

**G8 Lyon/Roma Group
Criminal Legal Affairs Subgroup**

**G8 BEST PRACTICES FOR THE ADMINISTRATION
OF SEIZED ASSETS**

INTRODUCTION

In the fight against international organized crime and terrorism, the G8 states have long recognized the importance of provisions in national law for the speedy and effective freezing of criminal assets with a view to their later confiscation. On May 5, 2003, the Ministers for Justice and Home Affairs from the G8 states and the European Commission met in Paris and adopted 29 best practice principles on tracing, freezing, and confiscation of crime-related assets. Further work in this important area and experience from criminal cases have identified the need to ensure that the value of such assets, once seized, is preserved during the often lengthy and costly process to finally confiscate those assets.

Accordingly, the G8 recommends the following basic principles of good practice regarding the administration of seized assets. These practices are intended in particular to help states preserve the value of seized assets during the pendency of confiscation proceedings.

A note about terminology: the term “seized” assets or property is used throughout these recommendations. This term is intended to be construed broadly to cover judicially authorised actions such as seizure, freezing, restraint, and any other provisional measures to prevent the dissipation of assets that may be liable to confiscation/forfeiture.

GENERAL PRINCIPLES

- The law enforcement objective of taking the proceeds or instrumentalities of the crime should be paramount. Consequently, there will be cases in which the competent authority should seize criminal proceeds and instrumentalities even though it will be unable to recover the resulting asset administration expenses.
- While the main objective of confiscation/forfeiture is to strip criminals of their ill-gotten gains and the instrumentalities that make crimes possible, good fiscal decisions are also an important factor; assets, rather than liabilities, should be seized for confiscation/forfeiture.
- Pre-seizure planning is essential to anticipate resource expenditures and make informed decisions about what property is being targeted for seizure, how and when it will be seized, and most importantly whether or not the property should be seized in the first place.

- States should adopt mechanisms for the administration of seized assets which are as efficient and cost effective as possible. To that end, they should in particular consider the establishment of an Asset Confiscation/ Forfeiture Fund.
- An important element in the administration of seized assets is the designation and powers of the body responsible under national law for such administration. The attached annex, based on the experience of some G8 States, identifies a number of elements which may be considered.
- States should ensure that strong controls with respect to the administration of seized assets are in place and that either there is a clear separation of duties to ensure that no single person has plenary authority over all aspects of asset administration or if any one person does have authority over all aspects of asset administration they are fully accountable for their actions to a higher body.
- Seized assets should be administered with transparency. Such administration should be subject to an annual examination by independent auditors, similar experts or otherwise in accordance with national law. The examination may include the certification of financial records, and the findings should be made available to the public, where appropriate.
- No person officially responsible for the seizure of assets should receive a personal financial reward connected to the value of a seizure, nor should funds from any mechanism for the administration of seized assets be used for personal purposes.
- States should consider the use of information technology (IT) systems for the administration of seized property. Appropriate financial and property administration IT systems can, for example, be extremely useful for tracking and managing inventory or for meeting expenses associated with seized property as well as for maintaining a transparent and accountable system. States may also wish to use such IT systems for the administration of confiscated property.
- When an asset has been seized, unless authorized for a pre-judgment sale, it should be preserved in the same condition it was at the time of seizure. Use of seized assets, whether by a defendant or a third person, should be regulated under national law. In certain cases, use of particular assets would be incompatible with the purposes and goals of the seizure. Unless there is a compelling purpose, for example for evidentiary reasons, seized assets should not be used by law enforcement personnel during the pendency of the confiscation/forfeiture case.
- Legal proceedings should be possible to permit, under conditions laid down in national law, pre-judgment sale of assets pending the outcome of the confiscation/forfeiture proceeding for wasting assets that are perishable or rapidly declining in value, such as vessels, aircraft, cars, animals and farms with growing crops. States should further consider authorising pre-judgment sale of assets which are too burdensome to maintain.

The resulting proceeds should be secured in accordance with national law (and the action notified to the court and other affected parties) pending a final determination of confiscation or forfeiture.

- In accordance with national law, when administering seized assets, the interests of the defendant should be taken into consideration.
- The payment of attorneys' fees and living expenses for the defendant out of seized assets should be strictly controlled or prohibited in accordance with national law. For example, a defendant might be required to establish that no other assets or publicly funded counsel are available to the defendant and that such expenditures are reasonable.
- There should be means for those with a legal interest in seized property to apply to the court to modify a restraining order or to release the property subject to adequate controls. To that end, domestic law and policy should clearly set forth the rights of *bona fide* third parties in relation to property subject to a restraining order. This may include allowing a person to carry on a legitimate trade or business that would otherwise be subject to seizure or allowing tenants to continue to occupy commercial real estate. Consideration should also be given to establishing expedited procedures for *bona fide* third parties (i.e., banks, automobile financing companies, etc.) so that their interests will be acknowledged at an early stage of the confiscation/forfeiture proceedings.
- Seized property should be appraised to establish the market value of the asset at an appropriate time, such as the date of the forfeiture. States may wish to use qualified third parties for this purpose.

ANNEX

ASSET ADMINISTRATION PRACTICES IN SOME G8 STATES

Important elements in the system for administration of seized assets in some G8 Member States include (1) the express designation of a competent national authority responsible for all aspects of the custody and management of seized assets, (2) the use of asset managers in particularly complex situations, and (3) the establishment of a dedicated fund for the deposit of seized and confiscated/forfeited assets.

Designated Competent National Authority for the Administration of Seized Assets

- ☐ Some G8 Member States have chosen to designate responsibility for the administration of seized assets to a particular government agency or body with authority to take custody of, manage, maintain, and dispose of seized assets. The designated authority can also assist in seizure operations.
- ☐ The designated authority consists of personnel with expertise in complex business, commercial and residential real estate, and finance issues. Where necessary, the authority utilizes third-party contractors to support its mission. Such contractors include property managers, appraisers for real property, experts in particular types of personal property (e.g. jewelry, antiques), brokers, and storage facilities.
- ☐ Accountability is maintained through external audits and appropriate oversight of the designated authority and its third-party contractors.

Asset Manager

- ☐ In certain types of cases, some G8 Member States utilize a court appointed independent manager as a trustee or receiver to take possession of assets and to manage them as directed by the court. Of course, not all seized property requires a manager (e.g., ordinary bank accounts). However, in complex cases, such as those involving seizure of an operating legitimate business, the use of an independent manager has been particularly useful.
- ☐ The manager has a fiduciary duty to ensure that seized assets are maintained so that their maximum value will be realized upon confiscation/forfeiture or return to the respondent.
- ☐ The court may grant the appointed manager authority to take any step required to manage the asset, including enter into contracts, sue, employ agents, and execute powers of attorney and deeds. For example, to keep a seized business in operation, the manager may have to carry out various functions on behalf of the business, such as

purchase supplies, fixtures, or machinery. If additional authority is needed, the manager or the prosecuting authority can go back to the court to apply for further powers for the manager to administer the assets.

- Typically the managers have the power to initiate or defend legal proceedings regarding assets under their administration and are granted, as far as possible, protection from civil legal liability, except for their own negligence. To be appointed, a manager must be bonded and insured.

Asset Confiscation/Forfeiture Fund

- Some G8 Member States have established a dedicated fund into which seized and confiscated/forfeited assets, after liquidation, are deposited. Such a fund facilitates the effective disbursement of assets after they have been confiscated or forfeited, and has additional advantages related to the administration of seized assets.
- Liquidated assets are deposited into an interest-bearing account pending the outcome of the confiscation/forfeiture proceedings. Such a procedure is particularly useful for the administration of seized currency, which would not otherwise earn interest or would incur unnecessary storage risks or costs. Proceeds of pre-judgment sales also are deposited into such an account.
- Establishment of a dedicated fund allows the asset confiscation/forfeiture program to be self-sustaining. The often considerable costs involved in the administration and maintenance of seized assets can be paid out of the dedicated fund, reducing the need for reliance on appropriated or other government funds.
- Where different judicial authorities have ordered the seizure of large amounts of assets in multiple cases, establishment of a dedicated fund is one way to facilitate the accountability and transparency of asset administration.