



**8th IAP EASTERN EUROPEAN & CENTRAL ASIAN
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ASSET SHARING

Asset Sharing



The sharing of the proceeds of confiscated assets between the requesting state and the co-operating state following mutual legal assistance in the enforcement of a confiscation order of the requesting state by the co-operating state



Imperatives to asset share – FATF 38

- Countries should have the authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize, or confiscate:
 - laundered property from,
 - proceeds from,
 - instrumentalities used in, or
 - instrumentalities intended for use in,
 - money laundering, predicate offences, or terrorist financing; or
 - property of corresponding value.
- Countries should be able to share confiscated property with other countries, in particular when confiscation is directly or indirectly a result of co-ordinated law enforcement actions.



Imperatives to asset share - StAR

- Recommendations on Barrier 20 – inability to return assets to originating jurisdictions
- For UNCAC offences, jurisdictions should put in place legislation that allows for the return of all assets confiscated upon foreign request (minus expenses) in accordance with UNCAC Article 57.
- For all other offences, including those set out in UNTOC, jurisdictions should put in place legislation that allows for direct sharing of assets based on domestic law in the absence of a bi-lateral asset sharing agreement. Bi-lateral sharing agreements setting out how assets are to be disposed of or shared may still be reached on a case-by-case basis.
- **Barriers to Asset Recovery - StAR – World Bank & UNODC**

AO Man Long



- Secretary for Transports and Public Works of the Macao SAR
- Earned a monthly salary of €13,517 inclusive of allowances
- December 2006 investigation opened by the Macao Commission Against Corruption and the Independent Commission Against Corruption (ICAC) in Hong Kong
- January 2008 convicted by the Macao Final Appeal Court of 40 counts of corruption; money laundering; abuse of powers; illicit financial participation in public affairs; inaccuracy of declared information and unjustified wealth
- Sentenced to 27 years imprisonment and a fine of €27,000
- Between 2002 and 2006 received 'commission' or 'counselling fees' totalling €73m
- €46m million frozen by Macao and Hong Kong



Legal Basis for Sharing – Treaties

- **UN Convention Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances – Vienna Convention 1988**
- Article 5 requires States Parties to adopt measures allowing for the confiscation of proceeds derived from offences or property of corresponding value.
- Property confiscated by a Party shall be disposed of by that Party according to its domestic law and administrative procedures.
- The Article provides for the requested Party to give special consideration to the concluding of agreements on sharing with other Parties, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, in accordance with its domestic law, administrative procedures or bi-lateral or multi-lateral agreements entered into for this purpose.



Legal Basis for Sharing – Treaties

- **UN Convention Against Transnational Organised Crime – Palermo Convention 2000 – Article 14**
- States Parties 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.
- A State Party may give special consideration to concluding agreements or arrangements on sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.



Legal Basis for Sharing – Treaties

- **UN Convention Against Corruption – UNCAC 2003**
- Article 57(3)the requested State Party shall:
- In the case of embezzlement of public funds or of laundering of embezzled public funds [] on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party.
- In the case of proceeds of any other offence [] return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognises damage to the requesting State Party as a basis for returning the confiscated property.

AO Man Long



- September 2007 contacted by ICAC to discuss asset recovery options
- Domestic money laundering investigation ruled out
- First Macanese request for international asset recovery assistance
- December 2007 - Macanese Letter of Request pursuant to UNCAC sent by diplomatic bag
- 30 January 2008 - received by UKCA
- 31 January 2008 - referred to CPS to execute
- 1 February 2008 – restraint (freezing order) obtained in UK Crown Court



European Measures

- **Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism – Warsaw Convention 2005 - Article 25**
- When acting on the request made by another Party in accordance with this Convention, Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated property to the requesting Party so that it can give compensation to the victims of the crime or return such property to their legitimate owners.
- When acting on the request made by another Party in accordance with this Convention, a Party may give special consideration to concluding agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, such property, in accordance with its domestic law or administrative procedures.



European Measures

- **EU Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders – Article 16**
- Money (or the proceeds of sale of property other than money) which has been obtained from the execution of the confiscation order shall be disposed of by the executing State as follows:
- if the amount obtained from the execution of the confiscation order is below €10 000, or the equivalent to that amount, the amount shall accrue to the executing State;
- in all other cases, 50 % of the amount which has been obtained from the execution of the confiscation order shall be transferred by the executing State to the issuing State.
- Article 16 (4) – the above paragraphs apply unless otherwise agreed between the issuing State and the executing State.

AO Man Long



- **Third Parties**
 - Wife
 - Daughter
 - Brother
 - Brother's wife
 - 5 BVI companies including ABC Limited
- **Assets**
 - 22 accounts at RBS Group - €7.3m
 - 34 accounts at Barclays Bank PLC - €6m
 - 5 accounts at Lloyd's Bank - €1,300
 - 8 accounts at HSBC Bank - €2m
 - 4 accounts at the Industrial & Commercial Bank of China (London) - €4m
 - Assets of the 5 BVI registered companies including the property 3 Wycombe Square, London then valued at approximately €9m

AO Man Long



- **ABC Limited** incorporated in the BVI on 2 February 2005 as investment vehicle
- DE Nominees Ltd (HK) sole director and shareholder of ABC Limited
- Declaration of trust to a Mr F who claimed to be the personal assistant of a Mr G
- ABC purchased 3 Wycombe Square on 31 May 2005 for £5m – funds transferred from Mr G and 3 companies controlled by him
- No evidence that Mr F held assets of ABC for Mr G
- January 2006 ABC gives power of attorney to defendant's wife to open and operate company bank account
- ABC bank account opened at ICBC London
- May to June 2006 defendant deposits £3.88m
- All correspondence regarding maintenance and renovation addressed to wife who resides there
- April 2014, Mr G and ABC withdraw their claim over the property



Domestic Requirements

Does domestic law permit sharing?

- In UK proceeds paid into Consolidated Fund
- Administrative arrangement between Treasury and Home Office to share
- Effect of EU provisions on MR of confiscation orders – Article 16

Is an international agreement required?

- Not required by the UK
- May be shared on a case-by-case basis

Convention, bi-lateral treaty or case-by-case agreement?

- UK has bi-lateral general asset sharing agreements with a number of jurisdictions
- May be required for particular legislative or constitutional reasons – e.g. Jamaica



Mechanics of sharing

Practicalities

- Voluntary repatriation
- Confiscation order enforced
- Government to government request

Amount to be shared?

- Contribution of parties
- Compensation or restitution
- International obligations?

Modalities of return

- Bank account details
- Other conditions
- Involvement of development agencies/civil society?

AO Man Long



- €33m recovered in UK
- CPS costs of €133,000 deducted
- MOU on return negotiated with Secretary for Administration & Justice
- Funds to be paid into Macao Special Administrative Region budget
- To be 'utilised in the interests of the people of Macao'
- Due diligence conducted on Macao account
- €33m (£28.7m) repatriated to Macao
- Repatriation ceremony held in Macao on 3 November 2015



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