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INTERNATIONAL SHARING OF FORFEITED ASSETS  
PROSPECTIVE AND EXPERIENCE FROM DE USA



# International Sharing of Forfeited Assets

Perspective and Experience  
From the USA



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# United States International Asset Sharing

- Total number of countries that have received sharing from the United States to date = 54.
- Since 1989, more than **\$239 million** of forfeited assets has been transferred to **41** countries from the Dept. of Justice Assets Forfeiture Fund.
- Since 1994, the Treasury Forfeiture Fund has Transferred more than **\$30 million** to **27** countries.



- Largest amounts shared with:
  - Switzerland
  - Colombia
  - Luxembourg
  - United Kingdom
- Most recent new sharing recipients:
  - Belgium
  - Bermuda
  - Uruguay

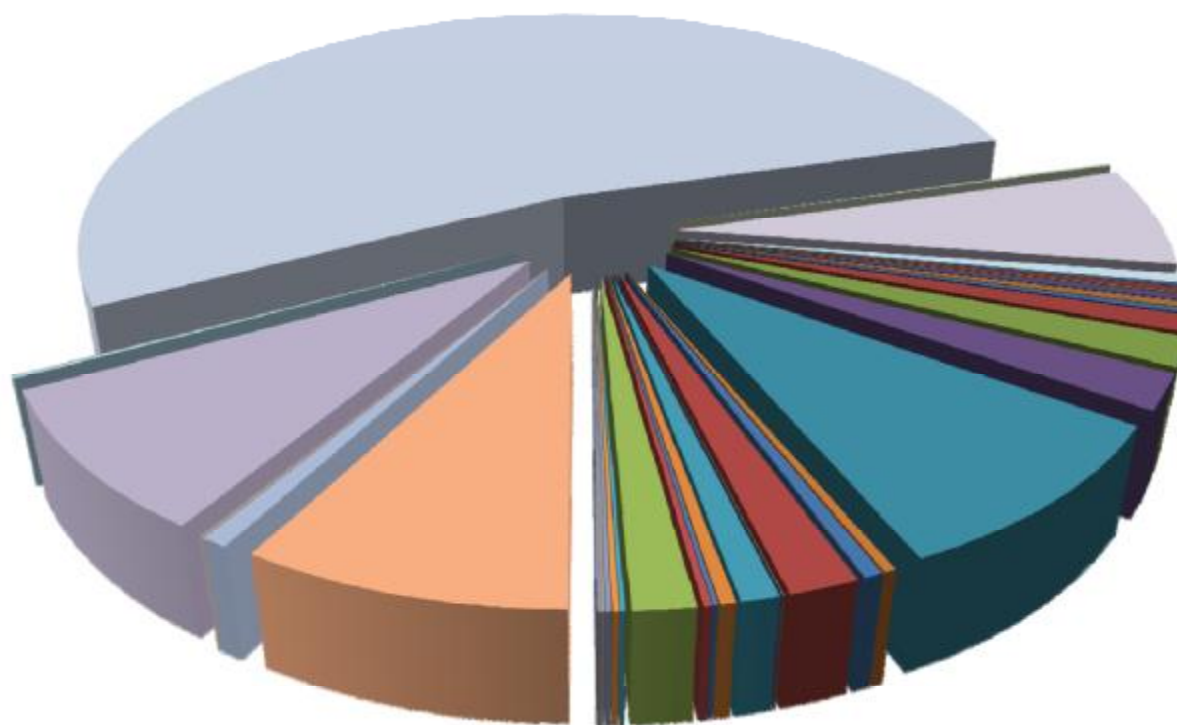
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## INTERNATIONAL SHARING CHART

| Country                | Total Amount      |
|------------------------|-------------------|
| Anguilla               | \$ 382,523.96     |
| Antigua & Barbuda      | \$ 614,656.10     |
| Argentina              | \$ 162,851.50     |
| Bahamas                | \$ 642,696.71     |
| Barbados               | \$ 100,000.00     |
| Belgium                | \$ 800,000.00     |
| Bermuda                | \$ 672,225.98     |
| British Virgin Islands | \$ 2,437,885.62   |
| Canada                 | \$ 4,310,620.09   |
| Cayman Islands         | \$ 5,340,808.70   |
| Colombia               | \$ 21,620,413.28  |
| Costa Rica             | \$ 733,019.00     |
| Dominican Republic     | \$ 1,176,361.71   |
| Ecuador                | \$ 4,293,877.46   |
| Egypt                  | \$ 51,240.00      |
| Germany                | \$ 11,336.25      |
| Greece                 | \$ 2,327,959.05   |
| Guatemala              | \$ 963,352.41     |
| Guernsey               | \$ 297,713.00     |
| Honduras               | \$ 500,000.00     |
| Hong Kong              | \$ 3,806,158.42   |
| Hungary                | \$ 8,415.40       |
| Indonesia              | \$ 287,577.46     |
| Ireland                | \$ 371,296.09     |
| Isle of Man            | \$ 335,862.39     |
| Israel                 | \$ 73,353.19      |
| Jersey                 | \$ 100,000.00     |
| Jordan                 | \$ 238,774.24     |
| Liechtenstein          | \$ 20,500.00      |
| Luxembourg             | \$ 19,791,190.66  |
| Mexico                 | \$ 1,646,237.42   |
| Netherlands Antilles   | \$ 22,500.00      |
| Paraguay               | \$ 70,000.00      |
| Peru                   | \$ 20,275,911.88  |
| Romania                | \$ 423,700.00     |
| South Africa           | \$ 11,044.57      |
| Switzerland            | \$ 127,018,205.50 |
| Thailand               | \$ 19,144.00      |
| Turkey                 | \$ 264,846.42     |
| United Kingdom         | \$ 15,309,559.97  |
| Venezuela              | \$ 1,384,815.02   |

41 Countries **\$230,218,667.57**

Anguilla  
 Antigua & Barbuda  
 Argentina  
 Bahamas  
 Barbados  
 Belgium  
 Bermuda  
 British Virgin Islands  
 Canada  
 Cayman Islands  
 Colombia  
 Costa Rica  
 Dominican Republic  
 Ecuador  
 Egypt  
 Germany  
 Greece  
 Guatemala  
 Guernsey  
 Honduras  
 Hong Kong  
 Hungary  
 Indonesia  
 Ireland  
 Isle of Man  
 Israel  
 Jersey  
 Jordan  
 Liechtenstein  
 Luxembourg  
 Mexico  
 Netherlands Antilles  
 Paraguay  
 Peru  
 Romania  
 South Africa  
 Switzerland  
 Thailand  
 Turkey  
 United Kingdom  
 Venezuela





# U.S. Statutory Requirements International Asset Sharing

1. The assets must be finally, non-appealably forfeited to either the Department of Justice or Department of Treasury Assets Forfeiture Fund.



# U.S. Statutory Requirements International Asset Sharing

2. The recipient country must have participated – either directly or indirectly – in the seizure or forfeiture of the specific assets to be shared.

(more on this later)



## U.S. Statutory Requirements International Asset Sharing

3. The sharing must be approved by the Attorney General (for Justice Department sharing) or by the Secretary of the Treasury (for Treasury Department sharing) via delegated authorities.



# U.S. Statutory Requirements International Asset Sharing

4. The sharing decision must be agreed to by the Secretary of State via delegated authorities.



## U.S. Statutory Requirements International Asset Sharing

5. The sharing must be authorized by an international agreement between the United States and the recipient country.

(more on this later, too)



## U.S. Statutory Requirements International Asset Sharing

6. If applicable, the country must be certified under the Foreign Assistance Act.



# The “international agreement” requirement

- Most bilateral Mutual Legal Assistance Treaties (MLATs) since 1987 provide generally for sharing.
- No multilateral conventions – including the OAS Convention on Mutual Legal Assistance – fulfill this requirement of U.S. law.



# The “international agreement” requirement

- Sharing also may be provided for by a bilateral forfeiture cooperation and sharing agreement between the United States and the recipient country.
  - (normally these are executive agreements for the U.S., not treaties)



# U.S. Bilateral Forfeiture Agreements

- **The U.S. has bilateral forfeiture cooperation agreements with the following 19 countries:**

- **Anguilla**
- **Austria**
- **British Virgin Islands**
- **Canada**
- **Cayman Islands**
- **Colombia**
- **Dominican Republic**
- **Ecuador**
- **Hong Kong** (limited)
- **Jamaica**
- **Mexico**
- **Monaco**
- **Montserrat**
- **Netherlands**
- **Singapore**
- **Turks & Caicos Islands**
- **United Kingdom**
- **Jersey** (drug cases only)
- **Guernsey** (drug cases only)



# United Nations Model Bilateral Agreement on Sharing of Confiscated Assets

Econsoc Resolution 2005/14

- The more recent of the U.S. bilateral forfeiture cooperation agreements are drawn largely from the U.N. model bilateral agreement adopted in 1995.
- See:

<http://www.un.org/en/ecosoc/docs/2005/resolution%202005-14.pdf>



## Special Provision Regarding Victim-Related Assets

- Consistent with Art. 14, Para. 2, of the U.N. Convention Against Transnational Organized Crime, U.S. bilateral agreements now include a reciprocal obligation that the signatory countries return all fraud and theft proceeds to the requesting country for purposes of compensating victims.



## The “international agreement” requirement

- In the absence of a bilateral MLA treaty or specialized forfeiture cooperation agreement, it is possible to structure an *ad hoc* “case-specific agreement” (CSA) to allow for sharing.
- This is not uncommon: e.g., all sharing with Switzerland since 1989 has been done under a series of 25 individual CSAs.



# The “international agreement” requirement

- Case-specific agreements typically specify:
  1. A recipient or recipients for the sharing;
  2. Purposes for which the shared assets are to be used;
  3. Accounting and audit measures to be applied to the shared assets; or
  4. Any combination of the above measures.



# The “international agreement” requirement

- The United States is much less likely to ask for targeted uses for, and/or targeted recipients of, shared assets if the recipient country has established a comprehensive legal regime for the management and disposition of its own forfeited assets.
- The interpretive notes for FATF Recommendation 38 urge countries to consider taking measures to “establish[] an asset forfeiture fund . . . into which all or a portion of confiscated property will be deposited for law enforcement, health, education, or other appropriate purposes,” and this admonition is reiterated in the FATF “Methodology for Assessing Compliance.”



# Criteria for International Asset Sharing

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*Set out in a 1995 Interagency MOU  
between the Department of Justice,  
Treasury, and State*

- Essential Assistance: (50-80 percent share)
- Major Assistance: (40-50 percent share)
- Facilitating Assistance: (Up to 40 percent share)



# Criteria for International Asset Sharing

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- Major Assistance: (40-50 percent share)
  - Normally involves assistance regarding assets located in the recipient country.
  - Such assistance typically includes:
    - Enforcing U.S. restraining and forfeiture orders and sending the assets to the U.S.;
    - Freezing assets / then lifting freeze to allow their voluntary return to the U.S. for forfeiture;
    - Returning assets for forfeiture as part of an extradition request;
    - Expending substantial foreign law enforcement resources to assist the U.S., including quantifiable and verifiable work hours; or
    - Providing assistance to the U.S. that places recipient country law enforcement agents in physical danger.



# Criteria for International Asset Sharing

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- **Essential assistance**: (50-80 percent share)
  - Also normally involves assistance regarding assets located in the recipient country, and, in addition to offering other assistance, typically includes:
    - Defending in litigation claims brought by asset owners, claimants, or other third parties who try to impede the recipient country's efforts to assist the United States;
    - Freezing assets / then lifting freeze and returning them to the U.S. for forfeiture without the cooperation of the controlling party or beneficial owner;
    - Foregoing the option of proceeding against the assets to allow the U.S. to forfeit them;
    - Also, Providing the U.S. with substantially all admissible evidence needed to prevail in a U.S. forfeiture against property located in the United States.



# Criteria for International Asset Sharing

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- **Facilitating Assistance**: (up to 40 percent share)
  - Normally involves investigative and/or operational assistance regarding assets located in the United States or in a third country; usually indirectly assists the forfeiture.
  - Such assistance typically includes:
    - Allowing the recipient country's territory to be used in a U.S. or joint undercover operation that leads to asset forfeiture;
    - Permitting recipient country law enforcement officials to testify as witnesses at U.S. forfeiture-related proceedings;
    - Assisting in the service of process, posting of notice, or obtaining information/evidence in the recipient country; e.g., interviewing witnesses; obtaining documents; researching titles;
    - Providing bank or other financial records or investigative information that allow the U.S. to locate and quantify forfeitable assets;
    - Supporting U.S. efforts to persuade recipient country banks to freeze or return assets or otherwise facilitate a U.S. forfeiture.
    - Providing information that leads to a successful U.S. forfeiture.



## **Recommendations for International Sharing**

- **Can originate from U.S. investigating agencies (including attachés posted in the recipient country) ; from U.S. prosecutors; from Justice or Treasury Department Headquarters, or any combination.**
- **Foreign authorities may also make their own requests for sharing in specific assets, subject to U.S. law and sharing guidelines.**



# ***Limitations:***

- 1) **Only the Deputy Attorney General or the Director of TEOAF can approve SO not advance promises of sharing!**
- 2) **Sharing cannot occur until the forfeiture has been finalized, beyond appeal.**
- 3) **Secretary of State must concur.**
- 4) **U.S. Congress can object in certain cases where funds are directed for anti-narcotic purposes.**
- 5) **Sharing is permitted in most but not all forfeiture cases.**



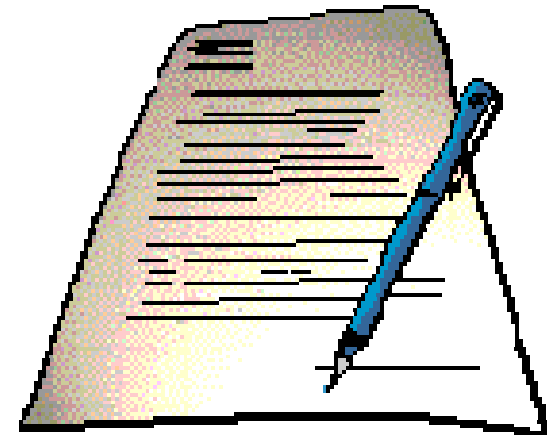
## ***Limitations:***

- 1) **Neither U.S. Attorneys (regional prosecutors) nor investigating agencies can authorize sharing with foreign governments**
- 2) **International sharing takes priority over sharing agreements with U.S. federal/state law enforcement agencies**

# How To Apply

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**Foreign governments may submit requests pursuant to treaties, sharing agreements, diplomatic requests or official signed letter to the U.S. law enforcement agency or to AFMLS.**





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