

Effective asset management

2014

A PRACTICAL GUIDE TO THE ADMINISTRATION OF SEIZED, RESTRAINED AND CONFISCATED PROPERTY FOR PACIFIC JURISDICTIONS

This guide was prepared by the International Legal Assistance Branch of the Australian Attorney-General's Department, in consultation with the Pacific Islands Law Officers' Network Corruption and Proceeds of Crime Working Group.

EXECUTIVE SUMMARY

1. Targeting the proceeds and instruments of crime is a critical way in which governments can combat financially motivated crime, including corruption. 'Following the money' is a key law enforcement tool to disrupt criminal activity and send a strong message of deterrence.
2. An effective asset management (or 'property management') framework is necessary for the integrity of a proceeds of crime framework, to prevent the dissipation or loss of assets seized, restrained or confiscated under proceeds of crime laws.
3. This Guide was prepared as a product of the Pacific Islands Law Officers' Network (PILON) Corruption and Proceeds of Crime Working Group (the Working Group), for policy makers to consider how they should best manage assets obtained through proceeds of crime actions. The management of property requires accurate monitoring, reporting and transparency at all stages, with the aim being to preserve the value of the property.
4. Asset management is a new component of the updated 2012 Financial Action Task Force (FATF) Recommendations and is being considered in the Asia/Pacific Group on Money Laundering's (APG) third round of mutual evaluations, which commenced in 2014. Countries will be assessed on their mechanisms in place for managing, and when necessary disposing of, property frozen, seized or confiscated, in relation to both domestic and international confiscation matters. The relevant recommendations and commentary are included in this Guide.
5. A comprehensive property management plan should accompany any proceeds of crime investigation where property is intended to be subject to seizure, restraint or confiscation orders. This may be undertaken by a single agency, or it may be spread across multiple agencies.
6. Common problems encountered in jurisdictions with inadequate asset management practices include the devaluation of property through neglect, misappropriation of property by those entrusted to store or manage it and a failure to maintain appropriate records.
7. This Guide provides the building blocks for the development of property management laws and procedures in proceeds of crime matters, with a view to assisting Pacific jurisdictions to develop or enhance their frameworks in this area. Whilst largely based on Australian experience, it draws on various resources including those developed by the UNODC, World Bank (StAR), FATF, Australia, New Zealand, Canada, Papua New Guinea and Fiji.
8. The Working Group will use the Guide to further consider property management in Pacific jurisdictions, and inform the further targeting of work and activities in this area to be undertaken through the Working Group.

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KEY TERMS

Property

9. Throughout this Guide we have used the word ‘property’ to refer to the proceeds and instruments of crime, or proceeds of unlawful activity. We have used ‘property’ as a generic term to cover all types of assets, such as cash, money in bank accounts, houses, cars, yachts, jewellery, shares, and businesses.

What are proceeds of crime?

10. Article 2 of the UN Convention against Transnational Organised Crime (UNTOC), defines ‘proceeds of crime’ as ‘any property derived from or obtained, directly or indirectly, through the commission of an offence’. It includes economic gains from the property and property converted or transformed, in full or in part, into other property. For example, Figure 1 is a motor vehicle purchased with funds obtained from a fraudulent



Figure 1: Confiscated Ferrari

investment scam. Authorities were able to confiscate the car because it was purchased using, and therefore also became, proceeds of crime.

What are instruments of crime?

11. An instrument (or instrumentality) of crime is the property used to facilitate a crime. For example, a car or boat used to transport narcotics, or monies used to fund criminal activity, could be an instrument of crime.

12. Figure 2, a yacht, is an example of an instrument seized and confiscated by law enforcement authorities. It was detected entering Australian waters carrying 100 kilograms of pure cocaine, which it had transported from South America via the Pacific. Drugs were concealed within its water tanks. There was no evidence to indicate the yacht was either the proceeds of crime or acquired with funds derived from earlier criminal offences. However, its use in the commission of an offence meant that it was confiscated as an instrument of the drug importation.



Figure 2: Confiscated Yacht caught carrying drugs

What are proceeds of unlawful activity?

In some jurisdictions including Australia, persons suspected of having committed serious criminal offending may be required to explain the lawful derivation of property held under their effective control. If property cannot be shown to have been lawfully derived (the onus of which may fall to the suspect), that property may be forfeited.

'Effective control' – who really owns the property?

13. 'Who controls the property?' is a key question that proceeds of crime laws must address. The United Nations Office on Drugs and Crime (UNODC) defines effective control as 'the exercise of practical control over the property whether or not that control is supported by any property interest or other legally enforceable power'.

14. For example, a suspect may be found to still have 'effective control' where all business and personal property has been transferred into the name of a company under his wife's directorship but the suspect has made all the important decisions in relation to the company and its property.

INTRODUCTION

Key considerations in managing property

15. An effective property management framework is necessary for the integrity of a proceeds of crime framework, to prevent the dissipation or loss of assets seized, restrained or confiscated under proceeds of crime laws.

16. There can be a number of different ways in which a country might approach their property management responsibility for proceeds or instruments of crime. The structure for a property management framework will depend in part on the legislation, guidelines and procedures in place for asset freezing, seizure and forfeiture in the relevant country.

17. For example, in some countries there are provisions to seize, restrain or confiscate the proceeds or instruments of crime in customs or narcotics laws. This can include the power to do 'administrative forfeiture'. This is a relatively quick process whereby a law enforcement officer seizes the property, notifies all relevant parties, and within a short period of time (sometimes as short as 30 days), the property is automatically forfeited to the government if there are no claims to the property.

18. Countries may also have a separate proceeds of crime law where the authorities can seize or restrain property until a final court order is given regarding forfeiture of the property – in which case the authorities may be responsible for managing the property for a longer period of time. This may or may not relate to the conviction of an offender – in some Pacific countries such as New Zealand, Fiji, PNG and Australia there are non-conviction based asset confiscation laws in addition to conviction based asset confiscation laws. Under either provision, if the costs of managing the property exceed the likely value to be achieved from the sale of the property, provisions would need to be available to progress a forced sale of the property either with, or in some cases without, the consent of the owner.

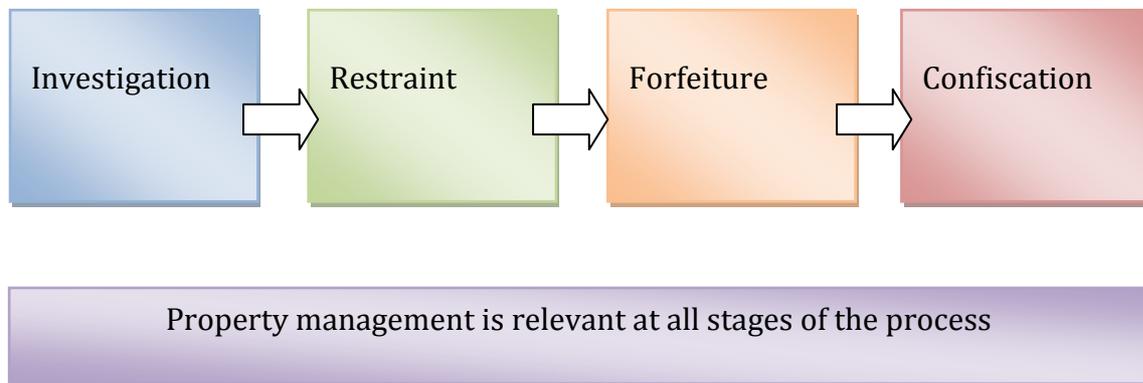
19. The nature of the asset forfeiture framework will change some of the property management considerations that will apply. This Guide discusses these considerations, relevant international standards, and the key roles of different stakeholders. The Guide also considers the following areas:

- **Identification of property that authorities suspect is the proceeds or instruments of crime.** At this stage, the authorities should be considering whether they should target the property, including whether they have the capacity to do so from a legal and practical perspective.
- **Management of assets once authorities have seized or restrained the proceeds or instruments of crime.** As noted above, the proceeds and instruments of crime can include cash, money in bank accounts, houses, cars, yachts, jewellery, shares and businesses. The authorities will have many things to consider, such as where the property should be stored and who pays for storage costs. The costs for storage

during the trial period could be considerable and the potential for devaluation of the property may be high. There is also the risk that the authorities may face a claim for damages due to devaluation or damage to the property if the court ultimately determines that the property should be returned to the owner.

- **Approach to how the property will be forfeited.** Considerations at this point include who will sell the property and where the money from its sale should go. These are both key issues that should be included in legislation. Other considerations include other laws such as property and title transfers, stamp duty implications (usually exempt for proceeds of crime matters) and what to do with forfeiture orders that cover property held in other jurisdictions which may not be willing or able to recognise such orders.

At all stages of the proceeds of crime investigation, it is important to remember that proper management of the assets is essential.



FATF STANDARDS

20. Reflecting an increasing focus on the importance of asset management for an effective proceeds of crime regime, express reference to asset management was added to the FATF 40 Recommendations in 2012.

21. The FATF Recommendations now require that countries have mechanisms in place for managing, and when necessary disposing of, property frozen, seized or confiscated. This applies to both domestic and international confiscation matters. Future evaluations will therefore assess countries on their establishment and operation of effective asset management structures.

22. The relevant FATF expectations are contained in Recommendation 4 on confiscation and provisional measures, and Recommendation 38 on mutual legal assistance: freezing and confiscation; in the interpretive notes for these standards; and /or the FATF Methodology 2013. Collectively, these require that:

- Countries should have effective mechanisms for managing frozen, seized or confiscated property
- Countries should have arrangements for coordinating seizure and confiscation proceedings, which should include the sharing of confiscated assets
- These mechanisms should be applicable both in the context of domestic proceedings, and pursuant to requests by foreign countries
- Countries should consider establishing an asset forfeiture fund into which all, or a portion of, confiscated property will be deposited for law enforcement, health, education, or other appropriate purposes, and
- Countries should take such measures as may be necessary to enable them to share among or between other countries confiscated property, in particular when confiscation is directly or indirectly a result of coordinated law enforcement actions.

23. The relevant extracts of the FATF Recommendations, interpretive notes and FATF Methodology are at **Attachment A**.

24. The FATF paper 'Best Practices on Confiscation (Recommendations 4 and 38) and a Framework for Ongoing Work on Asset Recovery' ('FATF Best Practices Paper') (<http://www.fatfgafi.org/documents/guidance/bestpracticesonconfiscationrecommendations4and38andframeworkforongoingworkonassetrecovery.html>) notes that:

Depending on the nature of the property or the particular circumstances of the case, the best method of managing it might be through any one of (or a combination of) the following: the competent authorities; contractors; a court-appointed manager; or by the person who holds the property subject to appropriate restrictions on use and

sale.

25. The FATF Best Practice Paper also states that, ideally, an asset management framework should have the following characteristics :

- (a) There is a framework for managing or overseeing the management of frozen, seized and confiscated property. This should include designated authority(ies) who are responsible for managing (or overseeing management of) such property. It should also include legal authority to preserve and manage such property.
- (b) There are sufficient resources in place to handle all aspects of asset management.
- (c) Appropriate planning takes place prior to taking freezing or seizing action.
- (d) There are measures in place to:
 - (i) properly care for and preserve as far as practicable such property;
 - (ii) deal with the individual's and third party rights;
 - (iii) dispose of confiscated property;
 - (iv) keep appropriate records; and
 - (v) take responsibility for any damages to be paid, following legal action by an individual in respect of loss or damage to property.
- (e) Those responsible for managing (or overseeing the management of) property have the capacity to provide immediate support and advice to law enforcement at all times in relation to freezing and seizure, including advising on and subsequently handling all practical issues in relation to freezing and seizure of property.
- (f) Those responsible for managing the property have sufficient expertise to manage any type of property.
- (g) There is statutory authority to permit a court to order a sale, including in cases where the property is perishable or rapidly depreciating.
- (h) There is a mechanism to permit the sale of property with the consent of the owner.
- (i) Property that is not suitable for public sale is destroyed. This includes any property: that is likely to be used for carrying out further criminal activity; for which ownership constitutes a criminal offence; that is counterfeit; or that is a threat to public safety.
- (j) In the case of confiscated property, there are mechanisms to transfer title, as necessary, without undue complication and delay.

(k) To ensure the transparency and assess the effectiveness of the system, there are mechanisms to: track frozen/seized property; assess its value at the time of freezing/seizure, and thereafter as appropriate; keep records of its ultimate disposition; and, in the case of a sale, keep records of the value realised.

The Revised FATF 40 Recommendations will be used to assess countries on their establishment and operation of effective asset management structures including:

- Whether an effective legal framework is in place
- Allocation of resources to perform the task
- Use of people with appropriate expertise
- Sale of property by consent or by forced sale by order of a court
- Appropriate record keeping
- Whether proceeds from forfeiture are capable of being repatriated or shared with other jurisdictions

ROLES AND RESPONSIBILITIES OF STAKEHOLDERS

Who is doing what?

26. In proceeds of crime matters a number of agencies usually have key roles and responsibilities – including law enforcement agencies, prosecutors, courts and property management agencies. In Australia an overarching protocol has been established to set out who is responsible for making key decisions, on what basis they will make the decision, and the roles and responsibilities of all parties throughout the process. The Australian Proceeds of Crime Protocol has a chapter on property management, which covers the role of Australia’s property management agency, the Australian Financial Security Authority (AFSA), as the Official Trustee. Each agency also has bilateral interagency agreements setting out roles and responsibilities, such as the agreement between AFSA and the Australian Federal Police (AFP) on how property will be transferred, clearly setting out each agency’s responsibilities.

27. Where a large volume of cases with assets under administration are conducted it is necessary for the agency or department charged with the responsibility of managing property to have clear and accurate oversight of the cases, particularly time frames and court dates, values, location and costs of administering property. A well established and managed database is essential to providing clear oversight of the cases to all stakeholders and property managers and enabling accurate reporting.

28. In many countries, different government agencies play different roles in relation to property management. Generally, these will include:

Law enforcement agencies: Law enforcement agencies such as police and anti-corruption commissions are generally responsible for investigating proceeds of crime matters, and identifying property that they believe will be the subject of a proceeds of crime order seeking restraint or confiscation including registering foreign orders and providing supporting evidence.

Government lawyers: Prosecutors are generally responsible for making applications for court orders. These orders issued by the court may stipulate how the property should be managed ('custody and control orders'), including seeking that property be removed from the custody of the owner and placed under the control of a property manager.

Courts: The judiciary makes decisions as to whether or not applications for the use of coercive powers (such as search warrants, monitoring orders and production orders) are issued to assist proceeds of crime investigations. The judiciary also decides whether to make orders, including freezing orders, restraining orders, exclusion orders, pecuniary penalty orders, forfeiture orders and ancillary orders. In making these orders it considers the interests of third parties where appropriate

Property management agencies: The FATF Best Practices Paper notes that an asset management framework should include a designated authority or authorities who are responsible for managing (or overseeing management of) frozen, seized and confiscated property, with the legal authority to preserve and manage such property. In Australia, AFSA (the Official Trustee) is responsible for managing and maintaining restrained property which is the subject of a custody and control order in Commonwealth cases, maintaining forfeited property which has not yet been disposed of, and disposing of forfeited property. In New Zealand the role falls to the Official Assignee, who performs a similar function. However, in some jurisdictions – including some Australian State jurisdictions – the management of assets may be contracted to a private sector provider such as Ferrier Hodgson for storage, maintenance and sale. In some smaller jurisdictions the role may be assigned to an agency such as the police, which is the case in PNG. In Fiji, the role is set out in the Proceeds of Crime (Management and Disposal of Property) Regulations 2012, which under section 4 assign the responsibility to the Attorney General. Options exist to appoint representatives to manage the property which could include private sector providers. Such an arrangement may assist in minimising the risks and burdens asset management can place on an agency if it has not been specifically established to perform that type of function.

PROPERTY IDENTIFICATION

We have found property, should we seize/restrain it?

29. The initial point in property management is where the property is first identified as potentially forfeitable property. This includes proceeds and instruments of crime, as well as other lawfully acquired property that could be used to satisfy pecuniary penalty orders (orders that require payment to the equivalent value of the benefits of the crime where the proceeds or instruments are no longer available) or where property may be forfeitable on

the basis of it not having been lawfully acquired. Investing time now in deciding which assets should be targeted can prevent problems later in the management of assets. Key issues to consider at this point are:

a) **Ownership:** Who is the legal owner of the property? (This can often be ascertained by a registration search, government title search or other process.) Who has effective control over the property? Are there any other potential claimants or interested parties in the property?

The most commonly encountered asset protection method employed by criminal offenders is to register property under the names of close family, friends or business associates. The person listed on title may not be the lawful owner of the property and in fact may be committing money laundering offences by allowing it to be registered in their name if they have reason to suspect it was derived from criminal activity.

b) **Location:** Is the property in a remote location and will there be costs involved in relocating it to a safe storage site? If the property is not able to be moved, such as a house, what can be done to provide security to ensure it remains safe?

c) **Value = Low:** If the costs in managing the property, including depreciation, outweigh its final realisable value, do you have provisions to enable the sale prior to final orders? Or should you exclude that specific property from your property management plan?

d) **Value = High:** If the property item is highly valuable, can you provide secure transportation and storage? Who will cover the costs of insurance and storage? Is there a high risk in leaving the property in the custody of the offender or their family? This could include the family home or vehicles, antique furniture or artwork.

e) **Responsibility:** Who is responsible for the management of property taken from the suspect or offender? This will be dictated by the legislative provisions under which the seizure or restraint takes place. In the case of a criminal investigation where property is seized during the execution of a search warrant (as evidence of the offence or as tainted property) the property will generally remain with the seizing agency until such time as a court order is obtained that transfers custody and control to an administrator. Where there is no administrator it is often left to the police to undertake all functions in respect to the security and management of the restrained property. In these circumstances it is preferable to have a specialised person or team within the police which performs this function or provides oversight and instruction on best practice to other officers.

f) **Insurance:** It is generally best to obtain a formal valuation. Then, a change in the insured value should be carried out when next updating the insurance policy. Or, if a significant increase in value is noted, steps should be taken to increase the insured amount. It is possible that a formal valuation will need to be sought in certain circumstances. Guidance should be sought before any expenditure in that regard is made. If there are no

buildings on a site, insurance issues will need to be considered in relation to cover of such items as fencing, vehicles, boats, stock yards etc, if that is applicable.

g) **Storage:** Do you have a contracted company to provide safe and secure storage facilities, or is the property kept on police premises? It is often preferable to place property in the hands of professional administrators who can obtain valuations, arrange insurance coverage and provide a secure storage site as opposed to having items located in a police compound or in a non-secure, publicly accessible area.

h) **Maintenance Costs:** Some items of property, particularly luxury cars and yachts, have high maintenance costs which must be met in order to retain their full value. Who should pay these costs and are they recoverable from the final sale proceeds?

i) **Evidentiary Value:** Is the property required as evidence in the criminal process and if so, can secondary evidence be obtained in the form of photographs and video footage to enable the property to be sold or realised? For example, cash seized from a drug dealer may afford evidence in the form of forensic trace samples of narcotics, fingerprints, or the serial numbers on notes may have been recorded as part of an undercover operation. In these cases the evidentiary value may necessitate the retention of the property in its original form. However, this raises the issue of secure storage and the inability to place the money in an interest bearing account where it can increase in value.

j) **Realisation:** A key question at the commencement of a case is what will happen with the property at the end of proceedings? If there are victims who are capable of pursuing their own recovery through civil proceedings against the suspect it may be worth considering not pursuing a separate proceeds of crime action. This is because in such cases, the police may effectively find themselves in the role of a debt recovery agent for the victim when the victim could have recovered the money themselves. Alternatively, in some cases there may be a large number of victims, such as in a ponzi style investment fraud, and there may not be a single investor with the resources to pursue debt recovery proceedings. In these cases consideration should be given to the state commencing property restraint proceedings to prevent the offender from keeping, spending or concealing the proceeds of crime.

k) **Tax laws** may also affect which property should be targeted as some property may be the subject of proceedings by taxation authorities for unpaid tax liabilities. The Australian Commonwealth recently introduced provisions for the Taxation Commissioner to waive a tax liability if it would facilitate the conduct of proceeding under the *Proceeds of Crime Act 2002*.

30. **Seizing assets under search warrant-** When seizing property, the location and ownership of the property may or may not be known. Where the location and ownership of the property is not known, the property is generally discovered as part of a criminal investigation such as during the execution of a search warrant on premises or vehicles or the interception of a vehicle or vessel which has been used in the commission of an offence.

In this situation the decision as to initial property management often has to be made on site and without the benefit of wider enquiries having been undertaken.

31. When executing warrants or orders to seize or restrain property, all documentation regarding the ownership of property should be seized. This includes documents or other evidence that may identify potential claimants (for example joint owners, investors, mortgagors or lenders).

32. It will be important to determine whether your legislation allows you to seize tainted property or evidential material (evidence as to ownership, source and control of property) under a criminal investigation search warrant for use in proceeds of crime action.

Note: Australian Commonwealth search warrants under the *Crimes Act 1914* include the power to seize 'tainted property' or 'evidential material'. 'Evidential material' refers to evidence in respect to property where action could be taken under the *Proceeds of Crime Act 2002* or benefits derived from the commission of a qualifying offence (these include Commonwealth indictable offences, certain foreign indictable offences and certain State indictable offences of Commonwealth concern). There is also a specific search warrant for these items under the *Proceeds of Crime Act 2002*. 'Tainted property' refers to the proceeds of a qualifying offence and may also include an instrument of an indictable offence.

33. **It is important to be able to collect all evidence to prove ownership and to enable the property to be properly managed and sold.** It must be stressed that the material needed to manage and deal with property does not always fall under the general criminal definition of evidential material, which focuses on evidence relating to the commission of the offence. To overcome this problem, consideration should be given to having provisions in the law to enable the seizure of documents such as deposit books, title deeds and ownership certificates which may be necessary to facilitate the final sale of the item if it is forfeited.

ACCESS TO PROPERTY TO GIVE EFFECT TO A COURT-ISSUED CUSTODY AND CONTROL ORDER.

Can we enter premises to seize a car or other property item?

34. It may be necessary to gain entry to private premises to take possession of items such as vehicles or boats. In these situations, consideration should be given to whether the court has the power to issue an order allowing access to the property when issuing a restraining order, or whether the police can only gain entry to seize property with a search warrant. If the police have no basis to request a search warrant, do you have alternate provisions to require the occupant or owner to surrender the item at a nominated location? Your laws and procedures should address these issues.

Tip: Details of conversations with people who can assist in determining ownership and control of property should be carefully recorded. Often these conversations are held at a time when the primary focus is collecting evidence for a criminal prosecution, however it is important to also consider the proceeds of crime aspects at this time.

PROPERTY SEIZURE / RESTRAINT

Now we are responsible, what should we do?

35. Once all property has been seized / restrained it is important to keep a record of this. This is important for the integrity and control of the property. For example, in Australia, all items and documents, regardless of their value, are fully described on a 'property seizure record' (see **Attachment B**) and provided as a receipt to the occupant or owner, preferably where they have also signed the receipt. These documents include a unique reference number applied to each item for later identification in addition to describing the item in some detail, the date and location of seizure and the signature of the seizing officer along with a witness. If the item is returned or provided to someone else a receipt should be obtained (see **Attachment C**).

36. Where cash or valuable items are located it is advisable for the cash to be counted in the presence of the occupant and have them witness the count including the final value of the total cash count. If the cash may afford forensic value in criminal or other investigations, consideration should be given to ensuring its forensic value is preserved and it should be placed in a suitable bag and sealed in such a way that it cannot be opened or tampered with without detection. In Australia, special audit bags have been developed for this purpose and are regularly used for valuable property by the AFP.

37. If the property is precious stones, gold or similarly valuable material it should always be treated carefully, ideally photographed on site, fully recorded (see **Attachment D**, from the New Zealand Official Assignee) and placed in a secure storage bag for transportation.

38. When the item has been taken into the possession of the police officer (or the property administration agent) it is then the responsibility of the custody officer to ensure that there is a continuous record of who has possession of the item until such time as it is placed in secure storage. Ideally the item will be recorded on the property record, photographed and transported to a safe storage facility like a safe at the police station, a safety deposit box at a bank or other safe storage facility. The primary concern is that the custody officer has secure control over the item until it is placed into a secondary location and that the same degree of control is maintained including a full custody log of those who have access to the item in its secure location.

39. In some circumstances the property will be a large item that requires relocation either because it has been seized as suspected tainted property or because it is evidence of an offence. In either situation the item needs to be carefully transported to preserve its value and to reduce any chance of damage. In the case of vehicles, management should

include transport of the vehicle by insured professional vehicle transporters and placement in an undercover secure storage facility. For high value vehicles this is essential; for low value vehicles it may be worth considering the cost to seize and administer the vehicle against the total costs involved. Where marine vessels are involved the items need to be placed in a secure storage location and ideally out of the water on a stand, where this is appropriate to the type of vessel concerned. Longer term storage should involve the use of professional mechanics and shipwrights who can best advise on the correct storage procedures for the vessel and its motors.

40. For some items such as yachts it may be necessary to take a full inventory of all components such as radio, navigation equipment, engines, generators and tenders to ensure all items are accounted for and not stolen. Smaller removable items should be removed from the vessel and placed in safe storage separate to the vessel.

41. Sample forms for vehicle inspection reports, and checklist instruction and report for plant and machinery are provided at **Attachments E-F** (from the New Zealand Official Assignee).

42. At the earliest opportunity, any property held by police should be transferred to the property administrator (whether in another agency or an assigned person within the police, as may be the case in small jurisdictions) for professional management including storage, sale and administration. The management of property is undertaken in accordance with either a court order or as a transfer from police. When ordering the restraint of property a court can issue custody and control orders placing the nominated property in the custody and control of an authorised officer. In Australia, this is the Official Trustee. In circumstances where there is no custody and control order at restraint stage, the Official Trustee may still be required to exercise custody and control following forfeiture, to administer the sale of the property and management of the proceeds of that sale.

OVERVIEW - SOME KEY CONSIDERATIONS FOR DIFFERENT TYPES OF PROPERTY

Cash: How should it be kept secure? Is there any evidential value in keeping the cash in its original form, or should it be kept in a bank account? If the latter, whose bank account should it be kept in? Should it be in an interest bearing account?

Real property: Should the suspect and their family be able to live in the house? Who will maintain the property (for example swimming pools)? Have you taken a comprehensive inventory of the house with photos and had them signed by all parties? Have you lodged a caveat on the property title to prevent it being sold? If it was a rental property, who will manage this and what will be done with rent that is received?

Vehicles/ Vessels: Should the owner be able to use the vehicle/ vessel? What are the likely costs and duration of storage? Do you have the log books (this will be useful for resale)? Should the vehicle/ vessel be re-registered if registration expires?

Bank Accounts: Should the suspect or third parties be allowed access to any funds?

Businesses: Should the business continue to operate? If yes, should the owner operate it or should a third party?

Shares: You may need to consult with the owner of the shares before considering how to manage them. Publicly traded shares can increase or decrease in a short period of time causing a high exposure to damages. If the owner agrees to sell the shares it may be better to have them sold and the proceeds of the sale placed into an interest bearing account.

Insurance

43. Insurance coverage for restrained property is an important consideration. This may be part of a larger government insurance coverage or it may be insurance obtained by a professional storage agent. Insurance obtained or continued by a suspect over property they have been allowed to live in or retain can be problematic if a loss occurs and you seek to claim on the insurance. In some cases in Australia, insurance companies have refused to pay out on the claim on the basis that the loss is suspicious. In effect, the insurer suspects the loss to be deliberate or fabricated. If you allow the property to remain in the possession of the defendant or suspect, you need to carefully review any existing insurance coverage to ensure adequate protection in all circumstances. If this cannot be obtained the risk of allowing the defendant, suspect or his/her family to retain possession of the property may be too high.

Living and business expenses

44. In some circumstances it will be appropriate that suspects and defendants can seek to have funds released from restrained property with the consent of the court to meet reasonable living and business expenses if there are no unrestrained funds available to meet these costs. This aspect needs to be considered at the time of restraint as it may be simpler to exclude some funds to meet an individual's reasonable living expenses.

Legal expenses

45. Where restrained property can be released to meet a defendant's legal expenses, there is the possibility of legal representation costs exceeding the value of money restrained in any individual case. Consideration should be given to ensuring that the legal expenditure available for the defence of criminal and property confiscation proceedings does not result in the restrained assets being exhausted.

46. As an example, when Australia first introduced its proceeds of crime laws, a suspect or defendant could seek to have restrained property released to meet their legal expenses in defending both their criminal proceedings and their proceeds of crime proceedings. The result was that in numerous cases restrained funds would be fully spent in meeting ongoing legal disputes until such time as restrained funds were exhausted and the defendant would plead guilty or discontinue their appeals. To address this misuse, the Australian *Proceeds of Crime Act 2002* was amended, and now respondents and defendants can seek to have

funding provided from separately funded legal aid support if they have insufficient non-restrained money to meet their legal expenses. The legal aid offices are reimbursed for their expenditure from the Confiscated Assets Account (see further below).

47. Another common issue is the provision of legal services for the property management agency, including funding their own legal counsel or funding for representation by a nominated government counsel. Consideration needs to be given to meeting this expenditure either from confiscated property or other funding sources.

PROPERTY CONFISCATION

How will the property be forfeited?

48. In Australia, Fiji, PNG, and New Zealand property is liable to forfeiture by a court order under various provisions contained in their proceeds of crime laws. This includes conviction based forfeiture (i.e. following conviction) and non-conviction based forfeiture (not necessarily linked to a conviction).

49. In Australia, forfeited property vests in the Commonwealth and is transferred to the Official Trustee. Some of the issues to be considered are the correct verification of expenses, payment of administrative costs and the remuneration of the property administrator.

50. Some countries including Australia can provide that a Court can direct the compensation be paid to dependents for hardship when a person's property is forfeited under a non-conviction based forfeiture order.

51. Property cannot generally be finally dealt with until the expiration of the relevant appeal period.

PROPERTY MANAGEMENT

What should a property manager do?

52. As discussed above, in some countries police are assigned the responsibility for managing property, or there may be no agency assigned this responsibility. Where there is a significant amount of property being seized, restrained or forfeited, it may be appropriate for a separate agency to be established or for the function to be assigned to an existing agency with a specialist asset management role.

53. To provide one example, as noted above, the Australian Government has allocated this responsibility to AFSA as the Official Trustee to play this role in proceeds of crime matters. Below is a description of the Official Trustee's responsibilities (see also www.afsa.gov.au).

The Official Trustee's responsibilities

54. The Official Trustee has a fiduciary or trustee responsibility. When property is forfeited, the Official Trustee's responsibility is to the Commonwealth. When property is controlled (that is, subject to a restraining order), the responsibility is to the owner of the property and to the Commonwealth.

55. The Official Trustee is expected to act quickly, fairly and openly when it controls and deals with property.

56. The Official Trustee sells property at market value and based on proper valuation, does not sell or dispose of property in contravention of the law, does not unduly delay the sale of property, does not engage in speculative or risky investments, and recognizes the rights of the defendant.

57. If the owner of property is not convicted (if required) or an order is not made against them, controlled property is returned. The owner can sue the Commonwealth for damages if property deteriorates or loses value because the Official Trustee exercises inadequate or ineffective control.

The Official Trustee's Powers

The Australian *Customs Act 1901* and the *Proceeds of Crime Act 2002* allow the Official Trustee to:

- do anything reasonably necessary to preserve property
- become a party to civil proceedings affecting property
- ensure that property is insured
- realise or deal with securities and investments
- employ or terminate business employees
- carry on a business on a commercial basis, and
- exercise shareholder rights in lieu of the registered owner.

The *Proceeds of Crime Act 2002* also allows the Official Trustee to:

- require production of documents and records
- obtain information and sworn evidence from people
- destroy unsafe or dangerous property, and
- dispose of uneconomical or depreciating property.

These powers dealing with production of evidence and disposal of property by the Official Trustee are discussed below.

Information and documents

58. The *Proceeds of Crime Act 2002* allows the Director of Public Prosecutions, the Australian Federal Police and other agencies to examine individuals, execute search warrants, monitor financial accounts and acquire documents. However, the Official Trustee uses its own investigative powers to achieve custody and control of property and does not rely on other agencies to do so.

59. The Official Trustee has power under the *Proceeds of Crime Act 2002* to obtain information and documents akin to similar powers in the *Bankruptcy Act 1966*. Broadly speaking, the Official Trustee can require a person to:

- produce documents
- explain document contents or whereabouts
- give information
- provide assistance, and
- give sworn evidence.

60. The Official Trustee can require that a person produce books, attend to give evidence and obtain information. This is done by a notice which:

- requires that production be made within a period, or at a time and day that are reasonable in the circumstances
- requires production of books to a specific person
- should clearly state the subsection they relate to
- should state the penalties for non-compliance
- can be issued to any person
- should clearly state which section of the legislation they relate to, and
- should state the penalties for non-compliance.

61. The Official Trustee must ensure:

- the information being requested is not too onerous, eg too wide or insufficient time is given to comply
- the recipient of the notice knows clearly what is expected, eg how, where, to whom to deliver information, and
- the information is relevant to the powers/functions being performed.

Destruction and disposal of property

62. After the Official Trustee gives written notice to the owner and other interested parties, property controlled under the *Proceeds of Crime Act 2002* can be destroyed or disposed of when:

- it is in the public interest
- it is required for the public's health or safety
- the owner and interested parties agree
- it is likely to lose value, or
- control costs are likely to exceed its eventual sale value.

63. If notified parties object to the proposal, the Official Trustee applies to the Court for a ruling. The proceeds of any sale are then treated as the original property.

Overview - After disposal, the realised value of the property is applied to:

- expenses incurred in the storage, transport, sale or disposal
- any prior police transportation and storage expenses
- the Official Trustee's remuneration, and
- the Confiscated Assets Account with the balance.

If the property is cash, the Official Trustee's remuneration is deducted and the balance paid to the Confiscated Assets Account.

Confiscated Assets Account

64. As noted above, the revised FATF recommendations require countries to consider establishing an asset forfeiture fund into which all or a portion of confiscated property will be deposited for law enforcement, health, education, or other appropriate purposes (this is set out in the Interpretative Note to Recommendation 38).

65. As part of the Model Provisions on Money Laundering, Terrorist Financing, Preventative Measures and Proceeds of Crime developed jointly by UNODC, IMF and the Commonwealth Secretariat, key provisions are suggested for the establishment of a recovered assets fund. These are provided at **Attachment G**.

66. The FATF Best Practices Paper notes that, regardless of whether an asset forfeiture fund has been established, as a matter of best practice, countries should endeavour to use confiscated property transparently to fund projects that further the public good.

67. In Australia, under the *Proceeds of Crime Act 2002*, following the other disbursements noted above, the realised value of confiscated property is paid in to the Confiscated Assets Account. This includes property from domestic proceedings as well as any property returned under a mutual assistance request from a foreign country.

68. The purposes for which the Confiscated Assets Account can be used are limited by the *Proceeds of Crime Act 2002*. These include making payments:

- approved by the relevant Minister for justice reinvestment, such as:

- crime prevention measures;
- law enforcement measures;
- measures relating to treatment of drug addiction;
- diversionary measures relating to illegal use of drugs.
- under the mutual assistance process to foreign countries, and
- certain payments to the Official Trustee (reimburse costs).

Additional considerations

69. Other issues or options to consider in setting up a property management agency / function:

- Managing shares and other investments
- Operating businesses and associated legislation issues, for example, chemists and the sale of pharmaceuticals involves compliance with specific legislation
- Cooperation with proceeds of crime units in other jurisdictions when dealing with property
- Procedures for retaining property – the need for high level government approval and insurance should fall to the department to which the property is allocated
- Legislation to force a sale with jointly owned property
- Appropriate methods of sale – eg, auction - to be considered with service providers. Many items are high value so there is a limited market place, and issues arise about how to establish a true market value
- Appropriate health and safety practices and procedures for any staff dealing with property – or selling property that is contaminated
- Appropriate procedure of destruction of goods particularly when dealing with criminal or licensed goods such as drugs, firearms and pornography, and
- Responsibility to record interests on various property and title registers – notifying third parties should the defendant/suspect try to sell restrained goods
- The possibility of setting up a panel of specialist service providers for each type of property such as real estate, boats, vehicles and collectables. These service providers assist government departments in fulfilling their property management obligations by applying specialist skills, industry experience and providing cost efficient outcomes. You may find it helpful to develop protocols and agreements with service providers for standards, costs and reports (often dependent on the frequency of the use of these providers)

PRIVATE SECTOR PROCESS

How can the private sector assist in asset management?

70. As noted earlier, it is possible for jurisdictions to utilise private sector asset management companies instead of, or in addition to, a government property management agency – through contracting out this function, or where provided for, appointing representatives, which could include private sector providers, to manage property in particular circumstances. This can be one way of minimising the risks and burdens asset

management can place on a government agency if it has not been specifically established to perform that type of function. There are a number of private sector companies who can provide a comprehensive asset management service from initial assessment through to final realization. These companies have been used effectively in major cases such as one involving the high profile Australian gangland identity Tony Mokbel which included assets in Australia and a yacht in Greece.

CONCLUSION:

71. Taking possession of a suspect's property and ensuring that its value is retained for final realisation at the conclusion of proceedings will build confidence in the judiciary and the public, whilst ensuring that the maximum value is available for forfeiture or, if the case is unsuccessful, property is returned in its original condition.

72. Although often seen as the end of the asset confiscation process, asset management needs to be considered at the earliest stages of planning and preparation during the investigation and litigation of any case in which forfeiture of property may be sought.

73. Asset managers must have the necessary skills, resources and legal authority to perform the broad range of functions necessary to preserve the security and value of assets during the investigation and litigation process.

74. As highlighted in this Guide, in order to implement an effective asset management framework and meet FATF expectations in future evaluations, key points to consider when developing an asset management framework include:

- Is asset management considered in the investigators'/litigators' planning process?
- Do you have established oversight and audit practices in place to ensure the integrity of your asset management process?
- Have you developed a policy position on how assets will be applied after forfeiture?

75. Effective and efficient management of seized and forfeited assets poses many challenges, however developing a strong legal and administrative framework will enable many of these challenges to be met.

Further Reading:

The World Bank and the UNODC have developed relevant publications as part of the Stolen Asset Recovery Initiative (StAR). These can be located on their website at the following links;

Management of Returned Assets: Policy Considerations

http://www1.worldbank.org/finance/star_site/publications/management_returned.html

StAR Asset Recovery Handbook: A Guide for Practitioners (note chapter 5 on asset management)

http://www1.worldbank.org/finance/star_site/publications/ar_handbook.html

Fiji's Proceeds of Crime (Management and Disposal of Property) Regulations 2012 are available at:

<http://www.fijifu.gov.fj/getattachment/Left-Menu/Law-Regulations/Proceeds-of-Crime-Act/LN-63-Proceeds-of-Crime-%28Management-Disposal-of-Property%29-Regulations.pdf.aspx>

Attachment A**REVISED FATF RECOMMENDATIONS 2012
- EXTRACTS RELEVANT TO ASSET MANAGEMENT FROM
RECOMMENDATIONS, INTERPRETIVE NOTES AND
2013 METHODOLOGY****RECOMMENDATIONS****Recommendation 4**: Confiscation and provisional measures

Countries should adopt measures similar to those set forth in the Vienna Convention, the Palermo Convention, and the Terrorist Financing Convention, including legislative measures, to enable their competent authorities to freeze or seize and confiscate the following, without prejudicing the rights of bona fide third parties: (a) property laundered, (b) proceeds from, or instrumentalities used in or intended for use in money laundering or predicate offences, (c) property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations, or (d) property of corresponding value.

Such measures should include the authority to: (a) identify, trace and evaluate property that is subject to confiscation; (b) carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property; (c) take steps that will prevent or void actions that prejudice the country's ability to freeze or seize or recover property that is subject to confiscation; and (d) take any appropriate investigative measures.

Countries should consider adopting measures that allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction (non-conviction based confiscation), or which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law.

(Note: Recommendation 4 does not expressly refer to asset management, however its interpretive note does)

Recommendation 38: Mutual legal assistance: freezing and confiscation

Countries should ensure that they have the authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate property laundered; proceeds from money laundering, predicate offences and terrorist financing; instrumentalities used in, or intended for use in, the commission of these offences; or property of corresponding value. This authority should include being able to respond to requests made on the basis of non-conviction-based confiscation proceedings and related provisional measures, unless this is inconsistent with fundamental principles of their domestic law. *Countries should also*

have effective mechanisms for managing such property, instrumentalities or property of corresponding value, and arrangements for coordinating seizure and confiscation proceedings, which should include the sharing of confiscated assets (italics added).

INTERPRETIVE NOTES

Interpretive Note to Recommendations 4 and 38 (Confiscation and provisional measures)

Countries should establish mechanisms that will enable their competent authorities to effectively manage and, when necessary, dispose of, property that is frozen or seized, or has been confiscated. These mechanisms should be applicable both in the context of domestic proceedings, and pursuant to requests by foreign countries.

Interpretive Note to Recommendation 38 (Mutual legal assistance: freezing and confiscation)

Countries should consider establishing an asset forfeiture fund into which all, or a portion of, confiscated property will be deposited for law enforcement, health, education, or other appropriate purposes. Countries should take such measures as may be necessary to enable them to share among or between other countries confiscated property, in particular, when confiscation is directly or indirectly a result of coordinated law enforcement actions.

...

FATF METHODOLOGY 2013

The relevant extracts from the FATF Methodology (2013) are included below. The Methodology will be used for assessing technical compliance with relevant recommendations and effectiveness of the AML/CFT system in upcoming mutual evaluations.

Recommendation 4: Confiscation and Provisional measures:

....

- 4.4 Countries should have mechanisms for managing and, when necessary, disposing of property frozen, seized or confiscated.

Recommendation 38: Mutual Legal Assistance: Freezing and Confiscation

...

- 38.3 Countries should have: (a) arrangements for co-ordinating seizure and confiscation actions with other countries; and (b) mechanisms for managing, and when necessary disposing of, property frozen, seized or confiscated.

Immediate Outcomes

The FATF assesses effectiveness primarily on the basis of eleven Immediate Outcomes. Each of these represents one of the key goals which an effective AML/CFT system should achieve.

Immediate Outcome 8: Proceeds and instrumentalities of crime are confiscated

Characteristics of an effective system

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

Core issues to be considered in determining if the outcome is being achieved include:

...

8.2. How well are the competent authorities confiscating (including repatriation, sharing and restitution) the proceeds and instrumentalities of crime, and property of an equivalent value, involving domestic and foreign predicate offences and proceeds which have been moved to other countries?

...

One of the specific factors which could support conclusions on this core issue is

...

8. What are the measures adopted to preserve and manage the value of seized/confiscated assets?

Attachment B

**POLICE
PROPERTY SEIZURE RECORD**

CASE No: WARRANT HOLDER: RECORDING OFFICER:
.....

ISSUED BY : ISSUED ON: PREMISES

SEARCHED:.....

DATE SEARCHED: TIME COMMENCED: TIME

COMPLETED:

ITEM No.	DESCRIPTION OF ITEMS SEIZED	LOCATED BY	TIME	SPECIFIC LOCATION OF ITEM

WARRANT HOLDER: I certify that the property described above was seized at the above premises.

Page

.....of

Name: Signature.....Date Rank/Number

OWNER; I certify that I am the owner/person in possession of the property listed above at the time of the seizure.

The items have been correctly described and I have received a copy of this record.

Name Signature.....Date

PROPERTY OFFICER: I certify that the property described above was seized at the above premises.

Name: Signature.....DateRank/Number

EXHIBIT REGISTRAR: I certify that I have received the property listed above in accordance with the guidelines on exhibit management.

Name.....Signature.....Date.....Rank/Number.....

Attachment D

FOREIGN CURRENCY, FOREIGN CASH HOLDINGS, PRECIOUS METALS PRECIOUS AND SEMI-PRECIOUS STONES AND PEARLS AND OTHER VALUABLES CHECKSHEET

Please take possession of jewellery/antiques/other valuables described below pursuant to an order of the Court dated //

(copy of Court Order attached).

Respondent(s) Names(s):

Operation Name:

Location:

Contact Person:

Phone:

Known items seized/to be seized				
No.	Type	Model No./Type	ID/Serial No	Exhibit Bag No.
1				
2				
3				
4				
5				
6				

7

Agents to verify delivery to depot: (Yes, No, N/A)**Registration number: (Yes, No, N/A)****Prescribed person Asset Identification number:****CLANDESTINE LABORATORY RISK (Yes/No)****Comments:**

INSPECTION REPORT FOR FOREIGN CURRENCY, FOREIGN CASH HOLDINGS, PRECIOUS METALS AND SEMI-PRECIOUS STONES AND PEARLS AND OTHER VALUABLES

<p>This form is to be completed electronically by field staff and forwarded to within 24 hours of completion of inspection together with photos saved to compact disk.</p> <p>Case Name:</p> <p>Law Enforcement Authorities reference number:</p>	<p>CASE REFERENCE</p>			
<p>Physical address:</p>				
<p>ITEM(S) LOCATED:</p>				
<p>No.</p>	<p>Type</p>	<p>Model No./Type</p>	<p>ID/Serial No</p>	<p>Exhibit Bag No.</p>
1				
2				
3				
4				
5				
6				
7				
<p>Digital photos taken (as detailed below):</p>				
<p>1.</p>		<p>2.</p>		<p>3.</p>
<p>If available obtain any photos previously taken by Police:</p>				<p>.</p>

Field Receipt issued and Number:	Yes, No. []
Acknowledged by With copy of Without/restraint/preservation order Date	
Location:	
Seized by:	
Dated:	
Copy sent to Bank: Date	

Attachment E

INITIAL VEHICLE INSPECTION REPORT

<p>This form is to be completed electronically by field staff and forwarded to Prescribed person within 24 hours of completion of inspection together with photos saved to compact disk.</p> <p>Case Name:</p> <p>Reference number:</p>	<p>Name of the Defendant:</p>
<p>Physical address of vehicle:</p>	
<p>Vehicle Registered Owner:</p>	
<p>Registered securities and amounts, if known:</p>	
<p>Vehicle located (Yes/No), if No inform the Director of Public Prosecutions immediately.</p>	
<p>Year:</p> <p>Model:</p> <p>Chassis Number:</p> <p>Colour:</p> <p>Warrant Of Fitness expiry:</p> <p>Keys available (Yes/No)</p>	<p>Make:</p> <p>Registration Number:</p> <p>Engine Number:</p> <p>Odometer reading:</p> <p>Registration expiry:</p>

General Condition (and as detailed on photos/diagram below):	
Digital photos taken (Yes/No): If No, please state reason why	
Personal items located:	
Amount of petrol in the tank:	
Field Receipt issued (Yes/No) Acknowledged by:	
Third party insurance, if yes provide details if known:	
Any specific storage requirements (Yes/No): If No, please state requirements	
Risk issues and management:	
[Any other issues?]	

<p>Issues relating to the current condition of the vehicle are described above. Any risk issues highlighted in that report may need to be addressed prior to any possible confiscation. The Director of Public Prosecutions and Police will be advised of these issues, if appropriate.</p>	
<p>Clandestine Laboratory Risk:</p>	
<p>Value:</p>	<p>Valuation conducted by:</p>
<p>Insurance:</p>	<p>Prescribed person's insurance in place for value stated above. (Yes/No)</p> <p>If No, please state reason why</p>
<p>Inspected by:</p>	
<p>Police contact details:</p>	
<p>Place of inspection:</p>	
<p>Date of inspection:</p>	

VEHICLE CONDITION REPORT FORM

Reconditioning Required (Indicate on diagram where reconditioning is required)

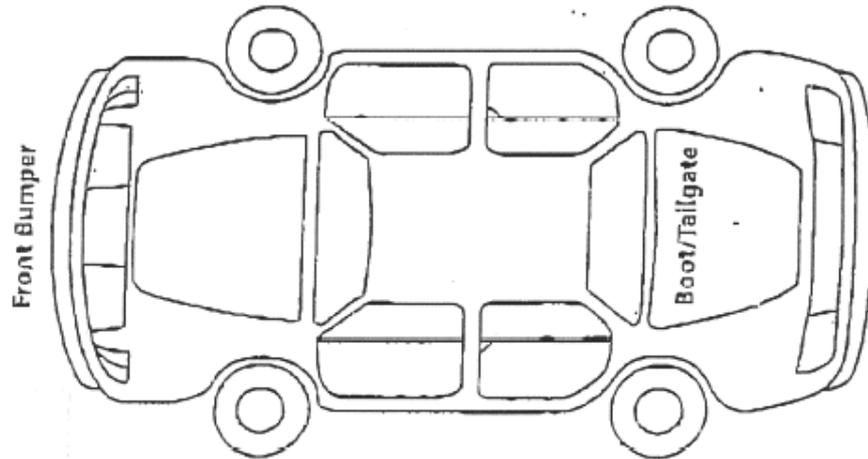
Key:

△ = Paintwork

* = Panel

= Rust

+ = Glass



IMPORTANT:

AN ACCURATE RECORD OF ALL DAMAGE MUST BE MADE AT THE TIME THAT THE VEHICLE IS TAKEN UNDER CONTROL

REPORT ON ASSETS

CHECKSHEET INSTRUCTION AND REPORT FOR PLANT AND MACHINERY

Please complete the initial asset inspection of the plant and machinery described below pursuant to an order of the Court dated:

(copy of Court Order attached).

Owner(s) Name(s):

Operation Name:

Location:

Police contact:

Phone:

Is Police discharge letter required to obtain release of vehicle? (Yes/No)

Agents to verify delivery to depot:

Registration number, if asset not located:	
CLANDESTINE LABORATORY RISK	
(Yes/No)	
Comments:	

PRESCRIBED PERSON REPORT ON ASSETS		
Case Name:		
OA reference number:		
Physical location of asset:		
Asset Registered Owner:		
Year:		Make:

<p>Model:</p> <p>Other:</p>	<p>Serial No.</p>
<p>General Condition (and as detailed on photos):</p>	
<p>Digital photos taken (Yes/No):</p>	

Attachment G**UNODC Model Laws****Part VIII: Recovered Assets Fund****Section 97. Establishment of Fund**

(1) There is hereby established in the accounts of [name of State] an account to be known as [insert name of fund, for instance, the (name State)'s Recovered Assets Fund].

(2) The [insert name of authority, for instance, Minister of Justice] shall issue regulations for implementation of the provisions of this Part.

Section 98. Receipts and Disbursements**(1) There shall be credited to the [insert name of Fund]:**

(a) all moneys derived from the fulfilment of confiscation, benefit recovery, [*Option: extended benefit recovery*] and civil forfeiture orders and from settlements of confiscation, recovery and forfeiture claims;

(b) any sums of money allocated to the [insert name of Fund] from time to time by [*Variants: legislative or parliamentary*] appropriation;

(c) any voluntary payment, grant or gift made by any person for the purposes of the [insert name of Fund];

(d) any income derived from the investment of any amounts that are credited to the [insert name of Fund]; and

(e) any sharing of confiscated or forfeited property and funds received from other States.

(2) [Insert authority, for instance, the Minister of Justice] may authorise payments out of the [insert name of Fund] to:

(a) compensate victims who suffer losses as a result of offences, criminal conduct or terrorism;

(b) pay expenses relating to the recovery, management and disposition of property under the provisions of this Act, including mortgages and liens against relevant property, and the fees of receivers, trustees, managers or other professionals providing assistance;

(c) share recovered property with foreign States;

(d) pay third parties for interests in property as appropriate;

(e) pay compensation ordered by a court pursuant to [insert reference to provisions, here Sections 72 and 90];

(f) enable the appropriate law enforcement agencies to continue to address [serious offences or specified offences] and terrorism;

(g) assist in [insert societal goals, for example, the rehabilitation of drug users; public education regarding the dangers of drug abuse]; and

(h) pay the costs associated with the administration of the [insert name of Fund], including the costs of external audits

Drafting Note: A State may conclude that one use for forfeited assets is distribution to domestic law enforcement agencies. If so, care should be taken to ensure that the program is carefully thought through and monitored. Otherwise, issues could arise in individual cases regarding whether the prospect of receiving a share of recovered assets has in some way has compromised the broader criminal justice considerations that underlie law enforcement activities.

Further information on the Model Laws is available at
https://www.unodc.org/tldb/en/model_laws_treaties.html