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United Nations Office on Drugs and Crime
Regional Office for Central Asia

MANAGEMENT AND DISPOSAL OF SEIZED AND CONFISCATED ASSETS IN UZBEKISTAN

Recommendations to improve the cost effectiveness of the asset management and disposal system in Uzbekistan

This publication is part of the United Nations Office on Drugs and Crime (UNODC) Programme for Central Asia 2022-2025, Sub-Programme 2 'Preventing Crime, Increasing Access to Justice and Strengthening the Rule of Law'.

UNODC expresses its gratitude to Hermione Cronje who prepared this report under the guidance of Vladimir Kozin, Regional Anti-Corruption Advisor for the UNODC Regional Office for Central Asia (ROCA), Koen Marquering, UNODC ROCA Criminal Justice Program Coordinator, Sitora Alikulova, UNODC ROCA National Programme Officer and in discussion with UK-based consultant Cedric Woodhall.

UNODC equally wishes to acknowledge the valuable input provided by Nozim Khodjaev, Deputy Head of the International Cooperation Department in the General Prosecutor's Office.

The Stolen Asset Recovery Initiative (StAR) funded an initial analysis of Uzbekistan's asset management and disposal system on which this report builds.

Published in 2023 by UNODC ROCA.

This publication is available at https://www.unodc.org/centralasia/en/publications.html.

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March 2023

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Abbreviations

AGRASC	Agency for the Recovery and Management of Seized and Confiscated Assets
AMU	Asset Management Unit
Appendix 1	Appendix 1 to the Decree of the Cabinet of Ministers of the Republic of Uzbekistan dated July 15, 2009 No. 200 "On improving the procedure for the seizure, sale or destruction of property subject to conversion into state revenue"
ARO	Asset Recovery Office
COSC	Central Office for Seizure and Confiscation
CARA	Criminal Assets Recovery Account
CC	Criminal Code of the Republic of Uzbekistan
CM 200 of 2009	Decree of the Cabinet of Ministers of the Republic of Uzbekistan dated July 15, 2009 No. 200 "On improving the procedure for the seizure, sale or destruction of property subject to conversion into state revenue
CPC	Criminal Procedure Code of the Republic of Uzbekistan
Enforcement Bureau	Compulsory Enforcement Bureau in the Office of the Prosecutor General
PGO	Prosecutor General's Office of Uzbekistan
Phase 1 Report	Paul Mylvaganam: Review and Assessment of Asset Management Institutional Arrangements
ROCA	Regional Office for Central Asia
SDGs	Sustainable Development Goals
StAR	Stolen Asset Recovery Initiative (World Bank and UNODC)
the 2010 Instruction	Instruction "On the procedure for the seizure (acceptance), accounting, storage, transfer, sale, return, destruction of material evidence, material assets and other property during the preliminary investigation, inquiry, preliminary investigation and trial" (Registered by the Ministry of Justice on December 29, 2010 No. 2174)
UNCAC	United Nations Convention Against Corruption
UNODC	United Nations Office on Drugs and Crime

MANAGEMENT AND DISPOSAL OF SEIZED AND CONFISCATED ASSETS IN UZBEKISTAN

Summary of Recommendations

Requirements for an effective asset management and disposal regime

To achieve a significant increase in government revenue generated from criminal proceeds, an effective legislative and policy framework and institutional capacity need to be in place.

A national asset recovery strategic plan that addresses the above components should inform efforts to expand and improve the capacity required for management and disposal of seized and confiscated assets in Uzbekistan. The criminal assets management capacity in Uzbekistan should form part of such a strategic planning process.

International experience shows that only once dedicated capacity is created to focus on asset recovery and specialist financial investigations capacity is created, will real progress be made in recovering instruments and proceeds of crime.

Policy Objectives of the Asset Recovery Regime

Consider the adoption of a law dedicated to asset recovery. The law should define how recovered proceeds are to be allocated and distributed. The law should expand the purposes of asset confiscation in Uzbekistan to include:

- Taking the profit out of crime;
- Disrupting criminal activity by removing the means by which crime is committed;
- Providing for recovered proceeds to be allocated to:
    - cover expenses incurred in the management and disposal of assets;
    - pay victim compensation;
    - fund special law enforcement projects (particularly through financial support to bodies of investigation and inquiry who contribute significantly to seizing and confiscating assets;
    - fund victim organisations;
    - promote social re-use and contribute to the achievement of SDGs.

Expand the scope of property subject to forfeiture

Consider expanding the scope of the law that allows for seizure and confiscation of instruments and proceeds of crime in accordance with international standards, in particular:

- Include in the law a definition of the term “confiscation” as a sanction that can be imposed distinct from other penalties, and over and above what is required for victim compensation;
- Provide for a procedure to determine matters connected to making confiscation orders;
- Extend the definition of instrumentalities of crime beyond only “*the means by which”* crimes are committed to include instruments that make the crime “easier to commit and harder to detect”;

- Extend the confiscation regime to permit confiscation of:
- - proceeds of crime that have been converted or transformed, in whole or in part, into other property (i.e. property representing proceeds of crime);
- - proceeds from crime that were added to property acquired from legitimate sources (commingled property);
- - profits or other benefits derived from criminal proceeds and property into which such criminal proceeds were converted or transformed, or from property to which such criminal proceeds were added (focus on overall benefits derived from crime - value-based confiscation);
- Consider the introduction of extended confiscation, together with presumptions/assumptions that facilitate proof of extended benefits derived from criminal activity beyond the crimes established at the criminal trial;
- If seized property is owned by a third party, if it constitutes criminal assets (proceeds or instruments) return of such property should be made subject to the third-party owner showing that it derived the property for fair value and without knowledge of its association with crime (the innocent owner defense);
- Consider the inclusion of non-conviction asset forfeiture or *in rem* asset forfeiture. Provide for civil procedures and standards to apply to asset recovery proceedings.

Improved accountability for allocation of recovered proceeds

Collect accurate data on the purposes the asset management system currently serves. This includes collecting data on:

- What percentage of assets seized by bodies of inquiry and investigation were seized:
  - to secure victim compensation; or
  - as instruments or proceeds involved in or generated from crime.
- In terms of the current regime, what percentage of confiscated assets annually is paid to victims and what percentage is paid to the State?
- Review the special funds of the seizing agencies to determine how much each agency contributes annually to the Enforcement Bureau for payment to the State Revenue Fund or for allocation in terms of Appendix 1.
- Review, the special fund of the Enforcement Bureau to determine annual income earned from the enforcement of confiscation orders. Assess expenditure incurred in management and disposal of criminal property annually. Identify opportunities to improve cost-effectiveness.
- Assess expenditure reimbursed to bodies of inquiry and investigation and examine how costs can be reduced by improved storage, valuation and other costs.
- Review allocations in terms of Appendix 1 to assess what returned funds are currently spent on, how they are accounted for and what value they have added.

Improved management of income generated from and expenditure incurred in relation to recovered proceeds

Consider the adoption of a law that provides for the establishment of a special revenue fund into which all proceeds from confiscation orders and other enforcement actions is deposited, including assets recovered and returned from abroad.

- Once a framework for allocating funds collected in the special fund has been adopted, the law should provide for a distribution mechanism to facilitate, monitor and account for the distribution of revenue in the special fund. This could be a cabinet committee or the head of the asset management function. It could also follow the mechanism adopted to deal with the returned proceeds.
- It is critical that the distribution decisions are made public, either in Parliament or as part of a transparent budget reporting process. The allocations should be subject to independent auditing

annually and the results of the audit should be made public. This will instill confidence and ensure the credibility of the asset recovery process and minimise risks of mismanagement and corruption.

- The Enforcement Bureau's special account, currently used to receive proceeds of the sale of perishable goods and proceeds realised from confiscation orders, could be designated as the proceeds of crime operating account. Accounting for expenses incurred should be divided between predictable routine annual expenditure on management and disposal costs such as salaries of personnel and storage and other facilities on the one hand and special expenditure incurred in managing particularly complex or unusual assets. This data can inform annual allocations out of recovered proceeds to support the asset management capacity.
- Both income collected and operating expenses incurred must be accounted for annually, audited and subject to policies that control inefficiency and promote transparency.

The duration of the interim management phase

Serious consideration should be given to providing more flexible time-frames for asset-tracing investigations. Together with the development of specialist capacity to conduct these investigations, an enabling statutory regime will go a long way to increasing potential to recover more criminal proceeds.

Interim management measures

While the pre-confiscation period is of an un-characteristically short duration in Uzbekistan, if more flexible timeframes are introduced to allow for comprehensive asset tracing investigations, there would be a need to introduce legislation that provides for:

- *Pre-confiscation sal*e, or interim sale pending a confiscation decision. The law could specify the circumstances in which interim sale would be permitted, e.g. where the costs of storage are likely to outweigh the value of the property when it is ultimately.
- Procedural safeguards that protect the property rights of the owner, for example, permitting the owner to oppose the interim sale before a judicial officer; permitting the owner to oppose the interim sale where the item has particular sentimental value or other exceptional reasons exist to retain the property in storage instead of sale or permitting the return of the property on presentation of a financial guarantee.
- Placing the proceeds of the interim sale of property in a secure interest-bearing account so that the interest earned can be handed over to the ultimate beneficiary of the confiscation decision.
- *Interim use.* The law would need to determine the circumstances under which use will be permitted and procedural safeguards would need to be included to protect against deterioration of the asset.
- Seizure and interim management of non-residential immovable property (real estate) and businesses operating as a going concern, if they were acquired with the proceeds of crime or used to commit serious crime. *While non-residential property can only be seized if used in the commission of serious crime, they should also be liable to seizure and subsequent confiscation if they were acquired with the proceeds of crime, subject to alternative accommodation arrangements being made for innocent dependents in appropriate circumstances.*
- Residential and non-residential immovable property subject to seizure to be used productively in the interim phase. For example, rental property should continue to be let and rent collected instead of sealing off productive properties.
- Businesses that are operating as a going concern to be taken over by an interim manager or a court appointed third party manager, instead of merely sealing off premises and closing banking operations.
- Establishment of an expense account from which payment of costs associated with interim use and interim management can be made, including the costs of making improvements to assets to achieve better returns upon sale.

Interim sale provisions and provisions relating to abandoned property in the existing law can be extended to apply to new circumstances:

- The GPO could consider bringing civil proceedings to dispose of unclaimed assets, such as vehicles currently filling up storage facilities of bodies of inquiry and investigation, on the basis that they are ownerless.
- Similarly, procedures for the sale of "perishable goods" only after receipt of an expert opinion on the subject of their suitability for consumption (use, processing) could be applied to the sale of rapidly deteriorating assets.

Institutional arrangements

Given the stage of development of the country's asset recovery programme and its existing institutional capacity, it is recommended that the Enforcement Bureau is formally established in law as the unit responsible for the management and disposal of seized and confiscated property both at the interim management phase and the disposal phase.

Rather than establish a separate entity for interim management only, it makes more sense to combine the functions of pre and post-confiscation management and disposal functions in one entity.

Ideally the pre-confiscation functions should be added gradually to the functions of the Enforcement Bureau, commencing with record keeping and advisory services and potentially expanding first into taking control of cash seized for evidentiary and asset recovery purposes pre-confiscation, before expanding into pre-confiscation management of more complex assets and interim sale when the law is amended to provide for these during the interim phase.

Improving co-ordination and streamlining asset management functions and establishing uniformity in asset management practice across bodies of inquiry and investigation during the interim management phase can be achieved by the Enforcement Bureau enforcing uniform practices under the umbrella of the GPO.

The Enforcement Bureau currently performs many of the asset management functions other AMUs perform:

- Record keeping/maintaining an electronic database of both pre and post confiscation decisions.
- Enforcement of confiscation orders, incl. sale, storage and destruction.

It is recommended that the Enforcement Bureau prepares itself to take on:

- Co-ordination of and advisory functions to the bodies of inquiry and investigation in relation to interim asset management.
- Interim management of seized cash and complex assets.
- Interim sale and use of assets.

For the foreseeable future the Enforcement Bureau should remain within the GPO but retain a measure of functional independence from other units in the GPO that are involved in issuing impoundment orders and seeking final confiscation orders from the courts. This is to foster a reputation of ensuring the preservation of the value of property pending a final order, independent of the interests of law enforcement.

However, as the legislative and institutional capacity to recover criminal assets improves in Uzbekistan, and demand for asset management services expands, the asset management function could be separated from investigation and prosecution functions.

Electronic data-management

It is critical that the authority of the Enforcement Bureau to compel compliance of bodies of inquiry and investigation with data capturing requirements in relation to seized assets is clearly established in the law. Armed with accurate data, the Bureau will be in a much better position to improve the cost effectiveness of interim management functions.

Storage

The Bureau should maintain a database of storage facilities country-wide and the costs associated with storing particular asset classes. This information should better inform decisions to seize and store assets pending confiscation.

The agencies currently responsible for these functions need to meet, share information and cooperate to achieve economies of scale when procuring storage and safeguarding facilities.

Pre-seizure planning

The GPO should develop guidance notes (standard operating procedures) for the bodies of inquiry and investigation that will inform:

- The decision to freeze rather than seize an asset.
- To have the asset valued by a professional valuer or to adopt a value assigned by a law enforcement official.
- Whether, where and how to store particular assets.
- Whether and who to appoint to manage assets that require specialist skill.

Development of Specialist skill in the area of asset management

The Enforcement Bureau should remain engaged with and supportive of the development of skills required to manage seized and confiscated assets, such as valuators and professional asset managers, whether in the public or private sector.

Introduction

As part of a broader partnership, the United Nations Office on Drugs and Crime ("**UNODC**") is providing support to the government of Uzbekistan on establishing an improved national mechanism for the management and disposal of seized and confiscated assets, which will, *inter alia*, facilitate the use of criminal assets to contribute to the achievement of the Sustainable Development Goals ("**SDGs**"). This outcome is aimed at achieving the twin-objectives of *"improved income generation and efficient use of public finances"* as well as *"combatting illicit financial flows through increased asset recovery of proceeds of crime".*

Scope and Structure of this Report

The Terms of Reference for this report require an investigation of the *economic* viability of investing in the establishment of an asset management capacity in Uzbekistan. What is required is a cost benefit analysis which addresses the following research questions:

1. What kind and extent of income can be generated and what kind of approaches to seized asset management should be applied to maximize possible income?
2. What are the kinds and extent of the costs incurred in relation to the functioning of the seized asset management system in Uzbekistan? How can these costs be optimized?

A cost benefit analysis of a public good like the management and disposal of seized and confiscated criminal assets is never a straightforward matter. Turning abstract notions of social benefits and costs into a simple accounting exercise is riddled with challenges. For example, seizing and storing a motor-vehicle used to traffic in persons achieves the important law enforcement objective of removing from circulation *"the means by which the crime is committed"*. Yet it will rarely be cost effective to seize the vehicle and store it while legal processes are concluded, because a motor vehicle is a rapidly depreciating asset. Equally, paying for a court-appointed manager to run a business enterprise operated as a criminal enterprise, pending a criminal conviction may be costly, but the disruption of the criminal organisation may justify the expense regardless of the financial benefit that can be recovered when the asset is finally confiscated.

While the social benefits of asset recovery are axiomatic, they are not easy to quantify in monetary terms. Comparing the value of those benefits against the costs incurred in achieving them is even harder. What this report aims to do instead is to assess how more value can be generated from this source and assess where legislative, policy and institutional changes can bring about increased efficiency and effectiveness in the management and disposal process.

The asset management and disposal process covers two distinct periods: the interim management/ pre-confiscation phase and the post confiscation/enforcement/disposal phase. The latter phase is also concerned with the final (re)distribution/(re)allocation of finally confiscated property. Each phase has different role-players, responsibilities and objectives. During the interim management phase, the role-players are typically law enforcement officials policing and investigating proceeds of crime. The private property rights of owners play a role as the assets may have to be returned to those owners if no confiscation order is made. The primary responsibility is preserving or increasing the value of assets pending a final confiscation determination.

The confiscation/disposal phase is about realising maximum value for seized assets and effectively executing on the court's order of compensation or conversion into state property, at minimum cost. The role-players are

typically those with expertise in the sale of government property as government is the primary stakeholder, as the erstwhile owner has at this stage been lawfully deprived of any interest in the property. The distribution or allocation phase ensures that the confiscated property ends up where the law makers intended, either as part of the State budget or for specified social purposes.

After a review of factors that impact on criminal assets as a source of government revenue, the report will cover the two phases of the asset management and disposal process. The report concludes with a discussion of the institutional arrangements for an asset management agency.

For the preparation of this report, consultations took place with representatives from the GPO (the Academy, the International Cooperation Department and the Bureau of Compulsory Enforcement), the Ministry of the Interior, Ministry of Finance, the State Customs Committee and other stakeholders. Two virtual roundtable discussions were held on 26 April 2022 and 17 May 2022.

The first roundtable focused on the agencies involved in the Interim Phase (asset seizure/impoundment phase), i.e. primarily bodies of inquiry and investigation and prosecutors from the GPO. Members of the Pledge Registry in the Treasury also attended. The second roundtable concerned the bodies involved in the enforcement of confiscation orders. In addition to the Compulsory Enforcement Bureau, the Ministry of the Interior and the Ministry of Finance were represented. Written responses to questions posed to the Enforcement Bureau were received at this stage.

In the first week of August 2022 an in-person two-day meeting was held with relevant domestic stakeholders and representatives. This was followed up with a first draft of the “as is” assessment. A final hybrid roundtable took place on 20 October 2022 at which some of the recommendations were presented and discussed with national partners. These comments and additions from local practitioners and specialists enriched the report.

Factors that Impact on Criminal Assets as a Source of Government Revenue

The Optimal Functioning of the entire asset recovery value chain

The optimal functioning of the criminal asset recovery dispensation in Uzbekistan[1] is a pre-requisite for the optimal functioning of the asset management and disposal system. One indicator of the effectiveness of the asset recovery system overall, albeit fraught with difficulty, is the proportion of criminal assets available in the criminal economy currently being seized and confiscated by law enforcement and managed and disposed of by the asset management system. Asset management is but one component of this entire asset recovery value-chain and its overall effectiveness is dependent on the effectiveness of other components in that chain, such as the bodies of investigation and inquiry, prosecutors and courts.

If the proportion of criminal proceeds brought into the asset management system is very low there may be improvements to be made in the legal mechanism that enables recovery of criminal assets and improvements in institutional capacity to support the asset recovery process. This assessment would determine the potential for growth of the asset management system. The asset management function therefore needs to be carefully aligned with the objectives and plans relating to asset recovery of the broader asset recovery strategy for the country. An assessment of the need to increase asset management capacity for example, is entirely dependent on what capacity and will there is to increase the volume and value of criminal assets to be recovered.

In Uzbekistan there is currently underway a process to strengthen the legal basis for the seizure and confiscation of criminal proceeds and potentially also for the management and disposal of seized and confiscated assets. The extent to which these legislative changes will significantly expand the scope for recovery of proceeds of crime in Uzbekistan, to include recovery of extended benefits and the inclusion of non-conviction based asset recovery, is likely to increase significantly the quantity and value of property seized and confiscated.

Similarly, the extent to which dedicated capacity is created and specialist skills are developed to focus on and prioritise asset recovery investigations and obtaining seizure and confiscation orders in court, will impact on the economies of scale that an asset management capacity can achieve. A more effective asset recovery regime will require an expanded, fit for purpose asset management capacity, preferably one established in legislation with clearly demarcated functions. The role of and relationship between asset recovery investigators, prosecutors and other asset recovery specialists vis-à-vis asset management practitioners should ideally be clarified in the law.

1 This issue is beyond the scope of this paper. However recommendations on how the asset recovery regime may be improved was considered in a Report adopted at an Anti-Corruption Network for Eastern Europe and Central Asia (ACN) meeting on 21 March 2019 in Paris. (Anti-Corruption Reforms in UZBEKISTAN (oecd.org).

Requirements for an effective asset management and disposal regime

To achieve a significant increase in government revenue generated from criminal proceeds, the following upstream requirements regime needs to function optimally:

- an effective legislative framework;
- policy framework; and
- and institutional capacity

A national asset recovery strategic plan that addresses all three the above components, should inform plans to expand and improve the capacity required for management and disposal of seized and confiscated assets in Uzbekistan. The criminal assets management capacity in Uzbekistan should form part of such a strategic planning process.

International experience shows that only once dedicated capacity is created to focus on asset recovery and specialist financial investigations capacity is created, will real progress be made in recovering the proceeds of crime.

Disposal

Objectives of Asset Recovery

The main policy objective of criminal asset recovery is ensuring that ***"crime does not pay"***. The focus is on ensuring that the cost of committing crime **No index entries found.** outweighs any benefits for the *offender*.

Criminal asset recovery is a powerful deterrent measure. It removes the incentive to commit crime. Criminals often care more about losing the symbols of their wealth and status earned from their criminal activity, such as luxury vehicles and expensive real estate, than they do about losing their liberty. Serving a prison sentence is regarded as an occupational hazard to be endured, provided the benefits of the crime are available to their families while they are in custody and to themselves on their release. An additional benefit of depriving criminals of the profits of their crimes is the disruptive effect it can have on future criminal endeavour.

Policy objectives driving asset recovery programmes around the world have expanded considerably over the years. It however remains first and foremost an important law enforcement tool for achieving the broader ends of justice, accountability and strengthening the rule of law. As such the procedure for confiscating proceeds of crime to the State is subject to important human rights substantive and procedural safeguards that may well override economic considerations. It is up to law-makers to ensure that the correct balance is struck between the societal interests in the crime control objectives of asset recovery and basic human rights of suspected offenders.

While removing the proceeds and instruments of crime from the control of the perpetrator of crime remains the primary objective of asset recovery, other objectives are gaining in prominence. Using the recovered proceeds of crime to compensate individual victims and to support organisations and programmes that cater to the needs of victims of crime is becoming increasingly important. Social re-use of the proceeds and instruments of criminal activity for the benefit of communities that have suffered the negative effects of a crime is also receiving greater priority than in the past. The aim of these programmes is to restore confidence in the rule of law undermined by criminal conduct and more broadly to support realisation of the Sustainable Development Goals.

Using the recovered proceeds to fund an asset recovery programme more generally, including asset management activities and law enforcement initiatives, is also regarded as a legitimate objective of an effective asset recovery system. It has the symbolic value of not only ensuring that "crime does not pay" but going a step further and "**using the proceeds of crime to fight crime**". With the proper safeguards in place, confiscated funds can be used to enhance law enforcement efforts. The goal of achieving self-financing status, including the ability to fund the costs incurred in maintaining and improving the value of seized and confiscated property can be achieved within the appropriate legislative framework. However, ensuring that the asset recovery value chain is well enough resourced to reach this objective remains an important government responsibility.

Objectives of asset recovery in Uzbekistan

In Uzbekistan the stated policy objectives of asset recovery in the CPC are:

- to prevent the appropriation, embezzlement, concealment, destruction or damage of property recognised as **material evidence;** and
- to support the **compensation of victims of crime** who suffered material harm caused by criminal conduct.

Article 211 of the CPC defines as "material evidence" liable to confiscation:

- **Art 211(1) instruments of crime** ("the tool of a crime") that belongs to the suspect, accused person or defendant;
- **Art 211(5) money and other valuables acquired by criminal means** ("attained illegally") shall be made available **for compensation for property damage caused by a crime**, and if the person who has suffered property damage is not identified, they are **transferred into state revenue**.

The court decides on the fate of arrested goods in a verdict or ruling of confiscation. In its ruling the court may direct that the goods be sold and the proceeds ought either to be:

- returned to the owner,
- destroyed,
- transferred to the victim to satisfy a compensation order, or
- transferred to the state revenue,

Article 284 of the CPC provides guidance to the court on how to deal with property connected to the criminal case:

- "property involved in a criminal act is to **be converted to state property**", provided it is not subject to return to the former owner. If such property has not been discovered, then, **its value must be paid to the state**. The law is however silent on how value is to be ascribed to the item and what procedure is to be used to recover this value from the accused or convicted person. The law is also silent on what happens if the convicted person fails to pay over the value of the property. Does a failure to pay result in an increase in time spent in prison?
- Money, objects and other valuables acquired by an accused through criminal activity shall be spent towards indemnification of any property damage pursuant to a court ruling, and **the amount exceeding the damage shall be paid to the state**.
- Money, objects and other valuables, acquired by the defendant through the realisation of property involved in a criminal action **is subject to confiscation in addition to any compensation for losses suffered by an innocent acquirer of such property**.

These legislative provisions foreground confiscation of property as material evidence and for purposes of victim-compensation, and only once these two objectives are achieved, can the balance of the proceeds be transferred to the state revenue. Asset recovery programmes around the world are more focused on depriving criminals of the full extent of their ill-gotten gains rather than focusing only on the harm caused to a particular victim. For this reason asset recovery laws tend to target, not just property used directly in the commission of the crime or derived directly from the crime (thereby constituting evidence of the crime) but also assets obtained indirectly as a result of or in connection with the commission of crime and any profits earned or benefit derived from the use of such assets, often referred to as extended confiscation.[2]

The focus is on the benefit derived or the extent to which the accused person's estate is enriched by criminal conduct. This means that if the direct proceeds are not traceable, the benefit derived can be recovered from other property belonging to the criminal, including property derived from legitimate sources, referred to as value-based confiscation. When a convicted criminal has assets that exceed income from legitimate sources, the law provides for legal presumptions to operate casting the burden on the accused person to show why such assets should not be confiscated. Uzbekistan law enforcement does not currently have these legislative provisions at its disposal.

Policy Objectives of the Asset Recovery Regime

Consider the adoption of a law dedicated to asset recovery. The law should define how recovered proceeds are to be allocated and distributed. The law should expand the purposes of asset confiscation in Uzbekistan to include:

- Taking the profit out of crime;
- Disrupting criminal activity by removing the means by which crime is committed;
- Provide for recovered proceeds to be allocated to:
  - cover expenses incurred in the management and disposal of assets;
  - pay victim compensation;
  - fund special law enforcement projects (particularly through financial support to bodies of investigation and inquiry who contribute significantly to seizing and confiscating assets;
  - fund victim organisations or for social re-use
  - contribute to the achievement of SDGs.

2 in May 2022 the European Commission adopted a proposal to amend a 2014 directive on asset recovery with a view to strengthening the EU's asset recovery and confiscation rules and reinforcing the powers of Asset Recovery Offices ("ARO'). This included the following proposals: Value-based confiscation: a confiscation measure by which a court imposes an order corresponding to the value of proceeds or instrumentalities of a crime, enforceable against any property of the individual. Extended confiscation: a confiscation measure following a criminal conviction that goes beyond the direct proceeds of the crime for which a person was convicted, where the property seized is derived from criminal conduct. A direct link between the property and the offence is not necessary if the court concludes that part of the person's property was obtained through other unlawful conduct. Third-party confiscation: a confiscation measure depriving someone other than the offender (a third party) of criminal property, where that third party possesses property received from the offender. Non-conviction based confiscation (NCBC): a confiscation measure taken in the absence of a conviction and directed against an asset of illicit origin. It covers cases where criminal conviction is not possible because the suspect has become ill or has fled the jurisdiction, has died, lacks legal capacity, has immunity from prosecution, etc., but also cases where action is taken against the asset itself (in rem proceedings, generally civil proceedings),regardless of the person in possession of the property. See https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/739373/EPRS_BRI(2023)739373_EN.pdf

Criminal Property subject to Asset Recovery (Instruments and Property of the suspect, accused or convicted person)

In terms of Article 290 of the CCP residential property **cannot** be seized unless it is involved in especially serious crimes, such as treason, terrorism, sabotage. It is not clear if residential and non-residential property can be seized if, without being used in the commission of serious crime, they were acquired with the proceeds of crime?

Article 7 of the Law "*On the State Customs Service of the Republic of Uzbekistan*", the Customs authorities, in the performance of the tasks assigned have the right to: "detain and confiscate goods and other valuables that are **direct subjects** of customs offences". This is an example of a statute that authorises seizure of instruments of crime but limits instruments to the direct subject matter of the crime. Article 13 of the Customs Code defines a commodity, as any movable property moved across the customs border, including the national currency of the Republic of Uzbekistan, currency values and other securities, electrical, thermal and other types of energy, objects of intellectual property, a vehicle, e*xcept for a vehicle used to transport goods and passengers in contravention of customs laws*.

Under the Customs Law, a vehicle 'includes any watercraft, aircraft, motor vehicle, railway vehicle (railway rolling stock, unit of railway rolling stock) or a container, as well as spare parts, accessories and equipment, fuels and lubricants, coolants and other technical liquids contained in filling containers provided for in the technical data sheets or technical forms in accordance with their design, if they are transported together with these vehicles.

Paragraph 10 of the Supreme Court Resolution *"On Some Issues of the Application of the Legislation On Material Evidence in Criminal Cases"* states that *"in some cases, vehicles, motorcycles and other vehicles (containers) could be considered as* ***crime weapons,*** *which were* ***used in the commission of a crime*** *by persons held criminally liable for such acts as, for example, smuggling, moving goods or other valuables through customs border of the Republic of Uzbekistan, illegal transportation of narcotic drugs or psychotropic substances, kidnapping, etc…*

However, in order to recognise these **vehicles as an instrument of crime**, it is necessary to reliably establish that the vehicle **was used specifically as an instrument** for committing an intentional crime (for example, when committing theft, when goods were exported in large quantities by car, moving goods or other valuables apart from or with concealment from customs control), and not just as a means of transportation (for example, illegal fishing is committed by the perpetrator using fishing rods and nets, and the car was used only as a means of transportation)

This narrows the scope of the definition of instruments of crime which is out of step with the international trend of expanding the definition to include not merely items without which the crime would not have occurred and extends it to include **all property that made the crime easier to commit or harder to detect**.

Similarly, there are no legal provisions that allow an investigator or an inquiry or a court to make assumptions about the criminal acquisition of assets, in the absence of evidence of a direct link or admission that seized property is the proceeds of crime. Instruments or property used to commit crime owned by a person other than the convicted person are excluded from confiscation, as this property is liable to be returned to its owner. The CPC does not require an inquiry into whether the third party gave value when acquiring the property or whether the third party nominally holds the property on behalf of the defendant.

According to the Phase 1 Report, "*LEAs are focused on seizing the instruments and objects of criminal activity, such as a vehicle used in a bank robbery. However, there is a lack of appreciation of the difference between these and the proceeds of crime. There is a firm focus on the former. The importance of preserving and managing the value of the proceeds of crime is not adequately appreciated by the relevant institutions*".

There is also greater emphasis in the CPC on **quantifying the loss or harm suffered** by **victims** of crime and consequently seizing sufficient property of the convicted person to compensate for this harm. There is less focus on **quantifying the profits and benefits** of crime derived by the **suspect, accused or defendant** and recovering the full value of the benefit for the benefit of the state in the absence of an identifiable victim of the crime.

Expand the scope of property subject to confiscation

Consider expanding the scope of the law that allows for seizure and confiscation of instruments and proceeds of crime in accordance with international standards, in particular:

- Include in the law a definition of the term "confiscation" as a sanction that can be imposed distinct from other penalties, and over and above what is required for victim compensation.
- Provide for a procedure to determine matters connected to making confiscation orders;
- Extend the definition of instrumentalities of crime beyond only "*the means by which"* crimes are committed to include instruments that make the crime "easier to commit and harder to detect".
- Extend the confiscation regime to permit confiscation of:
- - proceeds of crime that have been converted or transformed, in whole or in part, into other property (i.e. property representing proceeds of crime);
- - proceeds from crime that were added to property acquired from legitimate sources (commingled property);
- - profits or other benefits derived from criminal proceeds and property into which such criminal proceeds were converted or transformed, or from property to which such criminal proceeds were added (focus on overall benefits derived from crime - value-based confiscation)
- Consider the introduction of extended confiscation, together with presumptions/assumptions that facilitate proof of extended benefits derived from criminal activity beyond the crimes established at the criminal trial.
- If seized property is owned by a third party, if it constitutes criminal assets (proceeds or instruments, return of such property should be made subject to the third-party owner showing that it derived the property for fair value and without knowledge of its association with crime (the innocent owner defence)
- Consider the inclusion of non-conviction asset forfeiture or *in rem* asset forfeiture. Provide for civil procedures and standards to apply to asset recovery proceedings.

Enforcement of Confiscation Orders by the Executive

There is currently no provision in the Criminal Code ("**CC**") or the CPC that determines how criminal proceeds, once converted into state revenue, are to be dealt with. The objectives of seizing assets to ensure that "crime does not pay" or "using the proceeds of crime to fight crime" are not currently provided for in the substantive law. There is also no substantive legal provision that permits the social re-use of proceeds converted into state revenue or for them to be applied to support SDGs. Instead these issues are governed by Executive Decree.

The Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated July 15, 2009 No. 200 "*Regulation on the procedure for the seizure, sale or destruction of property subject to conversion into state revenue*", ("**the 2009 Decree**") and various regulations, appendices and instructions, such as the Instruction[3] "*On the procedure for the seizure (acceptance), accounting, storage, transfer, sale, return, destruction of material evidence, material assets and other property during the preliminary investigation, inquiry, preliminary investigation and trial*" (adopted by the GPO,

3 https://lex.uz/uz/docs/1724291?ONDATE=08.01.2011%2000#5694377adopted

Supreme Court, National Security Service, Ministry of Internal Affairs, Ministry of Justice, Ministry of Defense, State Customs Committee and the State Tax Committee and registered by the Ministry of Justice on December 29, 2010 No. 2174) ("**the 2010 Instruction**") are executive policy instruments that guide the process of dealing with seized and confiscated property in Uzbekistan.

APPENDIX № 1[4] to the 2009 Resolution recognises the following as bodies involved in seizure of the proceeds and instruments of crime: the State Security Service, State Customs and Tax Committees, including Border Guards, the Department for Combatting Tax, Currency Crimes and Money Laundering and the State Body for the Environment and the Ministry of Internal Affairs. These bodies of inquiry and investigation are responsible for the initial impoundment decision and are largely responsible for preserving the value of the property until a court makes a confiscation decision. Each of these bodies maintain their own bank accounts into which seized cash will be deposited prior to a confiscation decision.

Once a definitive confiscation decision is made by the court, the body that has effected the seizure transfers the funds to the Enforcement Bureau in the regions. The district offices of the Enforcement Bureau have special bank accounts into which the Bureau's officers are required to transfer funds from the sale of property realised in terms of a confiscation order as well as the proceeds of the sale of perishable goods. Funds received into the special account of the relevant departments of the Bureau of the district (city) must be distributed within three banking days as follows[5]:

DEPOSITING INSTITUTION	RECIPIENT AGENCY	%
State Security Agency	Local Authorities	75
	State Security Agency	17
	Court Bodies	8
State Tax Service	Local Authorities	82
	Tax Fund	10
Customs Authorities and Border guards	Court Fund	8
Department for Combating Tax, Currency Crimes and Money Laundering	Local Authorities	82
	DTCML	10
	Court Fund	8
State Committee of the Republic of Uzbekistan on Ecology and Environmental Protection	Local Authorities	52
	Environment Fund	40
	Court Fund	8
Other Seizure Bodies	Local Authority	84
	Seizing Body	8
	Court Fund	8

4 Appendix 1 to the Decree of the Cabinet of Ministers of the Republic of Uzbekistan dated July 15, 2009 No. 200 "On improving the procedure for the seizure, sale or destruction of property subject to conversion into state revenue"

5 Para 53 of Appendix 1

It is not clear how the funds allocated in accordance with Appendix 1 are monitored to ensure that the allocations support legitimate law enforcement objectives, or that they contribute to improved capacity to recover criminal proceeds. Appendix 1 provides for a "reconciliation act" to be drawn up monthly between the relevant departments of the Enforcement Bureau, the prosecutor's office, tax, customs and investigative authorities. No details are specified as to who prepares the reconciliation act and how it is verified or audited.

The Enforcement Bureau is responsible for ensuring that any expenditure from its accounts complies with the requirements of Appendix 1 to CM Resolution 200. Para 55 of Appendix 1 allows for the costs associated with the storage, examination and evaluation, transportation costs and other costs associated with the conversion of property into state revenue to be recovered from:

- funds of the bodies that carried out the seizure of property - until the transfer of property to **state executors**;
- from the **Fund for the Development of Courts and Justice Bodies** - after the transfer of property to state executors.

The costs of storage, examination and appraisal, transportation and other costs associated with the destruction of property, and the cost of conversion of property into the state's income, are to be recovered from the funds realized from the sale of confiscated property. In order to recover expenses, proof of the expenses must be submitted to the state executors. Documents confirming these expenses must be submitted separately for each writ of execution by the authorised bodies that seized the property and these expenses are to be deducted before distribution of the funds in accordance with paragraph 53 of Appendix 1. The GPO and the tax authorities are required to ensure the completeness and timeliness of the transfer of realised.

It would appear however that these funds are off-budget, i.e. the expenditure has not been approved by the legislature and does not benefit from government monitoring by the Ministry of Finance or other members of the Executive Authority. If these funds are indeed outside the budgetary control of the Ministry of Finance and there is no central monitoring of how the money is spent, the risks that the lack of transparency and accountability may lead to inefficiency or misuse of these funds are high.

In 2018, more than half of public spending in Uzbekistan was estimated to have been off-budget— through tens of thousands of off-budget accounts and special funds. According to a World Bank report[6], by 2022 all off-budget spending had been fully consolidated into the government's annual budget approved by Parliament. While there has been considerable improvement in the effectiveness and transparency of financial management of public funds in Uzbekistan, there is room to improve the framework for allocating funds to law enforcement and for selecting social upliftment (SDG-related projects). Improved guidance for screening and selecting projects in advance to ensure that allocated funds are used to either improve law enforcement or deliver on promised outcomes of projects is necessary.

It is important that the expenditure incurred in managing and disposing of seized and confiscated assets form part of regular budget processes. Managing seized and confiscated criminal assets should be insulated from the risks of corruption and financial mismanagement. Ensuring transparency and accountability in the management, disposal and allocation of recovered proceeds, is a challenge that has been grappled with in a number of countries and these responses can be very instructive in constructing an appropriate framework for Uzbekistan.

6 https://documents1.worldbank.org/curated/en/933471650320792872/pdf/Toward-a-Prosperous-and-Inclusive-Future-The-Second-Systematic-Country-Diagnostic-for-Uzbekistan.pdf

Improved accountability for allocation of recovered proceeds

Collect accurate data on the purposes the asset management system currently serves. This includes collecting data on:

- What percentage of assets seized by bodies of inquiry and investigation were seized:
  - to secure victim compensation; or
  - as instruments or proceeds involved in or generated from crime.
- In terms of the current regime, what percentage of confiscated assets annually is paid over to victims and what percentage is paid to the State?
- Conduct a review of special funds of the seizing agencies to determine how much each agency contributes annually to the Enforcement Bureau for payment to the State Revenue Fund or for allocation in terms of Appendix 1.
- Review, the special fund of the Enforcement Bureau to determine annual income earned from the enforcement of confiscation orders. Assess expenditure incurred in management and disposal of criminal property annually. Identify opportunities to improve cost-effectiveness.
- Assess expenditure reimbursed to bodies of inquiry and investigation and examine how costs can be reduced by improved storage, valuation and other costs.
- Review allocations in terms of Appendix 1 to assess what returned funds are currently spent on, how they are accounted for and what value they have added.

Uzbekistan-Swiss-UN Multi-Partner Trust Fund

While there is no domestic law that permits the use of proceeds of crime converted into State Revenue to fund the SDGs, in August 2022, Uzbekistan and Switzerland signed an agreement on the restitution of assets that were confiscated in the criminal proceedings in Switzerland in connection with Gulnara Karimova, the elder daughter of the late former president of Uzbekistan. In terms of the agreement, the confiscated assets will be used for the benefit of the population of Uzbekistan and will make a significant contribution to the implementation of the 2030 Agenda for Sustainable Development.

The agreement provides for the creation of a new UN multi-partner Trust Fund[7] that allows for the returned assets to be used for the benefit of the population of Uzbekistan. The fund will be used for the USD 131 million already deposited into it by Switzerland, but also for any assets confiscated in future in the ongoing criminal proceedings in connection with Gulnara Karimova.

Both Switzerland and Uzbekistan are represented on the fund's strategic governing bodies and will therefore be involved throughout the restitution process. Funding will be provided for projects that are in line with the UN Sustainable Development Cooperation Framework for Uzbekistan. Projects will be implemented by UN agencies participating in the fund, working with various implementing partners. They will be monitored in line with the monitoring and evaluation framework established for the fund and UN system rules and regulations. Civil society organisations will act in an advisory capacity.

This model of allocating the proceeds of crime to fund the SDGs could serve as a basis for domestic arrangements that permit the allocation and re-use of assets for the benefit of the people of Uzbekistan. For this to happen, amendments to the law will be needed to provide for a governing structure to approve allocations and to monitor and evaluate implementation of approved projects. The principles of openness and transparency are integral to the return of recovered proceeds under the Global Forum on Asset Recovery (GFAR)[8]. Any mechanism established to receive repatriated assets should be evaluated for compliance with the GFAR principles.

7 See https://mptf.undp.org/fund/uzb00

8 https://uncaccoalition.org/learn-more/asset-recovery/#The_Global_Forum_on_Asset_Recovery

A South African case study in allocation and distribution of recovered proceeds

South Africa has had some success with managing the re-allocation of recovered proceeds of crime and may serve as a useful model for Uzbekistan to emulate.

In South Africa, a Criminal Assets Recovery Account[9] ("**CARA**") was established by law to receive all money derived from the fulfilment of confiscation orders. The law also provides for the establishment of a high-level CARA Committee consisting of the Ministers of Justice, Police and Finance and the National Director of Public Prosecutions to advise the Cabinet in connection with all aspects of forfeiture of property to the State.

The Committee makes recommendations to the Cabinet regarding: a policy to be adopted concerning the realisation of forfeited property, other than money, and the transfer of such property to the CARA; the allocation of property and money from the account to specific law enforcement agencies or to any institution, organisation or fund supporting victims of crime; and the allocation of funds for its own administration.

All amounts of money withdrawn, or property allocated from the CARA is considered a direct charge against the National Revenue Fund. When allocating property or money to a specific law enforcement agency or to an institution, organisation or fund supporting victims of crime, the Cabinet must indicate the purpose for which that property or money is to be used. The Minister of Justice must cause all particulars of such allocation to be tabled in Parliament.

The CARA Committee may not allocate property or money to an institution, organisation or fund supporting victims unless an accounting officer is appointed to account for the acquisition, receipt, custody and disposal of all property and that all payments made are for the purpose for which the allocation was intended.

The Committee issues guidelines to accounting officers in connection with the system of bookkeeping and accounting to be followed and must require separate accounting for money and property received from the fund. The auditor-general must audit the books of accounts, accounting statements, financial statements and financial management of each law enforcement agency or institution, organisation or fund to which property or money had been allocated.

An administrative capacity operating out of the Department of Justice called the Criminal Asset Recovery Unit, was instituted to implement the provisions relating to the Criminal Assets Recovery Account. Setting up these extensive legislative mechanisms for the management and accountability of the National Revenue Fund took several years—the first allocations were made five years into the establishment of the fund[10]. It also took that long to build up sufficient capital in the fund to justify convening the Committee to make the first allocations. Because of the auditing requirements, there have been fewer allocations to victim organisations than to law enforcement initiatives and the administration costs of the asset recovery programme.

9 See sections 63 to 69 of the Prevention of Organised Crime Act, 121 of 1998 at http://www.saflii.org/za/legis/num_act/pooca1998294.pdf

10 The first report was published at https://www.justice.gov.za/reportfiles/other/cara-anr-2010-11.pdf Since 2015 the report is included in the Annual Report of the Department of Justice at https://www.justice.gov.za/reportfiles/report_list.html

International Experience regarding accounting for recovered proceeds

Canada established a special fund[11] from which expenses incurred in the management and sale of criminal assets can be defrayed. In the United States, the Department of Justice Assets Forfeiture Fund[12] and the Treasury Forfeiture Fund[13] are the repositories of forfeited currency and forfeited proceeds from the sale of criminal property and serves as the operating fund from which programme expenditures (specified in the law), such as asset management and disposal expenses, are defrayed. The funds can be allocated and used without the enactment of an annual appropriation by the legislature, provided the funds are used for the purposes specified in the authorising statute. These Funds are transparently managed and information about the funds are available online. The Funds are also comprehensively audited by independent auditors.

Pre and post-confiscation sales must be handled transparently to avoid exposing the asset management capacity to unnecessary criticism, either from the owners of confiscated property or from the public. This can be achieved by ensuring that the process resulting in the decision to sell and the method of sale are clearly defined and understood by the public.

Accounting scrupulously for expenses incurred is critical. The default position in many jurisdictions that provide for payment of the proceeds of crime to the state, is for the funds to be paid to the National Treasury and made available to be allocated in accordance with the budget priorities of the government of the day.

Where a special purpose or ring-fenced fund is created in legislation separate from the National Revenue Fund additional safeguards are put int place to ensure accountability. In Uzbekistan, the issue of what happens to confiscated property after it is no longer required as evidence or for victim compensation, is a matter dealt with by Presidential decree. The process of accounting for this income and expenditure is not subject to legislative oversight and control, which also makes the funds vulnerable to mismanagement and corruption.

Improved management of income generated from and expenditure incurred in relation to recovered proceeds

Consider the adoption of a law that provides for the establishment of a special revenue fund into which all proceeds from confiscation orders and other enforcement actions is deposited, including assets recovered and returned from abroad.

- Once a framework for allocating funds collected in the special fund has been adopted, the law should provide for a distribution mechanism to facilitate, monitor and account for the distribution of revenue in the special fund. This could be a cabinet committee or the head of the asset management function. It is critical that the distribution decisions are made public, either in Parliament or as part of a transparent budget reporting process. The allocations should be subject to independent auditing annually and the results of the audit should be made public. This will instill confidence ensure the credibility of the asset recovery process and minimise risks of mismanagement and corruption.
- The Enforcement Bureau's special account, currently used to receive proceeds of the sale of perishable goods and proceeds realised from confiscation orders, could be designated as the proceeds of crime operating account. Accounting for expenses incurred should be divided

11 https://www.tpsgc-pwgsc.gc.ca/app-acq/gbs-spm/index-eng.html

12 https://www.justice.gov/afp/fund

13 https://home.treasury.gov/policy-issues/terrorism-and-illicit-finance/treasury-executive-office-for-asset-forfeiture-teoaf

between predictable routine annual expenditure on management and disposal costs such as salaries of personnel and storage and other facilities on the one hand and special expenditure incurred in managing particularly complex or unusual asset. This data can inform annual allocations out of recovered proceeds to support the asset management capacity.

- Both income collected and operating expenses incurred must be accounted for annually, audited and subject to policies that control inefficiency and promote transparency.

Interim Management Measures

The interim management phase spans the period between which the court or other relevant authority directs that an identifiable asset(s) is preserved until a final determination is made regarding its confiscation. The concern during this phase is with mitigating the risk that criminal property may be placed beyond the reach of law enforcement, lost, damaged, destroyed or diminished in value, thereby frustrating the fulfilment of a confiscation order in the event that one is made.

Article 2(f) of UNCAC refers to two types of interim measures: freezing orders and seizure orders and defines "seizure" as "**temporarily assuming custody or control** of property on the basis of an order issued by a court or other competent authority". A "freezing order" is defined as a measure "**temporarily prohibiting the transfer, conversion, disposition or movement of property**".

Interim Management Measures in Uzbekistan

The CPC in Uzbekistan provides for **impoundment** which refers to both freezing and seizure orders.

Freezing Orders

Freezing order refers to situations where the property remains under control of the owner or a third party, under restrictions imposed in the impoundment instrument. The owner of the property is informed of the **prohibition to dispose of**, and – if necessary – **the prohibition to utilize** property. The person/authority making the decision or ruling on the freezing of property must complete a record indicating by **whom**, **when** and **in what case** the freezing order was issued, **for what purpose** and **whose property** is subject to arrest, and, if the freezing order is imposed to secure a civil claim - for what amount?

Should the competent authority decide to impose a freezing order, property subject to the order is left for safekeeping with its owner or possessor, or an adult member of his family or another person. The person under whose control the property is left, will be explained the legal responsibility to safeguard the property. If the resolution or court ruling imposes conditions on the possession of the property such as prohibition on sale or use, the person responsible for the property will sign a document confirming that she/he understands the obligations imposed on the property.

Similarly, withdrawal of cash deposits, government bonds, shares and other securities that are kept in financial institutions is prohibited. Upon receipt of a resolution or ruling on seizure, debit transactions on them are terminated, even though the funds remain in the account in the name of the suspect, accused or defendant.

Seizure Orders

A seizure order is **imposed under the authority of the inquiry officer or investigator with the sanction of the prosecutor**, or by decision of the court. A court may direct the investigative body to issue a seizure order if such

an order is not already in place by the time the matter is before the court. In cases of urgency, seizure of property can be imposed without the sanction of the prosecutor, but with subsequent notification to the prosecutor with a copy of the resolution and protocol attached within twenty-four hours.

In terms of Article 294 of the CPC, property affected by a seizure decision, may be transferred for storage to **a representative of a self-governing body of citizens or another organisation.** In practise and in terms of the 2010 Instruction[14]:

- Vehicles are sent for storage to the closed parking lot of the investigation or inquiry body;
- **Residential** buildings, apartments, household furnishings and utensils, clothing and other items necessary for the normal viability of the family of the suspect, accused, defendant and civil defendant is excluded from seizure. Residential property can only be seized if it is involved in especially serious crimes, such as treason, terrorism, sabotage.
- Money, securities, currency valuables, jewellery and other items from precious stones, scraps of such items, seized as material evidence shall be examined by a specialist before it is submitted to storage. Money, seized or acquired as provision against a civil suit or possible confiscation of property or as a deposit, shall be submitted to **the deposit account of the respective inquiry officer body within a three day term**;
- Business objects are transferred to the person responsible for the object in the business, i.e. the manager or director of the business. When a business is made subject to a seizure order, business activity is stopped, and the bank accounts of the business are frozen. *The law does not allow for businesses to be operated as a going concern by an interim manager or a court appointed third party manager*;
- Precious metals (including products made of precious metals) and currency are transferred to the bank for safe-keeping; Art objects are transferred to the appropriate organization that can ensure their proper storage (museum, gallery). Goods of wholesale and retail trade (equipment, interior items, etc.) can be transferred for storage to the owner or **legal entities that are engaged in the sale** of confiscated property. Cattle and small cattle can be transferred for storage to legal entities or individuals who are engaged in cattle breeding;
- Prohibited items such as firearms, narcotic substances, prohibited by law from circulation must be seized, and transferred to storage facilities designated for material evidence of the investigation or inquiry body. Until the court makes a final determination on its fate.

Interim Sale of Perishables

Interim sale, in particular, of perishable items, and the retention of the proceeds of the sale in a bank account pending final determination, is permitted by the CPC. Article 210 of the CPC provides that, upon completion of the inquiry officer's actions, the following material evidence shall be immediately returned to the owners: perishable items necessary in daily life, livestock, poultry and other animals. If the legal owner or proprietor

14 And in terms of APPENDIX № 1 to the Resolution of the Cabinet of Ministers dated from July 15, 2009 No. 200 REGULATION on the procedure for the seizure, sale or destruction of property subject to conversion into state revenue and Resolution of the General Prosecutor's Office; Supreme Court; National Security Service; Ministry of Internal Affairs; Ministry of Justice; Ministry of Defense; State Customs Committee, State Tax Committee of the Republic Of Uzbekistan On Approval Of The Instructions On The Procedure For Seizing (Reception), Accounting (Registering), Storage, Transfer, Sale, Return, Destruction Of Material Evidence (Corpus Delicti), Material Assets And Other Property During Preliminary Investigation, Inquiry, Preliminary Investigation And Court Proceedings - [Registered by the Ministry of Justice of the Republic of Uzbekistan on December 29, 2010, registration number 2174]

of the perishable items or livestock, poultry, or other animals is unknown or return thereof is impossible due to other reasons, they shall be submitted to respective **enterprises**, **organizations for foddering** and used for intended purposes.

Funds from the sale of goods are to be credited to the deposit accounts of **the relevant departments of the Bureau of the district** until the receipt of an executive document on the circulation of goods to the state revenue or its return to the owner is ordered.

In accordance with paragraph 39 of the 2009 Regulation, "*perishable goods with a shelf life of up to 72 hours, as well as goods with a shelf life expiring within one month, regardless of the decision to turn them into state revenue, within one day from the date of receipt of* ***the expert opinion on the subject of their suitability for consumption*** *(use, processing) and its assessment, must be transferred by an official of the body that carried out their withdrawal and sent for sale to trade organizations with the participation of a state executor, with an act of transfer for sale*".

The interim sale of perishables does not extend to the sale of vehicles seized, despite the fact that vehicles are rapidly depreciating assets. Certainly, the cost of storage of a vehicle can be so prohibitive that it very quickly exceeds the value of the asset. No provision is made in the CPC for the interim sale of property that deteriorates rapidly, or the cost of storage rapidly outweighs the value of the vehicle. Motor-vehicles, vessels (boats, yachts) and aircraft all fall into this latter category as mooring fees or hangar fees can be very costly.

Mandatory Destruction of unsafe, hazardous property

In terms of Article 294 of the CPC, objects prohibited for circulation shall be confiscated. The following are subject to mandatory destruction:

- ethyl alcohol (food), alcoholic products and beer;
- tobacco products;
- medicines and medical products;
- biologically active food supplements, food additives;
- food and other goods recognized by expert opinion as unsuitable for direct consumption (use)
- products subject to mandatory certification, recognized by the conclusion of the certification body as not complying with the requirements of regulatory acts on standardization;
- counterfeit copies of works and objects of related rights, except for cases of their transfer to the right holder at his request, as well as equipment used for the manufacture and reproduction of counterfeit works and objects of related rights.

Abandoned property

In criminal cases where the accused has not been identified, and the criminal case cannot be submitted for consideration to the court, the seized property will be kept until the accused is identified or the criminal case is terminated.

In customs cases, a product whose owner has not been identified, and no criminal case has been initiated based on the results of the pre-investigation check, the **customs officer seizes** such goods and transfers it to a **special warehouse** until the owner is identified.

In accordance with Article 327 of the CCP, customs authorities may apply to court to sell seized customs goods unclaimed after a year of storage on the basis that they are recognised as ownerless goods. Article 330 of the Code of Civil Procedure, similarly allows the court to transfer seized property to the ownership of the state, if it finds the property (thing) does not have an owner or the owner is unknown or the product is left by the owner without the intention of retaining the right of ownership to it.

Interim Use

Use of assets during the interim phase, whether by law enforcement or a third party, is not permitted under the CPC. Seized property can only be used or sold when a final confiscation determination is made by a court.

Duration of Asset Management and Disposal Phases

How long an asset will need to be preserved during the interim management phase depends on the procedural time frames for finalising the investigation. An impounded asset can only be disposed of in terms of a final court order.

Pre-investigative review is a procedural activity to verify a report of a crime, which consists in establishing the presence or absence of factual and legal grounds for initiating a criminal case. The purpose of the pre-investigation review is to check the crime report for the presence or absence of sufficient data indicating the presence of signs of a crime. The pre-investigation review includes measures to verify statements, reports and other information about crimes, making a decision based on the results of their consideration, as well as measures to consolidate and preserve the traces of the crime, objects and documents that may be relevant to the case. According to Article 329 of the CPC, the pre-investigation review must be completed within a period of not more than **10 days**, and this period **may be extended by the prosecutor up to 30 days**.

In terms of the CPC an **inquiry** is conducted **within 30 days** from the date of initiation of a criminal case, and this period may be extended by the prosecutor for **another 20 days**. In terms of Article 344 of the CPC, the **preliminary investigation** must be completed within a period of not more than **three months** from the date of initiation of a criminal case and may be **extended up to seven months by the relevant prosecutor**[15].

These time-frames, if strictly adhered to, allow for expeditious conclusion of investigations and consequently the costs of preserving assets during this interim phase can be kept to a minimum. However, money laundering and asset recovery investigations tend to be time-consuming, especially if they span across borders.

It is less clear how long it takes to conclude a criminal case in the courts in Uzbekistan, once the case is referred to the courts. Whether the statutory time-frames for investigations do in fact result in less of a need for protracted storage and other costs associated with prolonged interim management, is an issue for the asset management authority to monitor closely. The time it takes to complete complex financial investigations in complex cross-border money laundering cases and the delays in concluding criminal trials in conviction-based asset recovery jurisdictions, are the biggest challenges experienced by asset management authorities internationally.

While the tight time-frames for the conclusion of investigations are laudable, they will inevitably greatly limit the potential recovery of criminal property simply because comprehensive asset tracing takes time.

Recommendation: Serious consideration be given to providing more flexible time-frames for asset-tracing investigations. Together with the development of specialist capacity to conduct these investigations, an enabling statutory regime will go a long way to increasing potential to recover more criminal proceeds.

15 Article 351 of the Code of Criminal Procedure

Pre-confiscation sale internationally

The trend internationally is towards finding more creative ways to ease the burden and costs of managing seized assets during the interim phase by:

- Increasingly opting to provide for assets to be maintained in the custody or under the control of the owner, subject to restrictions to preserve the value of the asset, thereby avoiding storage and safeguarding costs, as well as costs of insurance for indemnifying owners against losses incurred during the interim phase while under the control of the seizing agencies.
- Providing for pre-confiscation use and sale of assets and preserving the proceeds of the sale pending final determination.

Article 10 of Directive 2014/42/EU enjoins European Union member States to ensure the adequate management of frozen property, which may be confiscated, by including the option to sell or transfer property where necessary. The G8 Best Practices for the Administration of Seized Assets also recommends pre-confiscation sale for assets that are perishable, will rapidly decline in value (such as vessels and aircraft) or are too burdensome to maintain. These initiatives have resulted in a significant increase in the number of countries that now provide for the pre-confiscation sale of assets in their law.

The Organization of American States guide on Asset Management Systems in Latin America and Best Practices Document on Management of Seized, and Forfeited Assets highlights pre-confiscation sale or disposal as a good practice, especially for perishable or rapidly depreciating assets.

Criteria and Procedure permitting pre-seizure sale in other countries

- **Perishable assets: Most countries,** permit the pre-confiscation sale or disposal of perishable goods; some of them apply the same criteria applicable to the pretrial sale of goods seized as evidence in a criminal case. In Costa Rica, the asset management office may sell, donate or destroy perishable goods, fuel, building materials, scrap, essential chemicals, precursors and animals before a final judgment is delivered in a criminal proceeding.
- **Rapidly depreciating property** - In Canada there are disagreements about what 'rapidly depreciating' means. Courts in one province regard vehicles as rapidly depreciating, while in others, vehicles are not regarded as rapidly deteriorating and must be stored pending the conclusion of a trial. Costa Rica expressly includes "self-propelled assets (vehicles, boats, aircraft) in the definition of rapidly depreciating assets.
- **Storage or maintenance costs disproportionate to an asset's value –** In Honduras and the Netherlands, if storage costs are disproportionate to the value of assets, they may be sold before a confiscation order is issued. In Costa Rica and Peru, if the storage and preservation costs of seized assets are assessed as too expensive, and in Columbia, if their management will result in a negative cost-benefit balance, they may be sold or disposed of before a confiscation order.
- **Assets too difficult to administer or their management requires special conditions or expertise not readily available.** Brazil and The Netherlands sell goods not suitable for storage, such as special machinery or motor vehicles. In Thailand, assets may be sold if they will **cause an undue burden to the state** because of their specific features. Columbia permits the sale or destruction of assets that could cause environmental damage.

- **Goods that are easy to replace.** In Belgium and the Netherlands, assets that are easily replaceable, whose replacement value is easily determined and whose seizure might cause depreciation, damage or disproportionate costs can be sold.
- **To pay legal representation and expenses incurred for other seized assets.** In Australia, assets can be sold to pay a legal aid commission's cost. In Canada, New Zealand and the United Kingdom, seized property can be sold to defray the cost of maintaining the value of other assets, such as paying a mortgage.
- **When the owner has absconded.** In Romania, the law makes special provision for the sale of seized vehicles whose owners cannot be determined. In these cases, the prosecutor must prove all conditions for selling the seized vehicle, including inability to determine the owner**.** The court decides, based on the evidence presented, but the decision can be challenged.

Role of the Owner

Most jurisdictions permit pre-confiscation sale or disposal with the consent of the owner and the relevant agency responsible for enforcing the seizure order. Owners are more likely to consent to sell where the legal framework provides for pre-confiscation sale or where legal precedent authorizing a sale in similar circumstances has been established.

A court or other competent authority must authorize the sale. The owner usually has to be afforded the right to challenge the decision in court. In New Zealand, an independent court-appointed official is authorized to sell property to preserve its value with consent of the court. In Colombia, the pre-confiscation sale or disposal of real estate requires prior authorization from a committee.

Regarding interim management measures

While the pre-confiscation period is of an un-characteristically short duration in Uzbekistan, if more flexible timeframes are introduced to allow for comprehensive asset tracing investigations, there would be a need to introduce legislation that provides for:

- *Pre-confiscation sal*e, or interim sale pending a confiscation decision. The law could specify the circumstances in which interim sale would be permitted, e.g. where the costs of storage are likely to outweigh the value of the property when it is ultimately.
- Procedural safeguards that protect the property rights of the owner must be provided for, for example, permit the owner to oppose the interim sale before a judicial officer; permit the owner to oppose the interim sale where the item has particular sentimental value or other exceptional reasons exist to retain the property in storage instead of sale or permitting the return of the property on presentation of a financial guarantee.
- The proceeds of the interim sale of property could be placed in a secure interest-bearing account so that the interest earned can be handed over to the ultimate beneficiary of the confiscation decision.
- *Interim use.* The law would need to determine the circumstances under which use will be permitted and procedural safeguards would need to be included to protect against deterioration of the asset.
- The law should permit the seizure and interim management of non-residential immovable property (real estate) and businesses operating as a going concern, if they were acquired with the proceeds of crime or used to commit serious crime. *While non-residential property can only be seized if used in the commission of serious crime, they should also be liable to seizure and subsequent confiscation if they were acquired with the proceeds of crime, subject to alternative accommodation arrangements being made for innocent dependents in appropriate circumstances.*

- Permit residential and non-residential immovable property subject to seizure to be used productively in the interim phase. For example, rental property should continue to be let and rent collected instead of sealing off productive properties.
- Similarly, provision should be made for businesses that are operating as a going concern be taken over by an interim manager or a court appointed third party manager, instead of merely sealing off premises and closing banking operations.
- Provide for the establishment of an expense account from which payment of costs associated with interim use and interim management can be made, including the costs of making improvements to assets to achieve better returns upon sale.

Interim sale provisions and provisions relating to abandoned property in existing law can be extended to apply to new circumstances:

- The GPO could consider bringing civil proceedings to dispose of unclaimed assets, such as vehicles currently filling up storage facilities of bodies of inquiry and investigation. on the basis that they are ownerless.
- Similarly, procedures for the sale of "perishable goods" only after receipt of an expert opinion on the subject of their suitability for consumption (use, processing) could be applied to the sale of rapidly deteriorating assets.

Institutional arrangements for cost effective management and disposal of seized and confiscated assets

The Phase 1 Report recommends that an AMU be established to manage *seized* assets and to:

- *harmonize* inter-agency asset management efforts
- *coordinate* with asset recovery and management agencies in other jurisdictions
- *establish* and **maintain a central database**
- **preserve and optimize the value of seized assets** pending final judgment

An AMU exclusively to manage seized assets during the interim phase?

The function of managing seized property on an interim basis pending final determination differs from the function of disposing of property once entitlement to it has been finally determined. During the interim management phase, claim to the property is still disputed. The culpability of the owner of the property or the role of the property in the crime has not yet been finally determined. The property could at that stage either be returned to its owner or declared forfeited to the State or allocated to victim compensation in subsequent judicial proceedings. The competing interests in the property must be carefully balanced at this stage. The asset management capacity must be seen as impartial and performing its functions independently of the interests of law enforcement.

Whereas at the confiscation stage, once a court has finally determined that an asset is to be converted into state property or disposed of to pay for victim compensation, the only concern is giving effect to the court's determination regarding the final destination of the property. At this stage the state can usually be left to deal with the property in accordance with policies and procedures that ordinarily govern state assets.

Many countries, especially common law countries, separate the function of managing seized assets pre-confiscation from the function of disposing of state assets post confiscation when the court has finally determined the status of the property. In countries like the United Kingdom, the interim management function is outsourced to private sector asset management companies, at great expense to the State. Provisions is made for these expenses to be recouped if a confiscation order is made, but if confiscation is refused, the State muat cover the costs.

Where the functions are performed by the same body, the interim management function is exercised subject to the directions of the judicial authority, while the disposal function is executed in compliance with legislative or executive policy dictates. There are many countries that provide for one entity to manage both seized and confiscated assets. The functions of storage, sale, valuation and maintenance are functions that cut across both interim and final confiscation stages and it often makes commercial sense to manage these functions in one place.

Where the bodies responsible for enforcement of final confiscation orders expand operations to take on the management of seized assets pre-confiscation – they are more likely to provide advisory, co-ordination, record keeping and support functions to law enforcement and judicial bodies directly involved in the seizure decision. When they expand to take on the management of particular assets, the role is often restricted to handling only complex assets that require special management skills.

Evolution of asset management capacity

Many countries, particularly in the early stages of developing asset recovery capacity have elected to locate the asset management function within law enforcement units performing conventional law enforcement functions such as asset-tracing and financial investigations. Many EU members states, for example, set up dedicated capacity to, among other things, encourage the use of asset recovery laws through improved coordination and training of law enforcement personnel on financial investigations; they influence government policy on asset recovery and coordinate international cooperation in asset recovery. These dedicated asset recovery offices ("**AROs**") typically also took on the function of asset management and disposal.

However, the skillset required to effectively deal with the seizure, storage and maintenance of assets is very different from the skill set required to prevent and investigate crime. The responsibilities involved in managing assets tend to distract from the core functions of policing which ought to be more focused on tracing assets and conducting investigations that prove the asset is either derived from crime or involved in the commission of crime.

The primary benefit of establishing an AMU to manage assets pre-confiscation is to alleviate the burden on law enforcement. While law enforcement can generally be expected to provide for assets required as material evidence, seizing, storing or managing complex assets productively is usually beyond the skill set of law enforcement agencies. An asset management agency that services all bodies of inquiry and investigations can also ensure greater consistency in asset management practice. The state can also benefit from economies of scale. For example, bulk storage services can be procured more cost effectively if all agencies use the same warehouse as opposed to each agency entering into separate arrangements to store seized goods.

Many civil law jurisdictions have in place capacity to ensure enforcement of judicial orders. These capacities have been expanded to include asset management during the pre-confiscation phase. The responsibilities involved in managing assets tend to distract from the core functions of law enforcement which ought to be more focused on tracing assets and conducting investigations that prove the asset is either derived from crime or involved in the commission of crime. For these reasons, ideally, as the asset managements requirements increase, the asset management function could be separated from investigation and prosecution functions.

Where to locate the asset management capacity?

An evaluation of the strengths and weaknesses of existing capacity and strategies to address the weaknesses and build on the strengths will provide a solid foundation for deciding whether to establish a new institution or strengthen an existing one to carry out the necessary functions.

It is important that the capacity to manage assets can grow as the demand for such services expands. Once critical mass has been reached, the establishment of an independent, professional asset management entity to undertake asset management and disposal functions may be necessary.

International experience on where to locate asset management capacity varies greatly. The following are the most prominent trends:

- Within law enforcement, combining the functions of asset management with other law enforcement functions such as financial investigation and asset tracing investigations. (esp. during pre-confiscation stage)
- Within an existing public sector entity with experience in dealing with the management and disposal of assets, (entities tasked with regulating insolvencies or bankruptcies or managing/disposing of state owned assets.
- Creation of a new stand-alone entity to deal exclusively with the management of seized and confiscated property derived from crime, separating the asset management function from more conventional law enforcement functions.

All these options are potentially available in Uzbekistan.

Bodies of Inquiry and Investigation already carry the load of taking control of and storing seized property prior to conviction and confiscation.

The ***Enforcement Bureau*** executes court orders that provide for victim compensation and conversion of property into state revenue after conviction.

The ***State Assets' Management Agency*** is a relatively newly established state body established to monitor the financial status of state enterprises, initiates insolvency proceedings and regulates the appointment of court managers in insolvency matters. This agency could potentially assume interim asset management and disposal functions.

Lastly, it is also at least notionally possible that ***an independent stand-alone asset management and disposal agency*** could be established in Uzbekistan from scratch.

Three Case Studies

COSC-Belgium

In Belgium, the Central Office for Seizure and Confiscation ("**COSC"**) was created in terms of the Law of 26 March 2003 on the Creation of a Central Office for the Seizure and Confiscation of Assets Office to assist judicial authorities with seizure and confiscation. It is part of the Belgian Public Prosecutor's Office. It does not have separate legal personality.

The COSC reports directly to the Minister of Justice. It implements guidelines of criminal policy relating to asset recovery issued by the Board of Prosecutor's General. The office is staffed by personnel drawn from a range of diverse departments:

- Management: director and deputy director (public prosecutors)
- Liaison magistrates (public prosecutors)
- Liaison officers (Federal Police)
- Liaison officers of the Ministry of Finance

COSC is obliged to manage all cash seized by law enforcement agencies and judicial authorities. Investigating bodies remain responsible for asset management pre-confiscation. They must however notify COSC of all asset seizures, methods of storage or preservation, and all other decisions relating to the assets. Prosecutors responsible for decisions on pre-confiscation sales and the destruction of seized assets and for obtaining confiscation orders are equally obliged to notify COSC of such decisions/court orders.

COSC undertakes pre-confiscation sale, (for example of real estate, cars, ICT-material, etc) if the costs of management/ conservation are too high (or) the value of asset can depreciate very quickly. The procedure for pre-confiscation is set out in the law. Funds derived from the alienation replace the seized asset (legal abrogation)

The Ministry of Finance and Ministry of Justice are both responsible for enforcement of confiscation orders, and they too must notify COSC of all executions related to confiscated assets. The Patrimonial Services division within the Treasury is responsible for carrying out disposal activities, such as the sale, destruction, recycling and lending of confiscated property. The only management of seized assets COSC does in-house is of cash (cash seized in money laundering cases and the cash realized from pre-confiscation sales and disposals. COSC may appoint private sector experts to manage valuable assets or assets that require specialized skills. COSC may ensure the management of other valuable assets (shares).

AGRASC-France

The Agency for the Recovery and Management of Seized and Confiscated Assets ("**AGRASC**") was established in France in 2011. AGRASC is a public administrative body placed under the joint supervision of the Ministry of Justice and the Ministry of Budget. The President of the Board of Administration and its Director General are members of the Judiciary. The Secretary general comes from the Ministry of the Budget.

When the Agency commenced it comprised of ten agents from these two Ministries and from the Home office. AGRASC is designed to be self-financing to the greatest possible extent: by part of the proceeds of the sale of

confiscated assets when they have been managed or sold by the Agency; by the proceeds of the investment of monies seized or from the management of the assets entrusted to it for such purposes. AGRASC is responsible for the management of complex assets seized, when these require acts of administration to preserve their value (vehicles, buildings, goodwill, boats, etc)

In addition to its general role of assistance, advice and guidance given to magistrates and investigators in matters of seizures and confiscations, the agency's mission is to ensure the centralised management of all sums seized in the context of criminal proceedings in France.

AGRASC carries out all sales before judgement of moveable property seized when they are no longer useful for establishing the truth and are subject to depreciation. It also carries out all publications with the land registration services for seizure and criminal confiscations of real estate.

AGRASC is responsible for the execution of the confiscation sentence. It ensures that public creditors are informed prior to any execution of judicial decisions of restitution in relation to property in which they have an interest. AGRASC determines priority compensation of civil parties from the property confiscated from the convicted person and ensures the payment of claim of civil parties, in particular fiscal, customs, social or compensation.

ARMA – Ukraine

ARMA is a special governmental body, authorised to formulate and implement state policy in the sphere of tracing assets that are subject to seizure. In executing court decisions, ARMA is entitled to manage assets seized or confiscated in criminal proceedings in order to preserve or maintain economic value of the assets by:

- transferring assets into management using asset management agreements;
- and disposal – sale with preservation of the cash proceeds in the state banking system until conclusion of the criminal proceedings.

ARMA develops and manages the Unified State Register of Assets Seized in Criminal Proceedings, which contains information on assets which have been seized in criminal proceedings, court decision on seizure and/or cancellation of seizure, number of criminal proceedings in the Unified Register of Pre-Trial Investigations and other relevant information.

ARMA may only manage seized property based on a court ruling in a criminal proceeding (a ruling of an investigative judge or court), or with the consent of the asset's owner. If a court rules on the transfer of property into management, ARMA is obliged to fulfil the order, as does the owner of the assets or other persons entitled to the property. The court order creates a separate property right to manage the seized asset. This is a special fixed term right to property, similar to other property rights over another person's property, as defined in civil law.

The Civil Code of Ukraine permits a contract to be concluded between ARMA and a private asset manager, who is obliged to manage the asset efficiently and preserve or increase its value. The manager has the right to pay (remuneration), reimburse necessary expenses incurred in connection with asset management, deduct expenses directly from the proceeds derived from the productive use of assets taken into management but may not sell the assets taken into management. The asset management agreement is discontinued in case of cancellation of seizure of assets accepted under management or confiscation thereof, special confiscation, other court ruling on forfeiture to the state. ARMA must perform periodic check of efficiency of management of seized assets transferred by it under management. A manager is obliged to provide authorised persons in ARMA with access to assets accepted under management for inspection, as well as to the documents related to management of such assets and use of them.

Asset Management Capacity in Uzbekistan

Interim Management Phase

In Uzbekistan currently the functions associated with the management of seized assets ***prior*** to confiscation are performed by the bodies of inquiry and investigation of the Ministry of Internal Affairs, the General Prosecutor's Office, the State Security Service, the Department for Combating Economic Crimes and the Bureau of Enforcement under the General Prosecutor's Office and the State Customs Committee and the National Guard (collectively referred to as **the bodies of inquiry and investigation**).

These are conventional law enforcement bodies concerned with the prevention and investigation or prosecution of crime. While these bodies have over time had to develop policies and procedures to securely store items of property required to serve as evidence in a criminal prosecution; to make them available for expert or forensic examination; and to retain in-tact the chain of custody of evidence for purposes of proof during the criminal proceedings, they are not especially well equipped to perform the functions associated with seizing, managing and preserving the value of assets, much less become involved in the sale and monitoring the interim use of such assets.

As the law enforcement bodies are usually the first to identify assets potentially subject to seizure, (i.e. they appreciate the need for it to be seized and preserved) these bodies of inquiry and investigation remain important stakeholders in the asset recovery value chain. A very close working relationship must exist between the asset management capacity and the bodies of inquiry and investigation.

Similarly, requests for international cooperation in criminal matters require close coordination with asset recovery and management agencies in other jurisdictions. While the International Co-operation Division in the GPO receives and dispatches requests for mutual legal assistance in the area of asset recovery, the Enforcement Bureau in the GPO is well positioned to perform the execution functions. These include the function of locating assets in Uzbekistan on behalf of law enforcement abroad and executing seizure/restraint orders on behalf of other countries.

The Pledge Registry

Article 290 of the CPC dictates that, within one day (24 hours) of making the decision to seize property, the inquiry officer or investigator, must make a corresponding entry in the **pledge register**. After a court ruling on the seizure of property, the relevant internal affairs body and prosecutor, must make a corresponding entry in the **pledge register**, within three days of the court's ruling.

The pledge register is a unified information database containing **records of the rights of creditors to the property of debtors**. Registration of the claim of the creditor provides the creditor with security against the property of the debtor for the performance of the debtor's obligations to the creditor. It also records other restrictions on the debtor's rights to dispose of property and the use thereof that are imposed in accordance with the law (including the CPC) in order to ensure the proper performance of the debtor's obligations.

Management and technical support of the activities of the pledge registry are carried out by the State Unitary Enterprise "Pledge Registry" under the Central Bank. The State Unitary Enterprise "Pledge Register" ensures the storage of all entries, including any change and cancellation of an entry, for five years after the entry is excluded from the pledge register.

This procedure began in 2020, after amendments were made to the CPC. The Pledge Registry was able to provide some data regarding seizures for the year 2021 as reflected in the table below.

	Information provided by the State Unitary Enterprise: Pledge Registry: Period ended 2021Property attached in criminal cases			
Type of Asset	**Internal Affairs Bodies**		**Prosecution Bodies**	
	No	**Value**	**No**	**Value**
vehicles	85	US$1.7 million (approx.)	41	US$960 000 (approx.)
real estate	21	US$1 million (approx.)	242	US$17.5million (approx)
other movable property (inventory)	35	US$175000 (approx.)	48	US$240 000 (approx.)

Access to data in this format can greatly assist in making decisions regarding asset management. It would be ideal to have access to a more complete picture of available information regarding assets subject to interim preservation orders. The Registry however is more a source of information about restrictions on the trade in property than it is a database from which information can be extracted about seized property. This information must be obtained from the seizing entities directly.

Oversight functions of the GPO

In terms of Article 34 of the CPC the inquiry and preliminary investigation agencies must comply with the instructions of the GPO in connection with pre-investigation checking, institution of criminal proceeding and investigation in compliance with the procedure determined by the CPC. The GPO therefore performs an important oversight and compliance function during the interim management phase.

The GPO is therefore ideally suited to set standards and exercise oversight of the bodies of inquiry and investigation in the asset management process. It should assume the function of establishing standard operating procedures relating to the decision to seize and store assets, to sell pending confiscation and to guide disposal decisions.

The GPO also enforces compliance with the asset recovery laws and Regulations and imposes discipline and criminal measures.

Disposal Phase

The Bureau of Compulsory Enforcement under the GPO (the Enforcement Bureau)

The Bureau of Compulsory Enforcement, located in the GPO in terms of the Law "*On the Prosecutor's Office*" is the only entity tasked with enforcement of court-issued confiscation orders. It has considerable experience executing victim compensation orders following a criminal conviction. By Decree of the President dated May 30, 2017, the Department of Enforcement of Orders of Criminal Courts and Administrative Courts was established in the Enforcement Bureau's central office to provide for the execution of court orders in criminal and administrative cases that direct the conversion of assets into state property. Much of the experience gained from enforcing confiscation orders are equally relevant to management of seized assets pre-confiscation.

Regarding institutional arrangements

Given the stage of development of the country's asset recovery programme and its existing institutional capacity, it is recommended that the Enforcement Bureau is formally established in law as the unit responsible for the management and disposal of seized and confiscated property both at the interim management phase and the disposal phase.

Rather than establish a separate entity for interim management only, it makes more sense to combine the functions of pre and post-confiscation management and disposal functions in one entity.

Ideally the pre-confiscation functions should be added gradually to the functions of the Enforcement Bureau, commencing with record keeping and advisory services and potentially expanding first into taking control of cash seized for evidentiary and asset recovery purposes pre-confiscation, before expanding into pre-confiscation management of more complex assets and interim sale when the law is amended to provide for these during the interim phase.

Improving co-ordination and streamlining asset management functions and establishing uniformity in asset management practice across bodies of inquiry and investigation during the interim management phase can be achieved by the Enforcement Bureau enforcing uniform practices under the umbrella of the GPO.

The Enforcement Bureau currently performs many of the asset management functions other AMUs perform:

- Record keeping/maintaining an electronic database of both pre and post confiscation decisions.
- Enforcement of confiscation orders, incl. sale, storage, destruction, etc

It is recommended that the Enforcement Bureau prepares itself to take on:

- co-ordination of and advisory functions to the bodies of inquiry and investigation in relation to interim asset management, and in particular
- interim management of seized cash, and of complex assets, etc. and
- interim sale and use of assets

For the foreseeable future the Enforcement Bureau should remain within the GPO but retain a measure of functional independence from other units in the GPO that are involved in issuing impoundment orders and seeking final confiscation orders from the courts. This is to foster a reputation of ensuring the preservation of the value of property pending a final order, independent, of the interests of law enforcement.

However, as the legislative and institutional capacity to recover criminal assets improves in Uzbekistan, and demand for asset management services expands, the asset management function could be separated from investigation and prosecution functions.

Specific Asset Management Functions

Inventory/Record Keeping

The CPC makes adequate provision for proper record keeping of seizure and freezing orders. Article 290 of the CPC, makes it mandatory that the **resolution** or **court ruling authorizing impoundment** states:

- who issued the resolution or court-ruling,
- the date and time the resolution or court ruling was issued,
- relevant details of the case [do these refer to case information such as parties and reference numbers or does it extend to include a summary of the case details and a list of property involved],
- the purpose of the property impoundment [does this refer to whether it is saved as material evidence as opposed or victim compensation?],
- the name of the owner whose property is subject to impoundment; and
- in case of a civil proceeding, the cost [value?] of property shall be mentioned.

Article 291 requires an inquiry officer or investigator to draw up a record of the imposition of a property impoundment in the presence of at least two attesting witnesses pursuant to the requirements of articles 90-92 of the CPC. The record must consist of **a complete list of property subject to impoundment** with an indication of **the items, measures, weight, extent of wear and tear, other individual features**; it shall indicate the actions of the person enforcing the impoundment, and mention the ownership of the property to the third parties if such property is included in the record. In the event of **seizure** of property, the record shall **reflect which objects have been seized**, who and where they have been **transferred for storage**. If during the impoundment attempts were made to hide, destroy or otherwise damage the property this shall be reflected in the record with the indication of measures taken by the inquiry officer or investigator.

Article 292 requires that a copy of the **record of the property impoundment** be handed to the person whose property was listed or to a member of his family that is of lawful age who shall sign to confirm the receipt thereof; in the absence of such family member the record shall be handed to the representative of the local self-governance authority on whose territory the inventory of property was made. If the listed property is located on the premises of an enterprise, institution, organization or a diplomatic representation, a copy of the record of the impoundment shall be handed to the relevant representative of the administration or diplomatic representation who **shall sign to confirm the receipt thereof**.

In relation to customs commodities, the **custom's officer** initially draws up an act (statement) in triplicate. Then the pre-investigation check procedure begins, during which the goods are arrested and **transferred to a specialized warehouse**. If a criminal case is initiated based on the results of a pre-investigation audit, the criminal case is transferred to the prosecutor for transfer to the investigating authority for a preliminary investigation.

These provisions comprehensively address the record keeping requirements of an asset management dispensation. What is lacking is a body with the authority to monitor and enforce compliance with the requirements of the law.

Unified Electronic Database

The Resolution of the President of the Republic of Uzbekistan dated March 12, 2019, No. PP-4236, as of October 1, 2019, required the Enforcement Bureau to launch a unified electronic database where all **enforcement documents** are stored. The Bureau receives all information about confiscation orders from the criminal courts. Currently the data is received electronically and reporting back to the court is also conducted electronically.

Each enforcement document is assigned a single identification number (code) that ensures data security. Progress in each enforcement action by state executors of the Bureau is captured in real time. The claimant and the debtor, using a single identification number (code), can monitor the progress of enforcement actions at all stages, via the Internet. All document flow between the Bureau and the criminal courts is digitised. This greatly improves transparency and accountability.

The resolution on the Unified electronic database pre-dates the Presidential Resolution on the *Unified Investigative Information System* which makes the Enforcement Bureau in the GPO responsible for the integration of the Unified Investigative Information System database with other information systems; its uninterrupted operation and for ensuring information security. The system is stored on the servers of the Data Processing Centre of the GPO. The Unified Investigative Information System will integrate the information systems of the relevant bodies of inquiry and investigation. Once this system is fully implemented the Enforcement Bureau will have access to all data about seizure and freezing orders and will be in a position to make improvements to the asset management system.

Electronic data-management

It is critical that the authority of the Enforcement Bureau to compel compliance of bodies of inquiry and investigation with data capturing requirements in relation to seized assets is clearly established in the law. Armed with accurate data, the Bureau will be in a much better position to improve the cost effectiveness of interim management functions.

Storage

Article 291 of the CPC requires an inquiry officer or investigator who effects **seizure** of property, to make a record of **which objects have been seized** and where they have been **transferred for storage**. The law makes provision for storage of items that will also serve as material evidence in the criminal trial. This often requires more specialised and secure storage facilities. Designated evidence rooms are in place at courts and for the duration of the investigation, at the inquiry or investigation department offices.

The **regional departments of the Enforcement Bureau** have concluded contracts for the provision of services for the sale of property with trade organisations that have appropriate premises for storing seized property.

The Ministry of Interior is also an important role player in storing seized property such as vehicles at the police pound. These vehicles tend to be stored at a specialised parking lot. Large numbers of vehicles appear to have been stored for years as there is currently no regulation regarding disposal of these vehicles, other than by confiscation order.

The 2010 Instruction provides guidance on storage of assets seized pre-confiscation. Artworks are handed over to the museum for special storage. Jewellery is handed over to the bank account of the investigation department

that effected the seizure. Precious metals (fragments of such items), precious stones and diamonds, as well as precious stones, handmade jewellery, coins made of precious metals are wrapped in **a storage room or service bank or the Central Bank of the Republic of Uzbekistan**.

There appears to be no single mechanism to manage storage of assets across agencies. This greatly inhibits the ability to make savings from exploiting economies of scale. There is currently no reliable information on storage costs of seized items.

Storage

The Bureau should maintain a database of storage facilities country-wide and the costs associated with storing particular asset classes. This information should better inform decisions to seize and store assets pending confiscation.

The agencies currently responsible for these functions need to meet, share information and cooperate to achieve economies of scale when procuring storage and safeguarding facilities.

Pre-seizure Planning

Pre-seizure advisory services such as inspection, appraisal and valuation expertise and advice on the cost effectiveness of seizing and storing an asset over merely freezing it, is a function not currently performed by the Enforcement Bureau.

In some countries, pre-seizure planning is considered so important that it is regulated in legislation or regulations. In Canada, the Seized Property Management Act provides for the asset management office to offer consultative and other services to law enforcement agencies in relation to the restraint of property. Legislation in Colombia makes explicit reference to the importance of carrying out a cost-benefit analysis prior to obtaining a seizure order.

Pre-seizure planning and advisory services to bodies of inquiry and investigation in the area of interim asset management can best be fulfilled by the Enforcement Bureau given its existing experience with storage and sale of assets.

Pre-seizure Planning

The GPO should develop guidance notes (standard operating procedures) for the bodies of inquiry and investigation that will inform:

- The decision to freeze rather than seize an asset?
- To have the asset valued by a professional valuer or to adopt a value assigned by a law enforcement official?
- Whether, where and how to store particular assets?
- Whether and who to appoint to manage assets that require specialist skill.

Asset management professionals

Valuators

Article 293 requires that property subject to impoundment **be valued** by the inquiry officer or investigator in accordance with the **current market prices** and taking account of wear and tear. If necessary, a **specialist** shall participate in the valuation of property. In terms of Article 125 of the CPC, money, bonds, checks, shares and other securities shall be accounted as per their nominal price. When imposing the property impoundment **the record shall list** part of the property with **the amount sufficient for the compensation of damage** to provide for the enforcement of the sentence in part pertaining to the civil claim. Therewith, the oowner is entitled to indicate the property that in his view should be included in the record.

A regime for management of specialised appraisal organisations has been put in place in Uzbekistan (200 hundred appraisal organisations and approximately 1000 appraisers with a qualification certificate are in place). It is unclear how the valuators are regulated and how reliable the valuations are. The development of this specialist skill is however an important component of an effective asset recovery regime.

Asset Managers

No matter what the institutional home in which countries locate the asset management function, most jurisdictions have found it necessary, in addition to in-house capacity, to rely on private sector players to provide some of the specialised skill-sets required to store and manage certain types of assets, either by means of:

- the use of court-appointed asset managers or
- the use of subcontractors procured by the asset management office to provide a range of services.

Reforms are underway in Uzbekistan to develop a regulatory framework for professional trustees and court appointed asset managers in the context of insolvency and liquidations. These developments will benefit the asset management capacity once legislation is in place for interim management.

Specialist skill will need to be procured as and when needed to run certain businesses as going concerns. The recently established Asset Management Agency (art 24 of the Insolvency Law) is the Authorised State Body for Insolvency and regulates/monitors court administrators and maintains a unified register of court administrators. Court administrators are members of a public association of administrators of businesses. The public association of court administrators promotes the protection of professional interest of court administrators. State executors can be engaged to assist in sale or transfer of perishables. This role can grow to perform other specialist functions.

Auctions/Public Sale

Electronic auctions is a function currently performed by the Enforcement Bureau. The Bureau is experienced in holding regular online auctions.

Interim management of cash/ Deposit accounts for cash and other fungibles-

Appendix 1 makes provision for the district offices of the Enforcement Bureau to open a special bank account into which they transfer funds from the sale of property subject to conversion into state revenue. Funds held in the special demand deposit accounts of the bodies of inquiry and investigation that are subject to conversion into state revenue, must be transferred to the special accounts of the Bureau in the regions.

The Enforcement Bureau receives all funds from the sale of perishable goods and credits these funds into the deposit accounts of the relevant district departments of the Bureau until the receipt of an executive document on the circulation of goods to the state revenue or its return to the owner is ordered.

The Enforcement Bureau has insight into all the bank accounts of regional offices and is responsible for ensuring that the expenditure complies with the requirements of Appendix 1 to CM Resolution 200 – which provides for the distribution of set percentages of these funds to the bodies of inquiry and investigation responsible for the confiscation action, as well as other criminal justice related bodies.

As in the case of AGRASC, the Enforcement Bureau could be mandated in the law to add to this function, the responsibility to take possession of all cash seized by the bodies of inquiry and investigation.

Development of Specialist skill in the area of asset management

The Enforcement Bureau should remain in engaged with and supportive of the development of skills required to manage seized and confiscated assets, such as valuators and professional asset managers, whether in the public or private sector.

Conclusion

Uzbekistan is poised to significantly enhance its asset recovery regime. It already has significant capacity to manage confiscated assets. It is well positioned to benefit from best practices and lessons learnt in the field of management and disposal of seized and confiscated assets. Ultimately, whatever lessons are taken on board, must fit the objective realities of the country, if they are to yield positive results. These recommendations should assist in enhancing not only cost effectiveness but also substantive improvements in adherence to the rule of law.