



Organization of American States

17th St. & Constitution Avenue N.W.
Washington, D.C. 20006
United States of America

P. 202.458.3000
www.oas.org

**INTER-AMERICAN DRUG ABUSE
CONTROL COMMISSION
CICAD**

Secretariat for Multidimensional Security

**XXXIX GROUP OF EXPERTS FOR THE CONTROL OF MONEY LAUNDERING
SEPTEMBER 25-26, 2014
MONTEVIDEO, URUGUAY**

OEA/Ser.L/XIV.4.39
CICAD/doc.15/14
26 September 2014
Original: English

**PROVIDING INTERNATIONAL COOPERATION FOR ASSET FORFEITURE IN THE CARIBBEAN
MECHANISM FOR MANAGEMENT OF FORFEITED ASSETS**

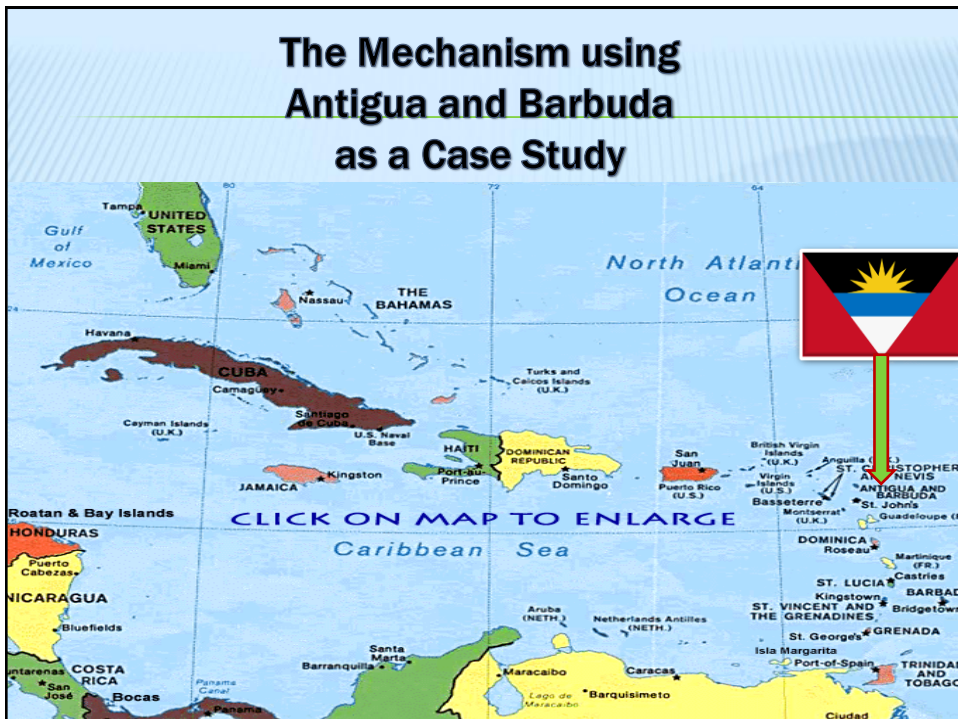
Providing International Cooperation for Asset Forfeiture in the Caribbean Mechanism for Management of Forfeited Assets

By
Lt. Col. Edward Croft
Supervisory Authority &
Director
The Office of National Drug and Money
Laundering Control Policy (ONDCP)
Antigua & Barbuda



“IF THE RULE OF LAW IS UNDERMINED NOT ONLY IN ONE COUNTRY, BUT IN MANY, THEN THOSE WHO DEFEND IT CANNOT LIMIT THEMSELVES TO PURELY NATIONAL MEANS”.

— UN Convention Against Transnational Organized Crime 2004



Basic Steps

- ✖ Asset Identification
- ✖ Asset Restraint
- ✖ Enforcement of Asset Forfeiture
- ✖ Asset Repatriation

Legal Authority for International Assistance

- ✖ Statutes
- ✖ Treaties
- ✖ Conventions



Registration of Foreign Orders

- ✖ Mutual Assistance in Criminal Matters Act 1993
- ✖ A statutory implementation of the UN Vienna Convention 1988
- ✖ Provides for Assistance with tracing of assets
- ✖ Provides for Registration of foreign orders that:
 - + Restrain dealings with property
 - + Impose a pecuniary penalty assessed by value of property derived from serious offense
 - + Confiscate property derived from serious offence

Direct Action on behalf of Foreign Authority

- ✖ Money Laundering (Prevention) Act 1996
- ✖ Requires mutual legal assistance treaty
- ✖ Court or Supervisory Authority can act in consultation with the Attorney General
- ✖ Can cooperate with court or competent authority of another State
 - + To take appropriate measures to provide assistance in matters concerning money laundering offences
 - + Money laundering offences has very wide definition

Under the MLPA

- ✕ Action can be taken by the local authority at a foreign request to
 - + Freeze
 - + Seize
 - + Forfeit property, proceeds or instrumentalities
- ✕ Take measures to assist a request related to:
 - + Investigation, prosecution or proceedings
 - + That are civil, criminal or administrative in nature
 - + Involving most serious criminal offences

Mutual Legal Assistance Treaty

TREATY

CONVENTION

TREATY

- ✖ USA
 - + Mutual Legal Assistance in Criminal Matters 1996
- ✖ United Kingdom:
 - + Agreement for the Investigation, Restraint and Confiscation of the Proceeds and Instrumentalities of Crime 1997

Conventions

- ✖ UN Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances (Article 7)
- ✖ Harare Scheme: Scheme Relating to Mutual Legal Assistance in Criminal Matters Within the Commonwealth
- ✖ Inter-American Convention on Mutual Legal Assistance in Criminal Matters

Conventions

- ✖ United Nations Convention Against Transnational Organized Crime (Article 18)
- ✖ Inter-American Convention Against Corruption (Article 15)
- ✖ United Nations Convention Against Corruption (Article 43)

Asset Identification



ASSETS

- ✖ “Property” means assets of every kind, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets.”

(section 3 Proceeds of Crime Act 1993)

INFORMAL REQUESTS FOR INFORMATION

- ✖ Verbal communication (particularly where urgent)
- ✖ Written communication, including fax and email
- ✖ Egmont secure requests (written)

FORMAL REQUESTS FOR INFORMATION

- ✖ MLAT Requests
- ✖ Letters of Request
- ✖ Necessitating:
 - + Production Orders (for financial institution information)
 - + Government public information
 - + Government official information

Asset Restraint

FOREIGN RESTRAINT ORDERS

- ✖ Where an order is made restraining dealing with property which is or is suspected on reasonable grounds of being, property so derived or obtained;
 - + a request is transmitted requesting that the order concerned be enforced in accordance with the law of Antigua and Barbuda and that, to that end, Antigua and Barbuda give appropriate assistance; and
 - + the request is accepted
 - + the Attorney General shall cause an application to be made to the High Court for the registration of the order concerned.
- Section 27 Mutual Assistance in Criminal Matters Act 1993

DOMESTIC FREEZE ORDERS

- ✖ Money Laundering (Prevention) Act, section 23
- ✖ Authorizes the Supervisory Authority to act on behalf of a Requesting State to:
 - + freeze, seize property, proceeds or instrumentalities connected to money laundering offences
 - + And where appropriate take action to forfeit

Notification

- ✖ Registration and Freeze orders obtained ex parte
- ✖ Thereafter notification:
 - + To financial institution
 - + To owner of the asset

Opposition to Restraint

- ✖ Subject of a restraint order can apply for release of property
- ✖ Hearing will depend on basis on which property restrained:
 - + Laws of requesting country where restraint is based on foreign restraint order
 - + Domestic law where restraint is based on action taken by local authority on behalf of the requesting country
 - + All procedures are under the Domestic Rules of the Supreme Court

- ✖ Need for Requesting State to provide substantial documentary support and advice to satisfy the local court of the basis to sustain the order.

Jamaica Examples where MLAT and/of other international cooperation used

- ✖ **Jamaica** - Lottery Scam Case – (*R v Yowo Morle*) significant assistance from the US resulted in the forfeiture of \$M of assets.
- ✖ **US** - Drug trafficking cases – (*US v. Christopher Coke aka Dudus*) Significant collaborative work with US and Jamaica law enforcement
- ✖ **UK** - Drug trafficking (*R v. Owen Clarke aka Father fowl*) – Significant cross border investigation with the UK which resulted in conviction and asset stripping .

Jamaica Examples where MLAT and/of other international cooperation used

- ✕ **Canada** - Drug trafficking ([R v. Robert Bidwell](#))
Significant cross border investigation between Jamaica and Canadian RCMP officers resulted in extradition, conviction and asset stripping.
- ✕ **Cayman** – ([R v. Ryan Edwards](#)) obtained illicit funds via a robbery in Cayman and fled to Jamaica he was held with the cash bearing the same serial numbers. He was extradited and convicted assets forfeited.

Mechanisms for Management of Restrained Assets



Money

- ✖ Funds held in a financial institutions are frozen and may not be dealt with until further order of the court.
- ✖ Cash and other forms of currency can be seized.
- ✖ Documents that allow control and disbursement of money can be seized and frozen by order of court.
- ✖ Seized cash may have to be held in an interest bearing account.
- ✖ Financial institutions that contravene a restraint commit an offence punishable if person: 5 years or \$100,000; if institution: \$500,000.

Cross Border Cash Seizures

- ✖ Often requires assistance from country of origin.
- ✖ Request for profile of suspect.
- ✖ Request to verify aspects of explanation of source and derivation of cash.

Jamaica Cash Seizures

CASES	AMOUNT	COMMENTS
Regina vs Deloris Miller	US\$1.6 million	Amount forfeited resulting in extensive collaboration between Jamaica and the USA (http://m.jamaicaobserver.com/mobile/news/US-1.35-million-ordered-into-state-offers)
The Norman Manley Airport	US\$550,000	The money was found on two foreign nationals who had travelled from Pakistan to Dubai to South Africa to Brazil to Panama before coming to Jamaica with the intention of flying to Trinidad.
US DRUG LORD	J\$135 Million	A drug lord who is resident in the US had 7 properties forfeited in this investigation from 2011-2014 with a combined value of over http://www.fid.gov.jm/html/financial-investigations-division-fid-seizes-several-properties-guna/ .
Hamilton	US \$459 Million	Hamilton a drug dealer in the USA amassed \$459 Million which is subject to forfeiture and cross border internal investigations between Jamaica and the USA (http://www.fid.gov.jm/html/jamaica-govt-wins-legal-battle-in-bid-to-confiscate-drug-traffickers-assets/)

SUMMARY STATS ENDING MARCH 2014

COUNTRY	NO OF ML INVESTIGATIONS	NO OF ML CASES IN ORIGINAL JUSTICE SYSTEM	CASH SEIZURE	NO OF CASH SEIZURE FORFEITURE ORDERS	CRIMINAL CONFISCATION	CIVIL FORFEITURE	PRODUCTION ORDERS	CONFISCATION ORDERS	RESTRAINT ORDERS	Anticipated Assets & EC equivalent (at Court proceedings)	Realised Assets & EC equivalent	Total CONFISCATED/ FORFEITED to FUND & EC equivalent
Antigua	28	4	19	7	67	1	62	0	31	15,360,014	14,696,054	1,444,395.43
Barbados	20	4	4	0	42	N/A	13	0	5	1,512,819	1,512,819	204,790.00
Belize	0	0	0	0	1	N/A	0	0	0	0	0	0
Dominica	32	11	25	1	24	0	52	0	4	1,860,000	1,430,686.68	642,149.93
Grenada	20	8	10	3	64	N/A	16	2	10	7,253,776	1,336,916	101,938.00
Montserrat	3	1	0	0	7	N/A	6	0	0	1,200,000	0	0
St Lucia	20	1	16	2	58	N/A	50	0	12	7,154,196	5,893,250	288,390.00
St Vincent	5	1	167	38	7	N/A	125	0	4	2,958,091	2,958,091	6,105,878.00
St Kitts	16	0	2	0	20	N/A	85	0	2	1,481,400	400,000	0
TOTAL	144	30	243	51	290	1	409	2	68	\$38,780,296	\$28,227,817	\$8,787,541
										US \$ 14,273,729.62	\$ 10,389,715.00	\$ 3,234,400.00

Non-Monetary Assets

✕ Land

- + Restraint Order.
- + Seizure of documents giving title to land.
- + Charge or restriction entered on the land to prevent dealings with the land.

Non-Monetary Assets (continued)

- ✕ Vehicles (boats, cars etc.)
- ✕ Obtaining restraint order is fairly straightforward
- ✕ Maintenance of such assets can create serious issues
- ✕ If frozen and kept in custody, for example, because they were a conveyance
 - + The authority that obtains the restraint order has responsibility for maintaining the asset.
 - + Liability for any damage to the asset.
 - + Liability for unreasonable reduction in the value of the asset.

Non-Monetary Assets (continued)

- ✖ Alternative options:
- ✖ St. Vincent & the Grenadines:
 - + Sell the asset before criminal proceedings, hold the proceeds in a bank account pending the outcome of proceedings
- ✖ Where a confiscation order is to be sought:
 - + Leave the asset in possession and control of owner
 - + If upon confiscation he does not produce the asset, he will have improved additional prison time
- ✖ Where forfeiture order of tainted property is to be sought
 - + Release asset to owner in exchange for either:
 - ✖ A Bond that can be realized upon failure to produce the asset once forfeited
 - ✖ Other binding undertaking

Example of protracted matter

- ✖ In one case, Requesting Country assisted by registering criminal restraint
- ✖ Then criminal proceedings discontinued
- ✖ Then civil forfeiture proceedings then instituted
- ✖ Assisted Requesting Country to obtain registration of its civil restraint order
- ✖ Process has been ongoing for years

Enforcement of Confiscation Order

- ✖ Order forfeiting assets derived from criminal conduct
 - + Property must be tainted
- ✖ Order confiscating the benefits of criminal conduct
 - + Provides for satisfying an order of the foreign court with property that includes lawfully as well as unlawfully obtained property
 - + Confiscation order would have to be some form of debt owed to the state for which payment can be enforced (not merely by further imprisonment, but by transferring title of property to the government)

Where confiscation is obtained by the Requesting Country

- ✖ Requesting country to Provide Formal Letter of Request
- ✖ Provide copy of court decision
- ✖ Provide copy of the confiscation order
 - + Details of the property subject to a confiscation order
- ✖ Request that the order be enforced

Mutual Legal Assistance in Criminal Matters Act

- ✖ Registration of Confiscation Order
- ✖ Use Civil Procedure for Reciprocal Enforcement of Judgments and Orders

Where Requested Country is asked to take action to forfeit property

- ✖ Actions are civil proceedings under the Money Laundering (Prevention) Act
- ✖ Criminal based forfeiture
 - + Forfeiture where Respondent fails to apply to unfreeze or fails to persuade the court to unfreeze
- ✖ Civil based forfeiture
 - + Civil forfeiture
 - + Freeze order
 - + Engaged in money laundering offence within 6 years before application
 - + Unable to persuade the court to unfreeze

Example: Drug Case

- ✖ **Luxury Villa**
- ✖ **Restrained and ultimately sold pursuant to a confiscation order.**

Example: Fraud Cases

- ✖ **Deposits in IBCs (Offshore account) restrained for as long as it takes for foreign court to reach a determination on confiscation.**

Disposition of Property Subject to Forfeiture (Money Laundering (Prevention) Act)

- ✖ A criminal offence to dispose of property subject to forfeiture.
- ✖ Imprisonment for 2 years or fine of \$100,000
- ✖ Disposition or dealing with interest of forfeited property
 - + Contrary to forfeiture order
 - + Not for sufficient consideration
 - + Not in favor of a person at arms length, acting in good faith
- ✖ Then the disposition is void

Disposition of Property Subject to Forfeiture (Proceeds of Crime Act)

- ✖ Disposition of property subject to restraint
 - + Imprisonment for 5 years
 - + Fine of \$100,000

Successfully Forfeited Assets

Case of Jorge Fernandez - Investment Fraud

- ✖ US request to restrain funds
- ✖ US request to enforce forfeiture
- ✖ \$1,530,040 U.S.

Akhil Bansal, Quailtec Ventures Ltd – Illegal Online Drug Sales

- ✖ US request to restrain funds
- ✖ US request to enforce forfeiture
- ✖ Forfeited; \$222,455 USD

Akhil Bansal, Flexton Holdings Ltd. – Illegal Online Drug Sales

- ✖ US request to restrain funds
- ✖ US request to enforce forfeiture
- ✖ \$473,000 U.S.
- ✖ \$401,000 Canadian

Michael Vallone - Mail & Wire Fraud

- ✖ US request to restrain funds
- ✖ US request to enforce forfeiture
- ✖ \$80,000 US

Ira Gentry – SECURITIES Fraud, WIRE FRAUD, TAX EVASION, MONEY LAUNDERING.

- ✖ US request to restrain funds
- ✖ US request to enforce forfeiture
- ✖ Amount forfeited: \$720,000 US

Ian Henry – DRUG TRAFFICKING

- ✖ UK request to enforce confiscation order
- ✖ Villa at Jolly Harbour restrained
- ✖ Villa auctioned for \$435,000 EC
- ✖ Records of two other properties were provided to UK authorities.
- ✖ Those records used in proceedings in the UK to reach agreement with defendant on forfeiture of those properties.

Restraint of Property

Pavlo Lazarenko - Corruption

- ✖ US request to restrain funds
- ✖ Ukrainian request to restrain funds
- ✖ \$86,000,000

Scottish Case - VAT Fraud

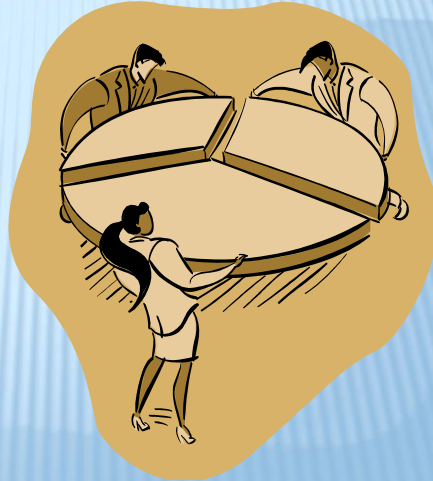
- ✖ Scottish Request to restrain funds for criminal confiscation
- ✖ Discontinued
- ✖ Scottish Request to restrain funds in relation to civil forfeiture proceedings

Sharing and Repatriation

Notify the Requesting County of Successful Enforcement of the Forfeiture

- ✖ Confirm sharing agreement
- ✖ Confirm details and procedure for repatriation

Sharing Agreements



Sharing Agreements

- ✖ There are no legal provisions for sharing of confiscated assets.
- ✖ Sharing agreements are done on a case by case basis.

Bases for Sharing

- ✖ Amount of legal work done
 - + Obtaining restraint orders
 - + Obtaining production orders
 - + Taking witness statements
- ✖ Amount of work done to physically secure the asset.
- ✖ Amount of effort expended to maintain the asset.
- ✖ Rights / Compensation of Victims

Requirement for Distribution of Proceeds

- ✖ Section 20G of the Money Laundering (Prevention) Act
- ✖ 20% of proceeds forfeited under the Act are deposited into the Consolidated fund for administrative expenses.
- ✖ Remaining 80% shared

Is there an Asset Sharing Agreement

- ✖ Check the terms of the Sharing Agreement
- ✖ Is asset required to be repatriated before sharing, or
- ✖ Can asset be liquidated and the proceeds divided according to the Agreement, then repatriated.
- ✖ What is most practical and convenient.

If No Asset Sharing Agreement

- ✖ Apply to Requesting Country for share of confiscated assets
- ✖ Give details of the contribution and efforts exercised in securing forfeiture of the assets.

International Cooperation

FATF: Recommendation 38 requires countries to have authority to take expeditious action in response to requests by foreign countries, and arrangements for co-ordinating freezing, seizure and confiscation proceedings, which should include the sharing of confiscated assets, particularly when confiscation is directly or indirectly a result of co-ordinated law enforcement actions.



QUESTIONS??

QUESTIONS??

CONTACT DETAILS

Lt. Col. Edward Croft

Director

**Office of National Drug and Money Laundering Control Policy (ONDCP)
& SUPERVISORY AUTHORITY**

Camp Blizzard

St. George's

Antigua

Telephone: (268) 563-3256/57

Email: edward.croft@ondcp.gov.ag

