



CFATF Monthly Article

CFATF Secretariat Research Desk
July 7, 2021

What is Asset Recovery?



Key Definitions

Key Definitions by International bodies

The Requirements of FATF Recommendations 4 and 38

The process for recovery of stolen assets

The Role of the RSS-ARU

The Role of FIUs in Asset Tracing

The Role of Government and Civil Society

In this article

Key Definitions – Asset Recovery (1)



“The term asset recovery means the return or repatriation of the illicit proceeds, where those proceeds are located in foreign countries. The illicit proceeds subject to asset recovery may or may not have been confiscated.”

Source: [FATF Best practices guidance on confiscation \(Recommendations 4 and 38\) and a framework for ongoing work on asset recovery](#)

“Asset recovery is the legal process through which a country, government and/or its citizens recover the resources and other assets that were stolen through corruption from another jurisdiction.”

Source: [Transparency International](#)

Key Definitions – Asset Recovery (2)



“The terms confiscation and Non-conviction Based Confiscation (NCBC) are defined in the Glossary to the FATF Recommendations as follows:

Confiscation- includes forfeiture where applicable, means the permanent deprivation of funds or other assets by order of a competent authority or a court. Confiscation or forfeiture takes place through a judicial or administrative procedure that transfers the ownership of specified funds or other assets to be transferred to the State.

In this case, the person(s) or entity (ies) that held an interest in the specified funds or other assets at the time of the confiscation or forfeiture loses all rights, in principle, to the confiscated or forfeited funds or other assets.

Confiscation or forfeiture orders are usually linked to a criminal conviction or a court decision whereby the confiscated or forfeited property is determined to have been derived from or intended for use in a violation of the law.

Source: [FATF Recommendations Glossary](#)

Key Definitions – Asset Recovery (3)



“The term NCBC – Confiscation through judicial procedures related to a criminal offence for which a criminal conviction is not required.”

Source: [FATF Best practices guidance on confiscation \(Recommendations 4 and 38\) and a framework for ongoing work on asset recovery](#) and FATF Recommendations Glossary

“Confiscation for which a criminal conviction is not required. As its name suggests, an NCB confiscation does not require trial or a criminal conviction, but only a noncriminal confiscation proceeding. The NCB proceeding may, or may not, parallel a criminal proceeding.”

Source: [Glossary of Asset Recovery Terms- Stolen Asset Recovery Initiative](#) The World Bank-UNODC

Definition – Asset Recovery (4)



- The International Centre for Asset Recovery (ICAR) defines Assets Recovery as the confiscation and return of illegally obtained assets – usually money – to the country from which they were stolen.
- In fact, the return of the money is just the most headline-grabbing part of a much longer process, which covers four essential phases:
- **Pre-investigative phase:** investigator verifies the information initiating the investigation and determines its authenticity.
- **Investigative phase:** proceeds of crime are identified and located.
- **Judicial phase:** the accused person is convicted or acquitted and the decision on confiscation is final.
- **Disposal phase:** the property is actually confiscated and disposed of by the state in accordance with the law.

Source of definition on previous slide



For more details, see [Tracing Illegal Assets – A Practitioner’s Guide](#) and the [Guidelines for Efficient Recovery of Stolen Assets](#), developed in collaboration with the World Bank/UNODC Stolen Asset Recovery Initiative (StAR) as part of the Lausanne Process.

Source: [ICAR](#)- a specialised operational division of the Basel Institute on Governance dedicated to strengthening and supporting the capacities of developing and transition countries to recover stolen public assets.

ICAR works through four main lines of intervention: Case advice and mentoring, capacity building training, legal and policy advice and global policy dialogue.





The Requirements of FATF Recs 4 and 38



A core element of Recommendation 4:

Confiscation and provisional measures: that there should be measures in place within a jurisdiction to identify, trace and evaluate property which is subject to confiscation.

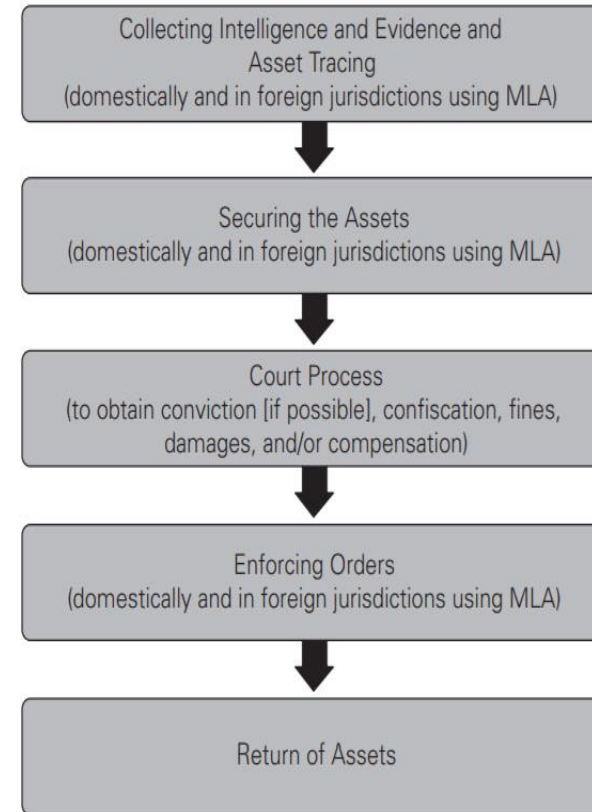
Likewise, a core element of Recommendation 38:

Mutual legal assistance: freezing and confiscation requires that there be authority within a jurisdiction to take expeditious action in response to requests by foreign countries to identify freeze, seize and confiscate property which may be subject to confiscation.

The process for the recovery of stolen assets



FIGURE 1.1 Process for Recovery of Stolen Assets



Source: Authors' illustration.
Note: MLA = mutual legal assistance.

Source: [Asset Recovery Handbook: A Guide for Practitioners](#) by Jean-Pierre Brun Larissa Gray Clive Scott Kevin M. Stephenson- Stolen Asset Recovery Initiative-The World Bank and the UNODC



The Role of the Regional Security System-Asset Recovery Unit (RSS-ARU) (1)

The RSS-ARU criminal assets recovery programme is an innovative approach to tackling serious organised crime in the Caribbean common law jurisdictions, through partnership and the robust application of proceeds of crime and money laundering legislation. It commenced in November 2015, taking over from the highly successful Eastern Caribbean Financial Investigations Advisory Team (ECFIAT) and Caribbean Criminal Assets Recovery Programme (CCARP).

Although based in Barbados, it covers seven of the CFATF Members, namely, Antigua & Barbuda, Barbados, Dominica, Grenada, St Kitts & Nevis, St Lucia and St Vincent & the Grenadines.

The team also provides wider regional support to include key transit countries and the overseas territories of the United Kingdom.

The Role of the RSS-ARU (2)

Asset Recovery Unit

Operations



RSS Asset Recovery Unit – Caribbean

The purpose of the RSS-ARU is to build capacity and capability within regional law enforcement agencies, Financial Intelligence Units (FIUs), Public Prosecutors, Magistracy and the Judiciary.

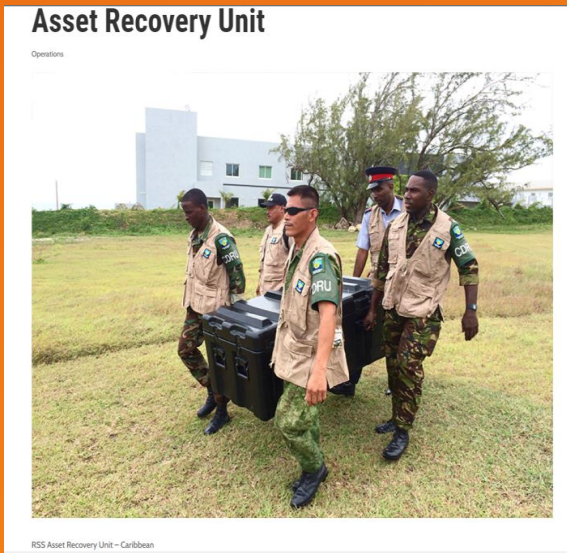
The Unit seeks to enhance their efforts in countering serious organised crime, particularly drug trafficking, by utilising cash seizure, money laundering and confiscation legislation as key components in financial investigation and asset recovery.

RSS-ARU has recently completed the drafting of 'model' proceeds of crime legislation to remedy legislative deficiencies and encourage the introduction and use of civil forfeiture legislation.

The Role of the RSS-ARU (3)

The RSS-ARU works closely with all Regional and International partners including US, UK, UNODC, OAS, OECS, CARICOM, CFATF, CARICOM-IMPACS. The Caribbean is used as a transshipment point for the trafficking of cocaine from South America to the major consumer markets of North America, UK and Europe. The profits generated regionally is a factor in the gang and gun culture across the region.

Crime, violence and corruption, deters inward investment and hinders regional development. The RSS ARU is committed to taking the profit out of crime and supporting the Caribbean region in the fight against organised crime and corruption.



The Role of FIUs in Asset Tracing (1)

- According to FATF Recommendation 29, FIUs are national agencies that receive and analyse STRs or suspicious activity reports (SARs) as well as any other information related to money laundering, predicate offences or terrorist financing. They furthermore disseminate the results of that analysis to their counterparts (mainly law enforcement, prosecutors and foreign FIUs) and other competent authorities.
- The FIU is a crucial actor in the AML framework and the process of tracing illegal assets, as it can act as an interface between the private sector and LEAs, enabling the flow of relevant financial information.
- Source: EGMONT Group, 'The Role of Financial Intelligence Units in Fighting Corruption and Recovering Stolen Assets, An Egmont Group White Paper', October 2012, Executive Summary, p. 1.

The Role of FIUs in Asset Tracing (2)



- The role of FIUs in the asset tracing process depends on the following:
 - The powers of action entrusted to them as well as their characteristics according to their type;
 - The amount and quality of the information they receive; and
 - The effective handling/analysis of sensitive and, most of the time, confidential information accumulated.

- When practitioners are keen to get an FIU involved in an asset recovery case or receive information from it, they should first be aware of the powers of action delegated to the particular FIU and its characteristics.

These powers/characteristics, but also constraints, are related to the type of FIU: administrative, judicial/prosecutorial, law enforcement, hybrid.

Source: International Monetary Fund/World Bank, 'Financial Intelligence Units An Overview', July 2004, p. 9-17.

The Role of FIUs in Asset Tracing (3)

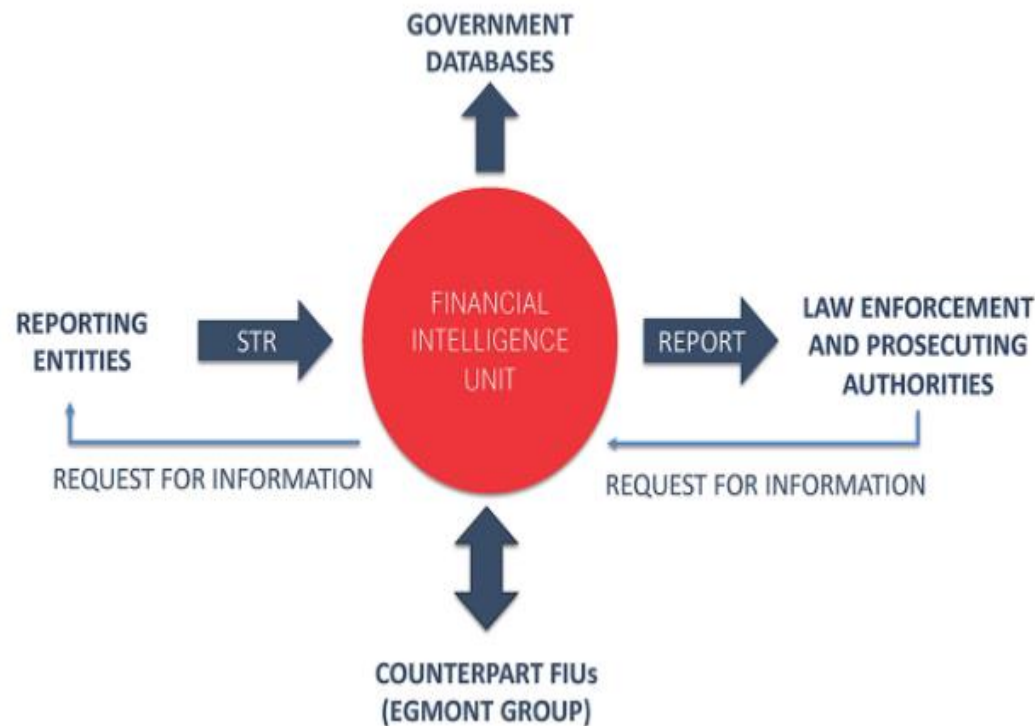


The FIUs contribute to this pre-investigate stage by conducting a thorough analysis of the case and may be able to identify possible commission of a financial crime such as money laundering, as well as the predicate offence – the crime at the origin of the illegal funds. It can also identify assets used to commit the crime and any assets that are the proceeds of the crime.

The FIU uses all its powers, all the information available to it, plus international connections through the Egmont Group (if a Member), to create operational intelligence. It then makes this intelligence available to the competent authority investigating the case.

Source: <https://baselgovernance.org/blog/thierry-ravalomandas-quick-guide-role-fius-asset-recovery>

The Role of FIUs in Asset Tracing (4)



Source: <https://baselgovernance.org/blog/thierry-ravalomandas-quick-guide-role-fius-asset-recovery>

The Role of Government and Civil Society



Effective anti-corruption work demands efforts not only from governments but also from civil society organisations, the private sector and the greater public.

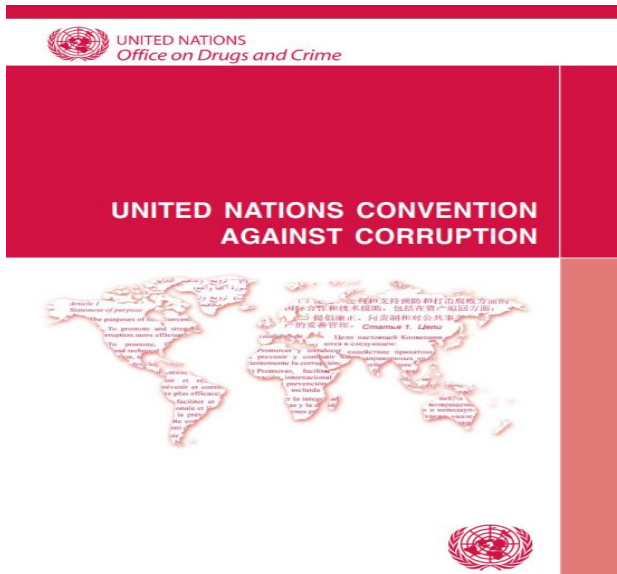
Without pressure from civil society groups, government anti-corruption commitments may not move forward.

Without coordinated global action by a wide range of civil society groups, the UNCAC may not achieve its promise.

The need for participation of civil society and the importance of access to information are explicitly recognised in Article 13 of the United Nations Convention Against Corruption (UNCAC): Participation of society.



Article 13 of the (UNCAC): Participation of society



This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to nontolerance of corruption, as well as public education programmes, including school and university curricula;
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:
 - (i) For respect of the rights or reputations of others;
 - (ii) For the protection of national security or *ordre public* (*public policy*) or of public health or morals.