

GIFCS COMMITMENT ON ASSET RECOVERY

1. Background

A successful framework for combating financial crime and money laundering includes numerous characteristics, including depriving criminals of the proceeds and instrumentalities of their crimes.

This can in part be achieved by confiscating proceeds recovered through criminal, civil or administrative processes, and the restitution of funds to the victims of fraudulent or corrupt activity.

The confiscation and recovery of assets of illicit origin are effective instruments for dealing with organised crime, which is undertaken with clearly defined profit goals. They also help to prevent assets with illicit origin from being used to finance other illicit activities, to undermine the confidence in the financial systems, and to corrupt legitimate society.

This process is commonly referred to as “asset recovery”.

2. International standards

- (a) FATF immediate outcome 8 requires jurisdictions to evidence that the proceeds and instrumentalities of crime are confiscated. It states:

“Characteristics of an effective system

Criminals are deprived (through timely use of provisional and confiscation measures) of the proceeds and instrumentalities of their crimes (both domestic and foreign) or of property of an equivalent value. Confiscation includes proceeds recovered through criminal, civil or administrative processes; confiscation arising from false cross-border disclosures or declarations; and restitution to victims (through court proceedings). The country manages seized or confiscated assets, and repatriates or shares confiscated assets with other countries. Ultimately, this makes crime unprofitable and reduces both predicate crimes and money laundering.”

- (b) The leading convention in this area is the United Nations Convention against Corruption (UNCAC), which was signed in 2003 and came into force in 2005. It uses the expression “asset recovery” to refer to recovery of the proceeds of corruption rather than the wider universe of confiscation and repatriation. When asset recovery is referred to in UNCAC, the context is efforts by governments and their agencies seeking repatriation of the proceeds of corruption hidden in foreign jurisdictions. The proceeds of corruption or the assets which the proceeds have been turned into can be any asset, for example, money in bank accounts, equity portfolios, art, boats, cars and property. Such assets need to be managed by the authorities of the jurisdiction which has confiscated them.

Often, the assets are stolen by corrupt heads of government and other politically exposed persons. These individuals seek to move the assets to foreign jurisdictions in order to remove

them from their domestic environment and take advantage of differences in legal systems, difficulties in coordinating international investigations, poor international cooperation, and lack of transparency by using legal persons.

UNCAC was fundamental in moving global thinking on criminalising corruption beyond bribery to other aspects such as trading in influence and abuse of power. It also includes substantial and specific provisions on asset recovery – the foreword to the convention states that the convention makes a major breakthrough by requiring Member States to return assets obtained through corruption to the country from which they have been stolen.

Asset recovery is multi-jurisdictional. Its main processes under UNCAC can be broken down into tracing assets, freezing them, confiscating them and repatriating them. The multi-jurisdictional nature of these complex processes means that asset recovery is highly challenging.

Asset recovery is a fundamental principle of the convention as it also provides for repatriation after confiscation.

- (c) The main international initiative in relation to corruption and asset recovery is the Stolen Asset Recovery Initiative (StAR), which commenced its activities in 2007. This initiative is a partnership between the World Bank and the United Nations Office on Drugs and Crime. It works with developing countries and financial centres to prevent the laundering of the proceeds of corruption and to facilitate more systematic and timely return of stolen assets. One of the priorities of StAR is to tackle the misuse of legal structures to conceal the proceeds of corruption.

StAR publishes policy papers, expert guides and a database of asset recovery cases; delivers workshops to raise awareness and more advanced courses on asset recovery; and provides technical assistance to jurisdictions involved in asset recovery cases at their request.

- (d) The Chair and other members of GIFCS have already participated in certain international fora on asset recovery. These fora bring together interested parties and are a significant part of the international community's efforts in relation to asset recovery.

3. Confirmation

It is timely for GIFCS to confirm commitment to asset recovery. It considers facilitation of systematic and timely asset recovery to be a priority. In order to facilitate tracing of the proceeds of crime in the context of asset recovery and repatriation of assets, robust frameworks for obtaining and maintaining records of beneficial ownership of legal persons and legal arrangements and of high risk customers such as politically exposed persons are crucial. GIFCS will also promote initiatives by its membership on combating corruption as part of its commitment to asset recovery.