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High-Level Principles on Strengthening Asset Recovery Mechanisms for Combatting Corruption



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Asset recovery is a core component of the international anti-corruption regime and a stated purpose of the United Nations Convention against Corruption (UNCAC). A robust and effective framework for the recovery of proceeds of crime, including the proceeds located in foreign countries, is important for preventing and combatting corruption. Confiscation of proceeds of crime not only deprives corruption offenders from enjoying rewards of corruption but also prevents the laundering and re-investment of proceeds of crime.

UNCAC, particularly its chapters IV and V, while acknowledging the variation in the way that different legal systems carry out obligations domestically, sets out a broad framework for cooperation and assistance with regard to the recovery of proceeds derived from or used in corruption, through identification, freezing, seizure, confiscation, return and disposal of the same. Articles 12 and 13 of the United Nations Convention against Transnational Organized Crime (UNTOC) also require States parties to have the necessary legal framework for asset recovery and for international cooperation and assistance in the recovery of proceeds of crime or instrumentalities used in or intended to be used in transnational organized crimes. Financial Action Task Force (FATF) Recommendation 4 provides that without prejudicing the rights of bona fide third parties, countries should have measures in place to identify, trace, freeze or seize and confiscate property which are proceeds from, or instrumentalities used in or intended for use in money laundering or predicate offences or the financing of terrorism or property of corresponding value. FATF Recommendation 38 provides that countries should ensure that they have the authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate such property.

Furthermore, the political declaration adopted by the special session of the UN General Assembly against corruption, focussed on strengthening domestic and international asset recovery, including¹ by encouraging States parties to: “remove barriers to applying measures for the recovery of assets, in particular, by simplifying their legal procedures, where appropriate and in accordance with their domestic law, and by preventing the abuse of such procedures while safeguarding due process”. It also recognised the need for effective, efficient and responsive international cooperation in asset recovery and return and mutual legal assistance without undue delay and to continue to address challenges in our fight against corruption, including gaps in the implementation of UNCAC. It called on the strengthening of domestic efforts to adequately criminalize corruption offences and prosecuting those engaged in corruption and money-laundering, by taking domestic measures to investigate, trace, freeze, seize, confiscate and return such property as defined in the Convention, and by strengthening international cooperation in asset recovery. It also recognized that a strong and trusting partnership between requesting and requested States, with proactive measures taken by both, is key to successful asset recovery and return.

¹ Paragraphs 42 and 43 of the political declaration “Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation”, adopted by the special session of the General Assembly against corruption, held from 2 to 4 June 2021 at the United Nations Headquarters in New York.



G20 countries have extensively deliberated upon ways to strengthen asset recovery mechanisms as reflected in several documents developed by the G20 ACWG over the years². G20 countries also reaffirmed their commitment to the implementation of Chapter V of UNCAC by endorsing the High-Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery (2016). In the 2018 G20 Leaders' Declaration³, a call was made to “explore the links between corruption and other economic crimes and ways to tackle them, including through co-operation on the return of persons sought for such offences and stolen assets, consistent with international obligations and domestic legal systems.”

This was followed by the development of the Scoping Paper on International Cooperation dealing with Economic Crime, Offenders and Recovery of Stolen Assets in 2020 and building upon the issues addressed in this Scoping Paper, the G20 Presidency commissioned the five International Cooperation Think Pieces (2021), including the Think Piece on ‘Asset Recovery: Practical Enhancements for Mutual Legal Assistance’⁴. In the Think Pieces and the Accountability Report 2020 the differences in legal traditions, laws and procedures, resources and capacities, substantial delays in the provision of informal and formal assistance and difficulties in enforcement of non-conviction-based (NCB) confiscation requests in corruption cases were identified as potential challenges for streamlined and effective asset recovery. It was also recognized that the complexity of Mutual Legal Assistance (MLA) processes in general, an increase in the volume of MLA requests due to increasing cross-border criminal activity and a corresponding varying degree of capacity to process requests, quality or procedural issues related to MLA requests, and the underutilization of open source information and informal networks are among the challenges that prevent an efficient transnational recovery of assets. To address these challenges, the Think Piece lays out several innovative proposals to increase the efficiency of MLA, such as improved domestic case management, increased reliance on open-source information, expert meetings between G20 competent authorities, and effective mechanisms for the provisional restraint of assets suspected to be proceeds of crime.

With a view to overcoming these challenges, G20 countries have developed these High-Level Principles on ‘Strengthening Asset Recovery Mechanisms for combatting Corruption’ aimed at increasing the efficiency of international cooperation and domestic mechanisms related to asset recovery while respecting the domestic legal systems of G20 countries. While implementing these principles, G20 members recognize that fighting corruption requires a strong foundation, which includes respect for international law, a commitment to respecting human rights and the rule of law as well as a commitment to respect the sovereignty of each country and their international commitments and domestic legal systems. Nothing in these principles should be interpreted as enabling a G20 member to undertake activities in the territory of another state. For the purpose of these high-level principles, “corruption” encompasses the offenses established under UNCAC.

² The G20 Nine Key Principles on Asset Recovery (2011), the Nine Key Principles of Asset Recovery Benchmarking Survey (2013), the Country Step by Step Guides on Asset Recovery (2014), Good Practices in asset disclosure systems in G20 countries (2014), Asset Tracing Country Profiles (2012), and the Updated Asset Tracing Country Profiles (2017).

³ Paragraph 29 of the 2018 G20 Leaders' Declaration in Buenos Aires, Argentina, on 30 November - 1 December 2018

⁴ The Think-pieces were completed in March 2021 by UNODC, the World Bank, the OECD, the Financial Action Taskforce and the UNODC/World Bank Stolen Asset Recovery Initiative and presented at the first meeting of the Italian Presidency. While these Think Pieces were not negotiated by the group, and only represent the analysis of the drafting international organization, they can offer helpful insight.



Principle 1: Making the recovery and return of proceeds of crime an anti-corruption policy objective

G20 countries can achieve this principle by:

- i. Enhancing asset recovery at domestic policy and operational levels, and promoting effective cooperation between relevant authorities.
- ii. Providing adequate and effective resources including economic, human, and technical resources, for effective pre-MLA cooperation and efficient formulation of outgoing and processing of incoming MLA requests, and where appropriate, considering internal processes to expedite high priority requests, which can help advance asset recovery.
- iii. Taking measures to enable competent authorities to retrieve information related to assets in that country's jurisdiction, in respect of a person or entity subject to investigation of corruption, in order to trace such assets in a timely manner and share this information in response to a well-supported request, in accordance with the fundamental principles of domestic law.
- iv. Developing appropriate domestic mechanisms to collect, analyze, and maintain information and statistics in relation to incoming and outgoing international asset recovery requests related to corruption or take other appropriate measures, in order to internally monitor trends and track progress with a view to continually make processes more efficient. G20 countries may also consider the utility of publishing statistics related to asset recovery requests, on a voluntary basis.
- v. Sharing good practices that facilitate successful cross-jurisdictional asset recovery and help to overcome challenges and strengthen asset recovery regimes.

Principle 2: Ensuring that tools, mechanisms and processes for the timely and effective identification and tracing of proceeds of crime are available to relevant domestic authorities and can be used effectively for making and executing international cooperation requests for asset tracing and identification

G20 countries can achieve this principle by:

- i. Identifying existing and, where necessary, designating, in application to asset recovery requests from foreign jurisdictions, relevant single or multiple domestic authority(ies)/agency(ies) as the focal point/focal points, as appropriate and in accordance with fundamental principles of domestic law. Thus, facilitating informal/pre-MLA cooperation, including consultation, timely asset tracing and identification of proceeds of crime and also for overall effective domestic coordination.



- ii. Enabling the designated focal point(s) or relevant authorities to obtain or take appropriate measures, in accordance with domestic law, to provide informal/pre-MLA assistance in obtaining information in a timely manner for asset tracing and identification of proceeds of crime, from publicly available sources, as well as relevant domestic registers or databases, or other relevant sources, by working with domestic agencies.
- iii. Enhancing, where relevant and applicable, participation in international cooperation and asset recovery networks or groups such as the Global Operational Network of Anti-Corruption Law Enforcement Authorities (GlobE Network), International Criminal Police Organization (INTERPOL), Egmont Group and the Asset Recovery Inter-Agency Networks (ARINs) as well to consider using other channels for the informal/pre-MLA exchange of information.
- iv. Making proactive and timely disclosure of information on suspected proceeds of crime to foreign jurisdictions, without prejudice to its domestic law or to its own investigations, prosecutions or judicial proceedings, consistent with articles 46(4) and 56 of UNCAC and the relevant FATF recommendations⁵.
- v. Ensuring that domestic mechanisms allow for the identification of beneficial ownership status of a legal person or legal arrangement under investigation in corruption offences including through establishing or strengthening registers on the beneficial ownership of legal persons or alternative mechanisms, consistent with FATF recommendations.

Principle 3: Ensuring the timely restraint, freezing or seizure of proceeds of crime to prevent their movement across jurisdictions and dissipation

G20 countries can achieve this principle by:

- i. To the extent consistent with fundamental principles of domestic law and domestic legal frameworks and in line with relevant international standards, countries should provide competent authorities such as FIUs, law enforcement, investigative, prosecutorial or judicial authorities with the adequate authority, processes, and tools necessary to prevent the transfer or dissipation of assets suspected to be proceeds of crime, in cases where a freezing order is to be sought but not yet entered. Such measures may include suspension of transactions by a competent authority or relevant entity, temporary freezing orders, and any other mechanisms to prevent dissipation of assets suspected to be proceeds of crime, in accordance with domestic law.
- ii. Providing competent law enforcement, investigative, judicial, or prosecutorial authorities, as applicable, with effective mechanisms to freeze or seize assets suspected to be the proceeds of crime in a timely manner, including where the request is made by a foreign country.

⁵ FATF Recommendation No. 40 and Relative Interpretative Note.



- iii. Ensuring competent authorities are empowered and are equipped with internal policies and procedures as well as resources and capacity to manage assets subject to provisional measures to prevent dissipation.
- iv. Enabling, as appropriate and in accordance with domestic law, competent authorities to proactively initiate freezing or seizure proceedings in cases of corruption and related offences, based on information through direct channels or international cooperation and asset recovery networks or groups.

Principle 4: Ensuring that the national asset recovery framework of G20 countries provides for the use of a wide range of legal powers, tools, and measures for effective asset recovery

G20 countries can achieve this principle with the following measures, where consistent with domestic law:

- i. Effective mechanisms for asset recovery, which may include non-conviction-based confiscation or equivalent civil or administrative measures in appropriate cases such as death, flight or absence⁶.
- ii. Effective mechanisms for value-based freezing, seizure and confiscation⁷ and enforcement of foreign value-based freezing, seizure and confiscation orders, as applicable.
- iii. Effective mechanisms for the confiscation of proceeds of crime held in the name of or transferred to non-bona fide third parties.
- iv. Consider adopting measures which require a person suspected of corruption to demonstrate the lawful origin of the property alleged to be liable to confiscation, to the extent that such a requirement is consistent with the principles of domestic law.
- v. Timely enforcement, where appropriate and consistent with Article 54 of UNCAC and domestic law, of foreign asset freezing, seizure or confiscation orders⁸ and consideration of measures such as mutual recognition processes and efficient international cooperation under bilaterally or multilaterally or reciprocally agreed upon conditions.

⁶ Article 54 (1)(c) of UNCAC, G20 Nine Key Principles on Asset Recovery, FATF recommendation 4 & 38.

⁷ Article 31 of UNCAC.

⁸ Articles 51 and 55 of UNCAC.



- vi. Effective enforcement of foreign non-conviction-based confiscation orders as long as such orders meet the minimum legal standards for enforcement. This authority should include being able to effectively respond to requests for enforcement made on the basis of non-conviction-based confiscation orders and related provisional measures, unless this is inconsistent with the fundamental principles of domestic law of the requested country. Countries may also consider mutual recognition of foreign non-conviction-based confiscation orders, where appropriate and consistent with fundamental principles of domestic law⁹.
- vii. Considering alternative resolution mechanisms which may involve settlement agreements in order to facilitate asset recovery.

Principle 5: Ensuring timely and effective coordination and communication between countries' competent authorities, to facilitate timely execution of cross-jurisdictional asset recovery requests

G20 countries can achieve this principle by:

- i. Promoting and developing channels and procedures to allow for timely consultation and communication between central and competent authorities of the requesting and requested State, on a continuing basis, prior to and throughout the mutual legal assistance process.
- ii. Recognizing case specific differences in the execution of asset recovery requests, arising from the interpretation of laws, rules and procedures of each country as well as exchanging information to raise awareness of the respective national legal frameworks, processes and mechanisms.
- iii. Interpreting the dual criminality requirement to be satisfied by focusing on the underlying conduct and not the legal name of the offence. In the absence of dual criminality, consider providing the widest measure of mutual legal assistance, under mutually agreed upon conditions and in accordance with domestic law.
- iv. Proactively engaging in dialogue for seeking and providing clarifications and resolving differences between requesting and the requested State or promoting any other mechanism contained in bilateral or multilateral treaties, as applicable.

Principle 6: Making effective use of open-source and other relevant information for successful asset recovery

G20 countries can achieve this principle by:

⁹ In line with G20 Nine Key Principles on Asset Recovery (2011).



- i. Proactively raising awareness about and assisting other States in obtaining information that is in the public domain, including through a compilation of open-source resources of G20 countries, including “Country Guides on Asset Tracing and Asset Recovery”, if available, and resources gathered by various law enforcement networks. This information may include, if publicly available, property records, asset registers, company registers, or beneficial ownership information.
- ii. Exploring options in accordance with domestic law, to share other information not in the public domain on a voluntary basis, which could be utilised by interested jurisdictions. This information may include non-public beneficial ownership or anonymised money-laundering related data.
- iii. Developing effective mechanisms to verify beneficial ownership information and applying effective measures to deter furnishing of inaccurate information so as to comply with international standards on beneficial ownership.
- iv. Exploring methods to efficiently execute MLA requests seeking authentication of publicly available open-source information for its admissibility as evidence during proceedings related to corruption in the requesting country, in accordance with fundamental principles of domestic law.

