



**GUIDE**  
**FOR ASSET RECOVERY**  
**IN FRANCE**





# INTRODUCTION

Asset recovery is a key issue in the fight against organised crime and corruption, in order to deprive criminals from their illicit profits and ensure that crime does not pay.

Over the past ten years, France has strengthened its legal tools available in this respect, in order to build an efficient legal framework, asset recovery being a very high priority in French criminal policy.

France has developed efficient tools allowing swift access to financial information (e.g. FICOBA, a centralized bank register created in 1982) and improved its enforcement capacities with the creation of a specialized law enforcement unit, dedicated to criminal asset identification (PIAC: criminal asset identification platform).

In addition, 3 major legislative amendments have been passed in the last 5 years improving the legal framework for seizure and confiscation of criminal assets.

France also supports various international actions in this respect, in order to promote best practices and to facilitate international cooperation, such as the Stolen Asset Recovery Initiative (StAR), the Camden Asset Recovery Inter-Agency Network (CARIN), and the Asset Recovery Focal Point Initiative supported by INTERPOL and StAR.

This guide intends to provide for a comprehensive description of the French legal system related to asset recovery, in order for the requesting countries to better understand what is legally possible in France, what kind of information is available, what types of investigation can be conducted, and how to proceed to obtain effective asset recovery through mutual legal assistance.

Developing a better understanding of the different legal systems and building up confidence between the different actors involved in asset recovery cases is a key factor for improving the efficiency of mutual legal assistance. In this respect, French authorities welcome informal cooperation and will do their best effort to facilitate exchange of information. It is however to be highlighted that informal cooperation cannot replace a formal MLA request, and only constitutes an efficient way to prepare such requests and facilitate their successful implementation.

## CONTACT INFORMATION

In France, the central authority for mutual legal assistance in criminal matters is the Bureau of International Mutual Assistance in Criminal Matters («Bureau de l'Entraide Pénale Internationale»). It is part of the Criminal Affairs and Pardons Division, located in the Justice Ministry in Paris.

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France also has liaison magistrates on assignment in thirteen countries (Algeria, Brazil, Canada, Croatia, Germany, Italy, Morocco, Netherlands, Romania, Spain, Senegal, United Kingdom and United States) and is host to liaison magistrates from ten countries (Algeria, Canada, Germany, Italy, Morocco, Romania, Netherlands, Spain, United Kingdom and United States). These magistrates facilitate the processing of requests for mutual legal assistance between French judicial authorities and the authorities of these countries. They provide advice and support in this matter.

## ASSET RECOVERY AGENCIES

France has established two agencies dedicated to asset recovery cases, appointed as focal points in the above mentioned cooperation networks.

**The PIAC, platform for identification of criminal asset**, is a law enforcement unit, created in 2005, dedicated to identification of criminal asset, and is empowered to conduct financial and patrimonial investigations under supervision of a judicial authority. It also centralizes all information relating to detection of illegal assets all over the French territory and abroad. It has been appointed as focal point in the different cooperation networks mentioned above.

**The AGRASC, agency for management and recovery of seized and confiscated asset**, is an asset management office, created in order to improve criminal asset management and to provide the courts with legal and technical assistance. It can also be ordered to execute MLA requests, under the control of a judicial authority.

# ASSET RECOVERY : FRENCH LEGAL FRAMEWORK

## IDENTIFICATION OF ASSET

Identification of stolen asset can be obtained through different databases, managed by public authorities or under their supervision. On this basis, court orders may be issued in order to obtain additional information from the individuals or entities concerned. MLA request may be usefully adapted in light of these available information.

The main databases usually used are the following :

**Banking information : FICOBA** is a centralized bank register, created in 1982 and managed by the tax administration. It contains all relevant information relating to creation, modification or closure of any account of any kind held in France, either through a French financial institution or through a foreign institution operating in France. On this basis, information relating to the financial flows can be obtained directly from the relevant bank, upon judicial request.

**National Asset Database (BNDP)** contains key information about assets held by persons known to the tax administration through their various tax declarations. It consists mainly of extracts of deeds of transfer of ownership in exchange for payment (sales of buildings and land), or free of charge (gifts and inheritances), and the identities and addresses of the persons and properties concerned. TRACFIN has access to it upon request (no need of a court order)

**Real estate properties** : the land registry contains information relating to developed land (buildings) and undeveloped land. It can be used to find out the identity of owners of premises or land, and where they live if they do not live at the property. The furnished accommodation tax file can be used to find out the identity of the occupiers of particular premises (the tenant or non-rent-paying occupier) and whether the property is a first or second home.

**Legal entities : the “Registre du Commerce et des Sociétés” (RCS)** contains information relating to registered companies and businesses, and notably related to the identification of the shareholders, the bookkeeping and main financial information. This information is publicly available, through a website [www.infogreffe.com](http://www.infogreffe.com).

## **FREEZING AND CONFISCATION OF ASSET**

**The French judicial system regarding asset recovery is based on criminal conviction : no confiscation can be ordered without declaration of guilt by a court. Confiscation constitutes a criminal sanction pronounced in addition to imprisonment and/or fine. The range of asset liable to confiscation is very large, due to mechanisms of extended confiscation and reverse of the burden of proof.**

**Hence non conviction based confiscation is not allowed according to domestic law, France may accept to execute foreign NCB order, under certain conditions, according to a MLA request.**

### **The French system is currently based on the following principles:**

Any asset used to commit the offence may be confiscated provided it belongs to the convicted person, or that the latter had free disposal of it to commit the offence,

Any asset that constitutes the object or the proceeds of crime, either directly or indirectly, may be confiscated by the court, irrespective of any ownership condition; proceeds of crime may then be confiscated even if they belong to a third party from a legal point of view,

Confiscation may be ordered by the court as an additional penalty for any offence carrying 1 year or more of imprisonment, even if the legal act defining the offence does not expressly provide for such an additional penalty,

Furthermore, extended confiscation may be pronounced in two cases:

- If an offence carries 5 years or more of imprisonment and generated a profit: in this case, any asset owned by the convicted person or at the disposal thereof may be confiscated by the court, to the extent that he cannot prove its lawful origin (the onus of proof is reversed in this case),
- Or when provided for by the legislative act defining the offence, confiscation of the whole asset of the convicted person may be ordered by the court, irrespective of any link with the offence, and irrespective of its lawful/unlawful origin (e.g. applicable to money laundering and terrorism-linked offences)

Value-based confiscation may also be ordered rather than the confiscation of an identified asset, without specific condition, in order to facilitate the confiscation application.

Any asset that can be confiscated may be seized prior to the judgment during the investigation, in order to guarantee the confiscation ordered later by the court. -

Specific procedures have been established in this respect, particularly adapted to intangible assets and real estate.

When the offender cannot be convicted on the basis of the original offence, the French criminal code provides for other offences that allow criminal confiscation, based on mechanisms that lower and/or reverse the onus of proof:

- money laundering,
- receiving criminal assets,
- and failure to justify income for a person usually in relation with offenders.

## **GENERAL GUIDELINES FOR MLA**

The French judicial authorities provide extensive assistance in criminal matters to other countries seeking assistance via letters of request. Requests from foreign authorities are treated in principle in the same way as identical measures from French authorities.

### **LEGAL FRAMEWORK**

Most exchanges relating to mutual legal assistance in criminal matters in France take place on the basis of ratified bilateral or multilateral conventions, which prevail over French domestic law.

For the purposes of asset recovery, the following multilateral conventions may be taken into consideration :

- The 1988 United Nations convention against illicit traffic in narcotic drugs and psychotropic substances ;
- The 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime ;
- The 1997 OECD convention on combating bribery of foreign public officials in international business transactions
- The 2000 United Nations Convention against transnational organized crime ;
- The 2003 United Nations Convention against corruption ;

Where no international convention is applicable, the general provisions of the Code of Criminal Procedure apply, and requests for mutual legal assistance are executed on the basis of the reciprocity principle.

In this case, requests for judicial assistance from foreign judicial authorities are sent through diplomatic channels.

Requests for mutual legal assistance are executed pursuant to French Law, but the legal requirements of the foreign country can be taken into account as far as they do not limit the exercise of procedural rights foreseen by the French Code of Criminal Procedure.

The request may not be executed if it is liable to threaten public order or the fundamental interests of the nation. The requesting authority is informed in this case that no action, total or partial, may be taken in relation to the request.

According to the French legislation and jurisprudence, dual criminality is not generally required in mutual legal assistance where no coercion is necessary to execute the request. However, such a requirement may arise from the relevant convention or where the execution of the request implies the use of coercion.

Any evidence which France provided in execution of a mutual legal assistance request may only be used for the specific purpose stated in the request. If further use of the evidence is required, your country must first seek France's consent to the further use.

## **PRACTICAL STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM FRANCE**

In general, when seeking mutual legal assistance from France the steps outlined below should be followed:

### **Consultation with the central authority**

In the most serious cases, it is recommended that the foreign Central Authority contact the French Central Authority in advance of making a request for mutual legal assistance to ensure the assistance sought is available under the laws of the French Republic and the request will meet the legal requirements of France's legislation.

An incomplete request for legal assistance will not systematically be returned in

such cases, but additional information may be requested.

### **Specification of the applicable Legal Framework**

The treaty, convention (UNCAC, UNTOC, OECD Anti-Bribery Convention, other) or other legal framework pursuant to which mutual legal assistance is requested from France has to be clearly specified. If no convention is applicable, the request is made pursuant to the reciprocity principle.

### **Identification of the authority conducting the investigation and requesting assistance :**

It is absolutely necessary for the French Central Authority to identify precisely the requesting judicial authority.

### **Summary of the case**

It is necessary to provide a detailed outline of the case under investigation or prosecution, including a summary of the evidence that supports the investigation. This summary should clearly link the facts and the assistance requested, as well as the importance of the evidence requested for the investigation.

More specifically in the context of requests aiming at identifying, freezing or confiscating criminal assets, it is paramount to provide all necessary information on the links established between the criminal offence and the assets proceeding of this offence (see below).

### **Applicable legal provisions**

It is necessary to identify and enclose a copy of all relevant legal provisions under investigation and/or prosecution, including applicable penalties and the relevant procedural rules of your legislation.

### **Assistance sought**

It is necessary to outline in specific terms the assistance sought from France. Any particular requirements that must be met (example: certification/authentication needs) must be clearly presented.

In addition, considering the nature of the assistance sought, the following information must be included:

▪ **Witness statements/testimony:**

Provide a list of questions to be asked of the witness.

Clearly specify the procedural rules applicable in your legislation for the hearing of witnesses or suspects. These rules will be taken into account as far as they do not limit the exercise of procedural rights or privileges foreseen by the French Procedure Code.

More specifically, provide all relevant details regarding:

- The information to be delivered to the witness/suspect on his rights;
- The oath to be taken by the witness;
- The extent to which the witness has an obligation to appear, and the possibility to use coercion; and
- The competent authority must clearly specify if the witness shall be heard by a judge according to your legislation, and not by a police officer.

▪ **Search and Seizure:**

Provide extensive details on the location of the premises to be searched.

Give all relevant information on the type of objects to be seized.

If evidence may be held on a computer system set up within the premises where the search is requested, give all relevant technical information at your disposal.

If the express consent of the person in whose residence the operation takes place is necessary, specify expressly.

Mention all necessary undertakings for the safekeeping and certification of the seizures.

▪ **Enforcing orders to seize Criminal Assets :**

Provide the name, address, nationality, date and place of birth and all available information concerning the location of the suspect whose criminal conduct has given rise to a seizing order of an asset.

Provide the particulars of the assets which are intended to be seized, and explain in detail the link between the suspected offence and this property. When

available, provide any information on the rights of third parties in relation to this property.

Specify whether this asset is the object, the instrument or the product of the crime or if the seizure aims at freezing all the assets of the person under examination. In this case, where several offences are investigated, specify for which offence the freezing is foreseen in your legislation (as these requests can be subject to a need for dual criminality).

Provide an official, certificated copy of the freezing order.

#### ▪ **Enforcing an order of confiscation of criminal proceeds**

Provide the name, address, nationality, date and place of birth and all information concerning the location of the person whose criminal conduct has given rise, after a verdict of guilt, to a decision of confiscation.

Provide the particulars of the assets which are intended to be confiscated and details on the link between the suspect and this property. Provide any information on the rights of third parties in relation with to property.

Specify whether this asset is the object, the instrument or the product of the crime or if the confiscation is extended to all the assets of the convicted person.

Provide an official, certificated copy of the decision on confiscation (unabridged). Specify whether or not this decision is final.

If an application for the execution of a freezing order has previously been made in relation to the confiscated property, provide all references of this request.

#### **Confidentiality requirements**

In France, the existence and nature of requests for assistance are subject to confidentiality. However, as some disclosure may be necessary, particularly where the rights of third parties are to be guaranteed, the need for confidentiality should be expressly set out in the request.

#### **Urgent requests**

Identify any time limit within which compliance with the request is desired and the reason for the time constraints (example: pending court proceeding/time-sensitive investigation, ongoing detention pending trial, etc.). If you face limitation periods, set out the precise dates.

## **Contact points**

Include a list of the names and contact numbers for key law enforcement/prosecution authorities familiar with the case. You should include the name and, where applicable, the contact information of your Central Authority, in the event the foreign authority wishes to contact you for the purpose of clarification or obtaining additional information.

## **Translation**

Where no applicable convention stipulates otherwise, France requires requests for legal assistance to be made in French or accompanied with a translation.