



UNODC

United Nations Office on Drugs and Crime

Regional Office for Southeast Asia and the Pacific

Preparation for Upcoming Review of UNCAC Chapter 5: Asset Recovery - A Practical Guide to Key Provisions

2 December 2015



Chapter V, Asset Recovery (art. 51-59)

“The return of assets is a fundamental principle
of this Convention...

Parties shall afford one another the widest
measure of cooperation and assistance in this
regard” (art. 51)



Asset Recovery: Chapter V of the UNCAC

Chapter V on Asset Recovery is a major breakthrough and is closely linked to the other chapters of the Convention:

- **Prevention**: Chapter II contains provisions on prevention of the diversion of funds, in particular of corruption (art. 8) and money-laundering (art. 14)
- **Criminalization**: Chapter III establishes the criminal offences to which chapter V is applicable
- **International Cooperation**: Chapter IV complements Chapter V with innovative provisions on international cooperation, particularly on mutual legal assistance (art. 46)



Typical steps of an asset recovery case as reflected in the UNCAC: (1)

- **Tracing / identifying / locating: art. 52, 55 (2, 3), 56, 58**
- **Seizure / Freezing: art. 54, 2 / 55, 2, Confiscation: art. 54, 1 / 55, 1**
- **Return / Recovery: art. 57**



Prevention and detection of transfer of proceeds of corruption (art. 52)

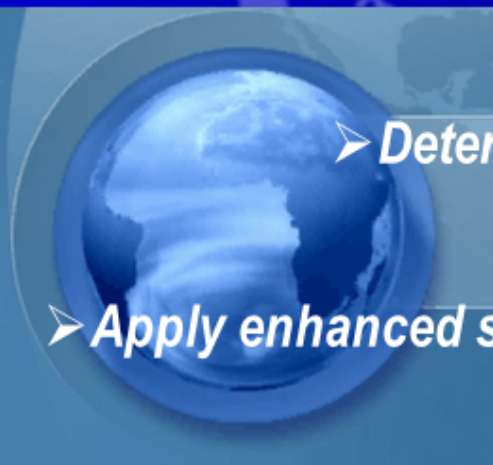
States Parties must require their financial institutions to:

➤ *Verify the identity of customers*

➤ *Determine the identity of beneficial owners of high-level accounts*

➤ *Apply enhanced scrutiny to accounts maintained by prominent public officials*

➤ *Report suspicious transactions to competent authorities*





Special cooperation and Financial Intelligence Units (art.56-58)



States Parties
shall endeavour

➤ Forward information on proceeds of corruption to another Party **without request** – when believed that this may trigger investigation and prosecution by receiving Party



States Parties
shall cooperate to prevent and combat transfer of proceeds of corruption and promote recovery and shall consider

➤ Establishing Financial Intelligence Units for receiving, analyzing and disseminating to competent authorities reports of suspicious transactions



Typical steps of an asset recovery case as reflected in the UNCAC: (2)

- Tracing / identifying / locating: art. 52, 55 (2, 3), 56, 58
- **Seizure / Freezing: art. 54, 2 / 55, 2**
Confiscation: art. 54, 1 / 55, 1
- Return / Recovery: art. 57



Art. 54 para 1: Confiscation Models

CONVICTION BASED

- To give effect to a foreign confiscation order, 54 (1a) (mandatory)
 - To order confiscation of foreign property, 54 (1b) (mandatory)
- The confiscation follows a criminal conviction against the person.

NON CONVICTION BASED (= IN REM, = CIVIL FORFEITURE)

- Consider: Confiscation without criminal conviction (1c) (non mandatory).
- The action is against the property, not against a person.



Non-conviction-based confiscation: Art. 54 subpara (1c)

- **Civil action against the property.** The non-conviction based confiscation follows a **tainted property scheme**: It has to be proven that the property is **tainted** (proceeds / instrumentalities)
- **Advantages:**
 - When no conviction is possible (perpetrator absconded, political opposition, weakened judicial system in the requested country)
 - Civil standard of proof is applied from the beginning (confiscation may be possible although the perpetrator has to be acquitted by criminal standards)
 - No need for dual criminality
 - No issues of retroactivity
- **Examples:** the US, Ireland, the UK, Italy, Australia, Slovenia, Ontario (Canada), South Africa



Typical steps of an asset recovery case as reflected in the UNCAC: (3)

- Tracing / identifying / locating: art. 52, 55 (2, 3), 56, 58
- Seizure / Freezing: art. 54, 2 / 55, 2, Confiscation: art. 54, 1 / 55,1
- **Return / Recovery: art. 57**



The Disposal of Confiscated Property (art.57)

**Embezzled public funds or
laundering of embezzled
public funds**

*Return to
requesting Party*

*Return to requesting Party if it can
reasonably establishes prior ownership*

**Proceeds of other
offences of corruption**

Other cases

*Confiscated property may be
returned to the requesting Party,
prior legitimate owner or
used for compensating victims*



Specifics of art. 57 UNCAC, compared to the UNTOC regime on the sharing of confiscated proceeds of crime

- Return of assets is **unconditional**, the return is **not at the discretion** of the confiscating State
- Convention establishes rules for the return of assets, depending on **how closely** the assets were linked to the requesting State Party
- Asset-sharing not foreseen in the Convention, **reasonable expenses** can be deducted
- **Bilateral agreements** on the final disposal of confiscated funds are possible, including on voluntary monitoring of the use of returned funds



Recommendations for SEA-PAC Members on Preparation for 2nd Review Cycle

1. Rigorously follow up on recommendations identified (Chapter III and IV) → Foundations to effective asset recovery regime
2. Capacity building in the area of financial investigations (7 out of 9 ASEAN country reviews identified FI as required TA): policy priority as well as legal recognition to use FI evidence in courts
3. Consideration to enactment/amendment of “Proceeds of Crime-related” Legislation and Framework and MLA

Thank you for your attention!

Akharakit (Ryan) Keeratithanachaiyos
Anti-Corruption Specialist

Regional Office for Southeast Asia and the Pacific
United Nations Office on Drugs and Crimes
Tel: (+66-2) 288-1074
Fax: (+66-2) 281-2129

ap-intact

ASIA-PACIFIC INTEGRITY IN ACTION NETWORK
ap-intact@groups.undp.org



*Empowered lives.
Resilient nations.*



UNODC
United Nations Office on Drugs and Crime