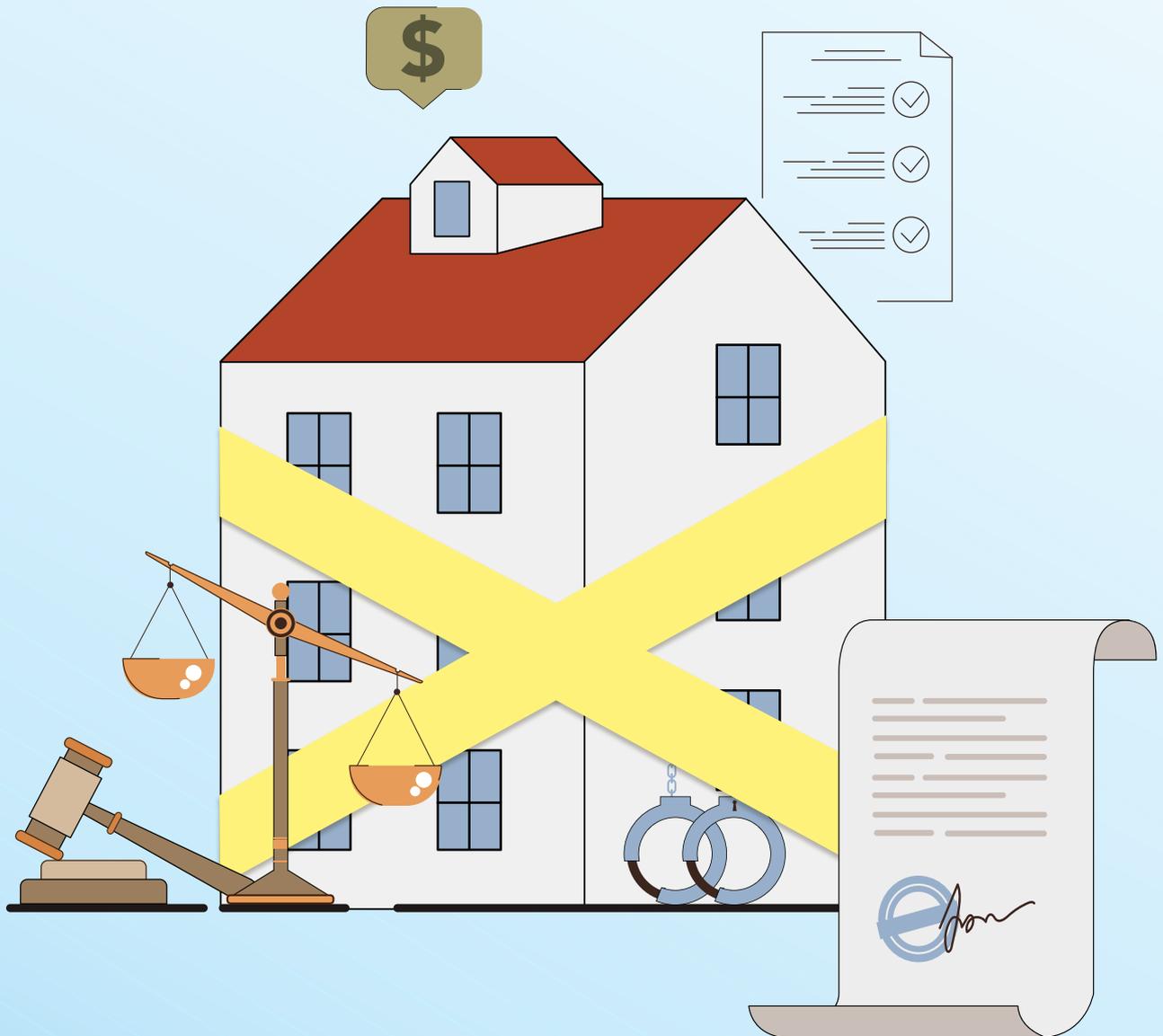




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United Nations Office on Drugs and Crime
Regional Office for Central Asia



Technical Paper on

Standard Operating Procedures in the Matter of

FROZEN

and

CONFISCATED

Assets in Uzbekistan

Explanatory Note

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Technical paper on Standard Operating Procedures in the matter of frozen and confiscated assets in Uzbekistan

March 2023

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Abbreviations used in this paper

AM	Asset Manager
CEB	Compulsory Enforcement Bureau (of PGO)
EU	European Union
FATF	Financial Action Task Force
PGO	Prosecutor General's Office of Uzbekistan
MOJ	Ministry of Justice
PR	Pledge Register
SOP	Standard Operating Procedure
TOR	Terms of Reference
UNCAC	United Nations Convention Against Corruption

1. Executive summary

1.1. The main goal of this paper is to provide a set of robust standard operating procedures to support the seizure, management and sale of assets ordered to be confiscated (by the Courts) as the proceeds of crime. The methodology outlined in this paper follows the November 2018 UNCAC non-binding guidelines on the management of frozen, seized and confiscated assets¹.

1.2. There is an existing Uzbekistan State Asset Management Office. Its remit is to manage the process of privatisation of State assets. It has expertise in the management and sale of assets but it is not the instrument for the management and sale of assets to be confiscated through court orders.

1.3. Criminal asset confiscation is conducted through the Compulsory Enforcement Bureau (CEB) of the PGO. The CEB arranges for the safe keeping of seized assets and their subsequent sale if a Confiscation Order is made by the Court at the conclusion of proceedings. The Criminal Procedure Code sets out the seizure and confiscation provisions in Articles 203, 211, 284 and 285 and 290. The approach to asset confiscation is as an adjunct to the criminal investigation. There is no emphasis on identifying the proceeds of crime and ensuring their early seizure. The main focus of confiscation is compensation or restitution to victims of crime rather than depriving a criminal of illicit profits. There is no specific proceeds of crime legislation to help focus asset recovery activity and designate a suitable Minister as a 'Champion' to highlight importance of asset recovery.

1.4. There is a lack of comprehensive statistics at the national level for seized/frozen assets and total confiscations. FATF recommendation 33² requires that countries should maintain (amongst other AML/CFT stats) comprehensive statistics on property frozen, seized and confiscated. The Pledge Register, which was established 2 years ago, should be able to furnish statistics on seized property but confiscation figures are only recorded locally i.e. in each regional CEB office. This needs to be corrected.

¹ <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/12-14November2018/V1807476e.pdf>

² <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>

2. Recommendations

2.1. Introduce specific proceeds of crime legislation to criminalise the acquisition & use of criminal proceeds. This would focus asset recovery action against criminal profits/proceeds increasing visible action against criminals by depriving them of their profits.

2.2. Appoint an asset recovery champion to direct cross-government activity focussing on asset recovery.

2.3. Uzbekistan needs a single focal point Asset Recovery/Asset Management Office. This could be fulfilled by a strengthened CEB or the creation of a separate Criminal Asset Recovery/Asset Management Office that subsumes the role and function of the CEB. This would require legislation. Appendix A shows this option with the steps needed to make it happen.

2.4. Uzbekistan lacks specialist asset managers. It is recommended that the CEB trains a cadre of in-house Asset Managers with skills in the professional management and sale of confiscated assets. There are international institutions that can provide this³.

2.5. The CEB/Asset Recovery/Management Office should also be responsible for collation of all statistics, nationally, of seized and confiscated assets. In the interim, as no confiscation statistics are currently captured nationally there is no basis for sizing the expected workload and thus frustrating any estimations of capacity needed to manage asset recovery nationwide. Pro tem, the agencies involved in seizing freezing and confiscation should submit their figures on a national basis to a central point (to be determined but probably the CEB).

³ E.g. (1) BAMIN (Balkans Asset Management Interagency Network <https://www.bamin-network.org/>). (2) Institute of Asset Management www.theiam.org

3. Introduction

3.1. This paper is aimed at providing a set of robust SOP's to enable the Republic of Uzbekistan to better manage the seizure, management and sale of assets that are ordered to be confiscated by the Courts following a criminal conviction.

3.2. The UN has identified that lack of an asset management body and a specific legal framework is a challenge to an effect regime of administrating seized and confiscated assets. The UN paper⁴ (Revised draft non-binding guidelines on the management of frozen, seized and confiscated assets) sets out a series of guidelines that could be adopted to improve asset management. These deal with :-

- effective pre seizure planning;
- pre-confiscation sale;
- interim measures such as;
 - owner retention of assets
 - interim use of assets
 - destruction of unsafe or no value assets
- 3rd party representation;
- Enforcement of confiscation and use of assets;
- Post confiscation allocation of assets;
- Rules to define specific allocation of confiscated proceeds;
- Transparency and accountability in management and disposal of assets;
- Prompt return of frozen/seized assets where confiscation is not made.

The Guidelines also recommend:

- Considering the skill set available in Government institutions and related training needs when planning establishment of an AMO;
- Ensuring that adequate capacity and agreements are in place for the asset management institution to function effectively;
- Investing in the resources necessary for central asset registration, databases and data management;
- Considering whether the AMO should be funded wholly or partly from the proceeds of confiscated assets.

3.3. To provide the reader with useful comparisons and to illustrate international best practice in asset management and confiscation separate annexes contain more detailed information on asset recovery and management provisions in the United Kingdom, Ireland, France and the Netherlands..

3.4. Many countries (such as the Netherlands and UK) require that law enforcement agencies conduct a financial investigation into criminal assets and money flows as a standard procedure. Confiscating criminal money is a top budget priority of the Dutch Ministry of Justice and Security. This priority has resulted in more funds being made available to the Dutch Prosecutors to pursue asset confiscation with dedicated 'asset tracing' Prosecutors supported by police.

3.5. Uzbekistan currently has no specific 'Proceeds of Crime' legislation, however confiscation is provided for in the Criminal Procedure Code (as described above). The competent authorities of Uzbekistan have broad powers for the application of preventative measures, including the seizure and freezing of property which is subject to confiscation. This paper will describe SOP's to support the reception, interim management and eventual sale of assets that will be confiscated. Annex B contains SOP's that proscribe the role and responsibility of the AM.

4 <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/12-14November2018/V1807476e.pdf>

4. Terminology

2.1. Introduce specific proceeds of crime legislation to criminalise the acquisition & use of criminal proceeds. This would focus asset recovery action against criminal profits/proceeds increasing visible action against criminals by depriving them of their profits.

2.2. Appoint an asset recovery champion to direct cross-government activity focussing on asset recovery.

2.3. Uzbekistan needs a single focal point Asset Recovery/Asset Management Office. This could be fulfilled by a strengthened CEB or the creation of a separate Criminal Asset Recovery/Asset Management Office that subsumes the role and function of the CEB. This would require legislation. Appendix A shows this option with the steps needed to make it happen.

2.4. Uzbekistan lacks specialist asset managers. It is recommended that the CEB trains a cadre of in-house Asset Managers with skills in the professional management and sale of confiscated assets. There are international institutions that can provide this .

2.5. The CEB/Asset Recovery/Management Office should also be responsible for collation of all statistics, nationally, of seized and confiscated assets. In the interim, as no confiscation statistics are currently captured nationally there is no basis for sizing the expected workload and thus frustrating any estimations of capacity needed to manage asset recovery nationwide. Pro tem, the agencies involved in seizing freezing and confiscation should submit their figures on a national basis to a central point (to be determined but probably the CEB).

5. Asset seizure planning checklist

5.1. Wherever possible there should be prior planning before the asset seizure takes place. For example the following should be considered:

- Should seizure/freezing action take place at all?
- What should be seized, what should be frozen? (*cost is a factor*)
- What should be taken up (seized) and held by the Prosecution? What
- What should be left with the defendant or 3rd party and what controls and restrictions should be put in place to prevent damage or disposal of the asset?
- Is there any possibility of a pre-confiscation sale? (*Uzbekistan law only provides for pre confiscation sale for perishable items. This should be amended to allow prosecutors to secure a Court sale order if the following apply in whole or part*)
 - Will the asset deteriorate whilst held by the State?
 - Is the asset likely to incur excessive costs to manage whilst in custody? (e.g. through a Court appointed Administrator)
 - Will the asset suffer excessive depreciation whilst in custody?
 - Does the asset need specialist (expensive) management not ordinarily available to the State?

6. Immoveable Assets

6.1. Assets fall to be managed by way of a Court Order. They generally are placed into two groups, i.e. 'immoveable assets' (e.g. Real Estate/houses/fixed businesses) or 'movable assets' (vehicles, cash and valuables etc.).

6.2. The Asset Manager or a designated person in the 'Agency'⁵ should analyse the particulars of the Court decision to identify the legal nature of the assets. This means identifying that the seizure order has correctly and accurately identified the 'property' subject to seizure and that the asset owner has been notified. This analysis of the decision should be carried out with great attention and if doubts emerge over interpretation then a submission via the Prosecutor to the Court should be considered for clarification. The analysis of the Court decision is also aimed at identifying any mistakes that may have occurred relating to:-

- Incorrect cadastral references due to clerical error or outdated data. References could have changed over time due to division or unification of cadastral parcels which were never updated;
- Unclear specification about which assets have been seized such as the seizure of corporate assets not specifically mentioned in the Court order. A Court may order the Freezing/Confiscation of "100% of the corporate assets". The Cadastral Registry may require the specific cadastral references if they are not mentioned in the order.

6.3. Analysis of the Court decision should also identify if all the decisions by the Court have been supplied to the AM and if not then the Court should be asked to supply any missing documentation.

Uzbekistan's legislation does not allow the seizure/freezing of the defendants' family's residence. This diverges from international practice, which considers property purchased with the proceeds of crime. Why should the family benefit from illegal enrichment this way? Some change in law will be needed to regularise this.

⁵ Agency means the responsible body assigned to manage assets likely subject to eventual confiscation. Currently this is the CEB.

I. Data to be recorded

6.4. The Asset Manager should maintain a record or file of each property under their management. This is called the 'Asset Register'.

6.5. The bullet points below outline the data that the AM should record for each asset:-

- Name of the Court;
- Grounds and deadline of the sequestration or confiscation;
- Data on the asset, appraised value of the asset;
- Name, last name, personal identification number and address of the natural person, or a legal person, then the name, seat and business registration number, from whom the asset has been sequestered or confiscated, if those are included in the Court decision;
- Details of where the asset is stored (located);
- Details of when last inspected;
- Details of the maintenance requirements and how these are to be met;
- Details of the costs of management and maintenance of such asset;
- Details of third parties who claim an interest in the asset;
- Details of every person that has an interest in that property other than the person from whom the property was taken;
- Data on any international request on that property;
- Any other details necessary for involved institutions⁶ and other legal provisions in force.

6.6. To assist the AM, relevant issues are listed below to consider when assessing any seized or confiscated property:-

- What is the percentage of the immovable assets affected by the measure? In the case of seizure/ confiscation of a part of the asset, if it is possible to divide the asset allowing the autonomous allocation of the part of the property seized/confiscated or does it remain an undivided part of the immovable asset, and the names of co-owners;
- The existence of mortgages (nature, registration date, residual principle and interests) or constraints of any nature burdening the asset;
- Description of fixtures, fittings and furnishings. When engaged in the on-site visit (see 6.7 below) take photographs and include these in the properties file;
- What is the legal nature of the seized/confiscated immovable: in particular if it has been seized/ confiscated autonomously as a corporate asset;
- Are there any executive or insolvency procedures affecting the asset (analyse the competent judiciary authority, state of the proceedings, the applicant, the amount of principal and interest subject to the aforementioned procedures, the name of the liquidator, etc.);
- The current use of the asset: if it is legally occupied or not; the names of all the occupants, specifying the existence of any rent contract (nature, contracting parties, expiration date, date of conclusion of the contract, rent fees, eventual authorisation of the judge, regularity of payments or delay in payment, etc.);
- The existence of any preliminary contract of sale (nature, contracting parties, amount of money already paid by the purchaser, date of conclusion of the contract, date of registration of the preliminary contract at the cadastral register, etc.);
- Are there any co-proprietor charges (amount unpaid, reference period, amount about to expire);
- Are there any pending proceedings or litigations concerning the asset (competent judiciary authority, nature and state of the proceedings/litigation, parties concerned, etc).

⁶ For example, Banks; Cadastral Register; Pledge Register.

- Analysis of the Court decision should also identify if all the decisions by the Court have been supplied to the AM and if not then the Court should be asked to supply any missing documentation.

6.7. After these preliminary verifications, the AM should carry out an on-site inspection to acquire all necessary information to draw up the asset's assessment. The appointment of an administrator is not always necessary; it depends on the complexity of the procedure. If the asset is immediately assignable and the assessment procedure is not particularly complex then there is no reason to appoint an administrator.

II. Mortgages

6.8. The existence of mortgages affecting immovable assets represents one of the most important obstacles to the management process. In general, no public administration, local authority, legal entity or individual is likely to be able to support the financial burden deriving from a mortgage.

6.9. The operational path aimed at the solution of this critical factor could be as follows:

- Verify the "good faith" of the creditor. It is always necessary to check the authenticity of the mortgage through the verification of "good faith" of the creditor at the time of the issue of the mortgage. If circumstances indicate that the creditor or his employees or agents were complicit with the offender or grossly negligent in conducting due diligence, the debt may not be legally enforceable. Verification of "good faith" on behalf of the creditor concerns:
 - the nature and extent of the credit at the time provided;
 - the relationship between creditor and debtor;
 - company's profit and loss account;
 - the purposes for which the loan was granted and the type of business carried out by the debtor.

6.10. It is essential to verify if, at the time it was issued, that the mortgage granted to individuals from whom the assets have been seized or confiscated was provided on the basis of valid requirements. If the check reveals "bad faith" on the part of the creditor (bank) the whole debt could be cancelled. In such cases the creditor should be considered a suspect in a potential money laundering investigation or other criminal offence and the matter referred to the Prosecutor.

6.11. If the mortgage was shown to have been created in good faith, it is necessary to start a discussion with the creditors in order to reduce as far as possible the debt. In such cases the Bank can make an application to be treated as a bona fide "third party". In practice the Bank would issue a legal process requiring the State to recompense it from the proceeds of any sale.

III. Structural deficiencies and illegal construction development

6.12. Where there are potentially structural deficiencies related to an immovable sequestered or confiscated asset it is necessary to carry out a detailed technical survey aimed at verifying if these weaknesses represent a serious threat to the environment or public safety. In any instance where a building is found to be unsafe, it may be necessary to consider obtaining an order for demolition or taking steps to protect the public from injury.

Another issue which can arise is that the asset may be affected by partial or total illegal construction. This illegal construction may not be able to be registered at the cadastral registry and will affect any sale value. At some point a decision will have to be made between the Court and the Municipality whether or not any illegal construction is regularised or demolished.

IV. Sharing of immovable asset which cannot be divided

6.13. In a case where the seizure/freezing concerns only a part of an immovable asset it may be necessary to conduct a technical assessment of the structural characteristics to verify the possibility of dividing the asset into two or more building units.

6.13. If the property is indivisible and it is not possible to make the relevant part of the sequestrated asset autonomous, it may not be possible to realise the asset and hence the saleable value will be adversely affected. One possible solution could be to sell or rent the sequestrated part of the asset to the co-owner.

6.14. In cases where the immovable asset can be divided, the AM should seek an amicable settlement with the third parties concerned or - if no agreement is reached - carry out a settlement before the Court with the purpose of dividing the asset and therefore identifying the seized/confiscated portion of it which can be realised. At some point this will need to be regularised at the Cadastral registry.

6.15. Where the immovable asset is illegally occupied the AM should immediately commence an administrative procedure aimed at vacating the property. If the occupants fail to vacate the property on the expiry of the notice period, an Order of Eviction should be issued. The Order of Eviction should direct the occupants to vacate the property within a specified period from the date of notification of the measure. If the occupants do not vacate the asset within the aforementioned deadline, the AM will take steps to enforce the eviction with immediate effect.

6.16. The AM should repeat the inspection 30 days after the aforementioned notification, in order to verify the actual vacation of the property.

7. Movable Assets

I. Vehicles

7.1. The generality of vehicles usually refers to motor vehicles but can include vessels, aeroplanes and other mechanised forms of transport. When contemplating taking up a vehicle the AM should consider the following factors and the cost implications:-

- The likely length of time the vehicle will remain in a state of seizure;
- The complexity of the vehicle and its long term storage requirements *e.g. If it's a high end car does it need the engine starting regularly, should the wheels be turned over and the brakes used. If it is an aircraft, it should be hangered and regularly maintained. If it's a vessel - should it be removed from the water? This is not an exhaustive list and each type of asset will have its own requirements.*

II. Livestock

7.2. In the case of livestock or other animals, birds or reptiles, the Asset Manager or representative of the Agency shall make provision for their welfare by lodging them with pre-arranged hosts such as a farm, zoo, veterinary clinic, animal welfare home or other place as deemed appropriate and that meet acceptable standards until a decision is made to return or dispose of them⁷.

7.3. Pre-notification to the Agency by the competent authority investigating is especially important in these instances to ensure proper planning for receiving the asset takes place. The Asset Manager will be responsible, with the assistance of others in the Agency as necessary, for negotiating payment of costs to the host⁸. A written agreement should be made with the host in accordance with agreed contracting guidelines drawn up by the Agency but in practice will be somewhat at the discretion of the Asset Manager who will use his 'best endeavours' to manage the asset.

7.4. As a general rule, the Asset Manager shall seek the agreement of the prosecutor or the court to dispose or sell livestock as quickly as possible under the special provisions rule at para 9.23 below in order to: reduce maintenance costs, the possible deterioration of the asset, or on health and safety grounds. Any monies accruing should be deposited in an interest bearing escrow account with the Central Bank which, if ordered by the court, may subsequently have to be paid back to the owner .

III. Artefacts

7.5. Items which are of special historical, scientific or artistic value shall, if seized, be entrusted to the care of an appropriate institution competent for safe-keeping such items. Where possible this should be a government facility where the artefacts can be stored at little or no cost.

⁷ As with all livestock a speedy decision on return or disposal is necessary. Disposal could include slaughter if the livestock is edible stock. Donation to a Zoo is one option for rare species.

⁸ This paper envisages that necessary budget provisions will be made to the Agency for operating costs.

IV. Precious stones and metals

7.6. In the case of precious stones or metals the Asset Manager or other appropriate person within the Agency shall arrange for them to be entrusted to the Central Bank for safe-keeping. The same principle applies in the case of temporary storage being necessary.

8. Disposal (other than by sale)

[Explanatory note: this chapter deals with the disposal of assets other than by sale which is covered in part 9 below. Disposal will normally take place after a Confiscation Order has been made by the Court unless the Court orders confiscation at the time of seizure as in the case of livestock, perishable or hazardous goods. There are four main ways of disposing of assets: destruction, donation, diversion and sale. These are covered in turn below.]

As stated in the explanatory notes at para 8.3, the law refers to the sale of assets, not other types of disposal[.]

I. General Disposal

8.1. The Agency or Asset Manager can only dispose of an asset on the authority of the Court after a final Confiscation Order has been received. Disposal should be carried out as soon as practicable to prevent unnecessary costs being incurred in storage.

8.2. Consideration should be given to destroying any asset that is not suitable for public sale, for example, any asset:

- that is likely to be used for carrying out further criminal activity;
- for which ownership constitutes a criminal offence;
- that is counterfeit, or is a threat to public safety.

[Explanatory note: it is unlikely that such items or goods will be placed in the Agency's charge but it is possible, and may, for example, form part of an inventory of the contents of a business or house that had not previously been fully inspected by the competent authority investigating. The most appropriate course of action might be to transfer such items to the competent authority.]

8.3. The Asset Manager or a representative of the Agency should, where necessary, seek expert advice from within government, or if necessary the private sector, to assist in the disposal and/or sale of assets of a specialist nature⁹.

8.4. In accordance with the Law, the Court shall inform subjects that are parties in the procedure as well as the Agency regarding the decision issued for disposing of confiscated or seized assets.

8.5. After acceptance of the final decision of the competent court for disposing of the assets, the Agency will invoke the procedure for disposing the assets in accordance with the law in force.

8.6. The Chief of the Agency, at his discretion, may form a committee, of three persons or more to review and recommend which assets should be destroyed, donated, diverted to government use or sold. The report shall detail the reasons/rationale for the recommendations made and be signed by all members of the committee. The final decision rests with the Chief of the Agency.

⁹ 'Specialist nature' here refers to assets with a narrow market appeal or requires special handling and storage due to the delicate nature or fragility of the asset.

[Explanatory note: if not already provided for in legislation, the Agency or the Asset Manager should have a legal gateway to exchange information with prosecutors, judges and the prosecuting agencies and to be able to request information for the purpose of effectively managing and disposing of an asset subject to a court order]

II. General Disposal

8.7. An asset that has no commercial value or the usage date has expired or it has lost its technical and technological attribute shall be destroyed.

8.8. An asset that is in legal circulation but cannot be sold, donated or diverted to government use shall be destroyed.

[Explanatory note: due to the condition of some assets or for some other reason, there may not be a market to sell certain types of assets, even though they are in legal circulation. The only option available may be to destroy the asset].

8.8.1. An asset – seized or confiscated - that is perishable, or is likely to deteriorate in value quickly, shall be liquidated, donated or sold as quickly as possible and the monies lodged at the Bank, or it shall otherwise be destroyed.

8.9. Hazardous goods such as chemicals or pharmaceutical drugs that may be contaminated or where their provenance or trustworthiness cannot be proved and therefore cannot be sold or donated, shall be disposed of as soon as practicable and in accordance industry guidelines.

[Explanatory note: in the case of pharmaceutical drugs, most good hospitals have facilities for their disposal. The Agency may wish to investigate this option. The Agency or the Asset Manager may need to seek specialist assistance or advice to dispose of other hazardous goods such as oils, chemicals and similar products].

8.10. Disposal by destruction or where the asset is placed beyond use shall comply with all relevant health and safety codes and guidelines in order to protect staff and other persons.

8.11. Disposal by destruction shall comply with any rules and codes designed to protect the environment, for example, water, air, wildlife, inhabited areas and land.

8.12. Destruction of assets should be witnessed by the Asset Manager or designated member of the Agency, or the Committee, as directed by the Chief of the Agency. A report shall be prepared detailing:

- the asset or quantity of assets destroyed
- the names and details of those present
- the place, date and length of destruction
- the method used
- any residue, waste and what was done with it, and
- signatures that destruction of the relevant item has taken place and that the item is now beyond use.

[Explanatory note: The Chief of the Agency can determine who should be present at the destruction of an asset, for example the Committee if this is established. The important point is that destruction should be witnessed by an appropriate person or persons within the Agency and the details recorded].

8.13. The Asset Manager or a representative of the Agency shall ensure that the Asset Register is completed after destruction of the asset(s) and other relevant documents maintained.

III. Donations

8.14. Exceptionally, on the recommendation of the Committee and the express authority of the Chief of the Agency, [and – see para 8.6], certain assets on which a confiscation order has been received from the Court may be donated to hospitals, schools, or other similar institutions for social purposes in line with the Sustainable Development Goals. *[Does this need a Courts authority?]*

8.15. Assets which may qualify for donation include:-

- Medicines and pharmaceutical drugs for which the origin and trustworthiness can be fully verified and for which the relevant institution is willing to accept responsibility. Such assets are unlikely to be sold easily in the market and care should be taken not to skew competition and affect the competitiveness of the market;
- paper or stationary products;
- disability aids such as wheelchairs,
- other items that are deemed in the public interest, on the recommendation of the Committee and the express authority of the Chief of the Agency.

8.16. Exceptionally, and on the express approval of the Chief of the Agency, [and on the recommendation of the Committee – see para 8.6 above] assets that are considered to have historical, archaeological, ethnographic, cultural or humanitarian value, may be offered to state authorities, cultural institutions responsible for protecting cultural inheritance, humanitarian organisations, or other similar bodies for justified purposes.

8.17. The Asset Manager or representative of the Agency shall ensure that the Asset Register is completed after donation of the asset(s) with full details of the recipient(s) and any other relevant documents maintained.

IV. Diversion of assets to Government use

8.18. Exceptionally, and on the express authority of the Chief of the Agency, [and on the recommendation of the Committee – see article 8.6 above] certain assets on which a confiscation order has been received by the Court may be taken into government use, free of charge. *[Does this need a Courts authority?]*

8.19. Assets which are most likely to qualify are typically, buildings and real estate but can potentially relate to any type of asset. The process for donation must be transparent and the government agency wishing to take possession of the asset should make a full 'business case' setting out compelling reasons for their request and the cost/benefit for them and the government. The Chief of the Agency [on the recommendation of the Committee – see para 8.6 above] shall consider any competing requests before arriving at a decision.

[Explanatory note: the Chief of the Agency should consider obtaining ministerial approval for assets over a certain threshold value – to be determined. The Chief of the Agency may also wish to convene and chair an independent panel or the Committee to help him consider business cases. This will assist in demonstrating transparency and integrity of the process and allow for social reuse of assets in line with the Sustainable Development Goals].

8.20. The Asset Manager or representative of the Agency shall ensure that the Asset Register is completed upon diversion of the asset(s) and all relevant documents maintained.

9. Disposal by sale

I. Sale (other than business or real estate)

9.1. In accordance with the Law the Court shall inform subjects that are parties in the procedure as well as the Agency regarding the decision issued for selling confiscated assets. The Asset Manager or a representative of the Agency shall ensure this action has been taken before the asset is sold.

9.2. In accordance with the Law (Criminal Procedure Code) all income received from the sale of an asset shall be deposited in a bank account of the Agency in the Central Bank of the Republic of Uzbekistan.

9.3. In accordance with the Law, when the Court or other competent authority decides to return assets in the procedure, the Agency shall be obliged within fifteen (15) days to execute the decision. The Asset Manager or a representative of the Agency shall ensure that the date and action carried out is recorded in the Asset Register. *(Comment: In the case of seized assets to be restored to an individual, the Asset Manager may wish to check, where possible, if that individual is in debt for any state fine, levy, tax or other court order and liaise as necessary with the prosecutor or judge to authorize funds from a sale to settle the debt).*

9.4. Proceeds from the sale of confiscated assets are the property of the Republic of Uzbekistan. However, where there is a lien on the property by a third party, for example a mortgage, loan agreement or other such obligation, the Agency on instructions from the Court, may be obligated to negotiate an acceptable settlement of the debts from the sale of the asset.

[Explanatory note: This issue should be addressed with the prosecutor and the Court Service to clarify the legal situation. This article may therefore need amending or changing].

9.5. Assets shall be sold as soon as practicable after the confiscation order has been received from the Court by the Agency after the approval by the Committee and the Chief of the Agency.

9.6. The Committee will verify the content, quantity, quality and determination of the open market value of the assets specified in the list prepared by the Agency and shall verify if the asset(s) is in a condition for selling. In accordance with paragraph 9.24 below, account will need to be taken of the possible distressed nature of the sale and that a warranty or guarantee cannot be provided.

9.7. After approval of the list by the Committee, the AM shall prepare for the implementation of the auction procedures and shall:

- distribute to the participants in the auction the documents needed for selling the asset(s);
- evaluate the tenders in the auction according to the procedures determined;
- select the winning bid according to the tender procedures. The winning bid shall be countersigned by members of the Committee;
- the Committee shall prepare a report on the outcome of the tendering process including data on persons that have submitted offers, information on the assets, starting price, height of the offers for each offer, reasons for selling, selling price achieved and the name of the buyer of the asset.

9.8. The Asset Manager or representative of the Agency shall ensure that the Asset Register is completed upon sale of the asset(s) with the sale price and details of the recipient. All relevant documents associated with the sale shall be maintained for at least 10 years from the date of sale.

II. Tender procedures

Explanatory note: these tendering procedures should be sufficient for requirements. There may be more detail and requirements on how to run a public auction in the regulations approved on July 15 2009¹⁰}

9.9. Subject to the Special Provisions at Article 9.23, sale shall be by public auction. This can be conducted by the Agency or by using the services of a public auction house. In either case, items to be sold shall be announced at least seven days before the public auction in at least one daily national newspaper as well as on the internet page of the Agency with a detailed list of the items to be sold.

9.10. Announcement of the sale of assets should include:

- instructions on the process for sale and purchase by the buyer, including the place, time and other relevant information such as pre-auction inspection arrangements and timescales for payment and collection;
- the type, quantity and condition of the assets, including notice that the asset(s) are being sold “as seen” without warranty or guarantee;
- value, deposit requirements;
- terms of payment i.e. form of payment.

9.11. Members of the Agency, competent authorities, or any other government officials associated with the sale of confiscated assets are banned from making bids at public auction or having bids made on their behalf. Officials who fail to adhere to this rule may be subject to disciplinary procedures and the purchase ruled null and void.

9.12. The Asset Manager, at least one other member of the Agency, [or the Committee as determined by the Chief of the Agency] shall be present at the auction to ensure procedures are properly carried out.

9.13. In the case of auctions held by the Agency, participants in the public auction are required to deposit 10% of the starting price of the asset being sold prior to the auction commencing. This deposit is to be held by the Agency.

9.14. When selling any asset the Asset Manager [or the Committee] shall establish a minimum price and allow timelines for appropriate sale. Where a specialist agent has been employed to sell the asset, the asset may not be sold for a price lower than the value which has been established - in writing- by mutual agreement.

[Explanatory note: unless otherwise directed by the Court the Asset Manager and the Agency should endeavour to obtain value for money in any sale and if necessary delay the sale if there is a likelihood of achieving a much better price in the near future.

9.15. Listed sales items should not be sold under their estimated market value. If at first, the estimated market price is not achieved, the Asset Manager or a member of the Agency will schedule a new auction at which

¹⁰ 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

items can be sold under the estimated value but not below the estimated value lowered for one quarter of the estimated value.

9.16. If the assets remain unsold after the second auction, on the authority of the Chief of the Agency, the Asset Manager or Committee may invite written offers and sell the asset to the highest bidder. The Agency should ensure that this process is conducted fairly and transparently to avoid accusations that might affect the integrity of the process.

9.17. The purchaser shall pay the full purchase price within five days of the successful bid and take possession within 10 days. Unless agreed with the Agency in advance, failure to take possession of the asset within the period allotted may incur storage charges. Warning of such charges should be included in the pre-selling instructions.

9.18. The successful bidder shall take possession of the asset only after proof of payment has been received by the Agency or auction house.

9.19. In the event the buyer does not pay within the deadline at para 9.17 above, he shall lose his deposit at para 9.14 and the asset shall be offered to the person that offered the second highest price in the auction. The deposit is recorded as extreme revenue in the Consolidated Budget of the Republic of Uzbekistan.

9.20. Minutes of the auction containing details of the starting price, bidder, selling price and data on the buyer shall be maintained in accordance with para 9.4 above.

9.21. Within two days of the asset being sold, the Agency shall for three days publish the minutes in accordance with para 9.2 above. Appeals can be submitted within this period and will be reviewed by a senior manager in the Agency or by the Committee.

9.22. In the case of appeals submitted the appeals shall be reviewed by the senior manager or Committee within five days from the day appeals are received.

III. Special selling procedures

9.23. An exclusion from the provision in para 9.9 above is where there is no possibility of arranging a full public auction, for example in the case of perishable goods or livestock, where there is a potential risk that the value of the asset could quickly diminish due to its nature or where there is a risk to the health and safety of the livestock/animals, or persons handling the livestock/animals, or others coming in to contact with the livestock/animals. In such cases, the Asset Manager together with the Procurement section of the Agency shall adopt a special procedure to sell the asset.

[Explanatory note: as discussed at para 7.4 above the Agency cannot sell such assets on its own volition but will require the authorization of the prosecutor or Court. Provided this is obtained, the decision to invoke the 'special selling procedures' should be with the Chief of the Agency].

9.24. Invocation of the special selling procedures may be authorized in writing by the Chief of the Agency or a person designated by him [or the Committee]. Rules for these special procedures shall be prepared by the Agency and should be transparent. They should include:

- the reason for invoking the special selling procedures and the consequences of not invoking them;
- a minimum price for the asset(s) to be sold based on the open market value and then discounted to take into consideration the distressed nature of the sale; and

[Explanatory note: this may be up to 50% maximum; the precise amount is at the discretion of the Chief of the Agency].

- notification in writing to the owner (if known) of the asset from whom it is being seized or confiscated;

9.25. The rules should allow the Agency to tender for offers and for them to be quickly assessed by the Committee for recommendation and acceptance.

9.26. The sale shall be conducted as a public auction in all other respects and as far as practicalities allow given the short timescales involved. If possible, the sale should be conducted at the location at which the asset is located.

[Explanatory note: Not every detail is described here. The Agency should develop its own practice. In writing more detailed guidance on special selling procedures the Agency may wish to consult the State Assets Management Agency.]

9.27. It has been the experience of some States that contracting international auction houses to market sell assets that may have a limited market in the home state (Uzbekistan) can realise greater value from the asset than might otherwise be the case. For example, there may only be a limited market for high end motor cars (e.g. Ferrari) within Uzbekistan but if marketed to the global community greater interest and value would be created. This would also apply to high end yachts, aircraft and similar vehicles.

IV. Sale of businesses or real estate

9.28. The principles in parts 9i and 9ii above apply in so far as can be applicable to sale of a business or item of real estate. Time limits may need to be extended to ensure the widest possible public notice.

9.29. The sale of a business or item of real estate requires specialist services and may be provided by a 'special manager' appointed by the Court or the Agency or a licensed real estate agent.

9.30. The Agency will prepare special administrative procedures to deal with the sale of a business or item of real estate but the same principles apply as in the case of the sale of other assets in that the process shall be open and transparent and sale shall as far as possible take place by public auction.

[Explanatory note: as mentioned above, this is a specialist area and requires specialist procedures. It is not clear how the Agency could take forward this aspect of the sale of assets and the extent of the role of the Court. Hence, this section is not prescriptive. It is recommended that special procedures are written when it becomes clearer how the Agency intends to manage the process.]

The practice in most countries is that a Court appoints a 'Receiver' who is normally a qualified lawyer or solicitor whose normal role is to take over ailing or failed businesses on behalf of the Court or other regulatory body. Employing a 'Receiver' from a list of recommended firms can be extremely expensive and the general experience of agencies has been that because fees are paid from the sale of the asset the actual amount of money realized from a sale after expenses have been deducted can be very small, and in some cases non-existent.

Because of this experience, the Irish and UK confiscation agencies have developed in-house receivership models. Essentially, this is where the Court appoints a 'receiver' but the receiver is actually an employee of the confiscation agency full time and manages all the assets on behalf of the agency. This is a much more economical way of operating. See annex C and D for further details on these models.

Appendix A: Pathways for enhanced CEB/AMO

Pathway to Enhanced CEB	Pathway to New AMO
PGO Initiates legislation change request to enhance specifically the criminalisation of the proceeds of crime (several models).	
New laws on possession, use of, benefit accrued through criminal conduct, retrospective period of assessment (after conviction Court looks back over x years to identify prior proceeds of crime).	
Creation of financial investigation specialism. Police investigators trained in financial investigation to trace proceeds of crime in all acquisitive crime cases.	
CEB creates Asset Manager role and conducts internal review of competencies, skillsets, and appropriate training to be delivered.	Legislation to establish new Asset Management Office. Transfer of CEB to form basis of AMO.
CEB Tashkent becomes central office for national asset seizure and confiscation statistics. All prosecution offices and other relevant institutions to report data on asset seizure and confiscation to CEB Tashkent.	AMO becomes central office for national asset seizure and confiscation statistics. All prosecution offices and other relevant institutions to report data on asset seizure and confiscation to AMO.
CEB trains its staff in asset management techniques to professionalise the Asset Manager role.	AMO trains its staff in asset management techniques to professionalise the Asset Manager role.
CEB ensures resources available to manage increased volume of seized assets.	AMO has office, budget and staff appropriate to its workload.
AMO has office, budget and staff appropriate to its workload.	

Annex B – Draft internal rules of Asset Manager

ANNEX B

UZBEKISTAN ASSET CONFISCATION

DRAFT INTERNAL RULES ON THE ROLE OF THE ASSET MANAGER

This document sets out the internal rules governing the role and responsibilities of the Asset Manager (hereafter referred to as the **'AM'**).

These rules take their authority from Law..... (to be specified)

[Explanatory note: there may be internal rules or policies governing the administration of the Agency or guidance on the powers and responsibilities of the Agency contained within the 'Regulations on the procedure for the seizure, sale or destruction of property subject to conversion in state revenue', approved by the Cabinet of Ministers July 15 2009]

Article 1 Role

1.1. The **AM** is responsible for the preservation and management of seized or confiscated assets entrusted to his/her care in cooperation with the court, prosecution, or other competent body, and in accordance with the law in force. The **AM's** primary role is to administer the assets with the aims of providing cost effective and professional asset management.

Article 2 Interpretation

2.1. For the purposes of these rules the terms below have the following meaning:

"Agency" means the Unit, Bureau, Agency or other body designated to manage and liquidate assets deemed to be the proceeds of crime and ordered to be confiscated by a Court of Law.

“asset manager” means a person designated by the Court or Chief of the Agency to administer the asset/s;

“assets” has the meaning of either ‘seized’ or ‘confiscated’ assets and can be considered goods and items of personal property - moveable and immovable - real estate, money and other monetary instruments that are in legal circulation as defined in Law XXXXX;

“confiscation” means permanent suspension of the assets ordered by a final decision of the competent court or another competent authority in accordance with the law in force as defined by Law XXXXX;

“seizure” means the temporary suspension of assets ordered by a competent authority in accordance with the law in force as defined by of Law XXXXX;

“warehouse” means a place of security approved by the Chief of the Agency and designated as such in accordance with the rules of the Agency.

Article 3

Status and Supervision

3.1. The **AM** may be appointed by the Court but is contracted by the Agency designated to manage the Seizure and Confiscation of Assets (hereafter referred to as the ‘Agency’). S/he will operate under the authority of the Chief of the Agency. On a day to day basis the **AM** will report to the Head of the Department for the Receiving, Preserving the Value, and Selling of the Assets [*note: you may wish to review this title as necessary*] who will be her/his line manager.

3.2. The **AM** will abide by the rules and policies as laid down by the Agency in the receipt, storage and disposal of assets and comply with its operating procedures.

[Explanatory note: good practice suggests that the AM should be the most senior person in the agency who may delegate his authority as he sees fit. The court may appoint a specialist asset manager to administer the asset/s. I have taken account of this by ensuring that the appointed AM must abide by all relevant rules and policies as laid down by the Chief of the Agency].

Article 4

Principles

4.1 The **AM** will abide by all relevant codes and statutes with regard to:

- health and safety standards in handling the receipt, storage and disposal of assets
- the preservation of the chain of evidence especially in relation to seized assets
- data protection rules and confidentiality requirements.

4.2 The **AM** will have access to and maintain such records as required by the Agency and comply with relevant document classification and confidentiality requirements.

4.3. The **AM** should be independent of the case s/he is administering, with no previous connections to the owner of the assets or parties being prosecuted, or in any way involved with them, financially or otherwise.

Article 5

Main Duties

5.1 The **AM** shall prepare an income and expenditure plan for the property under his/her administration for approval to the Chief of the Agency in accordance with paragraph 3 of Article 5 of the Administrative Instruction Nr. 1/2010

5.2 The **AM** shall prepare other reports as required by the Chief of the Agency or progress reports on specific cases as requested by the court, prosecutor or competent authority.

5.3 The **AM** will be responsible for managing his/her assets [as befitting the master of the house and good business practice] and will at all times seek to preserve the value of the asset in cooperation with the prosecutor or the court. In this regard the **AM** will have consideration as to the cost of management of the asset in relation to the value of the asset but not to be profit driven.

[Explanatory note: a key aim of the Agency is to be cost efficient and professional. The AM must be able to make representations to the prosecutor or the court where the cost of storing an asset far outweighs its value].

5.4 As the custodian of seized or confiscated assets, the **AM** and the Agency will offer pre-seizure advice to law enforcement agencies, prosecutors and the courts to ensure sound decisions are made and potential problems avoided.

[Explanatory note: this is a fundamental requirement of any cost-efficient and professional asset management office. Notwithstanding the statutory time notifications, the AM should be consulted early where possible and have the experience and expertise to advise prosecuting agencies, prosecutors or Judges during an investigation, in relation to planning any sequestration, restraint or confiscation. The sooner the AM is involved, the better the preparation and asset management plan.]

5.5 The **AM** may, on the authority of the Agency, facilitate reasonable access to assets held by the Agency for the purposes of inspection by the owner (in the case of seized assets) or other authority and for audit or assurance purposes.

[Explanatory note: this is good practice and in line with human rights legislation.]

Article 6

Data Management

6.1 Under the Agency's data management rules, the **AM** may be designated by the Data Controller as an 'authorized user' of a centralized electronic database created to record and track the handling of assets taken into his/her charge.

Article 7 Training

7.1 As an employee of the Agency, the **AM** shall attend training as deemed necessary by the Agency to carry out her/his functions safely and effectively.

[Explanatory note: the Agency has a duty to ensure employees and contracted workers receive appropriate training to carry out their duties safely and effectively. Although not exhaustive, essential training is considered to cover:

- *basic health and safety requirements – the AM should be aware of the potential dangers in handling certain products such as chemicals and know where to seek advice, also in heavy lifting and other identified hazards;*
- *data compliance and data classification;*
- *basic record keeping necessary to ensure the preservation of evidence].*

Article 8 Asset Management

8.1 The **AM** will, as agreed by the Chief of the Agency, put in place a risk management profile and regular assurance regime for the purposes of good management of the assets.

[Explanatory note: it is very important that key risks are identified and strategies and actions put in place to mitigate the risk. A risk profile or profiles should be established. These should be regularly monitored with the help of an internal Agency assurance programme to ensure compliance.]

8.2 The **AM** will not release or dispose of any asset without the express approval of the prosecutor, court or other competent authority which should be in writing.

[Explanatory note: good practice suggests that the AM should have the legal right to sell assets before any confiscation is made for the purposes of a 'value based' approach to management of the asset but which also preserves the rights of the suspect and third parties; for example, if the assets have sentimental value, are irreplaceable or are rapidly deteriorating in value. Uzbekistan law does not allow for this but the AM should be able to take account of this by making representations to the prosecutor or the court as required.]

8.3 The **AM** may be held responsible for any damages to be paid following legal action by an individual in respect of loss or damage to assets due to deliberate abuse, neglect or misuse of the asset.

[Explanatory note: this is to point out that the AM and ASCA may leave themselves open to civil litigation if it can be shown they were in dereliction of their duties.]

8.4 The **AM** is obliged to notify the Court of other assets which could be the object of seizure measures, about whose existence the asset manager was informed during the administration of the goods.

Article 9

Notification and Taking Over of the Asset

9.1 The **AM** may be appointed by the court or the Agency to take responsibility for an asset/s which should be in writing. Where the **AM** is not a direct employee of the Agency, a contract should be drawn up specifying the rules under which s/he is to operate and appropriate remuneration levels. On notification by a prosecutor, court or competent authority as required by the law, the **AM** will make the necessary arrangements to take them into the Agency's control.

9.2 The **AM** shall then complete a report in the prescribed format *[in a form agreed by the Agency]* on the type, quantity and condition of the assets received, the name of the person it has been seized from, its valuation and any other relevant data about the asset. The **AM** shall submit his report to *[head of department or Chief of the Agency?]* and to the prosecutor or court if requested, within *[do you wish to place a time-frame on this, e.g. 15 days?]*

9.3 In valuing the asset, the **AM** should seek to assess its market value. To do this s/he may need to employ the services of a competent assessor and should, where required, make the necessary arrangements for this to be done.

9.4 The **AM** shall inform the court, prosecutor or other authorized person, or the person from whom the property is seized if required, of its estimated market value and in writing.

9.5 The **AM** will liaise as necessary with the competent authority to ensure execution of the decision of a court or competent authority to comply with the 15 day rule under paragraph 2 of Article 7 of the code. To carry out this duty effectively, the AM may seek the expert assistance of others in the Ministry of Justice, *(or Finance?)* or within government.

Article 10

Security and Storage of Assets

10.1. The **AM** is responsible for the safekeeping of assets including their preservation, security, storage and insurance. The **AM** should make provision for the secure storage of assets by establishing as far as possible, with the assistance of the Agency, pre-determined storage facilities or 'warehouses' that meet adequate standards.

[Explanatory note: a 'warehouse' can be a place or field, a safe in an office, a room in a building, a building or lock-up facility, or a bank account, as approved and designated by the Agency. By standards is meant that, depending on the facility, certain minimum standards should apply, for example, high value goods such as jewelry or monetary instruments should be kept in a safe or other appropriate lock-up that meets certain requirements such as a manifoil type lock. Vehicles may have to be or started or driven to remain in reasonable order. (See Operating Procedures for details).]

10.2 Cash, or other monetary instruments that can immediately be converted into cash, should be placed into an interest bearing account as soon as practicable unless it is required to be retained for evidential purposes e.g. forensic testing.

10.3 In the case of an immovable object such as a building or other such fixture, the **AM** should ensure that the asset is clearly marked as such with a reference number and the contact details of the AM, and made secure.

10.4 In the case of livestock or other animals, birds or reptiles, the **AM** will make provision for their welfare by lodging them with pre-arranged hosts such as a farm, zoo, veterinary clinic, animal welfare home or other place as deemed appropriate and that meet acceptable standards until a decision is made to return or dispose of them.

10.5 In the case of perishable goods, the **AM** will, with the agreement and authority of the prosecutor, court or other competent authority, dispose of the goods by sale or destruction, having regard to the cost of management of the asset against its value and/or health and safety requirements.

10.6 Items which are of special historical, scientific or artistic value should, if seized, be entrusted to the care of an appropriate institution competent for safekeeping such items.

10.7 . In the case of precious stones or metals the **AM** should arrange for them to be entrusted to the [National Bank?] for safekeeping.

10.8 In the case of a business or piece of real estate, the **AM** will, as soon as practical, appoint a 'Receiver' [or other legal expert] to assist in managing and disposing of the asset.

[Explanatory note: to be discussed in more detail. This can become very technical and I do not know what the law provides in this area]

Article 11

Disposal and Sale of Assets

11.1 The **AM** may access expertise from within government or the private sector to assist in the disposal and or sale of assets. Where the nature or quantity of moveable goods so requires, the **AM**, with agreement from other relevant government bodies, can call on a specialist agent to assist.

[Explanatory note: this is important in helping preserve the value of the asset especially where it may require specialist care and sales expertise, as well as dealing with claims from 3rd parties and also disposal of difficult or hazardous products.

If not already in provided for in legislation, the AM/Agency should have a legal gateway to exchange information with prosecutors, judges and the prosecuting agencies and to be able to request information for the purposes of effectively managing assets subject to a court order]

11.2 In accordance with paragraph 5, Article 10 above, assets – both seized and confiscated - that are perishable, or deteriorate in value quickly, should be liquidated and/or sold as quickly as possible and the monies recouped and banked, or they should be otherwise destroyed. Hazardous goods should be disposed of in accordance with relevant safety guidelines.

11.3 When disposing or selling any asset the **AM** should establish a minimum price and allow timelines for appropriate sale. Where a specialist agent has been employed to dispose of the asset, the asset may not be sold for a price lower than the value which has been established - in writing- in mutual agreement.

[Explanatory note: unless otherwise directed by the court the AM should endeavour to obtain value for money in any sale and if necessary delay the sale if there is a likelihood of achieving a much better price in the near future.]

In the case of seized assets to be restituted to an individual, the AM may wish to check where possible if that individual is in debt for any state fine, levy, tax or other court order and liaise as necessary with the prosecutor or judge to authorize funds from a sale to settle the debt]

11.4 In the case of real estate confiscated with a final legally valid decision, the **AM** shall inform the Chief of the Agency who may [if legally able] make arrangements for the transfer of the real estate to another government body, free of charge pursuant to the Law.

11.5 Consideration should be given to destroying any asset that is not suitable for public sale, for example, any asset:

- That is likely to be used for carrying out further criminal activity,
- For which ownership constitutes a criminal offence,
- That is counterfeit, or is a threat to public safety.

[Explanatory note: this section may not apply as assets have been defined as those in legal circulation.]

11.6 All sales should be by public auction. The **AM** should ensure that a list of items to be sold is announced at least seven days before the public auction in at least one daily newspaper as well as on the internet page of the Agency with a detailed list of the items to be sold.

[Explanatory note: this is good practice to avoid accusations of corruption but you may wish to consider whether the Agency has the power to dispose of goods within government e.g. cars where a demonstrable business case is made and value for money obtained].

11.7 Listed sales items should not be sold under their estimated value. If at first, the estimated price is not achieved, the AM and the Agency will schedule a new auction at which items can be sold under the estimated value but not below the estimated value lowered for one quarter of the estimated value.

[Who in the agency will be responsible for auctions? Need to discuss extent to which others in the Agency deal with this function].

ANNEX C UK system

In the case of the UK, there is now a provision in the Proceeds of Crime Act 2002, section 267, (for Civil Recovery cases) where the Court appoints a 'Trustee' within the Agency to be responsible for the assets as follows:

- (1) *The trustee for civil recovery is a person appointed by the court to give effect to a recovery order.*
- (2) *The enforcement authority must nominate a suitably qualified person for appointment as the trustee.*
- (3) *The functions of the trustee are:*
 - (a) *to secure the detention, custody or preservation of any property vested in him by the recovery order,*
 - (b) *in the case of property other than money, to realise the value of the property for the benefit of the enforcement authority, and*
 - (c) *to perform any other functions conferred on him by virtue of this Chapter.*
- (4) *In performing his functions, the trustee acts on behalf of the enforcement authority and must comply with any directions given by the authority.*
- (5) *The trustee is to realise the value of property vested in him by the recovery order, so far as practicable, in the manner best calculated to maximise the amount payable to the enforcement authority.*
- (6) *The trustee has the powers mentioned in Schedule 7 of the Act.*

In the UK, the Trustee works within the Civil Recovery Division of the National Crime Agency and has a small team of between five and eight officers. He manages a portfolio of around £10m. As a Trustee, all the property he manages on behalf of the Court and the Agency are in his own name. He therefore manages and sells the properties under his own name.

For information, the following are the responsibilities of the Trustee's post from his Role Profile:

Manage and lead the Recovery team in the legal management and realisation of assets.

To ensure all functions of the Trustee for Civil Recovery are carried out in accordance relevant legislation.

Authorise asset management activity in line with current legislation and manage risks as appropriate.

Authorise payment for goods and services properly incurred during the course of recovery action.

Responsible for service delivery and performance through the effective management and deployment of resources, ensuring activities are in line with best value and the agency's strategic aims.

Provide advice on legislation, policy, tactical options and evidential opportunities to assist the planning of investigations and operations.

Manage and monitor compliance in the collection, recording, quality assurance, retention, analysis and dissemination of intelligence and reports in accordance with the agency's policy.

Manage the security and accuracy of intelligence, maintaining confidentiality, sensitivity and a duty of care.

In brief the Trustee is appointed by the High Court as Trustee for Civil Recovery and is accountable both to the Court and to the Agency. There is a legal requirement under s267 of POCA 2002 for the Agency to nominate a "suitably qualified person". Once appointed by the court the Trustee has a range of powers set out under Schedule 7 of POCA 2002, but these include power to buy, sell, instruct agents, commence legal proceedings, sue or be

sued etc. All of the property management is sub-contracted by the Trustee to the private sector. The Estate Agents the Trustee instructs have property management facilities. They collect rents on the Trustee's behalf and deduct 10-15% as their fee for managing the property. They also ensure that the Agencies' insurers Codes of Practice are being adhered to (e.g. locks changed, systems drained down, letter boxes sealed, combustible waste removed etc).

The following is a sample of the tasks that the Trustee's team would undertake to manage the assets:

Case Name:	Recovery Officer:	
Jurisdiction:	Financial Investigator (FI):	
Date of Order:	Lawyer:	Paralegal:

Task	Task Completed	Notes
Case Handover Meeting with FI		
Copy of Recovery Order on File		
Risk Assessment sent by FI		
Update Log sent by FI		
End of Activity Report sent by FI		
Land Registry docs sent by Legal		
Property: Insurance in place		
Chattels/Vehicles: Insurance in place		
Property: Management Agents instructed		
Property: Estate Agents/Auctioneers instructed		
Property: Solicitors instructed		
Property: Letter to Mortgage Company		
Chattels/Vehicles: Management/Selling Agents instructed		
Letter to Banks		
Letter to Pensions/Investments company		
Management Information system (MIS) updated for each asset		
Property: completion statement in and filed away.		
Property: insurance cancelled		
Property: estate agents/managing agents/solicitor stood down		
Case Closure: Review of file by SG4/Trustee		
Case Closure: Feedback to FI/Lawyer		
Case Closure: Closure Log		
Case Closure: End of Activity Report		
Case Closure: MIS closure requested		
Case Closure: Joint Asset Recovery Database (JARD) closure requested		

ANNEX D Irish System

In Ireland, the asset management agency, known as the Confiscation of Assets Bureau (CAB), operates a receivership function within the Bureau. Their approach is to secure the assets and have them controlled by a court appointed receiver, which in all cases is their in-house legal officer who is a solicitor, and who has responsibility to preserve and protect receivership assets.

The management of receiverships and other assets is placed with an asset manager/administrator. It is envisaged that much of the burden of administration of such assets be devolved from the receiver to the proposed asset management/administrator role. This will be expected to have a positive impact on the control and disposition of the assets and the receivership estate. It is also envisaged that the role of the investigator in dealing with asset administration will primarily pass to the asset manager/administrator.

A significant saving will be that where the in-house solicitor is the receiver, his time will not be diverted from legal matters.

The reorganisation of receivership administration will involve devolution of asset management and administration tasks from the receiver and others to the asset manager/administrator.

Notwithstanding the development of the asset manager/administrator, the receiver will be still be the office holder and will retain ultimate responsibility for the asset. This is a requirement at law.

The development of the asset management role is intended to place the administration of receivership assets in the hands of a manager/administrator. The appointment of the asset manager will assist timely and orderly completion of receiverships.

The responsibilities of the asset manager are seen as:

- Taking possession/control of the asset on behalf of the receiver following appointment;*
 - Supervision of day to day activities of asset management;*
 - Maintenance planning and site visits;*
 - Accounting for all income;*
 - Accounting for expenses;*
 - Control of necessary expenditure – final authorization from receiver or other authorised signatory;*
 - Safekeeping of assets including security and insurance;*
 - Assessment and verification of reasonable expenses to be paid from seized assets;*
 - Avoidance of diminution of value in assets – maintenance of assets held for the long term;*
 - Preparation of sales information/memorandum;*
 - Preparation of asset management reports (current values, estimated outcomes); and*
 - Preparation and maintenance of overview chart of all assets and receiverships to allow for on-going review.*
- However, there are certain responsibilities which should only be executed in close consultation with the Receiver. These include:*
- Proactive management of assets;*
 - Disposal of wasting assets, chattels etc.;*
 - Review of contractual services;*
 - Liaising with other professionals as necessary e.g.: valuers, agents, auctioneers and solicitors to dispose of assets;*
 - Engaging legal and other services;*

*Liaising with legal representatives on contracts;
Devising and agreement of marketing strategy; and
Assessment of offers for assets and advise receiver.*

While the asset manager should have sufficient authority to take appropriate action in line with delegated tasks, it will be incumbent on the asset manager to report to and maintain constant liaison with the receiver on maintenance and to plan retention and disposal of assets in line with receiver/Bureau policy and strategy. The retention by the receiver/investigators of detailed involvement in asset management will not lead to the efficiencies this role is expected to achieve.

