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Regional Study on legislation

with focus on search, seizure and confiscation of cybercrime proceeds and prevention of money laundering on the Internet

Eastern Partnership region
CyberEast Project

Report 2022

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1. INTRODUCTION

1.1 Purpose of the regional study

As the use of and reliance on information technology becomes ever more pervasive in society, the targeting and exploitation of computer systems has also become increasingly common. The Internet-based offences generate proceeds of crime and often the Internet is the place where the laundering process begins. Currently there is general agreement that generating proceeds is now the primary purpose of cybercrime.

Due to the rapid growth and technological developments, the payment systems developed tremendously in terms of speed of transactions, number and types of service providers, payment methods, clearing options and even currencies. These new developments of the payment systems offer opportunities for money launderers, their accomplices and render more difficult the detection of potentially suspicious transactions. In addition, cyber criminals combine within for the same schemes both traditional and new payment methods, co-mingling them in multiple operations including cash, bank transfers, prepaid cards, money remitters, e-currencies and other electronic payment systems. More and more virtual and crypto currencies are being used and virtual asset service providers involved. Often multiple jurisdictions may be involved. Crime proceeds from the where criminal offence has been committed can be moved by means referred above from one country to another. Often multiple countries and their financial institutions or payment service providers can be used for transit until the money reaches final destination. Therefore, the detection and pursuit of the criminal money flows is much more difficult for law enforcement agencies. However, financial investigations and pursuit of criminal proceeds doesn't only relate to cybercrime. Therefore countries need to have a wider approach with regard to detection and identification, tracing of assets, seizure and confiscation as well as recovery.

In this context, the CyberEast project aims to support the countries of the Eastern Partnership in further improving cooperation on cybercrime and electronic evidence. One of the new areas in which the project intends to increase its action is focus on parallel financial investigations and intelligence, online crime proceeds, financial fraud, and money laundering offences, as well as looking more closely into the matters of virtual currencies and Darknet investigations in the context of "follow the money" concept.

Following the criminal money requires concerted effort. Financial sector institutions are bound to identify and report suspicious transactions to Financial Intelligence Units (FIUs) according to a set of indicators aimed at prevention of money laundering and terrorist financing. As regards cyber laundering, red flags of anomalous behavior can be like the indicators in the traditional payment systems, or sometimes might bear some particular features. The quality and application of such indicators remains a challenge and it may be necessary to review indicators, to better address specific risks related to new technologies (Darknet, virtual currencies, etc.) and to prevent and identify online crime proceeds. Most importantly however, is the baseline knowledge of the level of regulation of these concepts in the Eastern Partnership states, and how much does that correlate to safeguards and guarantees applicable, in particular the data protection requirements.

Developed by the CyberEast project of the European Union and the Council of Europe, Regional Study on legislation concerning search, seizure and confiscation of (cyber)crime proceeds and prevention of money laundering on the Internet in line with data protection requirements for Eastern Partnership region contributes directly to foreseen outputs of the CyberEast project, by looking into regulatory matters of parallel financial investigations and intelligence, online crime proceeds, financial fraud and money laundering offences, as well as virtual currencies and Darknet investigations in the context of "follow the money" concept.

The research supports establishing of the baseline for the series of activities under CyberEast project to achieve the following in the project countries:

- Increase awareness of current threats, trends, countermeasures and various initiatives in the field of investigation and prosecution of online financial fraud and credit card fraud;
- Strengthen the capacity of the national criminal justice authorities to search, seize and confiscate online crime proceeds generated by such criminal activities;
- Strengthen inter-agency cooperation among prosecutors, cybercrime investigators, financial investigators and financial intelligence units for the detection, prevention and fight against online financial fraud and its proceeds;
- Improve information sharing between cybercrime related governmental agencies and the private sector entities at national level.

1.2 Financial crime, Cybercrime and Money Laundering Landscape

One of the main motives of serious and organised crime, including cybercrime, is financial gain.

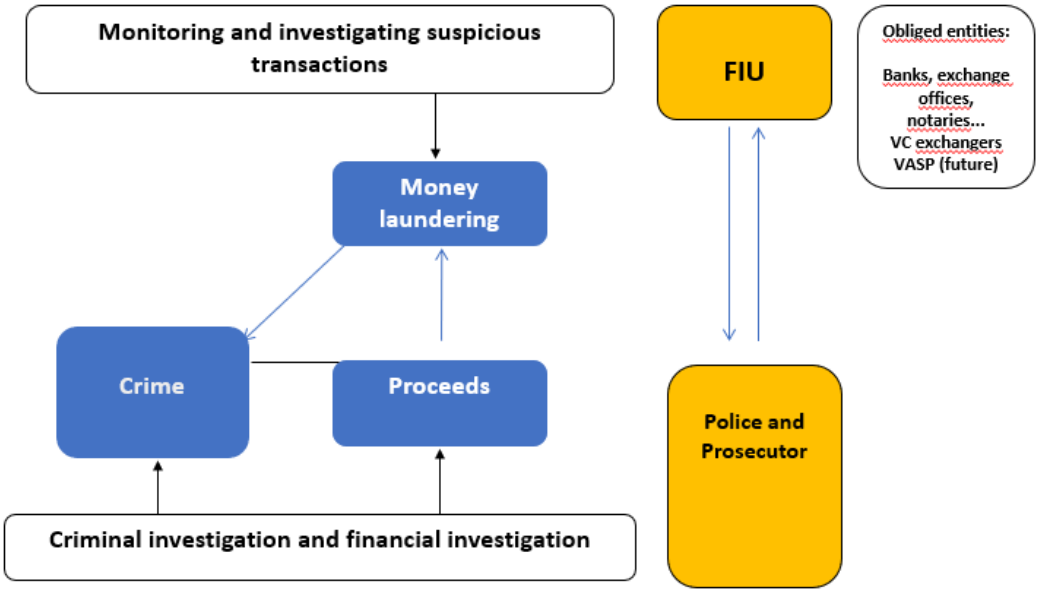
"No one should benefit from crime and keep the proceeds from crime."

Effects of confiscation of proceeds of crime:

- Preventive, as economic profit is the rationale of most criminal offences;
- It prevents the infiltration of illegal profits and corruption into the legal economy;
- It removes the instrument to commit future crimes;
- It helps to target the top management of a criminal organisation;
- It upholds the rule of law and the principle that nobody should benefit from crime.

The benefits of combining criminal (cybercrime) investigation with financial investigation (potentially leading to money laundering) should be highlighted. Both in the context of domestic investigation and cooperation with the FIU and in cases that involve international cooperation, by use of 24/7 network under Cybercrime convention or FIU network or to combine instruments for formal mutual legal assistance.

Money laundering and financial investigations



Europol Internet Organized Crime Threat Assessment for 2021 (IOCTA 2021)[1] in its introduction states that ransomware groups, which continue to be a key threat, have been increasingly taking advantage of widespread teleworking by scanning potential targets' networks for insecure remote desktop protocol (RDP) connections and keeping a keen eye on disclosed virtual private network (VPN) vulnerabilities. Mobile malware operators have leveraged the increase in online shopping by using delivery services as phishing lures to trick their victims into downloading their malicious code, stealing their credentials, or perpetrating different forms of delivery fraud.

In continuation of the contemporary financial crime landscape, assessment is underlining existence and use of mobile banking trojans which have become a specifically noteworthy threat due to the increased popularity of mobile banking. Perpetrators continue to be increasingly ruthless and methodical in their actions. During 2021 the arsenal of coercion methods of social engineering, direct or reverse, has expanded with cold-calling journalists, victims' clients, business partners and employees. In addition, many of the most notorious ransomware affiliate programs deploy DDoS attacks against their victims to pressure them into complying with the ransom demand.

These criminal actions are becoming more popular with criminals conducting investment fraud as well, which European law enforcement reported as one of the key threats. Those organising these schemes are setting up local call centers to increase their credibility with different language-speaking victims, as well as re-targeting their 'customers'. Once a person has realized that their investments have been stolen, fraudsters contact them again under the pretext of representing law firms or law enforcement agencies, offering to help retrieve their funds.

[1] Europol (2021), Internet Organised Crime Threat Assessment (IOCTA) 2021, Publications Office of the European Union, Luxembourg.

Key findings regarding online frauds, which are directly related to the online money laundering and perpetration of the connected financial criminal acts, by IOCTA are:

- Phishing and social engineering remain the main vectors for payment fraud, increasing in both volume and sophistication;
- Investment fraud is thriving as citizens incur devastating losses, but business email compromise (BEC) and CEO fraud also remain key threats;
- Card-not-present fraud appears under control as COVID-19 restrictions curb travel-based types of fraud.

The continued increase of cyber and computer related crime is to a large degree enabled through the evolution and maturation of the criminal markets, especially the ones on the Darkweb, that provide all the necessary tools, goods and services to novice and established criminals. Network intrusions and social engineering are components of a multitude of attack vectors.

Criminals are increasing their operational security by hiding their online activity, using more secure communication channels which are mostly heavily encrypted, and obfuscating the movement of illicit funds, which should be of particular interest to the Law Enforcement and Criminal Justice authorities. The universality of these practices creates monetary incentives for the expansion of both the crime-as-a-service (CaaaS) business mode,l and grey infrastructure.

Seizure and confiscation of crime proceeds has also been addressed by **Europol Serious and Organised Crime Threat Assessment Report (SOCTA 2021)**.[2]

The SOCTA 2021 inter alia highlights the emerging risks and trends related to large-scale money laundering and how it has evolved into complex schemes that are offered as services by specialised groups to other criminals for a fee.

It also acknowledges that since financial gain is the primary motivation behind almost all forms of serious and organised crime, the laundering of illicit proceeds forms an integral part of criminal infrastructures. Therefore, professional money laundering and related networks are being used more often and they continue to pose a major threat for countries.

For example in exchange of fee or commission these services offered by professionals may include currency conversion operations, international transfers bolstered by fictitious contracts and invoices, and alternative payment systems, as well as services designed to conceal beneficial ownership (e.g. locating investments or purchasing assets, establishing companies or legal arrangements, acting as nominees, or providing account management services). As these money laundering has been facilitated by multiple businesses and (shell) companies in different jurisdictions, use of bank accounts, payment service provider accounts, virtual currency exchanges and assistance of brokers, cash couriers and money mules, law

[2] https://www.europol.europa.eu/publication-events/main-reports/european-union-serious-and-organised-crime-threat-assessment-socta-2021

enforcement authorities must be aware of the schemes that are being used and try keep the pace with the criminals.

As a key tool Europol has recommended focusing on asset recovery. Given that most offences are financially driven, asset recovery is a powerful deterrent in the fight against crime. It deprives criminals of their ill-gotten assets and denies them the capacity to reinvest them in further crime as well as to integrate them into the mainstream economy.

Countries need to strengthen the asset recovery regime and several key points have been addressed: identification, freezing, management, confiscation and disposal. This in turn requires better integration and alignment throughout the entire asset recovery process and all stakeholders: law enforcement, judiciary and asset management offices – need to be engaged.

As in addition to previous reports there are also indications and assessments how crime has evolved and increased during the COVID-19pandemic[3] Therefore, while bearing in mind both the findings of IOCTA and SOCTA countries need take necessary measures in order to raise their capacities related to financial investigations, identification of assets, their seizure and confiscation.

Professional money laundering as a challenge has also been addressed by the Financial Action Task Force (FATF) in their report[4] from 2018. Based on several studies the reports identifies and explains different typologies as well as provides recommendations to countries.

1.3. Introduction to search, seizure and confiscation of proceeds from crime and contemporary cybercrime vectors

Financial Investigation

One of the main aspects of the fight against serious and organised crime has been the focus on targeting the proceeds of criminality with the view of rendering illicit activity less profitable and attractive for criminals. In addition, financial investigations seek to deprive criminals, and especially criminal groups, of the resources necessary to pursue further criminal activity. In order to secure the confiscation of proceeds of crime, it is essential to ensure timely identification of such funds and application of provisional measures, so that the assets in question are not hidden by the criminal network. Financial investigation should be carried out simultaneously with the criminal investigation in order to trace the material benefit connected to the criminal activity in question.

[3] How COVID-19-related crime infected Europe during 2020 https://www.europol.europa.eu/cms/sites/default/files/documents/how_covid-19-related_crime_infected_europe_during_2020.pdf

[4] http://www.fatf-gafi.org/publications/methodsandtrends/documents/professional-money-laundering.html

Key elements to ensure effectiveness of financial investigations are the attribution of sufficient powers to competent authorities (such as access to data, including banking data, and the ability to apply special investigative powers, for example undercover operations, secret observation, etc., by law enforcement authorities). An additional fundamental element is also the fact that, due to the increasingly international nature of criminal activities, financial investigations should be conducted in a manner. The respective authorities should have appropriate powers in this regard to take into consideration the trans-border aspect and allow for sharing of information, as well as for the undertaking of joint actions.[5]

Financial investigation definition provided by the FATF considers this criminal proceeding as an enquiry into the financial affairs related to a criminal activity, with a view to:

- Identification of the extent of criminal networks or the scale of criminality;
- Identification and tracing the proceeds of crime, terrorist funds or any other assets that are, or may become, subject to confiscation;
- Acquisition of evidence which can be used in criminal proceedings.

Elements of Financial Investigation

FATF in its Report on operational issues and financial investigation guidance recommends that financial investigation should represent an integral part of an overall crime strategy and thus to be deeply embedded in the functional and organizational matrix of competent criminal justice and other authorities which are participating in this field.

It is a recommendation that countries aiming to successfully suppress and proceed financial crime, should establish a comprehensive policy that sufficiently emphasises financial investigation as an integral part of law enforcement efforts. Clear objectives, dedicated action, sufficient resources, training for investigators and use of the legal tools available in a comprehensive, creative, consistent, and committed manner are all important elements of an effective financial investigation strategy in any country. Countries should take active measures to ensure that financial investigations become a routine part of all law enforcement inquiries related to crime with financial gain.

Having that said, general approach towards defining of the financial investigation elements should be inclusion of the following:

1. Detection of criminal offence and the perpetrator (parallel to criminal investigation)
2. Establishing the proceeds of crime
3. Establishing property that can be confiscated
4. Freezing order – temporary measure for securing the confiscation

[5] https://www.coe.int/en/web/moneyval/implementation/financial-investigations

5. Confiscation as the final result.

In accordance with World Bank and UNODC Stolen asset recovery initiative, there are two main results which should be achieved during undertaking proceedings in financial investigation:

- Making of a precise subject profile
- Establishing of an evidence matrix

While subject profile includes well known elements of the any criminal investigation with this regard, like establishing the personal details for the suspect and its close social surrounding, technical contact and resident data, results and reports from the official, unofficial an online source, it should also include collection of financial data and use of other evidence sources. Also, open-source investigation should be used as one of the tools for financial investigation. Open-source information is generally defined as publicly available information that can be gathered by any legal means, including information available through social media or the internet for free, for a fee, or by subscription. Information from open sources and other government agencies can reveal assets held by targets, their families and associates, and associated businesses.

The evidence matrix is a key investigative work result that ensures that the investigation remains focused and that the investigative steps being undertaken are directed at gathering evidence relevant to the alleged crime(s). In the initial stages, the evidence matrix looks to identify evidence the investigator has obtained and how it aligns with the elements of a criminal offense. With complex financial cases, especially where crimes have been committed in foreign jurisdictions, the investigator should expect gaps to exist in the case because the evidence-gathering exercise is not complete. The evidence matrix exercise helps identify those gaps and focus the subsequent work to be undertaken. [6]

Contemporary cybercrime focusing on profit

Regarding online financial crime perpetration and trends, EUROPOL in IOCTA 2021 report notes that criminals are continuing to make significant profits through well-known types of online frauds which are continuing to be effective. While criminals did not have to invent ground-breaking new ways of perpetrating financial and money laundering cybercrime, they continue to refine them, making them more focused towards its targets and technically more advanced.

Investment fraud has become a significant concern, as phishing and social engineering have further increased to generate considerable criminal proceeds. One of the consequences of the COVID-19 pandemic restrictions is a population shift to online shopping which generated multiplied opportunities for frauds of different types and volumes.

Pandemic Impact

[6] https://star.worldbank.org/focus-area/financial-investigations

It is the fact that COVID-19 pandemic has had a significant impact on the European and world fraud landscape. As such, European law enforcement agencies have reported an overall increase in online fraud as criminals have exploited increased online activity. Some of these crimes make use of COVID-19-related lures, such as phishing or the sale of counterfeit medical products, while others seek to exploit the side-effects of the pandemic. These include the relaxation of established security procedures due to employees working from home and a widespread shift to online shopping.

The extension of lockdowns throughout Europe and world has brought with it a number of new e-commerce opportunities, which have often proven to be a target for criminals. Delivery fraud has emerged as a new criminal focus in the second year of the pandemic. Criminals offer goods and receive payment without delivery, defraud online shops with weak security measures, or use delivery services as phishing lures. Posing as delivery services, criminals contact potential victims with links to phishing websites pretending to offer information about a parcel delivery, with the aim of obtaining user credentials and payment card detail.

Phishing Variants and Social Engineering

Phishing and social engineering are not a novelty as cybercrime perpetration mechanisms. Still, due to the lack or rejections of the awareness amongst population in previous years we have seen a further significant increase in its use. Facilitated by the ongoing pandemic, the number of COVID-19- related phishing attempts conducted above all via telephone (vishing) and text messages (smishing) has risen considerably. While tried and tested social engineering approaches still work very well for criminals, phishing campaigns continue to evolve.

Compromised information from data breaches is easily and increasingly available. Criminals have increasingly made use of this opportunity to improve their chances of success by creating highly targeted campaigns. Traditionally successful crimes such as business email compromise, CEO fraud, extortion and various types of scams, all profit from the availability of potential victims' personal data. As this data can be key in improving the success rate of criminal activities, this has led to a perpetual fraud cycle, in which the black market for compromised information is booming.

Vishing and smishing have particularly profited from the exploitation of stolen data. In combination with spoofing, whereby victims are contacted using legitimate-looking caller IDs or text aliases, criminals have lent these types of fraud attempts significant credibility. In line with other developments, fraudsters more often combine traditional social engineering attempts with technical components to target especially elderly victims.

The increased use of remote access trojans (RATs) in vishing, for instance, exploits a lack of technical knowledge on the part of the target, potentially leading to full account access and significant financial harm. Criminals are using vishing to gain access to victims' bank accounts in countries in which medical services are linked to mobile bank IDs. In these cases, criminals contact citizens over the phone and ask them to identify themselves for the purpose of arranging a vaccination appointment or other medical services. Criminals have exploited this circumstance to convince victims to provide their identity documents to log into bank accounts and unknowingly transfer money to the criminals.

With smishing, criminals have employed a diverse mix of crime perpetration methods by contacting victims through text messages to request information, redirect to phishing websites, or distribute malware. A notable example of this development is the “Classiscam” scheme. “Classiscam” is an automated scam-as-a-service that propagates via Telegram and WhatsApp bots, providing fraudsters with pre-made pages intended to steal banking information from customers.

Serious Cybercrime Financial Frauds

The top threats in the field of non-cash payment fraud are related to investment frauds, business email compromises and CEO frauds, as criminals further refine and improve their ways of perpetration. Investment fraud has emerged as the most dominant type of fraud in the last years. Although this type of criminal activity in different forms existed before, criminals continued invent new ways and incentives for targeting victims with fraudulent investment opportunities. With different assets on offer, cryptocurrencies emerged as the most popular, as their price surged earlier in 2021 with attracting new investors. Fake investment websites are particularly suited in this context, since criminals can exploit lack of knowledge and, in some jurisdictions, regulatory hurdles regarding access to cryptocurrency exchanges.

At the same time, criminals are further refining and improving this type of fraud. Authentic-looking advertising campaigns, the illicit use of celebrities, and even personal recommendations through online dating schemes all help bring unsuspecting victims to these fake platforms. In addition, criminals are becoming more professional, running local call centers to target different languages, creating more legitimate-looking websites, using remote access software to take over victims’ accounts, and operating complex money mule networks. This mixing up of different ways of perpetration is a key trend in investment fraud.

Increasingly, criminals are hitting their victims twice: following the theft of the investments, criminals contact the victims pretending to be lawyers or law enforcement agents offering help to retrieve their funds. With the help of spoofing and detailed knowledge about the theft, they are often able to defraud their victims several times.

Investment fraud poses a significant challenge for law enforcement. The use of cryptocurrencies means that perpetrators can launder criminal proceeds quickly and efficiently, while uncooperative exchanges, or those with weak KYC (Know Your Customer) measures, make them difficult to identify. At the same time, fake investment websites do not directly target legitimate financial institutions but abuse their brands to target members of the public, leading to a decreased incentive for the industry to act. Since many victims have incurred significant losses – in some cases entire life savings – investment fraud is a serious type of crime with potentially devastating consequences.

As investment fraud takes the spotlight, business email compromise (BEC) and CEO fraud have remained key threats in the past years, with some countries reporting a further increase in the number of cases. Continuing to lead to significant losses, both types of crime have grown in sophistication and become more target-focused. Heavily relying on social engineering,

attacks have increasingly focused on upper-level management, as well as on impersonating other staff members or changing invoice data in commercial transactions.

Re-inventing of Card-not-present Frauds

Card-not-present (CNP) fraud appears to be largely under control. In countries that did see an increase in CNP cases, criminals often made use of the circumstances of the COVID-19 pandemic. Food delivery services, gaming platforms and other e-commerce platforms were targets of fraud or were exploited to steal card data.

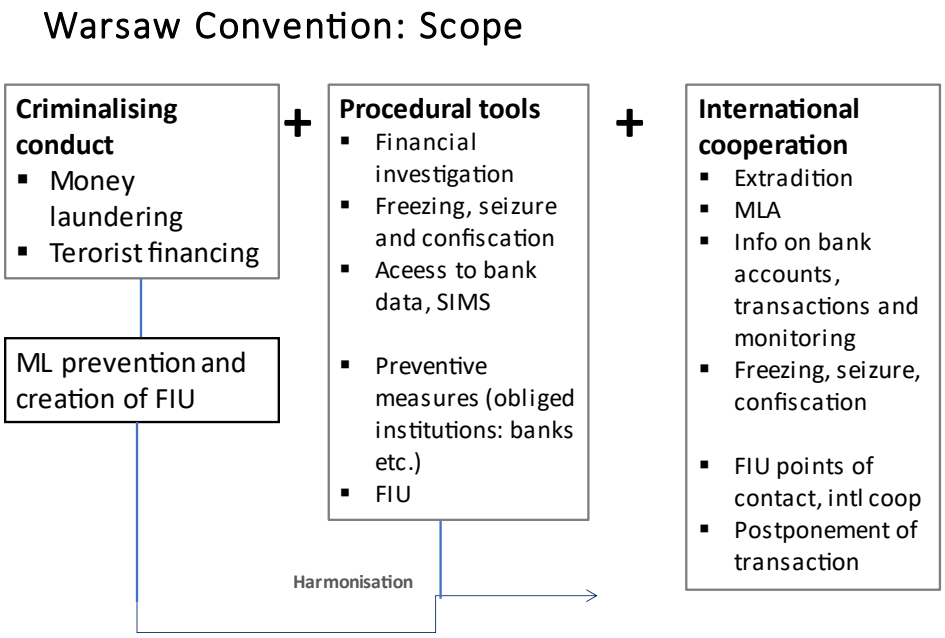
The shift from physical shopping to e-commerce has further led to an increased criminal focus on e-skimming. As more and more transactions are taking place through online shops, there has been an increase in the use of online skimming for the purpose of stealing card data. While the perpetration mode have not changed, criminals have added a number of new e-skimmers.

As logical attacks on ATMs faded, criminals with technical abilities moved towards other digital attack surfaces, such as mobile devices. The drop in ATM attacks is not a permanent trend, however. As soon as lockdowns and travel restrictions were relaxed, many EU Member States started reporting a significant increase in this type of crime. ATMs continue to be an attractive target for criminals. Many old ATM models are vulnerable to attack, as they are not updated with the latest software upgrades. Itinerant and crime-as-a-service groups are linked to black box attacks. These attacks are carried out by connecting remotely operated (e.g. via TeamViewer) external devices to ATMs. In the second stage, suspects move via wire transfers or cryptocurrency transactions.

2. INTERNATIONAL STANDARDS

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 2005 (CETS 198, Warsaw Convention) succeeded the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 (ETS No. 141).

Warsaw convention defines the standards in area of tracing, seizure and confiscation of proceeds of crime, money laundering and financing of terrorism.



This analysis will focus on relevant legal provisions that regulate:

a) financial investigation (aiming at tracing proceeds of crime)
b) seizure or freezing
c) final confiscation of proceeds of crime
d) money laundering offence, which in its essence aims at the criminalization of concealing
criminal profits and the deprivation of laundered property from the criminals.

<u>Definition of terms</u>

Warsaw convention defines key terms that will be used in this paper:

- "proceeds" means any economic advantage, derived from or obtained, directly or indirectly, from criminal offences. It may consist of any property as defined below;

- "property" includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to or interest in such property;
- "freezing" or "seizure" means temporarily prohibiting the transfer, destruction, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;
- "confiscation" means a penalty or a measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences resulting in the final deprivation of property.

According to Financial action task force (FATF)[7] **Financial investigation** means an enquiry into the financial affairs related to a criminal activity, with a view to:

- identifying the extent of criminal networks and/or the scale of criminality;
- identifying and tracing the proceeds of crime, terrorist funds or any other assets that are, or may become, subject to confiscation; and
- developing evidence which can be used in criminal proceedings.

Parallel financial investigation refers to conducting a financial investigation alongside, or in the context of, a (traditional) criminal investigation into money laundering, terrorist financing and/or predicate offence(s). Law enforcement investigators of predicate offences should either be authorised to pursue the investigation of any related money laundering and terrorist financing offences during a **parallel investigation or** be able to refer the case to another agency to follow up with such investigations.

Follow the money concept starts with a financial investigation, which is conducted by (criminal) police with involvement of prosecutor in parallel to investigation of criminal offence.

Financial investigation has four elements:

1. detection of criminal offence and perpetrator, parallel to criminal investigation of the criminal offence that results in proceeds;
2. gathering information and evidence on the value of criminal proceeds (from the criminal offence under investigation);
3. establishing property that can be confiscated (from the criminal or related persons, including bank accounts, movable and immovable property in country and abroad and including virtual currencies) (taking into account value based confiscation) and
4. the proposal to seize or freeze the identified property that will ensure final confiscation after the criminal proceedings and court decision.

[7] The FATF Recommendations, Interpretive note to Recommendation 30, page 105, https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf

Management of seized or frozen and confiscated property is also an important issue that should be taken into account especially in relation to modern technologies of money laundering, such as the use of virtual currencies. Management has its legal, institutional and practical implications, while the creation of dedicated Asset management agencies (AMO) is promoted.

Virtual currencies

According to EUROPOL Serious and organize crime threat assessment (2021) [8] cryptocurrencies remain important means of payment for criminal services and products. Cryptocurrencies are commonly used by fraudsters. Illicit proceeds may be already in the form of virtual currencies or digitally converted. New money laundering techniques relying on cryptocurrencies involve the use of mixing services and coin swappers.

EUROPOL finds in its **Internet organized crime threat assessment (IOCTA 2021)**[9] that criminals continue to abuse legitimate services such as VPNs, encrypted communication services and cryptocurrencies. There is increase in use of privacy-enhanced cryptocurrencies, such as Monero on Dark Web marketplaces and non-cooperative swapping services. In addition to traditional use of Bitcoin, that gets converted to Monero by recipients also Zcash is used. Iin cases of online money laundering different obfuscation methods are used, such as mixers, CoinJoin, swapping, crypto debit cards, Bitcoin ATMs, local trade and more. Swapping service Kilos is operating on the Dark Web, as well as KSwap and Krumble.

FATF revised in 2018 **Recommendation 15 on new technologies** to include new risk of money laundering posed by use of virtual currencies and virtual assets service providers.

According to FATF glossary **a virtual asset** is a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes. Virtual assets do not include digital representations of fiat currencies, securities and other financial assets that are already covered elsewhere in the FATF Recommendations.

Virtual asset service provider means any natural or legal person who is not covered elsewhere under the Recommendations, and as a business conducts one or more of the following activities or operations for or on behalf of another natural or legal person:

- exchange between virtual assets and fiat currencies;
- exchange between one or more forms of virtual assets;
- transfer of virtual assets;
- safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; and
- participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset.

[8] EUROPOL SOCTA 2021, https://www.europol.europa.eu/publications-events/main-reports/socta-report..
[9] EUROPOL IOCTA 2021, https://www.europol.europa.eu/cms/sites/default/files/documents/internet_organised_crime_threat_assessment_iocta_2021.pdf.

5th EU AML Directive 2018/843 limited the anonymity related to virtual currencies: cryptocurrency exchanges and wallet providers who own private keys of their clients are obliged entities, mandating them to a proper identification of their clients (KYC).

European Commission's issued two legislative proposals in this respect. Digital finance package (24 September 2020) contains also proposal for a Regulation on Markets in Crypto Assets (MiCA), while AML/CFT package (20 July 2021) includes a) proposal for Regulation on AML/CFT (**Single EU Rulebook for AML/CFT**) that includes all types and categories of Crypto-Asset Service Providers and all Crowdfunding service providers among obliged institutions and b) a recast of the 2015 Regulation on Transfers of Funds (Regulation 2015/847) that **extends its scope to transfers of crypto-assets**. The rationale is to identity those who send and receive crypto-assets for AML/CFT purposes, identify possible suspicious transactions and if necessary, block them.

Relevant international and EU legal instruments

Council of Europe

- 2005 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198, Warsaw Convention), which succeeded the
- 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141, Strasbourg Convention)

United Nations

- 1988 UN Vienna Convention: Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
- 2000 UN Palermo Convention: Convention against Transnational Organized Crime
- 2003 UN Convention against Corruption

EU

- Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union - (replaced) Joint Action 98/699/JHA
- Framework Decision 2005/212/JHA on confiscation of crime-related proceeds, instrumentalities and property
- Framework Decision 2001/500/JHA on money laundering the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime
- Commission proposal for Directive on asset recovery and confiscation (25.5.2022)

Mutual recognition:

- Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders
- Framework Decision 2003/577/JHA for the execution of freezing orders and Framework Decision 2006/783/JHA for the confiscation orders

- Council Decision 2007/845/JHA concerning cooperation between **Asset Recovery Offices** of the Member States in the field of tracing and identification of proceeds from, or other property related to crime

3. ASSESSMENT OF THE EASTERN PARTNERSHIP COUNTRIES LEGISLATION AND RECOMMENDATIONS

Introduction

Countries that are being addressed in the present study are Armenia, Azerbaijan, Georgia, Moldova and Ukraine. All these countries have ratified and are State Parties to the Warsaw Convention and are also members of MONEYVAL[10].

Currently MONEYVAL is conducting it fifth mutual evaluation round and fifth mutual evaluation round reports have adopted with regard to the following countries: Armenia (2015, follow-up report in 2018), Azerbaijan (2014, follow-up report in 2018), Georgia (2020), Moldova (2019) and Ukraine (2017, follow-up reports in 2019 and 2020).

Georgia, Moldova and Ukraine are also members of Camden Asset Recovery Inter-agency Network (CARIN)[11].

Based on the findings of the Cybercrime@EaP report from January 2019 "Perception of threats and challenges of cybercrime in the Eastern Partnership", it can be drawn that cybercrime in its different forms can be considered as a risk and threat together with other types or serious and organised crime in the Eastern Partnership region. This has later been also confirmed by the "Cybercrime and Cybersecurity Barometer - regional analysis". There is a perception of cybercrime threat in the region. Internet fraud and fraud, BEC/CEO fraud, phishing and ransomware are among the threats identified. It can also be seen that during COVID-19 pandemic cybercrime increased, additional modus operandi emerged.

From the mutual evaluation reports of MONEYVAL, it can also be seen that money laundering related risks are present in the region. Serious and organised crime, including economic crime and cybercrime have been identified as some of the money laundering risks in the region. However, countries in the region have taken steps, including legislative and other measures to improve legislative framework in increase the capacity of law enforcement and judiciary as well as of the FIU-s and asset recovery offices.

[10] https://www.coe.int/en/web/moneyval
[11] https://www.carin.network/

3.1 Armenia

Country: Armenia	CPC 1998	CPC 2021
Financial investigation	No specific provision, combination of traditional investigative powers (production request 59., 77 and 79 CPC; search 225 CPC, seizure of objects 226 CPC; 14 IOIA	No specific provision, combination of traditional investigative powers
Access to bank data	172/2 and 3 CPC 2021 14/15 IOIA	239/4 CPC (suspect and relevant person)
Monitoring bank account	124.1 CPC 14/15 IOIA	250 CPC
Seizure and freezing	Chapter 32, 232 CPC	Chapter 15, 131-135 CPC
Confiscation	103.1 CC	
Extended confiscation	x	
Civil forfeiture	Law on seizure of property of illegal origin, May 2020	
Money laundering offence	190 CC (responsibility of National security service)	
Virtual assets	x	
Management	13 (security of property) and 116 (safe keeping of property) CPC	134 CPC

3.1.1 Legislation

Criminal procedure code of Armenia (CPC 1998)[12] does not contain specific provision on financial investigation. General powers can be used for gathering information and evidence with a purpose to trace and seize for the purpose of their confiscation, such as search and seizure of evidence (articles 225 - 229), request for production of evidence (article 59, 77 and 79). Access to bank data is limited to data of suspect only (article 172), as highlighted in Moneyval Fifth Round Mutual Evaluation Report (December 2015)[13]. Chapter 32 CPC regulates arrest of property (articles 232-238) that relates to seizure of property to secure confiscation of proceeds of crime, property claim of victim and coverage of court expenses.

Armenia adopted new Criminal procedure code in 2021 that came into force on 1 July 2022 (CPC 2021)[14]. There is still no specific mentioning of **financial investigation**. **Access to bank data** is regulated in the context of seizure of objects under bank secrecy in article 239/4 CPC. It is not limited only to suspect, but can be requested also in relation to relevant third persons

[12] Criminal procedure code (1998 with amendments), http://parliament.am/law_docs/010998HO248eng.pdf?lang=eng.

[13] https://rm.coe.int/anti-money-laundering-and-counter-terrorist-financing-measures-armenia/16807152b.

[14] Criminal procedure code (2021), http://www.parliament.am/legislation.php?sel=show&ID=7747.

and legal person. Court order is required (article 208/4 CPC). **Monitoring of bank account** is regulated in article 250 CPC as a type of undercover investigative action. It is applied through banks and other financial institutions that are obliged to cooperate.

Attachment (seizure) of property Is regulated in chapter 15 in articles 131 – 135. Seizure relates to property that is proceeds of crime, instruments of crime and property intended to financing of terrorism if such property may be hidden, damaged or consumed. The definition clearly refers to direct and indirect proceeds as well as income or any other gain obtained from such property (fruits). Equal value property can be also seized. According to article 133 during the preliminary investigation property can be seized by decision of investigator that has to be submitted to court for approval within 3 days. If conditions for seizure are met prima facie, the investigator can immediately seize the property. *It is interesting that article 133/8 foresees the possibility that the property, subject to seizure is not specified in the decision. In such a case the possessor can choose the property that will be seized. Article 134 deals with the preservation of seized property, however it does not permit is disposal or selling in case of need (volatile value, goods that get damaged or destroyed). Seizure can be extended until the enforcement of judicial act.* The seizure of property can be terminated by a decision of investigator (and confirmed by prosecutor or court) if such necessity emerge. Judicial review of seizure (attachment) of property is regulated in chapter 39 (articles 294- 298). It can be initiated by the motion of affected person or reasoned motion by investigator in order to confirm the legitimacy within 3 days after the seizure. The owner and interested person have the right to participate in the court proceedings. The owner or the interested person can request the termination of seizure after 3 months from seizure.

Judgment shall contain the decision of court also on **confiscation of property**, seizure (attachment) of property and property claim are obligatory content of judgment (article 348).

Legal person can also be subject of interim measures, including seizure (attachment) of property (article 445/2). **Criminal liability for legal persons** was introduced in Armenia following the Moneyval 2015 recommendation.

Law on operational intelligence activity[15] defines additional investigative measures, including monitoring of bank account (article 14/15). According to Moneyval report (2015) the availability of certain operative measures to LEAs is subject to unduly burdensome conditions (e.g. only available in relation to grave and particularly grave crimes, thereby excluding basic ML).

Criminal code of Armenia (CC)[16] defines **confiscation of property** as a type of punishment (article 55) and is not related to proceeds of crime. In 2014 the CC was amended to include mandatory confiscation of property that relates to proceeds of crime (article 103.1). It refers to direct and indirect proceeds, income and other benefits and instrumentalities and property

[15] Law on operational intelligence activity (2007), https://www.arlis.am/documentView.aspx?docid=128809.
[16] Criminal code (2003 with amendments), http://www.parliament.am/legislation.php?sel=show&ID=1349&lang=eng.

intended for terrorist financing. The definition includes equal value confiscation and confiscation from third person, that is not bona fide.

Criminal code incriminates **money laundering** in article 190. The provision is in line with the Warsaw convention's standards. Recommendation 3 (money laundering offence) is rated as compliant by Moneyval.

According to Moneyval report (2015) the money laundering offence and the confiscation regime were largely in place in Armenia. However, seizure and confiscation of criminal proceeds, instrumentalities and property of equivalent value are not pursued as a policy objective. It is doubtful whether LEAs are in a position to effectively identify, trace and seize assets at the earliest stages of an investigation, since proactive parallel financial investigations for ML and predicate offences are not conducted on a regular basis.

Civil (in rem) confiscation

In addition to the confiscation of proceeds of crime in the context of criminal procedure, Armenia introduced **civil (in rem) confiscation that is regulated in Law on seizure of property of illegal origin,** adopted in 2020[17], while latest amendments were debated in parliament in May 2022[18].

According to article 5 the investigation can be initiated in case of a criminal judgment, or if a criminal case is initiated, or if there are sufficient ground to suspect there is property of illegal origin, but the criminal case can not be initiated or was suspended given the reasons defined in law, or if there are sufficient grounds to suspect that the official or a person related to him owns property of illegal origin based on evidence from investigation according to the Law on Operative-Investigative Activities.

The Department for Confiscation of Property of Illicit Origin of the RA General Prosecutor's Office was established[19]. This was one of the conditions for entry into force of the law.

3.1.2 Institutional aspect

Several agencies have investigative authority in Armenia. Preliminary investigation can be conducted by Investigative committee, Anti-Corruption Committee, National Security Service (NSS), Special Investigation Service (SIS) and State Revenue Committee (article 180 and 181 CPC 2021)[20].

[17] Law on seizure of property of illegal origin (2020), https://www.arlis.am/DocumentView.aspx?docid=142347 (in Armenian).
[18] http://www.parliament.am/news.php?cat_id=2&NewsID=16695&year=2022&month=05&day=19&lang=eng.
[19] https://www.prosecutor.am/en/mo/7943/.
[20] See for example in http://archive.eap-csf.eu/assets/files/WG1_HR_Armenia.pdf

Investigative committee[21] has been established in 2014 by the law and is authorized to conduct preliminary investigation of the apparent crimes within the limits of its competence envisaged by Criminal Procedure Code. The authorities and duties of the investigator are defined by Criminal Procedure Code and *include some powers that are traditionally in the hand of the prosecutor, such as to make a decision on abatement of the criminal proceedings, on termination of criminal prosecution and within 24 hours to send the copy of the decision to the prosecutor to verify the legality of it. Its competence over criminal offences overlaps with Police and other authorities.*

National Security Service has competence in the area of gathering intelligence and is responsible for criminal investigation, including money laundering investigation. Special Investigation Service is responsible for criminal cases, committed by state officials.

The prosecution office[22] Is responsible for criminal prosecution.

Armenia has an Agreement on cooperation with Europol since 2021 and started negotiations with Eurojust in 2021.

Financial Monitoring Center (FMC)[23] is Armenian financial intelligence unit, operating in the framework of Central bank. According to **Moneyval Report** (2015) there was little evidence that intelligence, whether generated by the FMC or LE operative units, was used to a great extent to identify ML and to conduct financial investigations. LEAs do not routinely conduct proactive parallel financial investigations, at least in relation to major proceeds-generating crimes, the potential for identifying ML cases is limited. Most of ML convictions achieved in the period under review were self-laundering cases mainly involving domestic predicate offences.

There are no specialized units that would conduct financial investigation in parallel to criminal investigation. The participants at the C-PROC Training on Financial investigation, Darknet and Virtual currencies (February 2022) were of an opinion that the Investigative committee is conducting financial investigations on some occasions in practice. Participants form FIU explained that there were request for their assistance in relation to bank transactions from Investigative committee, but FIU is limiting their reponse only to ML cases.

Management of seized property

There are no specific provisions for management of seized (or confiscated) property, nor specific Agency for management of seized or confiscated property in Armenia.

[21] https://www.investigative.am/en/home.html.
[22] https://www.prosecutor.am/en.
[23] https://www.cba.am/en/SitePages/fmcabout.aspx.

3.1.3 Virtual currencies

Virtual currencies are increasingly used for money laundering purposes, especially ones that increase anonymity, such as privacy coins.

Virtual currencies are not specifically regulated in Armenia in the context of criminal law, but there are no legal obstacles to consider them according to the definition of "property" in CC, that is liable to seizure and confiscation. There is no specific regulation on Virtual assets service providers (VASPs) to implement revised FATF recommendation 15. VASPs are not considered as obliged entities under AML legislation.

3.1.4. Recommendations and conclusions

Moneyval priority and recommended actions (excerpts, 2015):

- Law enforcement authorities should make full use of intelligence (whether generated internally or by the FMC) in financial investigations, particularly to develop evidence and trace criminal proceeds.
- To develop a national law enforcement policy to investigate and prosecute ML offences.
- To include the confiscation of criminal proceeds, instrumentalities and property of equivalent value as an objective in the national law enforcement policy.
- The policy should require LEAs to develop proactive parallel financial investigations when pursuing ML and associated predicate offences, at least in all cases related to major proceeds-generating offences. Practical guidance and specialised regular training should be provided to staff at all levels of LEAs, including the GPO and the judiciary, on financial investigations.
- As part of the requirement to proactively conduct parallel financial investigations, LEAs should be required to routinely apply provisional measures to prevent any dealing, transfer or disposal of property subject to future confiscation/forfeiture.
- To review the provisions of Article 31 of LOIA to remove unduly cumbersome conditions hindering its effective use by LEAs during the preliminary stage of the criminal investigation. In particular, Article 31 should be available in all ML investigations given that LEAs may not be able to identify whether "large amounts" or "particularly large amounts" are involved until the financial information has been considered.
- To introduce criminal liability for legal persons. Pending the introduction of criminal liability for legal persons, the authorities should make use of Article 31 of the AML/CFT Law on the involvement of legal persons in ML, where applicable, and revise the level of fines which should reflect the gravity of the offence. (Implemented)
- To re-consider introducing the reversal of the burden of proof regarding the lawful origin of alleged proceeds or other property liable to confiscation in serious offences and consider introducing non-conviction based confiscation measures. (Implemented)
- There should be a body with legally defined competences to actively manage frozen and confiscated assets.

Conclusions

- Relevant legislation is in general compliant with the international standards.
- Consider amending Article 31 of LOIA to be applicable to all money laundering investigations.
- Consider if legislation (article 134 CPC) adequately regulates the disposal or selling of seized property in case of need (volatile value, goods that get damaged or destroyed).
- Consider if the absence of time limit for the seized property is compliant with the article 1 of Protocol 1 to ECHR (Right to property).
- Consider regulating seizure and confiscation of virtual currencies as they are increasingly used for money laundering.
- Consider regulation of Virtual assets service providers to implement FATF Recommendation 15 to strengthen the prevention of money laundering by new technologies.
- Consider introducing specialization in the Police and prosecution service for financial investigation.
- Consider strengthening legal and institutional framework for management of property (AMO).
- Consider possible strategic measures to promote application of existing legal provisions of CPC and CC on financial investigation, seizure of property and confiscation of proceeds of crime in practice and further training of practitioners from police, prosecution and judiciary.

3.2 Azerbaijan

Country: Azerbaijan	
Financial investigation	No specific provisions, general CPC investigation articles apply
Access to bank data	134, 177 (The right to forcibly carry out investigative procedures), CPC
Monitoring bank account	177 CPC, 3, 7, 9, 11 of AML/CFT Law
Seizure and freezing	177, 242 – 247 CPC, 19 of AML/CFT Law
Confiscation	248 - 253 CC
Extended confiscation	x
Civil forfeiture	203, 205 Civil Code
Money laundering offence	193-1 Criminal Code
Virtual assets	As virtual currencies are digital representations of value, they can be considered property. Therefore, they can be accepted as the income generated by crimes and thus seized/confiscated during the investigation or prosecution processes.

3.2.1 Legislation

Criminal justice legislation in Azerbaijan regarding financial investigations, money laundering and seizing and confiscation of proceeds of crime is now going through significant changes. Goal is to strengthen existing capacities of Azerbaijan to fight and prevent economic crime, but also to amend organic laws like Criminal Code and Criminal Procedural Code with provisions which will more support substantial and procedural grounds for suppressing and tackling of the economic crime and its different but connected aspects

Process is primarily focused on areas that present shared challenges to the EaP countries and will contribute to advancing the understanding and adoption of new tools and mechanisms to effectively tackle corruption, money laundering and terrorist financing. More precisely, overall objective of the Azerbaijan process is to contribute to democracy and the rule of law through implementation of institutional reforms aimed at enhancing capacities of Azerbaijani authorities to prevent and combat money laundering and terrorism financing and recover proceeds from crime in line with European and international standards.

A presidential decree strengthening reforms in the legal system was adopted on 3 April 2019, aiming at increasing the independence, efficiency, and transparency of the judiciary.

Number of implementing acts have been drafted since then, targeting the establishment of specialised courts, improving mechanisms to prevent interference in courts, creating a single judicial practice, digitalising judicial activities, and ensuring social protection of judges, judicial examination, and the enforcement of decisions.

Azerbaijan achieved some progress in its anti-corruption efforts in several sectors of public administration such as service delivery, police and education. The perception of corruption in police and education decreased as a result. The 2020 Corruption Perception Index of Transparency International ranked Azerbaijan 129th out of 180 countries.

The National Action Plan for the Promotion of an Open Government for 2020-2022 was approved on 27 February 2020. It envisages measures to prevent corruption and enhance transparency in the activities of state bodies, to ensure financial transparency, combat money laundering and terrorism financing, and measures on accountability and transparency and other relevant activities.

The Government of Azerbaijan has made progress toward the establishment of an effective asset recovery system by establishing the **Department for the Coordination of Special Confiscation Issues (DCSC)** within the new structure of the Prosecutor's General Office (GPO) through the presidential decree dated 10 June 2020. The DCSC, as the body responsible for the coordination of the activities of the structural units of the PGO, supports the identification, tracking and seizure of assets.

Azerbaijan project activities are focused on the following three areas:

- Prevention: improving institutional capacities to fight and prevent economic crime;
- Enforcement: strengthening the capacities of the law enforcement and judiciary to investigate and prosecute money laundering, terrorist financing and other types of economic crime, as well as to seize, confiscate and recover proceeds from crime;
- Strategic actions: assisting with identification of future priority areas for developing a coherent anti-money laundering and counter-terrorist financing policy and successful implementation of national risk assessment.

Main Counterparts are Anti-Corruption Directorate under the General Prosecutor's Office of the Republic of Azerbaijan and Financial Monitoring Service.

Also, **MONEYVAL has launched its 5th round mutual evaluation process of Azerbaijan** with a high-level exchange including the Deputy Prime Minister of Azerbaijan, and the Chair of MONEYVAL. The high-level exchange was followed by a training for the authorities and the private sector of Azerbaijan. It was aimed at familiarising all national stakeholders involved in the evaluation with the underlying standards and methodology of the Financial Action Task Force (FATF) and the evaluation approach of MONEYVAL.

Last evaluation was undertaken in 2014 and it is going to be important to make comparison between two reports since eights years passed between two of them.

At the moment, and based on available reports, Azerbaijan legislation in this field consist of:

- Anti-money laundering and terrorist financing law
- Criminal Code
- Criminal Procedural Code
- Law on Combating Terrorism
- Banking law

- Number of regulations regarding asset circulation and money flow

Criminal Code of Azerbaijan in Chapter 30 stipulates cybercrime articles. Council of Europe Cybercrime Convention articles 2 to 6 are fully implemented. Computer forgery is stipulated by article 273-2 as a forgery of computer data but without illicit gain element. Computer fraud is not stipulated and in practice regular criminal act of fraud provided by act 178 is used.

Criminal Procedural Code of Azerbaijan and other laws do not specifically provide articles regarding financial investigation at the moment. General articles regarding investigation which is led by the Prosecution Offices with strong support form law enforcement agencies are implemented. An effective asset recovery process requires close coordination and collaboration across multiple institutions.

The CPC sets out a two-step approach – 'preliminary investigation' and 'investigation'. Preliminary investigation takes the form of simplified pre-trial proceedings in respect of offences which do not pose a major public threat. Following this, and within ten days from the commencement of criminal proceedings, the case is taken forward for "investigation" which is mandatory and may be conducted either by the investigating authorities or the investigator within the PGO, depending on the type of crime.

The CPC does not distinguish between criminal and financial investigation and there are no dedicated financial investigators. Financial investigations to identify assets for confiscation are conducted by investigators and prosecutors within the Tax Service, the Customs Service and the investigative bodies of the PGO's General Directorate for Combating Corruption. The Law on Operational Search Activity allows the MIA and the State Security Service to carry out asset tracing (financial investigation).

The Code also sets strict time limits for investigation to prove the case. However, extension of time limits is possible and should be authorised by courts only to prove the criminal case. No allowance is made for financial investigation to locate assets for subsequent confiscation.

As provides stated in the CPC, property shall only be frozen and seized if evidence collected in the criminal case sufficient grounds for doing so, and on the basis of a court decision. Provisional measures to freeze and seize assets are a key tool to safeguard the value of assets for any confiscation order.

Access to bank data is narrowly stipulated by this Code in articles 134 and 177 in more general sense. Article 134 provides regulation for making and keeping records of certain prosecution and court proceedings, while Article 177 is "catch all" provision which stipulates number of different procedural measures were rights for forcibly carrying out of investigative procedures belongs to prosecuting authority which may, by force, carry out investigative procedures to guarantee the normal course of an investigation, and it may take measures to make participants wait for the start of these procedures and to prevent them from leaving the place where they are to be held. Paragraph 177.3.6 is allowing that the obtaining of information about financial transactions, bank accounts or tax payments and private life or family, state, commercial or professional secrets is a procedural action at disposal to the Public Prosecution.

Monitoring of bank accounts is generally provided in the same article 177 of the CPC in general terms. Articles 3, 7, 9 and 11 of Anti-money Laundering and Counter Financing of Terrorism Law in more details are providing measures to prevent the legalization of criminally obtained funds or other property and the financing of terrorism. These measures are including monitoring of bank account, but also authority competent for financial monitoring, transactions with funds or other property who can be monitoring subject, customer due diligence measures, submission of information to the financial monitoring authority etc.

Seizure and freezing of the assets is regulated by the said 177, and 242 to 247 article of the Criminal Procedural Code, with general provision regarding deprivation of the material gain from perpetrators of criminal acts. As provides stated in the CPC, property shall only be frozen and seized if evidence collected in the criminal case sufficient grounds for doing so, and on the basis of a court decision. Provisional measures to freeze and seize assets are a key tool to safeguard the value of assets for any confiscation order that may be made post-conviction.

Article 19 of the AML/CFT law stipulates assets freezing in the way that when financial monitoring authority identifies that the information submitted belongs to the designated person within the framework of combating the financing of terrorism as well as legal person being under control or subordination of that person or natural and legal persons acting on behalf of or according to the instructions of that person, the financial monitoring organ shall adopt a decision on initial freezing the assets within two working days. Assets should be frozen by the financial monitoring organ within 30 days.

There are no legal provisions for freezing, seizing and confiscating of criminal assets through **non-conviction based civil confiscation**. The property will only be frozen and seized if there is a reasoned request by the investigator, an appropriate submission by the prosecutor in charge of the procedural aspects of the investigation, sufficient prima facie evidence to confirm that there are sufficient grounds for doing so based on the evidence in the criminal case, and if there are substantiated reasons to freeze and seize the property.

Money laundering is stipulated by Article 193-1 of the Criminal Code. Legalization of criminally obtained funds and other property means conversion or transfer of funds or other property knowingly criminally obtained, in order to conceal an actual source of obtaining of such funds or other property or to assist a person committed a crime to evade responsibility, or financial transactions or other transactions using funds or other property that criminally obtained, for the same purpose. It also encircles harboring or concealing a true nature, source, location of funds or other property knowingly criminally obtained, their disposal, their movement, title to such funds or other property and themselves.

3.2.2 Institutional setup

At present asset recovery is the responsibility of several ministries and other governmental institutions. Azerbaijan, like many of its neighbours in the region, has not yet formally established a national central Asset Recovery Office (ARO). However, a **Department for the Coordination of Special Confiscation Issues (DCSCI),** established in June 2020 within the PGO,

is responsible for coordination of the activities of other structural units of the PGO to ensure special confiscation and assists them in detecting, tracking and seizing assets as well as international cooperation in connection with the return. The first stage of asset recovery is identifying the proceeds of crime. It should be noted that the identification and investigation are critical steps in the asset recovery process, as its success depends on the quality of supporting evidence of corruption cases. As indicated above, the legal base for the identification of criminal proceeds, property and other means used for the purpose of a crime are defined by the CC and other related legal documents.

The DCSCI sends inquiries to other government agencies to identify the property concerned, and after receiving relevant information, transmits them to the investigative bodies.

In Azerbaijan, there are a number of institutions mandated to conduct investigations: The Ministry of Internal Affairs (MIA); the State Tax Service under the Ministry of Economy; the State Security Service, the State Customs Committee, the PGO, the General Directorate for Combating Corruption (under the PGO), and the Ministry of Justice. Each of them has its own fixed competency defined by the Constitution, the CC and the CPC. The Anti-Corruption General Directorate under the Prosecutor General is well placed to provide operational support in these areas, by facilitating operational aspects of gathering evidence, financial analysis and asset freezing. There are analysts and investigators within the General Directorate specialised in financial analysis and investigation, providing reports including advice and recommendations to prosecutors and investigators on preliminary investigation material and criminal cases.

3.2.3 Virtual currencies

Although it has been recognised that the use of virtual currencies and blockchain technology represents an emerging global trend, and despite real concerns about fraud, money laundering and other illicit activities potentially involving the use of virtual currencies, **there is no specific regulation of virtual currencies in Azerbaijan**. There are, of course, regulations in place that would potentially be applicable to virtual currencies, but the real challenge seems to be how to classify virtual currencies, as they possess the characteristics of various types of assets (e.g., a unit of account, a commodity or a security), thus eluding traditional regulatory definitions.

Banking and money transmission

Generally, the **Banking Law** attributes the activity of monetary transmission (money transfer services or payment instruments) to be a licensable banking activity. Furthermore, the Law on Currency Regulation regards foreign currency exchange activities in Azerbaijan (i.e., engaging in the business of buying or selling foreign currencies) as an additional licensable activity in which only local banks, branches of foreign banks, certain licensed post offices and entities holding foreign currency exchange licences may engage.

The Law on Currency Regulation defines foreign currencies as money in the form of banknotes, treasury notes and coins in circulation that are legal tender in the territory of a foreign state or group of states. Although unlikely, it is possible that virtual currencies will be classified as a foreign currency, especially if they are recognised as legal tender in a foreign country.

Therefore, entities wishing to engage in the above-mentioned activities involving a virtual currency within Azerbaijan or, potentially, Azerbaijani residents, are likely to be prevented from doing so, unless the relevant licence has been obtained.

When it comes to money laundering and terrorism financing, Azerbaijani law does not seem to make any material distinction between transactions carried out using a fiat currency or a virtual currency (although the latter is not specifically mentioned). For instance, any transactions involving funds received from or transferred to anonymous accounts located outside Azerbaijan or transactions where the parties cannot be accurately identified, or in cases where the submission of identification information about a customer or beneficiary is denied, as well as where identification information about a customer or beneficiary is discovered to be false, are required to be reported to the Financial Monitoring Service.

The 1995 Azerbaijan Constitution proclaims the manat as the official currency of Azerbaijan and the only monetary unit that is recognised as legal tender within the territory of Azerbaijan. The Constitution recognises the exclusive authority of the Central Bank of Azerbaijan (the Central Bank) to issue banknotes and mint coins.

The Civil Code, the cornerstone of commercial law, goes even further by requiring that contractual monetary obligations between residents be denominated in manats. Finally, wages may also only be paid in manats.

As such, virtual currencies are not, and are very unlikely to become, legal tender in Azerbaijan. In fact, recognising them as such would most likely require amendments to the Constitution to be adopted in a nationwide referendum. It is not clear whether the authority of the Central Bank to issue banknotes and mint coins would include minting electronic coins for a cryptocurrency protocol backed by the Central Bank. Thus far, the Central Bank has not expressed any intention to engage in the minting of electronic coins and has described its position regarding a virtual currency as conservative.

In January 2018, it was reported that a working group had been established in Azerbaijan to develop a draft law on the regulation of trade in virtual currencies. However, it seems that no progress has been made to date.

3.2.4 Recommendations and conclusions

- **Adoption of the specific law** which will stipulate proceedings and authorities for seizing and confiscation of proceeds of crime and financial investigations

- **Setting up of the specialized law enforcement and criminal justice authorities** which will deal with cybercrime including cyber financial investigations and confiscation of illicit cyber dependent or related property
- **Consider regulating seizure and confiscation of virtual currencies** as they are increasingly used for money laundering.
- **Consider regulation of Virtual assets service providers** to implement FATF Recommendation 15 to strengthen the prevention of money laundering by new technologies.
- **Consider measures for better understanding and application in practice of existing legal provisions of CPC and CC on financial investigation**, seizure of property and confiscation of proceeds of crime (including value based confiscation and civil confiscation), such as training of practitioners from police, prosecution and judiciary, and development of additional guidelines.
- **National authorities should be encouraged** to put in place legislation that provides for the widest possible range of legal tools to facilitate the recovery of the proceeds from corruption.
- **Designate one or more competent authorities responsible for identification and tracing of assets**, which will later initiate freezing and seizure of assets for confiscation.
- **Establish a full-fledged national Asset Recovery Office** by upgrading the status of the DCSCI and granting it a new mandate would facilitate tracing of assets derived from crime, and improve the track record on asset seizure and forfeiture. A newly designed structure would provide an identifiable office for foreign law enforcement and prosecutors to relate to. This may encourage trust and familiarity between jurisdictions.
- **Setting up a specialized department within the DCSCI of General Prosecution Office with the responsibility to manage seized or restrained assets**, conduct pre-restraint planning and analysis, and coordinate post- confiscation realization or liquidation is crucial.
- **Eliminate legal and institutional obstacles and ensure direct access to databases and information systems of government agencies** (for example, the taxing authority, vehicle registry authority, land registry authority, business records authority, criminal records authority and related entities) in order to allow the DCSCI to provide law enforcement (police and prosecutors) with consolidated reports on the assets held by those suspected of serious criminal activity, as well as assets in the possession of their family members and/or possible associates
- **Enhance international cooperation on asset recovery and management**, by raising awareness of competent national authorities on existing networks and platforms, in particular, work of EU ARO Platform, which was established to ensure implementation of Decision of the Council of the European Union 2007/845/JHA of 06 December 2007 on cooperation between the offices for the assets recovery in the field of tracing and finding of proceeds of crime or other property related to crimes, and its subgroups.
- **Financial investigation capacity building** among all public institutions involved in investigation and prosecution to improve effective asset recovery in Azerbaijan

should be organized in sustainable way

- **Financial investigators should be established and embedded** within those institutions conducting investigations across all types of crime.

3.3 Georgia

Country: Georgia	
Financial investigation	113 (interview), 119, 120, 124 (search and seizure), 125 (inspection) and 136 (request for e-document) CPC
Access to bank data	136 CPC (request for e-document)
Monitoring bank account	124.1 CPC
Seizure and freezing	151 - 158 CPC
Confiscation	52 CC
Extended confiscation	x
Civil forfeiture	Chapter XLIV of Civil procedure law
Money laundering offence	194, 194.1 and 186 CC
Virtual assets	x

3.3.1 Legislation

Criminal procedure code of Georgia (CPC)[24] does not contain specific provision on **financial investigation.** General powers can be used for gathering information and evidence, relevant to the criminal case, which includes also tracing the proceeds of crime for the purpose of their confiscation, such as interview (article 113), search and seizure (articles 119-124), inspection (article 125) and request for electronic data (article 136). Access to **bank data** is not specifically regulated but the general provision on request for electronic document (article 136) might be used, while monitoring of bank account was regulated by amendment (article 124.1). Additional investigative measures are defined in Law on operative investigatory activities (LOIA)[25].

Seizure of property (including bank accounts) to ensure possible confiscation (forfeiture) is possible by court order based on a motion of a prosecutor (articles 151 -158). Article 151 allows for such seizure if there is information to suggest that the property will be concealed or destroyed, and/or the property has been obtained in a criminal way. If the property, obtained in a criminal way, cannot be found, the court may seize property, the **value of which is equivalent** to the value of the property in question. Property may be seized from accused person **or related persons**. *It is interesting that the prosecutor is obliged to file a motion to seizure only in case if accused person is an official*[26]. The property, intended to be used for the

[24] Criminal procedure code (2009 with amendments), https://matsne.gov.ge/en/document/view/90034?publication=137.

[25] Law on operative investigatory activities (1999 with amendments), https://matsne.gov.ge/en/document/view/18472?impose=original&publication=40.

[26] 151/1 CPC. To ensure the possible forfeiture of property, as a coercive measure of criminal procedure, the court may, upon motion of a party, seize the property, including bank accounts, of the accused, of the person materially responsible for the accused person's actions, and/or of the person related to the accused person, if there is information to suggest that the property will be concealed or destroyed, and/or the property has been

commission of criminal offence (instrumentality) can also be subject to seizure (article 151, paragraph 2). Since seizure of property is temporary measure to preserve its possible future confiscation a reference to the rules of civil procedure code is made (article 151, paragraph 4).
Seizure order is used by judge in 48 hours, except in urgent cases when the order can be issued by prosecutor and within 12 hours reviewed and confirmed by judge (article 154 and 155). The seizure order has to be delivered within 48 hours to the prosecutor, the accused and/or a person whose material rights have been violated, as they have the right to appeal (article 156).

Article 157 regulates the procedure for executing the seizure order, including in case of restriction of disposal of seized funds on bank account. It also determines that if the property was acquired or increased with the resources obtained in a criminal way, the entire property or its major part may be seized*. It seems that this provision permits relaxed link between the amount of the proceeds from criminal offence and the existing property.* According to article 157 the seizure can apply to the property of the accused, of a legal person and its subsidiary companies, accused person's family member, close relative, related person and/or of a racketeering group, regardless of the share of the accused in that property, provided that there is sufficient evidence to believe that the property or its part has been obtained as a result of racketeering. *It seems that property belonging to wider circle of persons can only be seized in case of racketeering, taking into account article 151 that also extends the seizure of property to related persons of the accused.*

According to article 158 the property shall be seized until a judgement is enforced, until a criminal prosecution and/or an investigation is terminated. *Seizure of property /proceeds of crime interferes with the Right to private property (Protocol 1 to the European Convention of human rights). The measure should be proportionate, which might include the limitation of duration of freezing and the periodical review of existence of the grounds for freezing.*

There is no specific provision on obligation to conduct financial investigation or to confiscate proceeds of crime (ex lege), however article 274 stipulates that operative part of a judgment of conviction shall include also a decision on the forfeiture and procedural confiscation of property.

Criminal code of Georgia (CC)[27] defines **confiscation of property** as a type of sentence (article 40) and provides legal basis for confiscation in article 52. Confiscation of criminally obtained

obtained in a criminal way. If there is information to suggest that the property has been obtained in a criminal way, but the property cannot be found, the court may seize property, the value of which is equivalent to the value of the property in question. If the accused is an official, under the conditions referred to in this paragraph, the prosecutor shall be obliged to file a motion with the court requesting the seizure of property (including bank accounts) of that official, also the suspension of the fulfilment of obligations assumed under agreements entered into by that official on behalf of the State, or the taking of other interim measures.

[27] Criminal code (1999 with amendments), https://matsne.gov.ge/en/document/view/16426?publication=235.

property (article 52, paragraph 3)[28] is conviction based and includes the fruits of proceeds as well as (legal) property that is equivalent in value. Definition includes direct and indirect proceeds. Confiscation from third persons is not specifically regulated in Criminal code, but in Criminal procedure code.

Criminal code incriminates **money laundering** in articles 194 (Legalisation of illegal income), 194.1 (Use, purchase, possession or sale of property acquired through the legalisation of illegal income) and 186 (Purchase or sale of property obtained knowingly by illegal means). The provisions are in line with the Warsaw convention standards. Moneyval rated that legislation is compliant with Recommendation 3 (money laundering offence).

According to **Moneyval Fifth Round Mutual Evaluation Report** (September 2020)[29] Georgia recognises the importance of confiscation and has the necessary regime in place to address this. Tracing and preserving assets is strongly promoted as a policy objective and measures have been taken to improve effectiveness in this area. While there are concerns about the application of provisional measures in some cases, Georgia has achieved a significant level of confiscation overall, and a wide range of criminal proceeds and instrumentalities is being confiscated, including property in third party hands

The application of value-based confiscation is limited and there are concerns about the understanding of some authorities in this respect.

The number of investigations generated from parallel financial investigations (by sources other than STRs), is modest. Georgia adopted its AML National risk assessment (NRA) in 2019. Subsequently it defined six priority tasks to promote effective management of ML/TF risks, among which are:

- Monitoring of parallel financial investigation practices for all income-generating offences;
- Improving the collection of statistics on the type and value of frozen, seized and confiscated property.

Civil (in rem) confiscation

In addition to the confiscation of proceeds of crime in the context of criminal procedure, Georgia introduced also **civil (in rem) confiscation that is regulated in Chapter XLIV of Civil procedure code**[30] titled Proceedings on the confiscation and transfer to the State of the property derived from racketeering activities, or property of officials, members of criminal

[28] Article 52/3 CC. Confiscation of criminally obtained property shall mean gratuitous deprivation in favour of the State from the convicted person of the criminally acquired property (all property and intangible assets as well as title deeds for property), also of any income from this property or of property that is equivalent in value. The court shall order the confiscation of criminally obtained property for all intentional crimes provided for by this Code if it can be proved that this property has been obtained criminally.

[29] https://rm.coe.int/summary-moneyval-2020-20-5th-round-mer-georgia/1680a032d7.

[30] Civil procedure code (1997 with amendments), https://matsne.gov.ge/en/document/view/29962?publication=148.

underworld, human traffickers, persons facilitating the distribution of drugs or property of persons convicted of the crime under Article 194 and/or Article 331.1 of the Criminal Code of Georgia (articles 356.1 – 356.7).

Under civil proceedings property is liable for confiscation if it is found to be derived from racketeering or from certain other specified offences (including ML under Art. 194 of the CC, but not to the other ML offences under Art. 186 and 194.1 of the CC). The same regime applies to the property, which is unjustified, owned by a person convicted in designated crimes, his/her family members, close relatives and associates if those parties cannot demonstrate the lawful origin of property, or, in the case of immovable property, that they have paid the necessary utility or land charges etc. for it. This effectively reverses the burden of proof for these cases[31].

In the case *Gogitidze and Others v. Georgia* (2015)[32], the European Court for Human Rights (ECtHR) held there had been *no* violation of Article 1 of Protocol No. 1. The case concerned the court-imposed measure of confiscation of property (not in a criminal procedure) belonging to the former Ajarian Deputy Minister of the Interior. The Court found that a fair balance had been struck between the means employed for forfeiture of the applicants' assets and the general interest in combatting corruption in the public service. The applicants had not been denied a reasonable opportunity of putting forward their case and the domestic courts' findings had not been arbitrary. The Court also emphasized that the legislative amendment of 13 February 2004 introducing the administrative confiscation procedure had considerably helped Georgia to move in the right direction in combatting corruption.

3.3.2 Institutional aspect

According to CPC Article 34 the **investigative authorities** are the investigative divisions of the Ministry of Justice of Georgia, the Ministry of Internal Affairs of Georgia, the Ministry of Defence of Georgia, the Ministry of Finance of Georgia, the State Security Service of Georgia (including corruption cases) and the State Inspector's Office.

Financial investigation is conducted by criminal police and district prosecutors that can propose provisional measures to secure confiscation. There are no specialized units that would conduct financial investigation in parallel to criminal investigation.

The General prosecutor office, Criminal Prosecution of Legalisation of Illegal Income Division (GPO AML Division)[33] is the only LEA primarily focused on detection and investigation of ML, and the only one that prevalently uses financial intelligence for investigation of ML. Other LEAs use financial intelligence mostly to investigate proceeds generating crimes and only rarely to investigate complex ML cases.

[31] Moneyval report 2020, page 184.
[32] Application number 36862/05, https://hudoc.echr.coe.int/eng?i=001-15439.
[33] https://pog.gov.ge/en.

In 2015 GPO issued the Recommendation "On Certain Measures To Be Carried Out In Criminal Proceedings" requiring all LEAs to conduct parallel financial investigations when investigating predicate offences. According to this recommendation, all investigators (from any agency) and prosecutors are required to pursue all necessary measures permitted under the CC to trace and identify property that might come within the scope of the criminal confiscation provisions at Art. 52 of the CC, and to ensure its seizure. It is also a part of 2017-2021 Prosecutor's Strategy applicable to all agencies with responsibility for investigating and prosecuting ML.

GPO is engaged in cooperation in the framework of CARIN since 2012 and EU AROs since 2016. Since 2018, the GPO has established direct cooperation on cybercrime and electronic evidence with multinational service providers (such as Facebook, Apple and Microsoft)[34].

Georgia has agreement on cooperation with Europol since 2017 and Eurojust since 2019.

Financial Monitoring Service (FMS)[35] is Georgian financial intelligence unit with traditional powers and tasks according to the Law of Georgia on Facilitating the Suppression of Money Laundering and Terrorism Financing[36]. According to Moneyval 2020 report a requirement to obtain a court order (based on probable cause) to request financial intelligence from the FMS hinders effective collaboration between the FMS and the LEAs in supporting investigation of ML-related predicate offences. LEA access to financial intelligence held by the FMS was very limited (in 2019) followed by a lack of understanding by several LEAs as to the core role of the FMS and the potential analysis it can produce and provide. Since then, powers of some LEAs to request information from the FMS were enhanced.

During the C-PROC training on Financial investigation, Virtual currencies and Darknet in February 2022, the participants explained that there is no experience in seizing bitcoins or other VC or darkweb investigation. Selling drugs via Telegram is present in Georgia, but there is no cooperation from Telegram. Prosecutors mentioned self-laundering cases, in some cases also the use of shell companies and money mules for money laundering. No cases of money laundering were related to virtual currency. There are more than 40 BTC ATM machines in Georgia.

Management of seized property

There are no specific provisions for management of seized (or confiscated) property. However general provisions for the management of material evidence in CPC would apply (articles 79 and 80), including that property shall be kept under the conditions which prevent its loss and change of its properties. There are no provisions for situations where active management of property is necessary. Examples in the region of special law on management of seized and confiscated property might be useful for Georgia to explore[37].

[34] Moneyval report 2020, page 262.
[35] https://www.fms.gov.ge/eng/home.
[36] Law of 2019 with amendments, https://www.fms.gov.ge/Uploads/files/AML_CFT_Law_English_25.11.19.pdf.
[37] For Example Moldova Law no. 48 of 30.03.2017 on Criminal Assets Recovery Agency.

There is no specific Agency for management of seized or confiscated property in Georgia.

Based on responses from participants in training it appears that virtual currencies are present in Georgia and despite the lack of criminal cases involving virtual currencies the absence of legal (and technical) rules or guidelines on how to seize, manage and sell seized or confiscated virtual currencies might present serious obstacle for practitioners to target such property, derived from criminal offences or used for money laundering, as well.

3.3.3 Virtual currencies

Virtual currencies are increasingly used for money laundering purposes, especially ones that increase anonymity, such as privace coins,

Virtual currencies are not specifically regulated in Georgia in the context of criminal law, but there are no legal obstacles to consider them according to the definition of "property" in CC, that is liable to seizure and confiscation. There is no specific regulation on Virtual assets service providers (VASPs) to implement revised FATF recommendation 15. VASPs are not considered as obliged entities under AML legislation.

3.3.4. Recommendations and conclusions

<u>Moneyval recommendations (2020, excerpts)</u>

Related to Immediate Outcome 7 (ML investigation and prosecution)

- Georgia should improve the effectiveness of parallel financial investigations, such as, by appointing specialist financial investigators and assigning prosecutors who are financial crime specialists to assist the LEAs on parallel financial investigations, making greater use of interagency teams (especially involving tax and customs investigators) and issuing detailed guidance by the GPO on financial investigations. …

Related to Immediate Outcome 8 (Confiscation)[38]

- Georgia should review the practices of all authorities in connection with emergency freezing measures, to ensure that their respective powers to freeze or seize property urgently are applied in a consistent and effective way.
- Georgia should make a greater use of value-based confiscation and the range of assets confiscated as instrumentalities should be widened. This should be supported by guidance and training on value-based confiscation and instrumentalities, to all authorities, including the judiciary, and by maintaining specific statistics in these areas.

[38] Ibid., page 50. Note that the fifth round of Moneyval's mutual evaluation focused primarily on efficiency of mechanisms and system.

- Georgia should review the new regime for cross-border declarations and take the necessary steps to ensure that there are no obstacles to confiscating non-declared or falsely declared cash or BNIs or removing them from the party in breach through a fine.
- The GPO should supplement the Prosecutors' Strategy to include taking forward nonconviction-based confiscation as a policy objective, accompanied by guidance and training on this.

Conclusions

- Relevant legislation is in general compliant with the international standards.
- Consider reviewing proportionality of provisions on duration of seizure of property prior to confiscation (Article 157 CPC).
- Consider the necessity for court order to receive information from FMS in the context of financial investigation and/or money laundering investigation.
- Consider regulating seizure and confiscation of virtual currencies as they are increasingly used for money laundering.
- Consider regulation of Virtual assets service providers to implement FATF Recommendation 15 to strengthen the prevention of money laundering by new technologies.
- Consider introducing specialization in the Police and prosecution service for financial investigation.
- Consider strengthening legal and institutional framework for management of property (AMO).
- Consider measures for better understanding and application in practice of existing legal provisions of CPC and CC on financial investigation, seizure of property and confiscation of proceeds of crime (including value based confiscation and civil confiscation), such as training of practitioners from police, prosecution and judiciary, and development of additional guidelines (taking into account also 2015 GPO Recommendation).

3.4 Moldova

Country: Moldova	
Financial investigation	CPC Art, 57(2)1,9; 229-1 – 229-4, 258
Access to bank data	CPC Art 126, 132-2, 132-3
Monitoring bank account	CPC Art 132-2, 132-3
Seizure and freezing	CPC Art 202, 203, 204, 205,
Confiscation	CC Art 98, 106, 106-1,
Extended confiscation	CC Art 106-1 (2) value confiscation (3) third-party confiscation
Civil forfeiture	-
Money laundering offence	CC Art 243
Virtual assets	No separate definition. Covered by the general definition of property provided by the CC Article 132-1 and AML Law Article 3

3.4.1 Legislation

Criminal procedure code of Moldova pays contains provisions on financial investigations that can be conducted in parallel to the criminal investigation. Pursuant to the CPC Article 57, the officer conducting criminal investigation needs to take measures in order to identify lost property. More detailed measures and procedures are regulated by Articles 229-1 to 229-7, including grounds for financial investigation, powers and procedures. In addition measures related to management and use of retrieved property have been provided. The asset recovery proceeding consists of the following phases:

- identification and tracing the property;
- measures to seize or freeze property;
- confiscation and compensation of damages;
- return and repatriation of property.

Authority conducting criminal investigation can start parallel financial investigation. Financial investigation can be started only for certain criminal offences that have been provided by the CPC. Law enforcement authority conducting investigation cooperates also with the Criminal Assets Recovery Agency (CARA).[39] Pursuant to the **Law No 48/2017 on CARA,** CARA is an independent body under the National Anticorruption Center and has been given a task to conduct financial investigations (Law on CARA Articles 5,6, 9). Both the CPC and the Law on CARA include measures related to identification, seizure and freezing as well as recovery of property. While the CPC contains generic measures that can also be used for financial investigation purposes such as orders for information and documents, search and seizure, special investigation techniques. The latter also including explicitly access to financial

[39] https://www.cna.md/tabview.php?l=en&idc=121&t=/CARA/About-CARA&

information, access and monitoring of transactions. The Law on CARA, however, contains more specific investigation measures that include requesting information from persons and taking measures to seize and freeze property. Pursuant to the Law on CARA Article 9, financial investigations are conducted in compliance with the requirements of the CPC.

There are no limitations provided by the legislation and therefore orders for financial information and monitoring could be addressed to any person in order to obtain information of evidentiary value for the purposes of financial investigation.

The CPC contains broad powers to seize and freeze property including for the purposes of later confiscation. Seizure may take place by using financial investigation powers (CPC Articles 229-1 and 229-2) as well as general procedural powers (CPC Article 202-205). Authorities conducting investigation can order seizure and freezing by themselves during the pre-trial investigation phase. During the trial phase it would be decided and ordered by the court. In addition to investigative authorities also CARA has also the right to decide upon seizure and freezing. CARA can order freezing of property by itself for the period of up to 15 days. For seizure request for court order needs to be submitted according to the procedures provided by the CPC.

The Criminal Code provides for a possibility for special confiscation (CC Article 106) and extended confiscation (CC Article 106-1). While the special confiscation addresses measures including confiscation of tools, objects used, crime proceeds and derivatives, the extended confiscation can also be used to order value-based confiscation and confiscation from third parties. Pursuant to the CPC, confiscation is ordered by the court.

There is no separate definition for virtual currencies or virtual assets. However, as the definitions that have been provided by the CC Article 132-1 and **Law no 308/2017 on prevention and combating money laundering and terrorism financing/AML Law** Article 3, it can be concluded that these could cover any type of property or goods, including virtual assets.

The Office for Prevention and Combating of Money Laundering (Financial Intelligence Unit)[40] is an independent body established pursuant to the AML Law. The purpose of the FIU is to prevent and combat money laundering and terrorism financing and contribute to ensuring the security of the state in accordance with the AML Law. In order to fulfill its duties the FIU applies measures for identification, tracing, freezing, seizing and confiscation of goods obtained from money laundering, other from associated offences, from terrorism financing and proliferation of weapons of mass destruction. The FIU can also impose provisional measures and order freezing of suspicious activities and transactions for up to 30 working days. If this period expires a court decision is needed to prolong the freezing.

Money laundering offence has been provided by the CC Article 243.

[40] http://spcsb.cna.md/en/page/about

3.4.2 Institutional aspect

The criminal investigating bodies of the **Ministry of Interior** conduct criminal investigations of offences that are not assigned by law to the area of jurisdiction of other investigating agencies.

The Public Prosecution Service is a public institution within the judicial authority, contributing to the observance of the rule of law, act of justice, protection of rights and legitimate interests of individuals and society.
It includes

i) the General Prosecutor's Office,
ii) specialised prosecutor's offices and
iii) territorial prosecutor's offices.

The General Prosecutor's Office (GPO), upon the decision of the Prosecutor General, conducts the criminal investigation, and represents the accusation in courts, in cases of great importance. The territorial prosecutor's offices lead the criminal investigation in cases relating to offences where the criminal investigation is performed by the territorial criminal investigating bodies of the Ministry of Interior.

The Prosecutor's Office for Combating Organised Crime and Special Causes as a specialised prosecution office,

i) performs the criminal investigation in cases relating to torture, terrorism offences and offences committed by a criminal organisation, as well as in other cases given in its competence by the law;
ii) leads the criminal investigation in cases relating to offences where the criminal investigation is performed by the criminal investigating units of the central specialised bodies of the Ministry of Interior;
iii) performs or leads the criminal investigation in cases submitted to it for further handling by the Prosecutor General; and
iv) represents, in all above- mentioned cases, the accusation in the court of first instance, courts of appeal, courts of cassation.

The Anticorruption Prosecutor's Office is a specialised prosecution office, which

i) performs the criminal investigation in cases given in its competence by the law;
ii) leads the criminal investigation in cases where the criminal investigation is performed by the National Anti- corruption Centre; and
iii) represents, in the above-named cases, the accusation in the courts of first instance, courts of appeal, and courts of cassation.

The National Anticorruption Centre[41] is the authority specialised in the prevention of and fight against corruption, corruption-related acts and corruptible deeds, including money

[41] https://www.cna.md/index.php?l=en

laundering. Within the centre, **Criminal Assets Recovery Agency (CARA)**[42] is responsible for the recovery of assets obtained including through corruption and money laundering.

The Office for Prevention and Fight against Money Laundering (FIU)[43] is an independent public authority, functioning as an autonomous and independent specialised authority. It's activities are regulated in accordance with the AML Law laying down the operating principles, legal framework, objectives and functions operating controls, inter-institutional cooperation framework, rights and duties for employees, other responsibilities, funding and other issues.

Management of seized property

The CPC contains regulations on the procedures, assessment, storage and management of seized property (CPC Articles 206, 207, 207-1, 207-2, 208). In addition to investigative authorities, it is also the task of CARA to assess, keep records and manage seized assets. CARA also cooperates both at national and international level concerning its tasks and activities.

3.4.3 Virtual currencies

There is no separate legal definition for virtual currencies or assets. However, as both CPC and AML Law contain a broad generic definition for property and goods, they cover also virtual currencies and assets.

The CARA has also confirmed[44] that an effective mechanism exists for both tracking and seizing of property, including confirmed cases related to seizure of virtual assets.

3.4.4. Recommendations and conclusions

Moneyval priority and recommended actions (excerpts, 2019):

MONEYVAL has conducted the evaluation for Moldova in 2019 and found that the money laundering offence was in line with international standards, including relevant UN conventions and FATF recommendations and only minor deficiencies occurred.
With regard to the powers and procedures related to seizure and confiscation, no deficiencies were identified.

MONEYVAL highlighted also the following key findings and recommended actions from which some of them are of high relevance also to the present study.

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[42] https://www.cna.md/tabview.php?l=en&idc=121&t=/CARA/About-CARA&
[43] http://spcsb.cna.md/en/page/about
[44] https://www.cna.md/libview.php?l=en&idc=222&id=4200&t=/CARA/Press-releases/Virtual-money-in-the-list-of-assets-seized-by-the-Criminal-Assets-Recovery-Agency

- The FIU changed its position from a specialised independent Division within the Centre for Combating Economic Crime and Corruption to an autonomous public body. The FIU plays a central role in the AML/CFT system and has broad and unhindered access to information sources to develop financial intelligence which is used by LEA to collect evidence on ML and other crimes.
- LEAs have a sound ability to conduct financial investigations at the criminal intelligence stage. In practice, the APO, the NAC and the PCCOCS make use – to a certain extent - of financial intelligence in ML and proceeds generated cases.
- The significant and high-profile fraud and ML schemes Moldova faced in the recent years had an impact on the attitude of the LEA and other stakeholders vis-à-vis ML investigations, prosecutions and convictions. The authorities demonstrated a proactive approach in applying a variety of investigative techniques in ML cases, including multidisciplinary investigative teams, special investigative techniques and instruments of international legal cooperation.
- Parallel financial investigations are carried out, and are considered a priority for the prosecution services, following the General Prosecutor's instructions from April 2017. The criminal investigative officers in NAC are trained extensively on financial matters (part of training done abroad) but there is a deficit of specialised trainings for other LEA. The cooperation between authorities was described as constant and effective by all the parties involved.
- Moldova has in place a two-tier confiscation system, which includes both special and newly introduced extended confiscation and which, applies to both natural and legal entities. Provisional measures are available. At the early stage of the process, significant amounts are sequestrated by various LEA. The mechanism to apply extended confiscation was recently implemented and the prosecutors demonstrated sufficient awareness on its application, but at the time of the on-site visit, the results are not substantial. The authorities were able to demonstrate various forms of confiscations: from instrumentalities, foreign proceeds, equivalent value and proceeds located abroad.

Recommended actions that were proposed included inter alia the following.

- LEAs should enhance their resources and capacities to conduct financial investigations and make more effective use of financial intelligence (financial experts, forensic accountants, IT hardware and IT software).
- Consistently employ its legislative framework to the fullest extent, to raise the effectiveness of seizing (sequestration) followed by confiscation of proceeds to higher degree, in particular regarding extended confiscation.
- Take measures to enhance effectiveness the criminal asset recovery system. Adopt the National Strategy on criminal assets recovery.
- Take further measures to ensure the availability of reliable and reconciled statistical data on sequestrated and confiscated assets for ML and proceeds generating offences to monitor the effectiveness of results with a view to increased effectiveness.

- Strengthen the capacity of investigators (including CS), prosecutors and judiciary by providing continuous training in the field of asset sequestration, confiscation and management.
- Continue to enhance CARA's asset management capacities.

Conclusions

Moldova has established an effective system in terms of financial investigations and asset recovery. Financial investigations are mandated by legislation and law enforcement authorities together with CARA are conducting this. .

Still there is an impression that most of these financial investigations include cases that are being conducted/lead by Prosecutor's Office for Combating Organised Crime and Special Causes and The Anticorruption Prosecutor's Office. In addition the mandate for CARA seems a bit limited and attention is paid only to corruption and money laundering cases.

Therefore, Moldovan authorities could consider ensuring that financial investigations are also carried out by regional prosecutor's offices and attention should be paid also to other crimes, including cybercrime, fraud etc.

Moldovan authorities have demonstrated how CARA can contribute to financial investigations and identify assets. Therefore, it is also recommended to consider extending the scope of application of CARA, so it could address also other criminal investigations than only corruption and money laundering.

3.5 Ukraine

Country: Ukraine	
Financial investigation	CPC Art 170 AML/CFT Law Art 25
Access to bank data	CPC Art 170 AML/CFT Law Art 27
Monitoring bank account	CPC Art 269-1
Seizure and freezing	CPC Art 167 CPC Art 170 CPC Art 234 AML/CFT Law Art 22
Confiscation	CC Art 96-1. CC 96-2. CPC Art 96-8. CPC Art 100
Extended confiscation	CC Art 96-2(2) – value confiscation CC Art 96-2(4) – third-party confiscation
Civil forfeiture	Civil Procedure Code Art 290
Money laundering offence	CC Art 209
Virtual assets	AML/CFT Law Art 1(1)13 Civil Procedure Code Art 290(8)1

3.5.1 Legislation

Although **Criminal Procedure Code** doesn't explicitly refer to "financial investigation", it has been addressed in CC Article 170. Pursuant to paragraph 2, the investigator or public prosecutor shall take all necessary measures to identify and search for property that may be attached in criminal proceedings, in particular by requesting the necessary information from the National Agency of Ukraine for Detection, Search and Management of Assets Obtained from Corruption and Other Crimes, other government authorities and local governments, individuals and legal entities.

In addition, financial investigations have been addressed in the **Law on Prevention and Counteraction to Legalisation (Laundering) of Criminal Proceeds, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction (AML/CFT Law)**. Pursuant to the AML/CFT Law Article 25 the tasks of the FIU include: collecting, processing and analysing (operational and strategic) information on financial transactions subject to financial monitoring, other financial transactions or information that may be related to the suspicion of legalisation (laundering) of criminal proceeds, terrorist financing or financing of proliferation of weapons of mass destruction.

Law on the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes (ARMA Law) provides a legal basis for the Agency

and sets it's tasks that include also taking measures on finding, tracing and evaluation of assets as requested by an investigator, detective, prosecutor or court; arrangement of measures related to evaluation, accounting and management of assets and related cooperation with other authorities (ARMA Law Article 9).

For the purposes of criminal and financial investigations procedural measures provided by the CPC and ARMA Law are available, including right to obtain information and documents from persons.

CPC Article 170 enables access to banking information. Search as a generic measure (Article 234) can also be used if deemed necessary. On monitoring bank accounts the CPC has a specific provision in Article 269-1. Prosecutor can request a ruling from a court if bank account is being used for criminal acts or if it necessary to collect information for the purpose of search or identification of property. However, the scope of the current measure is rather limited and it is available only for the National Anti-Corruption Bureau investigations.

ARMA Law Article 10 explicitly stipulates that the agency has right to obtain information constituting bank secrecy. Pursuant to Article 15 the ARMA cooperates with investigation authorities, prosecutor's office and courts by:

- fulfilling their requests with regard to the issues on finding, tracing, evaluation and management of assets, and the requests for enforcing the decisions of foreign competent authorities on seizure and confiscation of assets;
- facilitating the search for appropriate premises and sites for storage of assets, seized in criminal proceedings or in the case of the establishment of the unfounded nature of assets, and which are not managed by the agency;
- providing clarifications, methodological and advisory assistance with regard to the issues on finding, tracing, evaluation and management of assets.

Both the CPC (Articles 100, 170) and ARMA Law also contain detailed provisions on the assessment, storage and management of seized property. The ARMA is a dedicated authority for this purpose and therefore has also a specific competence to manage the property and make relevant decisions related to that (in particular ARMA Law Articles 19, 20, 21, 22, 23, 24). The ARMA is also responsible for forming and keeping a central database on seized property – Unified State Register of Assets seized in Criminal Proceedings (Article 25).

The FIU can request information and documents, including banking information on the basis of the AML Law Article 27. Pursuant to Articles 23 the FIU can suspend financial transactions for a period of up to 7 days. After the expiry of the suspension period, a decision needs to be taken pursuant to the CPC. The FIU has also power to freeze assets (Article 22), but only with regard to assets related to terrorism and its financing, proliferation of weapons of mass destruction and its financing.

Criminal Code provides the legal basis for confiscation of property in the criminal proceedings. Both value confiscation and third-party confiscation is regulated by CC Articles 96-1 and 96-2. For confiscation a court order is always needed.

Civil Procedure Code complements the confiscation framework referred above and enables confiscation of assets considered unfounded and their recovery to the state revenue. Pursuant to the CivPC Article 290 a claim needs to be submitted by the prosecutor of the Specialised Anti-Corruption Prosecutor's Office

Money laundering offence has been provided by the CC Article 209.

3.5.2 Institutional aspect

The **National Police of Ukraine** is under the command of the Minister of Internal Affairs. The NP is responsible for police services, state migration and state border services. Its main functions include, inter alia, undertaking the necessary operative-investigatory measures for the prevention, detection and investigation of crime, protection of public and private property, and maintenance of law and order. The departments within the NP responsible for the pre-trial investigation of ML are mainly the Department for the Protection of the Economy, Department responsible for Combatting Cybercrime, Department responsible for Combatting Drug Crimes, Department responsible for Combatting Human Trafficking.

The Security Service of Ukraine is a special-purpose law-enforcement agency, which is entrusted with the security of the state and is also responsible for serious crime, organized crime, cybercrime and money laundering cases.

The National Anti-Corruption Bureau of Ukraine (NABU)[45] is a state law enforcement agency with the key objective of preventing, exposing, stopping, investigating and solving corruption-related offences committed by high officials, and averting new ones.

The Prosecutor General's Office of Ukraine[46] supports the prosecution in court on behalf of the state; represents the interests of individuals or the state in court in the cases stipulated by law; supervises detective operations, inquiries and pre-trial investigations; supervises the enforcement of court judgments delivered in criminal cases, as well as in application of other coercive measures related to restraint of individual personal liberty.

The Specialised Anti- Corruption Prosecutor's Office was established within the structure of the PGOU. SAPO is an independent structural unit of the PGOU. The main tasks and functions of SAPO include supervising pre-trial investigations conducted by the National Anti-Corruption Bureau of Ukraine (see below).

[45] https://nabu.gov.ua/en
[46] https://www.gp.gov.ua

National Agency of Ukraine for finding, tracing and management of assets derived from corruption and other crimes (**Asset Recovery and Management Agency or ARMA**)[47] is a special governmental body, authorized to formulate and implement state policy in the sphere of tracing, finding of assets that are subject to seizure and that are aimed to be seized, as well as management of seized assets in criminal proceedings. The objective of the ARMA is to improve mechanisms for tracing and finding of assets which illegally withdrawn from Ukraine as a result of corruption and other crimes, and development of transparent and effective mechanisms for managing of seized assets. ARMA is also involved in international cooperation on this matter and cooperates with different organizations and networks, including the field of finding, tracing and management of assets, including with the Camden Asset Recovery Inter-Agency Network (CARIN.

The State Financial Monitoring Service (FIU)[48] is an administrative-type of FIU and has the status of an independent central executive agency. It is the leading authority in the AML/CFT system in Ukraine and is empowered to implement and coordinate the national AML/CFT policy. It conducts typical FIU activities but also supervises real estate agents. According to its statute, the activities of the FIU are regulated and coordinated by the CoM through the Minister of Finance.

3.5.3 Virtual currencies

Ukrainian legislation has addressed also virtual currencies or virtual assets. Although the CPC doesn't address this issue, sufficient definitions have been provided by the AML Law and Civil Procedure Code. Such an interpretation has been used also for the criminal investigation and financial investigation purposes.

3.5.4. Recommendations and conclusions

Moneyval priority and recommended actions (excerpts, 2019):

MONEYVAL has conducted the evaluation for Ukraine in 2017 (follow-up reports in 2019 and 2020) and found that the money laundering offence was largely in line with international standards, including relevant UN conventions and FATF recommendations. Few deficiencies were identified wit regard to the scope of application of the offence.
With regard to the powers and procedures related to seizure and confiscation, it was concluded that most of the necessary elements were covered. Minor problems that were identified were related to the somewhat limited scope of the value confiscation and lack of mechanisms for systematic management of seized property.

[47] https://arma.gov.ua/en/mission
[48] https://fiu.gov.ua/en/pages/pro-sluzhbu/zagalni-vidomosti/pro-derzhfinmonitoring.html

MONEYVAL highlighted also the following key findings and recommended actions from which some of them are also of high relevance to the present study.

- The spontaneous dissemination of cases from the FIU regularly triggers investigations into ML, associated predicate offences or FT by LEAs. Most LEAs also regularly seek intelligence from the FIU to support their own investigative efforts. Cooperation among competent authorities is facilitated by a number of institutional mechanisms allowing for the timely and confidential exchange of financial information and intelligence with the relevant authorities.
- The number of ML investigations initiated by law enforcement compared with the increasing number of significant proceeds-generating offences is small, and ML indictments are declining.
- The confiscation legal regime has been updated and improved since the last evaluation through the introduction of special confiscation aimed at proceeds, though confiscation as an additional penalty remains available for many grave offences.
- There appear to be some problems in conducting financial investigations and a lack of resources for them across the board. In practice, thorough financial investigations in major proceeds-generating offences are few and far between, though considerable efforts are made in the biggest cases.

Recommended actions that were proposed included inter alia the following.

- Stop the decline in the number of ML indictments by ensuring that prosecutors advise LEAs to proactively follow the money in major proceeds-generating offences with a view to identifying how and by whom the proceeds are laundered. Identify specialized prosecutors dealing with ML to guide their colleagues in handling these cases (where they are not handling them themselves) and to advise as necessary on appeals against inappropriate sentences.
- LEAs should consider the creation of a dedicated team(s) of investigators specialized in financial investigations (financial investigators) and ensure their close cooperation with specialized prosecutors in matters relating to ML. Law enforcement authorities should conduct on a regular basis training for more law enforcement officers on pursuing effective financial investigations in parallel with the predicate offence.
- Develop short and clear mandatory instructions for prosecutors on when and how to direct law enforcement authorities to pursue financial investigations in major proceeds-generating cases.
- NABU needs to place emphasis on the ML aspects of its corruption cases involving senior officials and to recruit and train more skilled financial investigators.
- Financial investigations into the sources of alleged proceeds should be routinely undertaken in proceeds-generating cases using trained financial investigators working in parallel with the investigators of the predicate offences. Financial investigations should not simply be reserved for the biggest cases. The prior recommendation under

IO 7 for the creation of dedicated teams of financial investigators as resources to all law enforcement bodies is re-iterated also in the context of IO8.

- The authorities should ensure that early restraints are routinely made in all proceeds-generating cases. In this context it should be considered whether investigators should have the power of early restraint, subject to fast tracked reviews of such restraints by the prosecutors.
- There should be developed between the Judiciary and the PG a workable policy on the level of evidence needed to determine whether assets were the proceeds of crime, after conviction for proceeds-generating criminal offences. This policy should be consistently applied by the courts. To ensure that confiscation is always raised at the conclusion of trials for proceeds-generating offences, the PG should issue directions to all prosecutors in this regard. In the longer term, the authorities should decide whether the law needs amending to include a clause on the confiscation issue in the indictment.
- The PG should ensure that all supervising prosecutors in proceeds-generating cases are trained in modern financial investigative techniques and are capable of directing investigating officers in financial investigations where necessary. More focused guidance on the importance of early restraint and confiscation of proceeds should be issued to all prosecutors.

Conclusions

Ukraine has established an effective system for financial investigations and asset recovery.

While it seems that most of the financial investigations are carried about by NABU together with ARMA, the authorities could consider covering also other law enforcement authorities and prosecution services and include them in the cooperation.

Although the CPC indirectly refers to financial investigations, explicit reference and clear mandate or obligation would create additional added value.

The authorities could also analyse the provisions enabling obtaining data, incuding banking information. In addition to NABU, also other law enforcement authorities and prosecution services could benefit from such clear and explicit powers while investigating serious and organised crime, cybercrime etc.

4. CONCLUSIONS

The legislation on search, seizure and confiscation of proceeds of crime of assessed countries is in general terms mostly in line with the international standards (namely Council of Europe Warsaw convention, CETS 198). Some countries introduced extended confiscation or civil confiscation regimes.

Management of seized and confiscated property needs more attention (legal framework and creation of ARO/AMO), especially in relation to seizure and management of virtual currencies that can appear as proceeds of crime. Some countries established Asset management agencies.

The application of legislation in practice is however at a different level in different countries. Strategic approach that would include relevant stakeholders (police, prosecutors, judiciary, FIU and others) could be complemented by awareness raising activities and training.

In some countries legislation has clear reference and mandate on financial investigation that should be conducted in parallel with the criminal investigation. This practice could also be recommended to other countries. Countries who have ARO-s with clear mandate, have also demonstrated their abilities to identify and seize assets at both national and international level. Countries who haven't done so, should also consider joining the CARIN network.

ANNEX: RELEVANT LEGAL PROVISIONS

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1. ARMENIA

https://www.coe.int/en/web/octopus/country-wiki-ap/-/asset_publisher/CmDb7M4RGb4Z/content/armenia/pop_up?_101_INSTANCE_CmDb7M4RGb4Z_viewMode=print&_101_INSTANCE_CmDb7M4RGb4Z_languageId=en_GB

1. CRIMINAL CODE (2003)

http://www.parliament.am/legislation.php?sel=show&ID=1349&lang=eng
http://www.irtek.am/views/act.aspx?aid=150015 **(1.7.2022, Armenian)**
(Note: The " Criminal Code of the Republic of Armenia " adopted on 05.05.2021 has been put into effect since July 1, 2022 - Law 09.06.22 HO-144-N) – not available in English on legislation website).

Article 55. Seizure of property

1. Confiscation of property is the compulsory and gratuitous taking of the property considered the property of the convict into the ownership of the state.

2. The amount of confiscation of property is determined by the court, taking into account the amount of property damage caused by the crime, as well as the amount of property acquired through criminal means. The amount of confiscation of property cannot exceed the amount of the damage caused by the crime or the benefit obtained by criminal means.

3. Confiscation of property may be ordered for serious and particularly serious crimes committed with selfish motives in the cases provided for in the Special Part of this Code. ↩:

4. (Part 4 has lost its force since 28.10.2014 - Law HO-114-N of 21.06.14) ↩

5. (Part 5 has lost its force since 28.10.2014 - Law HO-114-N of 21.06.14) ↩

5.1. (Part 5.1 has lost its force since 28.10.2014 - Law HO-114-N of 21.06.14) ↩

6. The property necessary for the convict or the persons under his care is not subject to confiscation in accordance with the list defined by the law . ↩:

7. (Part 7 has lost its force since 28.10.2014 - Law HO-114-N of 21.06.14) ↩

(Article 55 amended by Laws dated 28.11.06 HO-206-N , 23.05.11 HO-143-N , 21.06.14 HO-114-N)

Article 103.1. Confiscation (2014)

1. Any property directly or indirectly generated or received as a result of the commission of a crime, the income or other benefits obtained from the use of such property, the tools and means used or intended for use in the commission of such a crime, as a result of which property was obtained, the property aimed at financing that terrorism income or other types of benefits from the use of property, in Articles 215.1 , 235.1 and 267.1 of this CodeThe contraband objects transported across the border of the Republic of Armenia by means of smuggling provided for in Articles, and in their absence, their equivalent property, except for the property of a bona fide third party, the property necessary to compensate the victim and the civil plaintiff for the damages caused by the crime, are subject to confiscation in favor of the state. ↩:

2. In the sense of this Code, a bona fide third party is considered to be a person who did not know or could not have known when handing over the property to another person that the property will be used or intended to be used for criminal purposes, as well as a person who did not know or could not have known when acquiring the property from another person. may know that the property was obtained through criminal means.

3. In the event that there is a dispute between the victim and a bona fide third party regarding the property subject to confiscation, the confiscation of that property can be carried out in civil proceedings.

4. In the cases provided for in this article, as well as in other articles of this code, any kind of material goods, movable or immovable objects of civil law, including financial (monetary) funds, securities and property rights, certifying property rights or interests are considered property within the meaning of these articles. documents or other assets, interest, dividends or other income derived from or accruing to the property, as well as related and patent rights.

5. In the case of the application of consent and cooperation proceedings, the rules set forth in this article are applicable, if nothing else is provided for in the protocol of consent or the agreement on pre-trial cooperation regarding the property subject to confiscation or its size, except for property whose circulation is prohibited or which poses a danger to persons and society, which is subject to compulsory confiscation in favor of the state. As a result of negotiations, the amount of the property subject to confiscation cannot be less than 75 percent of the value of the property subject to confiscation.

(Article 103.1 supplemented by Laws 21.06.14 HO-114-N , 16.05.16 HO-83-N , 05.05.21 HO-201-N)

Article 190. Legalization of criminally obtained property (money laundering) ↩

1. Conversion or transfer of criminally obtained property (if it is known that the property was obtained as a result of criminal activity) with the aim of concealing or distorting the criminal origin of the property or assisting a person to avoid committing a crime from liability, or concealing or misrepresenting the true nature, source of origin, location, disposition, movement, rights or ownership of property (if known to have been obtained as a result of criminal activity) or acquiring or possessing or using or disposing of property (if at the time of receiving that property, it was known that it was obtained as a result of criminal activity).

shall be punished by imprisonment for a term of two to five years. ↩:

2. The same act that was committed:

1) in large sizes,

2) with prior agreement by a group of persons

shall be punished by imprisonment for five to ten years with or without confiscation of property. ↩:

3. The act provided by the first or second part of this article, which was performed:

1) especially large sizes,

2) organized by the group,

3) using the official position:

shall be punished by imprisonment for six to twelve years with or without confiscation of property. ↩:

4. In this article, an amount (value) exceeding five thousand times the minimum wage established at the time of the crime is considered a large amount, and an amount (value) exceeding ten thousand times the minimum wage established at the time of the crime is considered a particularly large amount.

5. For the purposes of this article, the property provided for in Article 103.1, Part 4 of this Code , which directly or indirectly arose or was obtained as a result of the crimes provided for in this Code, is considered property obtained by criminal means. ↩:

(Article 190, amended 14.12.04 HO-16-N , 01.06.06 HO-119-N , 28.11.06 HO-206-N , 10.06.09 HO-149-N , 21.06.14 HO-84- N , 21.06.14 HO-114-N laws)

2. CRIMINAL PROCEDURE CODE

https://legalexpert.am/wp-content/uploads/2019/10/Armenia-Criminal-Procedure-Code-1998E-1.pdf
http://www.parliament.am/law_docs/010998HO248eng.pdf?lang=eng
new CPC in 2021: http://www.parliament.am/legislation.php?sel=show&ID=7747

NEW CRIMINAL PROCEDURE CODE (2021)

Adoption 30.06.2021, entry into force 01.07.2022

CHAPTER 15. ATTACHMENT OF PROPERTY

Article 131. Purpose of and Grounds for Attachment of Property

1. Attachment of property shall be applied in order to secure the compensation of the possible damage caused by the alleged crime or possible costs of proceedings, as well as the possible confiscation or forfeiture of the property.

2. Property may be attached, if any of the following grounds exists:

1) It has been substantiated by the preponderance of evidence that such property has directly or indirectly proceeded from or has been obtained as a result of a crime, or is the income or any other gain obtained from the use of such property;
2) It has been substantiated by the preponderance of evidence that such property has been an instrument or means used for or meant to be used for commission of a crime;
3) It has been substantiated by the preponderance of evidence that such property is a property designated for financing terrorist activity as prescribed by Article 310 of the Criminal Code of the Republic of Armenia, or an income or any other gain obtained from the use of such property;
4) It has been substantiated by the preponderance of evidence that such property is a smuggling object transferred across the border of the Republic of Armenia via commission of a smuggling act prescribed by Articles 291, 292, 340 or 399 of the Criminal Code of the Republic of Armenia;
5) There is a reasonable assumption that such property may be alienated, concealed, damaged, destroyed, or consumed.

3. In case of absence of the property envisaged by Clauses 1 to 4 of Paragraph 2 of this Article, the property equivalent to it may be attached.

Article 132. Property Subject to Attachment

1. The property of any person may be attached on the grounds envisaged by Clauses 1 to 4 of Paragraph 2 of Article 131 and by Paragraph 3 of Article 131 of this Code, whereas the property of the Accused or that of the person bearing pecuniary liability for the actions of the Accused, including the jointly owned property, regardless of the type of property and its possessor, may be attached based on the ground envisaged by Clause 5 of Paragraph 2 of Article 131 of this Code. In case of a joint shared ownership, only the respective share may be attached.

2. When determining the share of property to be attached for each of the several Accused persons, or each of the persons bearing pecuniary liability for their actions, the body conducting proceedings shall take into consideration the role and degree of participation of each of the Accused persons in the alleged crime.

3. The following shall not be subject to attachment:

1) Property that may not be the subject to forfeiture or confiscation pursuant to law;

2) Property recognized as physical evidence.

Article 133. Procedure for Attachment of Property

1. Within the course of preliminary investigation, the property shall be attached by a decision of the Investigator. Such decision and the materials substantiating it shall be submitted to the competent Court for approval within a three-day period. During the court proceedings, the property shall be attached by a decision of the Court.

2. The decision shall specify the property subject to attachment, its owner and possessor, the location of the property, as well as the property value that is sufficient for securing the purpose of the attachment.

3. In case of prima facie existence of the grounds envisaged by Clauses 1 to 4 of Paragraph 2 of Article 131 and by Paragraph 3 of Article 131 of this Code, the Investigator shall promptly attach the respective property.

4. The Investigator shall, against signature, provide the owner or the possessor of the property with the decision on attachment of property and shall require to surrender the property subject to attachment.

5. Attachment of property based on a court decision shall be performed in accordance with the procedure envisaged by the Law on Compulsory Enforcement of

Judicial Acts.

6. If adoption of a respective act by a state body or a legal person is required for attachment of property, then attachment of property shall be performed through the respective competent body or legal person.

7. The value of the property subject to attachment shall be determined by its market price, by an Expert involved for such purpose.

8. If the decision does not specify the property subject to attachment, then the owner or the possessor of the property who is present during the attachment shall be entitled to choose the property that is sufficient for complying with the requirements of the decision.

9. A protocol shall be composed on the fact of attachment of property, which shall specify the whole property that has been attached, including the property taken or left for preservation, with exact indication of the name, quantity, weight, state of depletion, value, other individual features, as well as the statements of the persons present during the attachment.

10. The copy of the protocol shall be served upon the owner or the possessor of the attached property against signature or, in case of his absence, upon any of his adult family members or the representative of the respective local self-government body. In case of attachment of property owned by or in possession of a legal person, the copy of the protocol shall be served upon its representative against signature.

Article 134. Preservation of the Attached Property

1. The attached property, with the exception of real estate and voluminous objects, shall be seized.

2. The precious metals and stones, foreign currency and securities exceeding the value of two hundred-fold of minimum wage shall be transferred to the Treasury of the Republic of Armenia for retention, whereas the Armenian Dram shall be paid in the deposit account of the Court that will have jurisdiction over the proceedings. The other objects that have been taken shall be sealed and kept with the body that has decided to attach the property, or shall be transferred to the representative of the local self-government body for retention.

3. The voluminous property that has been attached but not taken shall be sealed and left with the owner or the possessor of the property or their adult family member for preservation, whereas in case of impossibility thereof, shall be transferred to the competent state body upon the procedure prescribed by the legislation of the Republic of Armenia. The person responsible for preservation of the property, shall be provided with an explanation regarding the liability provided for by law for wasting, alienating, hiding or illegally transferring such property to other person, in respect of which his signature shall be taken.

Article 135. Duration of the Attachment of Property

1. Attachment of property shall remain effective until the entry into legal force of the conclusive procedural act rendered in the proceedings in question. The Court, of its own motion or upon the motion of the Victim or another interested person, shall be authorized to maintain the attachment of property after the completion of the criminal proceedings as well, till the enforcement of the judicial act.

2. During the proceedings, by a decision of the Investigator approved by the Supervising Prosecutor or by a court decision, the attachment of property shall be lifted, if circumstances indicating the necessity of terminating the attachment of the property have emerged.

3. The attachment of the object of bail may be lifted for the purpose of its sale, based on the decision of the body conducting proceedings rendered upon the motion of the depositor of bail, if:

1) It is not a property proceeded from a crime;
2) It is not a property designated for financing terrorism;
3) It is not a property necessary for compensation of possible damage caused to the Victim by the alleged crime and in relation to which the right to ownership or to bail is disputed in judicial proceedings by third parties.

The bail depositor shall transfer to the Court deposit the funds that remain after complying with the requirements of the bail depositor and deducting the expenses related to the sale of property.

Article 239. Seizure

1. Seizure is the taking of certain objects, substances, digital data or documents upon the Investigator's initiative, which are of significance to the proceedings and are located in a definitely known place or are held by a specific person.

2. The procedure of seizing documents containing state secrecy shall be agreed upon with the head of the respective state body.

3. Seizure of the mail or other correspondence may be performed if the respective correspondence is related to:

1) The natural person concerning whom there are facts indicating the commission of an alleged crime;

2) The Accused;

3) The natural person in relation to which there is a reasonable assumption that the Accused directly and regularly has communicated with him or the Accused reasonably has the chance to communicate with him;

4) The legal person in relation to which there is reasonable assumption that its activities fully or in the relevant part are managed, controlled or otherwise de facto directed by the person stipulated in the Clauses 1 or 2 of this Paragraph.

4. Documents or objects containing banking or related secrecy may be seized only in cases when they relate to:

1) The natural person concerning whom there are facts indicating the commission of an alleged crime;

2) The Accused;

3) The natural person in relation to which there is a reasonable assumption that direct connection exists between him and the person stipulated in the Clauses 1 and 2 of this Paragraph and the documents or objects containing banking or related secrecy immediately are related to those facts;

4) The legal person in relation to which there is reasonable assumption that its activities fully or in the relevant part are managed, controlled or otherwise de facto directed by the person stipulated in the Clauses 1 or 2 of this Paragraph and the documents or objects containing banking or related secrecy immediately are related to those facts.

5. The decision on seizure shall contain a brief description of the alleged crime on the occasion of which it has become necessary to perform the seizure, as well as the object to be seized and the time and place of performing the seizure.

6. Based on the decision on seizure, the Investigator and the persons participating in the investigative action shall enter into the building or the site where the seizure is to be performed.

7. Prior to the beginning of the seizure, the Investigator shall be obliged to familiarize the person, in whose premises the seizure is performed with the decision, and to provide him with a copy of the decision. His signature about such fact shall be taken.

8. After handing over the copy of the decision on seizure and publicizing the decision, the Investigator shall offer to present the object subject to seizure. In case of a refusal to present documents or objects containing medical, notary, banking or related secrecy without a reasonable justification, the Investigator shall be empowered to perform searching actions for the purpose of discovering them. In other cases, the performance of searching actions on the basis of a decision on seizure shall be prohibited.

9. If the object or document subject to seizure is in the materials of other criminal, judicial, or administrative proceedings, then a photo of the given object or a copy of the given document, signed by the person conducting the proceedings, shall be given to the Investigator. The original of the object or document may be given to the Investigator only for the purpose of performing an expert examination.

10. The digital data contained in the electronic devices or media shall be seized in view of copying them in other device by preserving the integrity of such data and the data being copied.

11. All seized objects shall be presented to the participants in the investigative action, described in detail in the protocol and, if necessary, packaged and sealed with the Investigator's seal.

12. A copy of the protocol of the seizure shall be handed to the person in whose premises the seizure has been performed or to his adult family member, against their signature. If the seizure has been performed in the premises of a legal person, institution, or detachment, then a copy of the protocol shall be handed to its representative.

Article 250. Monitoring of Financial Transactions

1. The monitoring of financial transactions is the secret observation of financial transactions carried out through banks or other financial institutions.

2. When performing the undercover investigative action envisaged by this Article, banks and other financial institutions shall be obliged, upon the request of the competent bodies, to provide the information necessary for ensuring the performance of the undercover investigative action.

CHAPTER 39. JUDICIAL SAFEGUARDS OF LIMITATION OF THE RIGHT TO OWNERSHIP

Article 294. Scope of Judicial Safeguards of the Legitimacy of the Limitation of the Right to Ownership

1. Within a due process of law established by this Code, the Court shall examine:

1)The motion on confirming the legitimacy of the decision of the Investigator on attachment of the property;

2) The motion on terminating the attachment of property.

Article 295. Initiation of the Proceedings to Verify the Legitimacy of Limitation of the Right to Ownership

1. Proceedings to verify the legitimacy of limitation of the right to ownership shall be instituted on the basis of the motion of the Investigator to confirm the legitimacy of a decision on attachment of the property, which motion shall be submitted to the Court within 3 days after attaching the respective property.

2. The motion of the Investigator shall contain:
1) The name of the competent Court;
2) The name, surname, and the position of the Investigator;
3) The year, month, day, hour, and minute of submitting the motion to the Court;
4) The sequential number of the proceedings;
5) The relevant personal data and the address of the owner of the attached property or other person having pecuniary interests in relation to it;
6) Description of the attached property;
7) The arguments substantiating the need for and the legitimacy of attaching the property;
8) If necessary, the request to examine the motion in the in-camera court session and the substantiation thereof;
9) List of the materials attached to the motion.

3. Attached to the motion shall be: a copy of the protocol on initiating the criminal proceedings, a copy of the decision on instituting criminal prosecution against the respective person, a copy of the decision on attaching the property, the document confirming the provision of a copy of the motion to the owner of the property or to other person having pecuniary interests in relation to it, as well as the copies of the necessary materials confirming the substantiatedness of the decision on attaching the property.

4. The Court, no later than on the day following the receipt of the motion, shall render a decision on instituting the proceedings for judicial verification of the legitimacy of limitation of the right to ownership, or on rejecting institution of such proceedings.

5. The decision to institute the proceedings shall indicate whether the proceedings will be conducted under written procedure, or, as envisaged by Paragraph 5 of Article 264 of this Code, under oral procedure. In case of conducting the proceedings under oral procedure, the decision shall indicate the place, the year, month, day and time of holding the court session, as well as whether it will be an open or an in-camera session. A copy of the decision shall be duly sent to the Investigator who submitted the motion, as well as to the owner of the attached property or other person having pecuniary interests in relation to it.

6. The Court session shall be scheduled within a seven-day period.

7. Institution of the proceedings shall be rejected in a substantiated manner, if any of the conditions set forth under Paragraphs 2 and 3 of this Article had not been observed. Rejection of the institution of the proceedings shall not be an obstacle for submitting a new motion.

Article 296. Conduction of the Proceedings to Verify the Legitimacy of Limitation of the Right to Ownership

1. Proceedings to verify the legitimacy of limitation of the right to ownership shall be conducted under written procedure and, in cases envisaged by Paragraph 5 of Article 264, under oral procedure. The examination of the motion conducted under oral procedure shall be performed in the form of court session with mandatory participation of the Investigator. The owner of the attached property or other person having pecuniary interests in relation to it, as well as their representative, and the Supervising Prosecutor shall be entitled to participate in such court hearings.

2. The court hearings may be conducted in the absence of the owner of the attached property or other person having pecuniary interests in relation to it, provided that they have been duly notified of the court session.

3. The court session to verify the legitimacy of the limitation of the right to ownership shall be open, provided that in the Court decision on institution of the proceedings, the Court has not decided to hold an in-camera session. In any event, the Court, on its own initiative or upon the motion of a party, may change, with substantiation, the decision on the openness of the court session prior to the court session or during thereof.

4. In the court hearings held for verification of the legitimacy of a limitation of the right to ownership, the Investigator shall be the first to provide an explanation, followed by the owner of the attached property or other person having pecuniary interests in relation to it, or their representative,

provided that such persons has appeared in the Court session. The opposite party, as well as the Judge shall be entitled to pose questions to the person providing an explanation.

5. The parties may present to the Court supplementary materials related to the subject matter of the proceedings. If they are not relevant, the Court shall not examine the supplementary materials, but shall be obliged to attach them to the proceedings. If they are relevant, the other party shall be given a reasonable opportunity to become familiarized with the supplementary materials.

6. The procedure of holding court hearings to verify the legitimacy of a limitation of the right to ownership shall, mutatis mutandis, be subject to the provisions of Section 8 of this Code.

7. Having concluded the court hearings, the Court shall retire to a separate room for rendering a decision. The decision in the result of the proceedings to verify the legitimacy of limitation of the right to ownership shall be rendered within the shortest time period possible but not later than within 15 days.

Article 297. Decision on the Motion to Confirm the Legitimacy of Limitation of the Right to Ownership

1. In a result of examining a motion to confirm the legitimacy of a decision on attaching the property, the Court shall render one of the following decisions:
1) A decision on rejecting the motion and revoking the decision of the Investigator on attaching the property;
2) A decision on granting the motion and confirming the legitimacy of the decision of the Investigator on attaching the property.

2. In case of the examination of the motion under oral procedure the conclusive part of the decision shall be publicized in the court session. The full decision shall be duly provided or sent to the participants in the court session no later than on the day following the publicizing or rendering of the decision.

Article 298. Motion to Terminate Limitations on the Right to Ownership and Its Examination

1. The owner of the property or other person having pecuniary interests in relation to it or their representative shall have the right, during the pre-trial proceedings, to submit a motion to the Court on terminating the attachment of property, not earlier than within 3 months upon the attachment of the property. A copy of such motion shall be sent to the Investigator conducting the pre-trial proceedings and to the Supervising Prosecutor.

2. The Court shall reject the institution of proceedings on the basis of a motion, if the motion has been submitted by an improper person or in an improper time frame, or if the motion does not contain any new essential arguments challenging the legitimacy of the attachment of property. Otherwise, the Court, upon the motion, shall institute proceedings by indicating in the decision whether the proceeding will be conducted under written procedure, or, as envisaged by Paragraph 5 of Article 264, under oral procedure. In case of conducting the proceedings under oral procedure, the Court session is scheduled within 7 days.

3. The examination of a motion envisaged by this Article, conducted under oral procedure, shall be held in compliance with the requirements set under Article 296 of this Code.

4. In a result of examining the motion, the Court shall render one of the following decisions:

1) A decision on rejecting the motion, if the Court reaches the conclusion that the conclusions on the legitimacy of the attachment of property remain grounded;

2) A decision on granting the motion partially or fully, and terminating the attachment of property partially or fully, if the Court agrees with the arguments stated in the motion.

5. In case of conducting the proceedings of the motion under oral procedure, the Conclusive part of the decision shall be publicized in the Court session. The full decision shall be duly provided or sent to the participants in the proceedings not later than the next day of publicizing or rendering the decision.

CHAPTER 44. SUPPLEMENTARY COURT HEARINGS AND RENDERING OF THE JUDGMENT

Article 345. Issues Subject to Discussion during the Supplementary Court Hearings

1. During the supplementary court hearings, the Court shall discuss:

… 4) The issue of solving the property claim;

5) The issue of compensating damages inflicted by the crime;

6) Issues related to the confiscation of property;

7) Issues related to the attachment of the property; …

2. The issue specified in Clause 1 of Paragraph 1 of this Article shall be discussed only in case of an acquitting verdict. The issues envisaged by Clauses 2, 3, 5 and 6 of Paragraph 1 of this Article shall be discussed only in case of a guilty verdict.

Article 348. Content of the Judgment

1. The judgment shall contain the answers to the following questions:

… 11) Whether the property claim is to be granted, in whose favour, and to what extent, and whether the inflicted pecuniary damages are subject to compensation, if a property claim has not been instituted;

12) Which property is subject to confiscation and to what extent;

13) Whether the attachment of the property applied will be terminated or, if no attachment of property has been applied, whether it is to be applied;

…

2. When rendering a judgment, the Court, based on the proven validity of the grounds and the amount of the property claim, shall grant the initiated claim fully or partially or reject it or leave it without resolution. In case of granting the property claim, the Court shall be entitled, prior to the entry of the judgment into legal force, to render a decision on undertaking interim measures for securing the claim, unless such measures had been undertaken earlier.

3. When rendering a judgment, the Court shall be empowered to apply, if necessary, the security measures prescribed under the Criminal Code of the Republic of Armenia.

4. In case of several Accused persons, the answers to all the relevant questions prescribed under this Article shall be stated separately for each of the Accused persons.

Article 445. Interim Measures Applied to the Legal Person

1. In order to prevent commission of a crime by the legal person, to ensure performance of the obligations imposed on it by this Code or under a court decision, as well as to ensure the compensation of potential damages caused by the alleged crime and of the costs of the proceedings, as well as to ensure possible confiscation of the property, interim measures may be applied in relation to the legal person.

2. The interim measures applied in relation to the legal person shall be the following:

…
2) Attachment of property;
…
3. An interim measure may be applied, if there is a reasonable suspicion that the alleged crime has been prima facie committed by the natural person for the benefit of the legal person or is related to his official activities.

4. When choosing the type of an interim measure, all the circumstances possibly ensuring or hindering the activities of the legal person shall be taken into consideration.

5. When resolving the issue of necessity of application or the choice of a type of the interim measure, the following shall be considered:

1) The nature of the activities of the legal person and the consequences caused by such activities;
2) The financial state of the legal person;
3) Status of the natural person in the management body of the legal person who is directly connected with the commission of the crime imputed to the legal person;
4) The measures taken by the legal person aimed at elimination of the consequences of the crime.
6. In relation to the interim measures specified under Clauses 1 and 2 of Paragraph 2 of this Article, the provisions of this Code on bail as a restraint measure and the attachment of property as a compulsory measure shall be applicable to a relevant part.

7. During the preliminary investigation, the interim measures prescribed under Clauses 3 to 6 of Paragraph 2 of this Article shall be applied upon the decision of the Investigator. Such decision and the materials substantiating it shall be submitted to the competent court within a 3-day period. During the court proceedings, the interim measures shall be applied upon the decision of the court.

8. The decision shall indicate, respectively, those types of the transactions which the given legal person has not been empowered to carry out, as well as those types of the activities, which the given legal person could not be engaged in.

9. If application of the interim measures prescribed under Clauses 3 to 6 of Paragraph 2 of this Article requires rendering of a respective act by any state body or legal person, then the given interim measure shall be implemented through the respective competent state body or legal person.

10. When confirming the decision of the Investigator on application of the interim measures prescribed under Clauses 3 to 6 of Paragraph 2 of this Article, the Court shall be guided, to a relevant part, by the legal provisions prescribed by Chapter 39 of this Code.

11. The body conducting proceedings, may allow, based on the motion by the Legal Representative or the Authorized Representative of the legal person, to implement certain transactions, if it is necessary to ensure normal activities of the legal person.

12. The interim measure applied in relation to the legal person, upon the motion by the Legal Representative or the Authorized Representative of the legal person or on the initiative of the body conducting proceedings, shall be terminated or the limitations applied shall be reduced, if the necessity of application of an interim measure has ceased fully or to some extent. Decision of the Investigator or the court shall be promptly sent, if necessary, to the competent body, for ensuring its enforcement.

OLD CRIMINAL PROCEDURE CODE (1998 WITH AMENDMENTS)

Article 119. Decisions about material evidence made after the end of the criminal proceeding

1. In the sentence of the court or the decision of the body which carries out the criminal proceeding about the dismissal of the case, the issue of material evidence shall be solved in accordance with the following rules:

1) Crime instruments which belong to the accused as well as objects which are subject to withdrawal from circulation shall be confiscated and forwarded to the corresponding institutions. Those which have no value shall be destroyed.

2) Items which have no value shall be destroyed, as established by law and if the interested parties petition to have the items returned to them.

3) Money and other valuables which cannot be legally possessed due to committing a crime or any other action prohibited by law shall be returned to the owners, possessors or their successors.

4) Money, items and other valuables obtained in an illegal way shall be used to cover the court expenses and damages of the crime, and if the person who suffered the damages is unknown, the money shall be forwarded to the state budget.

5) Documents which are considered material evidence shall be kept with the case or forwarded to the interested organization and citizens.

Article 172. Maintenance of an Official and Commercial Secrets

1. During a criminal proceeding measures prescribed by law shall be taken to secure the confidentiality of the information which constitutes an official, commercial or any other secret protected by law.

2. While carrying out court proceedings, no information which constitutes an official, commercial or any other secret protected by law shall be gathered, preserved, used or disseminated without necessity. Upon the order of the court as well as of the inquiry body, investigator, prosecutor, the participants of the investigation and other court proceedings shall not disclose any of the mentioned information, for which they sign a document.

3. Persons who are asked by the body which carries out the criminal proceeding in accordance with provisions of the present Code not to disclose information about a secret protected by law shall not have the right to refuse to fulfill that requirement but shall have the right to demand from the inquiry body or other corresponding body a proof of the necessity of such a disclosure.

4. A state employee, a representative of an organization, institution or a manufacture who had disclosed information about an official, commercial secret or any other secret protected by law shall inform the head of the corresponding state body about that if not forbidden to do so by the body which carries out the criminal proceeding.

5. Evidence which may disclose information which constitutes an official, commercial or any other secret protected by law may be investigated, at the request of the persons involved in the criminal proceeding, at a closed-door session of the court.

CHAPTER 31. SEARCH AND SEIZURE

Article 225. Grounds for conducting search

The investigator, having sufficient ground to suspect that in some premises or in some other place or in possession of some person, there are instruments of crime, articles and valuables acquired by criminal way, as well as other items or documents, which can be significant for the case, conducts a search in order to find and take the latter.
The search can also be conducted to find searched-for persons and corpses. The search is conducted only by a court decree.

Article 226. Grounds for seizure

When necessary to take articles and documents significant for the case, and provided it is known for sure where they find themselves and in whose possession, the investigator conducts seizure.
The seizure of documents which contain state secrets is conducted only by permission of the prosecutor and in agreement with the administration of the given institution.
No enterprise, institution or organization, no official or citizen has the right to refuse to give the investigator the articles, documents or their copies which he would demand.

Article 227. Persons present at search and seizure

Search and seizure is done in the presence of attesting witnesses.
When necessary, an interpreter and an expert take part in the search and seizure.
When performing search and seizure, one must provide the presence of the person or the full-age members of his family where the search or seizure is conducted. If their presence is impossible, the representative of the apartment maintenance office or local administration is invited.
Search and seizure at the premises owned by enterprises, institution, organizations and military units is done in the presence of their representative.
The persons whose premises are searched and whose items are seized, as well as the attesting witnesses, experts, interpreters, representatives, lawyers are entitled to be present during all actions of the investigator, make statements which must be recorded in the protocol.

Article 228. Procedure of search and seizure

Based on search or seizure warrant, the investigator is entitled to enter apartments or other buildings.
Prior to the search or seizure the investigator must familiarize the searched person or the one from whom seizure is done, with the warrant about which a signature is taken from the latter.
When conducting a search the investigator or the expert can use technical devices about which a record is made in the search protocol.
The investigator is obliged to take measures not to publicize the fact of the search and seizure, as well as their results and the facts of the private life of the searched person. The investigator is entitled to prohibit the persons present at the search or seizure site to leave the site, as well as prohibit communication between each other until the investigatory actions are over.
When conducting a seizure, after presenting and announcing the warrant, the investigator proposes to hand over the articles and documents subject to seizure of one's own accord, in case of refusal, compulsory seizure is done. If the searched-for articles are not discovered at the place indicated in the warrant, by discretion of the investigator and by court decree, a search can be conducted.
When conducting a search, after presenting and announcing the decree, the investigator proposes to hand over the articles and documents or the hiding person subject to seizure. If the latter are handed

over of one's own accord, this is recorded in the protocol. If the searched for items and documents are not handed over or are handed over partially, or the hidden person does not surrender, a search is conducted.
All taken items and documents are presented to the participants of investigatory actions, are described in detail in the protocol and when necessary, are sealed with the investigator's seal.
When conducting a search and seizure the investigator is entitled to open closed premises and warehouses, if their owner refuses to open the latter of his own accord. One must avoid from damaging locks, doors and other objects without necessity.

Article 229. Personal search

When conducting searches in the premises, in case of sufficient grounds, the investigator is entitled to conduct personal search and take items and documents possessed by the person at whose premises the investigatory actions are conducted, found in his personal effects, clothes or on the body which can have probatory value.
Personal search can be conducted without warrant in the following cases:
1) when arresting the suspect, and bringing him to the police or other law enforcement institution;
2) when using arrest as a measure to secure the appearance of the suspect or the accused;
3) when there are sufficient grounds to suspect that the person in the given premises where the search is made, may conceal documents or other items which have probatory value for the case.
Personal search can be conducted by the investigator, with the expert and attesting witness, provided they are of the same sex as the searched person.

Article 230. Search and seizure protocol

When the search and seizure are over, the investigator writes an appropriate protocol which must indicate the place where invastigatory actions were conducted, the time, the considerations, whether the searched for items and persons were surrendered of one's own accord, the name, surname, position of the person who conducted the search, the names, surnames and addresses of attesting witnesses, as well as the surnames, position and the legal status of other participants of the search.
All the seized articles must be indicated in the protocol of investigatory activities, mentioning their quantity, size, weight, individual features and other peculiarities.
If attempts were made to eliminate or hide the revealed articles or documents during investogatory actions, this fact is indicated in the protocol.
The investigator is obliged to familiarize all participants of investigatory actions with the protocol and they are entitled to demand for their comments to be incorporated in the protocol.

Article 231. The mandatory presentation of the copy of the search and seizure protocol

The copy of the search and seizure protocol with a signature is presented to the person in whose premises the invastigatory actions had been conducted or to the full-age members of his family, and in case of their absence, to the representative of the apartment maintenance office in whose area the investigatory actions were conducted.
If the search or seizure were done in the territory of an enterprise, institution, organization or military unit, the copy of the protocol is presented to their representatives.

CHAPTER 32. ARREST OF PROPERTY

Article 232. Arrest of property

Arrest of property is practiced as a remedy to secure property in civil claim and to prevent possible seizure and for coverage of court expenses.
Arrest of property is imposed on the property of the suspect and the accused as well as those persons whose actions can cause financial responsibility, regardless who posses what property.
The arrest of property commonly shared by spouses or the family is imposed on the part owned by the accused. In case of sufficient evidence that the commonly shared property increased or was acquired in a criminal way, the arrest can be imposed on the whole property of the spouses or the family or on a larger part of it.
Seizure can not be imposed on the property which according to law can not be seized.

Article 233. Grounds for arrest of property

Arrest of property can be applied by the bodies conducting criminal proceedings only in the case when the materials collected for the case provide sufficient ground to suspect that the suspect, the accused or other person who has the property, can hide, spoil or consume the property, which is liable to seizure.
Arrest of property is carried out based on the decree of the investigating body, the investigator or the prosecutor.
The decision on the seizure of property must indicate the property subject to seizure, the value of the property based on which it sufficient to impose arrest to secure the civil claim and court expenses.
When necessary, if there is a grounded suspicion, that the property will not be surrendered for seizure of one's own accord, the prosecutor appeals to the court for a search permission, as established in this Code.

Article 234. Valuation of the property to be arrested

The value of property to be arrested is determined at market prices.
The value of the property which is arrested as provision for civil claim or court expenses initiated by the prosecutor or civil plaintiff, must be adequate to the amount of the claim. When determining the portion of property to be arrested from a number of accused or persons responsible for the actions of the latter, the degree of participation in the crime is taken into account, however, to provide a civil claim, the property of one of the relevant persons can be seized in full amount.

Article 235. Procedure of implementation of the decree for property arrest

The investigation body, the investigator or the prosecutor hand over the property arrest decree to the property owner or the manager and demands the submission of property. When the demand is rejected, an enforced seizure is done.
After the end preliminary investigation, by court ruling, the marshall of the court implements the arrest of property.
When imposing property arrest, when possible, an expert in commodity is involved who determines its approximate value.
The owner or the manager of the property is entitled to decide which articles or valuable items should be seized first to provide for the amount indicated in the property arrest decree.
The investigating body, the investigator or the prosecutor write a protocol on property arrest and the court marshall compiles other documents envisaged in law. The protocol (document) enumerates the

whole seized property, accurately indicating the name, quantity, means, weight, degree of wear and tear, other individual features and when possible its value; it indicates what property was seized and what property was left for keeping, the seized property is described, the statements of present persons about the ownership of other people.
The copy of the appropriate protocol (document) with a signature is handed over to the owner or manager of the seized property, and in case of their absence, to the full-age members of their family, to the apartment maintenance office or local self-government representative. When seizing the property of an enterprise, institution or organization, the copy of the appropriate protocol (document) with signature is given to the administration representative.

Article 236. The preservation of seized property

Except real estate and large-sized items, other seized property as a rule is taken away. Precious metals and stones, diamonds, foreign currency, cheques, securities and lottery tickets are handed for safe keeping to the Treasury of the Republic of Armenia, cash is paid to the deposit account of the court which has jurisdiction over this case, other taken items are sealed and kept at the body which made a decision to seize the property or is given for safe keeping to the apartment maintenance office or local self-government representative.
The arrested property that has not been taken away is sealed and kept with the owner or manager of the property or his full-age members of his family who are advised as to their legal responsibility for spoiling or alienation of this property, for which they undersign.

Article 237. Appeals against arrest of property

The property seizure decree can be appealed against to the prosecutor, however, the submitted complaint does not prevent the execution of the decision.

Article 238. Release of property from seizure by criminal proceedings

The property is released from seizure by criminal proceedings ruling if as a result of recalling of the civil action, the qualification of the criminal act incriminated to the suspect or the accused has changed, and the necessity to seize property disappeared.
By petition of the civil plaintiff or other interested party, who are inclined to claim the property through civil proceedings, the court is entitled to preserve the imposed property seizure also after the end of criminal proceedings, within a month.

Article 279. Investigatory actions conducted by court decree

The court decrees the implementation of apartment search, as well as investigatory actions concerning the restriction of privacy of correspondence, telephone conversations, telegram and other communications.

3. LAW ON OPERATIONAL INTELLIGENCE ACTIVITY

https://www.arlis.am/documentView.aspx?docid=128809
https://www.ecoi.net/en/file/local/1042959/1226_1407150478_armenia-law-operational-inteliligence-activity-2007-en.pdf

Article 1. Subject matter of the Law

This Law shall regulate legal relations arising in the field of carrying out operational intelligence activity. The Law shall prescribe the concept, tasks, principles of operational intelligence activity, bodies carrying out operational intelligence activity, their rights and responsibilities while carrying out operational intelligence activity, types of measures of operational intelligence activity, control and supervision over operational intelligence activity.

CHAPTER 3 OPERATIONAL INTELLIGENCE MEASURES

Article 14. Types of operational intelligence measures

1. The following operational intelligence measures may be conducted during operational intelligence activity:

(1) operational inquiry;
(2) acquisition of operational information;
(3) collection of samples for comparative examination;
(4) test purchase;
(5) controlled supply and purchase;
(6) examination of items and documents;
(7) external surveillance;
(8) internal surveillance;
(9) identification of a person;
(10) examination of buildings, structures, localities, constructions and vehicles;
(11) interception of correspondence, postal, telegraphic and other communications;
(12) wire-tapping;
(13) operational infiltration;
(14) operational experiment;
(15) ensuring access to financial data and secret monitoring of financial transactions;
(16) imitation of taking and giving bribes.

Operational intelligence measures shall be prescribed only by law.

2. The Police shall be entitled to implement operational intelligence measures provided for by points 1, 2, 3, 5, 6, 7, 8, 9, 10 11, 12, 13, 14, 15 and 16 of part 1 of this Article.

2.1. The Military Police shall be entitled to implement operational intelligence measures provided by points 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 13, 14, and 16 of part 1 of this Article.

3. National Security Bodies shall be entitled to implement operational intelligence measures provided for by points 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of part 1 of this Article.

4. Customs authorities shall be entitled to implement operational intelligence measures provided for by points 1, 2, 3, 5, 6, 7, 8, 9, 13 and 14 of part 1 of this Article.

5. Tax authorities shall be entitled to implement operational intelligence measures provided for by points 1, 2, 3, 4, 5, 6, 7, 10, 13 and 14 of part 1 of this Article.

6. Bodies of the Penitentiary Service shall be entitled to implement operational intelligence measures provided for by points 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of part 1 of this Article, only in pre-trial detention facilities and in the territory of corrective labour institutions of the penitentiary system of the Ministry of Justice of the Republic of Armenia.

(Article 14 supplemented by HO-61-N of 19 March 2009)

4. LAW ON SEIZURE OF PROPERTY OF ILLEGAL ORIGIN (2020)

https://cis-legislation.com/document.fwx?rgn=135778

https://www.arlis.am/DocumentView.aspx?docid=142347

Article 1. Scope of this Law

1. This law regulates the relations related to the confiscation of property of illegal origin, defines the grounds for starting an investigation, the scope of authorities competent to initiate proceedings of confiscation of property of illegal origin and conduct the investigation, the rules of international cooperation regarding the confiscation of property of illegal origin, and also regulates other relations related to confiscation of property of illegal origin.

Article 5. Grounds for starting a study

1. In accordance with the procedure provided for by this law, the competent body can start an investigation if the following grounds are present:

1) there is a legally effective indictment, which confirms the commission of any of the crimes provided for by this law, and there are sufficient grounds to suspect that the convicted person or a person related to him owns property of illegal origin, based on the materials of the given criminal case, which was not forfeited by judgment.

2) in the initiated criminal case, the person was involved as an accused for the commission of any of the crimes provided for by this law, and there are sufficient grounds to suspect that there is property of illegal origin;

3) there are sufficient grounds to suspect that there is property of illegal origin, but criminal prosecution or initiation of a criminal case in connection with the commission of any of the crimes provided for by this law is impossible on one of the following grounds:

a. a law on amnesty was adopted,

b. the statute of limitations has passed

c. the person died

d. at the time of committing the act, the person did not reach the legal age to be held criminally liable;

4) there are sufficient grounds to suspect that there is property of illegal origin, but the criminal case initiated in relation to the commission of any of the crimes provided for by this law has been suspended on any of the grounds provided for in Article 31, Part 1 of the Criminal Procedure Code of the Republic of Armenia;

5) Based on the data found as a result of the operative-investigative measures established by the Law "On Operative-Investigative Activities", there are sufficient grounds to suspect that the official or a person related to him owns property of illegal origin.

2. The actions included in the framework of the study can be undertaken also in the event of the need to provide international mutual assistance in accordance with the procedure provided by this law.

3. On the basis of clause 1 of part 1 of this article, an investigation may be started even in the presence of an indictment issued by a foreign court, if it has been recognized in the Republic of Armenia.

1. 2. GEORGIA

1. CRIMINAL CODE

Article 52 – Confiscation of property

1. Confiscation of property shall mean gratuitous deprivation in favour of the State of the object and/or the instrument of crime or of the article intended for the commission of a crime, and/or of the criminally obtained property.

2. Confiscation of the object and/or the instrument of crime, or of the article intended for the commission of a crime shall mean the deprivation in favour of the State of property owned or rightfully held by the accused or convicted person, which was used for the commission of an intentional crime or of property that was in any form intended for this purpose. The object and/ or the instrument of crime, or the article intended for committing a crime shall be confiscated by the court for the commission of all intentional crimes provided for by this Code, when the object and/or the instrument of crime or the article intended for committing a crime is available and their confiscation is necessary due to public and social interests or for protecting the rights and freedoms of individuals or for preventing new crimes.

3. Confiscation of criminally obtained property shall mean gratuitous deprivation in favour of the State from the convicted person of the criminally acquired property (all property and intangible assets as well as title deeds for property), also of any income from this property or of property that is equivalent in value. The court shall order the confiscation of criminally obtained property for all intentional crimes provided for by this Code if it can be proved that this property has been obtained criminally.

Law of Georgia No 2361 of 8 September 1999 – LHG I, No 43(50), 21.9.1999, Art. 212
Law of Georgia No 292 of 5 May 2000 – LHG I, No 18, 15.5.2000, Art. 45
Law of Georgia No 2619 of 28 December 2005 – LHG I, No 4, 18.1.2006, Art. 39
Law of Georgia No 3619 of 24 September 2010 – LHG I, No 51, 29.9.2010, Art. 332

Article 186 – Purchase or sale of property obtained knowingly by illegal means

1. The use, purchase or sale of property obtained knowingly by illegal means, – shall be punished by a fine or community service from 180 to 200 hours or by corrective labour for up to one year or house arrest for a term of six months to two years or by imprisonment for up to two years.

2. The same act committed:
a) by a group of persons with the preliminary agreement;
b) repeatedly;
c) against a motor car;
d) in large quantities;
e) by a person who has two or more previous convictions for unlawful appropriation or extortion of another person's movable property, –
shall be punished by a fine or by imprisonment for a term of two to five years.

3. The act provided for by paragraph 1 or 2 of this article which has been committed:
a) by an organised group;
b) using the official position, –
shall be punished by imprisonment for a term of four to seven years.

Note: For the act provided for by this article, a legal person shall be punished by liquidation or by deprivation of the right to carry out activities and a fine.

Law of Georgia No 2937 of 28 April 2006 – LHG I, No 14, 15.5.2006, Art. 90
Law of Georgia No 5953 of 19 March 2008 – LHG I, No 8, 28.3.2008, Art. 56
Law of Georgia No 403 of 23 October 2008 – LHG I, No 29, 4.11.2008, Art. 176
Law of Georgia No 5170 of 28 October 2011 – website, 11.11.2011
Law of Georgia No 944 of 1 June 2017 – website, 20.6.2017

Article 194 – Legalisation of illegal income (money laundering)

1. Legalisation of illegal income, i.e. giving legal form to illicit and/or undocumented property (use, purchase, possession, conversion, transfer or other actions in connection with property) in order to conceal its illegal and/or undocumented origin or to assist another person in evading liability, as well as concealment or disguising of its genuine nature, source of origin, location, dislocation, movement, its title and/or of other rights related to it, –
shall be punished by a fine or by imprisonment for a term of three to six years.

2. The same act:
a) committed jointly by more than one person;
b) committed repeatedly;
c) which was accompanied by receipt of large income, –
shall be punished by imprisonment for a term of six to nine years.

3. The same act:
a) committed by an organised group;
b) committed using one's official position;
c) accompanied by receipt of particularly large income, –
shall be punished by imprisonment for a term of nine to twelve years.

Note:
1. For the purposes of this article, property, as well as income, or shares (interest) gained from this property shall be considered illicit if acquired unlawfully by the person, the person's family member, close relative or related person.
2. For the purposes of this article, property, as well as income, or shares (interest) gained from this property shall be considered undocumented if the person, the person's family member, close relative or related person does not have the documents that confirm that it has been acquired by legal means or if it has been obtained by the monetary resources gained from the alienation of the illicit property.
3. Under this article, large income shall mean income from GEL 30 000 to GEL 50 000, and particularly large income shall mean income exceeding GEL 50 000.
4. For the act provided for by this article, a legal person shall be punished by liquidation or by deprivation of the right to carry out activities and a fine.

Law of Georgia No 458 of 30 June 2000 – LHG I, No 27, 17.7.2000, Art. 83
Law of Georgia No 2619 of 28 December 2005 – LHG I, No 4, 18.1.2006, Art. 39
Law of Georgia No 2937 of 28 April 2006 – LHG I, No 14, 15.5.2006, Art. 90
Law of Georgia No 3530 of 25 July 2006 – LHG I, No 37, 7.8.2006, Art. 271

Law of Georgia No 5196 of 4 July 2007 – LHG I, No 28, 18.7.2007, Art. 283
Law of Georgia No 5953 of 19 March 2008 – LHG I, No 8, 28.3.2008, Art. 56
Law of Georgia No 4630 of 5 May 2011 – website, 19.5.2011
Law of Georgia No 5170 of 28 October 2011 – website, 11.11.2011

Article 194.1 – Use, purchase, possession or sale of property acquired through the legalisation of illegal income

1. The use, purchase, possession or sale of property acquired through the legalisation knowingly of illegal income, –
shall be punished by a fine or community service from 180 to 200 hours or by corrective labour for up to one year or by imprisonment for up to two years.

2. The same act committed:
a) by a group of persons with the preliminary agreement;
b) repeatedly;
c) in large quantities, –
shall be punished by a fine or by imprisonment for a term of two to five years.

3. The act provided for by paragraph 1 or 2 of this article which has been committed:
a) by an organised group;
b) using the official position;
c) in particularly large quantities, –
shall be punished by imprisonment for a term of four to seven years.

Note:
1. Under this article, large income shall mean income from GEL 30 000 to GEL 50 000, and particularly large income shall mean income exceeding GEL 50 000.
2. For the act specified in this article a legal person shall be punished by liquidation or by deprivation of the right to carry out activities and a fine.

Law of Georgia No 5953 of 19 March 2008 – LHG I, No 8, 28.3.2008, Art. 56
Law of Georgia No 5170 of 28 October 2011 – website, 11.11.2011

2. CRIMINAL PROCEDURE CODE

Article 57 - Rights of a victim

1. A victim shall have the right to:

a) be informed about the essence of the charges brought against the accused;
b) be informed about the procedural actions provided for by Article 58 of this Code;
c) during the hearing of a case on the merits, during the review of a motion for rendering a ruling without hearing the merits and at the sentencing
hearing, give a testimony concerning the damage he/she has incurred as a result of the offence, or submit, in writing, that information to the court;

d) obtain, free of charge, copies of a decree/ruling, and/or of a judgement on the termination of investigation and/or criminal prosecution, or of other
final court decisions;
e) be indemnified for the expenses incurred as a result of participating in the proceedings;
f) recover his/her own property that was temporarily confiscated during the investigation and court hearing for the needs of the case;
g) request the application of special protective measures if his/her or his/her close relative's or family member's life, health and/or property is
endangered;
h) be informed on the progress of the investigation and review the materials of the criminal case, unless this contradicts the interests of the
investigation;
i) upon request, obtain information on the measure of restraint applied against the accused, and information on the leaving of a penitentiary facility by
the accused/convicted person, unless this creates a risk for the accused/convicted person;
j) review the materials of the criminal case at least 10 days before a preliminary hearing;
k) request the prosecution to file a motion for closing, in part or in full, a court hearing for the purpose specified in Article 182(3) of this Code;
l) receive explanations as to his/her rights and obligations;
m) enjoy other rights granted under this Code.

Article 119 - Purpose and grounds for search and seizure

1. If there is a probable cause, a search shall be conducted for the purpose of uncovering and seizing an item, document, substance or any other object containing information that is essential to the case.
2. A search may also be conducted to find a wanted person or a corpse.
3. An item, document, substance or any other object containing information that is essential to the case may be seized if there is probable cause that it is kept in a certain place, with a certain person and if there is no need to search for it.
4. A search to seize an item, document, substance or any other **object containing information that is important for the case** may be conducted, if there is probable cause that it is kept in a certain place, with a certain person and if search is necessary to discover it.

Article 120 - Procedure for seizure and search

1. Based on a court ruling authorising search or seizure or, in the case of urgent necessity, based on a decree of an investigator, an investigator may enter a storage facility, a dwelling place, a storage room or other property to locate and seize an item, document, substance or any other object containing information.
2. Before starting a seizure or search, an investigator shall be obliged to present a court order, or in the case of urgent necessity, a decree, to a person subjected to the seizure or search. The presentation of the ruling (decree) shall be confirmed by the signature of the person subject to search.
3. An investigator may forbid the persons who are present or who arrive at the place of search, to leave the place, to interact with each other or with any other person before the search is completed, which shall be recorded in the appropriate record.
4. After a ruling, or in the case of urgent necessity, a decree, is presented, an investigator shall offer the person subject to the search, to voluntarily turn over an item, document, substance or any other object containing information that is subject to seizure. If an object that is subject to seizure is

voluntarily provided, that fact shall be recorded in the relevant record. In the case of refusal to voluntarily turn over the requested object, or in the case of its incomplete provision, it shall be seized by coercion.
5. During a search, an item, document, substance or any other object containing information that is referred to in a ruling or decree shall be searched for and seized. Also, all other objects containing information that may be of an evidentiary value for that case, or that clearly indicates another offence, as well as an item, document, substance or any other object containing information that has been withdrawn from civil circulation.
6. An item, document, substance or any other object containing information that has been detected during a search or seizure, shall, if possible, be presented, before its seizure, to persons participating in that investigative action. Then, it shall be seized, described in detail, sealed and if possible, packaged. On the packaged item, in addition to a seal, the date and signatures of the persons who participated in the investigative action shall be indicated. A document that is seized due to its contents, shall not be sealed.
7. During a search or seizure, an investigator may open a closed storage facility, dwelling place and premises, if the person subject to search refuses to voluntarily open them.
8. A person present at the place of search and/or seizure may be personally searched if there is a probable cause that he/she has concealed an item, document, subject or any other object that is subject to seizure. Such case shall be considered an urgent necessity and a personal search shall be conducted without a court ruling. The lawfulness of the search and/or seizure shall be examined by the court in the manner provided for by this Code.
9. A search or seizure of a legal person or in a building of an administrative body shall be conducted in the presence of its head or representative.
10. A prosecutor shall have the right to primary examination of an object, item, substance, or document containing information seized upon motion of the defence.

Law of Georgia No 3616 of 24 September 2010 – LHG I, No 50, 24.9.2010, Article 328
Law of Georgia No 6549 of 22 June 2012 – web-site, 4.7.2012
Law of Georgia No 741 of 14 June 2013 – web-site, 27.6.2013
Law of Georgia No 3090 of 19 February 2015– web-site, 6.3.2015

Article 121 – Personal search
Article 122 - Seizure and search conducted in a building of a diplomatic mission and with respect to diplomatic representatives
Article 123 - Search, seizure and arrest of property in the editorial offices of mass media and publishing houses, on the premises of scientific, educational, religious, public organisations and political parties
Article 124 - Return of a seized object

Article 124.1 - Monitoring of bank accounts

1. If there is probable cause that a person is carrying out a culpable action through a bank account (accounts), and/or for the purpose of searching for/identifying property that is subject to confiscation, a prosecutor may, with the consent of the Chief or Deputy Chief Prosecutor of Georgia, file a motion with a court, according to the place of investigation, and request a ruling authorising the monitoring of bank accounts; under this ruling a bank shall be obliged to collaborate with the investigation and disclose real time information on the transactions performed on one or several bank accounts.

2. The information referred to in paragraph 1 of this article shall be reported to the authority conducting the criminal case as soon as the transaction is performed.
3. If an amount is transferred or withdrawn from a bank account, this information shall be reported to the authority conducting the case, before the transaction is performed.
4. The period of monitoring of bank accounts shall not be longer than the period required for obtaining evidence for a criminal case.
5. The court shall review a motion stipulated by paragraph 1 of this article in the manner prescribed by Article 112 of this Code.

Law of Georgia No 5170 of 28 October 2011 – web-site, 11.11.2011

Article 125 – Inspection

1. To discover a trace of a crime, material evidence, or to establish the details of an incident and other circumstances essential to a criminal case, a party may inspect the crime scene, a storage facility, a dwelling place, premises, a corpse, an item, a document or any other object that contains information.
2. If private property is to be inspected, the inspection shall be conducted under a court ruling. A court ruling shall not be required for an inspection conducted by a party in the event of an absolute necessity, or when the owner (holder) expresses his/her consent in writing.

Chapter XVI - Investigative Actions Related to Computer Data
Law of Georgia No 3616 of 24 September 2010 – LHG I, No 50, 24.9.2010, Article 328

Article 136 - Requesting a document or information
1. If there is a reasonable cause to believe that information or documents essential to the criminal case are stored in a computer system or on a computer data carrier, the prosecutor may file a motion with a court, according to the place of investigation, to issue a ruling requesting the provision of the relevant information or document.
2. If there exists reasonable cause to believe that a person is carrying out a criminal act through a computer system, the prosecutor may request a court, according to the place of investigation, to deliver a ruling ordering the service provider to provide information about the user.
3. For the purposes of this article, information about the user shall be any information that a service provider stores as computer data or in any other form that is related to the users of its services, differs from the internet traffic and content data and which can be used to establish/determine:
a) the type of communication services and technical means used, and the time of service;
http://www.matsne.gov.ge 090.000.000.05.001.003.644
b) the identity of the user, mail or residential address, phone numbers and other contact details, information on accounts and taxes, which are available based on a service contract or agreement;
c) any other information on the location of the installed communications equipment, which is available based on a service contract or agreement.
4. Provisions of Articles 1432–14310 shall apply to the investigative actions stipulated by this article.

Law of Georgia No 3616 of 24 September 2010 – LHG I, No 50, 24.9.2010, Article 328
Law of Georgia No 2634 of 1 August 2014 – web-site, 18.8.2014

Article 137 - Real time collection of internet traffic data

1. If there is reasonable cause to believe that a person is carrying out a criminal act through a computer system, the prosecutor may, according to the place of investigation, file a motion with a court for a ruling authorising a real-time collection of internet traffic data; under the ruling the service provider is obliged to collaborate with the investigation authorities and assist them, in real time, in the collection or recording of those internet traffic data that are related to specific communications performed in the territory of Georgia and transmitted through a computer system.
2. A motion specified in paragraph 1 of this article shall take account of the technical capacities of the service provider to collect and record internet traffic data in real time. The period for collecting and recording internet traffic data in real time shall not be longer than the period required to obtain evidence for a criminal case.
3. Provisions of Articles 1432–14310 shall apply to the investigative actions stipulated by this article.

Law of Georgia No 3616 of 24 September 2010 – LHG I, No 50, 24.9.2010, Article 328 Law of Georgia No 2634 of 1 August 2014 – web-site, 18.8.2014

Article 138 - Obtaining content data

1. If there exists reasonable cause to believe that a person is carrying out a criminal act through a computer system, the prosecutor may, according to the place of investigation, file a motion with a court for a ruling authorising the collection of content data in real time; under the ruling the service provider is obliged to collaborate with the investigation authorities and assist them, in real time, in the collection or recording of content data related to specific communications performed in the territory of Georgia and transmitted through a computer system.
2. A motion specified in paragraph 1 of this article shall take account of the technical capacities of a service provider to collect and record content data in real time. The period for real-time collection and recording of content data shall not be longer than the period required to obtain evidence for a criminal case.
3. Provisions of Articles 1432–14310 shall apply to the investigative actions stipulated by this article.
Law of Georgia No 3616 of 24 September 2010 – LHG I, No 50, 24.9.2010, Article 328
Law of Georgia No 2634 of 1 August 2014 – web-site, 18.8.2014

Chapter XVI1 - Secret Investigative Actions
Law of Georgia No 2634 of 1 August 2014 – web-site, 18.8.2014

Article 143. 1 -Types of secret investigative actions

1. Types of secret investigative actions shall include:
a) secret eavesdropping and recording of phone conversations;
b) removal and recording of information from a communications channel (by connecting to the communication facilities, computer networks, line
communications and station devices), computer system (both directly and remotely) and installation of respective software in the computer system for
this purpose;
c) monitoring of post and telegraphic communications (except for a diplomatic post);
d) secret video and audio recording, film and photo shooting;
e) electronic surveillance through technical means, which do not endanger human life, health or the environment.
2. It shall be permissible to carry out several investigative actions at the same time.

Law of Georgia No 2634 of 1 August 2014 – web-site, 18.8.2014

Article 151 - Purpose and grounds for seizing property

1. To ensure the possible forfeiture of property, as a coercive measure of criminal procedure, the court may, upon motion of a party, seize the property, including bank accounts, of the accused, of the person materially responsible for the accused person's actions, and/or of the person related to the accused person, if there is information to suggest that the property will be concealed or destroyed, and/or the property has been obtained in a criminal way. If there is information to suggest that the property has been obtained in a criminal way, but the property cannot be found, the court may seize property, the value of which is equivalent to the value of the property in question. If the accused is an official, under the conditions referred to in this paragraph, the prosecutor shall be obliged to file a motion with the court requesting the seizure of property (including bank accounts) of that official, also the suspension of the fulfilment of obligations assumed under agreements entered into by that official on behalf of the State, or the taking of other interim measures.
2. The property seizure provided for by this Code shall also be applied in the case of preparation of one of the crimes stipulated by Articles 323-330 and 331.1 of the Criminal Code of Georgia or of any other particularly serious crime, as well as for their prevention, if there is sufficient information to believe that the property in question could be used for the commission of a crime.
3. A court may also seize property if there is sufficient evidence to believe that the property in question is obtained through corruption, racketeering or is owned by a member of a criminal underworld or by a person convicted under Article 194(3)(c) of the Criminal Code of Georgia, and/or a crime has been committed with respect to that property and/or it has been obtained in a criminal way.
4. When deciding issues concerning the seizure of property, provisions of the Civil Procedure Code of Georgia may apply, unless they contradict this Code.

Law of Georgia No 3616 of 24 September 2010 – LHG I, No 50, 24.9.2010, Article 328

Article 152 - Restriction of powers when seizing property

The seizure of property shall prohibit its owner or holder from administering that property, and if necessary, using the property as well.

Article 153 – Property that may not be seized

Seizure may not be applied to food products, fuel, or inventory necessary for professional activities of a person, or to other items that ensure normal living conditions of a person, nor to financial collateral arrangements (financial collateral) stipulated by the Law of Georgia on Payment System and Payment Services or to settlement accounts of significant system participants.

Law of Georgia No 6314 of 25 May 2012 – web-site, 12.6.2012

Article 154 – Motion to seize property and procedures for its review

1. A party shall prepare and submit, according to the place of investigation, to the court a motion to seize property, and information required for its review.

2. Not later than 48 hours after receiving the motion and the information required for its review, a judge shall decide the motion without an oral hearing. The judge may review a motion with the participation of the party that filed the motion. In that case, the procedure provided for by Article 144(3) of this Code shall apply during the review of the motion.

Article 155 – Decree on seizing property in urgent necessity

1. In urgent necessity, if there is probable cause to believe that property will be concealed or destroyed, the prosecutor may issue a reasoned decree to seize the property.
2. In urgent necessity, within 12 hours after the execution of a decree for the seizure of property (if the expiration of that period falls during nonworking hours, within not later than an hour after that period expires), the prosecutor shall inform the court of the seizure of property according to the place of investigation, or the court under the jurisdiction of which the procedural action has been carried out, and shall file a motion requesting the examination of the lawfulness of the seizure, and submit to the court the criminal case materials (or their copies) that prove the necessity of conducting the investigative action. Not later than 24 hours after receiving the materials, the court shall decide the motion without an oral hearing. The court may review the motion with the participation of the prosecutor and of the person against whom the investigative action has been carried out.

Article 156 – Appealing a court ruling seizing property

A court ruling seizing property shall, within 48 hours after the ruling is issued, be handed over to the person authorised to appeal. This ruling shall be appealed under Article 207 of this Code. The ruling may be appealed by the prosecutor, the accused and/or a person whose material rights have been violated as a result of that ruling, as well as by their defence lawyers. The running of the time limit for appealing a ruling shall commence from the time it has been handed over to the authorised person.

Law of Georgia No 741 of 14 June 2013 – web-site, 27.6.2013

Article 157 – Procedure for executing a ruling (decree) on seizing property

1. A party shall submit a court ruling, and in the case of urgent necessity, a decree of a prosecutor on the seizure of property, to the person who keeps the property, and request delivery of the property. If that request is denied or there is reliable information that the entire property has not been delivered, a search shall be conducted in accordance with this Code.
2. When seizing property, it shall be determined what items and valuables are to be seized within the limits of the amount indicated in the ruling (decree).
3. An expert may be invited to participate in the seizure of property, and he/she shall assess the value of the property.
4. The extent of the damage caused as a result of a crime and the value of the property subject to seizure shall be determined according to the average market prices.
5. If a bank account is seized, the person's right to administer the funds available on or transferred to his/her bank account shall be restricted. If only a certain amount is seized, the person's right to administer the funds available on or transferred to his/her account shall be restricted within the limits of the seizure. If property has been acquired or increased with the resources obtained in a criminal way, the entire property or its major part may be seized. Seizure shall apply to the property (including that of a legal person and its subsidiary companies) of the accused, his/her family member, close relative, related person and/or of a racketeering group, regardless of the share of the accused in that

property, provided that there is sufficient evidence to believe that the property or its part has been obtained as a result of racketeering.
6. A report shall be drawn up on the seizure of property.
7. The seized property, except for immovable and large things, shall be taken.

Law of Georgia No 6314 of 25 May 2012 – web-site, 12.6.2012

Article 158 – Period of validity of a court ruling on the seizure of property

Property shall be seized until a judgement is enforced, until a criminal prosecution and/or an investigation is terminated.

Article 274 - Operative part of a judgement of conviction

1. The operative part of a judgement of conviction shall include:
   a) the name and surname of the accused;
   b) a decision recognizing the accused as guilty of the commission of a crime;
   c) the article (paragraph, sub-paragraph) of the Criminal Code of Georgia under which the accused has been found guilty;
   d) the type and extent of the sentence that has been imposed on the accused for each crime, the total term of the sentence to be served;
   e) the length of the probation period, if a conditional sentence has been imposed;
   f) a decision to include in the term of the sentence the period of detention, arrest or stay in a medical facility for expert examination;
   g) the length of any deferment of the execution of a judgement and the duties imposed on the convict;
   h) a decision on the fate of material evidence;
   i) a decision on the forfeiture and procedural confiscation of property;
   j) decision on the deprivation of a state award, military, honorary or special title;
   k) (deleted - 28.10.2011, No 5170);
   l) the right to appeal the judgement, the period and place for its appeal.
2. If a person has been charged under several articles of the Criminal Code of Georgia, the operative part of the judgement shall precisely indicate the charges on which the person has been acquitted and convicted.
3. If the accused is released from serving the sentence, this shall be indicated in the operative part of the judgement.
4. The operative part of a judgement shall be worded in such a way that it does not give rise to any doubt as to the type and extent of the sentence imposed by the court during the service of the sentence.

Law of Georgia No 5170 of 28 October 2011 – web-site, 11.11.2011

3. CIVIL PROCEDURE CODE

Chapter XLIV[1]

Proceedings on the confiscation and transfer to the State of the property derived from raketeering activities, or property of officials, members of criminal underworld, human traffickers, persons facilitating the distribution of drugs or property of persons convicted of the crime under Article 194 and/or Article 331[1] of the Criminal Code of Georgia

Law of Georgia No 211 of 24 June 2004- LHG I, No 18, 9.7.2004, Art. 64
Law of Georgia No 2357 of 20 December 2005- LHG I, No 57, 29.12.2005, Art. 441
Law of Georgia No 3838 of 7 December 2006- LHG I, No 48, 22.12.2006, Art. 335
Law of Georgia No 5199 of 4 July 2007- LHG I, No 28, 18.7.2007, Art. 286
Law of Georgia No 1525 of 13 November 2013 – website, 22.11.2013

Article 356[1] – Definition of terms

For the purposes of this Chapter, the terms have the following meanings:

a) racketeering - repeated and organised activities performed for gaining income or other material benefit and related to deliberate crime (unless the conviction has been expunged or removed), if such activity was carried out at least twice within five calendar years, excluding any period of detention and imprisonment;

b) racketeering group - a legal person, as well as any association of physical and/or legal persons engaged in racketeering;

c) racketeer - a person who runs activities of a racketeering group independently or jointly with other person(s) or otherwise participates in the activities of a racketeering group and who is aware of the racketeering nature of this group, also who illegally settles or participates in solving disputes between racketeering groups or between a racketeeering group and other persons;

d) an official - an official provided in Article 2 of the Law of Georgia on the Conflict of Interests and Corruption in Public Service, a public servant, the
head or deputy head of a legal entity under public law, as well as a person authorised to manage/represent a state enterprise (in which 50% or more of
the interest (shares) is owned by the state), regardless of whether or not this person has been dismissed from the position;

e) human trafficker - a natural or legal person or group of persons who have committed a crime under articles 143[1] and/or 143[2] of the Criminal Code of
Georgia;

f) person facilitating the distribution of drugs - a natural or legal person or group of persons who committed the crime provided in Article 260 of the Criminal Code of Georgia (if the purpose of selling the drugs has been confirmed) or in Article 261(4) of the Criminal Code of Georgia (if the purpose of selling the psychotropic substances has been confirmed), or a particularly serious crime provided in Chapter XXXIII of the Criminal Code of Georgia;

g) member of the criminal underworld - any person who recognises the criminal underworld and acts actively for the advancement of its goals, or a person (thief in law) who runs and/or organises the criminal underworld or certain group of persons in any form, according to the special rules of the criminal underworld;

h) family member - a spouse, a minor child, a stepchild of a racketeer, an official, a member of the criminal underworld, a human trafficker, a person facilitating the distribution of drugs or of a person convicted of the crime under Article 194 and/or Article 331[1]of the Criminal Code of Georgia or a
person permanently residing with a racketeer, an official, a member of the criminal underworld, a human trafficker, a person facilitating the distribution of drugs or with a person convicted of a crime under Article 194 and/or Article 331[1]of the Criminal Code of Georgia;

i) close relative - a family member, a relative of direct ascending or descending line, siblings of a racketeer, an official, a member of the criminal underworld, a human trafficker, a person facilitating the distribution of drugs or a person convicted of a crime under Article 194 and/or Article 331^1 of the Criminal Code of Georgia, as well as stepchildren of parents or of children, siblings and parents of the spouse;

j) person connected with a racketeer, an official, a member of the criminal underworld, a human trafficker, a person facilitating the distribution of drugs or with a person convicted of a crime under Article 194 and/or Article 331^1 of the Criminal Code of Georgia - a person who, based on legal documentation, holds property and there is a reasonable suspicion that this property has been derived from racketeering or is obtained and/or used, is (was) administered by a racketeer, an official, a member of the criminal underworld, a human trafficker, a person facilitating the distribution of drugs or by a person convicted of a crime under Article 194 and/or Article 331^1 of the Criminal Code of Georgia;

k) property derived from racketeering - property or income obtained from racketeering, property acquired with proceeds from racketeering, as well as income, property or proceeds from property obtained by a racketeering group, a racketeer, a racketeer's family member, close relative, or by a person connected with a racketeer, where there is no document or evidence to confirm that the income or property has been obtained by lawful means;

l) property of an official - income, property or proceeds from the property of an official, the official's family member, close relative or of a person connected with the official, where there is no document or evidence to confirm that the income or property has been obtained by lawful means;

m) property of a member of the criminal underworld - income, property or proceeds from the property of a member of the criminal underworld, his/her family member, close relative or of a person connected with a racketeer or a member of the criminal underworld, where there is no document or evidence to confirm that the income or property has been obtained by lawful means;

n) property of a human trafficker - income, property or proceeds from the property of a human trafficker, his/her family member, close relative or of a person connected to the human trafficker, where there is no document or evidence to confirm that the income or property has been obtained by lawful means;

o) property of a person facilitating the distribution of drugs - income, property or proceeds from the property of a person facilitating the distribution of drugs, his/her family member, close relative or of a person connected with this person, where there is no document or evidence to confirm that the income or property has been obtained by lawful means;

p) property of a person convicted of a crime under Article 194 and/or Article 331^1 of the Criminal code of Georgia - income, property or proceeds from the property of a person convicted of a crime under Article 194 and/or Article 331^1 of the Criminal code of Georgia, his/her family member, close relative or of a person connected with a a person convicted of a crime under Article 194 and/or Article 331^1 of the Criminal code of Georgia, where there is no document or evidence to confirm that the income or property has been obtained by lawful means;

q) illegal property - income, property or proceeds from the property, shares (interest) acquired illegally by a racketeering group, a racketeer, an official, a member of the criminal underworld, a human trafficker, a person facilitating the distribution of drugs or by a person convicted of a crime under Article 194 and/or Article 331^1 of the Criminal Code of Georgia, or by a family member, close relative of or by a person connected with this person;

r) undocumented property - property, also proceeds from the property, shares (interest) where a racketeering group, a racketeer, an official, a member of the criminal underworld, a human trafficker, a person facilitating the distribution of drugs or a person convicted of a crime under Article 194 and/or Article 331^1 of the Criminal Code of Georgia, or by a family member, close relative of or a person connected with this person hold no document or evidence to confirm that the income or property or

shares has been obtained by lawful means, and/or where this property, proceeds from the property, shares have been acquired with the funds derived from the alienation of illegal property.

Law of Georgia No 211 of 24 June 2004- LHG I, No 18, 9.7.2004, Art. 64
Law of Georgia No 2357 of 20 December 2005- LHG I, No 57, 29.12.2005, Art. 441
Law of Georgia No 3838 of 7 December 2006- LHG I, No 48, 22.12.2006, Art. 335
Law of Georgia No 5199 of 4 July 2007- LHG I, No 28, 18.7.2007, Art. 286
Law of Georgia No 1525 of 13 November 2013 - website, 22.11.2013

Article 356^2 - Filing a claim for confiscation and transfer to the State of property derived from raketeering activities, or property of officials, members of the criminal underworld, human traffickers, persons facilitating the distribution of drugs or property of persons convicted of a crime under Article 194 and/or Article 331^1 of the Criminal Code of Georgia

1. A claim for confiscation and transfer to the State of property derived from raketeering, or property of officials, members of the criminal underworld, human traffickers, persons facilitating the distribution of drugs or property of persons convicted of a crime under Article 194 and/or Article 331^1 of the Criminal Code of Georgia may be filed by a prosecutor within 10 years after a court judgement against the raketeer, the official, the member of criminal underworld, the human trafficker, the person facilitating the distribution of drugs or the person convicted of a crime under Article 194 and/or Article 331^1 of the Criminal Code of Georgia has entered into force.
2. A claim for confiscation and transfer to the State of property derived from raketeering may be filed against a racketeering group, a racketeer, a racketeer's family member, close relative or against a person connected with the racketeer.
3. A claim for confiscation and transfer to the State of property of an official may be filed against the official, the official's family member, close relative or against a person connected with the official.
4. A claim for confiscation and transfer to the State of property of a member of the criminal underworld may be filed against the member of the criminal underworld, his/her family member, close relative or against a person connected with the member of the criminal underworld.
5. A claim for confiscation and transfer to the State of property of a human trafficker may be filed against the human trafficker, the human trafficker's family member, close relative or against a person connected with the human trafficker.
6. A claim for confiscation and transfer to the State of property of a person facilitating the distribution of drugs may be filed against this person, his/her family member, close relative or against a person connected with the person facilitating the distribution of drugs.
7. A claim for confiscation and transfer to the State of property of a person convicted of a crime under Article 194 and/or Article 331^1 of the Criminal Code of Georgia may be filed against this person, his/her family member, close relative or against a person connected with the person person convicted of the crime under Article 194 and/or Article 331^1 of the Criminal Code of Georgia.

Law of Georgia No 211 of 24 June 2004- LHG I, No 18, 9.7.2004, Art. 64
Law of Georgia No 2357 of 20 December 2005- LHG I, No 57, 29.12.2005, Art. 441
Law of Georgia No 3838 of 7 December 2006- LHG I, No 48, 22.12.2006, Art. 335
Law of Georgia No 5199 of 4 July 2007- LHG I, No 28, 18.7.2007, Art. 286
Law of Georgia No 3035 of 4 May 2010- LHG I, No 24, 10.5.2010, Art. 163
Law of Georgia No 1525 of 13 November 2013 - website, 22.11.2013

Article 356^3 - Declaring property to be derived from racketeering, declaring to be unlawful and undocumented the property of a racketeering group, a racketeer, an official, a member of the

criminal underworld, a human trafficker, a person facilitating the distribution of drugs or of a person convicted of a crime under Article 194 and/or Article 331[1] of the Criminal Code of Georgia

1. A judge shall declare property to be derived from racketeering if following evaluation of the appropriate evidence, it is discovered that the property has been derived from racketeering, constitutes proceeds from such property or has been acquired with proceeds from racketeering, or there is no document or evidence to confirm that the property of a racketeering group, a racketeer, the racketeer's family member, close relative or of a person connected with the racketeer has been obtained by lawful means;
2. A plaintiff shall be obliged to provide to the court evidence that confirms that the defendant's property has been derived from racketeering.
3. A judge shall declare as illegal the property of a racketeering group, a racketeer, an official, a member of the criminal underworld, a human trafficker, a person facilitating the distribution of drugs, or the property of a person convicted of a crime under Article 194 and/or Article 331[1] of the Criminal Code of Georgia, as well as the property of their family members, close relatives or the property of a person connected with a racketeer, an official, a
member of criminal underworld, a human trafficker, a person faciliting the distribution of drugs or with a person convicted of a crime under Article 194 and/or Article 331[1] of the Criminal Code of Georgia, if, based on the evaluation of the appropriate evidence, the court establishes that the property or the funds for acquiring the property has been obtained in violation of the law.
4. A plaintiff shall be obliged to provide to the court evidence that confirms that the defendant's property has been derived illegally.
5. A judge shall declare as undocumented the property of a racketeering group, a racketeer, an official, a member of the criminal underworld, a human trafficker, a person facilitating the distribution of drugs, or the property of a person convicted of a crime under Article 194 and/or Article 331[1] of the Criminal Code of Georgia, as well as the property of their family members, close relatives or the property of a person connected with a racketeer, an official, a member of criminal underworld, a human trafficker, a person facilitating the distribution of drugs or a person convicted of a crime under Article 194 and/or Article 331[1] of the Criminal Code of Georgia, if, during the proceedings the defendant fails to present to the judge documents that confirm that the property or the funds required for acquiring this property have been obtained legally, or that confirm that charges established under the legislation of Georgia for this property have been paid.
6. A defendant shall be obliged to present to the court evidence confirming that the property is legal and is backed with appropriate documents.

Law of Georgia No 211 of 24 June 2004- LHG I, No 18, 9.7.2004, Art. 64
Law of Georgia No 2357 of 20 December 2005- LHG I, No 57, 29.12.2005, Art. 441
Law of Georgia No 3838 of 7 December 2006- LHG I, No 48, 22.12.2006, Art. 335
Law of Georgia No 5199 of 4 July 2007- LHG I, No 28, 18.7.2007, Art. 286
Law of Georgia No 1525 of 13 November 2013 - website, 22.11.2013

Article 356[4] - Attachment of property

If there is information that the property of a racketeering group, a racketeer, an official, a member of the criminal underworld, a human trafficker, a person facilitating the distribution of drugs, a person convicted of a crime under Article 194 and/or Article 331[1] of the Criminal Code of Georgia, or the property of their family members, close relatives or the property of a person connected with a racketeer, an official, a member of the criminal underworld, a human trafficker, a person facilitating the distribution of drugs or with a person convicted of a crime under Article 194 and/or Article 331[1]

of the Criminal Code of Georgia will be concealed or spent or otherwise transferred, a prosecutor shall be obliged to request an injunction from the court to attach the property, including bank accounts.
Law of Georgia No 211 of 24 June 2004- LHG I, No 18, 9.7.2004, Art. 64
Law of Georgia No 2357 of 20 December 2005- LHG I, No 57, 29.12.2005, Art. 441
Law of Georgia No 3838 of 7 December 2006- LHG I, No 48, 22.12.2006, Art. 335
Law of Georgia No 5199 of 4 July 2007- LHG I, No 28, 18.7.2007, Art. 286
Law of Georgia No 1525 of 13 November 2013 - website, 22.11.2013

Article 356^5 - Legal consequences of declaring property to be derived from racketeering, as illegal or undocumented

1. If, under Article 356^3, a court declares property to be derived from racketeering, or if a court under Article 356^3 declares as illegal or undocumented the property of a racketeering group, a racketeer, an official, a member of the criminal underworld, a human trafficker, a person facilitating the distribution of drugs, or the property of a person convicted of a crime under Article 194 and/or Article 331^1 of the Criminal Code of Georgia, or the property of their family members, close relatives or the property of a person connected with a racketeer, an official, a member of criminal underworld, a human trafficker, a person facilitating the distribution of drugs or with a person convicted of a crime under Article 194 and/or Article 331^1 of the Criminal Code of Georgia, the property shall be transferred to its legal owner after the lawful interests of the third person have been satisfied, or to the State, if the identity of the legal owner cannot be established.
2. If the fact that the property has been derived from racketeering, is illegal or undocumented can be proven only in part, the part of the property that the defendant cannot prove in court not to be illegal, undocumented or derived from racketeering, shall be transferred to the legal owner, or if the owner's identity cannot be established, to the State.
3. If the illegal, undocumented property or property derived from racketeering cannot be returned to its legal owner or to the State in its original state, the defendant shall be ordered to pay the money that is equivalent in value to this property.
4. A court decision on the transfer of the illegal or undocumented property or of the property derived from racketeering to its legal owner or to the State shall be enforced under the Law of Georgia on Enforcement Proceedings.
Law of Georgia No 211 of 24 June 2004 - LHG I, No 18, 9.7.2004, Art. 64
Law of Georgia No 2357 of 20 December 2005- LHG I, No 57, 29.12.2005, Art. 441
Law of Georgia No 3838 of 7 December 2006- LHG I, No 48, 22.12.2006, Art. 335
Law of Georgia No 5199 of 4 July 2007- LHG I, No 28, 18.7.2007, Art. 286
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Article 356^6 - Default decision

1. When hearing a case relating to the confiscation of property derived from racketeering, of property of an official, a member of the criminal underworld, a human trafficker, a person facilitating the distribution of drugs, or of the person convicted of a crime under Article 194 and/or Article 331^1 of the Criminal Code of Georgia, when a wanted notice has been issued for a racketeer, an official, a member of the criminal underworld, a human trafficker, a person facilitating the distribution of drugs, or for a person convicted of a crime under Article 194 and/or Article 331^1 of the Criminal Code of Georgia or for their family members, close relatives or for a person connected with a racketeer, an official, a member of the criminal underworld, a human trafficker, a person facilitating the distribution of drugs, or with a person convicted of a crime under Article 194 and/or Article 331^1 of the Criminal Code of Georgia, Article 233(1)(c) of this Code shall not apply.

2. A party that fails to appear before the court, shall be sent a copy of the default decision within five days after it has been delivered. The party may appeal the default decision to a court of appeal (cassation). A party's signature on the appeal (cassation) claim shall be notarised or certified through a consular procedure.
3. In the case provided in the first paragraph of this article, the procedure for serving a judicial summons (notice) on the party prescribed under Chapter VIII of this Code shall apply.
Law of Georgia No 211 of 24 June 2004- LHG I, No 18, 9.7.2004, Art. 64
Law of Georgia No 2357 of 20 December 2005- LHG I, No 57, 29.12.2005, Art. 441
Law of Georgia No 3838 of 7 December 2006- LHG I, No 48, 22.12.2006, Art. 335
Law of Georgia No 5199 of 4 July 2007- LHG I, No 28, 18.7.2007, Art. 286
Law of Georgia No 1525 of 13 November 2013 - website, 22.11.2013

Article 356^7 - Criminal liability of a racketeer, an official, a member of the criminal underworld, a human trafficker, a person facilitating the distribution of drugs, or of a person convicted of a crime under Article 194 and/or Article 331^1 of the Criminal Code of Georgia

1. If a court confirms that a racketeer, an official, a member of the criminal underworld, a human trafficker, a person facilitating the distribution of drugs or a person convicted of a crime under Articles 194 and/or 331^1 of the Criminal Code of Georgia, or their family members, close relatives, or a person connected with a racketeer, an official, a member of the criminal underworld, a human trafficker, a person facilitating the distribution of drugs or with a person convicted of a crime under Articles 194 and/or 331^1 of the Criminal Code of Georgia, owns illegal and undocumented property, and if during a trial, signs of criminal activity have been discovered in the actions committed by a racketeer, an official, a member of the criminal underworld, a human trafficker, a person facilitating the distribution of drugs or by a person convicted of a crime under Articles 194 and/or 331^1 of the Criminal Code of Georgia, a prosecutor shall institute criminal proceedings against that person.
2. In the case provided in the first paragraph of this article, legal proceedings shall be conducted under the Criminal Procedural Code of Georgia.
Law of Georgia No 5199 of 4 July 2007- LHG I, No 5199, 18.7.2007, Art. 286
Law of Georgia No 1525 of 13 November 2013 - website, 22.11.2013

4. LAW OF GEORGIA ON OPERATIVE INVESTIGATORY ACTIVITIES[49]

Chapter II - Conduct of Operative-Investigative Measures

Article 7 - Concept of an operative-investigative measure

1. An operative-investigative measure is an action carried out by a state body or an official duly authorised under this Law, who/which, within the scope of his/her/its powers, ensures the fulfilment of the objectives specified in Article 3 of this Law.

2. In order to accomplish these objectives, the bodies conducting operative-investigative activities may, overtly or covertly:
a) interview a person;

[49] https://matsne.gov.ge/en/document/view/18472?impose=original&publication=40

b) collect information and conduct surveillance;
c) carry out a test purchase;
d) carry out a controlled delivery;
e) examine objects and documents;
f) identify a person;
g) censor the correspondence of an arrested, detained and convicted person;
h) obtain electronic communication identification data;
i)(Deleted - 1.8.2014, No 2635).
j) infiltrate a secret collaborator or an operative into a criminal group in a prescribed manner;
k) set up an undercover organisation in a prescribed manner;
l) monitor Internet communications by observing and participating in open and closed Internet communications in the global information network (Internet), and creating situations of the illegal obtaining of computer data in order to identify a perpetrator. [(the normative content related to the words of the same provision 'observe internet communications' shall be repealed) - decision No1/2/519 of the Constitutional Court of Georgia of 24 October 2012 – website 30.10.2012ბ.]

3. A body conducting operative-investigative activities may, in accordance with the procedure laid down in Chapter XVI1 of the Criminal Procedure Code of Georgia, obtain electronic communication identification data from an electronic communications company in the following cases: when searching for a missing person; when searching for an accused or convicted person for the purpose of bringing him/her before a relevant state authority if such person avoids the application of coercive measures imposed on him/her or the serving of an imposed sentence; when searching for property lost as a result of a crime.

31. The operative-investigative measures specified in paragraph 2(h) and (i) of this article may also be conducted in respect of a judge by an order of the chairperson of the Supreme Court upon a reasoned request of the Chief Prosecutor of Georgia.

4. (Deleted - 1.8.2014, No 2635).
5. (Deleted - 1.8.2014, No 2635).

6. The list of measures specified in paragraph 2 of this article may be changed or supplemented only under this Law.

7. A report shall be prepared at the time of conducting an operative-investigative measure; the report shall describe the circumstances in which technical means were used. The report, along with the obtained materials, shall be stored in accordance with this Law.

8. An official of the body conducting an operative-investigative activity shall personally participate in the conduct of the measures specified in paragraph 2 of this article, and at the same time, such official may use the assistance of specialists in a specific field, and the voluntary overt or covert assistance of certain persons.

Law of Georgia No 289 of 5 May 2000 - LHG I, No 18. 15.5.2000, Art.46
Law of Georgia No 808 of 24 December 2004 - LHG I, No 39, 25.12.2004, Art.187
Law of Georgia No 1370 of 20 April 2005 - LHG I, No 19, 28.4.2005, Art.140
Law of Georgia No 1682 of 17 June 2005 - LHG I, No 35, 4.7.2005, Art.214
Law of Georgia No 2941 of 28 April 2006 - LHG I, No 14. 15.5.2006, Art.95

Law of Georgia No 482 of 1 November 2008 - LHG I, No 30, 7.11.2008, Art.198
Law of Georgia No 2468 of 25 December 2009 - LHG I, No 1, 4.1.2010,Art.1
Law of Georgia No 3619 of 24 December 2010 - LHG I, No 51, 29.9.2010, Art.332
Law of Georgia No 6251 of 22 May 2012 - website, 29.5.2012
Decision of the Constitutional Court of Georgia No 1/2/519 of 24 October 2012 - website, 30.10.2012
Law of Georgia No 2635 of 1 August 2014 - website, 18.8.2014
Law of Georgia No 3537 of 1 May 2015 - website, 18.5.2015

2. 3. MOLDOVA

1. CRIMINAL CODE

Статья 98. Цели и виды мер безопасности

(1) Меры безопасности имеют целью устранение опасности и предупреждение совершения деяний, предусмотренных уголовным законом.

(2) Мерами безопасности являются:
a) принудительные меры медицинского характера;

b) принудительные меры воспитательного характера;

c) высылка;
d) специальная конфискация;
e) расширенная конфискация.

Статья 106. Специальная конфискация

(1) Специальной конфискацией является принудительная и безвозмездная передача в собственность государства имущества, указанного в части (2). В случае, когда этого имущества больше не существует, оно не найдено или не может быть восстановлено, конфискуется денежная сумма, равная его стоимости.

(2) Специальной конфискации подлежит имущество (в том числе валютные ценности):

a) использованное или предназначенное для совершения преступления;

b) полученное вследствие совершения преступлений, а также любые доходы от использования этого имущества;

c) переданное с целью склонения к совершению преступления или для вознаграждения преступника;

e) находящееся во владении вопреки законным основаниям;

f) частично или полностью превращенное или преобразованное из имущества, полученного в результате преступления, и из доходов от этого имущества;

g) являющееся предметом преступлений по отмыванию денег и

финансированию терроризма.

(2-1) Если имущество, полученное вследствие совершения преступлений, и доходы от этого имущества были приобщены к имуществу, приобретенному законным путем, конфискации подлежит та часть этого имущества или его стоимости, которая соответствует стоимости приобщенных имущества и доходов от него.

(3) Если имущество, указанное в пунктах a) и b) части (2), принадлежит или было передано возмездно лицу, которое не знало и не должно было знать о цели использования или происхождении имущества, конфискуется денежная сумма, равная его стоимости. Если такое имущество было передано безвозмездно лицу, которое не знало и не должно было знать о цели использования или происхождении имущества, оно конфискуется.

(4) Специальная конфискация может применяться и в случае, когда виновному не назначается уголовное наказание.

(5) Специальная конфискация не применяется в случае преступлений, совершенных посредством органа печати или любого другого средства массовой информации.

Статья 106-1. Расширенная конфискация

(1) Конфискации подлежит и иное, нежели указанное в статье 106, имущество в случае, когда лицо осуждено за совершение преступлений, предусмотренных статьями 158, 165, 206, 208-1, 208-2, 217–217-4, 218–220, 236–240, 243, 248–253, 256, 260-3, 260-4, 279, 280, 283, 284, 290, 292, 302, 324–329, 330-2, 332–335-1, и если деяние совершено из корыстных побуждений.

(2) Расширенная конфискация применяется в случае совокупного наличия следующих условий:

a) стоимость имущества, полученного осужденным в течение 5 лет, охватывающих период, предшествовавший совершению преступления, и период после совершения преступления до даты вынесения приговора, существенно превышает законно полученные им доходы;

b) судебной инстанцией на основании представленных по делу доказательств установлено происхождение соответствующего имущества от преступной деятельности, предусмотренной частью (1).

(3) При применении положений части (2) принимается во внимание стоимость имущества, переданного осужденным или третьим лицом члену семьи, юридическим лицам, которые контролируются осужденным, или иным лицам, которые знали или должны были знать о незаконном происхождении имущества.

(4) При установлении разницы между законными доходами и стоимостью полученного имущества учитываются стоимость имущества на дату его получения и расходы, произведенные осужденным, в том числе лицами, предусмотренными частью (3).

(5) Если подлежащее конфискации имущество не найдено или приобщено к имуществу, приобретенному законным путем, вместо него конфискуются деньги и имущество, покрывающие его стоимость.

(6) Конфискуются также имущество и деньги, полученные от использования подлежащего конфискации имущества или пользования им, включая имущество, в которое превратили или

преобразовали имущество, происходящее от преступной деятельности, а также доходы или выгода, полученные от этого имущества.

(7) Конфискация не может выходить за пределы стоимости имущества, полученного в предусмотренный пунктом a) части (2) период, составляющей превышение над уровнем законных доходов осужденного.

Статья 132-1. Имущество

Под имуществом в контексте статей 106, 243 и 279 понимаются финансовые средства, любого рода ценности (активы), материальные или нематериальные, движимые или недвижимые, осязаемые или неосязаемые, а также документы или другие юридические инструменты в любой форме, в том числе электронной или цифровой, подтверждающие правовой статус или право, включая любую долю участия (интересы) в таких ценностях (активах).

Статья 243. Отмывание денег

(1) Отмывание денег, совершенное путем:

a) конвертирования или перевода имущества лицом, которому известно или должно было быть известно, что это имущество составляет незаконный доход, в целях сокрытия или маскировки его незаконного происхождения либо оказания помощи любому лицу, вовлеченному в совершение основного преступления, во избежание юридических последствий этих действий;

b) сокрытия или маскировки подлинности, происхождения, местонахождения, распоряжения, передачи, перемещения имущества, реальных свойств имущества или прав на него лицом, которому известно или должно было быть известно, что это имущество составляет незаконный доход;

c) получения, владения или использования имущества лицом, которому известно или должно было быть известно, что это имущество составляет незаконный доход;

d) участия в любом объединении, сговоре, пособничества посредством оказания содействия, помощи или дачи советов в целях совершения действий, предусмотренных пунктами a)–c),

наказывается штрафом в размере от 1350 до 2350 условных единиц или лишением свободы на срок до 6 лет с лишением или без лишения в обоих случаях права занимать определенные должности или заниматься определенной деятельностью на срок от 2 до 5 лет, а в случае юридического лица – штрафом в размере от 8000 до 11000 условных единиц с лишением права занимат определенной деятельностью или с ликвидацией юридического лица.

(2) Те же действия, совершенные:
b) двумя или более лицами;
c) с использованием служебного положения,

наказываются штрафом в размере от 2350 до 5350 условных единиц или лишением свободы на срок от 4 до 7 лет, а в случае юридического лица – штрафом в размере от 10000 до 13000 условных единиц с лишением права заниматься определенной деятельностью или с ликвидацией юридического лица.

(3) Действия, предусмотренные частями (1) или (2), совершенные: a) организованной преступной группой или преступной организацией; b) в особо крупных размерах,

наказываются лишением свободы на срок от 5 до 10 лет, а в случае юридического лица – штрафом в размере от 13000 до 16000 условных единиц или ликвидацией юридического лица.

(4) Незаконными действиями являются также деяния, совершенные за пределами государства, если они содержат признаки состава преступления в государстве, в котором они совершены, и могут являться составом преступления, совершенного на территории Республики Молдова.

2. CRIMINAL PROCEDURE CODE

Статья 57. Офицер по уголовному преследованию и его полномочия

(2) Офицер по уголовному преследованию имеет следующие полномочия:

1) обеспечивает регистрацию в установленном порядке сообщения о совершении или подготовке к совершению преступления, если сообщение не было зарегистрировано руководителем органа уголовного преследования, начинает уголовное преследование в случае, если из содержания акта об осведомлении или из констатирующего акта вытекает разумное подозрение о совершении преступления, вносит предложение прокурору о прекращении уголовного преследования, прекращении производства по уголовному делу либо об отказе начать уголовное преследование;

9) руководит с момента регистрации социально опасного деяния специальными розыскными мероприятиями, направленными на раскрытие преступления, обнаружение исчезнувших лиц и пропавшего имущества;

Статья 125. Основания для производства обыска

(1) Орган уголовного преследования вправе производить обыск, если из собранных доказательств или материалов специальной розыскной деятельности вытекает обоснованное предположение, что в каком-либо помещении или ином месте либо у того или иного лица могут находиться предметы, предназначенные для использования или использованные в качестве орудий преступления, предметы и ценности, добытые в результате преступления, а также другие предметы или документы, которые могут иметь значение для уголовного дела и которые не могут быть получены другими доказательными путями.

(2) Обыск может производиться и в целях обнаружения каких-либо разыскиваемых лиц, а также трупов или других данных, важных для уголовного дела.

(3) Обыск производится на основании мотивированного постановления органа уголовного преследования и только с санкции судьи по уголовному преследованию.

(4) В неотложном случае или в случае явного преступления обыск может быть произведен на основании мотивированного постановления прокурора без санкции судьи по уголовному

преследованию с незамедлительным представлением последнему, но не позднее чем в течение 24 часов с момента окончания обыска материалов, полученных в результате его проведения, и указанием мотивов его проведения. Судья по уголовному преследованию проверяет законность этого процессуального действия.

(5) Если судья по уголовному преследованию признает обыск законным, он подтверждает его результаты своим мотивированным определением. В противном случае он выносит мотивированное определение о незаконности обыска.

Статья 126. Основания для производства выемки предметов или документов

(1) Орган уголовного преследования на основании мотивированного постановления вправе произвести выемку предметов или документов, имеющих значение для уголовного дела, если собранные по делу доказательства или материалы специальных розыскных мероприятий точно указывают, где и у кого они находятся.

(2) Выемка документов, содержащих сведения, составляющие государственную, коммерческую, банковскую тайну, а также информации о телефонных переговорах производится только с санкции судьи по уголовному преследованию.

Статья 132-2. Специальные розыскные мероприятия
(1) С целью раскрытия и расследования преступлений осуществляются

следующие специальные розыскные мероприятия:
1) с разрешения судьи по уголовному преследованию:
a) обследование жилища и/или установка в нем аудио-, видео-, фото- и

киноаппаратуры для ведения наблюдения и записи;

b) наблюдение за жилищем с использованием технических средств, обеспечивающих запись;

c) прослушивание и запись переговоров, запись изображений;

d) задержание, изучение, передача, досмотр или выемка почтовых отправлений;

e) мониторинг соединений, относящихся к телеграфным и электронным сообщениям;

f) мониторинг или контроль финансовых сделок и доступ к финансовой информации;

g) документирование с помощью технических средств и методов, а также локализация или отслеживание через глобальную систему позиционированияG(PS) или с помощью других технических средств;

h) сбор информации от поставщиков услуг электронных коммуникаций;

2) с разрешения прокурора:

a) идентификация абонента, собственника или пользователя системы электронных коммуникаций или точки доступа к информационной системе;

b) визуальное наблюдение;

c) контроль за передачей или получением притязаемых, принимаемых, вымогаемых или предлагаемых денег, услуг либо иных материальных или нематериальных ценностей;

d) розыскная деятельность под прикрытием; e) трансграничный надзор;
f) контролируемая поставка;
g) контрольная закупка.

(2) В процессе проведения специальных розыскных мероприятий в соответствии с настоящим кодексом используются информационные системы, видео- и аудиозаписывающие устройства, фото- и киноаппаратура, другие технические средства, в том числе специальные технические средства, предназначенные для скрытого получения информации.

(3) Специальные розыскные мероприятия проводятся розыскными офицерами специализированных подразделений органов, предусмотренных Законом о специальной розыскной деятельности.

Статья 132-3. Основания для проведения специальных розыскных мероприятий

(1) Основаниями для проведения специальных розыскных мероприятий являются:

1) распорядительные процессуальные акты офицера по уголовному преследованию, прокурора или судьи по уголовному преследованию, относящиеся к уголовным делам, находящимся в их производстве;

2) запросы международных организаций и правоохранительных органов других государств в соответствии с международными договорами, стороной которых является Республика Молдова;

3) поручения о производстве процессуальных действий правоохранительных органов других государств в соответствии с международными договорами, стороной которых является Республика Молдова.

(2) Прокурор координирует, руководит и контролирует проведение специального розыскного мероприятия или назначает для осуществления этих действий офицера по уголовному преследованию.

Статья 202. Меры по обеспечению возмещения ущерба, возможной специальной или расширенной конфискации имущества и гарантий исполнения наказания в виде штрафа

(1) Орган уголовного преследования по своей инициативе или судебная инстанция по ходатайству сторон может предпринять на протяжении всего уголовного судопроизводства меры по обеспечению возмещения ущерба, причиненного преступлением, возможной специальной или расширенной конфискации имущества, а также по обеспечению гарантий исполнения наказания в виде штрафа.

(2) Меры по обеспечению возмещения ущерба, причиненного преступлением, возможной специальной или расширенной конфискации имущества, а также по обеспечению гарантий исполнения наказания в виде штрафа заключаются в наложении ареста на движимое и недвижимое имущество в соответствии со статьями 203 – 210.

Статья 203. Наложение ареста на имущество

(1) Наложение ареста на имущество является мерой процессуального принуждения, которая состоит в инвентаризации имущества и запрещении собственнику или владельцу распоряжаться им, а в необходимых случаях – использовать это имущество. После наложения ареста на банковские счета и депозиты прекращаются все операции по ним.

(2) Наложение ареста на имущество применяется в целях обеспечения возмещения ущерба, причиненного преступлением, гражданского иска либо возможной специальной или расширенной конфискации имущества или стоимости имущества, перечисленного в части (2) статьи 106 и статье 1061 Уголовного кодекса.

Статья 204. Имущество, на которое может быть наложен арест

(1) Для возмещения причиненного преступлением ущерба арест может быть наложен на имущество подозреваемого, обвиняемого, подсудимого или гражданского ответчика на сумму предположительной стоимости ущерба.

(2) Для обеспечения исполнения наказания в виде штрафа арест может быть наложен только на имущество обвиняемого или подсудимого исходя из максимальной суммы штрафа, который может быть наложен за совершенное преступление.

(3) Для обеспечения возможной специальной конфискации или расширенной конфискации имущества арест может быть наложен на имущество, перечисленное в части (2) статьи 106 и статье 1061 Уголовного кодекса.

(4) Если имущества, подлежавшего специальной конфискации или расширенной конфискации, больше не существует, оно не найдено, не может быть восстановлено либо принадлежит или было передано возмездно лицу, которое не знало и не должно было знать о цели использования или происхождении имущества, принимаются обеспечительные меры для конфискации денежной суммы, равной его стоимости.

(41) Если имущество, подлежащее аресту для возмещения причиненного ущерба или обеспечения исполнения наказания в виде штрафа, используется в технологическом производственном процессе или является его частью и его арест неизбежно приведет к прекращению хозяйственной деятельности лица, принимаются обеспечительные меры по аресту денежной суммы, равной его стоимости.

(5) Если подлежащее аресту имущество составляет долю в общей собственности, арест может быть наложен только на долю в общей собственности, подлежащую специальной или расширенной конфискации.

(6) Не допускается наложение ареста на пищевые продукты, необходимые собственнику, владельцу имущества и членам их семей, на топливо, литературу по специальности и профессиональное оборудование, посуду и другую кухонную утварь повседневного пользования, которые не представляют особой ценности, а также на другие предметы первой необходимости, хотя бы они впоследствии и могли быть подвергнуты конфискации.

(7) Не допускается наложение ареста на акции, выпущенные банком, подпадающие под действие положений части (4) статьи 45, части (4) статьи 46, пунктов b) и c) части (1), частей (2), (3) и (6) статьи 52 и статьи 521 Закона о деятельности банков No

202/2017. В случаях, предусмотренных настоящей частью, на денежные средства, полученные от отчуждения таких акций, может быть наложен арест.

Статья 205. Основание для наложения ареста

(1) Наложение ареста на имущество может быть применено органом уголовного преследования или судебной инстанцией только в случаях, когда существует разумное подозрение, что имущество, на которое обращено взыскание, будет спрятано, повреждено или растрачено.

(2) Наложение ареста на имущество применяется на основании постановления органа уголовного преследования с санкции судьи по уголовному преследованию или, в зависимости от обстоятельств, на основании определения судебной инстанции. Прокурор по своей инициативе или по заявлению гражданского истца подает ходатайство с приложенным к нему постановлением органа уголовного преследования о наложении ареста на имущество. Судья по уголовному преследованию своей резолюцией санкционирует наложение ареста на имущество, а судебная инстанция разрешает заявление гражданского истца или другой стороны процесса, если разумное подозрение, указанное в части (1), является обоснованным.

(3) В постановлении органа уголовного преследования или, в зависимости от обстоятельств, определении судебной инстанции о наложении ареста на имущество должно быть указано подлежащее аресту имущество в той мере, в какой оно установлено в процессе расследования уголовного дела, а также стоимость имущества, необходимого и достаточного для обеспечения гражданского иска.

(4) Если существуют явные сомнения относительно добровольной выдачи имущества для наложения ареста на него, судья по уголовному преследованию или, в зависимости от обстоятельств, судебная инстанция одновременно с санкцией на наложение ареста на имущество выдает и санкцию на обыск.

(5) В случае явного преступления или в случаях, не терпящих отлагательства, орган уголовного преследования вправе наложить арест на имущество на основании своего постановления без санкции судьи по уголовному преследованию с последующим сообщением ему об этом в обязательном порядке незамедлительно, но не позднее чем в течение 24 часов с момента производства этого процессуального действия. Получив соответствующее извещение, судья по уголовному преследованию проверяет законность наложения ареста, подтверждает его результаты или признает его недействительным. В случае признания наложения ареста незаконным или необоснованным судья по уголовному преследованию распоряжается о снятии ареста со всего имущества или с его части.

Статья 229-1. Этапы процесса возмещения добытого преступным путем имущества

Процесс возмещения добытого преступным путем имущества подразделяется на следующие этапы:

1) преследование добытого преступным путем имущества и сбор доказательств;

2) установление запрета на распоряжение добытым преступным путем имуществом;

3) конфискация добытого преступным путем имущества и возмещение ущерба;

4) возврат добытого преступным путем имущества.

Статья 229-2. Преследование добытого преступным путем имущества и сбор доказательств

(1) В целях преследования добытого преступным путем имущества и сбора доказательств в отношении соответствующего имущества орган уголовного преследования проводит параллельные финансовые расследования.

(2) В случае уголовного преследования по одному или нескольким преступлениям, из которых по меньшей мере одно предусмотрено статьями 141, 144, 158, 164, 165, 165-1, 166-1, 167, 168, 181-2, 206, 217-1, 217-3, 218, 220, 239–240, 242-1–244, 248, 249, 259, 260, 260-2–260-4, 260-6, 279, 283–284, 324–329, 330-1, 330-2, 332–335-1, 352-1 и 362-1 Уголовного кодекса, а также в случае совершенных с использованием служебного положения преступлений, предусмотренных статьями 190 и 191 Уголовного кодекса, орган уголовного преследования распоряжается, посредством поручения Агентству по возмещению добытого преступным путем имущества, о преследовании добытого преступным путем имущества и сборе доказательств в отношении него в соответствии
со статьей 258 настоящего кодекса.

Статья 229-3. Установление запрета на распоряжение добытым преступным путем имуществом

На выявленное добытое преступным путем имущество устанавливается запрет на распоряжение определением судебной инстанции о наложении ареста на имущество или, по обстоятельствам, ордером на замораживание, выданным в соответствии с Законом об Агентстве по возмещению добытого преступным путем имущества No 48/2017.

Статья 229-4. Конфискация добытого преступным путем имущества и возмещение ущерба

Специальная конфискация и расширенная конфискация добытого преступным путем имущества, а также возмещение причиненного преступлениями ущерба назначаются постановлением судебной инстанции в соответствии с настоящим кодексом и Уголовным кодексом.

Статья 258. Распространение территориальной компетенции и поручения органа уголовного преследования

(1) В случае, когда отдельные действия по уголовному преследованию должны быть осуществлены за пределами территории, на которой осуществляется уголовное преследование, орган, осуществляющий уголовное преследование, может осуществить эти действия сам или поручить их осуществление другому соответствующему органу, который обязан выполнить данное поручение в течение не более 10 дней.

(2) В случае, когда орган, осуществляющий уголовное преследование, сам приступает к осуществлению процессуальных действий в соответствии с частью (1), он уведомляет об этом

соответствующий орган, в районе деятельности которого будут осуществляться данные действия.

(3) Орган уголовного преследования распоряжается, посредством поручения Агентству по возмещению добытого преступным путем имущества, о проведении параллельного финансового расследования в целях преследования добытого преступным путем имущества, сбора доказательств в отношении него в случаях, предусмотренных частью (2) статьи 229-2, установления запрета на распоряжение идентифицированным добытым преступным путем имуществом и обеспечения использования арестованного имущества в соответствии со статьей 229-7. Агентство по возмещению добытого преступным путем имущества информирует орган уголовного преследования о принятых на основании поручения мерах посредством протокола по результатам параллельного финансового расследования. Срок выполнения поручения Агентству по возмещению добытого преступным путем имущества не может превышать разумного срока уголовного преследования, с уведомлением каждые 60 дней органа уголовного преследования о результатах параллельных финансовых расследований, проведенных в целях возмещения добытого преступным путем имущества.

5. LAW NO. 48 OF 30.03.2017 ON CRIMINAL ASSETS RECOVERY AGENCY

Статья 5. Полномочия Агентства по возмещению добытого преступным путем имущества

В полномочия Агентства по возмещению добытого преступным путем имущества входит:

a) проведение параллельных финансовых расследований и составление протоколов по их результатам, а также установление запрета на распоряжение добытым преступным путем имуществом в порядке, предусмотренном Уголовно-процессуальным кодексом;

b) оценка, администрирование и использование добытого преступным путем имущества, распоряжение которым запрещено;

c) ведение учета в отношении добытого преступным путем имущества, распоряжение которым запрещено, в том числе на основании запросов компетентных иностранных органов;

d) ведение переговоров о репатриации добытого преступным путем имущества в соответствии с частью (2) статьи 13;

e) международное сотрудничество и обмен информацией с компетентными иностранными органами;

f) сбор и анализ статистических данных о предусмотренных настоящим законом преступлениях.

g) представление интересов государства и юридических лиц публичного права в гражданских процессах по возмещению добытого преступным путем имущества, а также ущерба, причиненного вследствие нарушения законодательства Республики Молдова и других государств;

h) сотрудничество с органами публичной власти, выполняющими полномочия, относящиеся к деятельности, осуществляемой Агентством по возмещению добытого преступным путем имущества;

i) оказание в соответствии с законом поддержки судебным органам в целях использования передового опыта в области выявления и администрирования имущества, которое может составить предмет мер по установлению запрета на распоряжение имуществом и конфискации в ходе уголовного процесса.

Статья 6. Права и обязанности Агентства по возмещению добытого преступным путем имущества

(1) Агентство по возмещению добытого преступным путем имущества наделяется следующими правами:

a) запрашивать и получать необходимые для осуществления своих полномочий информацию и документы от национальных и международных субъектов, которые ими владеют (далее – поставщики необходимых данных);

b) принимать в соответствии с частью (2) статьи 10 решение о замораживании выявленного добытого преступным путем имущества;

c) иметь свободный доступ к национальным базам данных в связи с осуществляемой деятельностью.

d) в целях выполнения своих полномочий предъявлять гражданские иски в интересах государства, юридических лиц публичного права.

(2) Агентство по возмещению добытого преступным путем имущества имеет следующие обязанности:

a) предоставлять, в зависимости от обстоятельств, компетентным национальным, иностранным и международным органам информацию и документы, подтверждающие обоснованные подозрения в совершении преступлений, а также о связанном с этими преступлениями добытом преступным путем имуществе;

b) утверждать руководства и методики.

Статья 9. Параллельные финансовые расследования

Агентство по возмещению добытого преступным путем имущества проводит в соответствии с Уголовно-процессуальным кодексом параллельные финансовые расследования в связи с совершением одного или нескольких преступлений, из которых по меньшей мере одно предусмотрено частью (2) статьи 2 настоящего закона.

Статья 10. Установление запрета на распоряжение добытым преступным путем имуществом

(1) Агентство по возмещению добытого преступным путем имущества обеспечивает установление запрета на распоряжение добытым преступным путем имуществом посредством:

a) запроса о наложении судебной инстанцией ареста в соответствии с Уголовно-процессуальным кодексом;

b) выдачи ордера на замораживание.

(2) Агентство по возмещению добытого преступным путем имущества выдает на основании письменного запроса компетентных иностранных органов ордер на замораживание добытого преступным путем имущества на срок до 15 дней. Замораживание имущества на основании выданного Агентством ордера не препятствует наложению ареста на это имущество

в ходе уголовного процесса.

(3) Ордер на замораживание должен содержать:

a) сведения о собственнике, владельце или выгодоприобретающем собственнике добытого преступным путем имущества;

b) правовую классификацию преступления, по поводу которого предполагается, что оно породило добытое преступным путем имущество;

c) указание подлежащего замораживанию добытого преступным путем имущества и относящиеся к данному имуществу доказательства;

d) основания, оправдывающие необходимость замораживания добытого преступным путем имущества;

e) по обстоятельствам – указание физических лиц и юридических лиц публичного и частного права, которым запрещено участвовать в какой-либо форме в операциях и сделках с указанным добытым преступным путем имуществом, а также способствовать перемещению, транспортировке или транзиту добытого преступным путем имущества.

(4) На основании ордера на замораживание, выданного Агентством по возмещению добытого преступным путем имущества, собственники, владельцы и выгодоприобретающие собственники добытого преступным путем имущества, другие физические лица и другие юридические лица публичного и частного права, участвующие в операциях и сделках, предметом которых является такое имущество, могут быть обязаны приостановить все связанные с данным имуществом операции и сделки или участие в какой-либо форме в таковых.

(5) Ордер на замораживание, выданный Агентством по возмещению добытого преступным путем имущества, доводится до сведения соответствующих лиц незамедлительно, не позднее трех дней с момента выдачи, в письменной форме, посредством телефона или телеграфа либо с помощью электронных средств связи.

(6) Ордер на замораживание, выданный Агентством по возмещению добытого преступным путем имущества, может быть обжалован в административном суде без соблюдения предварительной процедуры.

(7) Нарушение ордера на замораживание, доведенного Агентством по возмещению добытого преступным путем имущества до сведения, влечет уголовную ответственность в соответствии со статьей 251 Уголовного кодекса.

Статья 11. Администрирование добытого преступным путем имущества, распоряжение которым запрещено

(1) Оценка, администрирование и использование добытого преступным путем имущества, распоряжение которым запрещено на основании деятельности, осуществляемой Агентством по возмещению добытого преступным путем имущества, обеспечивается агентством в

соответствии с Уголовно-процессуальным кодексом и положением, утвержденным Правительством.

(2) Информация о процессе и результатах использования добытого преступным путем имущества, распоряжение которым запрещено на основании деятельности, осуществляемой Агентством по возмещению добытого преступным путем имущества, публикуется на официальной веб-странице Национального центра по борьбе с коррупцией.

(3) Агентство по возмещению добытого преступным путем имущества может заключать договоры с физическими и юридическими лицами публичного и частного права, специализация которых позволит обеспечить наиболее эффективное выполнение полномочий по оценке и администрированию добытого преступным путем имущества, распоряжение которым запрещено. Услуги, предоставляемые указанными лицами, оплачиваются за счет финансовых средств, полученных в результате использования добытого преступным путем имущества, распоряжение которым запрещено.

3. LAW NO 308/2017 ON PREVENTION AND COMBATING MONEY LAUNDERING AND TERRORISM FINANCING / AML LAW

Article 3. Main notions

Under the present law, the following notions shall mean:

goods - financial means, as well as funds, income, any category of corporeal or incorporeal, movable or immovable, tangible or intangible values (assets) and acts or other legal instruments in any form, including in electronic or digital form that attest a title or a right, including any share quota (interest) in respect of those values (assets);

financial investigations - activities that consist in collection of information, analysis and verification of all financial and economic relationships, as well as in verification of clients that may be related to actions of money laundering, to associated offenses and to actions of terrorism financing, activities focused to identification, determination of source and tracing of the goods used for, obtained from these offenses, of terrorists funds and other goods that are or may be the object of provisional and/or confiscation measures, as well as investigation of the extent of criminal network and of the related criminal degree. Financial investigations are distinct from special investigations regulated by Law No. 59/2012 on special investigative activity;

Article 19. Attributions of the Office

(1) For the purpose of enforcing of the provisions of present law, the Office has the following powers:

a) receives, records, analyses, processes and submits to competent authorities the information regarding the suspicious activities and transactions of money laundering, associated offences and terrorism financing, reported by the reporting entities, as well as other relevant information obtained under the provisions of the present law;

b) informs the competent law enforcement authorities immediately as it establishes pertinent suspicions related to money laundering, terrorism financing or other offenses

that resulted in the obtainment of illicit goods, as well as the Intelligence and Security Service in the area related to terrorism financing;

c) notifies the reporting entities, authorities with supervision functions of the reporting entities and other competent authorities regarding the risks related to money laundering and terrorism financing, new trends and typologies in the area of money laundering and terrorism financing, infringements established in the areas of competence and gaps in normative acts related to prevention of risks of money laundering and terrorism financing;

d) conducts financial investigations for the purpose of identification of the source of goods suspected of money laundering and terrorism financing;

e) submits, according to legal provisions, proposals on the improvement of legal framework in force and its adjustment to international regulations and standards of prevention and combating money laundering and terrorism financing;

f) issues orders, regulations, recommendations, instructions and guidelines for the purpose of enforcement the present law;

f[1]) develops the methodology for establishing the jurisdictions that do not implement international transparency standards, as well as the list of those jurisdictions, consults them with the National Bank of Moldova and the National Commission for Financial Markets and submits them to the Government for approval;

g) supervises the compliance of the reporting entities with the provisions of the present law, including the reporting of suspicious activities and transactions;

h) initiates, organizes and participates in the training of reporting entities and authorities with supervision functions of the reporting entities regarding the implementation of the provisions of the present law;

i) coordinates activity of the competent authorities in the area of prevention and combating money laundering and terrorism financing;

j) cooperates and performs the information exchange with national authorities and institutions, from other countries (jurisdictions), as well as with international organizations in the area of prevention and combating money laundering and terrorism financing;

k) represents the Republic of Moldova at different specialized international forums and organizations, as well as accumulates, prepares and presents to international organizations the national progresses in the area of prevention and combating money laundering and terrorism financing;

l) participates in preparation and organization of practical and scientific conferences, seminars and exchange of experience in the area, at national and international level;

m) creates and maintains an information system in its area of its activity, including the official web site, and ensures its functionality, as well as protection, security and limited access to held data;

n) collects and analyses statistical material on the effectiveness of the system of prevention and combating of money laundering and terrorism financing , including number of suspicious activities and transactions reports, data on the application of provisional measures, the value of seized and/or confiscated goods originated from money laundering and terrorism financing offences;

o) elaborates national policy documents in the area of competence, including the National Strategy for Prevention and Combating Money Laundering and Terrorism Financing, and coordinates their implementation;

p) initiates, coordinates, supervises and participates in the process of national risk assessment of money laundering and terrorism financing;

q) submits requests to competent authorities on the removal of causes and conditions that impede the efficient implementation of national policies and programs in the area;

r) issues freezing orders of the performing by the reporting entities of activities or transactions suspected of money laundering, associated offences, terrorism financing and proliferation of mass destruction weapons or freezing orders on suspicious goods;

s) verifies and ascertains the correctness of application by the reporting entities of the provisions of the present law, of the own programs of the reporting entities and issued instructions;

t) ascertains and examines contraventions according to its competence and initiates procedures of pecuniary sanction application;

u) applies contravention sanctions, pecuniary and other types of sanctions, according to competence, for noncompliance with the provisions of the present law;

v) provides information held on suspicious activities and transactions, under the terms and conditions of this law, upon the request of criminal investigative authorities;

w) performs other attributions under the present law.

(2) Employees of the Office are not allowed to perform other remunerated activities except for scientific, didactic, sports and creative activities.

(3) The Office shall elaborate and submit to the Government, by April 30th, the annual activity report, which shall be published subsequently on the official website of the Office.

(4) National public authorities, authorities with supervision functions of the reporting entities, shall provide the Office free and online access to information resources, including those containing data, necessary for achieving the purpose of the present law.

(5) The Office shall examine information about suspicious activities and transactions of money laundering or terrorism financing, received from sources other than those provided under art. 4, inclusively on the basis of self-notification.

Article 20. Rights of the Office

(1) The Office, on the basis, limits and for the purpose provided by the present law, has the right:

1) to require the reporting entities of:

a) application of customer due diligence measures according to the risk associated with certain customers, products, services, jurisdictions and business relationships;

b) application of provisional measures;

2) to request and receive within the time limit specified in the request:

a) necessary information and documents available to the reporting entities, their customers and public administration authorities for the purpose of determination of the suspected nature of activities or transactions;

b) information held by the reporting entities on the monitoring of complex and unusual activities and transactions, application of customer due diligence measures, beneficiary owners and business relationships;

c) information from natural and legal persons, resident and non-resident, concerning the activities and transactions performed or in course of preparation;

d) explanations from natural and legal persons concerning business relations and source of goods involved in suspicious activities and transactions money laundering, associated offences and of terrorism financing;

e) documents related to customer due diligence measures, programs and internal control;

f) relevant information from the competent authorities on the outcome of the examination of the disseminations submitted in accordance with provisions of the present law;

3) to require the competent authorities to carry out controls for the purpose to establish economic reason of operations, nature of business relationships, source of goods, beneficiary owner and the compliance with tax regime within the limits of their competence;

4) to request the Court within the territorial jurisdiction of the Office residence to extend the term of freezing of suspicious activities or transactions or the term of freezing of suspicious goods, in cases provided in art. 33 par. (4);

5) to maintain access to necessary information resources and manage official web site, where relevant information on the activity is published;

6) to request necessary information from the competent institutions, including similar offices or institutions from other countries (jurisdictions), and submit responses to the received requests;

7) to sign agreements, memoranda on cooperation and information exchange with national authorities, competent offices from other countries (jurisdictions) and specialized international organizations.

(2) The rights provided in par. (1) shall be exercised by the Office, including the requests received from offices with similar competences from other countries (jurisdictions).

Article 33.Provisional measures

(1) In accordance with attributions , the reporting entities, the Office, the law enforcement and judicial authorities shall apply efficient measures for identification, tracing, freezing, seizing and confiscation of goods obtained from money laundering, other from associated offences, from terrorism financing and proliferation of weapons of mass destruction.

(2) The reporting entities, ex officio or by the request, shall refrain from execution of activities and transactions with goods, including financial means, for a period of up to 5 working days if they establish reasonable grounds of suspicious that actions of money laundering, other associated offences, terrorism financing or mass destruction weapons proliferation, in the course of preparation, attempting, accomplishment or already performed, and shall immediately inform the Office, but not later than 24 hours alter the moment of refraining.

(3) The measures applied according to provisions of par. (2) are terminated ex officio on the basis of written and confirmed permission of the Office.

(4) In the case of establishment of reasonable grounds of suspicious of money laundering or associated offences, terrorism financing or proliferation of weapons of mass destruction-, on the basis of information received in accordance with the provisions of present law, including the requests of the competent authorities of other jurisdictions, for the purpose of the application of provisional measures, the Office issues decisions on freezing of the execution of suspicious activities or transactions, as well as decisions on freezing of suspicious goods, for a period of up to 30 working days, and inform the natural or legal person which constitute subject of freezing.

(5) Upon the receipt of decision of the Office, the reporting entity is obliged:

a) to record the decision, indicating the exact date and time;

b) to freeze immediately the execution of suspicious activities or transactions, to freeze suspicious goods within the term specified in the decision, except for account supplying operations;

c) to inform immediately the Office regarding the value of the frozen goods, including the available funds in the bank accounts;

d) upon the receiving order from the customer or his representatives on execution of certain activities, transactions or operations with the frozen goods, to inform the customer about the reason of freezing, number of decision, date of issuing and issuer of decision and to communicate immediately this fact to the Office.

(6) Decision on freezing of the execution of suspicious activity or transaction or the decision on freezing of suspicious goods shall become enforceable upon its receive by the reporting entity.

(7) The Office may cancel the decision on freezing of the execution of suspicious activity or transaction or the decision on freezing of suspicious goods until the expiration of indicated term if the reasons and conditions that justified the issuance of these decisions have disappeared.

(8) The Office, until the expiration of the term of decisions stipulated in par. (4), using motivated request, claim the court in territorial jurisdiction in which has the residence, about prolongation of the decision term if, in the stage of financial investigations and verifications of the source of the goods involved in activities or transactions, the initial suspicions are confirmed, if the Office is awaiting the answers to the request sent to foreign institution, or if the owner, possessor of goods or their representative avoids to disclosure the complete information on the legality of the source of the goods which constitute the object of verification, as well as in other circumstances that impede to establish of the source of goods that constitute the object of verification.

(9) The court, on the basis of decision, disposes the prolongation or rejection of the prolongation of the freezing decision of the execution of suspicious activity or transaction or of the freezing of suspicious goods on the basis of a motivated request submitted by the Office at least one day before the expiration of the term of decisions provided in par. (4). Prolongation of the term established by the judge can not exceed 60 working days on each case separately. About decision of the judge on the prolongation of the term of freezing shall be brought to attention of natural or legal person in respect of whom the freezing was disposed.

(10) Before the expiration of the term provided in par. (9), the Office shall take all necessary measures, in accordance with the provisions of present law, in order to disseminate the materials to the competent authorities for adoption of subsequent decisions.

(11) Decisions of the Office, issued on the basis of the provisions of par. (4) could be claimed in appeal using the administrative litigation procedure, and decision of the judge on the prolongation or rejection of the prolongation of the term of decisions provided in par. (4) could be claimed in appeal, in the manner established by legislation, by the person that is considered to be injured in rights.

(12) Administrative litigation court or, as the case may be , the appeal court may order the suspending of the execution of decisions of the Office provided in par. (4) and, respectively, of decisions of the judge on prolongation of the term only based on the request of person that is considered to be injured in rights, simultaneously or after submission claiming of the appeal and only in case in which the following conditions are met cumulatively:

a) the reasons invoked in support of the appeal are pertinent and well founded;

b) are presented the arguments that circumstances of dispute require an urgent order of the suspending of the execution of the contested act in order to avoid serious and irreparable prejudice of the interests of persons that are considered injured in rights;

c) damage that may be caused exceeds the public interest pursued by issuing of the contested act.

(13) The claim for suspending of the contested acts, submitted in accordance with par. (12), shall be examined no later than 5 working days after submission, with mandatory citation of the parties, and the court shall deliver a motivated decision on suspending or refusal of the suspending of the contested acts execution.

(14) The reporting entities identify the activities, transactions, persons and entities suspected of money laundering, associated offences, terrorism financing or proliferation of weapons of mass destruction, subject to provisional measures provided in par. (2), applying own programs for prevention and combating money laundering and terrorism financing.

(15) If, within the terms indicated in par. (4) and (9), there were not identified beneficial owners of the goods in respect of which there were applied provisional measures, the Office shall request the court from the territorial jurisdiction in which it has residence the freezing of the execution of suspicious activity or transaction or freezing of suspicious goods before the identification of the beneficial owner, but not more than one year.

(16) If beneficial owners of the goods were not identified within the term of up to one year since the date of application of provisional measures provided in par. (15), the Office or Prosecutor's Office request the court of the territorial jurisdiction in which they have residence to order the transfer these goods in the property of state proportionally to the quota held by the unidentified beneficial owner. The funds obtained as a result of sale, according to the established procedure, of the respective goods will be transferred to state income. Beneficial owners of goods can claim their restitution or their equivalent value within 3 years since the date of the transfer of the goods in state property.

(17) Through derogation from the provisions of par. (2), the reporting entity, based on written permission of the Office, carries out suspicious activity or transaction when refraining from their execution is impossible or may create impediments to trace the beneficiaries of an suspicious activity or transaction of money laundering, associated offences, terrorism financing or proliferation of weapons of mass destruction-. These provisions do not affect the obligations resulting from the execution of financial sanctions related to terrorism activities and proliferation of weapons of mass destruction.

3. 4. UKRAINE

1. CRIMINAL CODE

Article 96-1. Asset forfeiture

1. Asset forfeiture shall consists in compulsory forfeiture of money, valuables and other property without compensation by a court decision in the cases specified by this Code, provided that an intended criminal offence or a socially dangerous act that meet the criteria of the act provided for by Special Part of this Code, for which the primary punishment of imprisonment or a fine exceeding three thousand tax-free minimum incomes is prescribed, as well as provided for by part 1 of Article 150, Article 154, parts 2 and 3 of Article 159-**1**, part 1 of Article 190, Article 192, part 1 of Articles 204, 209-**1**, 210, parts 1 and 2 of Articles 212, 212-**1**, part 1 of Articles 222, 229, 239-**1**, 239-**2**, part 2 of Article 244, part 1 of Articles 248, 249, parts 1 and 2 of Article 300, part 1 of Articles 301, 302, 310, 311, 313, 318, 319, 362, Article 363, part 1 of Articles 363-**1**, 364-**1**, 365-**2** hereof.

2. Asset forfeiture shall not be applied on the basis of:

1) a court conviction;

2) court ruling on release of a person from criminal liability;

3) court rulings on the application of compulsory medical measures;

4) court rulings on the application of compulsory statutory aftercare.

3. In cases where the object of asset forfeiture is a property withdrawn from civil circulation, it may be applied on the basis of:

1) a court ruling on the closure of criminal proceedings on the grounds other than the release of a person from criminal liability;

2) a court ruling issued under part 9 of Article 100 of the Criminal Procedure Code of Ukraine, at the request of the investigator or prosecutor, if the criminal proceedings are closed by them.

{The Code has been supplemented with Article 96-1 under Law *No. 222-VII of 18 April 2013; as revised by Law No. 1261-VII of 13 May 2014; as amended by Law No. 731-VIII of 08 October 2015; text of the Article 96*-1 as amended by Law *No. 770-VIII of 10 November 2015; as amended by Law No. 743-VIII of 03 November 2015; text of the Article 96*-1 as amended by Law *No. 1019-VIII of 18 February 2016; as amended by Law No. 2617-VIII of 22 November 2018}*

Article 96-2. Cases of asset forfeiture

1. Asset forfeiture shall be applied if money, valuables and other property:

1) have been obtained due to committing a criminal offence and/or if they are income from such property;

2) they were intended (used) to persuade a person to commit a criminal offence, to finance and/or provide material support for a criminal offence or to be rewarded for its commission;

3) they were the subject of a criminal offence, except for those that are returned to the owner (legal owner), and in the case when it is not established, they become the property of the state;

4) were found, manufactured, adjusted or used as means or tools of committing a criminal offence, except for those returned to the owner (legal owner), who did not know and could not know about their illegal use.

2. If the money, valuables and other property referred to in part 1 of this Article have been fully or partially converted into other property, full or partially converted property shall be subject to the asset forfeiture. If the forfeiture of money, valuables and other property referred to in part 1 of this Article, at the time of the court decision on the asset forfeiture is impossible due to their use or inability to separate them from legally acquired property, or alienation, or for other reasons, the court shall decide to confiscate the amount of money corresponding to the value of such property.

3. Asset forfeiture shall also apply where a person is not subject to criminal liability in connection with reaching the age from which criminal liability may arise, or insanity, or is released from criminal liability or punishment on the grounds provided for by this Code, except for exemption from criminal liability in connection with the expiration of the statute of limitations.

4. Money, valuables, including funds in bank accounts or in custody in banks or other financial institutions, other property referred to in this Article shall be subject to asset forfeiture from a third party, if it acquired such property from the suspect, accused, a person who is prosecuted for committing a socially dangerous act at the age of which no criminal liability arises, or in a state of insanity, or from another person free of charge, at a market price or at a price above or below market value, who knew or should have known that such property meets any of the criteria specified in clauses 1–4, part 1 of this Article.

The above information about a third party shall be established in court on the basis of sufficient evidence.

Asset forfeiture may not be applied to property owned by a bona fide purchaser.

5. Asset forfeiture shall not apply to money, valuables and other property specified in this Article, which according to the law shall be returned to the owner (legal owner) or are intended for compensation of the damage caused by a criminal offence.

{Part 6 of Article 96-2 has been deleted under Law *No. 1019-VIII of 18 February 2016}*

{The Code has been supplemented with Article 96-2 under Law *No. 222-VII of 18 April 2013; as amended by Laws No. 1261-VII of 13 May 2014, No. 770-VIII of 10 November 2015, No. 1019-VIII of 18 February 2016, No. 2617-VIII of 22 November 2018, No. 361-IX of 06 December 2019}*

Article 96-8. Forfeiture of property

1. Forfeiture of property consists in compulsory confiscation of property of a legal entity without compensation and shall be applied by the court in case of liquidation of a legal entity in accordance with this Code.

Article 209. Legalisation (laundering) of property proceeding from crime

1. Acquisition, possession, use, disposal of property in respect of which the factual circumstances confirm that they are proceeds of crime, including conducting financial operation, transaction with such property, or transfer, change of form (transformation) of such property, or actions aimed at concealing, hiding the origin of such property or possession, the right to such property, its sources of origin, location, where these actions were committed by a person who knew or should have known that such property directly or indirectly, wholly or partially proceeded from crimes

shall be punishable by imprisonment for a term of three to six years with deprivation of the right to hold certain positions or engage in certain activities for a term of up to two years, and forfeiture of property.

2. Any such actions as provided for by part 1 of this Article, where committed repeatedly or by a group of persons upon their prior conspiracy, or committed in respect of large amounts

shall be punishable by imprisonment for a term of five to eight years with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years, and forfeiture of property.

3. Any such actions as provided for by part 1 or 2 of this Article, where committed by an organised group or in respect of a particularly large amount

shall be punishable by imprisonment for a term of eight to twelve years with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years, and forfeiture of property.

Note.

1. Legalisation (laundering) of property derived from criminal proceeds shall be deemed committed in respect of large amounts, where the subject of the crime was property exceeding six thousand tax-free minimum incomes.

2. CRIMINAL PROCEDURE CODE

Article 100. Custody of physical evidence and documents and deciding on asset forfeiture

{Title of Article 100 as amended by Law No. 222-VII of 18 April 2013}

1. Physical evidence transferred to or seized by a party to criminal proceedings shall be returned to its owner as soon as possible, except as provided for by Articles 160–166, 170–174 hereof.

2. Physical evidence or a document produced voluntary or pursuant to a court decision shall be kept by the party to criminal proceeding to which it has been released. The party to criminal proceeding to which physical evidence or a document has been provided shall preserve it in the condition acceptable for the use in the criminal proceeding. Physical evidence that has been obtained or seized by investigator or public prosecutor shall be examined, photographed and described in detail in the examination report. Prosecution shall preserve physical evidence according to the procedure established by the Cabinet of Ministers of Ukraine.

3. A document shall be kept throughout the criminal proceedings. Upon request of the owner of a document, investigator, public prosecutor or court may issue a copy of this document, and where

necessary, provide the original document, attaching to the records of criminal proceedings certified copies thereof.

4. If the party to criminal proceedings loses or destroys any physical evidence released thereto, such party shall provide a similar object or compensate its cost to the owner. If the party to criminal proceedings loses or destroys a document released thereto, it shall compensate its owner expenses related to the loss or destruction of a document and production of a duplicate document .

5. Physical evidence and documents furnished to the court shall be kept at the court, except as otherwise provided by part 6 of this Article and except for too bulky physical evidence or otherwise requiring special storage conditions, which may be kept in a different storage location.

6. Physical evidence, unless it contains elements of a criminal offence such as items or large lots of goods, where its storing, in view of its bulkiness or for other reasons, is impossible without due effort or where the cost of its storing in special conditions is commensurate with their value, as well as physical evidence such as perishable goods or products shall be:

1) returned, or transferred for safekeeping, to its owner (lawful holder) where this does not prejudice the criminal proceedings;

{Clause 1, Part 6 of Article 100 as amended by Law No. 222-VII of 18 April 2013}

2) transferred for sale, subject to written consent of their owner or, in its absence, decision of the investigating judge or court, provided this does not prejudice the criminal proceedings;

3) destroyed, subject to written consent of its owner or, in its absence, decision of the investigating judge or court, provided such perishable goods or products have become unmarketable;

4) transferred for processing or destruction by decision of the investigating judge or court if they belong to items or goods withdrawn from circulation or if their long term storage is hazardous for the life or health of people or environment;

In the cases provided for by this part, physical evidence shall be recorded by photography or videotaping and described in detail. Where necessary, a sample of physical evidence may be preserved in the amount sufficient for expert examination or other purposes of criminal proceedings.

Physical evidence with value exceeding 200 subsistence minimum levels for employable persons, provided it is possible without prejudice to criminal proceedings, shall be transferred with the written consent of its owner, and, in its absence, by decision of the investigating judge, or court to the National Agency of Ukraine for Detection, Search and Management of Assets Obtained from Corruption and Other Crimes, to take measures to manage them in order to ensure their preservation or preservation of their economic value, and physical evidence referred to in paragraph 1 of this part shall be transferred for sale with due account of specific aspects provided for by law by law.

{Part 6 of Article 100 has been supplemented with paragraph 7 under Law No. 772-VIII of 10 November 2015; as amended by Law No. 1791-VIII of 20 December 2016}

7. Where provided for by clauses 2, 4 and paragraph 7, part 6 of this Article, the investigator with consent of a public prosecutor, or a public prosecutor shall file corresponding motion with an investigating judge of the local court within whose jurisdiction the pre-trial investigation is conducted, and in criminal proceedings concerning criminal offences within the jurisdiction of the High Anti-Corruption Court, it shall be filed to the investigating judge of the High Anti-Corruption Court, or to the court during court proceedings, which shall be considered in accordance with Articles 171–173 hereof.

As provided for by paragraph 7, part 6 of this Article, a public prosecutor no later than the next working day from the effective date of the ruling of the investigating judge, the court shall forward a copy of this ruling to the National Agency of Ukraine for Detection, Search and Management of Assets Obtained from Corruption and Other Crimes regarding the acceptance of assets, and shall take urgent steps to transfer these assets to the National Agency of Ukraine for Detection, Investigation and Management of Assets Obtained from Corruption and Other Crimes.

{Part 7 of Article 100 as revised by Law No. 772-VIII of 10 November 2015; as amended by Laws No. 1021-VIII of 18 February 2016, No. 2447-VIII of 7 June 2018, No. 720-IX of 17 June 2020}

8. Sale, processing or destruction of physical evidence where provided for by this Article shall follow the procedure established by the Cabinet of Ministers of Ukraine, and where such physical evidence has been transferred to the National Agency of Ukraine for Detection, Investigation and Management of Assets Obtained from Corruption and Other Crimes, it shall follow the procedure established by law and legislative acts adopted under it.

{Part 8 of Article 100 as amended by Law No. 772-VIII of 10 November 2015}

9. The court shall decide on asset forfeiture and how to manage physical evidence and documents which have been produced before resolving the case that puts an end to criminal proceedings. Such evidence and documents shall be preserved until the effective date of the judgment. Where criminal proceedings are terminated by an investigator or public prosecutor, the issue of asset forfeiture and disposal of the physical evidence and documents shall be resolved by a court ruling on consideration of the respective motion under Articles 171–174 hereof. While:

1) the money, valuables, and other property that has been selected, produced, adjusted or used as a means or tool of criminal offence and/or retained traces thereof shall be confiscated, except where the owner (lawful holder) did not know and could not know of their unlawful application. In such cases the money, valuables, and other property shall be returned to the owner (lawful holder);

2) the money, valuables and other property intended (used) to induce a person to commission of a criminal offence, to finance and/or provide funding or logistic support to, or a remuneration for criminal offence shall be confiscated;

3) any property that was an object of criminal offence related to illicit trafficking and/or withdrawn from traffick shall be transferred to appropriate institutions or destroyed;

4) any property devoid of any value and unusable shall be destroyed, and where need be, transferred to criminological collections of expert institutions or to the parties concerned at their request;

5) the money, valuables and other property that was an object of criminal offence or another socially dangerous act shall be confiscated, except for property returned to the owner (lawful holder), and where the owner is not identified, reverted to the state revenue in accordance with the procedure established by the Cabinet of Ministers of Ukraine;

6) the money, valuables and other property gained by an individual or legal entity as a result of a criminal offence and/or which are the proceeds thereof, as well as any property that has been converted in full or in part into these proceeds shall be confiscated;

{Clause 6, part 9 of Article 100 as revised by Law No. 314-VII of 23 May 2013}

6**1**) property (money or other property, as well as proceeds thereof) of a convicted person for committing a corruption offence, legalisation (laundering) of proceeds from crime, his/her related

person shall be confiscated provided the court does not confirm the legitimacy of the acquisition of rights to such property.

The related persons of a convict shall mean legal entities that, with his/her assistance, received the said property for ownership or use.

Where the court recognises the absence of legal grounds for acquiring rights to a part of the property, this part of the convict's property shall be confiscated, and where it is impossible to allocate such a part, its value shall be confiscated. Where it is impossible to confiscate property, the legitimacy of the grounds for the acquisition of rights to which has not been confirmed, a convict shall pay the value of such property;

*{Part 9 of Article 100 has been supplemented with new clause 6***1** *under Law No. 198-VIII of 12 February 2015}*

7) the documents that are physical evidence shall be kept in the records of criminal proceedings throughout the entire period of their storing time.

{Part 9 of Article 100 as revised by Law No. 222-VII of 18 April 2013}

10. When deciding on asset forfeiture, the first issue to be decided on shall be returning money, valuables and other property to the owner (lawful holder) and/or compensation of damage inflicted through the criminal offence. Asset forfeiture shall be applied only after the prosecution proves through legal proceedings that the owner (lawful holder) of the money, valuables and other property was aware of their unlawful origin and/or use. Where a guilty person has no other property that can be recovered, other than the property liable for asset forfeiture, the damage inflicted upon the victim and civil plaintiff shall be paid from the proceeds of the forfeit sold, with the remaining part becoming the state property.

{Article 100 has been supplemented with new part under Law No. 222-VII of 18 April 2013}

11. Where the owner (lawful holder) of the money, valuables and other property specified in clause 1, part 9 of this Article has been identified after asset forfeiture and had and could have no knowledge of their unlawful use, he/she shall have the right to request recovery of his/her property or the funds from the state budget as obtained from selling such property.

{Article 100 has been supplemented with new part under Law No. 222-VII of 18 April 2013}

12. Any dispute arising in respect of the ownership of objects subject to return shall be resolved under civil procedure. In such case, the object concerned shall be preserved until court decision has taken legal effect.

Article 167. Grounds for provisional seizure of property

1. Temporary seizure of property shall mean the actual deprivation of the suspect or persons in possession of the property specified in part 2 of this Article the possibility to own, use and dispose of certain property until the issue is resolved of seizure or return, or its asset forfeiture in the manner prescribed by law.

{Part 1 of Article 167 as revised by Law No. 222-VII of 18 April 2013; as amended by Law No. 2617-VIII of 22 November 2018}

2. Property in the form of things, documents, money, etc., in respect of which there are sufficient grounds to believe that they:

2. The property in the form of items, documents, money, etc. may be provisionally seized where there are sufficient grounds to believe that such property:

2) was intended (used) to induce a person to commit a criminal offence, to finance and/or provide material support for a criminal offence or to be rewarded for its commission;

{Clause 2, part 2 of Article 167 as revised by Law No. 222-VII of 18 April 2013}

3) has been an object of a criminal offence related inter alia to its illegal trafficking;

{Clause 3, part 2 of Article 167 as amended by Law No. 222-VII of 18 April 2013}

4) has been gained as a result of commission of a criminal offence and/or is proceeds of such, as well as the property into which they have been fully or partially converted.

{Clause 4, part 2 of Article 167 as revised by Law No. 222-VII of 18 April 2013}

Article 170. Procedure for attachment of property

1. Attachment of property shall mean temporary, until revoked in the manner prescribed by this Code, deprivation by decision of the investigating judge or court of the right to alienate, dispose of and/or use property in respect of which there are grounds to reasonably suspect that it is evidence of a criminal offence, subject to asset forfeiture from the suspect, accused, convicted person, third parties, confiscation from a legal entity, to secure a civil action or recovery from the legal entity of the received improper advantage, probable forfeiture of property. Attachment of property shall be revoked in the manner prescribed by this Code.

{Paragraph 1, part 1 of Article 170 as amended by Law No. 720-IX of 17 June 2020}

Attachment of property shall aim to prevent the possibility of its concealment, damage, deterioration, destruction, transformation or alienation. The investigator or public prosecutor shall take all necessary measures to identify and search for property that may be attached in criminal proceedings, in particular by requesting the necessary information from the National Agency of Ukraine for Detection, Search and Management of Assets Obtained from Corruption and Other Crimes, other government authorities and local governments, individuals and legal entities. The investigator or public prosecutor shall take all necessary measures to identify and search for property that may be attached in criminal proceedings, in particular by requesting the necessary information from the National Agency of Ukraine for Detection, Search and Management of Assets Obtained from Corruption and Other Crimes, other government authorities and local governments, individuals and legal entities.

{Part 1 of Article 170 as amended by Law No. 772-VIII of 10 November 2015} 2. Attachment of property shall be allowed in order to ensure:
1) preservation of physical evidence;
2) asset forfeiture;

3) forfeiture of property as a type of punishment or measure of a criminal law nature against a legal entity;

4) compensation for damage caused as a result of a criminal offence (civil action), or recovery of improper advantage received from a legal entity.

3. Where provided for by clause 1, part 2 of this Article, attachment shall be imposed on the property of any individual or legal entity where there are sufficient grounds to believe that it meets the criteria specified in Article 98 hereof.

Attachment may also be imposed on property that has previously been seized in accordance with other legislative acts. In this case, the ruling of the investigating judge or court on the attachment of property in accordance with the rules of this Code shall be subject to execution.

{Part 3 of Article 170 has been supplemented with paragraph 2 under Law No. 772-VIII of 10 November 2015}

It is prohibited to attach funds in a single account opened in the manner prescribed by Article 35**1** of the Tax Code of Ukraine, on funds in the accounts of taxpayers in the system of electronic administration of value added tax, on funds which are on current accounts with a special mode of use opened under Article 15**1** of the Law of Ukraine "On Electricity", on current accounts with a special mode of use opened pursuant to Article 19**1** of the Law of Ukraine "On Heat Supply", on current accounts with a special mode of use for settlements under investment programmes, on current accounts with a special mode of use for credit funds opened pursuant to Article 26**1** of the Law of Ukraine "On Heat Supply" and of Article 18**1** of the Law of Ukraine "On Drinking Water, Drinking Water Supply and Drainage", on a special account of the operating organisation (operator) under the Law of Ukraine "On Streamlining Issues Related to Nuclear Safety".

*{Part 3 of Article 170 has been supplemented with paragraph 3 under Law No. 559-IX of 13 April 2020 – the amendments shall take effect from the day following the day of publication, in terms of seizure of funds in a single account opened in the manner prescribed by Article 35***1***of the Tax Code from 1 January 2021}*

4. Where provided for by clause 2, part 2 of this Article, attachment shall be imposed on the property of a suspect, accused, convict or a third party provided there are sufficient grounds to believe that it will be subject to asset forfeiture where provided for by the Criminal Code of Ukraine.

Attachment shall be imposed on the property of a third party where it acquired it free of charge or at a price higher or lower than the market value, and knew or should have known that such property meets any of the criteria provided for by clauses 1–4, part 1 of Article 96**2** of the Criminal Code of Ukraine.

{Paragraph 2, Part 4 of Article 170 as revised by Law No. 187-IX of 04 October 2019}

5. Where provided for by clause 3, part 2 of this Article, attachment shall be imposed on the property of a suspect, accused, convict or legal entity subject to proceedings, provided there are sufficient grounds to believe that the court in cases prescribed by the Criminal Code of Ukraine may impose a punishment of forfeiture of property or apply a measure of criminal law nature to a legal entity in the form of forfeiture of property.

6. Where provided for by clause 4, part 2 of this Article, attachment shall be imposed on the property of a suspect, accused, convict, individual or legal entity who is legally liable for damage caused by acts (omission) of a suspect, accused, convict or insane person. the person who committed a socially dangerous act, as well as the legal entity in respect of which the proceedings are conducted, in the presence of a reasonable amount of civil action in criminal proceedings, as well as a reasonable amount of improper advantage received by the legal entity under proceedings.

Where a civil action or recovery from a legal entity of the amount of improper advantage is sustained, the court at the request of the prosecutor or civil plaintiff may decide to attach property to secure a civil action or recovery from the legal entity in respect of which the proceedings are taken by decision of well-grounded amount of the received improper advantage before the entry into force of the court decision, where such measures have not been taken before.

Attachment may be imposed on property that has previously been seized in accordance with other legislative acts. In this case, the ruling of the investigating judge or court on the attachment of property in accordance with the rules of this Code shall be subject to execution.

8. The value of the property to be attached for the purpose of securing a civil action or recovery of the received improper advantage shall be commensurate with the amount of damage caused by the criminal offence or specified in the civil action, the amount of improper advantage received by the legal entity.

9. In urgent cases and solely for the purpose of preserving physical evidence or ensuring possible confiscation or special forfeiture of property in criminal proceedings in respect of grave or special grave crimes by the decision of Director of the National Anti-Corruption Bureau of Ukraine (or his/her Deputy), agreed by the prosecutor, provisional attachment of property or funds on the accounts of individuals or legal entities in financial institutions may be imposed. Such measures shall be applied for up to 48 hours. Immediately after making such a decision, but not later than within 24 hours, a public prosecutor shall apply to the investigating judge with a request to attach the property.

Where a public prosecutor fails to apply to the investigating judge for the attachment of property within the period specified in this part, or where such a motion is denied, the provisional attachment of property or funds shall be deemed revoked and the attached property or funds shall be returned to the person immediately.

10. Attachment may be imposed in the manner prescribed by this Code on movable or immovable property, money in any currency in cash or in non-cash form, including funds and valuables in bank accounts or in custody in banks or other financial institutions, expenditure transactions, securities, property, corporate rights, in respect of which the decision or ruling of the investigating judge or court determined the need to attach property.

Property shall not be attached where it is owned by a bona fide purchaser, except for the seizure of property in order to ensure the preservation of physical evidence.

11. Prohibition or restriction of use, disposal of property may be applied only when there are circumstances that confirm that their non-application will result in concealment, damage, deterioration, disappearance, loss, destruction, use, transformation, movement or transfer of property.

12. Prohibition on use of living quarters where any persons reside on legitimate grounds shall not be allowed.

{Article 170 as amended by Laws No. 222-VII of 18 April 2013, No. 314-VII of 23 May 2013, No. 1698-VII of 14 October 2014, No. 198-VIII of 12 February 2015; as revised by Law No. 769-VIII of 10 November 2015; Title of Article 170 as revised by Law No. 1019-VIII of 18 February 2016}

Article 234. Search

1. A search shall be conducted with the purpose of finding and fixing information on circumstances of commission of criminal offence, finding tools of criminal offence or property obtained as a result of its commission, as well as of establishing the whereabouts of wanted persons.

2. A search shall be conducted on the basis of a ruling of an investigating judge of a local general court within whose territorial jurisdiction the pre-trial investigation agency is located, and in criminal proceedings on crimes within the jurisdiction of the High Anti-Corruption Court ot shall be conducted on the basis of a decision of an investigating judge of the High Anti-Corruption Court.

{Part 2 of Article 234 as revised by Law No. 2367-VIII of 22 March 2018; as amended by Law No. 187-IX of 4 October 2019}

3. Whenever it is necessary to conduct a search, investigator with approval of public prosecutor, or public prosecutor shall submit an appropriate request to investigating judge containing the following information:

1) name and registration number of the criminal proceeding concerned;

1) brief description of circumstances of the criminal offence in connection with which the motion is filed;

2) legal determination of the criminal offence with the indication of the corresponding Article (part of the Article) of the Law of Ukraine on criminal liability;

4) grounds for search;

5) home or any other possession of a person or a part thereof or other possession of the person where the search is to be conducted;

6) person who owns the home or other possession, and person in whose actual possession it actually is;

7) individual or generic features of things, documents, other property or persons to be found, as well as their connection with the committed criminal offence;

8) substantiation that access to things, documents or information that may be contained in them cannot be obtained by the pre-trial investigation body voluntarily by requesting things, documents, information in accordance with part 2 of Article 93 of this Code, or by other investigative actions provided for by this Code, and access to the persons whom it is planned to find, by means of other investigative actions provided for by this Code. This requirement shall not apply to cases of searches to find tools of criminal offence, objects and documents withdrawn from circulation.

The motion shall also be accompanied by originals or copies of documents and other materials by which the prosecutor or investigator substantiates the arguments of the motion, as well as an extract from the Unified Register of Pre-Trial Investigations into criminal proceedings in which the petition is filed.

4. A request for search shall be considered in court on the day of its receipt, with participation of investigator or public prosecutor.

5. Investigating judge shall reject a request for search unless public prosecutor or investigator proves the existence of sufficient grounds to believe that:

1) a criminal offence was committed;

2) objects and documents to be found are important for pre-trial investigation;

3) knowledge contained in objects and documents being searched may be found to be evidence during court proceedings;

4) objects, documents or persons to be found are in the home or any other possession of a person indicated in the request;

5) under the established circumstances, a search shall be the most expedient and effective way to find and seize items and documents important to the pre-trial investigation, as well as to locate wanted persons, and as a measure proportional to interference with personal and family life.

6. Where the investigator refuses to satisfy the request for permission to search the dwelling or other property of the person, the prosecutor shall not have the right to re-apply to the investigating judge for permission to search the same house or other property of the person, unless new circumstances are specified in the request, which were not considered by the investigating judge.

{Article 234 as revised by Law No. 2147-VIII of 3 October 2017 – the amendments do not have retroactive effect in time and apply to cases in which information on a criminal offence is entered into the Unified Register of Pre-Trial Investigations after the entry into force of these amendments – refer to clause 4, § 2, Section 4 of the Law}

Article 269-1. Monitoring of bank accounts

1. Where there is a reasonable suspicion that a person commits criminal acts using a bank account, or for the purpose of searching for or identifying property subject to confiscation or asset forfeiture, in criminal proceedings under the jurisdiction of the National Anti-Corruption Bureau of Ukraine, the public prosecutor may apply to the investigating judge in the manner prescribed by Articles 246, 248, 249 of this Code, to issue a ruling on the monitoring of bank accounts.

2. According to the ruling of the investigating judge on monitoring of bank accounts, the bank shall provide the National Anti-Corruption Bureau of Ukraine in the current mode with information on transactions conducted on one or more bank accounts.

In the ruling on monitoring bank accounts, the investigating judge shall notify head of the banking institution of the obligation not to disclose information about the conduct of this investigative action and of the respective criminal liability. Based on the ruling of the investigating judge, the head of the banking institution shall notify in writing all its employees involved in the monitoring of bank accounts of the obligation not to disclose information about this investigative action and the respective criminal liability.

3. Information on transactions conducted on bank accounts shall be brought to the notice of the National Anti-Corruption Bureau of Ukraine before the respective operation is performed, and where it is impossible it shall be brought to the notice immediately after its implementation.

*{The Code has been supplemented with Article 269**1** under Law No. 198-VIII of 12 February 2015}*

3. LAW ON THE NATIONAL AGENCY OF UKRAINE FOR FINDING, TRACING AND MANAGEMENT OF ASSETS DERIVED FROM CORRUPTION AND OTHER CRIMES (ARMA LAW)

Article 9. Functions of the National Agency

1. The National Agency shall perform the following functions:

1) analysis of statistical data, results of researches and other information about finding, tracing and management of assets;

2) drafting of proposals to the formation and implementation of the state policy in the field of finding, tracing and management of assets, development of draft regulatory legal acts on these issues;

3) taking measures on finding, tracing and evaluation of assets as requested by an investigator, detective, prosecutor or court (investigative judge);

4) arrangement of measures related to evaluation, accounting and management of assets;

5) formation and keeping of the Unified State Register of Assets Seized in Criminal Proceedings;

6) cooperation with authorities of foreign states the competence of which includes the issues concerning finding, tracing and management of assets, other competent authorities of foreign states and relevant international organizations;

7) participation in ensuring the representation of the rights and interests of

Ukraine at foreign jurisdictional authorities in cases related to the recovery of assets derived from corruption and other criminal offences to Ukraine;

(Paragraph 7 of part one of Article 9, as amended by the Law of Ukraine No.720-IX from 17 of June 2020)

8) provision of clarifications, methodological and advisory assistance to investigators, detectives, prosecutors and judges with regard to the issues related to finding, tracing, evaluation and management of assets;

9) other functions stipulated by the legislation.

Article 10. Powers of the National Agency

1. For the purpose of fulfilling its functions the National Agency shall:

1) demand upon the decision of the Head of the National Agency or his/her deputy and obtain free of charge information, required for the fulfilment of obligations of the National Agency, under the established procedure from governmental authorities and local self-government authorities, as well as information constituting bank secrecy, in the manner and volume determined by the Law of Ukraine “On banks and banking activities”.

{Item first of paragraph 1 of part 1 of Article 10 as amended by the Law No. 1587-IX of 30.06.2021}

Entities, to which the aforementioned request is addressed, shall immediately but no later than three business days from the day of receipt thereof provide the relevant information. If provision of information is impossible, the entity shall immediately inform the National Agency about it with grounding of respective reasons. Upon request of a relevant entity, the National Agency shall have the right to extend the term for provision of the information by no more than two calendar days. Failure to provide the National Agency with the information upon its request, intentional provision of misleading or incomplete information, violation of the deadlines for provision of such information, notification of third parties on the fact that such information is collected about them is forbidden and shall entail liability set forth in the legislation;

2) have access to the Unified Register of Pre-Trial Investigations (under the procedure and to the extent provided for by a common order of the Prosecutor General's Office of Ukraine and the National Agency), automated information and reference systems, registers and data banks maintained (administered) by governmental authorities or local self-government authorities, use state, including governmental, means of communication, special communication networks and other technical means.

(Item 1 of paragraph 2 of part one of Article 10, as amended by the Law of Ukraine No. 113-IX from 19 September 2019)

Such information shall be processed by the National Agency subject to observance of provisions of the laws on personal data protection and ensuring confidentiality protected by law.

The procedure for receipt of the information and access to automated information and reference systems, registers and data banks provided for by this paragraph shall not cover the information and automated information and reference systems, registers and data banks, in possession of intelligence and counterintelligence authorities, as well as central executive authority, which implements state policy in the field of prevention and counteraction of money laundering, terrorism financing and financing the proliferation of weapons of mass destruction. The relevant information shall be provided to the National Agency in compliance with the law as well as the common orders with the relevant authorities; multi-agency international agreements on cooperation with authorities of foreign states the competence of which includes the issues concerning finding, tracing and management of assets derived from corruption and other criminal offences, take part in drafting international agreements on distribution and recovery of assets to Ukraine;

(Paragraph 3 of part one of Article 10, as amended by the Law of Ukraine No.720-IX from 17 of June 2020)

4) conclude civil law agreements with legal entities and individuals on the issues related to evaluation and management of assets and subject to consent of the Ministry of Justice of Ukraine – on the representation of interests of Ukraine in foreign jurisdictional authorities in cases related to the recovery of assets derived from corruption and other criminal offences, to Ukraine;

(Paragraph 4 of part one of Article 10, as amended by the Law of Ukraine No.720-IX from 17 of June 2020)

5) have accounts opened with the State Treasury Service of Ukraine and state- owned banks;

(Paragraph 5 part one of Article 10, as amended by the Law of Ukraine No. 1021-VIII from 18 February 2016)

6) adopt binding regulatory legal acts on the issues included in its competence;

7) issue orders to eliminate violations of the legislation on the issues related to evaluation, accounting and management of assets within the scopes of its respective powers;

8) file claims (petitions) with a court to declare regulatory legal acts and individual decisions issued (made) in violation of the requirements and limitations set forth in this Law invalid, and to declare deeds invalid;

81) provide the investigator, prosecutor, investigating judge, court with written clarifications about the possibility of ensuring the effective management of assets by the National Agency and preservation (if possible – increase) of their economic value.

Such clarification shall be provided in response to the appeal of the investigator, prosecutor, investigating judge, court within five business days from the date of receipt of such an appeal by the National Agency. The form of such an appeal is approved by a joint order of the Prosecutor General's Office and the National Agency;

(Part one of Article 10 was supplemented with part 81 in accordance with the Law No. 1648-IX of 14.07.2021)

9) initiate official investigations, take measures to bring persons guilty of infringement of this Law to liability, send materials proving the facts of the infringements to the law-enforcement authorities;

10) draw up protocols of administrative offenses referred by the legislation to the competence of the National Agency, apply measures provided for by the law to ensure proceedings in the cases on administrative offenses;

11) perform other powers provided for by this Law and other laws.

2. In case of identifying violations of requirements of the legislation in the part of accounting, evaluation and management of assets, the National Agency shall issue an order to the head of a relevant authority, company, institution, organization to eliminate violations of the legislation, conduct official investigation and bring a person in fault to the liability set forth in the law.

The order of the National Agency shall be binding. The results of fulfilment of the order of the National Agency shall be disclosed to the National Agency by the officer, to whom the order was addressed to, within three business days from the day of receipt of the order, unless a longer term is established in the order.

3. In case of identifying indications of an administrative offense referred to the competence of the National Agency, duly authorized persons of the National Agency shall draw up a protocol of such offense, which shall be sent to the court. In case of identifying indications of another offense, the National Agency shall draw up a grounded conclusion and send it to the relevant law-enforcement authorities. The conclusion of the National Agency shall be obligatory for consideration, and the National Agency shall be informed about the results of such consideration no later than five days after the receipt of a notification about identifying indications of the offense.

4. Regulatory legal acts of the National Agency shall be subject to the state registration with the Ministry of Justice of Ukraine and shall be included in the Unified State Register of Regulatory Legal Acts.

Upon inclusion into the Unified State Register of Regulatory legal acts, the regulatory legal acts of the National Agency shall be published in the state language in official printed publications.

The regulatory legal acts of the National Agency, which passed the state registration, shall enter into force from the day of official publication, unless

otherwise provided for by such regulatory legal acts, but no earlier than the day of official publication thereof.

Article 15. Cooperation of the National Agency with governmental authorities.

1. The National Agency shall cooperate with the pre-trial investigation authorities, prosecutor's office and court through:

1) fulfilling the requests from investigator, detective, prosecutor, investigative judge, court with regard to the issues on finding, tracing, evaluation and management of assets, and the requests for enforcing the decisions of foreign competent authorities on seizure and confiscation of assets;

2) facilitating the search for appropriate premises and sites for storage of assets, seized in criminal proceedings or in the case of the establishment of the unfounded nature of assets, and which are not managed by the National Agency;

(Paragraph 2 of part one of Article 15, as amended by the Law of Ukraine No. 263-IX from 31 October 2019)

3) provision of clarifications, methodological and advisory assistance with regard to the issues on finding, tracing, evaluation and management of assets.

2. The National Agency shall also cooperate with the National Bank of Ukraine, State Property Fund of Ukraine, Ministry of Justice of Ukraine, National Agency on Corruption Prevention, central executive authority that implements state policy in the field of tax policy, central executive authority that implements state policy in the field of state customs policy, central executive authority that implements state policy in the field of prevention and counteraction of money laundering, terrorism financing and financing the proliferation of weapons of mass destruction, as well as other governmental authorities.

(Paragraph 2 part two of Article 15, as amended by the Law of Ukraine No. 440-IX from 14 January 2020)

The National Agency shall also be entitled to conclude agreements (memorandums) on cooperation and exchange of information with certain governmental authorities and/or local self-government authorities.

Article 16. Assignments of the National Agency in the field of finding and tracing of assets.

1. For the purpose of finding and tracing of assets, the National Agency shall:

1) upon requests of pre-trial investigation authorities, prosecutor's office and courts, take measures on finding and tracing of assets; cooperate with such authorities for the purpose of seizure and confiscation of such assets, or recovery into the revenue of the State in case of establishment of the unfounded nature of assets;

(Paragraph 1 part 1 of Article 16, as amended by the Law of Ukraine No. 263-IX from 31 October 2019)

2) on the international scale cooperate with the relevant authorities of foreign

states in terms of sharing experience and information concerning the issues of finding, tracing and management of assets;

3) ensure cooperation with international intergovernmental organizations and networks the operation of which is aimed at ensuring international cooperation in the field of finding, tracing and management of assets, including with the Camden Asset Recovery Inter-Agency Network (CARIN), and represent Ukraine in this organization.

(Paragraph 3 part one of Article 16, as amended by the Law of Ukraine No. 1021-VIII from 18 February 2016)

2. For the purpose of completing the assignments specified in part one of this Article, the National Agency shall have the right to receive, process and exchange information on individuals and legal entities under the procedure provided for by the relevant international agreements and Ukrainian legislation.

Article 17. Fulfilment of requests of pre-trial investigation authorities, prosecutor's office and courts by the National Agency

1. The National Agency shall ensure the fulfilment of requests of pre-trial investigation authorities, prosecutor's office and courts for finding and tracing of assets and give reply within the shortest possible period of time but no later than within three business days from the day the request was received, or during any other longer period of time specified therein. Such period can be extended by the consent of pre-trial investigation authority, prosecutor's office and court.

Article 19. Acceptance of assets into management by the National Agency

(Title of Article 19 as amended by the Law No. 1648-IX from 14.07.2021)

1. The National Agency shall manage assets seized in criminal proceedings, including as an injunctive relief only in respect of a claim filed in the interests of the state with setting a prohibition on disposal and/or use of such assets, and in the litigation in cases on the establishment of the unfounded nature of assets and their recovery into the revenue of the State with the prohibition to use such assets, the amount or value of which exceeds 20,000 minimum subsistence level for working population established as of 1 January of a relevant year.

The aforementioned assets shall be accepted into management on the basis of the decision of an investigative judge, court or consent of the assets' owner, the copies of which shall be sent to the National Agency no later than the next business day after issuing (providing) them with an appropriate application from the prosecutor.

(Part 1 of the Article 19, as amended by the Law of Ukraine No. 1648-IX from 14.07.2021)

2. In case of acceptance of assets into management, which or the rights to which and encumbrances of which are subject to the state registration, the National Agency on the same day shall send the information about seizure of assets to the authorities, which keep state registers of such assets, rights to them or their encumbrances. In case of acceptance of securities under management, the relevant information shall also be sent to the respective members of the depositary system of Ukraine.

(Part two of Article 19, as amended by the Law of Ukraine No. 1021-VIII from 18 February 2016)

Article 20. Management of funds and banking metals

1. Funds in cash and non-cash forms in any currency as well as banking metals seized in criminal proceedings or in litigation proceedings in cases on recognition of the unfounded nature of assets and their recovery into the revenue of the State, shall be managed by the National Agency through:

(Item 1 of part 1 of Article 20, as amended by the Law of Ukraine No. 263-IX from 31 October 2019)

1) placing them in form of a relevant currency or banking metal on deposit accounts of the National Agency, opened with state-owned banks determined on a competitive basis in accordance with the procedure provided for by the law on state (public) procurement, under a bank deposit on demand, subject to availability of the relevant conclusion of the National Bank of Ukraine on development of the conditions for recognizing the bank distressed or insolvent;

2) prolongation of their placement until the expiry of the validity period of a deposit agreement on a deposit account of an owner with the bank they were deposited at the time of imposition of seizure, with prohibition on debit transactions and payment of interests or income in any other form pursuant to the terms of the agreement. In case of expiry of the validity period of a deposit agreement, from the next day the management of the relevant funds or banking metals together with the interests or other types of income shall be conducted pursuant to the procedure stipulated in paragraph 1 of this part.

The property of the bank (except for funds in the correspondent accounts of the bank), as well as funds and other values of legal entities or individuals deposited with the bank and seized, shall be transferred into the management (transferred to the accounts) of the National Agency no later than the next business day after receipt by the bank of a payment order executed by the National Agency with enclosed copies of the prosecutor's application, ruling of an investigative judge or court on imposition of seizure.

{Item 2 of Paragraph 2 of part 1 of Article 20 as amended by the Law No. 1587-IX of 30.06.2021}

2. An interest rate for the use by banks of funds or metals on deposit accounts of the National Agency shall be determined by the agreement and shall be no less than the discount rate of the National Bank of Ukraine or an interest rate of the bank for such types of services for third parties (for another bank).

3. In case of receipt of a prosecutor's or court ruling issued within the powers granted by the law, which has taken legal effect and terminates seizure of funds or banking metals deposited on accounts of the National Agency, the National Agency shall transfer the relevant funds and interests accrued on them or transfer banking metals and interests accrued on them to the relevant account of their legal owner within three business days from the day the owner provided the details of bank account.

Article 21. Management of movable and immovable property, securities, proprietary and other rights.

1. Movable and immovable property, securities, proprietary and other rights shall be managed by the National Agency by means of sale of the relevant assets or transfer of them into management.

2. Assets specified in part one of this article, accepted by the National Agency into management, shall be subject to evaluation performed by the relevant evaluation entities determined on the basis of results of a competition, and transfer to legal entities or private entrepreneurs into management

determined by the results of a competition under the procedure provided for by the law on state (public) procurement.

Assets shall be managed on the basis of an agreement to be concluded in compliance with chapter 70 of the Civil Code of Ukraine subject to specifics stipulated by this Law.

3. The assets specified in part one of this Article shall be managed on the basis of efficiency, as well as preservation (if possible – increase) of their value.

The manager has the right to be paid (remunerated) and compensated for the necessary costs incurred by it due to management of assets, which shall be deducted directly from the incomes generated by use of the assets accepted into management. The manager shall not have the right to alienate assets accepted into management.

(Item 1 of the part 3 of the Article 21 as amended by the Law No. 1648-IX of 14.07.2021)

Validity of the asset management agreement shall be discontinued in case of cancellation of seizure of assets accepted into management or confiscation thereof, special confiscation, other court ruling on forfeiture to the revenue of the State.

These and other terms of asset management shall be provided for by the agreement between the National Agency and the manager.

4. Movable property may be transferred for sale without the consent of the owner on the basis of the decision issued by the investigating judge or court, if there is at least one of the following grounds:

1) the property is in the form of quickly perishable goods;

2) the property quickly depreciates;

3) expenses for storage of movable property within one calendar year amount to more than 50 percent of its value.

Immovable property shall not be transferred for sale without the consent of the owner of such property until a judgment of conviction that has come into legal force, or another court decision that has come into legal force, which is the basis for application of special confiscation according to the Criminal Procedure Code of Ukraine, or a court ruling that has entered into legal force on recognition of the unfounded nature of assets and their recovery into revenue of the State.

The sale of property in the manner prescribed by this part shall be sold at prices not lower than market prices.

(Part 4 of the Article 21, as amended by the Law of Ukraine No. 1648-IX from 14.07.2021)

5. Assets specified in part four of this article shall be provided for sale without consent of the owner on the basis of a decision issued by an investigative judge or court on the management of assets by means of sale, and a copy of such decision shall be sent to the National Agency immediately after issuing such a decision together with a relevant application from the prosecutor.

Provision of assets for sale may be also done upon consent of their owner by means of notarized signature, and a notarized copy of which shall be sent to the National Agency together with a relevant application from the prosecutor.

The sale of assets in accordance with this Law is a forced sale (forced disposal), except in cases of the sale of assets with the consent of the owner.

The sale of assets shall be performed by legal entities determined on a competitive basis. The procedure for selection of such legal entities, the procedure for sale of assets at public bidding (auctions) and/or electronic bidding shall be determined by the Cabinet of Ministers of Ukraine.

(Part 5 of the Article 21, as amended by the Law of Ukraine No. 1648-IX from 14.07.2021)

6. The funds received from sale of assets shall be credited to the deposit accounts of the National Agency.

7. Management of assets in the form of a participatory interest, shares or contributions in the charter (contributed) capital of:

1) bank – shall be ensured by taking measures on demand of the National Agency, stipulated by the law as well as by a regulatory legal act of the National Agency, subject to consent of the National Bank of Ukraine and the National Securities and Stock Market Commission, and for cooperative banks – by the National Bank of Ukraine;

2) insurer – shall be ensured by taking measures on demand of the National Agency, stipulated by the law as well as by a regulatory legal act of the National Agency, subject to consent of the National Bank of Ukraine and the National Commission for Regulation of Financial Services Markets of Ukraine, and for insurers incorporated in the legal form of a joint stock company – also by the National Securities and Stock Market Commission;

3) credit union, manager of a real estate operations fund, lease company, factoring company, pawnshop – shall be ensured by taking measures on demand of the National Agency, stipulated by the law as well as by a regulatory legal act of the National Agency, subject to consent of the National Bank of Ukraine and the National Commission for Regulation of Financial Services.

In case of management of assets in form of a participatory interest, shares or contributions in the charter (contributed) capital, the manager, throughout the course of performing the powers of an owner of such assets at higher management bodies of a relevant legal entity, shall coordinate its actions with an owner of such assets.

This part does not apply to asset management in exceptional cases with the specifics provide for by this Law.

{Part seven of Article 21, as amended by the Law of Ukraine No. 1530-IX from 03.06.2021)

8. In case of receipt of a prosecutor's or court ruling issued within the powers granted by law, which has taken legal effect and terminates seizure of assets accepted into management, if there is a court decision in the Unified State Register of Court Decisions, the National Agency within the period of ten business days shall return them to their legal owner.

Prosecutor’s ruling, which terminated the seizure, is submitted to the National Agency by the prosecutor, and the corresponding court ruling, which has entered into legal force, is submitted by the court, investigating judge, party to the criminal proceedings, representative of the legal or natural person in respect of which the proceedings are being carried out, a third party, in relation to property of which the issue of seizure is being resolved.

If assets for which the seizure was terminated were sold by the National Agency in the manner prescribed by this Law, the funds received, as well as interest accrued as a fee for using such funds by the bank, shall be returned by the National Agency in a non-cash form to the person who was the legal

owner of such assets at the time of their sale within ten business days from the date of receipt of the relevant ruling to terminate the seizure and the account details of such a person.

The inaction of the National Agency, which consists in the non-return of assets, funds received from the sale of seized assets, as well as interest accrued as a payment for using such funds by the bank to their legal owner may be appealed by a person whose rights or legitimate interests have been violated in accordance with the procedure established by the law.

(Part 8 of the Article 21, as amended by the Law of Ukraine No. 1648-IX from 14.07.2021)

Article 23. Management of confiscated assets

1. The National Agency shall ensure enforcement of a court ruling on confiscation, special confiscation of assets, forfeiture of assets into the revenue of the State, managed by it.

2. The National Agency shall ensure enforcement of a court ruling on confiscation, special confiscation of assets, forfeiture of assets into the revenue of the State, managed by it.

The interdepartmental commission for sale of assets, established under the National Agency, approves the sale of such assets, the value of which exceeds 20,000 minimum subsistence levels for working population established as of 1 January of a relevant year.

Regulation on the Interdepartmental commission for sale of assets and its composition shall be approved by the Cabinet of Ministers of Ukraine.

The sale of the mentioned assets shall be carried out in accordance with paragraph four of the part 4 of Article 21 of this Law.

Sale and purchase agreements of movable property sold by the National Agency in compliance with this Law shall not be subject to notarization.

If the National Agency sells immovable property at public bidding (auctions) and/or electronic bidding in accordance with this Law, its acquisition is formalized by a notary by issuing a certificate of purchase of immovable property to the acquirer on the basis of an act on the sale of such property, which is issued by the National Agency, and a protocol of such bidding (auction), drawn up by their organizer.

A certificate of purchase of immovable property at public bidding (auctions) and/or electronic bidding is a document confirming the acquisition of ownership of such immovable property, and is issued to the acquirer by a notary in the manner prescribed by law.

3. The National Agency, the moment the court rulings were issued on confiscation, special confiscation, forfeiture of assets in criminal proceedings into the revenue of the State, managed by it, except for the cases set forth in part two of this article, shall transfer them to the authorities of state enforcement service for the purpose of further enforcement of the relevant court rulings.

(Item one of part three of Article 23, as amended by the Law of Ukraine No. 1021-VIII from 18 February 2016)

The procedure for cooperation of the National Agency and the Ministry of Justice of Ukraine while enforcing the court rulings on confiscation, special confiscation, forfeiture of assets in criminal proceedings into the revenue of the State, shall be determined by a common order of these authorities.

4. The rules for management of assets, including in the part of independent enforcement of court rulings by the National Agency, shall apply to assets recovered into the revenue of the State in litigation processes on cases on the recognition as unfounded of assets and their recovery into the income of the State, provided for by this Law, specifics of which are set out in section 12 of chapter III of the Civil Procedural Code of Ukraine.

Article 24. Proceeds from management of assets

1. Proceeds from management of assets by the National Agency as well as funds received on the basis of international agreements on distribution and recovery of assets to Ukraine shall be transferred to the State budget.

Article 25. The Unified State Register of Assets Seized in Criminal Proceedings

1. The National Agency shall form and keep the Unified State Register of Assets Seized in Criminal Proceedings (hereinafter referred to as the Register), which shall contain the information regarding the following:

1) assets seized in criminal proceedings or in cases of recognition as unfounded of assets and their recovery into the revenue of the State; amount of funds, description, specifications and assessed value of the property, proprietary and other assets;

(Paragraph 1 part one of Article 25, as amended by the Law of Ukraine No. 263-IX from 31 October 2019)

2) authority, the investigator of which investigates (investigated) a relevant crime, initials and surname of the investigator (investigators); court (name of the court, initials and surname of judges), which or an investigative judge of which issued a ruling on seizure and/or cancellation of seizure of the relevant property or rights; prosecutor's office, the prosecutor of which cancelled seizure of property, initials and surname of the prosecutor; court which considers (considered) a relevant criminal proceeding or in the case of recognition as unfounded of assets and their recovery into the revenue of the State; number of criminal proceeding in the Unified Register of Pre-Trial Investigations; information regarding the identity of the suspected or accused person;

(Paragraph 2 of part one of Article 25, as amended by the Law of Ukraine No. 263-IX from 31 October 2019)

3) measures taken in criminal proceedings in the case of recognition as unfounded of assets and their recovery into the revenue of the State, related to seizure and management of assets, including costs received from sale of assets as well as from management of them (dividends, interests, etc.);

(Paragraph 3 part one of Article 25, as amended by the Law of Ukraine No. 263-IX from 31 October 2019)

4) court ruling on confiscation, special confiscation of assets or forfeiture of assets into the revenue of the State in criminal proceedings in the case of recognition as unfounded of assets and their recovery into the revenue of the State, the status of enforcement of the ruling and management of confiscated assets, including the funds received from sale of assets;

(Paragraph 4 part one of Article 25, as amended by the Law of Ukraine No. 263-IX from 31 October 2019)

5) rulings of foreign competent authorities on seizure and confiscation of assets in Ukraine, and the status of fulfilment thereof;

6) rulings of Ukrainian competent authorities on seizure and confiscation or recovery into the revenue of the State of assets in foreign countries, and the status of fulfilment thereof;

(Paragraph 6 part one of Article 25, as amended by the Law of Ukraine No. 263-IX from 31 October 2019)

7) international agreements on distribution and recovery of assets to Ukraine.

Information contained in the Register shall be open, except for the information provided for by the paragraphs 1, 2, 5, 6 of this part in respect of the following: description and specification of assets (property), which allow identifying the location of assets (property) and/or a person, who possesses, uses and manages such assets (property); identity of the suspected or accused person;

information, which shall not be disclosed (published) within the framework of international cooperation in accordance with the international agreements of Ukraine.

(Part one of Article 25 is added with the paragraph according to the Law of Ukraine No. 1021-VIII from 18 February 2016)

2. Regulation on the Unified State Register of Assets Seized in Criminal Proceedings, procedure for forming and keeping it shall be approved by the National Agency.

Duly authorized employees of the National Agency shall be the registrars of the Register. Information to be included in the Register shall be submitted to the National Agency by means of electronic communication byinvestigators, detectives, prosecutors, judges, state enforcement officers, other officials and officers no later than the next business day after occurrence of the basis for submission of such information.

(Item two of part two of Article 25, as amended by the Law of Ukraine No. 1021-VIII from 18 February 2016)

3. Employees of the National Agency, heads of prosecutor's offices and pre- trial investigation authorities, prosecutors, investigators, detectives and other duly authorized persons of pre-trial investigation authorities, who perform functions of information and analytical support of law-enforcement authorities and keeping special records in compliance with the legislation, shall be the users of the Register.

(Part three of Article 25, as amended by the Law of Ukraine No. 1021-VIII from 18 February 2016)

4. The National Agency shall ensure that the software required for keeping the Register is owned by the state.

4. LAW ON PREVENTION AND COUNTERACTION TO LEGALISATION (LAUNDERING) OF CRIMINAL PROCEEDS, TERRORIST FINANCING AND FINANCING OF PROLIFERATION OF WEAPONS OF MASS DESTRUCTION (AML/CFT LAW)

Article 1. Definitions

1. For the purposes of this Law, the following definitions shall apply:

13) virtual asset — a expression of value in figures that can be traded digitally or transferred and can be used for payment or investment purposes;

Article 22.Freezing of Assets Related to Terrorism and its Financing, Proliferation of Weapons of Mass Destruction and its Financing

1. The reporting entity (liquidator (except for the Individual Deposit Guarantee Fund), the authorised person of the Individual Deposit Guarantee Fund) shall immediately, without prior notice to the client (person), freeze assets related to terrorism and its financing, proliferation of weapons of mass destruction and its financing.

On the day of the decision to freeze such assets, the reporting entity (liquidator (except for the Individual Deposit Guarantee Fund), the authorised person of the Individual Deposit Guarantee Fund) shall simultaneously notify the specially authorised body and the Security Service of Ukraine according to the procedure for frozen assets established by law.

2. If assets are frozen according to part one of this Article, profitable financial transactions of clients included in the list of persons, clients who are representatives of persons included in the list of persons, clients directly or indirectly owned or ultimately beneficial owners of which are persons included in the list of persons shall be carried out. In this case, the reporting entity (liquidator (except for the Individual Deposit Guarantee Fund), the authorised person of the Individual Deposit Guarantee Fund) on the day of conduction, but not later than 11 hours of the next working day from the date of profitable transaction, shall notify of its carrying out and/or attempting to carry out expenditure financial transactions the specially authorised body and the Security Service of Ukraine and immediately, without prior notice to the client (person), freeze the assets received as a result of such profitable transaction.

3. After freezing of assets, the reporting entity (liquidator (except for the Individual Deposit Guarantee Fund), the authorised person of the Individual Deposit Guarantee Fund) shall notify the client (person) in writing of such freezing on his (her) written request.

4. The reporting entity shall unfreeze the assets immediately:

no later than the next working day from the day of exclusion of a person or organisation from the list of persons;

no later than the next working day from the date of receipt from the Security Service of Ukraine of information that a person or organisation having the same or similar name (title) as the person or organisation included in the list of persons and assets of which have become subject to freezing, according to the results of the inspection is not included in the specified list.

The reporting entity (liquidator (except for the Individual Deposit Guarantee Fund), the authorised person of the Individual Deposit Guarantee Fund) no later than the next business day after unfreezing of assets shall inform the specially authorised body and the Security Service of Ukraine.

5. Freezing/unfreezing of assets according to parts one, two and four of this Article shall be carried out according to the procedure established by the state financial monitoring entities, which carry out state regulation and supervision of the activities of the appropriate reporting entities, or the Individual Deposit Guarantee Fund within their powers taking into account requirements and exceptions determined in the resolutions of the UN Security Council.

6. Access to assets related to terrorism and its financing, proliferation and financing of weapons of mass destruction shall be carried out according to the procedure established by law.

7. Freezing of assets according to parts one and two of this article shall not be the basis for the occurrence of civil liability of the reporting entity, its officials and other employees, liquidator (except for the individual Deposit Guarantee Fund), authorised persons of the Individual Deposit Guarantee Fund for violation of conditions of the relevant transactions and/or legislation on the system of guaranteeing deposits of individuals, if they acted within the tasks, responsibilities and in the manner prescribed by this Article.

Article 25. Tasks and Functions of a Specially Authorised Body

1. The tasks of the specially authorised body are as follows:

1) collecting, processing and analysing (operational and strategic) information on financial transactions subject to financial monitoring, other financial transactions or information that may be related to the suspicion of legalisation (laundering) of criminal proceeds, terrorist financing or financing of proliferation of weapons of mass destruction.

The principles of processing the information received from the reporting entitieson financial transactions subject to financial monitoring and the criteria for analysing such transactions are established by the central executive body that ensures the formation and implementation of state policy on prevention and counteraction to legalisation (laundering) of criminal proceeds, obtained by criminal means, terrorist financing and financing of proliferation of weapons of mass destruction;

2) ensuring the implementation of state policy in the field of prevention and counteraction;

3) ensuring the functioning and development of the unified information system in the field of prevention and counteraction;

4) establishing cooperation, interaction and information exchange with state bodies, the National Bank of Ukraine, competent bodies of foreign states and international organisations in the field of prevention and counteraction;

5) conducting a national risk assessment;

6) ensuring the representation of Ukraine in the prescribed manner in international organisations for prevention and counteraction.

2. Pursuant to the tasks assigned, the specially authorised body the tasks assigned shall:

1) makes proposals for the development of legislative acts, participates in the prescribed manner in the preparation of other regulations on prevention and counteraction;

2) submits requests to officials, state bodies (except for the National Bank of Ukraine), including law enforcement agencies, prosecutors and courts, local governments, state executive service bodies, private executors, enterprises, institutions, organisations for obtaining information according to the law (including copies of documents) required to perform the tasks assigned;

3) cooperates with executive authorities, the National Bank of Ukraine, other state bodies included in the system of prevention and counteraction;

4) if there are sufficient grounds to believe that a financial transaction or a set of related financial transactions may be connected with the legalisation (laundering) of criminal proceeds, terrorist financing or financing of proliferation of weapons of mass destruction, submits to law enforcement and intelligence agencies the appropriate generalised materials (additional generalised materials) and receives from them information on the course of their consideration;

5) if there are sufficient grounds to believe that the financial transaction or client is connected with the commission of a criminal offense not related to legalisation (laundering) of criminal proceeds or terrorist financing, submits information to the appropriate law enforcement or intelligence agency of Ukraine as generalised materials or additional generalised materials;

6) participates in international cooperation on prevention and counteraction;

7) analyses methods and financial schemes for legalisation (laundering) of criminal proceeds, terrorist financing or financing of proliferation of weapons of mass destruction;

8) annually summarises information on prevention and counteraction in the state;

9) approves drafts of regulatory legal acts of state financial monitoring entities on issues of prevention and counteraction;

10) receives from the reporting entities information on tracking (monitoring) of financial transactions of clients that have become the object of financial monitoring; 11) carries out typological research in the field of combating legalisation (laundering) of criminal proceeds, terrorist financing or financing of proliferation of weapons of mass destruction;
12) requires from the reporting entities compliance with the requirements of the legislation in the field of prevention and counteraction and in case of violations of the legislation takes measures provided by law, and notifies the appropriate state financial monitoring entities, which according to this Law perform state regulation and supervision of the reporting entities;

13) ensures the implementation of state policy in the field of prevention and counteraction and ensures the coordination of activities of state bodies in this field;

14) ensures, according to the procedure established by the Cabinet of Ministers of Ukraine, organisation and coordination of work on retraining and advanced training of specialists of public authorities on financial monitoring and responsible employees of reporting entities, and employees involved in primary financial monitoring, to prevent and counteract on the basis of the appropriate educational institution — academy, which refers to the sphere of management of the specially authorised body;

15) provides information to the state financial monitoring entities to increase the effectiveness of supervision in the field of prevention and counteraction.

The scope and procedure for providing the information specified in paragraph one of this clause shall be determined by the central executive body that ensures the formation and implementation of state policy in prevention and counteraction to legalisation (laundering) of proceeds from crime, terrorist financing and financing of proliferation of weapons of mass destruction, in agreement with the National Bank of Ukraine (for the reporting entities, state regulation and supervision of which according to Article18 of this Law is carried out by the National Bank of Ukraine), and joint regulations of the central executive body, which ensures the formation and implementation of state policy in the field of prevention and counteraction to legalisation (laundering) of criminal proceeds, terrorist financing and financing of proliferation of weapons of mass destruction, with other state financial monitoring entities (in relation to other reporting entities);

16) notifies the reporting entity after receiving information from courts or law enforcement agencies authorised to make decisions according to the Code of Criminal Procedure of Ukraine, on delivery to the person of the written notice on suspicion of commission of a criminal offense, on closing of criminal proceedings which are begun upon the notification of such entity which has arrived to the specially authorised body according to requirements of Articles 8, 14, 15, 16, 23 of this Law, and provides it with information on court decisions on such criminal proceedings with simultaneous notification to the appropriate state financial monitoring entity. The procedure for notifying and informing the reporting entity and the state financial monitoring entity shall be established by the central executive body that ensures the formation and implementation of state policy in the field of prevention and counteraction to legalisation (laundering) of criminal proceeds, terrorist financing and financing of proliferation of weapons of mass destruction;

17) participates on behalf of the Cabinet of Ministers of Ukraine in the preparation of the appropriate international treaties of Ukraine;

18) performs other functions arising from the tasks assigned and exercises powers according to the law.

3. The specially authorised body within the framework of this Law shall ensure record keeping of:

1) information on financial transactions that have been the object of financial monitoring;

2) generalised materials and additional generalised materials provided to law enforcement or intelligence agencies, and adopted as a result of their consideration of procedural decisions;

3) information on the results of the pre-trial investigation and court decisions in criminal proceedings in which the provided generalised materials were used (are used), and on the number of persons who committed or are suspected of committing criminal offenses, as well as those convicted of criminal offenses;

4) information on confiscated assets and assets seized in criminal proceedings in which the provided generalised materials were used (are used), and on the number of persons in respect of whom the court decided to confiscate assets and whose assets were seized;

5) sent and executed international requests for cooperation in the field of prevention and counteraction;

6) reporting entities.

4. The specially authorised body shall ensure the storage of information, materials, documents obtained or created within the framework of this Law for at least five years after receiving information about the financial transaction, refusal to carry out the financial transaction or decision-making by law

enforcement agencies or courts during the consideration of which the generalised materials were used.

5. The specially authorised body according to the procedure, established by the Cabinet of Ministers of Ukraine, provides deregistration/renewal of the reporting entitiesat their request in case of termination/resumption of the appropriate activities or deregistration of the reporting entitiesat the request of the state financial monitoring entities, which according to this Law perform the functions of state regulation and supervision over the reporting entities, either on the basis of information of the appropriate state registration bodies on cancellation of state registration (for legal entities and individual entrepreneurs), or in case of state registration of death (for individuals).

6. The specially authorised body is independent in making decisions on the analysis of information on financial transactions subject to financial monitoring, other financial transactions or information that may be related to the suspicion of legalisation (laundering) of criminal proceeds, terrorist financing or financing of proliferation of weapons of mass destruction, sending inquiries and/or transmitting information to law enforcement and intelligence agencies.

Article 27. Rights of a Specially Authorised Body

1. The specially authorised body has the right to:

1) engage specialists of central and local executive bodies, enterprises,

institutions and organisations in the consideration of issues within its competence (with the approval of their heads);

2) receive the information (certificates, copies of documents), including information with limited access required to perform the tasks assigned free of charge in the manner prescribed by law from state bodies, law enforcement agencies, courts, the National Bank of Ukraine, local self-government bodies, business entities, enterprises, institutions and organisations;

3) receive the information on tracking (monitoring) of financial transactions that may be related to legalisation (laundering) of criminal proceeds, terrorist financing or financing of proliferation of weapons of mass destruction from the reporting entity, if necessary, based on the results of the analysis;

4) receive the information on death of individuals from the central executive body, which implements the state policy in the field of state registration of civil status, in the manner prescribed by the central executive body, which ensures the formation and implementation of state policy in the field of prevention and counteraction to legalisation (laundering) of criminal proceeds, terrorist financing and financing of proliferation of weapons of mass destruction, and the Ministry of Justice of Ukraine;

5) carry out, according to the procedure established by law, access, including automated one, to information and reference systems, registers and data banks of public authorities (except for the National Bank of Ukraine) and other state information resources;

6) receive additional information from the reporting entitiesupon request;

7) develop and submit for consideration of the central executive body that ensures formation and implementation of state policy in the field of prevention and counteraction to legalisation (laundering) of criminal proceeds, terrorist financing and financing of proliferation of weapons of mass destruction, the draft regulations necessary for fulfillment of tasks and functions stipulated in Article 25 of this Law;

8) receive from law enforcement and intelligence bodies of Ukraine, to which the generalised materials (additional generalised materials) have been submitted according to this Law, information on the course of processing and taking the appropriate measures on the basis of the received materials in the manner prescribed by law;

9) conclude international treaties of interdepartmental nature with the appropriate bodies of other states on cooperation in the field of prevention and counteraction in the manner prescribed by law;

10) make in the cases provided by this Law, the decisions on suspension (further suspension, continuation of suspension) of financial transactions for the term established by this Law;

11) participate in coordination with the appropriate state financial monitoring entities, which according to this Law perform the functions of state regulation and supervision over the reporting entities, in preparation and/or conduct of inspections of the reporting entities(except for inspections of the reporting entitiescarried out by the National Bank of Ukraine) on compliance with the legislation in the field of prevention and counteraction;

12) inform the state financial monitoring entities, which according to this Law perform the functions of state regulation and supervision over the reporting entities, about possible violations by such reporting entitiesof the requirements of this Law;

13) provide data to the state financial monitoring entities according to the legislation within the limits specified in part three of Article 25 of this Law.

5. CIVIL PROCEDURE CODE

Article 290. Filing a claim to recognise assets unfounded and recover them into state revenue

1. A claim for recognition of assets as unfounded and their recovery into state revenue shall be filed and the representation of the state in court shall be carried out by the prosecutor of the Specialised Anti-Corruption Prosecutor's Office. In the cases on recognition of assets as unfounded and their recovery into state revenue regarding the assets of an employee of the National Anti- Corruption Bureau of Ukraine, a prosecutor of the Specialised Anti-Corruption Prosecutor's Office or assets acquired by others in the cases provided for in this Article, appeals to the court and representation of the state in court shall be carried out by prosecutors of the Prosecutors General's Office of Ukraine on behalf of the Prosecutor General.

2. A claim shall be brought in respect of:

assets acquired after the date of entry into force of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Concerning Confiscation of Illegal Assets of Persons Authorised to Perform State or Local Government Functions and Punishment for Acquisition of Such Assets”, if the difference between their value and legal income of the person authorised to perform the functions of the state or local government is more than five hundred or more times the subsistence level for able- bodied persons established by law on the date of entry into force of this Law, but does not exceed the limit established by Article 368-**5** of the Criminal Code of Ukraine;

assets acquired after the date of entry into force of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Concerning Confiscation of Illegal Assets of Persons Authorised to Perform

State or Local Government Functions and Punishment for Acquisition of Such Assets", if the difference between their value and legal income of the person authorised to perform the functions of state or local government is more than five hundred or more times the subsistence level for able- bodied persons established by law on the date of entry into force of this Law, and criminal proceedings under Article 368**5** of the Criminal Code of Ukraine where these assets were the subject of the offence,

has been closed based on clauses 3, 4, 5, 8, 10 of part 1 of Article 284 of the Criminal Code of Ukraine and the relevant judgment has become final.

income received from the assets specified in the paragraphs 2 and 3 of this part.

3. To determine the value of assets referred to in part 2 of this Article, the value of their acquisition shall be used, and in case of their acquisition free of charge or at a price below the minimum market value, the minimum market value of such or similar assets on the acquisition date shall be used.

4. A claim for recognition of assets as unfounded and their recovery into state revenue may be filed against a person who, being a person authorised to perform the functions of state or local government, has acquired the assets specified in part 2 of this Article, and/or to another individual or legal entity who has acquired such assets on behalf of a person authorised to perform the functions of state or local government, or if a person authorised to perform the functions of state or local government may directly or indirectly act in regard of such assets, similar to the exercise of the right to dispose of them.

5. The National Anti-Corruption Bureau of Ukraine and the Specialised Anti-Corruption Prosecutor's Office, and in cases specified by law, the State Bureau of Investigation and the Prosecutor General's Office of Ukraine, shall take measures to identify unfounded assets and collect evidence of their invalidity.

6. In determining the difference between the value of acquired assets and legal income under part 2 of this Article, the assets taken into account in qualifying the act in ongoing criminal proceedings under Article 368-**5** of the Criminal Code of Ukraine shall not be taken into account in the judgment to close criminal proceedings, except for cases of its closure based on clauses 3, 4, 5, 8, 10 of part 1 of Article 284 of the Criminal Procedure Code of Ukraine, or in a court verdict under the specified Article of the Criminal Code of Ukraine, which have entered into force.

7. If the adoption of a judgment on the recognition of assets as unfounded and their recovery into state revenue may affect the rights and obligations of third parties in respect of such assets, the plaintiff shall concurrently with the filing of the claim to notify such third parties and file to the court a statement on their involvement in the case as third parties who do not make independent claims on the subject matter of the dispute. Such a statement shall be accompanied by evidence that the duplicates of the application have been sent to the persons, who will be involved as third parties with the relevant application submitted.

8. For the purposes of this chapter:

1) the term "assets" shall mean money (including cash, funds in bank accounts or in custody in banks or other financial institutions), other property, property rights, intangible assets, including cryptocurrencies, the amount of reduced financial obligations, as well as works or services provided to a person authorised to perform the functions of state or local government;

2) "acquisition of assets" shall mean the acquisition of assets by a person authorised to perform state or local government functions, as well as the acquisition of assets owned by another individual or legal entity, if it is proved that such acquisition was made on behalf of a person authorised to perform the

functions of the state or local government, or that a person authorised to perform the functions of the state or local government may directly or indirectly perform actions regarding such assets identical in content to the exercise of the right to dispose of them;

3) persons authorised to perform the functions of the state or local government shall be the persons specified in clause 1 of part 1 of Article 3 of the Law of Ukraine “On Prevention of Corruption”;

4) employees of the National Anti-Corruption Bureau of Ukraine shall be the Director of the Bureau, his/her first deputy, deputy, senior staff and civil servants of the National Anti-Corruption Bureau of Ukraine;

5) the term “legal income” shall mean income lawfully received by a person from legal sources, including sources specified in clauses 7 and 8 of Article 46 of the Law of Ukraine “On Prevention of Corruption”;