**PLANNING BEFORE THE SEIZURE OF ASSETS**

**DERIVED FROM OR USED IN THE COMMISSION OF CRIME**

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# INTRODUCTION

In 2016, Ukraine reformed its confiscation regime in criminal proceedings, as well as the system for finding, tracing and managing criminal assets. In particular, the procedures for seizure of property and special confiscation in criminal proceedings have been improved, and the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes has been established (Asset Recovery and Management Agency — ARMA).

The Agency is a central executive body with special status and it operates on the basis of a special law and a number of subordinate legal acts.

ARMA’s objectives are to ensure professional search and detection of assets that may be seized in criminal proceedings, and properly manage seized assets in order to preserve their value. The Agency is also responsible for shaping state policy in these areas.

ARMA began actual operations in 2017 and today the Agency is undergoing active institutional development. In particular, the Agency's structure has been formed and most of its staff have been recruited, international contacts have been established, the principles of cooperation with national law enforcement agencies, the Prosecutor's office, and other public institutions have been coordinated and the practice of operation has been developed.

In 2018, with the support of the EU Anti-Corruption Initiative in Ukraine (EUACI), a group of international experts conducted an independent external technical assessment of ARMA, and presented a report with a number of recommendations for further strengthening the Agency's institutional and professional capacity, including the following recommendations regarding its role in planning the seizure of assets in criminal proceedings:

* ARMA should take steps to ensure the publication of guidelines for prosecutors and law enforcement agencies concerning pre-seizure planning;
* ARMA should develop guidelines to assist law enforcement agencies and prosecutors in determining under what circumstances assets should be seized in criminal proceedings, and this should also be taken into account in pre-seizure planning. These guidelines should include scenarios of success probability, analysis, and evaluation of the property, any requirements relating to the value of the property, as well as any predominant law enforcement goals;
* ARMA should raise awareness of arbitrators, prosecutors, and law enforcement authorities about the need to involve ARMA in the process as early as possible if there is an intention to transfer assets to ARMA for management, in order to develop a plan before the seizure of assets;
* The prosecutor in the case should be responsible for drawing up a pre-seizure plan. In view of this, PGO (Prosecutor General's Office of Ukraine) and SAPO (Specialized Anti-Corruption Prosecutor's Office) should be aware of ARMA's functions in managing seized and confiscated assets. Moreover, ARMA should be involved in pre-seizure planning as soon as possible before the seizure of assets which are planned for subsequent transfer to ARMA for management.

This review has been developed to follow upon these recommendations and includes a description of the recommendations of international organizations and some foreign pre-seizure planning practices, in particular, those of the United States of America, Canada, Colombia, France, and Australia. This document also contains recommendations for the practical implementation of such planning in the Ukrainian system.

The report was prepared by expert Andrii Kukharuk with the financial support of the EUACI.

# CONCLUSIONS AND RECOMMENDATIONS OF INTERNATIONAL ORGANIZATIONS

Generally speaking, many international organizations see the pre-seizure planning mechanism as the best practice for properly organizing the future management of seized assets and/or ensure the efficient use of state resources in the process of returning illegally obtained assets.

The Camden Asset Recovery Inter-Agency Network (CARIN) emphasized the expediency of involving the Asset Management Offices at the early stages of the investigation and that such planning should be coordinated with all stakeholders when considering proper asset management.

While describing best confiscation practices, the Financial Action Task Force on Money Laundering and Terrorism Financing (FATF) stressed the importance of proper planning before freezing or seizing assets.[[1]](#footnote-1)

Summaries and recommendations by other international institutions and groups, which have addressed pre-seizure planning issues in more detail, are presented below.

# **UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC)**

As part of the study on effective management and administration of assets, published in 2017, UNODC, when considering the cost of managing seized assets, noted that it is important to pay attention to pre-seizure planning to avoid turning the seized assets into liabilities when they fall under the control of the state.[[2]](#footnote-2)

In its more detailed analysis of pre-seizure planning this study has highlighted the following positive aspects of this tool. In particular, such planning helps to predict the timeframe of the court decision on the seizure, and to determine with what characteristics the future manager should be endowed. In addition to preventing high costs, planning should also focus on addressing possible liabilities on the part of the state, as well as reputation risks. Such planning enables the law enforcement agencies to fully evaluate the possible options for saving the asset with maximum preservation of its value, as well as to assess and minimize the risks associated with the freezing and seizure of the asset, such as asset waste, excessive burdensome costs, legal obligations, and reputation risks. If the seized asset remains under the owner's control, planning helps to determine the types of restraints on use of the asset and the measures to monitor compliance with such restraints.[[3]](#footnote-3)

Acknowledging that planning is an important tool, especially with regard to complex assets, the UNODC study emphasizes the need for asset management authorities to be able to provide advice and support to the law enforcement agencies on issues such as the cost of storage, maintenance, preservation and administration. When it comes to profit-making assets, such as real estate or a working business, the asset management authority should be able to professionally assist the law enforcement agencies on properly planning, foreseeing risks, and advising on how to eliminate such risks.[[4]](#footnote-4)

The study briefly describes the experience of the United States of America, Canada, Colombia, and France with pre-seizure planning, as presented below.[[5]](#footnote-5)

The study notes that countries are becoming increasingly aware of the importance of evaluating the options for preserving assets at an earlier stage as part of a cost-effective asset management system. Countries with extensive asset management programs and significant experience have focused on providing the right algorithm of action at this stage. Some jurisdictions pay more attention to pre-seizure planning, which is a result of previous negative and costly experiences. In general, countries that have implemented this effective tool, including in terms of cost, have reported a positive experience of investing their potential in assisting the law enforcement agencies through advice and expertise to estimate the value, risks and constraints that may occur after the seizure of assets.[[6]](#footnote-6)

UNODC is currently working on Draft Non-Binding Guidelines on the Management of Seized Assets. The revised draft guidelines, which are scheduled for consideration at the next meeting of the Open Intergovernmental Working Group on Asset Recovery in May 2019, include the first guideline that prior to taking any action to freeze or seize an asset, assessing the targeted asset with a view to deciding whether it should be frozen or seized and determining the optimal enforcement option in that regard are important considerations. The States may wish to consider, to the degree feasible, allocating adequate resources and capacity for this pre-seizure planning stage.[[7]](#footnote-7)

# **THE WORLD BANK AND UNODC STOLEN ASSET RECOVERY INITIATIVE (StAR)**

The World Bank and the UNODC Stolen Asset Recovery Initiative focuses on pre-seizure planning in their training materials.

Thus, the Asset Recovery Handbook issued by StAR focuses on the following aspects of pre-seizure planning:

1. Planning helps to identify **which assets need to be secured**. For example, depending on the confiscation system (property-based confiscation or value-based confiscation), it might be determined whether or not a house that cannot be characterized as the proceeds or an instrumentality of corruption, is subject to seizure.
2. Another important task is to establish **if the assets are owned by the person under investigation.**

Although some jurisdictions permit the seizure of assets without consideration of the identity of the owner or holder, in other jurisdictions, particularly those where the value-based system is applied, confiscation is limited to assets owned by the person under investigation. In this context, a strict interpretation of “ownership” may be problematic, given that corrupt individuals are rarely the legal owners of illegally obtained assets. Therefore, it is important to identify the assets that are the actual property of the person for the correct application of restraining measures. On the positive side, many jurisdictions broadly define “ownership”, which covers assets effectively controlled by such person. Some jurisdictions apply presumptions which shift the burden of proving ownership to the third party. An example is Colombia, where assets transferred to a third party can be seized and, in this case, the third party has the burden of proving that it is not involved in criminal activities.

There may also be a situation when the person under investigation owns only a certain share of the company and, in this case, only this person’s interest in the asset can be seized.

An important component of planning should be **a discussion on the future management of the seized assets**. The investigation team and the prosecutors who conduct a case should be involved in such a discussion. After it is determined that a seizure will take place, they should consider involving the agency responsible for managing the seized assets. Such authority or appropriate expert may advise whether assets should be restrained or seized, and what specific powers and conditions should be included in the order to facilitate asset management. The involvement of asset managers at an early stage will enable them to decide whether logistical arrangements will be needed to achieve physical control of the assets. The cost-benefit analysis for assets that can be transferred for management should also be undertaken, since management of some assets may cost more than the value of the assets. It is stressed that just because assets can be restrained or seized does not necessarily mean that they should be. As a rule, assets should not be seized or restrained if the likely cost of their maintenance, storage, and management will exceed or substantially diminish the return on confiscation. Some countries have set a threshold which avoids restraint or seizure of low-value or certain types of assets (livestock is given as an example of such assets). In other countries, a depository holder, responsible custodian, or escrow agent is appointed to manage assets that are too risky or expensive to administer, or the seizure and sale of certain items are permitted.

However, such general rules should be flexibly applied; in some cases, the seizure may be in the public interest, as in the case of the seizure of an abandoned house used for illegal activity. Also, in some cases, even if there is value in the asset, there may be reasons for restraining, but with permission of continued use of the property, as in the case of a family home with other assets inside of it or a vehicle.

Therefore, consideration should be given at the planning stage as to the feasibility of preserving the asset without involving management services, such as by registering restraint of property rights in public documents. The Handbook also provides a number of examples of how to handle assets with various levels of restraint.

**Preparation for taking physical control over the asset.** This issue concerns the need to identify a facility for storing the asset to be seized, and to arrange safe transfer of the asset to this storage facility. The importance of this component is associated with the need to provide specific conditions for the storage of certain assets, such as artwork or yachts, for example. There is also a need to coordinate the work of law enforcement officers and asset managers. For example, if a search is planned, this may be the best time to take possession of the assets. In some jurisdictions, asset managers may take physical possession of the restrained assets, and this may require their participation during searches. However, it is important in such instances to verify that such specialists hold the necessary authority, including to enter premises. Sometimes law enforcement practitioners are empowered by confiscation legislation to seize assets that are covered in the restraining order or that they believe are the proceeds or instrumentalities of crime. This may remove the need for the asset manager to be present during the search; however, procedures for dealing with the assets should be worked out in advance between the asset manager and the practitioners.[[8]](#footnote-8)

The Handbook also emphasizes the importance of determining the right time to seize an asset. This relates to the need for early consultation between the law enforcement officers and asset recovery professionals, to define the strategy as regards to the best time for seizure. It is noteworthy that early seizure may reveal information about the investigation, while late seizure may result in loss of assets or make it difficult to identify their location. It is pointed out that provisional measures are less effective in jurisdictions that permit the implementation of measures only after a target has been charged.[[9]](#footnote-9)

Particular emphasis is placed on the importance of equity valuation of the business before initiating any restraints or seizure in order to determine the debt load and equity and to determine in advance the expediency of its seizure and its management peculiarities.[[10]](#footnote-10)

# **ORGANIZATION OF AMERICAN STATES**

The Organization of American States has developed the Guide for the Management of Seized Businesses, which includes recommendations for the pre-seizure stage.

According to the recommendations, this stage should include three main phases:

1. Joint planning by the responsible authorities and the asset management office. For planning purposes, it is important that the Prosecutor's Office or other relevant authority in charge of the seizure provides information about the commercial or business activities in which the company is involved. This should help identify specialists or technical experts who can manage the company depending on their particular profile;
2. Obtaining information on the investigation from the responsible authorities. It is very important to obtain information that will help identify the reasons and motives that led them to the decision to seize the operational business. This qualitative analysis can help identify whether it is a front company used for criminal logistics or an operational company which is being used for money laundering. Thus, it will be clear whether it is viable for the company to continue its normal operations, or whether this is just a “company on paper” with no active commercial operations. This will also help understand if the company has illicit sources of income, and how their cutting off might affect the company's activities.
3. The business and commercial establishment should be identified. This refers to the actual and legal details on the company that is to be handed over to the Asset Management Office for management, in particular, registration data and legal credentials, partners, board members, and legal representatives. It is highlighted that all preparatory work should be carried out to make a notation in the appropriate business registry in order to suspend the owners’ rights to exercise control over the corporation. It should also be clarified whether the company owns real estate, whether it owns or leases the premises it uses, and whether precautionary measures should be taken to inform the real estate registry. The terms of licenses or other official permits that are necessary for the business must also be identified and checked. To provide for the company’s routine financial activities, its bank account details and other financial products it owns must be established. It is also recommended that persons associated with the company and its physical plant be determined and persons who might possess the documents about its activities be identified.[[11]](#footnote-11)

# EXPERIENCE OF INDIVIDUAL COUNTRIES IN PRE-SEIZURE PLANNING

Several approaches to pre-seizure planning, depending on the objectives of this tool, are applied at a national level. The common objectives are to prevent the loss of an asset, to ensure its proper seizure and subsequent proper management.

At the same time, at the heart of the planning lies a pragmatic approach which involves preventing excessive state spending on seized asset management and the assumption of liabilities associated with the asset. This approach may be difficult to apply in countries where prosecutors and law enforcement agencies do not have a certain level of discretion in initiating or resolving asset seizure issues, or where such an approach is not enshrined in the law.

The following are examples of pre-seizure planning in some jurisdictions.

# 3.1. THE UNITED STATES OF AMERICA

Generally speaking, in the United States, which has long, successful experience of the confiscation of assets related to criminal activities, pre-seizure planning is the most established and distinct part of the process, to which more and more attention is being paid.

To properly understand this subsection, it should be noted that the United States of America applies three types of confiscation - or forfeiture - at the federal level:

1. criminal —initiated together with the criminal charge of the person (*in personam*) in respect of the property that was used to commit or derives from a crime. If the jury finds the property forfeitable, the court issues an order of forfeiture;
2. civil — legal action against the property (*in rem*), meaning the property is the defendant and no criminal charge against the owner is necessary;
3. administrative forfeiture — also is an *in rem* action that permits the federal seizing agency to forfeit the property without judicial involvement. Property that can be administratively forfeited is the following: merchandise the importation of which is prohibited; a conveyance used to import, transport, or store a controlled substance; a monetary instrument; or other property that does not exceed $500,000 in value.[[12]](#footnote-12)

The US legal system stipulates various means for providing for criminal and civil forfeiture, such as restraining and protective court orders, as well as a seizure warrant which allows an asset to be transferred into state ownership. However, this is not an automatic component of the forfeiture regime and depends on the circumstances of a particular case.

The new Asset Forfeiture Policy Manual issued by the Money Laundering and Asset Recovery Section (MLARS) of the U.S. Department of Justice has devoted a separate chapter to pre-seizure planning.[[13]](#footnote-13) The document contains general guidelines for all services that are members of the Asset Forfeiture Program of the US Department of Justice[[14]](#footnote-14) assuming the possibility of establishing different rules based on the results of discussions with MLARS.

***Goals and Objectives of Pre-seizure Planning***

The purpose of pre-seizure planning is to ensure that various components of the Department of Justice work as a team to ensure that asset forfeiture is used as an efficient and cost-effective law enforcement tool consistent with the public interest. Planning provides the government with the opportunity to make informed decisions on matters regarding the financial impact of the asset seizure/restraint, forfeiture, and management, as well as on all matters affecting the government's ability to efficiently dispose of assets following forfeiture.

The general guideline in this part is to identify and address important financial and property issues related to the management of seized assets prior to their seizure. To this end, all involved services must have the established internal procedures in place. First of all, the Manual stresses the need to take such an approach to real estate, commercial enterprises, as well as other types of property that may pose problems of maintenance and/or disposition (animals and aircraft are given as an example). At the same time, the flexibility of the planning mechanism, which may vary depending on the circumstances and complexity of the case, is noted.

The Manual stresses that pre-seizure planning affords the Marshals Service, which is responsible for managing seized assets, and other authorities responsible for the seizure, management or administration of assets, an opportunity to conduct financial analysis to determine net equities of an identified asset and review in advance title/ownership issues that may delay or prevent the government from disposing an asset in a timely manner following forfeiture. In addition, this mechanism affords the Marshals Service sufficient time to plan for the care of the asset, assess the level of difficulty in handling the asset, and identify special requirements needed to preserve the asset.

The Manual emphasizes the need for prosecutors or other relevant agencies to engage the Marshals Service as early as possible once the assets that are likely to be seized have been identified.

***Non-Disclosure of Information***

The duty of the Marshals Service to keep information obtained from the law enforcement agencies as part of such consultations confidential is emphasized; any disclosure of information to external service providers can take place only with prior approval of the Attorney's Office, and only information that is necessary to procure a required contractor may be provided (for example, information can only indicate that towing services and storage space for 50 vehicles required in a particular location by a certain date). All services engaged in the planning process must be sensitive to operational security and at no time undertake any action that might jeopardize such security and compromise ongoing covert criminal investigations. Real property lien and title searches must be done as covertly as possible, such as through use of property websites, if available.[[15]](#footnote-15)

***Types of Assets the Seizure of which Must be Planned***

According to the Manual, joint discussions between the services involved in the investigation and the Marshals Service, as part of the planning, are mandatory for the following assets:

1. residential or commercial real property and vacant land;
2. businesses or other complex assets;
3. large quantities of assets involving potential inventory and storage or security problems (e.g. multiple vehicles, drug paraphernalia to be seized from multiple “headshops” on the same day, and the inventory of ongoing businesses (for example, jewelry stores);
4. assets that create difficult or unusual problems (e.g. animals, perishable items; chemicals or pharmaceuticals; intellectual property; valuable art or antiques);
5. assets located in foreign countries.[[16]](#footnote-16)

***Immediate Pre-Seizure Planning Stage***

Depending on the complexity and scope of the case, after such initial discussion, formal pre-seizure planning may continue as required by either the Attorney's Office or the Marshals Service. This also refers to the fact that the Marshals Service may be required to procure the professional assistance of commercial vendors during the covert stage of an investigation so services such as inventories, appraisals, transportation, and storage will coincide with the scheduled takedown date.

The Manual gives the following examples of the types of services that can be provided by the Marshals Service at the pre-seizure stage and an approximate time frame for the provision of such services.[[17]](#footnote-17)

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| Lien search and appraisal information | 3 to 4 weeks from date of request (additional time is necessary for full, non-“drive-by” appraisals) | The Marshals Service offers these services to provide the Attorney’s Office and investigative agencies information during the pre-indictment, pre-seizure planning stage |
| Animal care | 2 to 3 months prior to seizure | Proper arrangements must be made to ensure health and daily care of the animals. The Marshals Service and Asset Forfeiture Division should provide the Attorney’s Officewith further guidance involving the care of animals seized and forfeited in animal fighting cases. |
| Logistics services | 3 to 6 months prior to the takedown date for unusual or complex assets | Federal contracting regulations and the time necessary to coordinate with commercial vendors make it imperative to involve the Asset Forfeiture Division of the Marshals Service as soon as such services are anticipated |
| Recommended action plan for the business | 2 to 4 months or longer in more complex cases | Forfeiture decisions should be made only after the Marshals Service Asset Forfeiture Division conducts a documentary review of the business assets identified for forfeiture and their financial status |

***Responsible Authority***

Generally speaking, the Attorney's Office is responsible for ensuring that proper and timely pre-seizure planning occurs (except in cases where administrative forfeiture is planned, for which the agent of the relevant authority conducting the case is responsible). All pre-seizure planning meetings must include the Assistant U.S. Attorney or investigative agent in charge of the forfeiture matter (and, if applicable, the Assistant U.S. Attorney in charge of the related criminal matter), investigative agents, and the appropriate representative of the Marshals Service (including a representative from the district where the property is to be seized and/or managed if different from the district where the action is to be filed). A federal regulatory agency representative may also attend in forfeiture cases involving federal regulatory matters.

As a rule, the lead agency will process all the assets. However, another agency may be designated a lead agency if provided for in a task force agreement or memorandum of understanding. It is not recommended to divide the asset and assign it to multiple agencies, or separately seize different parts of the same asset (examples of such division include the division of cash into different amounts or two vehicles in one case). Exceptions to this recommendation are allowed only with the consent of the lead prosecuting office.

In asset forfeiture cases involving several federal judicial districts, the Attorney’s Office instituting the forfeiture case shall have primary responsibility, in coordination with the lead investigative agency, although all other participants in the process must be properly notified and planning must occur in all districts where assets will be seized.[[18]](#footnote-18)

***Issues to be Considered When Planning the Seizure of Assets***

In essence, the planning mechanism is described as anticipating issues and making fully informed decisions concerning what property should be seized or restrained, when and how to do so, and, most important, whether the property should be forfeited at all.

The Manual identifies the following list of questions, which, depending on the type of asset and other circumstances, should be answered during pre-seizure planning:

1. ***What is being seized, who owns it and what are the liabilities against it?*** Determine the full scope of the seizure to the extent possible. For example, if a house is being seized, are the contents also to be seized? If a business is being seized, are the buildings in which it operates, the property upon which it is located, the inventory of the business, and the operating or other bank accounts, accounts receivable, accounts payable, etc., also to be seized? All ownership interests in each asset must be identified to the extent possible as well as existing/potential liabilities involving the asset.
2. ***Should the asset be seized or even identified for forfeiture?*** If an asset has a negative or marginal net equity at the time of seizure, should it be seized and forfeited? Over time, what is the likelihood that the asset will depreciate to a negative or marginal value? What law enforcement benefits are to be realized from seizure and forfeiture? Is a restraining or protective order an adequate alternative to seizure given the circumstances? Can any anticipated losses be avoided or mitigated through careful planning on the part of the participants? Will custody, forfeiture, and/or disposal of the asset impose unduly significant demands on USMS or USAO resources and/or require a considerable infusion of funds from the AFF?
3. ***How and when is the asset going to be seized/forfeited?*** Determine whether immediate seizure is necessary or if restraint of the asset is sufficient to preserve and protect the Government’s interest. The type and content of the seizing instrument and authority for both the investigative agency and the USMS to enter or cross private property must be identified and procured in advance of seizure or restraint to ensure that each agency has the necessary information and legal authority to effectuate its seizure and post-seizure responsibilities.
4. ***What management and disposition problems are anticipated, and how will they be resolved?*** Any expected logistical issues involving the maintenance, management, or disposition of the asset should be discussed and resolved as early as possible.
5. ***If negative net equity, management, and disposition problems are identified, what are the alternatives to forfeiture?*** In other words, is it possible instead to release the property to a lienholder, allow tax foreclosure and identify any proceeds thereof, resort to state or local forfeiture action, etc.?
6. ***Is any negative publicity anticipated?*** If publicity or public relations concerns are anticipated, appropriate public affairs personnel should be advised and consulted. Consider preparing a press release announcing the basis and purpose of the seizure, restraint, and forfeiture.[[19]](#footnote-19)

***Requirements Pertaining to the Value of the Assets***

The Manual also defines the minimum net asset value thresholds that are recommended to be used when considering seizure and forfeiture at federal level. The purpose of thresholding is to reduce the number of federal seizures, thereby enhancing case quality and expediting processing, as well as encourage state and local law enforcement agencies to use state forfeiture laws. Thus, the Manual proposes a rational approach to the use of resources of federal structures in their work on the seizure and forfeiture of assets.

In particular, the minimum net equity requirements are:

1. Residential/commercial real estate and vacant land – minimum net equity must be at least USD 30,000 or 20% of the appraised value, whichever amount is greater. However, in exceptional cases and subject to appropriate consultation, the Manual provides an opportunity to extend the procedure for forfeiture of cheaper real estate. In addition, higher thresholds may be set at the district level taking into account the local real estate market. In exceptional cases, the contaminated property may be seized and confiscated.
2. Vehicles – minimum net equity must be at least USD 5,000 (based on the National Automobile Dealers Association “Trade-in Value”). The value of multiple vehicles seized at the same time may not be aggregated for purposes of meeting the minimum net equity.
3. Cash – the minimum amount must be at least USD 5,000, in some cases — 1,000 US dollars.
4. Aircraft – minimum net equity must be at least USD 30,000. Note that failure to obtain the log books for the aircraft will reduce the aircraft’s value significantly.
5. Vessels – minimum net equity must be at least USD 15,000.
6. All other personal property– minimum net equity must be at least USD 2,000 in the aggregate.[[20]](#footnote-20)

There are also a number of factors related to business, which will be discussed below. It is not recommended to make exceptions from the minimum net equity requirements for any individual item if it has a value of less than 1,000 US dollars, but if there are several such items and their total value is greater than that amount, exceptions are allowed. It is also possible to establish higher thresholds at the district level. In addition, non-compliance with these minimum values for certain assets is permitted, if, for example, the law enforcement interests require it. For example, thresholds are not applied to firearms; in some cases they may also not be applied to crack houses, conveyances with hidden compartments; computers or internet domain names involved in a major fraud schemes; vehicles used in the smuggling of illegal aliens; equipment connected to child exploitation and pornography, human trafficking or terrorism. The fact that the owner or person in possession of the property has been arrested or will be criminally prosecuted can be the appropriate basis for a waiver.

Special consultations between the authorities should be held if the restraint, seizure, and/or forfeiture of real property could create a net loss to the Assets Forfeiture Fund. In the case of business, the MLARS prior approval, coordinated with the Asset Forfeiture Division, is required to initiate the restraint, seizure, or forfeiture on such an asset.

***Forms of Documents and Information Analysis***

The forms compiled by the Marshals Service Asset Forfeiture Division are used to assist in making informed decisions, identify the issues that must be addressed during the pre-seizure planning phase, including the prevention of losses of the Assets Forfeiture Fund and to preserve the Government’s ability to dispose of the asset in an efficient manner following forfeiture. These forms include all the basic information necessary for normal planning, and other services can supplement these documents with additional information if necessary.

Net equity worksheets provide step-by-step formulas for computing net equity that include the estimated total amount of money the government expects to recoup from the asset once the aggregate of all liens, mortgages, and management and disposal costs have been subtracted from the expected proceeds of the sale of the asset. Thus, the forms document the results of this analysis. The Attorney’s Office and other seizing agencies are strongly encouraged to adopt net equity forms of the Marshals Service as they provide the most updated estimates for the management and disposal of assets, based on current contract prices. If necessary, these forms may be supplemented with other information.[[21]](#footnote-21)

Samples of forms used by the Marshals Service as part of pre-seizure planning are contained in the StAR Initiative Guide.[[22]](#footnote-22)

In terms of information analysis at the planning stage, the Manual focuses on ***legal and financial analysis****.*

With regard to the legal component, it is noted that the investigating agency is responsible for ensuring that current and accurate information on the ownership of, and any encumbrances against, personal property identified for forfeiture is compiled and made available to the Attorney’s Office and the Marshals Service prior to seizure, whenever practicable. When this is not practicable prior to the seizure, such information must be compiled and made available as soon as possible following the seizure. As a general rule, in cases where real property and businesses are identified for seizure, the Marshals Service will have primary responsibility for conducting a title search prior to seizure. The Marshals Service cannot conduct a complete ownership analysis of the business without appropriate documents.

In addition to clarifying these legal issues concerning the asset, the Manual also indicates the need for **financial analysis during the pre-seizure stage**. The Attorney's Office, in consultation with the seizing agency and the Marshals Service (and, in administrative forfeitures, the agent in charge of the field office responsible for the administrative forfeiture), evaluate and consider the forfeitable net equity and the law enforcement purposes to be served in light of the potential liability issues and estimated costs of post-seizure management and disposition.

If the financial analysis indicates that the aggregate of all liens (including judgment liens), mortgages, and management and disposal costs approaches or exceeds the anticipated proceeds from the sale of the property, the Attorney’s Office, or, in administrative forfeiture actions, the seizing agency, must either determine not to go forward with the seizure or acknowledge the potential financial loss and document the circumstances that warrant the seizure and institution of the forfeiture action. The prosecutor may also consider such an alternative to seizure as a report on the presence of certain assets in the proceedings (*lis pendens*) or the application of certain restraint to them. When it comes to real estate, the Attorney's Office must inform MLARS and the Asset Forfeiture Division, as well as obtain the written approval of the higher prosecutor with justification in the case file.

In instances where pre-seizure planning is not possible and/or is not completed prior to seizure, the seizing agency may be responsible for custody and maintenance of the property until the Marshals Service has had the opportunity to analyze the assets. The Marshals Service will complete a pre-seizure planning questionnaire as soon as practicable, given the nature of the information required. Upon completion and reporting of the Marshals Service pre-seizure analysis, a pre-seizure meeting should take place to address all issues identified. If the financial assessment indicates that the aggregate of all liens, mortgages, and management and disposal costs approaches or exceeds the anticipated proceeds from the sale of the property, the seizing agency in administrative forfeiture proceedings must either: take immediate and expeditious action to terminate forfeiture of the asset (if any forfeiture proceeding has been commenced); or acknowledge the potential loss and document the circumstances that warrant continued pursuit of the forfeiture notwithstanding the financial assessment. In judicial forfeiture cases, the Attorney’s Office must either: take action to dismiss the asset from the forfeiture action and to void any expedited settlement agreements involving the asset (if any have been entered into); or acknowledge the potential loss and document the circumstances that warrant the continuation of the forfeiture action notwithstanding the loss.[[23]](#footnote-23)

***Seizure of Business***

Taking into account the complexities of seizing an ongoing business, as well as the potential for substantial losses and liabilities, the Manual notes the need for the Attorney’s Office to cooperate and consult with MLARS in such cases. If the restraint, seizure, and/or forfeiture of a business could create a net loss to the Asset Forfeiture Fund for that business, prior approval from AFMS, in coordination with MLARS, is required. If the matter concerns future civil forfeiture of business, which was used to commit a crime, the Prosecutor's prior approval is also required.

The information necessary to make an informed decision about whether an operating business should be forfeited is typically not collected by the investigative agency as part of the underlying criminal investigation. Therefore, in almost all cases, MLARS and the Marshals Service recommend that the Attorney’s Office file a restraining order or protective order that allows normal operations to continue under the review and monitoring of the Marshals Service, and concurrently allows the Marshals Service on-site access to the business to inspect the premises, review financial records, and interview employees. This business review is a time-consuming process that may take 30 days or longer to complete depending on the availability of records and willingness of the business principals and employees to cooperate in the process. Upon review and analysis of the information obtained through the restraining/protective order, the Marshals Service will make an informed recommendation to the Attorney’s Office as to whether seizure and forfeiture of the business is advisable. The Attorney’s Office should include the Marshals Service’s recommendation in its consultation with MLARS.

Although there are many complex issues to consider in evaluating an operating business, the Government must first determine what it intends to restrain, and ultimately seize and forfeit. This determination requires analysis of the business entity itself (e.g., corporation, limited liability company, partnership, sole-proprietorship), the ownership structure of the business (e.g., the existence of other owners or partners), and whether the entity itself and/or other owners have been or will be indicted.

The Attorney’s Office should be mindful of the intricacies in identifying an ownership interest in the business (e.g., shares of stock, membership interest, partnership shares), the financial and/or physical assets of the business (e.g., bank accounts, accounts receivable, inventory, equipment, licenses) or both. The wording of the restraining order and subsequent forfeiture order might impact the administration, management, and sale of the business. For example, the seizure of an ownership interest may have legal and regulatory implications that need to be identified in advance and fully considered. Alternatively, the seizure of all assets of a business might very well cause the ongoing business to fail, even if the business itself is not seized.

Protective orders and restraining orders are powerful tools because they can be drafted to authorize the USMS to monitor all financial and operational activities of the business, take signatory control over the business bank accounts, and approve certain business transactions. The authority granted by a protective order or restraining order should authorize the Marshals Service to utilize internal resources to monitor and oversee operations of the business for a period of time so as to best formulate a recommendation on whether seizure and forfeiture of the business is advisable. In rare cases, a court-appointed trustee or monitor may be required. The authority granted to the Marshals Service under a restraining/protective order must not include — in fact, must expressly exclude — taking over the management responsibilities for operation of the business, at least during the assessment period; this must be considered an action of last resort and should normally be taken only after the Marshals Service has completed a thorough business review pursuant to the protective order or restraining order and has determined that the business should be forfeited and that there is no other option regarding management responsibilities of the business.

Generally speaking, a pre-seizure review of a business will help the Attorney’s Office answer the following questions:

1. Who owns the building in which the business operates?
2. Who owns the land?
3. What is the cash flow of the business? What is the cash flow if income from the illegal activity ceases?
4. What are the monetary values of accounts receivable and payable?
5. What other valuable assets does the business own?
6. Are there significant liabilities?
7. Are there environmental concerns?
8. Is the business highly regulated? Is the business currently in compliance with its regulatory obligations?
9. Will the business require capital contributions to remain viable?
10. What law enforcement or regulatory methods or alternatives to forfeiture may be effective (e.g., revocation of a license essential to operation of the business by state/local authorities)?
11. Is the business being seized as facilitating property or as proceeds of crime? Once the source of illegal funding and the illicit customers are gone, the business may no longer be profitable. If the business is facilitating illegal activity and also engaging in legal but unseemly activity, is the Government in a position to prevent or monitor the activity (e.g., Government operation of a strip club that attracts illegal drugs and prostitution)? The public may have an expectation that if the Government is operating the business, it will be able to prevent all illegal activity.
12. What would it cost to hire either a business monitor or trustee and necessary staff?
13. Can the business be disposed of efficiently and cost-effectively upon forfeiture, and how long will the forfeiture and post-forfeiture disposition process take?[[24]](#footnote-24)

***Involvement of External Advisors and Experts***

One of the tasks of pre-seizure planning is to address the need to involve trustees, monitors, managers, and custodians of assets.

The Manual recommends addressing this issue after all the interested services have agreed on a pre-seizure plan. The Attorney's Office is required to notify the Marshals Service on the need to appoint third parties as soon as it becomes aware this is being contemplated. Joint pre-seizure planning with the Marshals Service in cases involving complex assets is mandatory.

The guidelines for pre-seizure planning before seeking the appointment of a third party expert require that the Attorney's Office:

1. contact the Marshals Service to engage it in formal planning prior to seizing complex assets, including real property and businesses;
2. consult with the Marshals Service prior to submission or filing of any court orders, including the asset transfer into the Service's management;
3. consult with MLARS before commencing any action seeking any court orders in respect of an ongoing business;
4. consult with MLARS on the need for a third-party expert.

Pre-seizure planning should include the assessment of financial viability of any business and the long-term marketability of any complex asset pertaining to which forfeiture is contemplated, including determination as to whether the continued operation of the business and its take-over is in the government’s best interest. The pre-seizure plan must include an estimate of:

1. net equity of the business or its assets pertaining to which forfeiture is contemplated;
2. current and projected cash flow of the business;
3. anticipated fees and other costs of the third-party expert and the sources for paying these fees;
4. likely duration of the third-party expert assistance.

If it is contemplated that the targeted business will continue in operation pending forfeiture, a business review must be undertaken once the US Attorney's Office and the Marshals Service secure a protective order to obtain access to business records and other information relating to the financial viability of the business, and the capital that will be required for it to remain viable pending the forfeiture have been identified and fully assessed. The business review must identify and consider key historic financial data for the business, its current operating environment (including financial activity), and financial projections for the next two years. These projections should include both best- and worst-case scenarios for the business operations as well as “exit strategies” should conditions change for the worse& If the business is likely to lose money or be sold at a loss, the business plan should include plans to mitigate such losses or liquidate all or parts of the business.[[25]](#footnote-25)

# 3.2. COLOMBIA

As noted in the above-mentioned UNODC study, with reference to the Asset Forfeiture Code, the legislation of Colombia clearly indicates the need to carry out cost-benefit analysis of an asset prior to initiating its seizure.[[26]](#footnote-26) The StAR initiative also mentions the approval of the Guidelines on Pre-Seizure Planning Policy by the Attorney General’s Office of Colombia to analyze the cost and benefit of the seizure of assets, as well as development of consistent practices for dealing with types of assets that could cause maintenance and disposition problems, and the prevention of lawsuits resulting from irregular asset seizure or management.[[27]](#footnote-27)

# 3.3. CANADA

The UNODC study notes that Article 9 (a) of the Seized Property Management Act in Canada provides for the Seized Property Management Directorate established under the Public Services and Procurement Department to offer consultations and other services to law enforcement agencies in relation to the restraint on any property.

As part of this planning, the Directorate shall:

1. perform financial analysis of property;
2. provide recommendations to police about the financial viability of proceeding with the seizure;
3. analyze and evaluate the best method to protect and maintain the value of the asset;
4. evaluate the cost associated with asset management;
5. coordinate services such as towing, storing and inspection of the asset, as needed.[[28]](#footnote-28)

In turn, the Deskbook of the Public Prosecution Service of Canada states that, since the Department of Public Services and Procurement is responsible for the payment of damages arising from all undertakings given by the Attorney General of Canada under the Seized Property Management Act, the Seized Asset Management Directorate must be consulted prior to the signing of any undertaking, any restraint, seizure or forfeiture of the property. Such consultation serves to notify the Directorate that a particular property will be placed under its management, as well as allows the Directorate’s personnel to make comments on draft orders and to have input as to the feasibility or advisability of the restraint, seizure or forfeiture. However, in the case of property that is related to terrorism, such advice is not mandatory. Prosecutors should also involve the Directorate in cases where third parties have claimed their property rights, regardless of whether such claims arise before or after the forfeiture. Consultation with the Directorate must also be carried out prior to obtaining a forfeiture order to ensure it complies with the Seized Property Management Act.[[29]](#footnote-29)

# 3.4. FRANCE

French legislation does not formally provide for such a mechanism as pre-seizure planning. At the same time, in fact, it is part of the daily work of both offices: Platform for the Identification of Criminal Assets (PIAC) and Agency for the Recovery and Management of Seized and Confiscated Assets (AGRASC). Officers of the Platform for the Identification of Criminal Assets collect and cross-check information related to illicit assets, properties and financing flows at the investigation stage. They are to anticipate matters that could arise upon seizure of assets, and therefore they conduct a complete investigation of licit and illicit assets, particularly in seizure cases, in anticipation of a value-based confiscation order. Immediately after identifying the assets, the Platform officers contact AGRASC to evaluate the opportunity and possibility of seizing the assets.

AGRASC is also often consulted by judges on the viability or feasibility of seizures. After making judgements, AGRASC provides information to magistrates to seek pragmatic approaches in cases in which seizures are unlikely to lead to the successful liquidation of the asset in the future.[[30]](#footnote-30)

In Activity Report 2017, AGRASC notes that the agency receives requests from police, public prosecutors and investigative judges seeking advice on the technical and legal feasibility of asset seizures in criminal matters. Assistance is also regularly provided about the advisability of seizures of assets, especially with regard to legal or operational constraints that may ultimately jeopardize the ability to carry out a future confiscation. In such cases, AGRASC may or may not express its reservations depending on the circumstances of the files presented, or the nature of the assets.

Among these examples, the Agency draws attention to regular requests for the seizure of shares of family property investment companies with property investment that hold land plots. Judges and investigators who have identified the property of a person being prosecuted can easily determine that the person owns these shares. It may be hastily determined that the seizure of these shares would be a reasonable penalty. However, AGRASC almost always discourages such action for the following reasons:

* the face value of a property investment company is often very low;
* the seizure of shares does not block the company from divesting itself of its assets, namely real estate;
* if the confiscated shares hold no value and the balance is held by a family, the penalty imposed on one person is almost impossible to enforce, especially if the assets were also dispersed.

In such cases, AGRASC suggests instead that prosecutors should directly seize the asset held, if it is at the free disposal of the person being prosecuted , which is often the case. The notion of “free disposal” was created to overcome company arrangements that seek to hide the economic benefit of the asset.

Another example involves requesting the Gendarmerie whether or not it was possible to seize concessions of a marine oyster farm. Here, AGRASC notes that, as in the case of licenses for pubs, these operating permits are intangible movable property that have real market value. In this case, the Agency advised the judge to issue an order that met procedural requirements, but that could be also binding for any person needing to be informed therefore. Thus, the relevant prefectural authorities were informed of these orders so as to block any attempt to illicitly dispose of these authorizations.

The AGRASC Operational Department also dealt with requests related to the seizure of drones, electric cars, and healthcare rooms in nursing homes.

In 2017, AGRASC dealt for the first time with so-called tontines — a method of investment of *ad hoc* associations regulated by the Insurance Code. In these associations, subscribers place an amount of money (fixed or periodic payments) that they place with a management establishment for a long period of time (between 15 and 25 years), with a view to benefiting from their capital and the interest generated. While the rates are generally higher than other short-term investments, tontines are characterized by the sharing of any portion owned by a predeceased person between the remaining subscribers at the end of the investment agreement. AGRASC has provided recommendations to judges on the seizure of such investments. A problematic aspect is that the further confiscation of such deposits can be difficult, since the acquirers may be bona fide participants. The seizure of these investments does not cause difficulties, but for the purpose of confiscation, the Agency will need to monitor such assets until the end of the investment agreement.[[31]](#footnote-31)

AGRASC draws attention to the difficulties associated with the business seizure because very often the decision to confiscate the business cannot be enforced. Sometimes, after acquiring a business, the state becomes a debt holder and has to pay financial expenses. The Agency proposed that the judges use an alternative strategy encouraging them not to seize the business itself but its tangible and intangible assets. This is a much more effective legal solution that allowed judges to target the elements that had real financial value. An action file related to the seizure of business is on the Agency's intranet site and is available for all judges and investigators.[[32]](#footnote-32)

AGRASC provides training and consults judges on the phone or through a closed website on various aspects related to seizure and forfeiture. In many cases, a request for consultation results in a separate case file that can be provided to the prosecutor or to the court for use in order to fully review all assets that have been seized and transferred to the Agency in terms of future court proceedings or a decision to dismiss the case. The Agency can also assist in contacts with foreign jurisdictions.

Special attention is paid to real estate, as the Agency is well aware of all the possible difficulties that may arise at the stage of seizure or confiscation, in particular with regard to the identification of assets on the cadastral number. Therefore, AGRASC encourages judges and prosecutors to involve the Agency in each case of planning the seizure of real estate. The Agency is also trying to assess any legal limitations that may reduce the opportunity of further implementation of the decision on confiscation. Special attention should be paid to situations where property belongs to several co-owners. The Agency can also draw the attention of prosecutors or investigators to the registered pledges.

Thus, both institutions – PIAC and AGRASC – provide consulting and advisory assistance to investigative bodies and judges, including at the stage of preparation for the seizure of assets.

# 3.5. AUSTRALIA

In Australia, the Criminal Asset Confiscation Task Force assesses the risks in the process of restraining assets.[[33]](#footnote-33) These areas of risk include the possible alienation of the asset, its allocation, and the possible consequences of the planned restraint for the third parties. High-risk cases also include those that may lead to a high level of public attention and cases with the assets of more than 25 million Australian dollars. In high-risk cases, the approval of the Head of the Federal Police Head is required.

Usually, when restraining an asset, its withdrawal from the owner or the establishment of control over this asset is initiated with respect to bank accounts, identified cash, real estate or other assets with signs of the intended disposition, as well as the cost of surface, water, and air transport. If the Federal Police in Australia intends to seize the asset that will be transferred to the Federal Agency for Financial Security for storage or control, the police may consult the Agency prior to lodging the application for the restraining order. The possibility of such consultations is provided for in the Memorandum of Understanding between the Police and the Agency. Such consultations provide an opportunity for the Agency to discuss with the police the potential cost and/or resources that may be required to preserve property that the police proposes to include in a restraining order. However, this mechanism is not mandatory. Its application is considered expedient in the case of asset complexity, its uniqueness or the need for significant resources of the Federal Agency for Financial Security to ensure its preservation.[[34]](#footnote-34)

# PROSPECTS AND POSSIBLE WAYS OF PRE-SEIZURE PLANNING IN THE UKRAINIAN SYSTEM

The legislation of Ukraine does not expressly provide for such a tool as pre-seizure planning in criminal proceedings, although certain provisions of legislative acts presume the need for some analysis before initiating this measure of ensuring criminal proceedings.

In particular, Article 170 of the Criminal Procedure Code of Ukraine (CPC) provides for the objectives and goals of the property seizure. Thus, the objective of property seizure is to prevent its possible concealment, damage, destruction, transformation, and disposition. The permissible purpose of property seizure is to ensure the preservation of physical evidence or the confiscation or recovery of damage caused as a result of a criminal offence or the recovery of unlawful benefit from a legal entity. Depending on the purpose of the seizure, the law provides for a number of criteria regarding the owner and value of the property that may be subject to the seizure, and its relation to the criminal offence committed.

In addition, this article of the CPC indicates that it is impossible to seize a property if it is owned by a bona fide purchaser, except for the seizure of property in order to ensure the preservation of physical evidence.

The law also provides certain guarantees against the application of excessive prohibitions and restraint on the use and disposal of property (paragraphs 11 and 12, Article 170 of the CPC).

In turn, an investigating judge or court, when deciding on the seizure of property, should, inter alia, take into account the possibility of using the property as evidence (if it is proposed to be seized as evidence), the possibility of special confiscation, the reasonableness and proportionality of restraining the right of ownership to the objective of criminal proceedings, the consequences of the seizure of property for the suspect, accused, convicted, and third party.

Article 100 of the CPC, which regulates the storage of physical evidence and documents and the issue of special confiscation, provides for different ways of handling material evidence that does not contain traces of a criminal offence, in the form of objects, large quantities of goods, the storage of which through cumbersome or other reasons is impossible without unnecessary difficulties or costs to ensure special storage conditions which are commensurate with their value, as well as material evidence in the form of goods or products subjected to rapid deterioration.

Physical evidence at a cost of over 200 minimum subsistence levels for able-bodied persons, if possible, without prejudice to the criminal proceedings, are transferred for their management, and some - for disposal to the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes (ARMA).

The combination of the above requirements and criteria implies a logical need for planning the seizure of assets by an investigator and/or prosecutor before and during the preparation of an application for the seizure of property. On the one hand, this may indicate that there is no urgent need to consolidate such planning at the legislative level.

However, on the other hand, the scope of powers of the prosecutor and the investigator in criminal proceedings are defined by the CPC. A problem in this context may be the lack of a clear obligation for an investigator or prosecutor to initiate a formal planning process and implement it with the involvement of ARMA, which is justified by the best international practices described above. Therefore, the inclusion in the CPC of the rule on the obligation of the prosecutor and the investigator to plan the seizure of assets in certain cases with the mandatory involvement of ARMA would be appropriate.

Participation of ARMA in this process stems from its role as the Ukrainian Asset Management Office whose relevant functions and powers are enshrined in the CPC and the Law of Ukraine “On National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes” (Special law). In addition, one of ARMA’s objectives is also to provide clarification, guidance and consulting assistance to investigators, detectives, prosecutors, and judges on issues related to asset identification, tracing, evaluation, and management.

The lack of clear order in the preparation and planning of property seizure, as well as the established tradition and practice of conducting financial investigations, indicate the need for more detailed regulation of this mechanism. To raise awareness from asset seizure planning, as well as to effectively and efficiently discuss the importance of its introduction and all possible approaches to this, we suggest holding a targeted discussion with investigative judges, prosecutors and pre-trial investigation agencies, involving practitioners from some of the above-mentioned jurisdictions (USA, Canada, France) and experts from international organizations.

Taking into account a certain degree of detail in the objectives and components of the planning process, its regulation at the level of the law is impractical.

The best instrument of legal regulation in pre-seizure planning is the joint order of the General Prosecutor's Office of Ukraine, ARMA and the pre-trial investigative agencies regarding their cooperation in the planning process. A potential problem point regarding the approval of such a joint order is the above-mentioned lack of a legally established obligation of the prosecutor and the investigator to initiate a formal planning process, as well as the unwillingness of the Prosecutor's Office to disclose information of the pre-trial investigation.

A compromise solution to the problem point issues regarding the lack of a legislated obligation to initiate the formal planning before making any appropriate legislative changes can be its enshrinement in a joint order the launch of the planning process at the prosecutor’s discretion, not obligation. Moreover, in the absence of legislative amendments the planning is recommended to be carried out in the less formalised format of consultations.

Concerning the second problem point, associated with the disclosure of pre-trial investigation, the need for which may arise for the purpose of qualitative planning, it should be noted in the first instance that, according to Article 222 of the CPC, such disclosure is permitted with the written permission of the investigator or prosecutor to the extent defined by them. Therefore, it is recommended to include the provisions on the need for such written permission in the joint order. Regarding ARMA, according to part 4 of Article 11 of the Special Law, officials and public servants of the Agency are prohibited from disclosing information with limited access obtained due to the performance of their duties, except in cases established by law.

In order to ensure the effective use of ARMA resources, it is expedient to distinguish the degrees of the Agency’s expected involvement in the planning process depending on the assets, namely their complexity and volume. At the initial stage ARMA's involvement in planning the seizure of the most complex and expensive assets that require more thorough preparations related to their further transfer into ARMA’s management would be a reasonable solution. However, this does not mean that ARMA will be completely eliminated from planning before the seizure of other assets. It is also important to institute a rule about early involvement of ARMA and other agencies.

A joint Memorandum of Understanding between the involved agencies may be an alternative tool to document the agreements between them on joint work on planning the seizure of assets. However, taking into account the impossibility of setting regulatory requirements there, this approach can significantly reduce the planning capacity.

With regard to the substance of the pre-seizure planning process, it is generally important to ensure that it cover at least four of the following components:

1. general evaluation of the asset — the estimated time of the asset being under seizure, the expediency of applying limitation of the right of use, the qualitative and quantitative characteristics of the asset, the possibility of disposal of the asset at the management stage, the need to involve specialists at the management stage, the need for special conditions for storage of the asset, the possible public response or public attention to the asset seizure;
2. legal analysis of the asset — compliance of the asset with the CPC criteria for the seizure of property and the possibility of its seizure, determination of the range of persons entitled to the asset (including real and beneficial owners), what is a reasonable level of limiting their rights, registration data of the asset, the availability of pledges or other liens;
3. financial analysis of the asset — a preliminary evaluation of the asset value, preliminary estimate of the cost and viability of its management;
4. joint development of strategies and advice to eliminate or minimize the problems and risks identified in each of the above components, the development and joint implementation of appropriate measures, the choice of the right moment for the seizure of the assets.

However, it is also recommended to apply other practices based on the foreign experience described above (for example, a more detailed plan for the seizure of business, real estate and particularly complex assets).



1. FATF (2012), [Best Practices on Confiscation (Recommendations 4 and 38), and a Framework for Ongoing Work on Asset Recovery, Art. 9](https://www.fatf-gafi.org/media/fatf/documents/reports/Best%20Practices%20on%20%20Confiscation%20and%20a%20Framework%20for%20Ongoing%20Work%20on%20Asset%20Recovery.pdf) [↑](#footnote-ref-1)
2. UNODC (2017), [Effective management and disposal of seized and confiscated assets](https://www.unodc.org/documents/corruption/Publications/2017/17-07000_ebook_sr.pdf), page 11 [↑](#footnote-ref-2)
3. Ibid., pages 27 and 28 [↑](#footnote-ref-3)
4. Ibid., page 63 [↑](#footnote-ref-4)
5. Ibid., pages 28 to 29 [↑](#footnote-ref-5)
6. Ibid., pages 28, 30 [↑](#footnote-ref-6)
7. UNODC, Revised [draft non-binding guidelines on the management of frozen, seized and confiscated assets, Art. 3](https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2019-May-29-30/V1901749e.pdf) [↑](#footnote-ref-7)
8. StAR (2011), [Asset Recovery](https://star.worldbank.org/sites/star/files/asset_recovery_handbook_0.pdf) Handbook, pages 79 to 84 [↑](#footnote-ref-8)
9. Ibid., page 85 [↑](#footnote-ref-9)
10. Ibid., page 97 [↑](#footnote-ref-10)
11. Organization of American States (2014), [Guide for the Management of Seized Business](http://www.cicad.oas.org/lavado_activos/pubs/Guide%20for%20the%20management%20of%20seized%20businesses.pdf), pages 3 to 4 [↑](#footnote-ref-11)
12. https://www.justice.gov/afp/types-federal-forfeiture [↑](#footnote-ref-12)
13. U.S. Department of Justice (2019), https://www/justice.gov/criminal-afmls/file/839521/download [↑](#footnote-ref-13)
14. <https://www.justice.gov/afp> [↑](#footnote-ref-14)
15. U.S. Department of Justice (2019), [[Asset Forfeiture Policy Manual](https://www.justice.gov/criminal-afmls/file/839521/download)](https://www.justice.gov/criminal-afmls/file/839521/download), page 25 [↑](#footnote-ref-15)
16. Ibid., page 24 [↑](#footnote-ref-16)
17. Ibid., page 25 [↑](#footnote-ref-17)
18. Ibid., page 26 [↑](#footnote-ref-18)
19. Ibid., pages 26 to 27 [↑](#footnote-ref-19)
20. Ibid., page 27 to 28 [↑](#footnote-ref-20)
21. Ibid., page 29 [↑](#footnote-ref-21)
22. StAR (2009), [Stolen Asset Recovery. A Good Practices Guide for Non-Conviction Based Asset Forfeiture,](https://star.worldbank.org/sites/star/files/Non%20Conviction%20Based%20Asset%20Forfeiture.pdf) Art. 241 to 255 [↑](#footnote-ref-22)
23. U.S. Department of Justice (2019), [Asset Forfeiture Policy Manual,](https://www.justice.gov/criminal-afmls/file/839521/download) pages 29 to 30 [↑](#footnote-ref-23)
24. Ibid., page 31 to 32 [↑](#footnote-ref-24)
25. Ibid., page 141-142 [↑](#footnote-ref-25)
26. UNODC (2017), [Effective Management and Disposal of Seized and Confiscated Assets,](https://www.unodc.org/documents/corruption/Publications/2017/17-07000_ebook_sr.pdf) page 28 [↑](#footnote-ref-26)
27. StAR (2009), [Stolen Assets Recovery. A Good Practices Guide for Non-Conviction Based Asset Forfeiture](https://star.worldbank.org/sites/star/files/Non%20Conviction%20Based%20Asset%20Forfeiture.pdf), Art. 48, 86 [↑](#footnote-ref-27)
28. <https://www.tpsgc-pwgsc.gc.ca/app-acq/gbs-spm/index-eng.html> [↑](#footnote-ref-28)
29. [Public Prosecution Service of Canada](https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/tpd/d-g-eng.pdf), pages 423, 426 [↑](#footnote-ref-29)
30. UNODC (2017), [Effective Management and Disposal of Seized and Confiscated Assets,](https://www.unodc.org/documents/corruption/Publications/2017/17-07000_ebook_sr.pdf) page 28 [↑](#footnote-ref-30)
31. [Report on AGRASC Activities 2017](https://www.economie.gouv.fr/files/files/PDF/2018/AGRASC_Rapport_2017.pdf), pages 17 to 19 [↑](#footnote-ref-31)
32. Ibid., page 21 [↑](#footnote-ref-32)
33. <https://www.afp.gov.au/sites/default/files/PDF/criminal-assets-confiscation-taskforce-brochure.pdf> [↑](#footnote-ref-33)
34. [Report of the Australia National Audit Office for Implementation of the Proceeds of Crime Act (POCA) for 2016 and 2017](https://www.anao.gov.au/sites/default/files/ANAO_Report_2016-2017_43_0.pdf), pages 21 to 23 [↑](#footnote-ref-34)