

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

TURKEY

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 TURKEY

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

1. IDENTIFICATION OF THE ASSET

In order to recover the proceeds of corruption held within Turkey, first identify whether the request is formal or informal. It will be necessary to identify *[insert relevant information as needed here, e.g.: the suspect and all related entities through which he/she may hold property including companies, businesses, trust and family members.]* In order to assist identify assets in *[insert your country name]*, 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 Turkey 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. MASAK can also obtain information from relevant countries through bilateral agreements and Memorandum of Understanding it concluded with other countries.

2. [CONFISCATION OF PROPERTY RELATING TO FOREIGN OFFENCES

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

To restrain/ freeze/ 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, Turkey 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, Turkey 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

The Central Authority for the international recovery of assets is the General Directorate of International Law and Foreign Relations of the Ministry of Justice. Recovery of Proceeds from Crime Centre has been established within the body of this General Directorate.

Contact Information:

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[G20 country to set out contact information for law enforcement agency representatives focusing on international asset recovery matters and for central authority.]

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[Note if your country participates in any practitioner networks, e.g. CARIN, StAR, Egmont etc]

IV. OTHER USEFUL REFERENCES

Detailed information regarding international recovery of assets can be found at

“<http://www.uhdigm.adalet.gov.tr>” and

“http://www.uhdigm.adalet.gov.tr/suggam/index_suggam.html”.