



# Conference of the States Parties to the United Nations Convention against Corruption

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### Asset recovery

## Revised draft non-binding guidelines on the management of frozen, seized and confiscated assets

### Note by the Secretariat

1. In its resolution 7/1, entitled “Strengthening mutual legal assistance for international cooperation and asset recovery”, the Conference of the States Parties to the United Nations Convention against Corruption encouraged States parties to the Convention and the United Nations Office on Drugs and Crime to continue sharing experiences on the management of frozen, seized and confiscated assets, identifying best practices as necessary and building on existing resources, and to consider developing non-binding guidelines on that issue. Conference resolution 7/1, and Conference resolutions 5/3 and 6/3, are aimed at enhancing the effective implementation of article 31, paragraph 3, of the Convention, which requires States parties to adopt measures to regulate the administration by the competent authorities of frozen, seized or confiscated property.

2. Accordingly, the secretariat, on the basis of the UNODC study entitled *Effective Management and Disposal of Seized and Confiscated Assets – 2017*, and in view of the discussions held at the international expert group meeting on identifying good practices in the management and disposal of seized and confiscated assets, held in Washington, D.C., in December 2017, developed draft non-binding guidelines on the management of frozen, seized and confiscated assets ([CAC/COSP/WG.2/2018/3](#), annex) and submitted them for consideration by the Open-ended Intergovernmental Working Group on Asset Recovery at its twelfth meeting. At that meeting, many speakers welcomed the draft non-binding guidelines and expressed the view that more time should be allocated for further review of and making comments and holding discussions on those guidelines.

3. The draft non-binding guidelines were also considered by the Implementation Review Group at its second resumed ninth session, held from 12 to 14 November 2018, in conjunction with a revised version of the draft non-binding guidelines reflecting comments received from States parties (see [CAC/COSP/IRG/2018/CRP.14](#)). At that session, many speakers expressed the view that the secretariat should continue to collect proposals and recommendations on the management of frozen, seized and confiscated assets from States, including as part of and until the end of the second-cycle reviews of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, with a view to making them more

\* [CAC/COSP/2019/1](#).



objective and representative of the diversity of practices and legal and institutional frameworks of States parties. The secretariat informed the Group that all comments and suggestions would be considered and incorporated into a revised document that would be made available in all the official languages of the United Nations.

4. Accordingly, in a note verbale dated 28 January 2019, the secretariat invited States parties to provide additional views on the draft non-binding guidelines. The comments received were incorporated in a revised version of the draft non-binding guidelines which was submitted to the Implementation Review Group for consideration at its tenth session, from 27 to 29 May 2019, and to the Working Group on Asset Recovery for consideration at its thirteenth meeting, on 29 and 30 May 2019 (see [CAC/COSP/WG.2/2019/3](#)). Further comments were made by several States parties during the two meetings. The secretariat confirmed that it would include those comments in a revised document to be made available to the Conference at its eighth session, together with any other comments States parties might wish to submit.

5. The revised draft non-binding guidelines contained in the annex to the present note reflect, to the extent possible, the comments received from States parties to date.

## Annex

### **Revised draft non-binding guidelines on the management of frozen, seized and confiscated assets**

#### **Background and purpose**

1. In its resolution 7/3, the Conference of the States Parties to the United Nations Convention against Corruption recommended that the United Nations Office on Drugs and Crime take into account the priority areas for technical assistance identified during the course of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption in the development, implementation and, if required, revisions of its thematic, regional and country programmes.
2. The outcomes of the country reviews conducted in the framework of the Implementation Review Mechanism indicated that several States parties had faced particular challenges and had identified corresponding technical assistance needs in connection with the implementation of article 31 of the Convention. Among them, the administration of frozen, seized and confiscated assets featured prominently. The main challenges reported by States in that regard were the absence of a body tasked with the management and disposal of frozen, seized and confiscated assets and the lack of an effective legal framework governing the administration of such assets.
3. Article 31, paragraph 3, of the Convention against Corruption requires States parties to adopt, in accordance with their domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered by the Convention.
4. In addition, in its resolution 7/1, the Conference of the States Parties encouraged States parties and UNODC to continue sharing experiences on the management of frozen, seized and confiscated assets, identifying best practices as necessary and building on existing resources, and to consider developing non-binding guidelines on that issue.
5. The present revised draft non-binding guidelines are aimed at assisting States parties in addressing the main challenges faced regarding the management of frozen, seized and confiscated assets at the national level.
6. Bearing in mind the non-binding nature of the guidelines, States parties may wish to take them into consideration, where appropriate, in improving their domestic legislation and procedures on asset management. While the domestic management of frozen, seized and confiscated assets can also be relevant to assets that are subject to return to another State or that are being returned from another State, the focus of the present non-binding guidelines is not on the administration of proceeds of crime subject to a country's mutual legal assistance obligations, therefore, particular issues that may arise with respect to assets that are returned or subject to return are not specifically addressed in the guidelines.
7. For the purposes of the present non-binding guidelines, the terms "freezing", "seizure" and "confiscation" are to be interpreted in accordance with the Convention.

#### **A. Administration of assets and, where possible, their disposal prior to final confiscation**

##### **Guideline 1**

Prior to taking any action to freeze or seize an asset, assessing the targeted asset with a view to deciding whether it should be frozen or seized and determining the optimal enforcement option in that regard may be important considerations. Therefore, to the degree feasible, States may wish to consider allocating adequate resources and capacity for this pre-seizure planning stage.

States may also wish to take appropriate steps to preserve the assets for later confiscation, including maintaining and, if possible, increasing the value of the assets.

#### **Guideline 2**

The pre-confiscation sale of an asset, with or without the owner's consent, can be a means to reduce associated costs, including storage costs, and to secure the value of the proceeds from such sale until a final decision is reached.

Subject to domestic law, States may wish to consider permitting, in defined scenarios, pre-confiscation sales, in particular when the assets, including immovable assets, are: (a) perishable and rapidly depreciating; (b) too burdensome or costly to maintain relative to their value; and (c) easy to replace.

States may also wish to consider developing mechanisms to ensure that liquidated assets are accounted for and properly preserved until a final order is issued.

#### **Guideline 3**

A range of interim measures are available for consideration, such as retaining the asset in the possession of the owner or possessor, subject to restrictions or conditions on use, and the interim use of assets whereby the assets are placed under the custody of a third party, in line with domestic legal systems. Taking into account the nature of the assets to be managed, States may wish to consider providing for such interim measures. In addition, States may wish to consider adopting mechanisms to allow for the destruction of assets that are unsafe, illegal or hazardous, or that have no commercial value, after the assets have been frozen or seized.

#### **Guideline 4**

The protection of bona fide third parties during the execution of interim measures is important. Therefore, States may wish to consider adopting legislative or other measures to protect bona fide third parties, including by providing them with an opportunity to challenge the interim measure before a judicial authority.

### **B. Enforcement of confiscation orders and the use of confiscated assets**

#### **Guideline 5**

There are several options available with respect to confiscation orders. States may wish to consider providing a range of such options, in particular object-based and value-based confiscations, as appropriate. Practitioners may wish to take into account the most cost-efficient and productive method for the disposal of assets, which may vary depending on the type of asset, when ordering their confiscation.

#### **Guideline 6**

With regard to the allocation of confiscated assets, States may wish to consider articulating in their legislation their fundamental policy preferences for the allocation of confiscated assets, which may include allocation to the national revenue fund or the national treasury or to specific objectives, such as restitution to or compensation of victims, social reuse and the funding of law enforcement.

#### **Guideline 7**

When allocating confiscated assets to specific objectives, States may wish to consider adopting clear rules for determining the beneficiaries, in line with their domestic rules and regulations.

**Guideline 8**

The principles of transparency and accountability are important in the management and disposal of confiscated assets. States may wish to pay specific attention to those principles in managing and disposing of assets, in particular when specific funds or programmes are used, and to consider implementing specific anti-corruption measures.

**Guideline 9**

In cases where the final confiscation order is not granted, States may wish to consider establishing mechanisms, in accordance with their domestic laws, for the prompt return of frozen or seized assets to the owner.

**Guideline 10**

With regard to the confiscation process, States may wish to consider adopting specific legislative or other measures to ensure that all persons having a legitimate interest in an asset be given an opportunity to make their claim known.

**C. Institutional structure for asset management****Guideline 11**

When deciding on the institutional arrangements for the management of frozen, seized and confiscated assets, States may wish to take into account the volume of assets being frozen, seized or confiscated and the skill set already available in their public institutions, with the aim of establishing the most efficient and effective arrangement in accordance with domestic law.

**Guideline 12**

Regardless of the institutional arrangements in place for asset management, States may wish to consider equipping relevant institutions with adequate skills and capacities, and empowering them to enter into the necessary agreements or arrangements, as appropriate, with other public bodies or external contractors, as required for their effective functioning. Such agreements or arrangements may include long-term contracts, on an as-needed basis, to reduce corruption risks that may emanate from emergency or no-bid contractual arrangements.

**Guideline 13**

Having central asset registration systems and databases in place throughout the asset management process is instrumental in accountably managing seized, frozen and confiscated assets. Therefore, States may wish to consider establishing information technology systems and databases for asset registration, as appropriate.

**Guideline 14**

The governance, autonomy, accountability and funding of dedicated asset management structures are all issues requiring due consideration. With regard to the funding of dedicated asset management offices, States may wish to explore the possibility of such offices funding their own operations fully or partially from confiscated proceeds, thus making them economically viable over time by covering all or part of their operating costs.

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