

# **Asset Recovery in Ukraine**

**Practice Guide**

*November 2017*

## **Introduction**

Asset recovery is an important component of the system of effective fight against corruption, money laundering and organized crime. It allows depriving criminals of their illegally earned income and, thus, is one of the tools to prevent the commission of new corruption offences.

For Ukraine, combating corruption and other crimes is one of the key areas of government policy and ensuring national security and economic growth. Ukraine undertook international commitments to fight corruption, money laundering and organized crime. Ukraine is a party to most of the major international treaties in this area, including those concluded under the auspices of the United Nations and the Council of Europe.

Since 2014, Ukraine has implemented a number of important reforms in the field of combating corruption and laundering of illegally obtained assets:

- by adopting new legislation on combating corruption, peculiarities of pre-trial investigation of corruption criminal offences;
- by creating specialized agencies that deal exclusively with the investigation of crimes in the specified category, bodies that are meant for preventing such crimes;
- by ensuring public access to the information on incomes, expenses and property of public servants;
- by ensuring disclosure of information about the ultimate beneficial owners of legal entities registered in Ukraine and transfer of the data on beneficiary ownership, contained in the Ukrainian Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations, to the Global Register of Beneficial Owners, which is created within the framework of the international Open Ownership project.

Thus, new specialized agencies dealing with the criminal prosecution of only corruption criminal offences were created (the National Anti-Corruption Bureau of Ukraine, the Specialized Anti-Corruption Prosecutor's Office), as well as a body for the investigation and management of confiscated proceeds from crime (the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes).

In addition, the National Agency on Corruption Prevention (NACP) was created as an executive body that ensures the formation and implementation of the state anti-corruption policy.

Ukraine participates in the international mechanisms for promoting international cooperation in the field of asset recovery, including in the Camden Interagency Asset Recovery Network (CARIN), the Initiative of Contact Persons on Asset Recovery supported by the Interpol and StAR.

Ukraine supports an initiative on return of assets and cooperation between law enforcement agencies before a request for mutual legal assistance is received. Cooperation taking place before the stage of mutual legal assistance helps save time and greatly increases the chances of successful completion of investigations.

## **Legal basis for international cooperation**

Ukraine provides international legal assistance in criminal cases on the basis of bilateral or multilateral international treaties, and in the absence thereof – on the basis of a request from another state for legal assistance in a criminal case on the basis of reciprocity.

The procedure for consideration of a request for international legal assistance from another state or an international judicial body by the authorized (central) body of Ukraine and the procedure for execution of such a request are determined by the Criminal Procedure Code of Ukraine (Section IX) and international treaties of Ukraine.

Ukraine is a party, in particular, to the following major international multilateral treaties that provide grounds and procedure for international cooperation, including mutual legal assistance:

- The United Nations Convention against Transnational Organized Crime of 2000;
- The United Nations Convention against Corruption of 2003.
- The European Convention on Mutual Assistance in Criminal Matters of 1959, the Additional Protocol of 1978 and the Second Additional Protocol thereto of 2001;
- The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990, and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 2005;
- The Council of Europe Criminal Law Convention on Corruption of 1999;
- The Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 1993 (the Minsk Convention), which is used only in relations between Ukraine and the CIS countries.

Ukraine is also a party to more than 60 bilateral intergovernmental agreements in the field of mutual assistance in criminal proceedings, as well as extradition.

In case of international legal assistance in the absence of an international treaty of Ukraine, the authorized (central) body of Ukraine shall consider a request of a foreign state only if there is a written guarantee of the requesting party on acceptance and consideration of a similar request of Ukraine in the future on the basis of reciprocity. In such a case, when providing international legal assistance to such a state, the central body of Ukraine shall follow the Criminal Procedure Code of Ukraine, including the grounds for refusal to provide legal assistance, stipulated therein.

Thus, according to the general rule, the requesting party may be refused satisfaction of a request for legal assistance only in cases stipulated by the international treaty of Ukraine, and then the grounds for refusal to execute the foreign request, stipulated by the Criminal Procedure Code of Ukraine, shall not apply.

If there is no international treaty between the requesting state and Ukraine, which would regulate the issue of providing international legal assistance in criminal cases, the execution of the request should be refused on the grounds provided for in the Article 557 of the Criminal Procedural Code of Ukraine:

- 1) execution of the request will contradict the constitutional principles or may harm sovereignty, security, public order or other interests of Ukraine;
- 2) the request concerns a criminal offence for which a court in Ukraine rendered a decision which has come into force in respect of the same person;
- 3) the requesting party does not provide for reciprocity in this field;
- 4) the request relates to the action which is not a criminal offence under the Ukrainian law on criminal liability;
- 5) there are sufficient grounds to believe that the request is aimed at prosecuting, convicting or punishing a person on the ground of his/her race, colour, political, religious and other beliefs, gender, ethnic or social origin, property status, place of residence, language, and other grounds;
- 6) the request pertains to a criminal offence which is the subject of pre-trial investigation or trial in Ukraine.

Provision of legal assistance in respect of acts that are not criminal offences under the law of Ukraine on criminal liability is possible only if it is provided for in an international treaty of Ukraine.

Thus, if there is no international treaty between the requesting state and Ukraine, regulating the issue of international legal assistance in criminal cases, and the request for legal assistance relates to an offence that is not a criminal offence under the Ukrainian law, then such a request shall be refused on the basis of the Article 557 of the Criminal Procedure Code of Ukraine.

Without the prior consent of the competent authority of Ukraine, information or evidence provided by it in response to a request for legal assistance can't be used in a pre-trial investigation or court hearing of a criminal case other than that specified in the request for legal assistance.

## Central bodies

A request for legal assistance, including relating to the conduct of procedural actions, shall be sent to the authorized (central) body of Ukraine.

The central bodies in terms of international legal cooperation are three state bodies of Ukraine:

- *at the stage of pre-trial investigation:*
  1. The Prosecutor General's Office of Ukraine – examines requests of foreign competent authorities for international legal assistance in criminal proceedings during pre-trial investigation, except for pre-trial investigation of criminal offences referred to the jurisdiction of the National Anti-Corruption Bureau of Ukraine;
  2. The National Anti-Corruption Bureau of Ukraine – examines requests of foreign competent authorities for international legal assistance in criminal proceedings during pre-trial investigation of criminal offences referred to the jurisdiction of the National Anti-Corruption Bureau<sup>1</sup>;
- *at the stage of court proceedings:*
  3. The Ministry of Justice of Ukraine – examines requests of foreign courts for international legal assistance in criminal proceedings during trials.

In addition, for the purpose of finding and tracing assets, the competent foreign authorities may apply directly to the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes (the National Agency) or the State Financial Monitoring Service of Ukraine (see below).

However, in case the foreign competent authorities appeal to the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes or to the State Financial Monitoring Service of Ukraine, the issue of using information obtained from them as acceptable evidence in a criminal case should be decided under the domestic legislation of the requesting state.

## General procedure for the provision of assistance

In the territory of Ukraine, any procedural actions provided for by the Criminal Procedure Code of Ukraine or an international treaty may be carried out in order to fulfil the request for international legal assistance.

If in order to execute a request of the competent authority of a foreign state, it is necessary to conduct a procedural action, the execution of which in Ukraine is possible only with the permission of a prosecutor or court, such action shall be carried out only subject to obtaining appropriate permission in the manner prescribed by the Criminal Procedure Code of Ukraine, even if the law of the requesting party does not provide for this. The ground for

solving the issue of such permission is the materials of the appeal of the competent authority of the foreign state.

For clarity and promptness of certain procedural actions in the territory of Ukraine (for example, search of premises or seizure of documents), if such actions in the requesting state do not require obtaining permission from the court, it should be directly stated in the request for legal assistance, since in this case, the Ukrainian competent authority will still appeal to the foreign party with a request to provide corresponding explanations. In such a case, an appropriate procedural decision of the prosecutor (investigator) on carrying out the appropriate actions shall be attached to the foreign request.

However, the requesting countries should note that, unfortunately, at present, Ukraine can't guarantee the possibility of executing foreign requests for legal assistance and extradition in the temporarily occupied territory of the Autonomous Republic of Crimea and temporarily uncontrolled territories of Donetsk and Luhansk Regions, about which fact Ukraine made the relevant reservations to a number of multilateral international treaties in October 2015. Ukraine is interested in adopting the experience of other countries in solving this problematic issue.

A representative of a competent authority of a foreign state, the permission to whose attendance is granted in accordance with the requirements of the Criminal Procedure Code of Ukraine, shall not have the right to independently carry out any procedural actions in the territory of Ukraine. In case of presence during procedural actions, such representatives must comply with the requirements of the laws of Ukraine. Such representatives shall have the right to observe the conduct of procedural actions and to make comments and suggestions on their conduct, with the permission of the investigator, prosecutor or court to ask questions, as well as to make records, including using technical means.

By demand of the requesting party, the authorized (central) body of Ukraine shall have the right to take additional measures to ensure the confidentiality of the receipt of a request for international legal assistance, its contents and information received as a result of its execution.

A request of the competent authority of the foreign state for international legal assistance shall be executed within one month from the date of its receipt by the direct executor. In case there is a need to perform complex and large-scale procedural actions, including those that require the prosecutor's approval or may only be carried out on the basis of a decision of the investigating judge, the period of execution may be extended by the central body of Ukraine.

The authorized (central) body of Ukraine shall forward materials received during the execution of the request to the authorized (central) body of the requesting party within ten calendar days after receipt thereof from the competent authority of Ukraine.

## **Finding and tracing of assets**

According to the Criminal Procedure Code of Ukraine (Article 568), upon request for international legal assistance, the corresponding authorities of Ukraine shall conduct procedural actions provided for in this Code, as well as other actions provided for by a

special law, aimed at finding and seizing assets, money and valuables obtained by illegal means, as well as property that belongs to suspects, accused or sentenced persons.

A special law in this case is the Law of Ukraine “On the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes”.

In accordance with the international treaties of Ukraine, the National Agency shall carry out international cooperation with the relevant bodies of foreign states in the exchange of information on issues related to the finding, tracing and management of assets on the principle of reciprocity or on its own initiative. The National Agency shall carry out international cooperation at the request of the relevant body of the foreign state. In order to fulfil the tasks assigned to it, the National Agency has the right to receive, process and exchange information on individuals and legal entities in accordance with the procedure established by international treaties and legislation of Ukraine.

The National Agency shall accept for consideration and fulfil a request received from the requesting party by electronic, facsimile or other means of communication, if it is provided by international treaties of Ukraine or is carried out on the basis of reciprocity.

Refusal or postponement of a request for international cooperation in the field of finding and tracing of assets shall be carried out only on the basis of international treaties to which Ukraine is a party.

The National Agency may refuse to execute a request for international cooperation in the field of finding and tracing of assets in the following cases:

- 1) if execution of the request contradicts the constitutional principles or may harm the sovereignty, security, public order or other interests of Ukraine;
- 2) if the requesting party does not provide for reciprocity in this area;
- 3) if the request concerns an act that is not a criminal offence under the law of Ukraine on criminal liability;
- 4) if the costs of such execution clearly exceed the damage caused by a criminal offence or clearly do not correspond to the severity of the criminal offence (unless it contradicts the international treaty of Ukraine).

In order to find and trace assets in Ukraine, the following **databases or state registers** can be used, among others:

- The Unified State Register of Legal Entities, Individual Entrepreneurs and the Unified Register of Public Associations (contains information on legal entities and individual entrepreneurs registered in Ukraine, information on the ownership structure of legal entities, including the beneficial owners (controllers) of such persons, etc.);
- The State Register of Proprietary Rights to Real Estate and the State Land Cadastre (contain information on land plots and other real estate objects, their owners);

- The Unified State Register of the Ministry of Internal Affairs Concerning Vehicles (contains information on registered vehicles and their owners);
- The Unified State Register of Declarations of Persons Authorized to Perform State or Local Government Functions (contains information about property, income, expenses, financial obligations, private interests of all public servants, including the beneficiary ownership of assets).

The mentioned registries are publicly available, and information therefrom can be obtained on the Internet (in some cases after making a payment), with the exception of certain confidential data. At the same time, the National Agency is entitled to full access to all these databases and registers, as well as to a number of other databases that may contain information about the property and its owners.

Ukraine was one of the first countries in the world to introduce compulsory **disclosure of information about beneficial owners (controllers) of legal entities** registered in Ukraine. Information about beneficial owners (controllers) of legal entities is contained in the public register of legal entities. In addition, public officials are obliged to indicate in their property declarations information about legal entities in which they or their family members are beneficial owners (controllers). The register of officials' declarations is open and free of charge on the Internet.

**Access to banking secrecy.** Banks in Ukraine shall reveal banking secrecy:

1. to the prosecution bodies of Ukraine, the Security Service of Ukraine, the State Bureau of Investigation, the National Police, the National Anti-Corruption Bureau of Ukraine – upon their written request for transactions in the accounts of a particular legal entity or individual – a business entity for a specific time period. This does not include access to information about individuals who are not entrepreneurs;
2. the financial monitoring authority (the central executive body implementing the state policy in the field of prevention and counteraction to the legalization (laundering) of proceeds from crime or financing of terrorism) upon its request for financial transactions related to financial transactions that became the object of financial monitoring (analysis) in accordance with the legislation on prevention and counteraction to the legalization (laundering) of proceeds from crime, or financing of terrorism, as well as participants of the said transactions;
3. The National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes, upon its written request related to finding and tracing of assets that may be subject to seizure in criminal proceedings, regarding the availability and status of accounts, operations on accounts of a specific legal person or individual, individual entrepreneur.

In addition, pre-trial investigation bodies may access bank information within the framework of criminal proceedings under a court decision by the seizure of bank documents.



**Financial monitoring.** In order to find and trace assets, to establish whether an individual or legal entity has a bank account and which banking transactions have been committed by him/her/it, the financial monitoring (intelligence) authority of the requesting country may apply for information to the State Financial Monitoring Service of Ukraine within the framework of international cooperation between the financial monitoring agencies to prevent and counteract the legalization (laundering) of proceeds from crime, financing of terrorism.

## Seizure and confiscation of assets

When seizing property, money and valuables obtained by criminal means, as well as property belonging to suspects, accused or convicted persons, on the basis of a request for international legal assistance, Ukraine provides for necessary measures for its preservation until the court takes a decision on such property, which the requesting party shall be notified of.

By demand of the requesting party, the property found:

- 1) may be delivered to the competent authority of the requesting party as evidence in criminal proceedings or for return to the owner thereof;
- 2) may be confiscated, if it is provided for by a court verdict or another decision of the requesting party's court, which came into force. Such a court decision may be made in civil or administrative proceedings, subject to other requirements for the provision of international legal assistance as described above.

Property shall not be transferred to the requesting party, or its transfer may be delayed or may be temporary, if this property is needed for the purpose of considering a civil or criminal case in Ukraine or can't be transferred abroad for other grounds provided by law.

Property confiscated on the basis of a verdict or another decision of the requesting party's court, which came into force, shall be transferred to the revenue side of the State Budget of Ukraine. At the request of the central body of Ukraine, the court may decide on the transfer of confiscated property or its monetary equivalent on the basis of a verdict or another decision of the requesting party's court:

- 1) to the requesting party, which made a decision on confiscation to compensate victims for the damage caused by the crime;
- 2) according to international treaties of Ukraine, regulating the issues of distribution of confiscated property or its monetary equivalent.

Transfer of the seized property as well as confiscated property may be postponed if it is necessary for pre-trial investigation and court hearing in Ukraine or consideration of a dispute over the rights of other persons.

The Ukrainian legislation provides for the possibility of **extended confiscation** on the basis of a verdict. In accordance with the sub-paragraph 6-1 of paragraph 9 of Article 100 of the Criminal Procedure Code of Ukraine, property (money or other property, as well as income

therefrom) of a person convicted for the commission of a corruption crime, legalization (laundering) of proceeds from crime, as well as his/her affiliated party shall be confiscated, if the legality of the grounds for the acquisition of rights to such property has not been confirmed in court. Affiliated parties of the convict are legal entities that received the property for title or use with his/her assistance.

**Confiscation without a verdict** is not allowed in accordance with the Ukrainian legislation. At the same time, a request for confiscation in the criminal proceedings before delivering a verdict, if provided by the law of the requesting party, may be fulfilled by Ukraine in case of observance of other conditions stipulated by international treaties or the Criminal Procedure Code of Ukraine, and in the absence of grounds for refusal to provide mutual assistance.

**Requests for seizure/confiscation within the framework of prosecution of legal entities.** In Ukraine, the application of criminal law measures to legal entities is envisaged, in particular, in the following cases:

1) commission of a crime of legalization (laundering) of proceeds from crime or separate corruption crimes by an authorized person of the legal entity on its behalf and in its interests;

2) failure to ensure the fulfilment of obligations entrusted to its authorized person by the law or the constituent documents of the legal entity with regard to taking measures to prevent corruption, which led to a crime of legalization (laundering) of proceeds from crime or separate corruption crimes.

## **Practical recommendations and contact details of central authorities**

When requesting legal assistance, it is necessary to adhere to the following rules.

1. To conduct consultations with the central body of Ukraine before submitting a request. This is important for ensuring that the requested assistance can be provided in Ukraine and its request complies with the Ukrainian legislation.

2. The request shall indicate the multilateral or bilateral agreement on the basis of which the assistance is requested or, in the absence of such an agreement, to undertake a commitment to provide legal assistance on the basis of reciprocity.

3. The request shall indicate the state authority which carries out pre-trial investigation, prosecution or judicial proceedings in the requesting state.

4. To give in the request a detailed description of the proceedings in which the assistance is requested. In this case, it should be noted, in particular:

- qualification of the act, indicating the text of the provisions of the relevant criminal and criminal procedure law of the requesting party;

- a description of the actual circumstances and evidence gathered, as well as the way in which the evidence gathered justifies the need for the requested procedural actions;

- the most complete identification data of the individual or legal entity to whom/which the request relates.
5. In this case, the connection between the subject matter of the pre-trial investigation and the requested legal assistance should be discernible in the request.
6. To give the relevant details regarding the conduct of the requested actions, namely:
- **Interrogation of witnesses.** To provide information about the person to be interrogated (including his/her place of residence and stay), a list of questions to be asked during the interrogation, procedural peculiarities of carrying out the indicated actions according to the legislation of the requesting party (necessity of notification of the person's rights; the possibility of compelled appearance; indication of an official who should conduct interrogation – investigator, prosecutor or investigating judge, etc.).
  - **Search.** To specify the address of the individual or legal entity, where the search must be conducted, as well as a list of documents and items to be seized during the search. It is also necessary to give requirements for the preservation and certification of items and documents seizure, if necessary.
  - **Seizure of documents at a financial institution.** To specify the address of the financial institution, including the bank, where the documents should be seized, numbers of accounts to which the documents relate, a list of documents to be deleted, etc.
  - **Seizure/confiscation of property.** To provide a description of the property to be seized/confiscated and to explain in detail the connection between the criminal offence and the assets to be seized or confiscated on the basis of a request. If available, to provide information about the rights of third parties to this property. It should also be explained whether the property in question is an instrument of crime, or proceeds of crime, or that seizure or confiscation relates to the entire property of a person.
7. It is necessary to inform about the presence of a representative of the competent authority of the requesting party during the relevant procedural actions.
8. The request must be accompanied by a certified copy of the decision/permission to conduct the required procedural actions.
9. If the request is urgent or must be executed within a certain period of time, it should be noted in the request, giving the appropriate justification (trial limited in time, detention of a person in custody, etc.).
10. To indicate the names and contact details of the officials responsible for the relevant proceedings (investigators, prosecutors, judges), as well as the contact details of the central body of the requesting party.
11. If necessary, to indicate the requirement for confidentiality and non-disclosure of the fact of receipt of such a request and its contents by the Central Body of Ukraine and the immediate executor of the request.

In case there is a bilateral agreement on legal assistance or extradition between Ukraine and the requesting state, additional requirements regarding the form and content of the request may be specified separately therein.

### **Procedure for sending requests**

The authorized (central) body of Ukraine may accept for consideration a request received from the requesting party by electronic, facsimile or other means of communication. The execution of such a request shall be made solely upon condition that the original is sent or transmitted. Sending materials of the request execution to the competent authority of a foreign state is possible only after the Ukrainian party receives the original request.

### **Request language**

The request language shall be determined by international treaties of Ukraine. If a request is sent on the basis of the United Nations Convention against Corruption of 2003, requests and documents attached thereto must be sent to Ukraine together with a certified translation into Ukrainian, Russian, English or French, unless they are made in one of these languages. If a request is sent on the basis of the Council of Europe Convention, then the request and its accompanying documents must be sent to Ukraine together with a translation into Ukrainian or one of the official languages of the Council of Europe, unless they are made in these languages.

In case there is a bilateral agreement on legal assistance or extradition between Ukraine and the requesting state, the requirements regarding the request language may be specified separately therein.

In addition to the CARIN network, in which Ukraine is an observer, the Eurojust network, an agreement on cooperation with which Ukraine signed on 27.06.2016, may also be used for the rapid and complete exchange of information between law enforcement agencies of Ukraine and the requesting state.

In this case, the Prosecutor General's Office of Ukraine should be contacted as an authorized body. It is expected that in 2018, a permanent representative will be seconded by Ukraine to the headquarters of Eurojust in Hague.

### **Contact details of the central bodies of Ukraine**

*Central bodies providing legal assistance:*

#### **1) Prosecutor General's Office of Ukraine**

Address: 13/15 Riznytska street,  
Kyiv, Ukraine, 01011  
Tel: +38044 200 69 02  
Fax: +38044 280 60 00  
E-mail: indep@gp.gov.ua

#### **2) National Anti-Corruption Bureau of Ukraine**

Address: 3 Surikova street, Kyiv Ukraine

Tel: +38 044 246 33 46

E-mail: [info@nabu.gov.ua](mailto:info@nabu.gov.ua), [o.tomeyev@nabu.gov.ua](mailto:o.tomeyev@nabu.gov.ua)

### 3) Ministry of Justice of Ukraine

Address: 13 Horodetskoho street,

Kyiv, Ukraine, 01001

Tel: +38044 2796879

Fax: +38044 2705453

E-mail: [itex@minjust.gov.ua](mailto:itex@minjust.gov.ua), [ilad@minjust.gov.ua](mailto:ilad@minjust.gov.ua)

#### *Other state bodies of Ukraine:*

1) National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes

Address: 1 Borysa Hrinchenka street, Kyiv, Ukraine,

Tel: +38 (044) 290-08-30

E-mail: [info@arma.gov.ua](mailto:info@arma.gov.ua)

2) State Financial Monitoring Service of Ukraine

Address: 24 Biloruska street, Kyiv, Ukraine, 04655

Tel: +38(044)-594-16-01

Fax: +380(044)-594-16-00

E-mail: [sdfm@sdfm.gov.ua](mailto:sdfm@sdfm.gov.ua)