

COMPILATION ON THE MANAGEMENT AND DISPOSAL OF SEIZED AND CONFISCATED ASSETS

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Background

- The Conference of the States Parties to UNCAC, in Panama City in November 2013 adopted resolution 5/3 on facilitating international cooperation in asset recovery.
- Encourages States parties and UNODC to share experience on the management, use and disposal of frozen, seized and confiscated assets; identify best practices as necessary building upon existing resources that address the administration of seized assets, and to consider developing non-binding guidelines on this issue

Background

- In St. Petersburg in November 2015, this mandate was renewed with resolution 6/3 on fostering effective asset recovery.
- Resolution 6/3 reaffirmed 5/3, with the addition of embarking on activities with a view to contribute to sustainable development.

Expert Group Meeting Calabria 2014

- Early 2014 UNODC began work on management, use and disposal of seized and confiscated assets with *Regione Calabria, Italy*.
- April 2014 - expert group meeting - 80 experts from 35 countries, agencies and orgs with experience and expertise in management, use and disposal of frozen, seized and confiscated assets to discuss:
 - management, use and disposal at the domestic level
 - recovery, repatriation or sharing of assets where more than one jurisdiction involved, requiring international co-op and assistance

Calabria Outcomes

- The meeting recognized that approaches countries have taken to creating systems for the management and disposal of seized and confiscated assets are so diverse that it was not opportune at that stage to pursue the development of guidelines on the matter.
- Instead it identified areas that could benefit from further investigation and information sharing.

Vienna International Expert Group Meeting 2015

- 42 experts representing 30 countries,
- In the context of the implementation of Art 31(3) of UNCAC - deepen analysis and exchange experiences concerning management and disposal of frozen, seized and confiscated assets at the domestic level
- Main outcome – UNODC to compile a Publication
 - identifying issues confronting countries when designing legal and institutional frameworks and building operational capacities for the management and disposal of seized and confiscated assets at the domestic level

Compilation on Management of Seized and Confiscated Assets

- Addresses the themes discussed at the expert group meeting in Vienna and incorporates written contributions provided by country experts.
- A draft of the Compilation will now be shared with country experts and feedback incorporated into a final version.
- The Compilation will then undergo a peer review organized by UNODC as a second step of quality control.

Compilation Structure

- Summarises international knowledge products and developments in the area of asset management to date.
- Addresses policy considerations and trends in policy approaches adopted by countries.
- Chapters dedicated to:
 - Interim management of assets prior to final confiscation order;
 - Disposal – after final confiscation determination;
 - Institutional (organisational) arrangements to manage and dispose of assets

Survey Types of Interim Measures

- freezing orders - provide for restrictions to be placed on the use of the asset in the hands of the owner/possessor or in the hands of a third party;
- seizure order –custody and control of asset in hands of law enforcement, a specialized asset management office (AMO) or a court appointed asset manager;
- interim sale, in particular of perishable and rapidly depreciating assets, and retention of the proceeds of the sale;
- interim use by law enforcement or a third party;
- destruction of unsafe or hazardous property.

Role-players during Seizure

- the law enforcement agency that applied for the order such as the prosecuting or investigating authority;
- a specialized asset management office (**AMO**); or
- a court appointed receiver/judicial manager/trustee/*curator bonis* or other administrator.
- Private contractors – valuers, specialised storage facilities procured by the law enforcement agency or AMO

Summary of Outcomes

- The interim phase is concerned 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 fulfillment of a confiscation order once it is made.
- Trend towards finding ever more creative ways to ease the burden and costs of managing seized assets by:
 - ✓ providing for assets to be maintained in custody of owner subject to restrictions
 - ✓ providing for pre-confiscation sale of assets

Disposal Stage

- The disposal stage is concerned with ensuring the court's order is given effect to, i.e. full value of the benefit is recovered from the offender; by
 - Maximizing the returns from the sale of confiscated;
 - Ensuring beneficiaries receive and utilise confiscated property for the purposes intended, be it for the benefit of the State, victims or for social reuse;
- Increasing focus on asset recovery not just a law enforcement tool but on using recovered proceeds to benefit society through social re-use

Disposal

- Reviews mechanisms countries employ to recover judgments that order the offender to pay a sum of money (value-based confiscation orders):
 - Civil law execution proceedings
 - Special criminal confiscation execution proceedings
- Reviews decision-making processes in place for dealing with property declared forfeit (asset based confiscation)

Ultimate Beneficiaries

- Government Revenue Fund
- Special Fund
- Covering costs of the Asset Recovery Program
- Allocations to Law Enforcement (Equitable Sharing)
- Victims
- Victim Organisations
- Social Re-use

Functions

- Asset inspection, appraisal and valuation expertise or services.
- Inventory and Record keeping,
- Database Maintenance
- Storage and transportation facilities management and procurement of specialist facilities, hangars, mooring facilities, etc.
- Procuring specialist skill when needed, business management skills, etc,
- Financial Management and Accounting
- Auditing

Role-players during Disposal

- Law enforcement
- Specialised AMO
- Court appointed judicial manager
- Government entities charged with disposal of government property, Revenue, fiscal, tax entities, Domain receivers, etc
- NGO's

Institutional Arrangements

- Entities located within existing public institutions
- *Entities with additional asset recovery functions located within law enforcement; e.g. **Belgium**, the **Netherlands** (within prosecution), **Thailand** (within the Anti-Money Laundering Office); **US** Marshall's Service (fed police)*
- *Entities experienced in dealing with the management and disposal of property. e.g. **New Zealand** and **Australia** (insolvencies and liquidations regulator) and in **Mexico** (body tasked with managing the sale of public assets, including the privatization of SOE's)*

Institutional Arrangements

- Newly established independent specialised asset management capacity in the public service; e.g *Canada (SPMD)* and *France (AGRASC)* *Italy, Romania, Spain Colombia, Peru* and *Honduras*
- Court appointed private sector service providers appointed on a case by case basis to manage and dispose of criminal assets. Curator bonis, trustees, judicial managers. *England, South Africa* and *Tanzania*

Funding Options

- Revenue allocations from the national budget;
- Proceeds from the sale of confiscated property;
- Interest and income earned from investments made with seized cash and the proceeds of pre-confiscation sale;
- Fees earned from the management of productive assets;

Conclusion

- Appropriate Legislative Framework reflecting policy choices of the electorate
- Strong domestic institutions to manage seized and confiscated
- = Capacity to manage the recovery and return of seized and confiscated criminal property across jurisdictions.