



**U.S. Asset Recovery
Tools & Procedures:
*A Practical Guide for
International Cooperation***



“[W]e must work together to ensure that corrupt officials do not retain the illicit proceeds of their corruption. There is no gentle way to say it: When kleptocrats loot their nations’ treasuries, steal natural resources, and embezzle development aid, they condemn their nations’ children to starvation and disease. In the face of this manifest injustice, asset recovery is a global imperative.”

-U.S. Attorney General Eric Holder,
Global Forum IV, Doha, November 2009

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OVERVIEW

The United States is committed to the global fight against corruption and to ensuring both that corrupt leaders cannot seek safe haven for their stolen wealth in the United States and that stolen assets are recovered and returned to those victimized by corruption. In 2010, the Department of Justice (DOJ) launched the Kleptocracy¹ Asset Recovery Initiative to provide further support to cooperation in this area. The Initiative, which is spearheaded by DOJ's Asset Forfeiture and Money Laundering Section (AFMLS), established a dedicated team of attorneys, investigators, and financial analysts responsible for investigating and prosecuting asset recovery cases, and builds on the United States' past successes in seizing kleptocrats' assets in Latin America, Asia, and Africa. Since 2004, the United States has forfeited and returned over \$168 million to victims abroad, working in close collaboration with law enforcement and judicial officials around the world. Many other cases are in the investigative stage or in legal proceedings.

This guide provides practical information on how the United States can assist other countries in the recovery of assets—including assistance in asset tracing investigations, freezing, seizing, confiscation, and the enforcement of foreign restraint orders and confiscation orders—and the specific steps that other countries and foreign jurisdictions can take to access this assistance and cooperation.

For more information or assistance with specific cases, please see the contact information provided at the back of the guide. The tools available (informal vs. formal measures) will depend on the type of assistance sought and the agreements, whether bilateral or multilateral, in place in both countries. All requests should be in English or be accompanied by a translation into English.

U.S. officials welcome informal inquiries and can provide many forms of assistance before receiving a formal request for mutual legal assistance (MLA). The United States has numerous law enforcement attachés and DOJ attachés posted abroad who can facilitate assistance in support of foreign investigations. Practitioners can reach out to U.S. officials for these inquiries—through the contacts provided here, and the attachés in your country—before making formal requests.

Main U.S. Agencies Supporting Asset Recovery Cases:

- Department of Justice, Criminal Division, Asset Forfeiture and Money Laundering Section (AFMLS)
- Department of Justice, Criminal Division, Office of International Affairs (OIA)
- Department of Homeland Security, ICE Homeland Security Investigations (HSI)
- Department of Justice, Federal Bureau of Investigation (FBI)

¹ *Kleptocracy comes from the Greek word for "Rule of Thieves."*

U.S. Support for Asset Recovery and the Implementation of Chapter V of the UNCAC

- **Dedicated Specialized Teams:** In 2010, the Department of Justice launched the Kleptocracy Asset Recovery Initiative to provide further support for cooperation in this area, including through increasing the number of specialized staff. HSI and FBI also have personnel that are dedicated to investigating international corruption cases.
- **Promoting Policy at the Multilateral Level:** The United States worked with G20 partners at the Seoul Summit to adopt commitments on asset recovery cooperation and to welcome, at the Cannes Summit, principles for effective asset recovery.
- **Leadership in Prevention:** With United States support, the G20 also called upon the Financial Action Task Force (FATF) to examine the interplay between corruption and money laundering. The United States will seek to strengthen its requirements for disclosure of beneficial ownership information at company formation as one of its commitments under the Open Government Partnership initiative.
- **Supporting Multilateral Initiatives:** The United States is a partner of the Stolen Asset Recovery Initiative (StAR). The United States is a member of the Camden Asset Recovery Inter-Agency Network (CARIN) and has supported the development of regional equivalents to CARIN, as well as the Asset Recovery Focal Point Initiative supported by INTERPOL and StAR.
- **Fostering Capacity Building:** The United States supports a wide range of anticorruption technical assistance activities, including the provision of financial support and expertise to regional asset recovery workshops and the placement of asset recovery mentors in pilot countries. U.S. expertise has contributed to expert meetings and to best practices guides for practitioners.

U.S. ASSET RECOVERY TOOLS

I. Investigative Assistance

In order to recover the proceeds of corruption that are either held in the United States or moved through the United States, a foreign jurisdiction first must be able to identify the assets or assist the United States in identifying the assets. There are a variety of mechanisms through which the United States can assist in the identification and tracing of criminally derived assets.

The first step available to a foreign jurisdiction in identifying assets in the United States is often to request informal investigative assistance.

A. Informal Investigative Assistance

Informal Evidence Gathering

The United States may offer support to a foreign investigation using routine investigative measures such as witness interviews, visual surveillance, public record searches, and providing public documents. To request this type of assistance, foreign law enforcement authorities should contact U.S. attachés in their respective countries and/or the DOJ contacts provided in this guide.

Investigative Networks

The United States is a member of a number of practitioner networks related to the recovery of proceeds of corruption, or proceeds of crime more generally, including the Camden Asset Recovery Inter-Agency Network and the Asset Recovery Focal Point Initiative (supported by StAR and INTERPOL). These networks also facilitate informal investigative assistance and cooperation.

B. Formal Investigative Assistance

Mutual Legal Assistance Requests

Formal requests to obtain assistance such as formal service of process, compelled or sworn testimony, production of financial or third party records, authentication of records, and searches can also be made based on a bilateral mutual legal assistance treaty (MLAT), multilateral convention, or discretionary letter rogatory or letter of request. Formal requests are also necessary to enforce restraining orders or execute forfeiture judgments. The United States' central authority for formal mutual legal assistance requests is OIA. Requests for legal assistance are executed pursuant to the terms of the treaty or convention invoked (if any) and U.S. domestic law. The terms

of the treaty or convention outline what information must be included in a mutual legal assistance request. Generally, the following information must be provided in a request seeking assistance from the United States:

1. Name of the treaty or convention which is being relied on to support the request;
2. Name of the authority conducting the investigation/prosecution;
3. Factual summary of the case;
4. Text of the applicable legal provisions or statutes, including penalties, on which the investigation/prosecution is based;
5. Explanation of the assistance sought and its relevance to the investigation or proceeding that forms the basis of the request; and
6. Any special requirements such as confidentiality or urgency and the reasons for the necessity of same.

As the primary point of contact for all requests for formal legal assistance from the United States, OIA will work with its foreign counterparts, as well as with other U.S. prosecutors and law enforcement officials, to execute the requests for mutual legal assistance. OIA can also provide guidance on how to best draft requests.

314(a) Requests

To continue tracing assets to determine whether an individual, entity, or organization maintains an account in a U.S. financial institution, a foreign jurisdiction may seek information from the United States' financial intelligence unit (FIU) —the Financial Crimes Enforcement Network (FinCEN) —through a procedure referred to as a 314(a) request. Upon receipt of a 314(a) request, U.S. financial institutions are required to search their records and identify whether the institution has established an account or conducted a transaction on behalf of the individual, entity, or organization that law enforcement reasonably suspects—based on credible evidence—of engaging in *significant* money laundering activities.² To demonstrate the significance of the money laundering, FinCEN requires documentation showing the size or impact of the case; suspected monetary amounts; the impact of the underlying criminal activity; criminal organization involvement; multi-regional implications; and/or any other facts demonstrating its significance. The requesting entity must also certify that it has been unable to locate the information sought through traditional methods of investigation and analysis.

² A 314(a) request can also be issued based on suspected terrorist activity.

U.S. ASSET RECOVERY TOOLS

- *Foreign Jurisdiction Submitting a Request:* Reciprocal agreements between the United States and certain foreign jurisdictions permit law enforcement authorities of those foreign jurisdictions to submit information requests concerning significant money laundering investigations to U.S. financial institutions through FinCEN. When making a 314(a) request, the foreign law enforcement agency must complete and submit a 314(a) certification form and subject information form to a U.S. law enforcement attaché. The attaché will review the request and ensure that it is from a legitimate entity. The attaché will then forward the completed forms to FinCEN.

Egmont Requests

The United States is a member of the Egmont Group, an association of 127 FIUs from around the world that have agreed to share financial intelligence with one another in support of criminal/terrorist investigations.³ When its domestic legislation allows, law enforcement officials from a member state of Egmont can request financial intelligence from another member state through its FIU. The available information may include bank account information, cross-border cash transportation forms, criminal information, and records that may be on file with a public registry.

II. Confiscation of Property Relating to Foreign Offences

When assets have been identified, the United States offers two ways to assist countries in asset recovery. First, if the country or foreign jurisdiction has a foreign order against the asset, the United States has the authority to enforce the order upon receiving an appropriate mutual legal assistance request from a foreign jurisdiction. Second, if the foreign jurisdiction does not yet have a foreign order against the asset, the United States may be able to initiate an action in the United States, either as a criminal confiscation or as a “*non-conviction based*” (civil) confiscation. This ability is based on U.S. confiscation authority.

A. U.S. Confiscation Authority

The United States may forfeit properties within the jurisdiction of the United States which constitute, are derived from, or are traceable to, a broad range of domestic and foreign offenses. In addition, U.S. confiscation authority extends to criminal proceeds and instrumentalities located outside the United States that are traceable to a criminal defendant prosecuted in the United States or to criminal conduct occurring in part in the United States.

³ More information is available at www.egmontgroup.org.

Types of U.S. Confiscation Proceedings

- **Criminal Confiscation:** Following conviction, a defendant's interest in property constituting the proceeds of an offense or property used in the commission of the offense is forfeited to the United States as part of the criminal sentence. If pursuing a criminal confiscation, the court must exercise control over the defendant.
 - **Non-Conviction Based (NCB) Confiscation:** Such actions are against property rather than a criminal defendant, and do not require a conviction. In pursuing a NCB confiscation, the U.S. court must exercise control over the property subject to confiscation. NCB confiscation actions require proof of the nexus between the particular property subject to confiscation and criminal conduct. Such actions are particularly useful in cases in which a criminal conviction is not possible, such as when the property is held by a fugitive or a criminal who has died or is unavailable for prosecution in the United States. The United States can initiate a NCB confiscation proceeding against proceeds and instrumentalities of certain designated foreign offense predicates for money laundering and some U.S. offenses with inherently foreign components.⁴
- B. U.S. Authority to Restrain Assets Based on Foreign Arrest/Charge or Enforcement Order

Restraint (Freezing or Seizing) based on Foreign Arrest or Charge

Under the domestic law of the United States, at the request of prosecutors, courts can order a temporary (renewable) 30-day restraint of assets located in the United States based on evidence of an arrest or charge in a foreign jurisdiction in anticipation of filing a non-conviction based confiscation proceeding against that property based upon the list of foreign offenses that might give rise to confiscation under U.S. law. In pursuing such restraint, the United States can apply to any federal judicial officer (a judge) in the district in which the property is located for an *ex parte* order restraining the property subject to confiscation for not more than 30 days, while awaiting evidence. If proceeding *ex parte*, notice is not provided to interested parties. The time may be extended if U.S. authorities can show "good cause."

In its application, which is based on information supplied by the foreign jurisdiction through an MLAT or multilateral convention request, U.S. prosecutors must set forth the nature and circumstances of the foreign charges, as well as the basis for the belief that the person arrested or charged has property in the United States that would be subject to confiscation under U.S. law, which would require some evidence that the property in question is likely the traceable proceeds of the foreign offense. The

⁴ The United States can initiate this type of action for foreign money laundering predicates that include acts of corruption; bribery of a public official; misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official; extortion; and offenses for which multilateral treaties require extradition or prosecution. In addition, certain U.S. criminal offenses contain international criminal liability elements, for example, the knowing transmission or transportation into or out of the United States, via "foreign commerce," of property obtained by theft or fraud that is valued at \$5,000 or above.

U.S. ASSET RECOVERY TOOLS

application must also state that a restraining order is needed to preserve the availability of property for the period of time that is necessary to obtain, from the foreign country or elsewhere, the evidence that will be used in support of the eventual seizure and confiscation of the property.

In addition to the general information described above that must be included in a mutual legal assistance request, restraint requests to the United States under this section must include information showing probable cause⁵ that a crime was committed and the connection between that crime and the identified assets of the accused. Additional available information such as witness testimony, relevant documents, etc., should be included. See below for a more thorough list of what to provide to the United States to obtain restraint.

Restraint through Enforcement of Foreign Orders and Judgments

The United States has the ability to enforce foreign restraining orders and confiscation judgments pursuant to an MLAT request or pursuant to requests made under certain multilateral conventions, including the 1988 Vienna Convention, the UN Convention against Corruption (UNCAC), and the UN Convention against Transnational Organized Crime (UNTOC). The crime for which the property is to be restrained and ultimately forfeited must be one that would subject the property to confiscation under U.S. law, had the underlying acts been committed in the United States.

C. What to Provide to the United States to Restrain Assets in the United States

Enforcement of a Foreign Restraining Order

The requesting country must provide to OIA, in a request made under the relevant MLAT or multilateral convention, the following:

- A summary of the facts of the case and any other information required under the specific treaty or convention;
- A copy of the restraining order from the requesting country's court that specifically identifies the assets in the United States to be restrained, or in the alternative, an order which restrains all of the assets belonging to the accused, preferably with an amount of criminal proceeds identified to date; and
- A statement establishing that the requesting country complied with due process, which includes giving notice of all proceedings to all persons with

⁵ In order to establish probable cause, a restraint request must provide information sufficient to establish a reasonable belief that a person has committed a crime. Probable cause constitutes a higher standard of evidence than "reasonable suspicion" but lower than that required for a criminal conviction.

an interest in the property in sufficient time to claim any rights to it and certifying that the court issuing the order has the jurisdiction (the legal right) to issue such orders and that there is no evidence the order was obtained by fraud.

Request for Restraint Before the Initiation of a Foreign Charge or Before Issuance of a Foreign Restraining Order

The requesting country must provide to OIA, in a request made under the relevant MLAT or multilateral convention, the following:

- A summary of the facts of the case and any other information required under the specific treaty or convention; and
- An affidavit (sworn statement) from a foreign official with knowledge of the case that includes:
 - The nature of the investigation and identities of suspects and entities they used;
 - The foreign statutory citations and a summary of the offenses being investigated and/or charged and the confiscation authority for such offenses;
 - The dates of the offenses and the factual basis for the potential charges;
 - The assets to be restrained (with verified bank account numbers or other identifying information);
 - Explanation of the relationship between the specific assets to be restrained in the United States and the criminal conduct of the suspect;
 - Explanation of any connection between any suspects and any corporate entities in whose name the assets may be held;
 - The supporting evidence, and anything indicating reliability of that evidence;
 - The reasonable basis to believe that charges will be placed and that the property will be forfeited in the future;
 - Whether identified assets are forfeitable as proceeds, property traceable to proceeds, instrumentalities, or will be subject to a value-based judgment; and
 - The due process procedures that have been or will be undertaken in the requesting country.

In addition, requests must contain enough information that will permit U.S. prosecutors to convince a U.S court that dual forfeitability exists. That is, the underlying criminal conduct justifying restraint or confiscation of the assets must also

be recognized as a criminal act in the United States for which confiscation would be available if the same act occurred in the United States.

Enforcement of a Final Judgment of Confiscation

The requesting country must provide to OIA, in a request made under the relevant MLAT or multilateral convention, the following:

- A summary of the facts of the case and any other information required under the specific treaty or convention;
- A certified copy of the final, non-appealable confiscation judgment; and
- An affidavit (sworn statement) indicating that:
 - The judgment is not subject to further appeal;
 - The requesting country complied with due process (including giving notice of all proceedings to all persons with an interest in the property in sufficient time to claim any rights to it);
 - The court issuing the judgment has the jurisdiction (the legal right) to issue such judgments; and
 - There is no evidence the judgment was obtained by fraud.

Pursuing a U.S.-Based Forfeiture Action for Foreign Assets

In the event that U.S. authorities will pursue a U.S.-based forfeiture, or confiscation action, foreign officials should provide all available evidence establishing the connection between the property to be forfeited and criminal activity, such as financial records, witness interviews, sworn testimony, relevant laws establishing criminal acts; charging documentation if applicable; and other pertinent information upon request.

Requests seeking seizure/confiscation of criminal property in the United States should include the following additional information:

1. Identification of the assets to be restrained or confiscated (including account numbers or other detailed identifying information);
2. Explanation of the relationship between the specific assets to be restrained or confiscated in the United States and the criminal conduct of the suspect (so that the United States can examine the possibility of bringing its own confiscation action);
3. Explanation of any connection between any suspects and any corporate entities in whose name the assets may be held;

4. Identification of any restraining order that has been issued by a court of the requesting country; and
5. Identification of any final confiscation judgments obtained in the requesting country, as well as the procedural history of these judgments.

Examples of U.S. Cooperation to Recover Proceeds of Corruption

- The United States confiscated and repatriated to Peru corruption proceeds worth more than USD \$20 million that were connected to the criminal conduct of former Peruvian intelligence chief Vladimiro Montesinos and his associates. The combined efforts of Peruvian, U.S., and other law enforcement authorities also led Montesinos associates to voluntarily return millions of additional dollars worth of corruption proceeds to the government of Peru.
- The United States confiscated and repatriated to Italy more than \$117 million that constituted proceeds of corruption in the judiciary.
- As a result of close investigatory cooperation, the United States was able to forfeit and return to Nicaragua more than USD \$2.7 million connected to the criminal conduct of former Nicaraguan Tax and Customs Minister Byron Jerez.

III. Asset Disposition/Return

The United States may dispose of or return forfeited assets in two ways. The first is a statutory power to “share” forfeited assets with a foreign government that participated directly or indirectly in the investigation leading to forfeiture. The United States generally will retain only that portion of confiscated corruption-related assets to recoup the costs incurred in confiscating those assets. There must be an agreement between the governments in order to “share” forfeited assets with the other nation. Only the Attorney General or the Secretary of the Department of Treasury, or their designees, may approve an asset transfer, and the Department of State must concur. The U.S. Congress has the authority to object to an asset transfer in limited circumstances. Second, the Attorney General has the regulatory authority to “remit” confiscated assets to victims of the underlying criminal activity (i.e., the criminal activity upon which confiscation was based). Claimants seeking the return of assets through this method must file a Petition for Remission with AFMLS. Under the regulations, foreign individuals, entities, or governments may submit petitions for remission seeking consideration of their claims. The form for submitting a Petition for Remission can be found at the following website: www.justice.gov/criminal/afmls/forms/pdf/28cfr9.pdf. The discretion to “remit” forfeited assets to victims is made by the Chief of AFMLS.

CONTACT INFORMATION

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**United States Department of Justice, Criminal Division,
Office of International Affairs (OIA)**

As OIA is organized by geographical country teams and not by subject matter, please call the main OIA telephone number and ask to speak with the attorney who is responsible for your country.

202-514-0000

This guide was produced by the United States Department of Justice and United States Department of State. For more information about U.S. international anticorruption initiatives, please contact Robert Leventhal at LeventhalR@state.gov.

“It is only with a truly international and cooperative response that we will be able to achieve success in recovering the proceeds of corruption. Asset recovery requires the dedication and expertise of investigators and prosecutors in both the country victimized by the corrupt acts and in those countries in which corruption proceeds have been secreted.”

-U.S. Attorney General Eric Holder,
Global Forum IV, Doha, November 2009



United States Department of State

Printed by A/GIS/GPS
May 2012