

STEP-BY-STEP GUIDE FOR ASSET RECOVERY FROM G20 COUNTRIES

TÜRKİYE

I. INTRODUCTION

In Turkish law, decision on seizure of any assets can only be taken by a judge, and in case where delay is prejudicial, by the Public Prosecutor temporarily. A seizure decision taken by the Public Prosecutor must be approved by a judge within 24 hours. Search in the Turkish law is performed in accordance with article 116 of the Criminal Procedure Code. The procedure for seizure of assets is regulated under articles 127 and 128 of the Criminal Procedure Code. For seizure of immovable within the framework of article 128 of the Criminal Procedure Code, the offence must be contained in the offence types stated in this article. Some immovable and particularly vehicles may be annotated by the Public Prosecutor as nonsalable and non-transferable. In Turkish law, finalised conviction judgment is sought for confiscation. Except for the articles that constitute offence in themselves, confiscation is not possible without finalised conviction judgment. Confiscation is executed according to articles 54 and 55 of the Turkish Criminal Code and provisions in the special laws.

II. HOW TO SEEK RESTRAINT, SEIZURE AND FORFEITURE/CONFISCATION FROM TÜRKİYE

In order to seek the restraint, seizure and forfeiture/confiscation of criminal proceeds from Türkiye, the following steps should be followed:

1. IDENTIFICATION OF THE ASSET

In order to assist identify assets in Türkiye, the following mechanisms are available:

In order to seize movables and immovable in the Turkish law, it is necessary for the assets requested to be seized to be determined initially. Next, there should be concrete evidence indicating that such assets are acquired from the offence subject to the investigation.

An investigation is commenced if the Public Prosecutor is satisfied of existence of sufficient evidence upon the notification of institutions like Department of Anti-Smuggling and Organised Crimes of the Security General Directorate of the Ministry of Interior that was established particularly to investigate financial offences and Financial Crimes Investigation Board (MASAK) in line with the evidence they obtain. Within the scope of the investigation in question, the Public Prosecutor may request a decision from the court requesting seizure of the assets considered to be acquired from offence. The entire process depends on the commencement of an investigation by the Public Prosecutor.

The Public Prosecutor may request, within the scope of the investigation, information and documents from all public and private institutions regarding assets. Not providing these information and documents constitutes offence.

Financial Crimes Investigation Board (MASAK) which is the counterpart of FIU in Türkiye accesses this information before commencement of an investigation. MASAK can obtain information not only from banks regarding money flow but also from many institutions in which assets like Title Deeds registries or Stock Exchange Market equity securities are registered. MASAK can preserve this information in an information pool created by it. After obtaining this information, MASAK must apply to the Public Prosecutor's Office for execution of seizure proceedings in line with the article 128 of Criminal Procedure Code. MASAK can also obtain information from relevant countries through bilateral agreements and Memorandum of Understanding it concluded with other countries.

Moreover, it should be underlined that prosecutors can request information from every public officials regarding an ongoing investigation. In terms of pre-seizure planning, article 128 of Criminal Procedure Code sets out that asset research on proceeds of crime could be requested from several agencies.

Procedures for Pre-seizure Planning

Article 128 (1) of the Criminal Procedure Law (CPL) which is titled “seizure of real estate, on rights and receivables” sets out the pre-planning phase of seizure measures.

In this regard, it is delineated that a report concerning proceeds of crime shall be taken from Banking Regulation and Supervision Agency, Capital Markets Boards, Financial Crimes Investigation Board, Undersecretary of Treasury and Accounting and Auditing Standards Authority based on the case in advance of the seizure decision is taken. This report shall be prepared at the latest in three months. This period may be extended for two months when special reasons require.

However, article 17(2) of the Law no 5549 on Prevention of Laundering Proceeds of Crime (Anti Money Laundering Law) also sets out that if the judge approves, the report regarding the value stated in Article 128 of Criminal Procedure Law shall be obtained within three months and submitted for the approval of the judge once again in Money Laundering/Terrorism Financing cases in order to expedite seizure in urgent cases.

Postponement of the Transactions and Requests Received from foreign counterparts

As set out in Article 14 of CETS 198 (Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism) below;

Each Party shall adopt such legislative and other measures as may be necessary to permit urgent action to be taken by the FIU or, as appropriate, by any other competent authorities or body, when there is a suspicion that a transaction is related to money laundering, to suspend or withhold consent to a transaction going ahead in order to analyse the transaction and confirm the suspicion.

In this context, as stated in Article 19/A of the AML Law No. 5549 under the sub-title of Postponement of Transactions and in Articles 5 and 6 of the Postponement Regulation shown below, transaction postponement decisions can be made based on either suspicious transaction reports or foreign country requests within the framework of the administrative decision.

*As to the assets within obliged party detected by MASAK, if there is any document or serious indication supporting the suspicion of their link to offence of Money laundering or financing of terrorism; the decision made by the Minister for the postponement of the transactions related to relevant assets shall be notified to relevant obliged Parties by MASAK. Obliges parties shall not execute the transactions specified in the decision for seven work days as from the date of notification (**Article 5 – (1)**).*

A reasoned request made by a foreign counterpart for postponing a transaction related to offence of laundering or financing of terrorism shall be considered by MASAK. The decision regarding the request

shall be made by the Minister in the event that MASAK finds out any document or serious indication supporting the suspicion of link to offence of laundering or financing of terrorism. Principle of reciprocity shall be applied while executing this power.

(2) The decision made by the Minister for postponing transactions regarding the relevant assets shall be notified by MASAK to relevant obliged parties. Obligated parties shall not execute the transactions specified in the decision for seven work days as from the date of notification (Article 6 – (1)).

2. CONFISCATION OF PROPERTY RELATING TO FOREIGN OFFENCES

When assets have been identified, Türkiye offers the following means of assistance to recover the assets.

To restrain or seize assets located in your country based on a **foreign orders and judgements**:

Mutual Legal Assurances regarding detection, seizure and confiscation of assets are executed within the framework of multilateral conventions like European Convention on Mutual Assistance in criminal Matters, Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, United Nations Convention against Corruption and bilateral agreements.

In the judicial assistance requests regarding seizure and confiscation, Türkiye seeks that the offence indicated in the request is in compliance with the dual criminality principle in terms of both countries.

We need to divide mutual legal assurances into two. Some MLAs request provision of information or inquiry of assets for an investigation carried out by the requesting country, and these do not contain any executive proceedings. In that case, Türkiye conducts the inquiry requested by the requesting country within the framework of the European Convention on Mutual Assistance in Criminal Matter and its explanatory reports, and is able to provide the evidentiary documents to the requesting country.

In the rest of the MLAs, if evidence is obtained as a result of immature investigation determining that the assets acquired from crime or smuggled are in another country, request may be made for freezing or seizure of the assets in question. However, such request which is in the executive nature and influences the personal right directly might cause deprivation of right and even subjected to personal compensation lawsuits. Therefore, such a request must ground on concrete and strong evidence. These MLAs must be made carefully within the convention and bilateral agreements prior to the request and requested in compliance with the domestic legislation of the requested country. Hence, seizure, freezing or liquidation of assets in Turkish law are only possible by the decision of a judge or court. In this case, a court decision is sought in the MLA file of such a request from our country. Again to prevent abovementioned victimhood, the requested country is requested to provide a guarantee. Requests fulfilling the requirements in question are executed promptly.

3. DISPOSAL/RETURN OF ASSETS

The assets seized as a result of the legal assistance, requested to be confiscated according to the foreign court decision are returned in line with the negotiations to be carried out with the requesting country if the matter of return of the assets has already been stated in the letter of request.

III. ASSET RECOVERY AGENCY/ AGENCIES - CONTACT INFORMATION

There is no central authority with regard to asset recovery agencies in Türkiye.