and spontaneously (see Guideline 3 and steps for action “Consider sending spontaneous

transmittal of information). Moreover, the involved jurisdictions should strive to co-ordinate their investigative and legal strategies with one another (see Guideline 6 and 7), with a view to allowing contemporaneous investigations into the facts which constitute criminal offences in the involved jurisdictions (e.g., the predicate and money laundering offences).

Step 4: Understand impact of the timing of request for MLA on the process

Taking into account possible limitations on the exchange of financial or law enforcement intelligence subsequent to the request for MLA.

Requesting and requested jurisdictions should discuss the timing of various types of requests for MLA, with the understanding of how requests for MLA may impact the exchange of financial or law enforcement intelligence.

Step 5: Understand any potential impact on the investigation resulting from sending a request for MLA

Including but not limited to, confidentiality requirements, disclosure obligations, limits on the use of information, statute of limitation concerns, and the expected length of time required to execute the request for MLA.

Requesting and requested jurisdictions should discuss and understand any confidentiality requirements, limits on use of information or disclosure obligations to the target or third parties that may result from the request for MLA or its response.

Step 6: Prioritise requests for MLA

Based on seriousness of the offence, value of assets, the risk of dissipation of assets, length of time elapsed since time of misconduct, etc. Requesting jurisdictions should consider communicating through direct contact with the requested jurisdiction any compelling reasons for prioritisation of the execution of the request for MLA.

Requesting jurisdictions should prioritise their requests for MLA based on the seriousness of the offence, the value of the assets involved, the stage of the investigation or legal proceedings, and degree of public interest in the case. In some instances, it may be more effective to separate multi-faceted requests for MLA into several separate requests.



Further reading

- UNCAC, Articles 48, 54, 55, and 56.
- Brun, J.-P. et al. 2011. *Asset Recovery Handbook: a Guide for Practitioners* (see Section 7 “International Cooperation in Asset Recovery”). The World Bank.
Available at: <https://star.worldbank.org/publication/asset-recovery-handbook>
- Strategic Considerations for Developing and Managing a Case. In: Brun, J.-P. et al. 2011. *Asset Recovery Handbook: a Guide for Practitioners*. The World Bank.
Available at: <https://star.worldbank.org/publication/asset-recovery-handbook>
- Stephenson, K. et al. 2011. *Barriers to Asset Recovery* (see Barrier 6 “Quick Trigger on Formal MLA Submission”, Barrier 7 “Differences in Legal Traditions”, Barrier 8 “Inability to Provide MLA” and Barrier 28 “Identifying Foreign Bank Accounts”). The World Bank.
Available at: <https://star.worldbank.org/publication/barriers-asset-recovery>

Guideline 5: Legal requirements

Requesting and requested jurisdictions need to understand the legal requirements of one another, as these will become relevant for both domestic proceedings and international co-operation.

Differences in legal theory, case law, legal traditions, confiscation systems, and procedural requirements can present challenges to international cooperation in asset recovery. Overcoming these challenges may be necessary for success in domestic proceedings as well.

Involved jurisdictions may also consider the exchange of personnel and other experts, including the posting of liaison officers to support international cooperation and the MLA process, especially in complex or high value cases. Involved jurisdictions may choose to seek assistance from international experts (e.g., ICAR, StAR and UNODC) to facilitate communication or support the process through training, assistance in translation or other advice (see Guideline 6).

Step 1: Use available resources to gather information on MLA requirements

Use available resources to gather information on legal requirements (e.g., guides, databases, websites, practitioner networks) in involved jurisdictions.

Jurisdictions should publish and maintain guides to asset recovery in their jurisdiction, including points of contact, investigative assistance, provisional measures, information regarding the MLA process (see Guideline 9) and enforcement orders. Requesting jurisdictions should obtain and review these guides to resolve minor issues before contacting requested jurisdictions.

Step 2: National central authorities should be proactive

National central authorities should be proactive when advising domestic authorities on international co-operation (e.g. reviewing requests for MLA, identifying key requirements of the requested jurisdiction).

The minimum requirements for MLA (see Guideline 9) are often discussed on a case-by-case basis. In addition to the consultation of guides for MLA, the requesting authority should contact the requested jurisdiction proactively in order to explain the specific case and seek advice on submitting a draft request for MLA. During the preliminary discussions, the minimum strategic and technical requirements (see Guideline 9) should be addressed.

Step 3: Establish contact with competent foreign authorities

Establish contact with competent foreign authorities to understand specific legal, tactical and practical requirements of the requested jurisdiction(s).

Involved jurisdictions should not assume that they are knowledgeable of each other's legal requirements and procedures. Therefore those requirements should be discussed prior to the submission of requests for MLA, e.g. by exchanging and consulting each other's guides for MLA (see Guideline 6). Doing so may assist in overcoming unnecessary challenges and delays in international cooperation.

Step 4: Solicit feedback on potential (draft) requests in international co-operation, ensuring that sufficient information is provided

Most central authorities have established guides for MLA. The requesting authority should where applicable first approach the central authority of its own jurisdiction to obtain available information about the applicable requirements in the requested jurisdiction.

Requested jurisdictions should consider providing assistance to requesting jurisdictions to the widest extent possible, especially in support of complex or high value cases. Such assistance may include working with requesting jurisdictions to understand legal requirements, and reviewing initial draft requests for MLA (see Guideline 9 Step 2 "Consider consulting the requested jurisdiction on the draft request for MLA").

Step 5: Actively follow up with requested authorities

Actively follow up (e.g. regular calls, videoconferences or in-person visits) with requested authorities in relation to requests for international co-operation.

The requesting authority should be persistent, and call periodically, given their interest in obtaining information and evidence from the requested jurisdiction. Additionally, as MLA is reciprocal, the requested authority should be ready to assist the requesting jurisdiction (see Guideline 9 Step 4 "Communicate to ensure follow-up").



Further reading

- UNCAC, Articles 46(1), 46(13), 46(24), 46(26), 48(1)(e) and 55.
- Country Guides on Asset Recovery prepared under the auspices of the G-20 Anti-Corruption Working Group.
Available at: <https://star.worldbank.org/star/about-us/g20-anti-corruption-working-group>
- Country Guides on Asset Recovery prepared under the auspices of the Arab Forum on Asset Recovery.
Available at: <https://star.worldbank.org/ArabForum/country-guides-asset-recovery>
- Resources on Mutual Legal Assistance and the asset recovery laws of over 175 countries.
Available at: <https://www.unodc.org/unodc/en/corruption/publications.html>
- International Cooperation in Asset Recovery. In: Brun, J.-P. et al. 2011. *Asset Recovery Handbook: a Guide for Practitioners*. The World Bank.
Available at: <https://star.worldbank.org/publication/asset-recovery-handbook>
- Stephenson, K. et al. 2011. *Barriers to Asset Recovery* (see Barrier 23 “Lack of Information on MLA Requirements”). The World Bank.
Available at: <https://star.worldbank.org/publication/barriers-asset-recovery>

Guideline 6: Contacts

Requesting and requested jurisdictions should establish and use direct contacts between practitioners.

Direct and regular communication and coordination between the involved stakeholders in concerned jurisdictions throughout the various asset recovery steps is one of the cornerstones of any successful asset recovery process. In addition to communication in the context of sharing of criminal and financial intelligence or of investigative information (see Guideline 1), the subject(s) of such communication may also include case strategies, requirements for MLA and other legal requirements in the respective jurisdictions, and challenges encountered in the implementation of a co-ordinated case strategy. As such, direct communication between involved stakeholders within and especially among concerned jurisdictions facilitates the understanding of potential challenges at the operational and legal levels and may facilitate a quicker and more efficient collation of information. In addition, it builds trust and thereby further facilitates cooperation.

Requesting and requested authorities should consider seeking assistance from international experts.

Law enforcement agencies have increasingly sought the assistance of international asset recovery experts in high profile multi-jurisdictional asset recovery cases. Such international experts can include either (i) experts from intelligence and law enforcement agencies of other concerned jurisdictions, or (ii) experts from other organisations or law firms, who can assist in reinforcing the capacity of concerned agencies in requesting jurisdictions or facilitating cooperation with, and understanding requirements of, involved foreign jurisdictions.

The assistance of such experts has proven to be useful when a requesting or requested jurisdictions lack experience or capacity in dealing with complex international corruption or money laundering cases, are overwhelmed by the magnitude of the task at hand or for other reasons. An external expert can assist in developing investigation strategies and prioritising cases. When an external expert is used, he or she can further help coordinate between multiple concerned jurisdictions.

They should use all available channels for information sharing, such as international and regional networks.

Early and where possible proactively sharing of information between requested and requesting jurisdictions is key to enabling all concerned jurisdictions to efficiently progress in their investigations. Doing so may enhance trust amongst relevant practitioners, and positively contribute to the outcome of investigations, prosecutions and international cooperation.

Step 1: Establish productive relationships

Establish productive relationships with foreign jurisdictions at the earliest opportunity with a view to fostering trust, consistency and continuity.

Building trust overlaps with building new, or expanding existing contacts. One needs to build contacts and to have trust in them as well: trust should be established while putting in place a relationship. Building trust also means overcoming potential negative perceptions or images this may bring with it.

An effective approach to facilitating direct contact is through periodic communication between peers, which should be established through different mechanisms of direct communication, such as telephone calls (incl. Skype), email, videoconferences, or face-to-face meetings with law enforcement counterparts. Establishing relationships should be done at an early stage, preferably prior to an actual case. Embassies can also play an important role as facilitators. Continuity and consistency in providing timely replies, and observing the confidentiality requirements, are important factors contributing to building up the necessary level of trust. Any limitations or delays in the possibility to provide assistance should be frankly communicated.

Step 2: Networking and follow-up

Utilise all opportunities for networking and following-up with contacts obtained, including through responsive and engaged interaction.

Where the applicable legal provisions do not already address direct contacts, a starting point for establishing these is the conclusion of bilateral or multilateral agreements between law enforcement agencies of different jurisdictions allowing for such direct contacts. The many international and regional practitioner networks that exist (a list of relevant international and practitioner networks can be found in Annex 1), and specialised workshops and forums in which practitioners may have the opportunity to participate, can also assist in establishing contacts. Building up one's network is a continuous process and practitioners should not hesitate to contact the secretariat of these networks when they lack knowledge of whom to contact in a particular jurisdiction. Some networks also provide platforms for secure communication, which can assist in facilitating the exchanges.

International conferences and events should furthermore be used for networking. Participants in such events should be proactive, bringing a clear message about who they are, whom they represent and, how they can be reached if assistance is needed.

It is important to keep a record of contacts obtained, as there may be changes in personnel over time. Contacts should therefore be preserved at the institutional level to ensure continuity, e.g., by maintaining an institutional database of contacts, and changes in personnel should be communicated in a timely fashion.

Step 3: Consider requesting assistance from international experts

Consider requesting assistance from international experts to provide specialised support and advice as well as facilitate contacts for international cooperation. The role of these international experts should be clearly defined in order to manage e.g. confidentiality, non-authorised disclosure and cost implications.

A practice that has evolved in the past few years is for jurisdictions to receive assistance from specialised (international) organisations, such as the International Centre for Asset Recovery (ICAR) and the Stolen Asset Recovery Initiative (StAR) of the World Bank and the United Nations Office on Drugs and Crime. These organisations have the benefit of usually being comprised of practitioners with experience in multiple jurisdictions and the capability and authority to advise on legal matters as they relate to any other concerned jurisdiction.

Countries have sometimes also relied on law firms to perform similar functions relating to one particular jurisdiction, and to act on behalf of the requesting jurisdiction in possible legal proceedings in the requested jurisdiction. Care should be exercised in selecting reputable law firms, and in understanding the terms of their engagements (e.g., fees structure and scope of work).

It should be noted, however, that the usefulness of mandating (international) experts should be balanced against potential cost implications, confidentiality requirements, the risk of non-authorised disclosure. It should be noted that while international experts provide advice, the ultimate responsibility for making decisions should remain [or remains] with the competent local authorities.

Step 4: Identify and use practitioner networks

Identify and use practitioner networks and their secretariats to obtain contact information, as well as to acquire knowledge and share experiences.

International and regional practitioner networks provide platforms that can assist in providing relevant practical information. This important contribution does not replace legal formalities for mutual legal assistance. However, practitioners should be aware of and respect the limits of information sharing imposed by law. Publicly available information can be shared through practitioner networks. Information which is not public or is not available without first obtaining a court order cannot be shared through practitioner networks. Moreover, practitioner networks cannot be utilised when seeking to obtain evidence: a request for MLA is required to obtain the evidence.

In certain case-specific circumstances, concerned jurisdictions have also set up specific forums to enable their intelligence, law enforcement and prosecutorial communities to connect and meet face-to-face. Intelligence, law enforcement and prosecutorial agencies should be aware of, and utilise these channels for information to the largest extent possible. Participating practitioners in such networks should also promote the utility of such networks at the domestic level.

International and regional practitioner networks have proven to be particularly useful in providing strong support bases for many law enforcement agencies tackling multi-jurisdictional asset recovery cases. Such networks can furthermore provide FIUs and law enforcement agencies with an informal contact point with peers from another member jurisdiction. They can serve to share specific case-related information, although such information does not generate evidence, and cannot thus be collated to the relevant investigation and prosecution case file. The networks also serve as an excellent platform to better understand the practices of other jurisdictions in the asset recovery field, which in turn facilitates the definition of suitable investigation and prosecutorial strategies at the outset of a case. Practitioners should not hesitate to contact the secretariat of these networks (see list of international and regional practitioner networks here [Annex 1](#)) when they lack knowledge of whom to contact in a particular jurisdiction.



Further reading

- UNCAC, Articles 44, 48, 60(5), 61, 61(1) and 62
- Schnebli, M. 2013. Lessons learned from the past: today's response from requested countries. In: Fenner Zinkernagel, Gretta et al. (eds.). 2013. *Emerging Trends in Asset Recovery*. Peter Lang.
Available at: <https://doi.org/10.3726/978-3-0351-0602-2>
- International Cooperation in Asset Recovery. In: Brun, J.-P. et al. 2011. *Asset Recovery Handbook: a Guide for Practitioners*. The World Bank.
Available at: <https://star.worldbank.org/star/publication/asset-recovery-handbook>
- Stephenson, K. et al. 2011. Barriers to Asset Recovery.
Available at: <https://star.worldbank.org/publication/barriers-asset-recovery>
- Basel Institute on Governance (International Centre for Asset Recovery)
<https://www.baselgovernance.org/asset-recovery>
- Stolen Asset Recovery Initiative (StAR)
<https://star.worldbank.org/about-us/our-work>
- Hiring an Attorney: Steps, Considerations and Fee Arrangements. In: Brun, J.-P. et al. 2015. *Public Wrongs, Private Actions*.
Available at: https://star.worldbank.org/star/sites/star/files/9781464803703_0.pdf
- Arab Forum on Asset Recovery (AFAR)
<https://star.worldbank.org/ArabForum/About>
- Ukraine Forum on Asset Recovery (UFAR)
<https://star.worldbank.org/UFAR/ukraine-forum-asset-recovery-ufar>

Examples of international and regional practitioner networks

- Egmont Group: an international network of financial intelligence units (FIUs).
<https://www.egmontgroup.org>
- Stolen Asset Recovery/INTERPOL Focal Point List: a 24/7 focal point contact list of national officials who can respond to emergency requests for international assistance.
<https://www.interpol.int/Crimes/Corruption/Asset-recovery>
- INTERPOL, EUROPOL, ASEANPOL, AMERIPOL: International and regional police organisations that facilitate cross border police-to-police cooperation.
- World Customs Organisation: network of regional liaison officers.
<http://www.wcoomd.org/en.aspx>
- Camden Asset Recovery Inter-Agency Network (CARIN): an informal network of police and judicial bodies working to confiscate the proceeds of crime:
<https://www.europol.europa.eu/content/publication/camden-asset-recovery-inter-agency-network-carin-manual-1665>
- Asset Recovery Inter-Agency Network for Southern Africa (ARINSA): Similar to CARIN, this is a network of Southern African police and judicial bodies.
<https://new.arinsa.org>
- Asset Recovery Inter-Agency Network for West Africa (ARIN-WA): Similar to CARIN, this is a network of Western African police and judicial bodies.
- Asset Recovery Inter-Agency Network for Eastern Africa (ARIN-EA): Similar to CARIN, this is a network of Eastern African police and judicial bodies.
<https://eaaaca.com>
- Asset Recovery Inter-Agency Network for the Caribbean (ARIN-CARIB): Similar to CARIN, this is a network of the Caribbean police and judicial bodies.
<https://arin-carib.org>
- Asset Recovery Interagency Network - Asia Pacific (ARIN-AP): Similar to CARIN, this is a network of police and judicial bodies of the Asia-Pacific region.
<http://www.arin-ap.org>
- Red de Recuperación de Activos de GAFILAT (RRAG): Similar to CARIN, this is a network of points of contact for Latin America and the Caribbean:
<https://www.gafilat.org/index.php/es/espanol/18-inicio/gafilat/49-red-de-recuperacion-de-activos-del-gafilat-rrag>
- Asociación Iberoamericana de Ministerios Públicos (AIAMP): a non-profit organization that integrates the Public Prosecutors of Latin America.
<http://aiamp.info>

- European Judicial Network: representatives of national judicial and prosecution authorities designated as contact points for MLA.
<https://www.ejn-crimjust.europa.eu/ejn>
- Eurojust: judges and prosecutors from European Union Member States who assist national authorities in investigating and prosecuting serious cross-border criminal cases.
<http://eurojust.europa.eu>
- Arab Forum on Asset Recovery (AFAR):
<https://star.worldbank.org/ArabForum/About>
- Ukraine Forum on Asset Recovery (UFAR):
<https://star.worldbank.org/ufar/ukraine-forum-asset-recovery-ufar>
- International Anti-Corruption Coordination Centre (IACCC).

Guideline 7: Communication

Requesting jurisdictions should promptly discuss relevant elements of the investigative and legal strategy as well as a case outline and subject profile with all involved jurisdictions, where appropriate.

Early communication of the case outline and subject profile allows the involved jurisdictions to understand the needs of the requesting jurisdiction, setting the tone required for efficient international cooperation that can be maintained throughout the investigation and the asset recovery process.

Proactively sharing the relevant elements of the investigative and legal strategy (see Guideline 3) with the involved jurisdictions enables both the requested and the requesting jurisdiction to identify any potential challenges or difficulties (e.g., institutional, legal, or capacity based hurdles) that may hinder the effectiveness of the strategy within any of the involved jurisdictions, and allows the identification of ways to overcome them. This is also to be understood as an important trust building measure (see Guideline 6).

Involved jurisdictions should designate a focal point of contact and inform all concerned parties.

The focal point of contact is a person who effectively acts as a liaison between the requesting jurisdiction and other involved jurisdictions. It is the first point of communication, assisting in the co-ordination between the relevant authorities of the involved jurisdictions. Absence of focal points of contact may hamper or severely limit the effective initiation or continuation of co-ordination and cooperation among involved jurisdictions. The lack of clarity on the designated focal points at the beginning of the process may likewise affect cooperation between jurisdictions, resulting in unnecessary delays.

Assigning a focal point of contact may enhance clear and efficient communication among the involved jurisdictions. The designation of a focal point at the beginning of the process complements the direct communication that is cornerstone to the asset recovery process. (see Guideline 6). The involved jurisdictions should inform one another, as well as all their own relevant domestic agencies (see Guideline 3), as early as possible about their focal points for the case, and agree to use the channels of communication available to them (see Guideline 6).

The designated focal point should preferably be the lead investigator or prosecutor of the investigation or case. Where this is not possible or advisable (e.g. the lead investigator or prosecutor is not fluent in a foreign language), the case officer responsible for MLA should be used as the focal point.

Step 1: Communicate clearly the goal(s) and priority(ies) of the investigation to involved jurisdiction(s)

Communicate clearly the goal(s) and priority(ies) of the investigation to involved jurisdiction(s). The requested jurisdiction(s) should indicate whether the appropriate legal tools are available to accomplish these goals.

Most counterparts require operational information at the early stages of cooperation. Requesting jurisdictions should present the relevant elements of the investigative and legal strategy to the involved jurisdictions, enabling them to have an overall view of the inputs required, the aims sought and the desired outcomes, and to provide an overview of legal avenues which may be available to achieve those outcomes.

Developing a comprehensive investigative and legal strategy by the requesting jurisdiction will have an impact on the information that needs to be shared with other jurisdictions (see Guideline 3). Once it is clear what legal tools are available in the involved jurisdictions the need for further information can be assessed and sufficient details can be communicated. The amount of detail and information to be shared depends on the type of assistance that is sought as well as the underlying crime that needs to be proven. Furthermore, in cases involving parallel investigations details about the investigative and legal strategy may need to be communicated.

To that effect, the requesting jurisdiction should:

- Present a case outline, including: (i) the subject of the investigation; (ii) the alleged criminal behaviour under investigation; (iii) where the alleged criminal activity took place; (iv) when the alleged criminal conduct took place; (v) why the subject committed the alleged criminal activity; and (vi) how the criminal conduct was committed.
- Present the subject profile, indicating the legal entities (e.g. associations, companies, trusts) and individuals related to the subject of the investigation and the criminal activity under investigation, as well as the financial profiling of the assets of the subject and legal entities under investigation, and information on beneficial ownership where applicable (see Guideline 1 Step 5 “Prepare a subject, financial and jurisdictional profile”).
- Clarify the relevant parts of the investigative and legal strategy (see Guideline 3), and explain the asset recovery priority(ies).
- Indicate the link between the alleged crime(s), the assets obtained and the requested jurisdiction(s).
- Indicate the potential investigative powers and legal tools available (including mechanisms for freezing) in the requesting jurisdiction. This allows requested jurisdictions to take (upon request) the most appropriate investigative and legal steps applicable to the specific case.

Furthermore, if there are several involved jurisdictions, the requesting jurisdiction has to decide if it wants to communicate with one, some or all jurisdictions simultaneously or separately.

Finally, the process of cooperation is dynamic and there may be a need for continuous updating. As new action is taken in the requesting and requested jurisdictions, new information may need to be communicated to involved jurisdictions.

Step 2: Provide the requested jurisdiction(s) with any relevant information that impacts the execution of the request for MLA (e.g. confidentiality, timing and other procedural issues)

Requesting and requested jurisdictions should communicate any specific information that is required for the proper execution of the request for MLA to ensure that their legal or investigative strategy is not jeopardised.

The issue of confidentiality is particularly important in this context. For instance, it may be that the requested jurisdiction has to inform defendants or the subject of the pending MLA action, in which case the requesting jurisdiction may wish to consider the exact timing of the execution of the request (see Guideline 4).

Achieving major goals of an investigation can be inextricably linked to the timing of accomplishing those goals. As such, both the timing and the urgency of the execution of a request may have a crucial bearing on the investigative strategy. Furthermore, procedural issues which may, for example, have an impact on admissibility of evidence need to be clearly communicated to the involved jurisdictions (see Guideline 4).



Further reading

- UNCAC, Articles 46, 48 and 49.
- International Cooperation in Asset Recovery. In: Brun, J.-P. et al. 2011. *Asset Recovery Handbook: a Guide for Practitioners*. The World Bank.
Available at: <https://star.worldbank.org/publication/asset-recovery-handbook>
- Monteith, C. 2013. Case and Investigation Strategy. In: Fenner Zinkernagel, G. et al. (eds.). 2013. *Emerging Trends in Asset Recovery*. Peter Lang.
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- Stephenson, K. et al. 2011. *Barriers to Asset Recovery* (see Barrier 21 “Absent or Ambiguous Focal Points” and Barrier 23 “Lack of Information on MLA Requirements”). The World Bank.
Available at: <https://star.worldbank.org/publication/barriers-asset-recovery>

Guideline 8: Parallel investigation

Requested jurisdictions should consider initiating a parallel investigation into the assets and the facts surrounding these, in order to establish any wrongdoing in their jurisdiction.

Conducting parallel, joint or otherwise contemporaneous investigations means investigating facts, which constitute criminal offences in the involved jurisdictions at the same time. Thus, in complex cases spanning into two or more jurisdictions, having contemporaneous investigations enables combining the investigative expertise from the involved jurisdictions to complement the efforts of one another. This is particularly useful in cases of complex financial crimes, e.g., money laundering and its predicate offences such as corruption-related crime, that affect all the involved jurisdictions due to the transnational nature of the offence.

A jurisdiction that is conducting an investigation and identifies information that may be pertinent to another jurisdiction should strive to share such information proactively and spontaneously (see Guideline 4 Step 1 “Consider sending spontaneous transmittal of information”). Both the requested and requesting jurisdictions should consider opening parallel criminal investigations into the criminal offences related to the facts, with a view to establishing wrongdoing in the involved jurisdictions. (see Guideline 4 Step 3 “Consider opening parallel investigations”). Moreover, when an involved jurisdiction conducting an investigation requests information from another jurisdiction, it should inform the requested jurisdiction of an offence that may have occurred within its borders.

Requesting and requested jurisdictions should fully support one another’s proceedings by furnishing additional information spontaneously whenever possible and promptly processing valid requests for MLA.

Due to the transnational nature of many criminal offences, law enforcement authorities in one jurisdiction will often acquire intelligence that relates to criminal investigations in other jurisdictions. Spontaneous transmission of information is a proactive manner of disclosing information to an involved jurisdiction, so that it is aware of an on-going investigation or that existing evidence could be of interest (see Guideline 4). It does not refer to the sharing of material to be used for evidentiary purposes during court proceedings, as the sharing of intelligence can only be used to advance investigations. Furnishing additional information spontaneously should also be done with a view to ultimately receiving a request from MLA from the jurisdiction that was a recipient to such spontaneous information.

This spontaneous information could be of importance to the requested jurisdiction and enables it to either initiate or to further its own criminal proceedings. This information should be shared to the greatest extent possible with the involved jurisdictions, to enable them to take the necessary investigative steps quickly.

Spontaneously transmitting information through informal channels such as Egmont or other practitioner networks is an excellent way to communicate information to relevant authorities, consequently leading to a fertile dynamic within the MLA process (see Annex 1 of Guideline 6).

Promptly processing MLA requests is necessary to ensure the efficient conveyance of material that can be used for both investigative and evidentiary purposes (see Guideline 9 and Guideline 10). The speedy furnishing of material requested through MLA will allow requesting enforcement authorities to continue pursuing lines of investigation (e.g. by revealing further links in an asset trail), and will greatly improve the chance of locating assets, acquiring freezing orders, and preparing cases for court

Requesting and requested jurisdictions should assess their potential right of participating in legal proceedings underway in one another's jurisdiction.

In some jurisdictions, the rules on criminal procedure allow a party claiming harm from an offence to apply to participate in the criminal case as civil party ("partie civile"), after demonstrating that actions under investigation have caused the concerned jurisdiction harm. If such an application is successful, an involved jurisdiction may gain access to the case file and related evidence, with a view to supporting that investigation and prosecution.

Prior to considering becoming a civil party, the requesting jurisdiction should discuss this avenue and its consequences with the requested jurisdictions, including the possibility of the use of evidence obtained through participation as civil party (see Guideline 5). While participating as a civil party does not, and should not, preclude mechanisms for MLA between the involved jurisdictions, becoming a civil party in many instances has proven to be an invaluable avenue for information sharing among the involved jurisdictions.

The concerned jurisdiction should also verify how to retain MLA in parallel to the civil party mechanism, to ensure that it is able to take its domestic proceeding forward and in parallel to the civil party mechanism.

Requesting and requested jurisdictions should determine whether to maintain parallel investigations and consider initiating joint investigations.

Where there are common objectives in the investigative strategy, involved jurisdictions should consider establishing joint investigation teams comprising the relevant authorities of each involved jurisdiction. Where permitted, these joint investigation teams should avoid the duplication of efforts in the involved jurisdictions and provide a forum for exchanging information and creating a common strategy. Joint investigations also allow for more efficient co-operation among the involved jurisdictions.

Practitioners from involved jurisdictions should first verify the existence of legal frameworks that enable the establishment of joint investigations. For example, while in the United States joint investigations may not be feasible due challenges related to admissibility of evidence, in the context of the European Union, such investigations are regulated by the Council of the European Union Framework Decision of 13 June 2002 on joint investigation teams (2002/465/JHA).

Step 1: Encourage early and regular coordination of actions

Encourage early and regular coordination of actions to avoid e.g. double jeopardy problems, flight of targets and dissipation of assets.

Involved jurisdictions should strive to co-ordinate their investigative and legal strategies with one another (see Guideline 7) with a view to allowing contemporaneous investigations into the facts which constitute criminal offences in the involved jurisdictions (e.g. the predicate and money laundering offences).

Early and regular co-ordination is also essential in order to observe the principle of “ne bis in idem” and thus avoid a situation of double jeopardy (see Guideline 3, Guideline 5 and Guideline 6). Furthermore, lack of co-ordination and consultation among authorities in involved jurisdictions can tip off the perpetrators of the crime under parallel investigation and lead to the flight of targets and dissipation of assets. Authorities in involved jurisdictions should therefore co-ordinate their actions and consult on their investigative and legal strategies (see Guideline 3 and Guideline 5).

Step 2: Discuss in advance all major investigative and other necessary steps to collect evidence

Discuss in advance all major investigative and other necessary steps to collect evidence (e.g. searches) in order to avoid actions negatively impacting on the on-going parallel investigations in other jurisdictions.

As indicated above co-ordination shall continue on a regular basis and include discussions of major investigative and other necessary steps to collect evidence to ensure that decisions of one authority will not jeopardize the investigative strategy of another authority and to avoid authorities of relevant jurisdictions working at cross-purpose (see Guideline 7). To that end it is essential to conduct consultations on timing of investigative actions.

Step 3: Take into account disclosure obligations and other evidentiary rules

Take into account disclosure obligations and other evidentiary rules when considering engaging in a parallel investigation or joint investigations.

Involved jurisdictions should also consider the legal and practical implications of the choice between parallel or joint investigations (see Guideline 4), including for instance, disclosure obligations and other evidentiary rules.

Furthermore, if they choose to conduct joint investigations, the involved jurisdictions should agree in advance on the common purpose, goal and objective of the joint investigation team (e.g., via a Memorandum of Understanding). Any major action under joint investigations shall

be taken in co-ordination with involved jurisdictions. Many considerations related to parallel investigations also apply to joint investigations, which require regular communications between involved jurisdictions.

Finally, the involved jurisdictions need also to confirm that sufficient resources, proper training, security measures for operational information, and an environment of trust and commitment are present prior to establishing the joint investigation team.



Further reading

- UNCAC, Articles, 42(5), 46(4), 49, 56.
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Guideline 9: Draft request for Mutual Legal Assistance (MLA)

Share draft requests for MLA between the requesting and requested jurisdictions to confirm all requirements are met.

The execution of a request for MLA is subject to its compliance with the legislation of both the requesting and requested jurisdictions. While international conventions have mostly standardised requirements for requests for MLA, specific procedural and legal elements still vary from jurisdiction to jurisdiction. Additionally, language, content and format of a request for MLA, as well as evidentiary standards often differ from one jurisdiction to the next. Finally, an offence in one jurisdiction may not constitute an offence in another jurisdiction, which is likely to cause difficulties, as the fulfilment of the dual criminality requirement is a prerequisite before a request for MLA can be executed. Concerned jurisdictions should familiarise themselves, when necessary, with any guidelines or country specific information available when drafting a request for MLA.

Jurisdictions should establish contact with each other prior to sending a request for MLA to ensure that the request meets the applicable standards and is of appropriate quality, establish and maintain a level of mutual trust and understanding, and consequently increase the efficiency of the MLA procedure and the asset recovery process as a whole. Prior contacts often help to determine the best course of action and whether, for the particular case, draft requests for MLA should be shared before submitting them through formal channels.

Prior contacts also allow for better strategic planning. The requested jurisdiction(s) may alert the requesting jurisdiction about potential obstacles and challenges in relation to executing the request for MLA and thus be of better assistance throughout the asset recovery proceeding. Prior contact will further allow the requested jurisdiction to understand the sensitivities surrounding the criminal investigation in the requesting jurisdiction, thereby determining the priority and urgency of the request, and whether there is sufficient time to first review a draft request for MLA before its formal submission. When determining the sensitivities surrounding the criminal investigation, consideration should be given to the seriousness of the offence, the value of the assets, the stage of the investigation and the degree of public interest.

Prior revision of draft requests for MLA by the requested jurisdiction can save valuable time and other resources, allowing the concerned jurisdictions to use MLA as an effective and strategic tool to further criminal proceedings.

Where a revision of the draft requests for MLA by the requested jurisdiction is not required, the central authority of the requesting jurisdiction should review the draft request for MLA.

Requesting and requested jurisdictions should ensure follow-up to support the prompt execution of requests for MLA and periodic consultation on progress in domestic processes.

Concerned jurisdictions should ensure that they communicate with each other on a regular basis throughout the entire asset recovery process – even after a request for MLA has been formally submitted and then accepted by the requested jurisdiction. As requesting jurisdictions are often

under enormous pressure to progress rapidly with cases, remaining in contact with requested jurisdictions while they analyse and eventually execute the requests will enable the requesting jurisdictions to have a realistic understanding of the timeframe within which they can expect the request to produce results. Being in contact during this phase will also enable the concerned jurisdictions to be aware early on of any hindering developments that may arise during the process. Continuous communication among concerned jurisdictions allows them to anticipate and plan for any further actions upon the completion of the initial request, such as the need for drafting of additional requests for MLA.

Step 1: Determine channel for transmission of request for MLA

Identify the counterparts. Use available tools such as guides and MLA templates when preparing the draft request. Where applicable, submit the draft request for MLA to the domestic central authority for initial review.

Prior to submitting a request for MLA (see Guideline 3, Guideline 4 and Guideline 5), requesting jurisdictions should first contact the requested jurisdiction's central authority, or a focal point or point of contact, to understand the legal and procedural requirements of the requested jurisdictions. Prior contact enables not only familiarisation with the requirements of the requested jurisdiction, but also establishes a contact person within the authority who can act as a focal point for on-going communications (see Guideline 6 and Guideline 7).

Discuss with the requested authority (point of contact) whether it will be possible to assist with the revision of the request for MLA, where applicable or desired. Where this is not feasible, draft a request for MLA based on manuals or other available guidance prepared by the requested jurisdiction for this particular purpose.

Review MLA manuals prepared by the requested jurisdiction and information provided by a point of contact. This further enables both the requesting and requested jurisdictions to identify potential challenges, which may be met during the execution of a request for MLA, and allows mitigating them and reduce cause for delays (see Guideline 10).

If however attempts at establishing a communicative relationship between the concerned jurisdictions fail, they should consider establishing such a relationship through other avenues, such as through third parties with whom they may already have an established working relationship or through other external parties such as proposed in Guideline 6.

Step 2: Consider consulting the requested jurisdiction on the draft request for MLA

Constraints such as urgency, translation requirements and disclosure obligations should be taken into account. Advice from the requested jurisdiction may relate to applicable legal provisions and appropriateness of submitting a request for MLA.

Familiarise with the legislation and practice in the requested jurisdiction while preparing the draft request for MLA. Use the point of contact as a source for clarification of any questions that the requested jurisdiction has before the execution of the request for MLA.

Requesting jurisdictions should then draft their request for MLA in accordance with the information received, or which is available from the requested jurisdiction regarding, for example, content (including dual criminality matters), language, format and evidentiary standards. The draft request for MLA should in addition clarify the statutes of limitation for the criminal offence(s) under investigation and whether the suspect has been detained in the requesting jurisdiction. A revision of the draft request for MLA should precede any attempt to submit the request through formal channels.

The requested jurisdiction should swiftly analyse the draft request for MLA and provide the requesting jurisdiction with written comments or need for additional information about potential needs for amending the draft request for MLA. It is important that these comments and recommendations are not of a general or theoretical nature but are made in relation to the specific text of the draft request for MLA under analysis.

Step 3: Include all relevant information

These include: details of the requesting and requested authority, the purpose of the request and the applicable legal provisions (with the maximum sanction). Ensure that the summary of facts details and links the criminal behaviour and the assets related to it, with the types of assistance sought. Note any confidentiality requirements. Indicate reasons for urgent execution (such as court dates and statutes of limitation).

The requesting jurisdiction should ensure that the facts contained in the draft request for MLA contains the following elements:

1. Legal basis for the request for MLA
2. The name, position and full contact details for the requesting authority, as well as the languages spoken
3. Reference to the proceeding(s) under which the request is made
4. The criminal offences under investigation (including a copy of the text of the criminal offence)
5. Name and personal qualification of the person(s) under investigation
6. Summary of facts of the case
7. Description of the assistance sought
8. Where applicable, procedures to be observed.

Concerning the criminal offence under investigation (item 4 above), the requesting authority must determine with the point of contact whether the criminal offence under investigation in the requesting jurisdiction meets dual criminality requirements, so that it may be processed in the requested jurisdiction.

Concerning the summary facts of the case (item 6 above), the draft request for MLA should generally establish a connection between the facts of the case, the persons under investigation, the alleged criminal offence committed and the evidence or assets which are expected to be found in the requested jurisdiction.

Concerning the description of the assistance sought (item 7 above), the request for MLA must specify and detail the assistance sought. The requesting authority should contact the requested jurisdiction to learn how to best address the assistance sought in the request for MLA.

The requesting authority should swiftly amend the draft request for MLA as per the comments received from the requested jurisdictions with a view to bringing it in line with procedural and other requirements under the requested jurisdictions' legislation. Should issues remain or should the requesting jurisdiction encounter particular difficulties with responding to comments received from the requested jurisdiction, these should be discussed informally by phone or by exchanging further draft requests. Drafts should continue to be shared until the request for MLA reaches the necessary acceptable standard.

Step 4: Communicate to ensure follow-up

Requested jurisdiction acknowledges receipt of request for MLA and promptly flags any issues or needs for supplementary information. Where appropriate, put the relevant authorities in direct contact with each other. The requesting jurisdiction should periodically inform of developments relevant to the request for MLA; the requested jurisdiction should communicate progress on the execution of the request for MLA.

Following the acceptance of a request for MLA, the requested jurisdiction should ensure that the requesting jurisdiction receives regular updates on progress relating to its request for MLA. Requesting jurisdictions should aim to speak with the person assigned to execute the request as this opens up possibilities to clarify any terminology or translation issues or to address any needs for further information. It is important that concerned jurisdictions remain up-to-date on any progress (or lack thereof) concerning the execution of the request for MLA, as this will enable them to plan for any foreseeable hurdles to the proper execution of the request.

Where appropriate requested jurisdictions should consider transmitting the requested materials as soon as possible, as partial execution of a request for MLA. Following the partial or the full execution of the request, concerned jurisdictions should continue to communicate with one another. Particularly, the requesting jurisdiction should provide feedback on the quality of the material provided. The stronger the communication between the parties, the easier it will be for the two jurisdictions to cooperate more efficiently during any subsequent or unrelated requests that may arise in the future.



Further reading

- UNCAC, Article 46.
- Schnebli, M. 2013. Lessons learned from the past: today's response from requested countries. In: Fenner Zinkernagel, Gretta et al. (eds.). 2013. *Emerging Trends in Asset Recovery*. Peter Lang.
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Guideline 10: Execution of request for Mutual Legal Assistance (MLA)

The requested authority promptly proceeds to the execution of the request.

After the draft request for MLA has been revised and agreed on by the requested jurisdiction, the requesting jurisdiction should promptly proceed with the submission of the request for MLA. The requested jurisdiction should, in turn, proceed with the execution of the request for MLA as soon as possible upon its receipt. Furthermore, the requested jurisdiction should keep the requesting jurisdiction informed of the status of the request for MLA during its execution.

When considering concluding domestic proceedings that may affect related proceedings in another jurisdiction, including settlements, engage in consultation, where appropriate, to minimize obstacles to foreign proceedings or international cooperation.

As noted in Guideline 8, both requesting and requested jurisdictions may be conducting domestic procedures in the same case. The outcome of such procedures may affect the involved jurisdictions in a range of manners. For this reason, concerned jurisdictions should keep each other continuously informed when proceedings are nearing conclusion, and should keep in mind the effect that the conclusion of their own procedure may have on other concerned jurisdictions' procedures with a view to preventing any adverse impacts.

Definitions

Deferred Prosecution Agreement (DPA):

An agreement reached between a prosecutor and an organisation which could be prosecuted, under the supervision of a judge. The agreement allows a prosecution to be suspended for a defined period provided the organisation meets certain specified conditions.

Non Conviction Based Forfeiture (NCBF):

Confiscation through judicial procedures related to a criminal offence for which a criminal conviction is not required.

This is of particular importance in instances where procedures may be concluded through alternative avenues for recovering assets, which may not require a criminal conviction – a solution to which jurisdictions have increasingly turned in recent years. Such alternative avenues may for instance include negotiated agreements such as settlements, plea-bargains or deferred prosecution agreements (DPAs), and non-conviction based forfeiture (NCBF) proceedings. The use of such alternative avenues often involve the negotiation of confidential arrangements with suspects that involve the confiscation of assets in return for an asset sharing agreement or for interrupting criminal proceedings and the (non-)admission of guilt. Interrupting these criminal proceedings in one jurisdiction however can make it very challenging for another

concerned jurisdiction to pursue related asset recovery efforts of their own. A negotiated settlement in one jurisdiction may affect the ability of that jurisdiction to provide mutual legal assistance on the matter, or to provide information or evidence, to another jurisdiction.

Similarly, increasing amounts of jurisdictions are abandoning some criminal proceedings in favour of pursuing NCBF proceedings. The legislative framework providing for NCBF can differ greatly from one jurisdiction to the next and consequently, the decision of one jurisdiction to conclude criminal proceedings in favour of NCBF proceedings can have repercussions on the ability of another jurisdiction to pursue criminal proceedings on related matters. Furthermore,

even if both jurisdictions have NCBF legislation, the standard of proof required by this legislation can vary from jurisdiction to jurisdiction, and may impact on the ability of these jurisdictions to enforce each other's judicial orders. Lastly, even if a jurisdiction proceeds with NCBF, it may be met with challenges during its enforcement in other jurisdictions.

Step 1: Adopt measures for expedited execution

Requests can be partially executed to allow for the preliminary transmission of information to the requesting jurisdiction as well as to further refine the execution of the request. In cases where legal challenges are likely to be invoked by affected parties, all possible action to expedite their use in the requested jurisdiction should be undertaken.

Requests for MLA should only be issued to the requested jurisdiction after it has had the opportunity to review and, where applicable, comment on the draft (see Guideline 6 and Guideline 9). Doing so saves time on the acceptance of the request and is likely to contribute to a prompt execution of the request upon its formal arrival in the requested jurisdiction.

Before issuing a request for MLA, the requesting jurisdiction should establish whether the nature of the assistance requested cannot be obtained through other, more expeditious means, such as law enforcement cooperation, asset recovery offices and Financial Intelligence Units (see Guideline 1 and Guideline 3).

Where the nature of the assistance sought requires the issuance of a request for MLA, the requesting jurisdiction should engage as early as possible with the requested jurisdiction in the preparation and submission of the request for MLA (see Guideline 9).

Where a request for MLA does not meet the necessary requirements for execution, the requested jurisdiction should promptly indicate the obstacles for execution (e.g. the lack of dual criminality) to the requesting jurisdiction (see Guideline 6 and Guideline 9). A request for further clarification to the request for MLA should not be interpreted as an unwillingness to cooperate with the requesting jurisdiction, and should be used as an opportunity to enhance and further cooperation and coordination between the involved jurisdictions.

Where any foreseeable delays to the execution of the request exist (or where the execution of the request for MLA cannot be carried out), the requesting jurisdiction should promptly be informed, and these should be taken into consideration by both the requesting and requested jurisdictions regarding the prioritisation of cases.

Requests for MLA should be phrased as precise as possible and indicate the priority of execution of the various MLA measures sought with the request (e.g. first gather monthly bank account statements before obtaining SWIFT details of individual transactions).

Where the requested jurisdiction has obtained material that partially responds to the request for MLA, it should promptly forward that material to the requesting jurisdiction to allow it to further its case domestically.

Where the execution of a request for MLA is of particular urgency, the requested jurisdiction should be alerted to the reasons for that urgency through any means of communication between the concerned jurisdictions, and these reasons should also be mentioned in the request for MLA itself.

Time constraints (e.g., requests where urgency has been raised, or where prompt action is needed vis-à-vis a provisional order) should be examined when prioritising the execution of requests for MLA. Further aspects that can be considered include financial and contextual implications and the legal basis upon which the request was made.

Step 2: Mitigation strategies in case of delays

Any foreseeable delays in executing the request should promptly be communicated to the requesting jurisdiction. Continued communication is crucial to reflect any changes in priorities. In cases where there are multiple requests made related to the same group of cases, the jurisdictions involved should engage in in-depth consultation with one another to devise an overall strategic approach (e.g. in the case of regime changes).

Any delays in the execution of the request for MLA in the requested jurisdiction should be promptly informed to the requesting jurisdiction, and elements relating to such a delay should be discussed by the concerned jurisdictions to finding a way forward.

The requesting and requested jurisdictions should establish criteria for the prioritisation of cases based on, e.g. suspect under arrest, existing time constraints (e.g. the statute of limitations has lapsed), risk of dissipation of assets, plurality of requests for MLA.

Step 3: Consider items for consultation

Involved jurisdictions will promptly inform each other about any potential or concluded settlements of ongoing cases and admissions of guilt which may impact the investigations in another jurisdiction.

Throughout the lifecycle of the criminal investigation, as well as during the cycle of the requests for MLA, the involved jurisdictions should engage in period case coordination meetings (see Guideline 3) which allow for continuous assessment of the situation and eventual re-strategizing, where appropriate and following the evolution of the case.

Jurisdictions should use proper channels of communications (as mentioned in Guideline 6) to consult foreign jurisdictions before deciding conclusively to interrupt domestic criminal proceedings. Concerned jurisdictions should be aware of the consequences of the decision, and

should take into consideration that the decision does not severely hinder another jurisdiction in their asset recovery efforts. When a decision would prove to be an obstacle in one of the concerned jurisdictions, discussions should focus on establishing an agreed strategy suitable for the concerned jurisdictions. If possible, negotiated agreements with the investigated persons should have input from all the jurisdictions that have a vested stake in the issue at hand.

Where the interruption of the domestic criminal proceedings stem from the fact that there are numerous investigations into the same fact by different jurisdictions, communication among the involved jurisdictions should establish which jurisdiction(s) is best placed to reach an outcome into the investigation and prosecution of the case. Wherever possible, this decision should be taken as early as possible in the criminal investigation.

Before concluding criminal proceedings through negotiated agreements, NCBF or other alternative routes to the asset recovery process, concerned jurisdictions should consult the affected jurisdictions, to ensure that these decisions do not hinder the other jurisdictions from pursuing asset recovery efforts of their own.

Concerning NCBF, some countries have successfully incorporated terms of co-operation on NCBF issues into bilateral treaties and agreements that allow for cooperation and enforcement of foreign orders despite systemic differences.



Further reading

- UNCAC, Article 46; 54 – 56.
- Schnebli, M. 2013. Lessons learned from the past: today's response from requested countries. In: Fenner Zinkernagel, Gretta et al. (eds.). 2013. *Emerging Trends in Asset Recovery*. Peter Lang.
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