



Federal Ministry  
of Justice and  
Consumer Protection

# Asset Recovery under German Law

- Pointers for Practitioners -

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## 1. Introduction

Effectively combating and preventing the phenomena of cross-border crimes involving financing of terrorism, organised crime and corruption not only require finding the offenders and bringing them to justice. It is also important to recover the material proceeds of the crimes in order to take them away from the offenders and compensate for the injuries suffered by victims. In this process, asset recovery is divided into four phases in terms of chronology: tracing assets, securing them, finally confiscating the assets and putting them to use; it may also involve distribution of the assets. These pointers are divided into those four phases as well.

The various legal bases for asset recovery should be differentiated from one another. The first of these is based upon criminal law. Here, we differentiate between providing support to a foreign criminal proceeding and conducting own proceedings in Germany due to crimes committed abroad. Secondly, turning over assets unlawfully obtained in a foreign country may be achieved by way of a lawsuit under civil law and execution of the judgment rendered. Both a lawsuit in Germany with subsequent execution and the execution of a foreign court judgment in Germany are possible. Particularly in the case of criminal acts by deposed regimes, the effect of sanctions resolved at the level of the United Nations or the European Union may need to be taken into account.

This guide can provide only an initial overview. A list of contact addresses is included at the end; in concrete cases, these could provide additional support.

The German legal provisions cited are accessible at the website <http://www.gesetze-im-internet.de>; which includes translations into English, e.g. of the Criminal Code (*Strafgesetzbuch* - StGB) and the Code of Criminal Procedure (*Strafprozessordnung* - StPO).

## 2. Tracing assets

Independently of the type of proceeding and the associated legal procedures, one prerequisite is always that relevant assets are available in the first place. Therefore, the first step is tracing those assets.

## **(a) Criminal law**

Criminal proceedings are characterised by the goal of asserting the State's claim to impose a penalty; this usually involves imposing a penalty on an individual offender.

### **(aa) Support of foreign proceedings**

All states have a common interest in appropriately penalising criminal offences, thereby not only compensating for individual guilt, but also taking away the material advantages from the offence from the offender. It must be made clear that crime does not pay. The increasing internationalisation of crime and the ease with which assets can be moved across borders require intensive international cooperation. As such, German authorities provide mutual legal assistance in several thousand criminal proceedings per year that are conducted by foreign criminal prosecution authorities. A precondition for support of foreign investigative proceedings is that the investigating state makes a request, the request is granted, and the concrete measure is permissible according to German law. The following comments apply to mutual legal assistance for tracing assets and naturally to the subsequent steps as well.

- **Legal bases**

The Act on International Legal Assistance in Criminal Matters (*Gesetz über die international Rechtshilfe in Strafsachen – IRG*) governs how and under what preconditions support may be provided to criminal proceedings in another country. It forms the basis for the field of mutual legal assistance.

Germany has become a signatory to the important multilateral agreements which are designed to facilitate cross-border asset recovery. Relevant in this regard are primarily Conventions of the European Union, of the Council of Europe (e.g. the European Convention on Legal Assistance in Criminal Matters with its additional protocols, Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, and the Criminal Law Convention on Corruption) and the United Nations (e.g. the Convention of the United Nations of 15 November 2000 against Transnational Organised Crime – UNTOC, and the Convention of the United Nations of 31 October 2003 against Corruption – UNCAC). These are complemented by bilateral agreements between Germany and a single other state.

Pursuant to German legal rules, however, performance of mutual legal assistance is possible without an existing international law agreement as well. In its non-treaty-based assistance with a large number of states, Germany also has good and trusting cooperation in sanctioning and preventing criminal offences.

Section 59 of the IRG is a broadly-framed provision which enables investigative acts for tracing assets; in principle, this is allowed in the same scope as the mutual legal assistance which German courts or authorities could provide to one another.

In addition to the IRG, the provisions of general German criminal procedure law apply to acts of mutual legal assistance. Within that context, measures to trace assets are possible even if there is merely an initial suspicion; this means that there are adequate factual indications that allow the conclusion that an offence has been committed

- **Competent authorities**

Requests for mutual legal assistance are submitted to Germany via various channels of communication; this can be diplomatically via the Foreign Office, interministerially among justice ministries, or directly between public prosecution offices or, in exceptional cases, between police authorities. The proper channels of communication are set forth in the applicable international-law agreement. If no such agreement exists, diplomatic channels of communication are to be maintained. If a request is transmitted in an impermissible manner, it is forwarded to the competent authority and, if necessary, the requesting state is asked to comply with the proper channels.

With the Federal Office of Justice and the Federal Criminal Police Office, Germany has established two asset recovery offices which can provide information to domestic and foreign authorities and, due to the special skills and experiences of those officials, can facilitate and effectively promote cooperation. The asset recovery offices and their availability is detailed below.

Germany is represented through the Federal Office of Justice and the Federal Criminal Police Office in the Camden Asset Recovery inter-Agency Network (CARIN), the network of asset recovery offices, and the Asset Recovery Focal Point Initiative.

The asset recovery offices may themselves undertake investigative measures to trace assets. Furthermore, they forward incoming requests to the locally competent public prosecution office. In Germany, the public prosecution offices are charged with leading criminal proceedings (sections 152, 160 Code of Criminal Procedure (*Strafprozessordnung* – hereinafter StPO). In this process, they take advantage of help from the police and other investigators (section 152 Courts Constitution Act – *Gerichtsverfassungsgesetz* - hereinafter GVG). These investigators have independent competence under the law of criminal procedure (section 163 StPO); however, the public prosecution office is in control of the proceedings (section 161 StPO).

As in purely domestic German criminal proceedings (and consistent with foreign procedural law, although not always identical), some measures require a judicial order due to their compulsory character and/or their intrusion into the basic rights of individuals affected by them. This is the case, for example, with searches or the seizure of documents (sections 98, 102, 105 StPO). Therefore, courts are often also involved in the execution of requests for mutual legal assistance.

- **Practical pointers**

Within the framework of a criminal proceeding, the German law enforcement authorities may carry out financial investigations, including enquiries with regard to existing data (among others, at the resident registration offices, at the national vehicle register, in land registers or by way of centralised account enquiries). Success cannot be predicted for a specific case; this will substantially depend on the state of knowledge in the requesting state's criminal proceedings and associated investigative approaches in Germany. It is important to notify of personal information as concretely as possible, including possible deviating spellings, birth dates as well as information on personal identification documents. The investigation is also facilitated if indications of connections to Germany are explained, such as repeated trips to certain locations, names and addresses of relatives or friends in Germany, or knowledge gained from intensive business relationships to Germany,

Measures against the will of the persons affected may need to be carried out as early as at the stage of tracing assets; this may include intrusion into their rights by way of searches and seizures. German law stipulates that stricter requirements are

necessary in such cases (cf. also Art. 12 (9), Art. 13 (3), Art. 18 (2) UNTOC [United States Convention against Transnational Organised Crime]). Important in this context is dual criminality (e.g. pursuant to sections 67, 66 (2) (1) IRG; cf. Article 18 (9) UNTOC). In practical terms, therefore, it is crucially important to portray in detail the factual situation upon which the domestic proceeding is based in the request for mutual legal assistance. This is the only way to enable the necessary assessment as to whether the preconditions of the relevant German provisions have been met (see also Art. 13 (2), (3) letter (c), Art. 18 (3) UNTOC).

Reasons should be provided which indicate that rapid freezing of assets seems necessary. If the request is to be treated confidentially, this must be explained as well.

Cooperation will be facilitated if a contact person is named in the request, along with availability by telephone and e-mail, as well as information about languages spoken. This enables quick contact in the case of minor questions.

#### **(bb) Carrying out domestic proceedings**

The criminal charges preferred in a foreign country may also lead to the commencement of a domestic criminal proceeding by German criminal prosecution authorities if German criminal law is applicable to the offence in question (section 3 et seq. Criminal Code (*Strafgesetzbuch* - StGB); this could be the case, for example, if the offence – at least in part – was committed in Germany, or if a German national participated in the offence or is a victim of it. German law excludes double punishment for the same offence by different courts.

Another possibility is an initial suspicion of money laundering (section 261 StGB) if there are indications that assets dirtied by criminal offences have been transported to or through Germany. Of course, the elements of the offence of money laundering require a preliminary offence punishable under German law. German law does not have the offence of unjust enrichment. This would be questionable under constitutional law due to the possible associated lessening – or even shifting – of the burden of proof.

If knowledge is gained due to own investigations, however, this might potentially be of use in terms of mutual legal assistance.



## **(b) Civil law**

Independently of involvement of the criminal prosecution authorities, every person damaged by a criminal offence is free to take action under civil law, e.g., to assert claims for payment of compensation for damages incurred due to a criminal offence committed by the defendant. Assets that have been taken from public funds due to a criminal offence may, pursuant to section 823 (2) BGB (*Bürgerliches Gesetzbuch* – Civil Code) in conjunction with a statute intended to protect another person, for example breach of trust pursuant to section 266 StGB, may be returned as compensation for damages.

As a general rule, however, initiating and carrying out disputes under civil law are an option only for the parties to the dispute, and not German authorities or government offices. Likewise, the injured person must lay out the facts of the case to the court; the court does not investigate *ex officio*. As such, he is primarily responsible for substantiating the case and providing evidence as to whether and which incriminated assets exist, or how other damages were incurred by way of a criminal offence.

Therefore, suing possible criminal offenders or holders of dirty assets under civil law offers the advantage that the injured person is in control of the proceedings and may assert his claims personally and directly. The German courts specifically have jurisdiction if the defendant has his usual place of residence or permanent residence in Germany. Under certain preconditions, pursuant to section 23 of the Code of Civil Procedure (*Zivilprozessordnung* - ZPO), the German court in whose district the assets of the defendant are located has jurisdiction. Claims of more than €5,000 require representation before the court by an attorney.

As soon as an enforceable judgment has been obtained from the court, the plaintiff can initiate compulsory execution. However, execution within Germany presupposes that assets of the defendant are located there. If the plaintiff fears that the defendant will move his assets to an undisclosed location in the course of the civil proceeding and therefore prevent a future execution, he may move for seizure by way of injunctive relief pursuant to sections 916 et seq. ZPO. More details on this point may be found at 3 b below.

Whether assets exist in Germany cannot be determined by the plaintiff until compulsory execution is initiated based upon a judgment.

### **(c) Sanctions**

In specific cases, certain individuals, particularly members of defeated regimes, may be subject to financial sanctions adopted at the level of the United Nations or the European Union and which – due to their implementation in penalty regulations of the European Union – are directly applicable in Germany. The financial sanctions serve to freeze the monies and other assets of listed individuals; no more monies or other assets may be made available to them. For monitoring and to guarantee implementation, there are obligations for reporting and information on the part of banks and other offices based upon the penalty regulations of the European Union. But this is not associated with systematic tracing of assets for the purpose of recovery. The freezing of assets is designed to prevent having those on the list use their assets for purposes which violate the sanctions. The assets are not expropriated.

## **3. Securing of assets**

Taking steps to secure assets is a way to avoid subsequent recovery being prevented because it cannot be done until after final termination of the proceedings.

### **(a) Criminal law**

Asset recovery in the criminal-law context focuses on the execution of a measure directed toward confiscating the advantages gained through a criminal offence. Measures to secure assets are possible to prevent hiding them as soon as the person affected is informed of the initiation of a proceeding.

#### **(aa) Support of proceedings in other countries**

- **Legal bases**

The legal basis relevant for securing assets for the purpose of a criminal proceeding abroad can be found in section 67 (1) and (2) IRG (cf. Art. 13 (2), (3), letter (c)

UNTOC). This provision is broad enough to be able to undertake the necessary type of measures to secure assets, as supplemented by the provisions of the criminal procedure law applicable to domestic factual situations (section 111b et seq. StPO).

Section 67 (1) and (2) IRG provide that the requirement of dual criminality applies to measures to secure assets (section 66 (2) no. 1 IRG). Therefore, in terms of the prospects for success of an incoming request, it is determinative that it contains all of the preconditions which enable an assessment of criminality pursuant to German law.

Furthermore, with regard to the possible surrender of assets, an order for seizure by a competent authority of the requesting state or a so-called substitute declaration (section 66 (2), no. 2 IRG) is required. With this substitute declaration, a competent authority in the requesting state confirms that the requirements for seizure would exist if the objects were located in the requesting state.

Finally, measures must be in place to ensure that the rights of third parties will not be infringed and that objects handed over under a condition will be returned upon request without undue delay (section 66 (2), no. 3 IRG). This usually requires an express assurance on the part of the requesting State.

Securing a certain item with the goal of confiscating it is possible only if its surrender is permissible because it is a means or product or surrogate, and was obtained for or through the offence on which the request is based (section 66 (1), nos. 2-4 IRG).

- **Competent authorities**

The public prosecution offices and courts are responsible for executing requests because the relevant measures to secure assets require judicial authorisation (for example search and seizure, section 67 (3) IRG; attachment, section 111e (1) StPO in conjunction with section 77 (1) IRG).

In the case of exigent circumstances, the police departments also have special authority for urgent cases. At the very least, they act as investigators who cooperate with the public prosecution offices (see above at 2.(a)(aa)(bbb)). In this context, special reference is made to the Federal Criminal Police Office (see below at 6.(b)) as the contact point for foreign authorities.

- **Practical pointers**

The German authorities rely on information from the requesting authorities in order to be able to conduct an investigation in Germany. With regard to measures to secure assets, these will have good prospects for success only if a connection between the concrete offences and the traced assets is portrayed (see section 66 (1), nos. 2-4 IRG).

In practice, this often necessitates the difficult task of showing indications that the assets found in Germany are products of the offence committed abroad or means with which it was committed; or are at least surrogates that have a continued connection to the original item. If such indications are not included in the request, or if cannot be supplemented in due course, no assets may be secured.

For reasons of proportionality, assets must be released following a certain period of time. Concrete periods of time may be determined only on a case-by-case basis. This requires close coordination among the participating authorities.

**(bb) Carrying out domestic proceedings**

Assets may be secured within the scope of a German criminal proceeding as well. With regard to the relevant legal bases and competent authorities, we refer to the statements above.

In principle, mutual legal assistance for the foreign proceeding and the domestic proceeding are not mutually exclusive. Securing assets may thus be carried out in a parallel manner. As such, it is possible to initially secure assets in the domestic proceeding, and that continued prosecution of the foreign offence is later dispensed with (section 153c StPO), therefore giving priority in terms of the secured assets to the foreign proceeding.

In terms of securing assets due to a domestic proceeding, it should be taken into account that, pursuant to the relevant German provisions, assets must be released, particularly when the evidentiary situation as seen by the German criminal prosecution authorities does not go beyond initial suspicion and the public

prosecution office does not prefer public charges, or if the court acquits the defendant following trial.

Claims on the part of the injured person against the offender have priority before confiscation by the state (section 73 (1), second sentence StGB). Section 111b (5) StPO provides that items and assets may be secured for the benefit of the injured person within the scope of “assistance in recovering proceeds of crime,” thus ensuring the possibility of asserting claims for compensation or restitution. This measure allows items and assets to be secured, but it does not provide for direct return to the injured person; after the assets have been successfully secured, he must proceed against the offender under civil law for their return.

### **(b) Civil law proceedings**

German law provides for injunctive relief to secure assertion of civil-law claims. Claims to seizure (section 916 et seq. ZPO) and injunctions (section 935 et seq. ZPO) may be issued if a claim and a reason for such measures can be substantiated. The latter means that a showing of special urgency is necessary because otherwise the claims are in danger of being thwarted.

Only a summary hearing takes place; this is based on the currently available facts. In this proceeding, the moving party is obligated to substantiate his claim. In contrast to criminal proceedings, the court does not investigate *ex officio*.

### **(c) Sanctions**

Securing assets of listed individuals subject to financial sanctions pursuant to the relevant regulations of the European Union does not require an implementing law in Germany. Such regulations have direct applicability and are to be complied with by all persons, particularly by economic actors who, like banks, administer or store foreign assets. The major commercial banks have established sanctions divisions for that purpose, whose staff compares the lists of persons holding accounts with the sanctions lists.

Authorities, especially those who operate registers – land, trade or ship registers – must also comply with this directly applicable law.

Freezing of assets located in Germany of the (listed) person subject to financial sanctions is associated with financial sanctions imposed by the United Nations and/or the European Union: their implementation by way of the sanctions regulations of the European Union results in restrictions in rights of disposal over those assets. However, this effect does not take hold for the benefit of potential injured persons. The law governing sanctions does not focus on a final reallocation of assets; rather, it temporarily removes the right of disposal over those assets by the listed persons during the period that the sanctions are in place. This serves to avoid having the assets used in a manner contrary to the purpose of the sanctions. The decision whether the sanctions are to be continued or terminated is not made by national authorities; rather, it is made at the level of the Security Council of the United Nations and/or the Council of the European Union. National authorities are able to approve release or making available of assets only in the exceptional cases enumerated in the respective sanctions regime.

#### **4. Final confiscation of assets**

As a general rule, when the underlying judicial decision attains final and binding effect, ownership of the asset declared confiscated passes to the state (section 73e StGB). Corresponding execution measures enable the state to thereupon access those items.

##### **(a) Criminal law**

The goal of asset recovery under criminal law is not to penalise the offender, but rather to re-establish lawful financial circumstances. However, a basic precondition for this is always that the assets to be recovered stem from a criminal offence or were procured for such an offence.

##### **(aa) Support of proceedings in other countries**

Similarly to the measures described above in the previous stages, the German law of mutual legal assistance takes account of the fact that recovery of assets under criminal law may be designed differently pursuant to foreign law.

- **Legal bases**

The IRG generally provides for the possibility of executing final and binding sanctions issued by a foreign court that do not involve deprivation of liberty without restricting this with a list of offences (section 48 IRG). No international-law treaty basis is necessary for this. The measure must merely be comparable in terms of its type with a measure provided for by German law.

The German law of assistance in execution of punishment considers to be binding foreign orders that may be classified as confiscation, forfeiture, also of equivalent value or forfeiture from a third party (cf. Art. 12 (1) to (5) UNTOC). This also applies with respect to third parties. However, no more far-reaching effect may be attached to a foreign judgment than that provided by the foreign law itself. A precondition pursuant to section 49 (4) IRG is that third parties have adequate opportunities at their disposal to assert their rights. Furthermore, the decision may not be contrary to a German civil-law decision on the same matter. Finally, the decision must not refer to the rights of third parties to a piece of real property in Germany.

In the case of a still-pending foreign proceeding, section 66 IRG provides for the possibility of handing over objects which may serve as evidence (section 66 (1) no. 1 IRG). Handing over products and instrumentalities of crime is not excluded (see section 66 (1) nos. 2-4 IRG). However, it must be ensured that the surrender does not impact rights of third parties and, if handed over under a condition, that the objects will be returned upon request without undue delay (see also Art. 12 (8) UNTOC). Therefore, final confiscation could be subject to other claims.

Unlike assistance in execution, assistance in surrender is conceived for ongoing proceedings according to section 66 IRG, i.e. for as long as no final and binding and enforceable foreign decision has been made (section 66 (3) IRG). Final confiscation must therefore still be attained pursuant to the rules of the respective foreign law.

The statements made above with regard to tracing and securing assets apply as well: dual criminality is a requirement (section 49 (1) no. 3, section 66 (2) no. 1 IRG).

- **Competent authorities**

The regional courts are competent for executing final and binding foreign decisions. The public prosecution offices prepare their decisions (section 50 IRG).

In the first step, the regional court issues an order which declares that the final and binding foreign decision is enforceable (sections 54, 55 IRG). If such order is issued, the assistance in execution will be granted in a second step. Primarily foreign policy aspects are taken into consideration in this process. If the assistance is granted, the foreign decision will be equated with a German decision imposing confiscation or deprivation (section 56 IRG).

As a general rule, the Federal Ministry of Justice and Consumer Protection, in consultation with the Foreign Office (section 76 IRG), decides on whether to grant. For certain measures and in relations with certain states, this competence has been delegated to other offices (for example, the justice ministries of the *Länder* or public prosecution offices). Especially in non-treaty assistance, however, the competence usually remains with the federal government.

- **Practical pointers**

Final confiscation of assets by way of mutual assistance in criminal matters primarily requires a final and enforceable foreign decision (meaning a judgment or comparable decision). At times, a finally concluded foreign criminal proceeding will be necessary before Germany can offer support by assistance in execution.

Also, the independent German courts must review whether the convicted person received a minimum standard of procedural rights. These primarily include being granted a hearing and the right to defend oneself (see section 49 (1) no. 2 IRG). Especially in the case of judgments in absentia, information in the request on that point is crucial.

Also, a prerequisite for execution is dual criminality (section 49 (1) no. 3 IRG), as it is for several of the mutual legal assistance measures already discussed.

In German law, proceedings are sometimes designed in such a manner that the confiscation of assets is done independently of a conviction under criminal law. This



primarily includes the provisions on extended confiscation and deprivation (sections 73d, 74a StGB) as well as independent orders (section 76a StGB), in which asset recovery can be undertaken separately from a conviction under criminal law or subject to less requirements. These situations are known internationally by the terms “non-conviction-based confiscation” (NCB) or “civil forfeiture.” A prerequisite for execution of foreign decisions made in these types of proceedings is that a criminal proceeding was originally initiated in a foreign country and that substantial elements of a criminal offence were proven. It is questionable whether execution assistance in criminal matters may be provided to implement foreign decisions that are associated with a shift in the burden of proof. Therefore, in practice it is important to provide details of the concrete proceeding in the requesting State in order to enable an assessment by the participating authorities and courts in Germany.

### **(bb) Carrying out domestic proceedings**

A precondition for final confiscation due to a domestic criminal proceeding is that these proceedings may be brought to a conclusion with final and binding effect. If this is achieved, the respective items and assets may be accessed by way of execution. Possibilities for use will be explained in more detail at 5. below.

Pursuant to German law, confiscation of proceeds of crime is not ordered if potential claims by injured individuals exist (section 73 (1), second sentence StGB). Therefore, the measures to secure assets within the scope of a criminal proceeding serve initially only to secure these claims. Only if the injured person has not continued to assert claims for compensation within a certain period of time can the ownership of the secured assets pass over to the state (section 111i StPO).

German criminal procedure law also provides that injured persons may themselves assert their property claims against the accused arising from the criminal offence in the criminal proceeding by way of a joinder procedure (*Adhäsionsverfahren*).

### **(b) Civil law**

The final confiscation of assets under civil law requires a final and enforceable title which allows execution on the available assets. This may be a title attained before a German court following court proceedings leading to a decision. An alternative could be that there is a foreign title which may be executed here in Germany.

### **(c) Sanctions**

The goal of financial sanctions of the UN or the EU is not to finally confiscate and reallocate assets. Rather, such sanctions serve to create temporary restrictions for the purpose of attaining other goals, such as changing the conduct of those persons or organisations subject to sanctions, or to prevent use of the assets for purposes contrary to the goal of the sanctions. If that goal is achieved, as a general rule it is appropriate to remove the financial penalties. Assets of listed persons or organisations that may have been frozen are released when the affected persons or organisations are de-listed. Thus, the formerly listed persons or organisations, as owners or otherwise with rights of disposal, regain that right of disposal and can freely dispose of the assets if no other measures to secure them have been taken (mentioned at no. 3 (a) and (b), in civil or criminal procedure law). Generally, however, current EU sanctions regulations only allow orders releasing assets frozen by criminal judgments or recognised civil-law titles imposed prior to the listing.

## **5. Use of the confiscated assets**

Asset recovery is substantially concluded with the confiscation of the assets. The question arises, however, as to what happens to the proceeds thereafter.

### **(a) Criminal law**

Characteristic of criminal proceedings, which flow out of the state power monopoly, is that the proceeds generally first go to the state.

#### **(aa) Support of proceedings in other countries**

If a decision of confiscation or deprivation issued by a foreign court in criminal proceedings is executed, the assets generally stay in the executing state. There are two exceptions to this: Compensation of the victims and dividing the proceeds between the participating states.

- **Legal bases**

In terms of using finally confiscated assets, German criminal law provides that ownership transfers to the German state (sections 73e, 74e StGB; see Art. 14 (1) UNTOC with the reference to national law). The grant of a foreign request for execution of a sanction to recover assets has a corresponding effect (section 56 (4) IRG).

With section 56b IRG, German law provides for the possibility of treating more flexibly the use of proceeds from asset recovery by way of mutual legal assistance in criminal matters. Pursuant thereto, the participating states may agree to distribute the recovered assets (cf. also Art. 14 UNTOC – section 2 on return and section 3 on distribution). In the German view, this applies to non-treaty-based assistance as well. Whether an agreement can be concluded must be decided on a case-by-case basis. A precondition for this is that reciprocity is assured (section 56 (1) IRG).

Whether and how victims may be granted compensation within the framework of a criminal proceeding depends primarily on the law of the foreign state. If the court in that proceeding grants a victim compensation of damages, or the convicted person obligates himself to pay the injured person by way of a title of execution, under certain circumstances compensation may be made from German public funds (section 56a IRG). However, this compensation is made only from assets which were collected by way of general execution. Further, no compensation is granted if the rights of the injured person to the assets continue to exist (section 56a (2) IRG). In such a case, it is the task of the injured person to himself pursue these rights.

- **Competent authorities**

At the domestic level, the public prosecution offices and the criminal enforcement authorities are responsible for questions associated with use of recovered assets.

The granting authority is responsible for matters within the scope of mutual legal assistance. In the case of non-treaty-based mutual assistance, the responsible office is the Federal Office of Justice in consultation with the Foreign Office.

- **Practical pointers**

How recovered assets are to be distributed is largely governed by comparatively new international instruments and national laws. For that reason, there have not yet been a great deal of practical experiences to draw from in this regard. It is important to take up contact at an early stage with the Federal Office of Justice, which is the competent German granting authority.

**(bb) Carrying out domestic proceedings**

As already discussed, German criminal law provides that assets finally recovered under criminal law pass to the German state (sections 73e, 74e StGB).

A precondition for this is that a German proceeding can be brought to a final and binding conclusion (cf. above 2. and 3. at (a)(bb)). With regard to using the proceeds, it should be noted that the possibility of distribution or return pursuant to section 56b IRG does not come into play here because it is not based on mutual legal assistance.

As such, domestic criminal proceedings alone do not seem apt under applicable German law to attain the return of assets to the countries of origin.

**(b) Civil law**

There are no restrictions with regard to the use of assets that have been executed on under civil law and therefore confiscated. The injured person has thereby himself asserted his claims as a party, and is now able to himself dispose over the proceeds.

**(c) Sanctions**

The sanctions regimes of both the United Nations and the European Union do not generally provide for the final confiscation of assets.

## 6. Contact points

### (a) Networks

In the area of asset recovery, various networks exist with contact persons in national authorities and international organisations. In terms of global networks, particularly noteworthy are the Camden Asset Recovery Inter-Agency Network (CARIN) and the Stolen Assets Recovery Initiative (StAR).

CARIN is an informal network with a secretariat at Europol in The Hague ([http://en.wikipedia.org/wiki/Camden\\_Assets\\_Recovery\\_Interagency\\_Network](http://en.wikipedia.org/wiki/Camden_Assets_Recovery_Interagency_Network)):

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StAR is maintained under the auspices of the World Bank and the United Nations Office on Drugs and Crime ([www.1.worldbank.org/finance/star\\_site](http://www.1.worldbank.org/finance/star_site)). The secretariat headquartered at the World Bank is responsible for day-to-day operations.

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Washington, DC 20433  
USA  
[starinitiative@worldbank.org](mailto:starinitiative@worldbank.org)

**(b) Specific cases**

The central contact point for ongoing or future specific cases of international mutual legal assistance in criminal matters for the justice field is the Federal Office of Justice:

Federal Office of Justice  
Division III1  
Adenauerallee 99 – 103  
53113 Bonn  
Deutschland  
poststelle@bfj.bund.de  
+49 228 99410 40

For the police, the Financial Intelligence Unit has been established at the Federal Criminal Police Office (*Bundeskriminalamt*). It may be contacted with respect to concrete specific cases, especially when urgent exchanges of information are necessary:

Federal Criminal Police Office  
Division SO35  
65173 Wiesbaden  
SO35@bka.bund.de  
mail@bka.bund.de  
+49 (0)611 55-0

These two offices represent Germany in the international asset recovery networks; they are the German justice and police contact points in the CARIN network.

The offices of the German National Contact Bureau (NCB) of the International Criminal Police Organisation – ICPO-Interpol are also at the Federal Criminal Police Office (Interpol Wiesbaden).

**(c) General questions, advanced training**

The Federal Ministry of Justice and Consumer Protection is available to answer general and legal policy questions on cross-border asset recovery as well as on possible advanced training measures:

Federal Ministry of Justice and  
Consumer Protection  
Division IIB4  
Mohrenstrasse 37  
10117 Berlin  
Deutschland  
poststelle@bmjv.bund.de  
+49 30 18 580 - 0