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## **Guideline 3: Investigation**

### **Involved jurisdictions should develop a comprehensive investigative and legal strategy for the case in consultation with all concerned public institutions.**

Developing a comprehensive investigative and legal strategy is essential for successful asset recovery. A strategy will assist to ensure that resources may be allocated and prioritised adequately so that the case proceeds in the most efficient manner with the highest likelihood of recovering assets.

In complex and/or high profile cases, the strategy should be developed in consultation (as appropriate) with all relevant national public institutions (see [Guideline 1 Step 6 Domestic coordination](#) [3]). These may include law enforcement agencies and prosecutorial authorities, as well as representatives from tax, customs, justice, foreign affairs, treasury, immigration, the FIU, regulatory or supervising authorities, the central authority, and the asset management authority. This consultation allows agencies to work together with a common purpose – the efficient recovery of stolen assets.

### **The strategy should designate a domestic lead authority, outline responsibilities and consider all legal avenues (including administrative, civil and criminal). Sequencing of the lines of inquiry should be agreed, including the initiation of an investigation, exchange of information and submission of requests for MLA. The strategy should be regularly reviewed throughout the asset recovery process.**

A nationally coordinated approach helps in establishing which agency should lead the execution of the investigation strategy, including whether multiple agencies have an interest in submitting a request for MLA.

Sequencing of the lines of inquiry, including methods for collecting information, intelligence and evidence should also be agreed. Where possible informal methods (e.g. open source information (see [Guideline 1](#) [3]), intelligence gathering (see [Guideline 1](#) [3]) or other sources of information (see [Guideline 4](#) [1])) should be used prior to formal methods (see [Guideline 9](#) [4]) (e.g. MLA).

Operational meetings should allow for regular revision of the case strategy, to determine whether the lead investigating agency requires additional assistance or resources, or even to reassign the investigation. Developments and revisions to the strategy should be communicated to all involved agencies as appropriate, including contact points in involved jurisdictions.

### **Step 1 Develop an investigative and legal strategy template/checklist**

Develop an investigative and legal strategy template/checklist that can be used by different national authorities and adapted to their mandates and each case.

#### **Explanation of step 1**

To implement an investigative and legal strategy, the national authorities should ensure domestic coordination to define the overarching strategy, its implementation and the expected outcomes.

The investigative and legal strategy should set forth each stage of the investigation and any legal proceedings with explicit sequencing of steps to be taken, timing and responsibilities among involved agencies. The sequencing and expected timing of significant milestones (e.g. request for provisional orders, exercise of coercive measures (such as production orders and search warrants, interviews of targets and key associates, witnesses), requests for MLA, or initiation of legal proceedings) should be agreed.

Available investigative powers may need to be identified, as well as their legal requirements and limitations. Consideration may be given to the investigative powers and capacity of various domestic agencies and their foreign counterparts (if applicable) to identify and assign investigative responsibilities.

Consideration may need to be given when prioritising the lines of inquiry to the available resources and estimated costs of pursuing the case in view of the likelihood and estimated amount of assets to be recovered. Involved jurisdictions should understand the expectations and willingness of counterpart jurisdictions to commit resources as the case develops.

## **Step 2 Initiate inter-agency communication as early as possible**

### **Explanation of step 2**

Authorities may consider forming a case specific (or interrelated cases) task force that comprises the various agencies with relevant law enforcement and prosecutorial authority. A clear lead domestic agency should be designated and agreed among the agencies (see [Guideline 1 Step 2 Appropriate party to investigate](#) [3]). A task force facilitates the exchange of information and skills and assists in discussions and reviews of the latest developments in the case. To avoid confusion or rivalries among agencies, it will be important to clarify from the outset the respective roles of the agencies and their respective team members in the task force. If appropriate, the task force may also consider coordination with private sector actors who have an interest in the prosecution or recovery of assets (or both).

The lead domestic agency should consider consulting with involved jurisdictions on the development of the investigative and legal strategy (see [Guideline 6](#) [5]) to ensure that necessary components and sequencing for international cooperation are addressed (see [Guideline 8](#) [6]). Such consultation may be necessary to understand the requirements for international cooperation, the capacity of counterparts, as well as the length of time required for various forms of assistance or MLA to be provided by involved jurisdictions.

Developments and revisions to the investigative and legal strategy should be communicated to all relevant parties as appropriate, including contact points in involved jurisdictions.

## **Step 3 Put in place an operational coordination mechanism**

Put in place an operational coordination mechanism enabling authorities to share information, divide tasks, prioritise activities and allocate resources for the investigation.

### **Explanation of step 3**

Involved agencies should identify all potentially concerned national public institutions, and designate a lead domestic agency responsible for strategic leadership and coordination. Roles and responsibilities of each participating national public institution should be clearly defined. Coordination meetings, including at specific milestones should be periodically held. Coordination is especially important to avoid positive or negative conflicts of jurisdiction (see [Guideline 1 Step 6 Domestic coordination](#) [3]).

As the case evolves through investigation and legal processes, the investigative and legal strategy should be regularly updated and reviewed to ensure momentum is maintained and resources and expertise continue to be allocated and prioritised with a view to asset recovery (see [Guideline 3 Step 6 Review and reassess the](#)

[investigative strategy](#) [7]).

Steps should be taken to: (i) ensure continuity in the investigation; and (ii) prevent the loss of knowledge, in the event of personnel changes. The lack of continuity and loss of knowledge hinders effective asset recovery. It further hampers the building up of trust, both domestically and internationally.

#### **Step 4 Ensure parallel financial investigation**

Ensure that a financial investigation runs parallel to any other investigative action.

##### **Explanation for step 4**

The implementation of an investigation strategy should focus both on investigating the criminal offences and identifying any criminally obtained assets. The financial investigation should whenever possible run parallel to the criminal investigation.

#### **Step 5 Explore avenues to facilitate obtaining evidence**

Explore civil or administrative avenues to facilitate the obtaining of evidence, or widen the scope of the asset recovery case.

##### **Explanation of step 5**

Consideration should be given to all possible offenses under domestic law and in other jurisdictions (if known). Various avenues may be available for the recovery of criminally obtained assets (criminal or non-conviction based confiscation, civil remedies, or through proceedings in a foreign jurisdiction). For each legal avenue, the evidentiary or procedural requirements and any statutory limitations should be identified both with regard to domestic law and any applicable foreign jurisdiction.

#### **Step 6 Review and reassess the investigative strategy**

Review and reassess periodically the investigative strategy, taking into account new evidence, suspects and lines of inquiry.

##### **Explanation of step 6**

The investigative strategy should determine both the topic and scope of any investigation. As the case develops the strategy will need to be revised, agreed and communicated among involved agencies.

When advancing the investigations locally and when requesting assistance internationally, potential time limits deriving from the applicable statute of limitations or deriving from the applicable code of criminal procedure, each of which may impact a criminal proceeding need to be considered.

#### **Step 7 Ensure that evidentiary thresholds for international co-operation are met**

Ensure that the required evidentiary thresholds for international co-operation with a specific jurisdiction are understood and met prior to submitting requests internationally.

##### **Explanation for step 7**

Continuously reviewing the evidence helps in determining at an early stage the jurisdictions involved in an asset recovery case. It further allows commencing communication with foreign authorities at an early stage (see

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[Guideline 6](#) [5]).

Law enforcement should strive to obtain evidence taking into account the highest level of evidentiary threshold required (see [Guideline 7](#) [8]). Evidence obtained through civil proceedings may need to be re-obtained to be admissible in criminal proceedings. Nevertheless, information obtained through civil proceedings may indicate leads for the criminal proceedings.

## Further reading

- UNCAC, Articles 44 and 48.
- Monteith, C. 2013. Case and Investigation Strategy. In: Fenner Zinkernagel, Gretta et al. (eds.). 2013. Emerging Trends in Asset Recovery. Peter Lang.
- Strategic Considerations for Developing and Managing a Case. In: Brun, J.-P. et al. 2011. [Asset Recovery Handbook: a Guide for Practitioners](#) [9]. The World Bank. Available at: <https://star.worldbank.org/publication/asset-recovery-handbook> [9].
- StAR, [Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action](#) [10] (see Barrier 5: Too Many Cooks in the Kitchen –Lack of Effective Coordination), available at: <https://star.worldbank.org/publication/barriers-asset-recovery> [10]

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[2] <https://guidelines.assetrecovery.org/guidelines/guideline-2-restraining-assets>

[3] <https://guidelines.assetrecovery.org/guidelines/guideline-1-preliminary-review>

[4] <https://guidelines.assetrecovery.org/guidelines/guideline-9-draft-request-mla>

[5] <https://guidelines.assetrecovery.org/guidelines/guideline-6-contacts>

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[8] <https://guidelines.assetrecovery.org/guidelines/7-Communication>

[9] <https://star.worldbank.org/publication/asset-recovery-handbook>

[10] <https://star.worldbank.org/publication/barriers-asset-recovery>