



Guideline On Stolen Asset Recovery

2022



INTOSAI

Goal Chairs
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PSC – CBC – KSC

**Quality Assurance Certificate of the Chair of the Working
Group/Subcommittee/Work Stream**

This is to certify that **the Guideline on Stolen Asset Recovery** which is placed at level **QA3** of Quality Assurance as defined in the paper on “Quality Assurance on Public goods developed outside Due Process” approved by the INTOSAI Governing Board in November 2017 has been developed by following the Quality Assurance processes as detailed below:

- (i) Draft reviewed by external expert at the World Bank Group’s Stolen Asset Recovery Initiative (StAR)***
- (ii) Drafts reviewed internally by Tanzania SAI and GAO, including attorney, editor and specialists in financial crime***
- (iii) Draft provided to the full Working Group (WGFACML) for comment***

The product developed is consistent with relevant INTOSAI Principles and Standards. The structure of the product is in line with the drafting convention of non-IFPP documents.

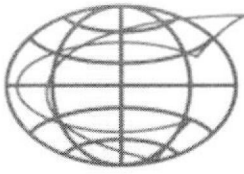
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Cairo , July 2022.

President of the Accountability State Authority of Egypt

Councillor/ Hesham Badawy

**Chair of the Working Group on Fight Against Corruption and Money Laundering
(WGFACML)**



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Based on the assurance provided by the **INTOSAI Working Group on Fight against Corruption and Money Laundering (WGFACML)** and the assessment by the Goal Chair, it is certified that the **Guideline on Stolen Assets Recovery** which is placed at level **3 (three)** of Quality Assurance as defined in the paper on "Quality Assurance on public goods developed outside Due Process" approved by the INTOSAI Governing Board in November 2017, has been developed by following the Quality Assurance processes as detailed in the Quality Assurance Certificate given by the Working Group Chair.

The product is valid till **30 June 2024** and if it is not reviewed and updated by **30 June 2024**, it will cease to be a public good of INTOSAI developed outside the Due Process.

Girish Chandra Murmu
Chair of Knowledge Sharing and
Knowledge Services Committee

Guideline On Stolen Asset Recovery

A TOOLKIT FOR SUPREME AUDIT INSTITUTIONS

Working Group on Fight Against Corruption and Money Laundering, International Organization of Supreme Audit Institutions (June 2021)

PREFACE

The International Organization of Supreme Audit Institutions (INTOSAI) is an independent, professional, and nonpolitical organization established to provide mutual support; foster the exchange of ideas, knowledge, and experiences; and encourage Supreme Audit Institution (SAI) capacity development and continuous performance improvement.¹ INTOSAI promotes good governance by enabling SAIs to help their respective governments improve performance, promote public trust, enhance transparency, ensure accountability, maintain credibility, foster the effective use of public resources, and fight corruption, among other things.

INTOSAI's third strategic goal of knowledge sharing builds on the essential features of openness, sharing, and cooperation that have been INTOSAI's hallmark since its inception in 1953.² INTOSAI's Knowledge Sharing Committee leads initiatives to meet this goal. The Working Group on the Fight Against Corruption and Money Laundering (WGFACML) is within this Committee. The Working Group's aims include:

- Promoting international cooperation in the fight against money laundering, both among SAIs and with other international organizations.
- Identifying and sharing policies and strategies for combating money laundering within competencies and authorities of SAIs.

¹A Supreme Audit Institution (SAI) is a public body of a state or supranational organization which, however designated, constituted or organized, exercises, by virtue of law, or other formal action of the state or the supranational organization, the highest public auditing function of that state or supranational organization in an independent manner, with or without jurisdictional competence. INTOSAI Statutes, Art. 2 § 2, (September 2019).

²INTOSAI's third strategic goal is to encourage SAI cooperation, collaboration, and continuous improvement through knowledge development, knowledge sharing and knowledge services, including (1) producing and revising INTOSAI products; (2) providing benchmarks and operating a community portal; and (3) conducting best practices studies, and performing research on issues of mutual interest and concern.
https://www.intosai.org/fileadmin/downloads/about_us/Overview/EN_INTOSAI_Strategic_Plan_2017_22.pdf.

- Designing and promoting policies, strategies and actions within the international anti-money laundering legal framework of each SAI.

This document, developed by WGFACML, addresses what to do *after* the crime has already been committed and assets have already been lost. While safeguarding assets is critical, as is preventing crime and corruption, these matters are beyond the scope of this document. The objectives of this document are to (1) explain the key steps of asset recovery efforts and associated challenges by summarizing the work of experts in the field, and (2) provide usable guidance or tips—a “toolkit”—for SAI auditors working in asset recovery.

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OVERVIEW

While the exact magnitude of the problem is difficult to measure, the Stolen Asset Recovery Initiative (StAR) estimates that the proceeds of crime, corruption, and tax evasion total between \$1 trillion and \$1.6 trillion annually.³ Governments lose between \$20 billion and \$40 billion in stolen assets each year, but StAR estimated in 2011 that over the last 15 years, only \$5 billion had been repatriated.⁴

Stolen assets are money and other proceeds that result from a profit-generating crime.⁵ Stolen *public* assets are money lost to countries through government corruption (e.g. kleptocracy and the bribery and fraud that make it possible).⁶ Criminals often hide these proceeds in “safe haven” financial centers to avoid identification and confiscation. The societal costs of corruption may far exceed the value of stolen assets. The theft of public assets—especially in developing countries—diverts valuable resources from addressing issues like poverty and fragile infrastructure.⁷

According to the World Bank, “corruption weakens confidence in public institutions, damages the private investment climate, and ruins delivery mechanisms for poverty alleviation programs such as public health and education.”⁸ In addition, corruption weakens the rule of law. Asset

³Kevin M. Stephenson et al., *Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action*. (Washington, D.C.: World Bank Publications, 2011). The Stolen Asset Recovery Initiative (StAR) is a partnership between the World Bank Group and the United Nations Office on Drugs and Crime that supports international efforts to end safe havens for corrupt funds. The StAR Initiative works with developing countries and financial centers to prevent the laundering of the proceeds of corruption and to facilitate more systematic and timely return of stolen assets.

⁴Stephenson et al., *Barriers to Asset Recovery*.

⁵Theodore S. Greenberg et al., *Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture* (Washington, D.C.: World Bank Publications, 2009).

⁶According to the Organisation for Economic Co-operation and Development (OECD), corruption is the antithesis of good governance and it is a direct threat to government programs at the federal, state, and local levels. The illicit behaviors encompassed by the term “corruption” include bribery, extortion, nepotism, and fraud, among other things. Fraud and other illicit actions against public funds increase the cost of public programs, lead to inefficient use of public resources, and erode trust in government and the rule of law. See OECD, *State-Owned Enterprises and Corruption: What Are the Risks and What Can Be Done?* (Paris: OECD Publishing, 2018).

⁷World Bank, *World development report 2011: Conflict, security, and development* (Washington, D.C.: World Bank Publications, 2010).

⁸Jean-Pierre Brun et al., *Asset Recovery Handbook: A Guide for Practitioners* (Washington, D.C.: World Bank Publications, 2011). A second edition of the handbook was published in December 2020. The StAR Initiative noted that the second edition includes new legislation and case examples, and emphasizes the need to use innovative

recovery—the seizure and recovery of the proceeds of crime and corruption—is a powerful tool to combat corruption and increase confidence in government.

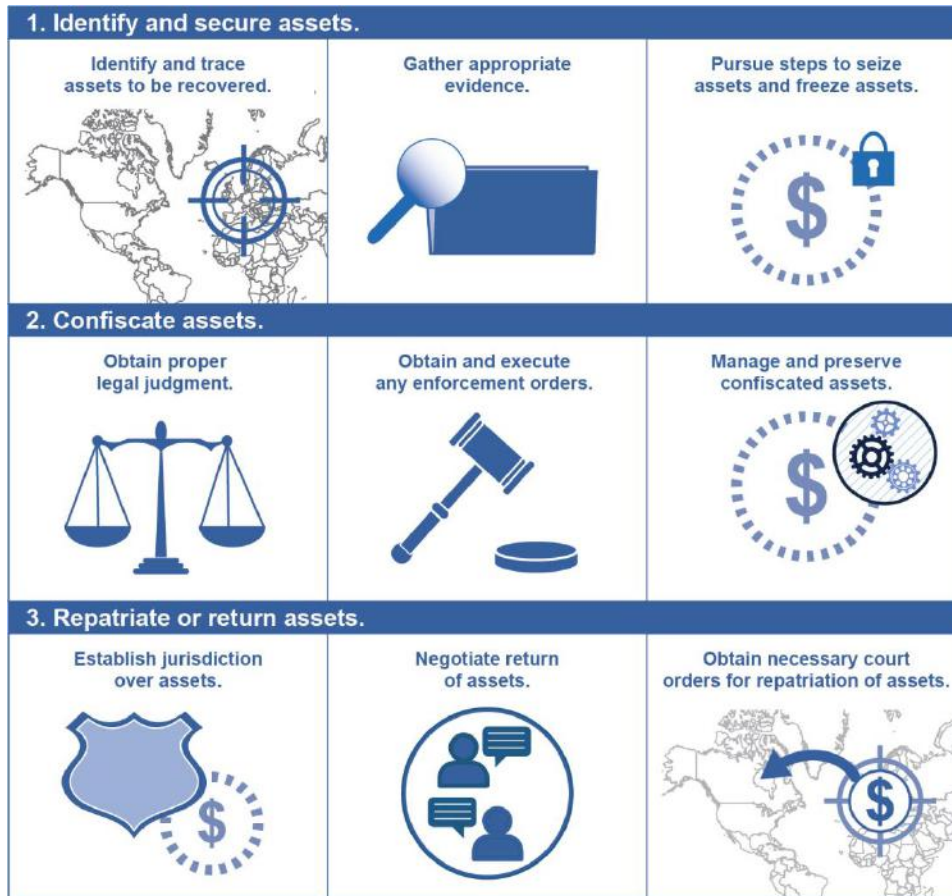
This overview summarizes existing work on the asset recovery process, explores key challenges, and identifies areas where Supreme Audit Institution (SAI) auditors can conduct audits or performance reviews relating to these asset recovery challenges.⁹ We have divided the asset recovery process into three key steps, each with a corresponding chapter that discusses the step in more detail.¹⁰

strategies and technical tools, including in the context of international cooperation. Jean-Pierre Brun et al., *Asset Recovery Handbook: A Guide for Practitioners, Second Edition*. (Washington, D.C.: World Bank Publications, 2020).

⁹In particular, StAR has published a large volume of work on asset recovery. See <https://star.worldbank.org/>.

¹⁰While many cases involving asset recovery follow these steps, asset recovery can happen through other means or methods. For example, there could be a civil case in which a domestic or foreign court is asked to award compensation for damages caused by corrupt activities or embezzlement or to resolve ownership of funds or assets.

Figure: Asset Recovery Organized as Three Key Processes



Note: The steps above illustrate common actions taken in asset recovery cases, but may not all apply to every case.

Step 1. Identifying and securing the assets. This step includes identifying and tracing the assets that need to be recovered, gathering the appropriate evidence, pursuing the proper steps to seize the assets, and freezing the assets so they cannot be accessed or moved.

Step 2. Confiscating the assets. This step involves preparing a legal case for forfeiture, obtaining the proper legal judgement, and obtaining and executing any enforcement orders.

Step 3. Repatriating (or returning) the assets back to the country or government from which they were stolen (where applicable). This step includes establishing jurisdiction over the recovered assets, negotiating the return of these assets, and obtaining any necessary court orders for the repatriation of the assets.

There are numerous stakeholders in the asset recovery process including:

- Law enforcement, particularly financial crime investigators who gather evidence and provide leads for investigations.
- Prosecutors and other judicial officials who can confiscate assets and convict.
- Other government officials, such as those who coordinate with foreign authorities or fine those who stole the assets.
- Banks which can freeze assets.
- Private companies and their intermediaries, such as lawyers.
- Development agencies that provide technical assistance and training.

Chapters 1–3 discuss these steps in more detail, including associated challenges and topics for SAI auditors to consider in their audit or performance reviews. Appendix I lists key legal and other resources related to asset recovery.

Key Mechanisms in International Cooperation on Asset Recovery

Recovering stolen assets is complex and may involve multiple parties within a country's government (and multiple legal jurisdictions within that country). All parties must coordinate and establish clear and distinct responsibilities, procedures, and lines of communication. Parties must also be able to identify which agencies are responsible for taking the lead at various key steps during the asset recovery process. In international cases, these parties may be in several different countries.

The key legislation on international cooperation on asset recovery is the United Nations Convention Against Corruption (UNCAC). The UNCAC is the only legally binding universal anti-corruption instrument. The UNCAC calls on all state parties involved in the asset recovery process to “afford one another the widest measure of cooperation and assistance.”¹¹ In 2015, the UNCAC Implementation Review Group launched its second round of a 5-year peer review process to examine state member parties' implementation of the UNCAC with a focus on

¹¹United Nations Convention Against Corruption, G.A. Res. 58/4, U.N. Doc. A/RES/58/4 (Oct. 31, 2003).

corruption prevention measures and asset recovery. These efforts are ongoing and estimated to conclude in 2023 or 2024.¹²

Experts in asset recovery have identified some key mechanisms for international cooperation on asset recovery. These include:

- Mutual Legal Assistance (MLA) requests: An MLA treaty is an agreement between two or more countries to gather and exchange information to enforce public or criminal laws. MLAs can be used in asset recovery cases to obtain financial records, testimony, or a search and seizure warrant, or to enforce a provisional restraint order. Experts recommend that international cooperation begin with informal assistance and escalate to an MLA as needed.
- Informal assistance: Informal assistance is any official support provided beyond the scope of an MLA request. It may be used by equivalent or counterpart law enforcement agencies, financial intelligence units, or regulatory agencies to obtain information to assist in investigations and potential asset recovery. For example, with the appropriate permission, a country may work through the Egmont Group, an international network of financial intelligence units.¹³ A country may also work with one of the many international judicial networks that cover various regions of the world and assist with training, capacity building, and information sharing.¹⁴ In 2019, the StAR Initiative developed a directory of asset recovery networks to help parties involved in asset recovery facilitate cooperation.¹⁵

¹²Conference of the States to the United Nations Convention Against Corruption, *Report of the Implementation Review Group Report* (Abu Dhabi: 2020).

¹³The Egmont Group is comprised of 159 Financial Intelligence Units (FIUs) that provides a platform for the secure exchange of expertise and financial intelligence to combat money laundering and terrorist financing. Eurojust, a European Union agency and one example of an international judicial network, addresses judicial cooperation among its agency member states.

¹⁴International judicial networks include the United States Committee on International Judicial Relations, the West African Network of Central Authorities, and the Network of Prosecutors against Organized Crime.

¹⁵World Bank, *International Partnerships on Asset Recovery: Overview and Global Directory of Networks* (Washington, D.C.: World Bank Publications, 2019).

Key Challenges in Asset Recovery

Experts from the StAR Initiative, the United Nations Office on Drugs and Crime (UNODC), and the Basel Institute on Governance have outlined broad challenges related to asset recovery, including challenges around (1) coordination and information sharing, (2) resources and expertise, and (3) differences in legal traditions.

Coordination and Information Sharing

According to the StAR Initiative, one of the greatest challenges with the asset recovery process is that government agencies and other authorities—both internationally and domestically—may work in silos and fail to share relevant information with other parties. In addition to collaborating and sharing information effectively, it is also important to establish good working relationships among the parties involved in the asset recovery process including among both domestic and international parties. In domestic cases, the lead agency in country may choose to coordinate the agencies by establishing regular contact or check-ins. In international cases, all parties also must share information and communicate effectively with each other to successfully recover assets. However, parties often experience communication issues in the context of MLA requests, according to the StAR Initiative.¹⁶ For example, if the request is sent to the wrong person or needs to be channeled through multiple agencies or departments, the request may be delayed. Cases could be hurt by these delays.

Resources and Expertise

In order for the asset recovery process to lead to a successful outcome (such as identifying and returning stolen assets), agencies and organizations must be well-resourced, meaning that appropriate staff are allotted time to work on asset recovery and have access to necessary technical tools (e.g., databases).¹⁷ Training and technical assistance (such as assistance with establishment of asset declaration, conflict of interest reporting, and verification systems) helps ensure that staff understand the process and have the tools needed to carry out their responsibilities. Countries new to asset recovery may benefit from reviewing literature and trainings offered by the StAR Initiative, the Basel Institute for Governance, and other

¹⁶Stephenson et al., *Barriers to Asset Recovery*.

¹⁷Ibid.

international groups that work in the area (app. I of this document provides more information on these groups and available resources).

Countries new to asset recovery need to:

- Provide training and technical support to all relevant staff;
- Establish good working relationships with other stakeholders; and
- Ensure that the proper resources are available throughout the process.

While SAI auditors' roles vary by country, they must understand the asset recovery process, know their country's laws, and have the tools necessary to complete their work.

Differences among Legal Traditions

Differences among legal traditions may affect the asset recovery process. For example, differing legal systems (e.g., common law versus civil law) and confiscation systems (value-based versus property-based systems) create challenges for foreign jurisdictions attempting to cooperate. Legal terminology used in one jurisdiction may be different from terminology used in another.¹⁸ There may be differences in procedures, evidentiary requirements such as the standard of proof, and even the length of time needed to obtain assistance. Addressing these challenges requires coordination by both originating and requested jurisdictions and transparency in how requests are processed.

Roles of SAIs and Areas for Review

SAI authorities vary depending on the legal and operational responsibilities of the SAI within a particular country. SAI authorities are established by the country's constitution or supreme law-making body. Based on SAI authorities, some SAIs may have direct and/or indirect involvement in asset recovery, particularly in the early stages. For example, SAIs may be directly involved by:

- Initiating asset recovery processes through audit findings and fraud indications;¹⁹
- Offering guidance on informal assistance;
- Developing technical training programs;

¹⁸Ibid.

¹⁹The Digest of Asset Recovery Cases provides instances where audit reports proved useful in building cases for freezing, confiscation, and repatriation of stolen assets. For example, in 2006, a Special Audit Report of the Controller and Auditor General of Kenya in found contracting irregularities which eventually resulted in \$6 million in asset recoveries. See United Nations Office on Drugs and Crime, *Digest of Asset Recovery Cases* (New York, 2015).

- Participating in asset recovery investigations by tracing assets;
- Obtaining information from tax agencies or law enforcement to verify suspected or potential corruption, fraud or financial wrongdoing; and
- Referring suspected wrongdoing and related facts to the relevant law enforcement or other authorities.

SAIs may also provide oversight by:

- Conducting performance and compliance reviews and audits of asset recovery laws and regulations;
- Reviewing agency policies on asset recovery processes, collaboration, or information sharing; and
- Providing recommendations to improve asset recovery processes based on these performance reviews and audits.²⁰

To address some of the broader challenges discussed in this overview, SAI auditors may wish to ask:

- What agencies within the country have responsibilities related to asset recovery?
- How do these agencies collaborate to implement asset recovery?
- Is there a political or organizational culture that encourages asset recovery efforts within the country?
- How do agencies share information with foreign countries and in international organizations?
- Do relevant agencies have sufficient resources and expertise?

Appendix II contains additional questions for SAI auditors.

²⁰For example, see Audit of SAI Austria, Strafrechtliche Vermögensabschöpfung (Asset recovery), Reihe Bund 2019/7. This report's main recommendations relate to the improvement of the strategy and aim setting, efficiency of processes, and the evaluation of the staffing.
https://www.rechnungshof.gv.at/rh/home/home/Strafrechtliche_Vermo_gensabschoepfung.pdf (only in German).

CHAPTER 1: IDENTIFYING, FREEZING, AND SEIZING ASSETS

1.1 Steps and related challenges

Successful asset recovery relies on an effective strategy for identifying, freezing, and seizing assets. These strategies may take different forms and vary in their formality. As discussed in the Overview, countries may collaborate through both informal assistance and a formal mutual legal assistance agreement (MLA). MLAs provide a framework for countries to formally request assistance with identifying, tracing, and freezing assets (among other asset recovery processes).²¹ Government agencies and industry practitioners—investigative and law enforcement agencies, courts, as well as private sector accounting firms and financial institutions—play key roles in these processes.

SAIs, in addition to their general audit functions, may also play a direct role in the early stages of asset recovery—particularly in identifying stolen assets—depending on their authority. For example, SAIs may help detect potential corruption, fraud, or other financial crimes during the course of their audits of entities and agencies. Government and industry professionals should be aware of possible legal obstacles and other challenges related to developing and implementing effective processes for identifying, freezing, and seizing assets. Below we have summarized key challenges related to these processes as identified by asset recovery experts, and identified potential areas for examination for SAIs.

1.1.1 Identifying and tracing assets and related key challenges

The process of identifying and tracing assets links the assets and proceeds of criminal activities to an offense committed by the criminal—i.e., “following the money.” The Group of 8 (G8), a collection of eight highly industrialized nations that meet annually to foster consensus on certain global issues, identified a number of best practices associated with identifying and tracing assets.²² These best practices encourage governments (or “states”) to:

²¹For example, these agreements may include mechanisms for collecting evidence on behalf of another country, conducting searches and seizures, or enforcing restraining or confiscation orders.

²²Members of the G8 include Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, the United States, and the European Union. Russia is currently suspended from participation. See *G8 Best Practice Principles on Tracing, Freezing and Confiscation of Assets* (New York: G8 Publications, 2005).

- ensure sufficient resources are made available by government agencies to identify the extent and whereabouts of assets subject to seizing or freezing;
- designate experts on asset tracing, freezing, and confiscation to provide specialized advice and expertise, either internally or to the authorities for mutual legal assistance;
- review and update their laws and procedures, as needed, to keep them current, for the purpose of enhancing their abilities to identify and assist other States in the tracing of assets; and
- cooperate with other states in investigating and seizing assets as well as prosecuting criminals.

Gathering evidence to identify and trace assets involves multiple agencies and stakeholders with roles that vary by country, but this process likely involves cooperation between law enforcement and private sector entities such as banks and accounting firms. These efforts are often under the supervision of or in close cooperation with prosecutors or other interested parties.

There may be several sources at the beginning of an investigation including criminal complaints, money laundering related reports, civil proceedings, information obtained from audits, and reports from whistle-blowers, among others. In April 2019, the StAR Initiative highlighted new approaches to tracing assets abroad by using open source tools developed in other nations. In one case, Moldova used Ukrainian asset declarations to identify potential corruption violations and assets held outside of Moldova.²³ Specifically, Moldovan officials and their family members owned assets in the Ukraine that were the proceeds of crimes, and those assets were identified through Ukraine’s database.²⁴

Challenges in Identifying and Tracing Assets

Government agencies and stakeholders, including SAIs, face a number of challenges in identifying and tracing assets including identifying the true owner of the assets (“beneficial owner”), and challenges associated with data access and emerging technologies. Beneficial

²³Asset Recovery Initiative, *The StAR Quarterly: April 2019* (Washington, D.C: 2019).

²⁴Ibid.

ownership challenges make it difficult to identify who truly owns an asset, and data access issues affect practitioners' ability to use data to identify and track assets. Emerging technologies create new mechanisms for hiding assets.

Beneficial ownership. StAR notes that a key challenge associated with identifying and tracing assets to be recovered is identifying who owns these assets.²⁵ Beneficial ownership refers to the person or persons who ultimately control an asset. Most jurisdictions use a broad definition of beneficial ownership which includes assets that are effectively controlled, held, or have been gifted by the target of an investigation.²⁶ However, criminals often attempt to obscure their true ownership of an asset by placing it in a corporation or trust or by having a family member or associate hold the asset. In some jurisdictions, for example, certain legal statutes have traditionally kept the identities of certain owners such as the actual owners of a corporation private. These privacy statutes protect the identities of corporate owners, leaving room for criminals to take advantage of these protections by using “anonymous” corporate owners to hold their illegal assets.

In 2014, the Financial Action Task Force (FATF) issued guidance on transparency and beneficial ownership that defined beneficial owners as “the natural person who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted.”²⁷ FATF recommends that countries ensure that adequate, accurate, and timely information on the beneficial ownership of all legal entities is available to law enforcement.²⁸

Some recent efforts to address beneficial ownership include:

- In 2016, the United States Financial Crimes Enforcement Network promulgated a rule that requires covered financial institutions in the United States to identify and verify the identity of the beneficial owners of all legal entity customers (with some exceptions) when a new account is opened, among other things. In these cases, the financial institution may comply by either obtaining the required information

²⁵Ibid.

²⁶Ibid.

²⁷FATF, *Guidance on Transparency and Beneficial Ownership* (Paris, 2014), <https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>.

²⁸FATF also identifies jurisdictions with weak measures to combat money laundering and terrorist financing in two public FATF documents that are issued three times a year.

on a standard certification or by any other means that comply with the substantive requirements of this obligation.²⁹ These requirements took effect in 2018.

- In 2016, France legislated a registration of actual beneficiaries for every company, i.e., every person or entity owning (even in an indirect way) at least 25 percent of the capital or having a significant influence. If the owner is another company, then the owners of that company are registered.³⁰
- The United Kingdom (UK) has also legislated to require transparency on the beneficial ownership of UK companies. The Small Business, Enterprise and Employment Act of 2015 (SBEE) amended the registration and disclosure obligations placed on companies and other entities, such as limited liability partnerships, incorporated in the UK. SBEE required those companies to obtain and hold additional information on People with Significant Influence or Control over the company. Companies must comply with disclosure and filing requirements to keep this information up to date.³¹

To improve governments' abilities to trace assets, FATF also identified mechanisms for obtaining beneficial ownership information such as company registries, financial institutions, and tax-related information.³² Many financial institutions conduct due diligence that could provide additional information access for SAIs and law enforcement.³³ This process, known as customer identification programs or "know your customer" (KYC) efforts, identifies customers who may pose a high risk to business activity in a particular jurisdiction.³⁴ KYC initiatives are a vital part of most financial institutions' anti-money laundering efforts.

²⁹Customer Due Diligence Requirements for Financial Institutions, 81 Fed. Reg. 29398 (May 11, 2016).

³⁰French Law n° 2016-1691 (dated December 9, 2016).

³¹Global Forum on Asset Recovery, *Guide to Beneficial Ownership Information: Legal Entities and Legal Arrangements* (December 2017), https://star.worldbank.org/sites/star/files/bo_country_guide_uk_dec2017.pdf.

³²FATF, *Guidance on Transparency and Beneficial Ownership* (2014), <https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>.

³³Specifically, banks may need to develop risk profiles of their customers and conduct ongoing monitoring based on the risk associated with the customer to identify and report suspicious activity.

³⁴Often these customer identification programs requires banks and other financial institutions to collect identifying information from customers and to have risk based procedures for verifying the customer's identification information so that the financial institution can have a reasonable belief that it knows the true identity of a customer.

Data access. When tracing assets, data access issues can significantly hinder asset recovery. For example, many countries lack domestic bank registry information so auditors and agencies cannot determine bank account owners' identities.³⁵ In addition, financial institutions in certain jurisdictions may lack complete and accurate financial records and other identifying information on entities that have been targeted for investigation, making it more difficult for law enforcement authorities to initiate or conduct an investigation.³⁶ However, some countries have taken steps to improve the availability of data related to beneficial ownership. For example,

- The United Kingdom has a public beneficial ownership register that includes individuals with significant control (over 25 percent) of a company for three different types of assets—companies, properties, and land trusts.³⁷
- In 2016, Brazil enacted a non-public beneficial ownership registry, which is only accessible by its Department of Federal Revenue.³⁸
- Further, the European Union's Fifth Anti-Money Laundering Directive requires member states to implement public beneficial ownership registries. Countries including France (2016), Denmark (2017), and Austria (2018) have already created registries. Other member states having ongoing efforts to create them.³⁹
- In 2021, the United States passed legislation requiring the establishment of a non-public beneficial ownership registry.

Emerging technologies. Agencies involved in asset recovery must keep abreast of emerging financial products that pose new money laundering risks—such as certain types of cryptocurrency designed to obscure ownership.⁴⁰ The World Bank notes that cryptocurrencies pose formidable challenges for policymakers because there is presently no regulatory framework for cryptocurrency, and transfers of funds via cryptocurrency may occur outside of

³⁵Stephenson et al., *Barriers to Asset Recovery*.

³⁶Ibid.

³⁷Ibid.

³⁸Mor, Federico. "Registers of Beneficial Ownership," *Briefing Paper 2019* (London: House of Commons Library, 2019). <https://researchbriefings.files.parliament.uk/documents/CBP-8259/CBP-8259.pdf>.

³⁹Inter-American Development Bank et al., *Beneficial Ownership Implementation Toolkit* (Washington, D.C.: March 2019).

⁴⁰PwC. *Brazil now requires information reporting for ultimate beneficial ownership* (Washington, D.C.: PwC Publications, 2016), <https://www.pwc.com/us/en/tax-services/publications/insights/assets/pwc-brazil-requires-info-reporting-for-ultimate-beneficial-owners.pdf>.

the scope of anti-money laundering compliance programs.⁴¹ To this end, agencies and stakeholders involved in asset recovery must be aware of evolving technologies and emerging techniques to obscure the ownership of assets. Further, some of these new technologies may also prove helpful to SAIs in locating assets. As a result, SAI should be mindful of potential uses of new technologies such as blockchain. For example, blockchains contain records of transactions that may prove helpful in tracking transactions and assets.

1.1.2 Issuance of freezing and seizing orders and related challenges

Freezing assets

A freezing order may be used to freeze assets suspected of being the proceeds of corruption. The rules surrounding the issuance of freezing orders vary greatly by jurisdiction, and are often based on whether a jurisdiction has a common law or civil law system. In practice, common law jurisdictions often require written applications including seizure warrants and a supporting affidavit. By contrast, civil law jurisdictions may only require that parties involved in the asset recovery provide specific information to the appropriate judicial party.

Many jurisdictions allow prosecutors to make applications to courts to freeze assets on a provisional basis without first notifying the target, a practice known as an “ex parte action”.⁴² This practice may prevent the target of an investigation from moving or hiding assets under investigation. The use of these orders varies widely by jurisdiction. In some jurisdictions, prosecutors may use an ex parte action whenever they would like; in other jurisdictions, ex parte actions are only permissible when there is a clearly demonstrated risk of the assets disappearing. Ex parte orders are often time-limited and may include a requirement to provide notice to the asset holding party and the opportunity for a hearing.

Asset seizure

⁴¹World Bank, *Cryptocurrencies and blockchain* (Washington, D.C.: World Bank Publications, 2018).

⁴²ibid.

The process of asset seizure also varies by jurisdiction, but generally involves court proceedings of some kind. Seizure is a temporarily prohibition of the transfer, conversion, disposition, or movement of property, or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority.⁴³ By contrast, confiscation is a permanent deprivation of property by order of a court or other competent authority. Seizure and confiscation laws preserve the proceeds of a crime for potential future confiscation.⁴⁴ See Chapter 2 for a more detailed discussion on confiscation.

Challenges related to freezing and seizing assets

Length of time to obtain a freezing order. Obtaining a freezing order can be a lengthy process that may provide criminals time to move or sell stolen assets. For example, procedures that involve multiple agencies across several jurisdictions may extend the time needed to obtain a freezing order. However, some countries have taken steps to mitigate this problem and enable more immediate action. For example:

- In the United States, a court may freeze certain assets belonging to a defendant accused of violating federal banking or health care laws before trial.⁴⁵
- In France, administrative authorities can freeze assets, which allows the Minister of the Economy and Finance and the Minister of the Interior to jointly decide on each freezing order request.⁴⁶
- In Switzerland, the Federal Act on Freezing and Restitution of Illicit Assets provides guidance on freezing politically exposed persons' assets. To this end, the act provides support to local judicial authorities by taking measures to prevent the withdrawal of any illicitly acquired assets that have entered the Swiss financial system.⁴⁷

⁴³United Nations, *Convention Against Transnational Organized Crime* (New York: 2000).

⁴⁴Ibid.

⁴⁵Freezable assets include property obtained as a result of the crime, property traceable to the crime, and other property of equivalent value.

⁴⁶Simon Champigny, Elise Pousin, and Laure Rougevin-Baville, *Asset Freeze Measures in the Fight Against Terrorism* (Bruxelles: European Judicial Training Network, 2016), http://www.ejtn.eu/Documents/THEMIS%202016/Semi%20A/France1_TH_2016_01.pdf.

⁴⁷Switzerland Federal Department of Foreign Affairs, *Freezing of Assets*, <https://www.eda.admin.ch/eda/en/home/foreign-policy/financial-centre-economy/illicit-assets-peg/freeze-assets.html>.

In certain cases, international conventions and treaties including the United Nations Security Council resolutions, bilateral mutual legal assistance treaties (MLAT), and associated legal authorities, can help freeze and seize assets more quickly. For example, Article 39 of Chapter VII of the United Nations (UN) Charter authorizes the Security Council to investigate any threats to peace which include any natural or legal person suspected of participating in terrorist activities.⁴⁸ The charter also enforces the use of the UN black list—a collection of individuals and organizations that use state funds for terrorist and related activities. The EU has implemented some of the UN charter resolutions by freezing the assets of individuals on the UN blacklist.⁴⁹

Varying evidentiary requirements. Effective asset recovery often depends on assistance from foreign jurisdictions, but this help can be complicated by statutes of limitation and varying legal traditions and procedures.⁵⁰ Evidentiary requirements to freeze and seize assets vary across countries. As a result, it may be more difficult for law enforcement agencies to access important information in certain jurisdictions. StAR has noted that evidentiary requirements can vary from “beyond a reasonable doubt” to the much less stringent “intimately convinces a judge” standard.⁵¹ Chapter 2 further discusses challenges related to varying evidentiary standards.

1.2 Key areas of focus for SAIs related to identifying, freezing, and seizing assets

Based on the steps and challenges discussed above, the following are key areas for SAI auditors to consider in performance reviews of other agencies or in cases where SAIs may be directly involved in a specific asset recovery effort—in particular, in identifying and tracing assets. Appendix II contains additional questions SAIs may want to ask regarding identifying, freezing, and seizing assets.

⁴⁸Champigny, Pousin, and Rougevin-Baville, *Asset Freeze Measures*.

⁴⁹Ibid.

⁵⁰Jean-Pierre Brun et al., *Asset Recovery Process and Avenues for Recovering Assets (adopted from the handbook for Practitioners on Asset Recovery under the StAR Initiative)* (Washington, D.C.: World Bank Publications, 2011), <http://pubdocs.worldbank.org/en/824561427730120107/AML-Module-5.pdf>.

⁵¹Ibid.

1.2.1 Identifying and tracing assets

With respect to identifying and tracing assets, SAIs may play different roles—reviewing processes for efficacy (auditor role) or participating alongside other agencies (more direct role).

SAIs may wish to consider the following questions during performance audits of relevant agencies' processes to identify and trace assets:

- How do relevant agencies within the jurisdiction identify new and emerging technologies that criminals employ to steal and hide assets?
 - Are there actionable steps outlined for agencies to take to combat these emerging methods?
 - How effective are these actionable steps in combating emerging methods?
- Which agencies are involved in identifying and tracing assets?
 - What policies or procedures do these agencies have in place?
 - To what extent do these agencies coordinate and cooperate with each other?
- How do these agencies obtain data and evidence, and from which sources?
 - What, if any, data access obstacles do relevant agencies face?
- What are the data management capabilities of law enforcement authorities, or other relevant parties, and are they sufficient?
- Are relevant agencies' data collection and analysis methods in compliance with all applicable domestic and international laws and regulations?
- Do the relevant agencies have sufficient training, expertise, and authority to conduct their responsibilities?
- How do these agencies keep abreast of new evolving technologies and emerging techniques to obscure the ownership of assets?

SAIs may wish to consider the following questions during asset recovery efforts in which they are *directly* involved:

- To what extent does a SAI have sufficient access to banking information at the national level, if such information is available?
- Does a SAI have the power and authority to protect sensitive personal information?

- Does a SAI have the required training and guidance to complete their responsibilities?
Could the SAI contribute to the training of other agencies on these issues?
- Does a SAI have the expertise to verify the data or sources used to ensure data reliability and transparency?
 - Specifically, to what extent does the SAI have policies and procedures in place to obtain information from tax agencies or law enforcement to verify suspected or potential corruption?
- Does the SAI have a legal framework for referring suspected wrongdoing and related facts to the relevant law enforcement or other authorities?

1.2.2 **Freezing and Seizing**

As discussed above, collaboration and information sharing between domestic and foreign entities is critical when identifying, freezing, and seizing assets. SAI auditors who are not directly involved with investigations review how agencies are implementing MLA processes and the extent to which MLA requests are successfully facilitating collaboration on tracing, freezing, and seizing assets. Evidentiary requirements and the statutes of limitation to freeze and seize assets vary across countries, complicating asset recovery efforts.

Relevant questions for SAIs to consider when reviewing these processes and collaborations include:

- Which agencies are involved in the asset seizure and freezing orders, and what type of information sharing authorities and policies do they have in place (domestically and internationally)?
- What legislative measures are proposed or in place to enable effective asset seizures and the issuance of freezing orders?
 - What steps have agencies in international cases taken to address problems arising from varying evidentiary standards and are there any best practices?
- How much time does it typically take to issue a freezing order?
 - What steps could reduce this amount of time?

- If appropriate, based on a SAI's authority, are there recommended legislative or administrative actions they could make to better facilitate asset recovery in the areas of beneficial ownership or freezing/seizing assets?
- Are the agencies involved applying best practices, such as FATF or UN guidance, as well as internal controls, in their seizing and freezing efforts?

CHAPTER 2: CONFISCATION OF ASSETS

2.1 Steps and related challenges

The UN defines *confiscation* as “the permanent deprivation of property by order of a court or other competent authority”.⁵² The term *confiscation* is often used interchangeably with *forfeiture*. Confiscation involves preparing a legal case and obtaining and enforcing a confiscation order. Confiscation may also include, for example, managing or preserving the assets while awaiting their disposition through repatriation (repatriation is covered in Chapter 3). This chapter will provide an overview of how assets may be confiscated, discuss challenges identified by experts in the field, and identify areas for SAI auditors to examine in audits or performance reviews of confiscation-related activities.

2.1.1 Asset confiscation procedures and associated challenges

There are generally three models of confiscation used to recover criminal proceeds: conviction-based (criminal) confiscation, non-conviction based (NCB) asset confiscation, and administrative confiscation.⁵³ These types of confiscation seek the same ultimate goal—the confiscation of assets—but their procedures differ. One key difference is that criminal confiscation requires a criminal trial and conviction, whereas other models of asset confiscation may not. Additionally, administrative confiscation is a model for confiscating assets used or involved in the commission of an offence that have been seized during the investigation and can occur without a judicial determination; however, depending on the jurisdiction, a court process may be required.⁵⁴ Asset confiscation procedures generally take one of two approaches for recovering the proceeds or instrumentalities of corruption. In property-based confiscation the assets are linked to the criminal activities. Value-based confiscation is focused on the value of benefits derived from the criminal offense and often imposes a monetary penalty equal to that value.⁵⁵

⁵²United Nations Office on Drugs and Crime, *United Nations Convention Against Transnational Organized Crime and the Protocols Thereto*, Ann. I, Art. 2(g) (New York: 2004).

⁵³Jean-Pierre Brun et al., *Asset Recovery Handbook* (2020 edition).

⁵⁴Jean-Pierre Brun et al., *Asset Recovery Handbook* (2020 edition).

⁵⁵*Ibid.*

Conviction-based confiscation is when the state confiscates the proceeds of the crime for which a conviction was obtained. It is an action against the wrongdoer and requires a criminal trial and conviction (see below for a case example).

Case example: Conviction-based Confiscation

The United States and Guernsey

In 2017, the United States and Guernsey each recovered more than \$14 million in assets linked to two U.S. cases in which money was laundered through Guernsey.

In the first case, defendant Raymond Bitar pleaded guilty to unlawful internet gambling and conspiracy to commit bank fraud and wire fraud. He admitted to defrauding customers of his gambling operation by lying to them about the security of their funds, and by falsely promising players that their funds would be protected in segregated accounts. Instead, Bitar and his accomplices used players' funds for whatever purposes Bitar directed, including to pay him and others millions of dollars, and to cover the operating expenses of the gambling operation. Ultimately, the operation collapsed and was unable to pay players approximately \$350 million it owed them. In connection with his plea and sentencing, Bitar agreed to forfeit \$40 million derived from his offenses, including the funds he maintained in Guernsey.

In the second case, more than \$1.56 million was recovered in connection with the United States' prosecution of Paul Hindelang and his associates. Hindelang was a large scale importer of marijuana into the United States during the 1970s and 1980s. Similar to the Bitar case, Guernsey assisted the United States in its investigation into Hindelang. This investigation ultimately led to the registration and enforcement of a U.S. judgment of forfeiture against assets laundered to Guernsey and later liquidated.

The funds from both cases were transferred from Guernsey to the U.S. under a bilateral asset sharing agreement between Guernsey and the U.S. in February 2015.

Source: U.S. Department of Justice, Office of Public Affairs, *Department of Justice Recovers Millions in Criminal Proceeds Via a First Time Forfeited Asset Sharing by Guernsey Officials* (Washington, D.C.: Dec. 7, 2017).

NCB confiscation is asset confiscation in the absence of the conviction of the wrongdoer; it is an action against the asset itself. NCB confiscation happens in two ways: (1) within the context of criminal proceedings (but without the need for a conviction or finding of guilt); or (2) outside of criminal proceedings, such as in a civil or administrative proceeding. The civil or administrative proceeding could occur independently of or in conjunction with related criminal proceedings. In a number of jurisdictions, this form of confiscation may be referred to as *civil confiscation* or *civil forfeiture*.⁵⁶ (See below for a case example involving Sani Abacha. More details on the Abacha case—in particular, prior Swiss actions taken—are discussed in Chapter 3.)

⁵⁶Stephenson et al., *Barriers to Asset Recovery*.

Case example: NCB Confiscation (also known as Civil Confiscation or Civil Forfeiture)

General Sani Abacha

In 2014, the U.S. Department of Justice forfeited over \$480 million in corruption proceeds hidden in bank accounts around the world by former Nigerian dictator Sani Abacha and his co-conspirators. In November 2013, the U.S. filed a civil forfeiture complaint against more than \$625 million—including funds in bank accounts in Jersey, France, the UK, and Ireland. As alleged in the complaint, General Abacha and others embezzled billions of dollars in public funds from the Central Bank of Nigeria on the false pretense that the funds were necessary for national security and then moved the money overseas through U.S. financial institutions, among other corrupt activities.

Source: U.S. Department of Justice, Office of Public Affairs, *U.S. Forfeits Over \$480 Million Stolen by Former Nigerian Dictator in Largest Forfeiture Ever Obtained Through a Kleptocracy Action* (Washington, D.C.: Aug. 7, 2014).

Value-based confiscation is a confiscation procedure that enables a court to impose a pecuniary liability (such as a fine, usually in multiples of the profit or benefit derived from the crime). A convicted person is ordered to pay an amount of money equivalent to the value of their criminal benefit (see below for a case example).

Case example: Value-Based Confiscation Procedure

Siemens

In 2006, German prosecutors launched an investigation into Siemens, a multi-national manufacturing company, as part of another investigation of possible bribery of foreign public officials and falsification of corporate books and records. Siemens conducted its own internal investigation and uncovered evidence of corruption spanning several decades worldwide—across multiple operating groups and geographical regions. The internal investigation revealed failures to implement and circumvent internal controls up to the most senior levels of management, as well as evidence of corrupt and improperly recorded payments connected to the U.S. financial markets through Siemens subsidiaries. From 2001 through about 2007, Siemens made payments totaling approximately \$1.36 billion, and about \$800 million of that total were corrupt payments to foreign officials. Siemens and its subsidiaries in Argentina, Bangladesh, and Venezuela pleaded guilty to charges of conspiracy and violations of books and records and internal controls provisions. The plea agreement resulted in a \$450 million fine.

Source: United Nations Office on Drugs and Crime, *Manual on International Cooperation for the Purposes of Confiscation of Proceeds of Crime* (New York: 2012).

Administrative confiscation is a means for confiscating assets that have been seized during the investigation or involved in the commission of a crime. Administrative confiscation is authorized by statute, and generally justified by the urgency of seizing the involved assets before they are sold or further used for criminal acts. However, many jurisdictions permit challenges to the seizure. This type of confiscation is common in customs enforcement at borders.⁵⁷

Challenges Related to Confiscation

Many of the broader challenges discussed in the overview section are also relevant to the confiscation process. In particular, differences among legal traditions among countries may affect the asset recovery process and specifically the confiscation process. As noted previously, differing legal systems (e.g., common law versus civil law) and confiscation models (as discussed above) may create challenges in cooperating with foreign jurisdictions. Also, there may be differences in legal terminology, procedures, evidentiary requirements (such as the standard of proof), and even the length of time needed to obtain assistance.⁵⁸ These challenges make transparency and coordination by both originating and requested jurisdictions throughout the confiscation process all the more important. StAR elaborated on other challenges related to confiscation including:

Lack of a Non-Conviction Based (NCB) confiscation process. StAR noted that the ability to proceed with NCB confiscation is a valuable tool because in some cases, it may be the only way to recover the proceeds of corruption. One challenge StAR identified is that corrupt officials could either prevent or delay criminal investigations until after the perpetrator has died or fled. Further, a corrupt official may have immunity shielding them from prosecution in certain jurisdictions. As discussed previously, an NCB confiscation model is not dependent on a criminal conviction and it is taken against the assets—therefore, confiscation may proceed independent of these challenges.⁵⁹ StAR stated that an increasing number of jurisdictions have

⁵⁷United Nations Office on Drugs and Crime, *Manual on International Cooperation for the Purposes of Confiscation of Proceeds of Crime* (New York: 2012).

⁵⁸Stephenson et al., *Barriers to Asset Recovery*.

⁵⁹Stephenson et al., *Barriers to Asset Recovery*. See Barrier 15 in the study.

adopted legislation permitting NCB confiscation. The practice is encouraged in multilateral treaties and international standards.

Comingled assets. StAR noted that stolen assets are frequently comingled with legitimate assets, and it is challenging to meet the criminal standard of proof in demonstrating the link between assets and the criminal activity. Equivalent-value restraint and confiscation allow for legitimate assets—equivalent in value to the proceeds of the crime—to be confiscated in cases where the actual proceeds from the crime cannot be located or are no longer available (these assets are also referred to as *substitute assets*).⁶⁰ Jurisdictions that do not provide for equivalent-value restraint and confiscation create a significant barrier to confiscation of stolen assets.⁶¹

2.1.2 Management and preservation of confiscated assets and associated challenges

The United Nations Convention against Corruption (UNCAC) establishes that jurisdictions, in accordance with their domestic law, implement legislative or other measures to manage frozen, seized, or confiscation property.⁶² As confiscation orders are to result in the permanent transfer of ownership of assets to the government entity, it is important that the agencies or individuals involved have a means for preserving the value of the asset, to the extent possible, and tracking its disposition. Some countries, such as France, have established specialized agencies for managing assets.⁶³ Agencies must also take into consideration the cost of maintaining the assets in relation to the assets' value. FATF and UNODC have issued guidance on best

⁶⁰ The concept of equivalent-value restraint and confiscation holds that legitimate assets equivalent in value to proceeds or instrumentalities of crime may be restrained or confiscated in cases where the actual proceeds or instrumentalities are no longer available or cannot be located. Stephenson et al., *Barriers to Asset Recovery*.

⁶¹ Stephenson et al., *Barriers to Asset Recovery*. See Barriers 13 and 14 in the study.

⁶² Specifically, UNCAC, Article 31, paragraph 3, states: "Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article."

⁶³ France has established a specialized agency for managing assets. In France, after a court decision, misappropriated funds or other assets (e.g. buildings, cars) are entrusted to a public agency—the AGRASC—which manages and sells the assets, pays public creditors, compensates victims for losses and damages. AGRASC can take these actions on an international scale if required by a foreign court. "Agence de gestion et de recouvrement des avoirs saisis et confisqués."

practices in the management of confiscated assets (as well as asset pending confiscation), to help aid in decision making.⁶⁴ These best practices include:

- Ensuring there are sufficient resources and appropriate planning in place to handle asset management before seizure or confiscation;
- Ensuring those responsible for managing the assets have the proper training and authority;
- Having mechanisms in place to properly care for and preserve assets, (if applicable and to the extent possible) and handle any individual or third party rights to the assets; and dispose of assets, among other things; and
- Maintaining records on the status of the asset (such as whether it has been sold or destroyed) and its value (including any changes to its value).⁶⁵

The same challenges around asset management also apply to confiscated assets—such as managing costs and measuring value. Managing assets recovered (or in the process of being recovered) from criminal or corrupt activity may pose additional challenges. For example, cases against organized crime or corrupt officials can take years to complete. In these cases, agencies should have interim preservation measures established to help secure the assets until confiscation proceedings can be completed. In international cases, the originating jurisdictions must also consider the requirements and rights of the requesting jurisdiction, as applicable.

2.2 Key areas of focus for SAIs related to confiscation of assets

SAIs' audit report findings and fraud indications could lead to initiating the asset confiscation process. SAIs may wish to consider the following questions and areas during performance audits of relevant agencies' processes to confiscate assets (see app. II for additional questions):

⁶⁴United Nations Office on Drugs and Crime, *Manual on International Cooperation for the Purposes of Confiscation of Proceeds of Crime* (New York: 2012). Chapters VI–VIII describe provisional measures to preserve assets pending confiscation. The manual also discusses post-preservation issues and the confiscation application, and generally guides practitioners to facilitate asset recovery in accordance with the provisions of the Organized Crime Convention.

⁶⁵Ibid.

- To what extent has the SAI's country been historically involved in confiscation? Are there any cases for review and, if so, what confiscation mechanisms were used? Were there any best practices or areas identified for improvement?
- How does the SAI's country handle comingled assets during confiscation processes?
- Are there any signed agreements among relevant law enforcement agencies (both local and international) describing coordination specifically on confiscation? Are there aspects of the agreements that need to be improved?
- Are there any legislative actions that could improve the confiscation process?

With respect to reviewing how confiscated assets are managed and preserved and maintained (when applicable, such as with a physical asset), SAI auditors may already have asset management review policies in place which they may supplement (in the context of asset recovery) by also reviewing best practices outlined by FATF, UNODC, and other experts.

CHAPTER 3: REPATRIATION OF ASSETS

3.1 Steps and challenges related to repatriation

The 2005 adoption of the UNCAC established both the recovery and return of assets obtained illegally as a fundamental principle of international public law. Specifically, Chapter V, Article 51 of UNCAC states: *The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.*⁶⁶

Since the adoption of UNCAC, there have been numerous international efforts to recover and repatriate (or return) assets, but with limited success. StAR and other experts have published work identifying the challenges related to asset recovery, including information specific to the repatriation process.⁶⁷ The purpose of this chapter is to summarize key steps in the repatriation of assets, discuss associated challenges, and identify areas for SAI auditors to examine in related audits or performance reviews of these activities.

While there is a significant body of guidance on asset recovery, there is less information specific to the repatriation process.⁶⁸ Based on the resources available, the repatriation process involves several key steps—identifying related legal authorities, negotiating terms of repatriating funds, and determining the mechanism by which they will be returned. Each of these steps has associated challenges.

3.1.1 Legal Authorities

Who owns the assets?

The countries involved in asset recovery must establish the status of the forfeited assets. For example, parties need to determine whether the forfeited assets become property of the jurisdiction that seized the assets, or if there another agreement made during the forfeiture process. UNCAC Article 57 describes the legal conditions under which the requested country

⁶⁶United Nations Office on Drugs and Crime, *United Nations Convention Against Corruption* (New York: 2004).

⁶⁷For a list of key resources for further information on asset recovery processes, guidance, and training, see app. I.

⁶⁸Stolen Asset Recovery Initiative, *Stolen Asset Recovery: Management of Returned Assets*. One key document on repatriation—referred to as a policy note—was commissioned by the StAR Initiative in 2009 and undertaken by the Public Sector Anchor within the Poverty Reduction and Economic Management of the World Bank. This policy note provides an analytical framework to help policy makers approach the systematic return of assets—including how assets can be used more effectively and transparently.

(the country that received the asset recovery request) should return or give priority in returning confiscated assets to the requesting country or prior legitimate owners, or compensate the victims of the crime.⁶⁹

StAR notes that assets may be repatriated through different methods. One method is direct recovery through the judicial process. Direct recovery can occur if the requested country permits the court to order compensation or damages directly to the requesting country as a legitimate owner in the confiscation action.⁷⁰ Another, more common method uses treaties, agreements, and statutory authority to distribute assets after the final order of confiscation. StAR states if an MLA request has been submitted in accordance with the UNCAC, the parties to the request have an obligation to return confiscated assets in certain cases—for example, in cases of public corruption.⁷¹

Can the confiscated assets be returned or shared?

The countries involved must also establish what jurisdiction or legal ability they have to engage to return assets. StAR notes UNCAC Article 57 lays out that states should have legislative and other measures in place to enable their authorities to return confiscate property (minus expenses incurred) to the jurisdiction from which it was stolen. However, Article 14(3)(b) of UNTOC requires jurisdictions *consider* sharing recovered assets with the requesting country (or originating jurisdiction).⁷²

StAR also found that the majority of jurisdictions included in its review only allowed confiscated assets to be shared—not returned. To share confiscated assets, the jurisdictions required an asset sharing agreement or a government decision. Only sovereign jurisdictions may negotiate bilateral asset sharing agreements, which limits the number of jurisdictions with which assets

⁶⁹United Nations Office on Drugs and Crime, *United Nations Convention Against Corruption* (New York: 2004). Cases in which property should be returned under UNCAC include embezzlement of public funds or laundering of embezzled public funds.

⁷⁰Jean-Pierre Brun et al., *Asset Recovery Handbook (2011 and 2020 editions)*. In some cases, direct recovery may also occur “voluntarily” through plea agreements in which a defendant agrees to voluntarily repatriate assets located in a foreign jurisdiction to the court in which he or she is convicted.

⁷¹*Ibid.* Multilateral and bilateral treaties, asset sharing agreements (either on a case-by-case basis or by permanent agreement), and statutory authorities may also be used to share or return the recovered funds.

⁷²Stephenson et al., *Barriers to Asset Recovery*. Article 14(1) and (2) of UNTOC says that state parties should follow their domestic law (which via UNCAC 57 should include sharing procedures). Article 14(2) states that when acting on request of another State Party, they “shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.”

may be shared.⁷³ Only a few jurisdictions have the legal authority to return 100 percent of assets.⁷⁴

We reviewed available asset recovery tools issued by several countries that are considered financial centers (i.e. requested countries) for information on repatriation processes.⁷⁵ The following three examples provide insight into how various countries address confiscated assets.

- **Germany.** German law provides for the possibility of treating use of proceeds from asset recovery through MLA in criminal matters more flexibly.⁷⁶ Participating countries may agree to distribute the recovered assets. Germany's asset recovery document also notes that victims' compensation depends primarily on the law of the foreign state.⁷⁷
- **Switzerland.** If assets are confiscated in Switzerland (as part of international cooperation in criminal matters the assets may be shared with the requesting country only if that country has reciprocity in returning assets.⁷⁸ The Swiss Federal Office of Justice is responsible for negotiating an agreement on division with the foreign authorities. As a rule, the seized assets will be divided equally between Switzerland and the foreign state; however, when the assets are derived from public corruption, they are to be returned in full to the requesting country.⁷⁹
Swiss authorities are to develop a customized agreement with other countries that specifies the type of public interest programs to be funded by the returned assets, ways in which the returned assets are to be used, parties to be included in the restitution

⁷³Ibid. The many offshore jurisdictions that qualify as crown dependencies or overseas territories may not negotiate such bilateral asset agreements, which restricts the number of jurisdictions with which assets may be shared.

⁷⁴Ibid.

⁷⁵StAR's website has a listing of asset recovery tools from various countries, see <https://star.worldbank.org/ArabForum/asset-recovery-guides>.

⁷⁶Stolen Asset Recovery Initiative. *Asset Recovery Under German Law: Pointers for Practitioners*, accessed April 2020, <https://star.worldbank.org/ArabForum/asset-recovery-guides>.

⁷⁷Stolen Asset Recovery Initiative. *Asset Recovery Under German Law*. "However, this compensation is made only from assets which were collected by way of general execution. Further, no compensation is granted if the rights of the injured person to the assets continue to exist (section 56a (2) IRG). In such a case, it is the task of the injured person to himself pursue these rights." Accessed April 29, 2020, <https://star.worldbank.org/ArabForum/asset-recovery-guides>.

⁷⁸Swiss Confederation Federal Department of Justice and Police, *International Mutual Assistance in Criminal Matters Guidelines*, (Bern, Switzerland: 2009).

⁷⁹Federal Act on the Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons. (CC 196.1.) Section 5, Article 18.

process, and a plan for monitoring the use of the returned assets. If an agreement cannot be reached with the affected country, Swiss law allows authorities to determine the restitution process. For example, the assets may be returned via funding international or national non-governmental organizations' programs in the affected country.

- **United States.** The United States has flexible legal authority to repatriate confiscated assets to certain victims of crime or in recognition of a foreign government's assistance. However, the legal mechanisms available may vary depending on each case's circumstances. The U.S. asset recovery tool guidance recommends that foreign authorities consult with a specialized office (for example, the Money Laundering and Asset Recovery Section in the U.S. Department of Justice) about the most appropriate mechanisms in the context of particular cases.⁸⁰

3.1.2 Negotiations Process

StAR notes that case-by-case sharing agreements are often negotiated after the assets have been confiscated—potentially giving the requested country a stronger position—in that they possess the assets—than the original jurisdiction. Negotiating asset sharing agreements can be a long process which may delay the return of the assets and require significant resources (such as expertise and funding) often not available to the requesting countries.⁸¹ Asset sharing agreements can also result in depreciation of the confiscated assets themselves and additional costs for the requested jurisdiction maintaining the assets (see Chapter 2 for a discussion of issues regarding the maintenance of forfeited assets). In addition, StAR found that in many jurisdictions, the owner of the seized or restrained property is entitled or can request payment of legal fees associated with the proceeding from the confiscated assets.

3.1.3 Mechanisms for Asset Repatriation – Case Examples

It is important to determine the specific mechanisms by which assets are returned. Key considerations include how the returned funds can be used most effectively, the internal

⁸⁰U.S. Department of State, *U.S. Asset Recovery Tools and Procedures: A Practical Guide for International Cooperation*, accessed June 2020, <https://star.worldbank.org/ArabForum/asset-recovery-guides>.

⁸¹Stephenson et al., *Barriers to Asset Recovery*.

controls around systems through which they are returned, and whether other new mechanisms (such as a specific fund set up for the return of the assets) should be developed. StAR provides considerations around these critical decisions.⁸² The following two case examples (from academic research and StAR's policy note, respectively) illustrate different means by which assets have been returned. In the first example, assets were returned by creating a foundation; in the second example, assets were returned through government procedures. Both examples illustrate the importance of monitoring and auditing the usage of repatriated funds.

Case Example: Abacha Case—Nigeria

General Sani Abacha governed Nigeria from 1993 to 1998 and is believed to have laundered between \$3 and \$5 billion through a complex network of banks and companies in the Bahamas, Jersey, Liechtenstein, Luxembourg, Nigeria, Switzerland, and the UK. In December 1999, Swiss authorities accepted an MLA request, which led to the issuance of a general order to freeze Abacha's funds. In 2004, Swiss authorities concluded there was sufficient proof of the criminal origin of the Abacha funds.

Forfeited funds from the case were repatriated to Nigeria through government procedures. After a series of negotiations, \$505.5 million was repatriated to Nigeria in 2005 and 2006 for the funding of Millennium Development Goals-related activities in the Nigerian budget (health, education, and rural infrastructure programs). With a grant from the Swiss government, the World Bank—which had also been selected to monitor the recovered assets as part of the negotiated agreement—worked with Nigerian civil society organizations to review and analyze how the looted funds were used. The World Bank Public Expenditure Review found the funds had generally been used to increase budget spending in the specified areas as intended.

Source: Stolen Asset Recovery Initiative, *Stolen Asset Recovery: Management of Returned Assets: Policy Considerations* (Washington, D.C.: 2009).

⁸²Stolen Asset Recovery Initiative, *Stolen Asset Recovery: Management of Returned Assets*.

Case Example: BOTA Foundation—Kazakhstan

The BOTA Foundation was founded in 2008 by Kazakhstan, Switzerland, the U.S., and five Kazakhstani citizens, as a means to return more than \$115 million in disputed assets (about \$84 million forfeited plus interest). The Foundation's mission was to improve the lives of impoverished children and youth in Kazakhstan by investing in health, education, and social welfare.

The forfeited funds came from a money laundering investigation initiated by judicial authorities in Switzerland. U.S. authorities who led the investigation suspected that U.S. citizens paid bribes to Kazakhstani government officials in exchange for oil prospecting rights in Kazakhstan. In 2001, \$84 million was restrained in a Swiss bank account.

Discussions between Kazakhstan, Switzerland, and the U.S. began in 2003 with the goal of establishing a restitution mechanism. In 2007, the three countries and the World Bank agreed to repatriate the \$84 million to Kazakhstan through a newly established independent foundation called the BOTA Foundation. The World Bank contracted the International Research and Exchanges Board (IREX), an international nongovernmental organization based in Washington, D.C. and Save the Children to build the Foundation, oversee its operations, and ensure it achieved its goals and funds were used appropriately.

According to IREX's final report on the BOTA Foundation, it was the largest child and youth welfare foundation in Kazakhstan during its operation from 2009 to 2014, improving the lives of over 208,000 poor Kazakhstani youth through its three programs: conditional cash transfers, scholarships to attend Kazakhstani higher education institutions, and grants to support innovative social service provisions. The IREX report also describes the internal controls and strategies employed for using the funds and external audits of the foundation.

Sources: Pablo J. Davis, To Return the Funds at All: Global Anticorruption, Forfeiture, and Legal Frameworks for Asset Recovery, 47 *University of Memphis Law Review* 291, 358 (2016); and IREX and Save the Children, *The BOTA Foundation: Final Summative Report* (submitted Feb. 12, 2015).

3.1.4 Repatriation Data

A 2014 study surveying OECD members on progress made in its asset recovery efforts reported that data on asset recovery cases continue to be scarce.⁸³ Challenges include the lack of sufficient data to link assets to specific underlying offenses. In other cases, data were simply not collected. StAR makes several recommendations to improve data collection for asset recovery

⁸³Stolen Asset Recovery Initiative, *Few and Far: The Hard Facts on Stolen Asset Recovery*, (Washington, D.C.: Sept. 10, 2014). The report's findings were based on a data derived from questionnaires sent to 34 countries that requested high level information on law enforcement efforts in freezing and returning assets, the sources of the cases, and the foreign jurisdictions where the assets originated. The questionnaire also requested information on policies, legal frameworks, and institutional arrangements for asset recovery.

cases, such as incorporating a data collection objective into asset recovery policies. INTOSAI has emphasized the importance of data reporting and efforts (case studies, for example) to hold agencies accountable for implementing policies.⁸⁴ On the subject of repatriation, StAR has also emphasized transparency and public reporting on the status of asset returns and their use.⁸⁵

In their 2014 analysis, StAR/OECD reported significant returns to developing countries. By contrast, the first StAR/OECD report on this issue—published in 2011—found most returns went to developed countries. The 2014 report found that between 2010 and June 2012, 80 percent of the total value of frozen or returned assets originated in developing countries. However, the value of assets returned versus assets frozen remained small. Of the \$2.6 billion frozen assets, only \$423.5 million were returned between 2006 through 2012.⁸⁶ According to the report, the lengthy time it takes to recover assets may explain the lack of returns following asset freezes. Regardless, the report found the number of both frozen and returned assets remains very small when compared to the estimated \$20 to \$40 billion stolen each year in developing and transitional countries.

3.2 Areas for SAI auditors to consider in review of repatriation processes

Based on the identified steps and challenges above, we have laid out potential areas for SAI auditors to consider in audits or performance reviews of repatriation activities. Appendix II provides additional information on potential issues and questions for audits.

3.2.1 Agencies Involved, Policies, and Controls

Asset repatriation is most commonly negotiated through various types of agreements. Different agencies and parts of the government within the requested (and requesting) country can have different roles. For example, in the U.S. only the Attorney General or the Secretary of the Department of Treasury or their designees may approve an asset transfer, and the Department of State must concur. The U.S. Congress has the authority to object to an asset transfer in limited circumstances. By contrast, in Switzerland, when local authorities identify confiscated assets derived from a foreign state, they are to contact the Swiss Federal Office of Justice which negotiates a sharing agreement with the other nation. If the amount to be repatriated exceeds 10 million Swiss francs, the sharing agreement must also be approved by the Swiss

⁸⁴INTOSAI, *Guidelines for Internal Control Standards for the Public Sector*.

⁸⁵Stolen Asset Recovery Initiative, *Stolen Asset Recovery: Management of Returned Assets*.

⁸⁶Stolen Asset Recovery Initiative, *Few and Far: The Hard Facts on Stolen Asset Recovery*.

Federal Department of Justice and Police. After the assets are seized, they are turned over to the Federal Office of Justice to be transferred to the other state, although in some cases they may be transferred directly by local authorities.

Key questions for SAI auditors to consider include:

- What legislative measures are proposed or in place to enable the return of confiscated/forfeited property?
- What agencies are involved in the repatriation process and what types of policies, procedures, and coordination mechanisms do they have in place (domestically and internationally)?
- Which specific agencies are involved in the approval process for a transfer of assets? How do they coordinate? Do they have documented policies? What is the process if there is disagreement among the agencies?
- Was a process established (by the requesting country, the requested country, or both) to ensure that repatriated funds were used in compliance with the negotiated agreement?
 - What role does the SAI play, if any, in auditing the disposition and use of repatriated funds?

3.2.2 Training and Expertise

Training and expertise are also challenges to asset recovery. These challenges extend to the specific process of repatriation given the specialized nature of the negotiations process. Auditors may wish to review whether the agencies involved have established training, related policies or guides (and the sufficiency of these documents), and whether the agencies obtained needed expertise on repatriation—especially on negotiations which is unique to this asset recovery step.

3.2.3 Data and Accountability

Data on asset recovery cases is limited, and collecting and reporting data on agencies' implementation of their policies is important to transparency and accountability. It is essential SAI auditors consider transparency and accountability in their reviews of these agencies' activities. For example, do the agencies involved:

- collect and regularly report data on the status and disposition of assets, including statistics on the amount of funds returned to the requesting country or third parties? or
- publish information on their repatriation efforts, for successful repatriation efforts?

Appendix I: Key Resources for Asset Recovery

Supreme Audit Institution (SAI) auditors can leverage several resources as they learn more about asset recovery. These include:

Resources

- **Stolen Asset Recovery (StAR) Initiative:** (www.star.worldbank.org). The World Bank StAR Initiative is a collaboration between the World Bank and the United Nations Office on Drugs and Crime (UNODC). StAR works with developing countries and financial centers to prevent the laundering of proceeds of corruption, and to facilitate more systematic and timely return of stolen assets. In addition to authoring publications and guides on stolen asset recovery for policymakers and practitioners, StAR officials provide capacity building, technical assistance, and training to countries interested in developing asset recovery guidance and improving staff skills. In December 2017, StAR held its first Global Forum on Asset Recovery. This forum brought together partners from several countries and focused on ways to provide assistance to four priority countries: Nigeria, Sri Lanka, Tunisia, and Ukraine. In April 2018, StAR began issuing a quarterly newsletter updating readers on StAR activity and important changes or upcoming events related to asset recovery. In January 2019, StAR published a global directory of international partnerships on asset recovery.⁸⁷ Additionally, StAR's most recent publications include a resource on e-filing asset declarations and a step-by-step guide for asset recovery practitioners on using insolvency proceedings to recover corruption proceeds.⁸⁸
- **Interpol's Global Focal Point Network on Asset Recovery:** (<https://www.interpol.int/en/Crimes/Corruption/Asset-recovery>). After identifying corruption as a priority crime area in 2007, Interpol launched the Global Focal Point platform in January 2009 to facilitate the return of stolen assets and put an end to safe havens for corrupt funds. According to Interpol, the Global Focal Point Network provides a secure information exchange platform for the recovery of criminal assets, on which

⁸⁷World Bank Stolen Asset Recovery Initiative, *International Partnerships on Asset Recovery: Overview and Global Directory of Networks* (2019), <https://star.worldbank.org/publication/international-partnerships-asset-recovery>.

⁸⁸Dmytro Kotlyar and Laura Pop, *The World Bank Stolen Asset Recovery Initiative, E-filing Asset Declarations: Benefits and Challenges* (2009); and Jean-Pierre Brun and Molly Silver, *World Bank Stolen Asset Recovery Initiative, Going for Broke: Insolvency Tools to Support Cross-Border Asset Recovery in Corruption Cases* (2020).

authorized law enforcement officers from member countries are designated as focal points who can respond quickly when another country requires assistance. The Network is open to all Interpol member countries, and applicants should be from law enforcement or a judiciary or administrative authority with a focus on asset recovery or corruption in general. These focal points can access contact information for other focal points; legislative, administrative, investigative, and judicial frameworks for member countries; a 24-hour initial action checklist for an asset recovery investigation; and a secure email system. The Focal Point Network meets annually to share information and best practices, and the Network has committed to offer technical assistance and capacity building workshops to member countries.

- **Basel Institute for Governance, International Centre for Asset Recovery:** (www.baselgovernance.org/asset-recovery). The International Centre for Asset Recovery (ICAR) was established by the Basel Institute on Governance in 2006 as an independent not-for-profit center for asset recovery. Its aims to strengthen and support the capacities of developing partner countries to recover stolen assets through training, case work, legal and policy analysis, the development of integrated IT tools, among other efforts.
- **Financial Action Task Force Recommendations:** (<http://www.fatf-gafi.org>). The Financial Action Task Force (FATF) (2012–2016) is an independent inter-governmental body established by the Ministers of its member jurisdictions.⁸⁹ FATF's mandate is to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing, and other related threats to the integrity of the international financial system. The FATF Recommendations set out a comprehensive and consistent framework of measures countries should implement to combat money laundering and terrorist financing, as well as the financing of proliferation of weapons of mass destruction. Countries have diverse legal, administrative, and operational frameworks and financial systems, and so cannot all take identical measures to counter these threats. The FATF Recommendations set an international standard of measures which countries should implement and adapt to their particular circumstances.

⁸⁹FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation* (Paris: 2012–2019), <http://www.fatf-gafi.org/recommendations.html>.

- **G-8 Countries Best Practice Principles on Tracing, Freezing, and Confiscation of Assets:** The G-8 countries have developed principles of good practice for asset recovery.⁹⁰ The principles are divided into four sections: general principles, traceability, freezing, and confiscation. Each section contains principles directed at country specific laws and procedures to facilitate effective action and improving international cooperation. Most of the principles emphasize the need for a multidisciplinary approach between, for example, legal, law enforcement, and financial and accounting experts, if restraint and confiscation work is to be effective.
- **Transparency International:** (www.transparency.org). Transparency International is an international non-governmental organization based in Berlin. Its purpose is to take action to combat global corruption with civil societal anti-corruption measures, and to prevent criminal activities arising from corruption. Transparency International offers technical assistance to governments and organizations to develop and promote practical tools that reduce opportunities for corruption.
- **International Anti-Corruption Coordination Centre:** (nationalcrimeagency.gov.uk). The International Anti-Corruption Coordination Centre (IACCC) aims to bring together specialist law enforcement officers from multiple agencies around the world to tackle allegations of grand corruption. IACCC works to improve rapid intelligence sharing, assist countries that have suffered grand corruption, and help bring corrupt individuals to justice.
- **Organizacion LatinoAmericana y Del Caribe De Entidades Fiscalizadoras Superiores/ Latin American and Caribbean Organization of Supreme Audit Institutions Working Group on the Fight Against Transnational Corruption:** (olacefs.com). This Working Group—composed of SAIs from Latin America and the Caribbean—was created to focus SAIs’ efforts in region in the fight against transnational corruption and to foster the exchange of timely information to improve the execution of

⁹⁰Group of 8, *G8 Best Practice Principles on Tracing, Freezing and Confiscation of Assets* (2004), https://www.justice.gov/sites/default/files/ag/legacy/2004/06/03/G8_Best_Practices_on_Tracing.pdf

investigation and government audit processes. The work of this group includes actions related to the exchange of information, such as:

- Reviewing a methodological guide on the exchange of information between SAIs in investigative work related to the fight against transnational corruption.
- Analyzing the legal feasibility of information exchange and generating protocols that will make it possible to validate the information that can be shared between SAIs.
- Providing technical assistance and proposing management and/or reciprocal control systems between SAIs to facilitate the exchange of information between SAIs.

Legal Tools

In addition to the resources above, SAI auditors may want to consult several legal tools during the asset recovery process. These tools include:

- **Changes to domestic legislation:** Those involved in the asset recovery process will need to determine if the proper laws are in place to support one country's efforts. It may be necessary to consider new laws, regulations, or procedures to expand or enhance existing legal capabilities, such as ensuring that the appropriate domestic institutions have sufficient criminal or civil authorities.
- **Mutual Legal Assistance Treaties:** MLATs and related multilateral conventions facilitate the exchange of evidence and information in criminal and related matters. In money laundering cases, they can be extremely useful as a means of obtaining banking and other financial records from treaty partners. If a country does not have an MLAT with another country it is attempting to recover assets from, it may want to consider entering into one.
- **UN Convention against Transnational Organized Crime:** Adopted in 2000, the United Nations Convention against Transnational Organized Crime (UNTOC) is a multilateral treaty against transnational organized crime. The Convention was adopted in November 2000, and entered into force in September 2003. It has three supplementary protocols:
 - Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children,
 - Protocol against the Smuggling of Migrants by Land, Sea and Air, and

- Protocol against the Illicit Manufacturing and Trafficking in Firearms.

All of these instruments contain elements of the current international law on human trafficking, arms trafficking, and money laundering.

Appendix II: Questions for Supreme Audit Institution (SAI) Auditors

Overview: General Asset Recovery Questions for Auditors

1. What agencies within the SAI's country have responsibilities related to asset recovery efforts?
 - a. Is there a lead agency or designated unit (which could consist of designees from multiple agencies)? If so, what specific authorities does the lead agency have and who is responsible for oversight of this agency?
 - b. What role does the legislature or other oversight body (such as a parliament) play in asset recovery? What is known about the effectiveness of their activities?
 - c. Does the SAI play an active role in asset recovery efforts (i.e., do they take part in identifying, confiscating or repatriating assets)?
 - d. If applicable, how does the SAI prepare and collaborate with the legislative or relevant authority on any audit findings related to asset recovery?

2. How do these agencies collaborate within the country to implement asset recovery?
 - a. Do they have any necessary memoranda of understanding (or other agreements) in place in order to share information and collaborate?
 - b. Have any related working groups or task forces been established?
 - c. Do they collaborate informally?

[SAI auditors could consider applying best practices for collaboration.]

 - d. Do the agencies have a documented plan for asset recovery and how to collaborate on these efforts?
 - Does the plan include periodic monitoring of these agencies' efforts?

[SAI auditors could consider applying best practices for performance measurement or assessment, or related internal controls.]

3. Within the SAI country, is there a political or organizational culture that encourages and support asset recovery efforts?
 - a. Has the SAI's country signed the United Nations Convention Against Corruption?
 - b. Does management at key agencies demonstrate a commitment to asset recovery efforts? (An example of this could be managers being assessed on asset recovery efforts.)
 - c. Is a commitment demonstrated at all levels of the relevant agencies?

[SAI auditors could apply aspects of internal control standards related to organizational culture.]

4. Are the agencies involved in related information-sharing efforts internationally?
 - a. Do the agencies have experience collaborating through the Mutual Legal Assistance Treaty (MLAT) process?
 - b. Do they collaborate informally with other countries? If so, do they have any policies or guidance covering informal collaboration?
 - c. Do they collaborate formally with other countries? If so, do they have any policies or guidance covering formal collaboration? (For example, agencies could represent their country at United Nations Convention Against Corruption meetings.)
5. Do the agencies involved have sufficient resources and expertise?
 - a. Do relevant agencies have dedicated budgets and staff allocated to asset recovery?
 - b. What training or other educational resources do agencies provide to relevant personnel?
 - c. Has the SAI country been involved in working with the Stolen Asset Recovery Initiative (StAR)? For example, has the SAI country requested technical assistance from StAR?

6. What technical assistance or training do agencies from requested countries (e.g., financial centers) provide for partners in requesting countries?⁹¹
7. Alternatively, to what extent do agencies from requesting countries take advantage of possible technical assistance or training resources?

Chapter 1: Identifying, Freezing and Seizing Assets

1. Does the SAI have a role in identifying stolen assets and the parties involved in the matter?
 - a. If directly involved, to what extent does a SAI have sufficient data access to assist in identifying and seizing efforts, and what opportunities exist to improve such data access?
 - b. What legal authorities exist to govern the SAI's role in identifying assets?
 - c. Does the SAI provide training to other agencies?
2. Who has the authority to determine which law or agreement governs the seizure process?
3. To what extent do local laws or agreements concerning identifying, freezing, and seizing assets reflect generally accepted best practices?
4. What are the requirements for information sharing related to identifying, freezing, and seizing assets both domestically and internationally, and how are these requirements implemented and monitored?
 - a. To what extent are there controls in place over the information sharing process?
 - b. To what extent do these processes reflect generally accepted best practices?
5. Are there mechanisms (e.g., database access or relevant contact information) in place to facilitate effective communication and collaboration during the identification of assets and seizure processes among the responsible entities (domestically or internationally)?

⁹¹Requested country means the country receiving the request for mutual assistance for one of the measures permitted under UNCAC. Requesting countries are those that are making the requests for assistance. United Nations Office on Drugs and Crime, *Digest of Asset Recovery Cases* (New York: 2015).

- a. To what extent are there controls in place to ensure that the mechanisms are effective and followed?
 - b. Specifically, to what extent does the SAI have policies and procedures in place to obtain information from tax agencies or law enforcement to verify suspected or potential corruption or other wrongdoing?
6. What is the training program for staff (including SAI staff, if applicable) involved in asset identification or seizure?
 - a. To what extent are there controls or human capital policies to ensure that all staff involved in the identification or seizure process have the necessary skills and capabilities?
7. How does the country identify new and emerging methods or technologies that criminals employ to steal and hide assets? Are there actionable steps outlined for the country to take to combat these emerging methods?
8. Are there uncommon or new data sources available that may assist domestic and international efforts to identify and seize assets?
9. What legal frameworks are in place to govern cooperation with other domestic agencies as well as international cooperation regarding the identification and seizure of assets?
 - a. Does the SAI have a legal framework for referring suspected wrongdoing and related facts to the relevant law enforcement or other authorities?
 - b. What steps, if any, can be taken to improve such cooperation?
10. Who has the authority to determine which law or agreement governs the seizure process?
11. To what extent are there controls in place to ensure that the seizure process is conducted in compliance with the relevant law or agreement?
 - a. What agency (or agencies) provides oversight of this process?

12. To what extent are there clear policies and procedures for seizing assets (i.e., initiating asset seizure, gathering and tracing assets, securing assets, and setting and enforcing court orders)?
 - a. Do the policies and procedures include timeframes and resource thresholds for each part of the process as well as roles and responsibilities?
 - b. What triggers exist for initiating the seizure process (for example, monetary thresholds)?
 - c. To what extent do the policies and procedures mitigate unnecessary duplication, overlap, and fragmentation?⁹²
 - d. To what extent are there controls in place to monitor the application of the policies and procedures and their effectiveness?

Chapter 2: Confiscation of Assets

1. To what extent has the SAI's country been involved in confiscation? Are there any cases for review?
2. If there are available case studies, what confiscation mechanisms were used (for example, civil or criminal confiscation or both)? Were there any best practices or areas identified for improvement? Do the cases reveal any gaps or uncertainties in the asset confiscation framework?
3. How does the SAI's country handle comingled assets during confiscation processes? Are there any applicable legal restrictions?
4. Are there any signed agreements among relevant law enforcement agencies (both local and international) describing the *modus operandi* on confiscation processes?
 - a. Are there ways in which the agreements need to be revised or improved?
5. Are there any legislative actions that could improve the confiscation process?

⁹²For example, see GAO, *FRAGMENTATION, OVERLAP, AND DUPLICATION: An Evaluation and Management Guide*, GAO15-49SP (Washington, D.C.: Apr. 4, 2015).

6. Do SAI auditors have sufficient knowledge and training to participate directly in (if applicable) or evaluate confiscation processes?
 - a. To what extent is the SAI permitted by law to directly participate in the confiscation of assets? What key concepts can be suggested for new or amended legislation?
 - b. Does the SAI have an audit plan for auditors involved in confiscation?
 - c. What skills can auditors learn from asset recovery practitioners (for example, by reviewing previous confiscations case studies or interviewing confiscation professionals)?
7. Who is ultimately responsible for maintaining and enforcing the control environment over confiscations assets?
 - a. What enforcement powers do they possess and do they have authority over all relevant entities involved in the seizure and confiscation process? Are there potential gaps or improvements for these powers?
 - b. What authorities or rights, if any, does the requesting jurisdiction have with respect to the confiscated assets? And how do the originating and requesting jurisdiction coordinate, if applicable?
8. To what extent are there clear policies and procedures for maintaining confiscated assets (e.g., physical assets) until their ultimate disposition?
 - a. To what extent are there controls in place to monitor the application of policies and procedures (and their effectiveness) for maintaining confiscated assets?
9. To what extent is the disposition and value of confiscated assets transparent? Are the responsible agencies maintaining appropriate records or reliable data on assets' value and status?

Chapter 3: Repatriation of Assets

*General Questions for Auditors about Repatriation*⁹³

1. To what extent has the SAI's country been involved in repatriation, e.g., are there any available cases for review?
 - a. When repatriation has been successful, what have been common agency practices, or interagency and international collaborative mechanisms?
 - b. When repatriation has been unsuccessful, what have been the causes for failure and areas for improvement?

2. Which agencies are involved in the repatriation process?
 - a. Does the SAI itself have any role in the repatriation process?

3. What legislative measures are proposed or in place to enable the return of confiscated/forfeited property?
 - a. Does the SAI have the ability to recommend legislative action in this area?
 - b. For requested countries (i.e., financial centers), do the agencies involved have the legal authority to return 100 percent of stolen assets?
 - i. If not, what percentage of the assets can they return and what happens to the remaining assets?
 - ii. Is the requested country permitted to subtract expenses from any amount returned, and how are these expenses determined? Is this established in law or in agency policies or procedures?
 - iii. How are third parties (i.e. non-state actors that may be entitled to some of any returned assets) treated under the law? If they are not addressed, are they addressed in other agency policies or procedures?
 - iv. Is the SAI involved in monitoring assets until they can be returned?
 - c. Does the agency (from either country involved in the process) have the authority to negotiate bilateral asset sharing agreements?
 - i. For jurisdictions that are not sovereign, what influence does the jurisdiction have on the process?

⁹³Repatriation is not defined in UNCAC. In this document, consistent with the United Nations Office on Drugs and Crime's definition, repatriation is the transfer of property to the country from which they has been stolen or which is otherwise entitled to them, such as the proceeds of a bribe paid to a national public official. *Digest of Asset Recovery Cases*, United Nations Office on Drugs and Crime (New York: 2015).

- d. Does the agency have the authority to verify compliance with international negotiations or law enforcement agreements?

Repatriation Questions for Both Requested and Requesting Countries

4. Do the agencies involved/under review (meaning only the agencies within the SAI's jurisdiction) have any policies, procedures, or informal guidance for the repatriation process?
 - a. If so, is it up to date and does it include all relevant definitions?
5. Are sharing agreements negotiated before or after assets have been confiscated?
6. Are there agency deadlines/limits on how long agencies have to do their part in the repatriation process (i.e., providing requested documentation, responding to communications from other agencies, etc.)? If so, how were the agency deadlines established and does the agency generally meet them?
7. Was a process established (by the requesting country, the requested country, or both) for ensuring that repatriated funds were used in accordance with the negotiated agreement?
 - a. What role does the SAI play, if any, in auditing the disposition and use of repatriated funds?
8. Does the agency publicize successful repatriation efforts? If so, where and how?
9. Do the agencies involved have expertise specific to the repatriation processes, including negotiations?

Repatriation Questions for Requested Countries

10. How do the agencies involved track the ultimate disposition of any confiscated assets (i.e., are they retained or repatriated)?
 - a. Are there related policies and procedures?
 - b. Who provides oversight?

11. How are repatriation judgements enforced? [Does the SAI have a role in coordinating this enforcement?]
 - a. Have there been cases where agencies have not followed through on judgements?

12. If the agency has the authority to return funds to third parties, does the agency have policies or guidance on this process?
 - a. Do any policies or guidance clarify how these third parties are identified and confirmed as eligible to receive funds?

13. If the agency has the authority to subtract any of its expenses from the return funds, does it have policies or guidance on determining these expenses?
 - a. What role, if any, does the requesting county have in the determination of expenses? Is this an issue that is negotiated?

14. What data does the agency collect on asset confiscation/forfeiture vs. asset repatriation? How is this data used?

15. What happens to assets that are not repatriated? Are there processes in place to determine potential for future repatriation? Are they used for social good? What role, if any, does the SAI play in monitoring this process?

Repatriation Questions for Requesting Countries

16. Has the SAI's country successfully requested and received repatriated funds before?

17. What steps has the country taken to begin the repatriation process?

18. Is there a lead agency or unit (which may consist of designees from multiple agencies) on requesting the repatriation of funds?

19. Is the SAI directly involved or is there a role for the SAI to assist in this process?