



Tool 5.7 Seizure of assets and confiscation of proceeds of crime

Overview

This tool discusses the requirements prescribed by article 12 of the Organized Crime Convention in relation to seizure of assets and confiscation of proceeds of crime. Implementation of article 12 is essential to facilitate the effective international cooperation discussed in Tool 4.6.

Cooperation mechanisms in different legal systems

There is substantial variation in the methods and approaches employed by different legal systems. Some opt for a “property-based” system, others for a “value-based” system, while still others combine the two.

- A property-based system allows for confiscation of property found to be proceeds or instrumentalities (used for the commission) of crime.
- A value-based system is concerned with the determination of the value of proceeds and instrumentalities of crime and the confiscation of an equivalent value. Some States allow for value confiscation under certain conditions (e.g. the proceeds have been used, destroyed or hidden by the offender).
- Other variations relate to the range of offences with respect to which confiscation can take place, the requirement of a prior conviction of the offender, the required standard of proof, the conditions under which third-party property is subject to confiscation and the power to confiscate the products or instrumentalities of crime.

In short, how a confiscation must be authorized and executed, what can be confiscated and how much proof is required to establish a link between certain property and crime are all matters that vary considerably among States. This poses complications for international cooperation in relation to assets forfeiture and makes confiscation of the proceeds of crime much more difficult. For more on information this topic, see Tool 4.6.

Confiscation under article 12 of the Organized Crime Convention

To the end of streamlining cooperative processes, article 12 of the Organized Crime Convention attempts to bring States into conformity with one another to the extent possible within their respective legal systems. Although the article acknowledges the variation in the way that different legal systems carry out obligations domestically, States are nonetheless called upon to have a broad ability to comply with the provisions of the article. If this article is not implemented, States will be unable to respond to international requests to confiscate.

Article 12 requires States parties to have the necessary legal framework to permit:

- The confiscation of proceeds of crime derived from offences covered by the Convention or property the value of which corresponds to that of such proceeds (art. 12.1 (a))
- The confiscation of property, equipment or other instrumentalities used in or destined for use in offences covered by the Convention (art. 12.1 (b))
- The identification, tracing and freezing and/or seizure of the proceeds and instrumentalities of crime covered by the Convention, for the purpose of eventual confiscation (art. 12.2)
- The application of confiscation powers to transformed or converted property and proceeds intermingled with legitimately obtained property (to the value of the proceeds in question) and to benefits or income derived from the proceeds (art. 12.3-5)
- The power of courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. Bank secrecy shall not be a legitimate reason for failure to comply (art. 12.6).

Please see Tool 4.6 in relation to international cooperation for the seizure of assets and confiscation of proceeds of crime.



See also the UNODC legislative guides at:
www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html