PANORAMIC

ASSET RECOVERY 2026

Contributing Editors

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LEXOLOGY

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Panoramic guide (formerly Getting the Deal Through) enabling side-by-side comparison of local insights into civil asset recovery (including jurisdictional issues, procedure, and remedies and relief); criminal asset recovery (including legal framework, cross-border considerations, and private prosecutions); and recent trends.

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Asset tracing under uncertainty: an epistemic guide for practitioners

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Introduction

Pursuing truth and justice and representing the client's interests in financial and economic crime cases is often complex and challenging. A thorough investigation of the intricate web of financial and other transactions, contracts, and relationships that underpin these crimes is essential to enable effective asset tracing. However, the effectiveness of asset tracing is not solely dependent on applying legal and technical skills and knowledge but also on the underlying epistemological principles that guide the investigation and asset tracing. The intersection of these legal and epistemological aspects ultimately determines the reliability and integrity of the investigation and, by extension, the success of efforts to recover stolen assets and bring perpetrators to justice.

Staggering results of asset tracing and recovery

Daily practice shows that the nature and extent of financial and economic crime are diverse, complex and extensive, and the effectiveness of public and private enforcement leaves much to be desired. Leading institutions speak of a significant social problem because the impact of this form of crime on society is enormous and often invisible. According to the UK HM Treasury report of 2020, Economic Crime Levy Consultation, financial and economic crime '*remains high and is constantly evolving'*. The issue of financial and economic crime occurs in many sub-areas, where various parties can act as perpetrators and victims. The increasing volume of financial and economic crime and the staggering recovery of only 2% of the criminal funds on a European level reveal a serious problem that is diverse, complex, and extensive. To explain this problem, we could conclude that a knowledge gap might make understanding and making sense of complex phenomena challenging.

In financial and economic crime, the aggrieved party may suffer significant financial, physical, psychological and/or reputation damage due to the unlawful actions of others. To find the causes of the problems, take appropriate action, recover stolen funds, and be able to explain and account for the financial, physical, psychological and/or reputation damage towards themselves, victims, shareholders, regulators and/or other stakeholders, the aggrieved party may feel or be compelled to take action. To conduct the entire process of investigation and legal proceedings professionally, carefully, effectively, and efficiently, the aggrieved party and its advisors need to understand the whole process of finding truth and

justice and the essential components that determine its outcomes and reliability. As many cases have often shown, a potentially unreliable (inaccurate and incomplete) outcome will not lead to accepting the findings presented in court and recovering assets.

The form and content of the truth- and justice-finding process largely determine good, reliable and careful case management. The complex and often invisible nature of financial and economic crime demands adequate checks and balances in the process of investigation, litigation, and adjudication to realise the main objectives of the client ánd the rule of law. The nature and extent of the activities and outputs from the first phase (the investigation phase) determine what can be brought into play in the second phase (the litigation phase) and underlie the final verdict of the decision-makers in the third phase (the adjudication phase). A limited output from the first phase will broadly impact the following two phases as the absent information could not or would be difficult to obtain in the subsequent phases.

Within this context, the professional must monitor the integrity of the investigative process. Investigations have a dual normative framework, namely a legal and an epistemological framework. The requirements based on the legal framework and epistemological principles are expressed differently, but they work together to ensure truthfulness, integrity, and justification. In today's society, it is increasingly important to carefully manage the interests of all involved corporates and individuals in the mentioned process. International and national legal and other obligations must be considered to understand and mitigate potential risks. Total or partial failure to protect the interests of corporates and individuals and to adequately clarify and, if necessary, address these issues could increasingly have criminal, administrative, private, disciplinary and/or reputational consequences.

To fulfil these obligations professionally, it is crucial to keep an eye on and monitor the integrity of the investigation process, of which asset tracing is an essential part. To achieve this, we will not only have to understand the design and execution of the investigative process but also know and be able to apply the underlying legal requirements and epistemological principles. These requirements and principles form the foundation of the investigation when conducted in the context of (future) legal proceedings, which should aim at material truth-finding. Internationally, truth-finding as a fundamental principle of procedural law can be found in the United Nations Universal Declaration of Human Rights (UDHR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Furthermore, truth-finding has an essential place in national (procedural) laws.

Investigations and asset tracing in a historical, scientific context

Natural phenomena have played an essential role in science since time immemorial. This contributed to the fact that over the centuries, a more prominent role in science has been assigned to natural sciences than social sciences. The latter only gained an equal position during the Enlightenment. Since the Enlightenment, many important discoveries have been made in the natural sciences, such as Galileo Galilei's telescope and Isaac Newton's various laws in classical mechanics. These scientists emphasised the importance of evidence-based reasoning and the systematic study of natural phenomena, which laid an essential foundation for our current view of science.

A key feature of natural sciences is that they can produce quantifiable, verifiable, and predictable results through controlled laboratory research using measuring instruments

and zoom-in on individual components. This has long been seen as a benchmark for '*true science*'. Natural sciences assume that the phenomena studied exist independent of human perceptions, beliefs and interpretations. In this view, they fit well with the philosophical movement of objectivism, which holds that objective reality exists independently of consciousness and that sense perception and reasoning are the only source of man's objective knowledge.

On the other hand, social sciences are often concerned with phenomena that are instead strongly linked to human perceptions, beliefs and interpretations. The Enlightenment brought attention to people's personal development and recognition of social sciences. On the one hand, methods of recording and analysis that originated in the natural sciences began to be applied within social sciences. On the other hand, research methodologies and theoretical thinking frameworks were developed within the social sciences that produced reliable and verifiable results. Thus, it has been recognised that historical, social, cultural, psychological, political, financial and economic factors are often strongly intertwined and need to be seen in each other's perspective from a holistic approach. Examining one specific component without the necessary context produces fragmented results in the social sciences, which are meaningless and unproblematic due to the absence of essential links. Consequently, social sciences are perceived as more complex and less predictable than natural sciences. Unlike natural scientists, social scientists cannot conduct controlled research in a laboratory, making it more challenging to make generalisable statements. In social science, the scientist is often the measuring instrument as he observes, records, analyses and describes part of the research field. The philosophical movement of subjectivism is mainly related to social science, as it adheres to the view that reality is not a fixed entity but is constructed and interpreted by the individual.

Investigating financial and economic crime and asset tracing cannot occur in a laboratory either; perhaps certain technical parts, but not the investigation as a whole. The investigator will have to gather the relevant facts and circumstances, considering the complex reality in which the possible activities occurred. The complex reality is reflected in the broad context in which organisations operate with a specific legal framework, corporate culture, individuals' personalities, social and economic developments and many other aspects. Restricting context, time, data, individuals and other relevant components to understand the complexity and make the investigation and asset tracing possible will detract from an investigation's quality and its findings' reliability. An investigation of financial and economic crime will have to be approached from an interdisciplinary, subjectivist, and holistic perspective due to the complex context and many relevant factors. Ultimately, this design and execution of the investigation and asset tracing, as well as the knowledge and experience of the investigator, determine the quality of the investigation and the reliability of the findings.

Conventional sciences are the long-established, common natural and social sciences, such as mathematics, economics, physics, and psychology. Forensic sciences, on the other hand, are small, special sciences that have primarily emerged from these conventional sciences for an entirely different purpose, namely, applying scientific methods and techniques to benefit justice.

The scientific literature shows that conventional and forensic research has many similarities and some characteristic differences. Both types of research involve empirical truth-telling; conventional science involves truth-telling in the context of science, and forensic science in the context of justice. However, decision-making in the justice context is governed by rules

different from those in a conventional context, namely legal ground rules that sometimes clash with scientific ground rules. Another characteristic difference is cited by Broeders, who notes that conventional science '*attempts to discover structures and relationships between objects by classifying them into classes and tests the correctness of these generalisations by making predictions regarding the behaviour of groups and classes in the past, present and future*'. This characterisation of conventional science corresponds to one part of forensic science but is diametrically opposed to the other, namely forensic individualisation science. Forensic science can be divided into two categories:

1. **Forensic individualisation science**, in which the investigation focuses on the individualisation of an object or subject.
2. **Forensic categorisation science**, where the investigation focuses on categorisation and quantification. For instance, the quantity of drugs or alcohol in someone's blood.

An investigation into financial and economic crime can, in most cases, be characterised as forensic individualisation research, as it is mainly aimed at being able to link potentially unlawful or undesirable activities to an individual in the context of a (future) judicial assessment in a complex context. The forensic science literature and practice show that this ability to link activities to an individual concerns the most challenging part, where, consequently, most mistakes are made by investigators. Being able to argue that there may be a relationship between specific activities and one or more individuals is often not that difficult. But substantiating back to the correct individual(s), the individualisation, and excluding specific facts and/or individuals, the falsification that specific individuals did not misbehave is much more difficult.

Legal Framework

The legal standards framework can be divided into two parts, namely, the procedural and substantive law standards frameworks. The procedural law norms consist of the rules, procedures and other guidelines. These are contained in the various jurisdictions for the design and conduct of the investigation. International treaties, such as Articles 7 and 10 UDHR and Article 6 ECHR, lay down important general frameworks that apply to all areas of law. In addition, rules of conduct and professional rules of the various professionals determine how they should behave in the exercise of their profession.

The substantive law standards framework concerns the substantive legal standards that apply to assessing the data collected and to be collected. This framework of standards gives the expert direction on '*what*' to look for to prevent the expert himself from determining what might or might not be relevant. These objective legal standards can be found in criminal and private law, but to a lesser extent, in guidelines, codes of conduct, and other regulations. For a professional to tailor the investigation to the correct issues and to recognise and gather the facts and circumstances necessary for assessment by the court, the professional will need to be familiar with the objective and subjective components (the conduct and intentions) of criminal law norm violations, and with the requirements of a breach of private law norms.

Epistemological Framework

The epistemological framework largely determines a substantive technical design and conduct of financial and economic crime investigations. Due to the complexity of this type of activity, the investigation will often need to take an interdisciplinary, subjectivist, and holistic

approach from different scientific backgrounds to obtain solid insight into the relevant facts and circumstances and to do justice to the interests and obligations of the various stakeholders. This framework is an umbrella science linking individual scientific disciplines.

According to tradition, the insights of Greek and other philosophers initiated critical philosophical studies, such as epistemology, ontology and methodology, which underpin our thinking about science and investigations. These three studies broadly define the '-*why*', '*what*' and '*how*' of an investigation and, as such, are closely related. These studies differ from the aforementioned conventional studies in that they are more normative than empirical. They focus on understanding and assessing the principles of underlying knowledge, existence, and human behaviour rather than on observing and measuring natural or social phenomena.

The epistemological standards framework in the mentioned context focuses on the methodology of knowledge gathering and the ultimate reliability of the facts and circumstances gathered. Epistemology focuses on the concepts of belief, truth and justification. Knowledge is defined herein as '*justified true belief*'. Thus, the belief examined and presented in the report and court must be true and substantiated. Otherwise, what is presented is nothing more than an assumption or a substantiated falsehood.

From a forensic perspective, the choice of an investigation philosophy and methodology often focuses on maximising the accuracy, reliability and objectivity of findings, given the potential legal implications of the investigation for the individuals involved. However, recognising the potential influence of subjective factors also plays a role, especially in collecting, analysing and reporting facts and circumstances. Navigating between these epistemological considerations is crucial to ensuring the integrity and effectiveness of an investigation and, therefore, an essential component to discuss when selecting an investigator and approaching the investigation.

The Interplay between Legal and Epistemological Frameworks in Asset Tracing

Although an investigation's legal framework may be adequately established, this does not automatically ensure that the epistemological framework is also adequate. The two frameworks serve distinct purposes and require different areas of expertise. The legal professional, who is well-versed in the legal framework, may not necessarily have the same knowledge and understanding of (the applying of) the epistemological principles underpinning the investigation. This is particularly concerning, as the integrity of the investigation process, including asset tracing, relies heavily on the interplay between these two frameworks.

The legal framework provides the necessary rules, procedures, and guidelines for conducting an investigation, ensuring that the focus of the investigation is on the correct delicts, that the rights of all parties are protected and that the process is fair and transparent. However, the epistemological framework deals with the underlying assumptions, principles, and methods that guide the investigation and shape the collection and interpretation of facts and circumstances. This framework concerns questions such as: Should the investigation be approached with a conventional or forensic identification methodology? Should the investigation be based on an objectivist or subjectivist methodology? How and which are the facts and circumstances collected and analysed? What are the underlying assumptions and biases that may influence the investigation? And how can we ensure that the conclusions drawn from the facts and circumstances are reliable and justified?

Even the most well-intentioned and legally compliant investigation can go awry without adequately understanding the epistemological framework. This is because the epistemological principles guiding the investigation can profoundly impact the investigation methodology, collecting and interpreting facts and circumstances, identifying relevant information, and drawing conclusions. Furthermore, a lack of attention to epistemological principles can lead to cognitive biases, flawed reasoning, and incorrect assumptions, ultimately undermining the investigation's integrity, the reliability of its findings and the tracing and recovery of assets.

Therefore, professionals involved in asset tracing must have a deep understanding of the legal and epistemological frameworks that govern their work. This requires an interdisciplinary approach, combining legal and investigative expertise with knowledge of epistemology, ontology and methodology, and critical thinking. By integrating these different perspectives, professionals can ensure that their work is legally compliant and epistemologically sound, leading to reliable and justified conclusions that serve the interests of justice and truth and the stakeholders.

Closing remarks

Epistemological considerations about objective and accessible knowledge are closely linked to the legal principles of justification, equality of arms and fair play, as enshrined in Articles 7 and 10 of UDHR and Article 6 of ECHR. It defines the criteria that information must meet to be considered reliable and relevant in the case context and for subsequent legal decision-making by the lawyers and court. The epistemological standards framework in an investigative context is directly linked to scientific principles. For instance, the requirement that beliefs be based on facts and logical reasoning is fundamental to science and law. This epistemological standards framework promotes a systematic and critical approach to the facts and circumstances gathered, examining them on their merits, reliability and relevance to the case. This allows legal decisions to be made as close to the truth as possible while respecting the interests of those involved, the complexity of the case and the nuances of human knowledge and experience.

The principles in Article 6 ECHR and criminal and civil procedure laws are essentially designed to ensure the integrity and reliability of criminal and civil investigations and proceedings. Through the differently worded requirements that facts and circumstances be provided 'to the best of one's knowledge' or 'truthfully, fully and best understanding' and that methodological transparency and expertise be demonstrated, Article 6 ECHR and the laws seek to establish a firm foundation of '*justified true belief*' in criminal and civil law contexts. The above highlights the importance of justification in beliefs, especially in the context of an investigation report, where the consequences of incorrect, unsupported or unjustified beliefs can be severe. It shows how the requirements of the law and the principles of epistemology work similarly to ensure truthfulness, integrity and justification.

In conclusion, the epistemological aspects of asset tracing are a crucial component of the investigation process, working in tandem with the legal framework to ensure the reliability and integrity of the findings. By recognising the importance of epistemological principles in guiding the investigation, professionals can adopt a systematic and critical approach to gathering and analysing facts and circumstances, ultimately leading to more informed and justified conclusions. As the complexity of financial and economic crime continues to evolve, professionals involved in asset tracing must prioritise integrating epistemological considerations into their work, upholding the principles of truthfulness,

integrity, and justification underpinning science and law. By doing so, they can contribute to a better result of asset tracing and a more effective and reliable pursuit of truth and justice, serving the interests of all stakeholders and promoting a fair and just society.

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Summary

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CIVIL ASSET RECOVERY – JURISDICTIONAL ISSUES

Parallel proceedings

1 | Is there any restriction on civil proceedings progressing in parallel with, or in advance of, criminal proceedings concerning the same subject matter?

There is no automatic restriction. The question is considered under the court's general discretion.

A stay of the civil proceedings may be granted if the court considers that there is a real danger of injustice in the criminal proceedings if the civil proceedings continue. The overriding principle is one of balancing the interests of justice between the parties. For a recent example of the application of these principles in favour of a company charged with a criminal offence, see *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited* [2019] FCA 964 and in favour of an individual charged with a criminal offence, see *Telstra v Sulaiman* [2024] NSWSC 971. Although each case will be considered on its merits, the courts have become increasingly mindful of giving sufficient weight to the practical legal prejudice to an accused, in light of the privilege against self-incrimination, the cost of multiple legal proceedings and the accused's right in the accusatorial process of criminal proceedings not to disclose any aspect of their defence. However, in weighing up the risk of prejudice, courts are also prepared to craft orders guarding plaintiffs against the risk of prejudice of a temporary blanket stay of the civil proceedings.

In an appropriate case, the court may make orders enabling the civil proceedings to progress to a certain point (eg, made ready for hearing), and then be stayed until the criminal proceedings have concluded. Alternatively, the court may be willing to order some, but not all, interlocutory steps (eg, service of subpoenas, inspection of documents produced on subpoena or the hearing of any strike-out application). See, for example, *National Australia Bank Limited v Human Group Pty Ltd* [2019] NSWSC 1404 and *Impiombato v BHP Group Limited* [2020] FCA 350.

Law stated - 1 September 2025

Forum

2 | In which court should proceedings be brought?

Each state or territory has a court system, and there is also a federal court system. There is a hierarchy of courts within each system, with the Supreme Court being the highest court in each state or territory. The High Court of Australia is the final court of appeal.

The court in which civil proceedings for the recovery of assets should be brought will depend on a variety of factors, including the amount claimed, the nature of the causes of action and relief sought, connecting factors to the forum and the location of the defendant's known assets. Most claims in fraud matters of any significant size or complexity are brought

in the relevant state or territory Supreme Court, all of which hear monetary claims above certain thresholds, including claims for equitable relief.

Law stated - 1 September 2025

Limitation

3 | What are the time limits for starting civil court proceedings?

Limitation periods are generally governed by state and territory legislation.

In most jurisdictions, causes of action for breach of contract or tort have a six-year limitation period from the date the cause of action accrued.

As far as equitable claims are concerned, in most jurisdictions, the legislation only applies to a limited extent. However, where the legislation has no direct application to a cause of action founded in equity, the courts may nevertheless apply the statutory limitation periods by analogy.

In most jurisdictions, fraud postpones the running of the limitation period until after the claimant has discovered, or could with reasonable diligence have discovered, the fraud.

In limited circumstances, courts also have the discretion to extend the time to commence proceedings.

Law stated - 1 September 2025

Jurisdiction

4 | In what circumstances does the civil court have jurisdiction? How can a defendant challenge jurisdiction?

The jurisdiction of courts can be defined by reference to the common law and (partly) statute. The foundation of jurisdiction for actions in personam is service of the originating process.

Service can be effected on any person who is physically present, no matter how briefly, within the geographic jurisdiction of the issuing court. Service outside Australia must be authorised under the rules of the issuing court. Those rules take into account the effect of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 1965, to which Australia has acceded.

A foreign defendant may apply to set aside service or stay the proceedings on various grounds, including that service was not authorised by the relevant court rules, the forum chosen by the claimant was inappropriate (forum non conveniens), or that the dispute falls within the scope of a foreign exclusive jurisdiction clause to which the claimant had agreed.

A defendant who has been sued in an inappropriate Australian superior court can apply for the proceedings to be transferred to another superior court under the Jurisdiction of Courts (Cross-Vesting) Acts.

Law stated - 1 September 2025

CIVIL ASSET RECOVERY – PROCEDURE

Time frame

5 | What is the usual time frame for a claim to reach trial?

The usual time frame for a claim to reach trial varies considerably depending on several factors, including the size, scale and complexity of the matter, and if there are concurrent criminal proceedings.

Section 37M of the Federal Court of Australia Act 1976 (Cth) aims to have disputes resolved 'as quickly, inexpensively and efficiently as possible'. State and territory civil procedure acts also contain sections to similar effect.

It is rare for contested proceedings to reach trial in less than six months. Proceedings ordinarily reach trial in a period of six to 18 months. If civil proceedings have been stayed pending the outcome of concurrent criminal proceedings, then it might take longer than usual for the claim to reach trial.

Law stated - 1 September 2025

Admissibility of evidence

6 | What rules apply to the admissibility of evidence in civil proceedings?

Applicable rules of evidence in federal, state and territory courts are established by legislation enacted in the relevant jurisdiction. In particular, each jurisdiction has its own Evidence Act. These acts are based largely upon the common law but expanded upon in various ways.

Evidence is admissible where it is relevant to a fact in issue and is not otherwise excluded. Areas of potential exclusion include hearsay evidence, opinion evidence, tendency evidence, credibility evidence and privilege. Courts also have a general discretion to exclude or limit evidence.

Generally, evidence is admitted primarily through documents and written statements, in the form of affidavits, witness statements or statutory declarations. The latter are usually read onto the record in court and serve as evidence in chief for that witness. The witness is then usually cross-examined and re-examined. In some matters, however, witnesses may be required to give the entirety of the evidence orally.

Law stated - 1 September 2025

Witnesses

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7 | What powers are available to compel witnesses to give evidence?

At the request of a party to proceedings, the court may issue a subpoena compelling a person to attend court to give evidence.

Except as otherwise provided by the uniform Evidence Acts, every person is competent to give evidence, and competent persons are compellable to give evidence (section 12). There are certain limited exceptions to compellability in proceedings within the uniform Evidence Acts. These include, for example, the Sovereign, the Governor-General, the governor of a state, the administrator of a territory, a foreign sovereign or head of state of a foreign country and, in limited circumstances, a member of a house of parliament (section 15).

A person called to give evidence will, however, be entitled to refuse to answer specific questions if certain limited privileges apply (eg, privilege against self-incrimination or legal professional privilege).

Law stated - 1 September 2025

Publicly available information

8 | What sources of information about assets are publicly available?

Publicly available sources of information about assets include the following:

- the Australian Securities and Investments Commission, which maintains company and business name registers containing information relating to companies such as registration status and officeholders, and, in some cases, shareholders and financial statements;
- the Personal Property Securities Register, which is a national online register where details of security interests in personal property can be registered and searched, at least by a creditor; and
- state or territory-based land and property information bodies, which maintain records of interests in real property.

Law stated - 1 September 2025

Cooperation with law enforcement agencies

9 | Can information and evidence be obtained from law enforcement and regulatory agencies for use in civil proceedings?

Information and evidence may be obtained through various means, including:

- a request to the relevant agency to consider disclosure under the agency's guidelines or statutory obligations;
- an application for access to documents held by government agencies under the freedom of information legislation, subject to various exemptions; and

- (most commonly) an application by a party to civil proceedings requesting the civil court to issue a subpoena requiring the production of specific documents, which will be subject to any claims for public interest immunity or legal professional privilege.

If material is obtained from foreign jurisdictions via mutual assistance channels for a criminal investigation or proceeding, it is inadmissible in any civil proceeding unless the Attorney General approves of its use for that other proceeding (section 43B of the Mutual Assistance in Criminal Matters Act 1987(Cth)).

Law stated - 1 September 2025

Third-party disclosure

10 | How can information be obtained from third parties not suspected of wrongdoing?

A claimant can apply for a Norwich Pharmacal order (named after *Norwich Pharmacal Co v Commissioners of Customs and Excise* [1974] AC 133) requiring a third party who has become relevantly involved in a transaction to disclose information that may be relevant to a potential claim, including the identity of the wrongdoer. It can be used to trace the disposition of monies obtained fraudulently (eg, by requiring a bank to disclose information).

Also, court rules contain procedures for obtaining preliminary discovery to identify a prospective defendant or to decide whether to institute proceedings.

A party to proceedings may also cause subpoenas to be issued to third parties requiring them to attend court to give evidence or produce documents to the court, or both. A subpoena must be issued for a legitimate forensic purpose and, where documents are sought, identify those documents with reasonable particularity.

A party can also apply for an order for non-party discovery requiring a third party to disclose the existence of relevant documents.

Law stated - 1 September 2025

CIVIL ASSET RECOVERY – REMEDIES AND RELIEF

Interim relief

11 | What interim relief is available pre-judgment to prevent the dissipation of assets by, and to obtain information from, those suspected of involvement in the fraud?

The key interim relief is a freezing order (Mareva injunction) and a search order (Anton Piller order). Both are exceptional remedies that are ordinarily sought on an ex parte basis.

To obtain a freezing order, the claimant must show that he or she has a good arguable case against the defendant and there exists a real danger that the defendant will deal with his or her assets in such a way as to wholly or partly deprive the claimant of the benefit of a final judgment. It will apply to the defendant's assets, typically whether located in or outside

Australia, up to a specified sum. The operation of the freezing order must not be frustrated by any third party who has notice of it (eg, banks). In appropriate cases, the court may make a freezing order against a third party.

A freezing order will ordinarily be accompanied by an order compelling the defendant to file an affidavit disclosing the nature and value of his or her assets. Other, less common, ancillary orders may include an order requiring the delivery of designated assets not specifically in issue in the proceedings or an order restraining the defendant from leaving the jurisdiction.

A search order compels the defendant to permit persons specified in the order to enter premises and to search for, identify and remove specified things. The key matters of which the court must be satisfied are that the claimant has a strong prima facie case against the defendant and that there is a real possibility that the defendant might destroy, or otherwise cause to be unavailable, important evidentiary material that is in the defendant's possession.

A claimant can also seek other forms of interim relief. These include orders for the detention, custody or preservation of property that is the subject of the proceedings. The usual methods of preservation are an interlocutory injunction or appointment of a receiver.

Law stated - 1 September 2025

Non-compliance with court orders

12 | How do courts punish failure to comply with court orders?

Courts have a wide discretion to impose sanctions for a failure to comply with the court's orders, including making adverse cost orders against the defaulting party or its solicitor (or both), striking out a pleading, rejecting evidence, or staying or dismissing the proceedings and giving judgment.

Breach of a court order can also give rise to a charge of contempt. Penalties for contempt include the imposition of a fine, the sequestration of assets or, in serious cases, imprisonment. It is usually left to the offended party to enforce contempt.

Law stated - 1 September 2025

Obtaining evidence from other jurisdictions

13 | How can information be obtained through courts in other jurisdictions to assist in the civil proceedings?

Australian superior courts have the power to make an order for the issue of a letter of request to the judicial authorities of a foreign country requesting the taking of evidence from a person in that country.

These requests are usually made under the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters 1970 (the Hague Convention) or a bilateral

agreement with another country. If the foreign state is not a party to any such treaty, the request may still be made, but the receiving country is under no obligation to comply with the request.

An order for the sending of a letter of request is discretionary and the party seeking the order must persuade the court that the discretion should be exercised because it 'appears in the interests of justice to do so' (see, eg, section 7(1) of theForeign Evidence Act 1994-(Cth)). Legislation in most Australian jurisdictions requires the court to consider various matters in this regard.

A letter of request may also ask for the production of documents, at least where those documents are ancillary to the oral testimony of the witness. However, it remains unclear whether Australian courts have jurisdiction to issue a letter of request to a foreign country solely for the production of documents under the Hague Convention. In New South Wales, the then Chief Justice of the Equity Division of the Supreme Court remarked, albeit in obiter, that Her Honour was inclined to the view that such jurisdiction does exist in respect of documents to be used as evidence at trial (*La Valette v Chambers-Grundy* [2019] NSWSC 1355 [82]). Another judge recommended that consideration be given to adopting a rule for the express conferral of the requisite power (*Gloucester (Sub-Holdings 1) Pty Ltd v Chief Commissioner of Stamp Duties* [2013] NSWSC 1419 [63]).

Court rules in all jurisdictions now allow subpoenas to be served overseas under the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 1965. However, where leave is required to issue a subpoena abroad, an Australian court would be unlikely to grant leave if it would result in a clear breach of international law or comity.

Law stated - 1 September 2025

Assisting courts in other jurisdictions

14 What assistance will the civil court give in connection with civil asset recovery proceedings in other jurisdictions?

Australian courts will assist parties in enforcing foreign judgments. Those judgments may be enforced by either registering the judgment under theForeign Judgments Act 1991 (Cth) or at common law.

The High Court of Australia confirmed that Australian superior courts may make a freestanding freezing order in aid of foreign proceedings in certain circumstances, including where there is a danger of an actual or prospective foreign judgment remaining unsatisfied if assets are removed from Australia (see *PT Bayan Resources TBK v BCBC Singapore Pte Ltd* [2015] HCA 36).

State and territory supreme courts also have the power, following a request from a foreign court, to make orders requiring a person to give evidence or produce specified documents (but not give discovery) in aid of the foreign proceedings. If the foreign court is from a country that is not a signatory to the Hague Convention or a bilateral agreement with Australia, the request is to be sent via the diplomatic channel and will be considered and executed based on comity.

Law stated - 1 September 2025

Causes of action

15 What are the main causes of action in civil asset recovery cases, and do they include proprietary claims?

The main causes of action in civil asset recovery cases include:

- equitable claims for breach of fiduciary duty or breach of trust;
- tortious claims for deceit, detinue, conversion, conspiracy or inducing breach of contract;
- restitutionary claims for monies had and received; and
- certain statutory actions under the the Corporations Act 2001 (Cth) and the Competition and Consumer Act 2010(Cth).

In equity, third parties may also be pursued for 'knowing receipt' of trust property or 'knowing assistance' in a breach of fiduciary duty. Certain equitable claims may be proprietary, such as where a beneficiary claims against a defaulting trustee for the recovery of trust property (or its traceable proceeds). Also, it is well accepted that where property is acquired from another by theft, proprietary relief by way of imposition of a constructive trust will be granted where appropriate.

Law stated - 1 September 2025

Remedies

16 What remedies are available in a civil recovery action?

The main remedies available in a civil recovery action include:

- an award of damages;
- equitable compensation;
- equitable lien or charge;
- an account of profits;
- declaration of constructive trust;
- an order for restitution;
- an order for delivery of goods; and
- relief under the Corporations Act or theCompetition and Consumer Act 2010(Cth) (eg, for declarations, damages or compensation orders), or both.

A successful claimant will also be entitled to claim interest (both pre- and post-judgment) and legal costs, although usually only a proportion of the total legal costs can be recovered.

Law stated - 1 September 2025

Judgment without full trial

17 | Can a victim obtain a judgment without the need for a full trial?

A victim can obtain a judgment without the need for a full trial, typically, by obtaining either default or summary judgment.

A claimant may seek default judgment where the defendant fails to file a defence. The judgment will typically be given in the absence of the defendant. If the claim is for unliquidated damages, judgment may be given on liability only with damages to be assessed.

A claimant may obtain a summary judgment without proceeding to a contested final hearing if it can satisfy the court that there is no real defence to the claim or only a defence as to the amount of the claim. The court will not determine the proceedings summarily if there is a real question in dispute.

Under various statutory regimes, a victim (including a corporation) may also be able to make a claim for a victim's compensation order against a convicted person for losses caused by the relevant criminal offence (see, eg, section 97 of theVictims Rights and Support Act 2013(NSW)).

Law stated - 1 September 2025

Post-judgment relief

18 | What post-judgment relief is available to successful claimants?

A freezing order may be available against a judgment debtor if the court is satisfied that there is a danger that a judgment will be wholly or partly unsatisfied because the judgment debtor absconds, or the assets of the judgment debtor are dissipated or removed from the jurisdiction before the claimant can apply for one of the traditional forms of execution.

The court may also make ancillary orders, such as an assets disclosure order, an order appointing a receiver to the defendant's assets or an order restraining a judgment debtor from departing the jurisdiction.

A judgment creditor may also obtain an order for examination of the judgment debtor requiring him or her to answer specific questions or produce documents to aid enforcement.

Law stated - 1 September 2025

Enforcement

19 | What methods of enforcement are available?

The principal means of enforcement are:

- writ of execution, granting the sheriff's office authority to seize and sell a judgment debtor's real or personal property, or both, and pay the net proceeds to the judgment creditor;
- garnishee order, which directs third parties owing money to the judgment debtor (eg, wages) to pay the judgment creditor directly;
- charging order, which operates to charge certain property in favour of the judgment creditor; and
- insolvency orders, for example, winding up a company or making an individual bankrupt to effect a distribution of the judgment debtor's assets among creditors.

Law stated - 1 September 2025

Funding and costs

20 What funding arrangements are available to parties contemplating or involved in litigation and do the courts have any powers to manage the overall cost of that litigation?

Various funding arrangements are available to parties contemplating or involved in litigation.

Generally, lawyers can offer conditional billing where the lawyer's ability to recover his or her fees depends on whether the legal action is successful. Typically, no fee is charged if the legal action is unsuccessful, and an uplift percentage is added to the lawyer's fees if the action is successful.

Third-party funding, whereby a party with no pre-existing interest in the proceedings funds the litigation in exchange for a share of the amount recovered, is permitted in Australia. The market for this funding is well-established and active, particularly in the class-actions space. It is not uncommon for multiple plaintiff law firms, each with separate funding arrangements, to commence competing class actions against the same defendant. Courts have broad powers to make orders dealing with such a scenario, including consolidation, a permanent stay of particular proceedings, declassing or class closure. In *Wigmans v AMP Limited* [2021] HCA 7, the majority of the High Court said that there can be no one-size-fits-all approach when addressing a multiplicity of proceedings. Furthermore, when exercising the power to permanently stay competing proceedings, it is necessary to determine which proceeding would be in the best interest of group members, considering various factors that vary from case to case.

Damages-based (namely, contingency) fee arrangements remain prohibited in all Australian state and territory jurisdictions, except for Victoria where they are only available for class actions. In Victoria, a plaintiff in a group proceeding may apply for an order that legal costs payable to the law practice representing the plaintiff and group members be payable as a specified percentage of the final award or settlement amount, and for those costs to be shared between the plaintiff and all group members (section 33ZDA(1) of the Supreme Court Act 1986 (Vic)). The court must be satisfied that such an order

is 'appropriate or necessary to ensure that justice is done in the proceeding' (section 33ZDA(1)). Such an order simultaneously renders the law practice liable for any adverse costs or security for costs orders made against its client (section 33ZDA(2)). This model, introduced in 2020, provides an alternative to the traditional third-party funding of class action proceedings. A number of such group costs orders have been made under these provisions since their introduction, either at the rate proposed by the applicant or at a different rate as considered appropriate by the court (see for example, *Allen v G8 Education Ltd* [2022] VSC 32 (27.5 per cent of any award/settlement); *Bergman v Sportsbet Pty Ltd* [2025] VSC 521 (33 per cent of any award/settlement); and *Byrnes v Origin Energy Ltd* [2025] VSC 504 (30 per cent of any awards/settlement)). The interests of the class action members will be a primary consideration for the Court when evaluating whether such a contingency fee arrangement should be ordered.

At the federal level, the High Court has recently held that the Federal Court does not have the power to grant a solicitor's common fund order, thus determining that contingency fees are also not available in federal class actions (*Kain v R & B Investments Pty Ltd* [2025] HCA 28).

After-the-event insurance is becoming increasingly common, particularly in the class actions space.

Courts seek to manage the costs of litigation in various ways, including by exercising broad case management powers. Generally, these powers must be exercised to facilitate the just, quick and cheap resolution of the real issues in the proceedings. Furthermore, courts have wide discretion concerning costs and can make interim costs orders against a party, including against parties in default.

Law stated - 1 September 2025

CRIMINAL ASSET RECOVERY – LEGAL FRAMEWORK

Interim measures

21 | Describe the legal framework in relation to interim measures in your jurisdiction.

The following will focus on the operation of theProceeds of Crime Act 2002(Cth) (POCA), which is the principal federal legislation for confiscation. Each state and territory jurisdiction also has legislation that governs confiscation of the proceeds and instruments of crime (collectively, the Confiscation Acts), including interim measures.

Three main types of interim measures can be obtained under POCA, all of which can be applied for on an ex parte basis from a court:

- restraining orders;
- freezing orders; and
- seizure of property under a search warrant.

The most important type of interim measure is a restraining order under Part 2-1, as it is necessary in most cases to obtain that order over the property before a forfeiture order can be obtained (see Parts 2-2 and 2-3). A restraining order prevents the disposal of

or dealing with property, either absolutely or subject to conditions, pending the outcome of confiscation proceedings. It is usually made following an application to the court by the Australian Federal Police (AFP). The suspect need not have been convicted or even charged. The circumstances in which the order can be made include where there are reasonable grounds to suspect that the suspect committed a relevant offence, or that the property is the proceeds or an instrument of a relevant offence. The order can potentially cover all property of a suspect, including property owned by the suspect or subject to his or her effective control. The court may allow reasonable living and business expenses (excluding legal costs incurred in connection with POCA or criminal proceedings) to be met from the restrained property if certain conditions are met (section 24).

Second, a freezing order under Part 2-1A may be issued by a magistrate to a financial institution (including corporations which provide a digital currency exchange) preventing the withdrawal of funds from a specified account. It may be issued where there are reasonable grounds to suspect that the account balance reflects the proceeds or an instrument of certain offences, and there is a risk of dissipation. A freezing order is usually obtained as a precursor to a restraining order. Unless extended, it ceases to have force after three working days (section 15N).

Finally, suspected tainted personal property (including cryptocurrency and other digital assets) may be seized under a search warrant issued by a magistrate under Part 3-5. The property must be returned after 14 days unless an application for a restraining order or forfeiture order is made concerning it (section 260).

Law stated - 1 September 2025

Proceeds of serious crime

22 Is an investigation to identify, trace and freeze proceeds automatically initiated when certain serious crimes are detected? If not, what triggers an investigation?

Investigative bodies will consider, on a case-by-case basis, whether to take steps to identify, trace and freeze suspected proceeds of crime.

At the Commonwealth level, for example, the Criminal Assets Confiscation Taskforce (the Taskforce), which is led by the AFP and also includes the Australian Taxation Office (ATO), the Australian Criminal Intelligence Commission, Australian Transaction Reports and Analysis Centre (AUSTRAC) and the Australian Border Force, works in partnership with other law enforcement and regulatory agencies to identify, investigate and litigate asset confiscation matters. It also takes referrals regarding potential confiscation matters from Commonwealth agencies and AFP criminal investigations, as well as state, territory or foreign law enforcement agencies. The Taskforce will consider whether a particular matter is suitable for proceeds action or whether other remedies (eg, pursuit by the ATO of taxation remedies) are more appropriate.

Law stated - 1 September 2025

Confiscation – legal framework

23 Describe the legal framework in relation to confiscation of the proceeds of crime, including how the benefit figure is calculated.

POCA covers confiscation concerning indictable offences against Commonwealth laws, foreign indictable offences and state and territory offences with a federal aspect. The Confiscation Acts govern confiscation concerning offences against the respective state and territory laws.

POCA's regime contains a comprehensive range of confiscation orders. Some jurisdictions (South Australia, Queensland and, to a lesser extent, Victoria and the Australian Capital Territory) are modelled on the Commonwealth confiscation regime. All proceedings under POCA are civil proceedings and the burden of proof is on the balance of probabilities (sections 315 and 317).

The fundamental premise of these laws is that where a person has profited from criminal activity, those profits should be returned to society. Furthermore, lawfully acquired property used in the commission of an offence should also be forfeited.

All jurisdictions provide for both conviction and non-conviction-based confiscation. In most jurisdictions, four types of confiscation orders can be sought from a court by the relevant state agency. These are:

- orders for the forfeiture of assets;
- pecuniary penalty orders;
- literary proceeds orders (requiring that a person who has committed an offence disgorge literary proceeds derived concerning that offence); and
- unexplained wealth orders.

However, there are several significant differences between each jurisdiction regarding how confiscation orders are obtained and the operation of certain orders.

How the benefit figure is calculated will vary according to the nature of the order sought.

Law stated - 1 September 2025

Confiscation procedure

24 Describe how confiscation works in practice.

Overview

Confiscating the proceeds of crime is a complex process that usually involves the following steps:

- an investigation conducted by the relevant state agency to substantiate unlawful conduct and identify property;
- obtaining a court order to restrain property;

- obtaining a subsequent court order to confiscate property; and
- disposing of the confiscated property.

Law enforcement agencies are given significant information-gathering powers to assist them with their investigations. Under POCA, these include oral examinations, production orders, notices to financial institutions, monitoring orders and search and seizure powers.

The section below sets out the process for obtaining two specific types of confiscation orders: forfeiture orders and unexplained wealth orders.

Forfeiture orders

Forfeiture orders may be either conviction or non-conviction based.

There are two types of conviction-based forfeiture orders under POCA and they are as follows.

- Forfeiture following an application made by the Commissioner of the AFP or Commonwealth Director of Public Prosecutions (CDPP) (no restraining order required) (section 48). The application for forfeiture must be made within six months of the conviction of an indictable offence, and the court must be satisfied that the property is either the proceeds or instrument of the offence.
- Automatic forfeiture occurring six months after a conviction for a serious offence of all property (unless otherwise excluded) that is subject to a restraining order relating to the offence (section 92). A 'serious offence' is defined under POCA to be an indictable offence punishable by imprisonment for three or more years of a certain nature, including money laundering offences.

Non-conviction-based forfeiture orders may either be person-directed or asset-directed. In both cases, the property must first be subject to a restraining order for at least six months before the forfeiture order can be made.

Property may be excluded from forfeiture if, among other things, the court is satisfied that a person has an interest in a property that is neither the proceeds nor an instrument of unlawful activity (section 94).

Once forfeited, the property vests in the Commonwealth.

Unexplained wealth orders

All Australian jurisdictions now have unexplained wealth laws. The laws are controversial because they reverse the onus of proof and the long-standing legal tradition of the presumption of innocence. In essence, individuals who cannot lawfully account for the wealth that they hold may be liable to pay that wealth to the state. However, there are differences between each jurisdiction, especially regarding whether some connection to criminal conduct is required.

Under sections 179B and 179E of POCA, where there are reasonable grounds to suspect that a person's wealth exceeds the value of his or her lawfully acquired wealth, the court may make an order requiring the person to attend court and prove, on the balance of

probabilities, that his or her excess wealth was not derived from a relevant offence. If the court is not satisfied that part of the person's wealth was not derived from such offences, the court may make an unexplained wealth order requiring them to pay that part of his or her wealth to the Commonwealth.

Law stated - 1 September 2025

Agencies

25 | What agencies are responsible for tracing and confiscating the proceeds of crime in your jurisdiction?

Federally, since 2012, the AFP has responsibility for most confiscation proceedings, both conviction and non-conviction based, and leads the Criminal Assets Confiscation Taskforce (CACT). The CACT targets the proceeds and instruments of serious and organised crime in both Australia and overseas. The CDPP only retains responsibility for conviction-based confiscation where no restraining order is necessary to preserve the property.

Generally, for most states and territories, the police force is responsible for investigating assets, and the DPP is responsible for confiscation proceedings. However, the New South Wales Crime Commission and the Queensland Crime and Corruption Commission are responsible for non-conviction-based confiscation in those states.

Law stated - 1 September 2025

CRIMINAL ASSET RECOVERY – CONFISCATION

Secondary proceeds

26 | Is confiscation of secondary proceeds possible?

Yes. Under the Proceeds of Crime Act 2002 (Cth) (POCA) and in most other jurisdictions, the definition of the proceeds of crime explicitly includes property that is wholly or partly derived (or realised) from a disposal (or other dealing) with the proceeds of crime.

Law stated - 1 September 2025

Third-party ownership

27 | Is it possible to confiscate property acquired by a third party or close relatives?

Yes. Under POCA and in various other jurisdictions, confiscation of property that is the proceeds or instrument of crime and that is acquired by a third party is generally permitted, unless it has been acquired under the following considerations (section 330(4)):

- for sufficient consideration (for money, goods or services that reflect its commercial value); and

- without knowledge, and in circumstances that would not arouse a reasonable suspicion, that the property was the proceeds or instrument of crime.

Furthermore, under POCA and in various other jurisdictions, if an innocent third party has an interest in property that is the subject of a forfeiture order, the court may direct that such interest be excluded from the operation of the relevant forfeiture order. Alternatively, a compensation order can be made in favour of that person following the disposal of the property.

Law stated - 1 September 2025

Expenses

28 | Can the costs of tracing and confiscating assets be recovered by a relevant state agency?

Confiscation proceedings under POCA and most state and territory jurisdictions are civil, not criminal, in nature. Therefore, in most jurisdictions subject to any specific legislative provisions, the ordinary rules regarding civil cost recovery apply to the costs of confiscation proceedings (namely, costs follow the event) (*Commissioner of the Australian Federal Police v HWCJ GLB Pty Ltd (No 5)* [2024] NSWSC 1463 and *Bow Ye Investments Pty Ltd v DPP (No. 2)* [2009] VSCA 278).

Law stated - 1 September 2025

Value-based confiscation

29 | Is value-based confiscation allowed? If yes, how is the value assessment made?

In most jurisdictions, value-based confiscation is allowed. The mechanics for obtaining such an order differ significantly across jurisdictions.

Under section 116 of POCA, the Commissioner of the Australian Federal Police or the Commonwealth Director of Public Prosecutions can apply to a court for a pecuniary penalty order. This is an order that requires a person to pay an amount of money to the Commonwealth. The basis for a pecuniary penalty order is that a person has been convicted of an indictable offence or has committed a serious offence.

The court must quantify a pecuniary penalty order under Part 2-4, Division 2. Broadly, this involves a value determination of the benefits derived from the commission of the offence. In assessing the value of those benefits, the court must analyse the evidence before it concerning certain specified matters but must not subtract expenses or outgoings incurred concerning the illegal activity (section 126).

These (or analogous) provisions have been applied to achieve different results in different contexts. For example, in several cases concerning illicit drugs, the gross proceeds of the offence have been regarded as the value of the offender's benefit, with no account taken of the acquisition costs of the illegal drugs. However, in a 2015 insider trading case, it was

held that determining the value of the benefit derived from the unlawful sale of shares purchased lawfully must involve bringing into account the cost price of the shares against the gross proceeds of their sale (see *Director of Public Prosecutions (Cth) v Gay* [2015] TASSC 15).

A pecuniary penalty order may be sought and made even if another confiscation order has been made concerning the offence. However, the amount of the pecuniary penalty must be reduced by an amount equal to the value of any forfeited property (section 130).

The amount payable under a pecuniary penalty order is a civil debt due to the Commonwealth (section 140). However, it can be enforced by the creation of a charge over any restrained property (section 142).

Law stated - 1 September 2025

Burden of proof

30 On whom is the burden of proof in a procedure to confiscate the proceeds of crime? Can the burden be reversed?

Generally, under POCA and the Confiscation Acts, the agency that is seeking a restraining or confiscation order from the court bears the onus of proof.

However, in those jurisdictions where an application can be made for an unexplained wealth order, the onus of proving that a person's wealth is not derived from an offence lies on that person.

Furthermore, on an application to exclude property from a restraining or forfeiture order (or from automatic forfeiture) under POCA or relevant Confiscation Acts, the party seeking the exclusion order bears the burden of proving that it has an interest in the property, which is neither the proceeds nor instrument of crime.

Law stated - 1 September 2025

Using confiscated property to settle claims

31 May confiscated property be used in satisfaction of civil claims for damages or compensation from a claim arising from the conviction?

In most cases, confiscated property cannot be used to satisfy such claims (assuming the claimant does not have an interest in the property). However, in several jurisdictions, the court may reduce the amount otherwise payable under a pecuniary penalty order by subtracting the amount the person has to pay by way of restitution, compensation or damages concerning an offence to which the order relates.

Furthermore, in Victoria, a restraining order may be made to preserve property so that it be available to satisfy an order for restitution or compensation under the Sentencing Act 1991 (Vic). Property that is forfeited must also be used to satisfy any such order.

Law stated - 1 September 2025

Confiscation of profits

32 Is it possible to recover the financial advantage or profit obtained through the commission of criminal offences?

In short, yes. Profits obtained through the commission of criminal offences can be confiscated in all Australian jurisdictions.

By way of example, in *Commissioner of the AFP v Fysh* [2013] NSWSC 81, a pecuniary penalty order was made under POCA requiring the defendant to pay to the Commonwealth the amount of the profit he made on the purchase and sale of shares for which he had been found guilty of insider trading offences under the Corporations Act. On those facts, the court held that the amount of the benefit derived by the defendant was the net gain received (excluding brokerage fees) as a result of the transaction.

Law stated - 1 September 2025

Non-conviction based forfeiture

33 Can the proceeds of crime be confiscated without a conviction? Describe how the system works and any legal challenges to in rem confiscation.

Non-conviction-based forfeiture is allowed in all jurisdictions except Tasmania.

Under POCA, there are two types of non-conviction-based forfeiture orders, which are:

- person-directed forfeiture order: forfeiture of property where the court is satisfied that a person is engaged in conduct constituting one or more serious offences (section 47); or
- asset-directed forfeiture order: forfeiture of property where the court is satisfied that the property is the proceeds or instrument of certain offences, or no claim has been made in respect to the property (section 49).

In both cases, the property must first be subject to a restraining order for at least six months before the forfeiture order can be made.

Similarly to conviction-based forfeiture, property may be excluded from forfeiture if, among other things, the court is satisfied that a person has an interest in the property that is neither the proceeds of unlawful activity nor the instrument of any serious offence (section 73).

Law stated - 1 September 2025

Management of assets

34 After the seizure of the assets, how are they managed, and by whom? How does the managing authority deal with the hidden cost of management of the assets? Can the assets be utilised by the managing authority or a government agency as their own?

The regime for managing restrained and confiscated property is broadly consistent across all jurisdictions.

The Public Trustee (the Trustee) (or an equivalent body) will take custody and control of the property, often once a restraining order has been made.

The Trustee is usually empowered to obtain information about the property, manage and otherwise deal with it. Once a forfeiture or other confiscation order has been made, the Trustee must dispose of the property (to the extent the property is not money). The Trustee is entitled to recover costs incurred in connection with the exercise of its duties, including managing the property, as well as an amount of remuneration for the Trustee.

The balance of the proceeds must be credited to a dedicated fund. This fund is primarily used in each jurisdiction to support programmes for crime prevention, intervention or diversionary measures, other law-enforcement initiatives and victims' compensation.

At the Commonwealth level, the Australian Financial Security Authority acts as Trustee.

Law stated - 1 September 2025

CRIMINAL ASSET RECOVERY – CROSS-BORDER ISSUES

Making requests for foreign legal assistance

35 Describe your jurisdiction's legal framework and procedure to request international legal assistance concerning provisional measures in relation to the recovery of assets.

Mutual assistance to and from Australia is governed by theMutual Assistance in Criminal Matters Act 1987 (Cth) (MAA).

Requests under the MAA are made by the Attorney General, usually on behalf of the Australian Federal Police or the Commonwealth Director of Public Prosecutions (CDPP), but also on behalf of state and territory investigative and prosecution agencies. Under the MAA, Australia can request assistance from foreign countries for, among other things, the issue of orders similar in nature to restraining orders, search warrants, monitoring orders and production orders under the Proceeds of Crime Act 2002 (Cth) (POCA), in aid of a criminal proceeding or criminal investigation commenced in Australia regarding a serious offence.

The process under the MAA is supported by several bilateral mutual assistance treaties to which Australia is a party.

Law stated - 1 September 2025

Complying with requests for foreign legal assistance

36 Describe your jurisdiction's legal framework and procedure to meet foreign requests for legal assistance concerning provisional measures in relation to the recovery of assets.

Australia can assist foreign countries to recover assets under the MAA or, in limited circumstances, via domestic proceeds of crime action. Requests under the MAA must be made to the Attorney General.

There is a range of provisional measures available under the MAA to identify, locate and trace the proceeds of crime located in Australia. These include production orders, monitoring orders, search warrants and time-limited domestic restraining orders pending receipt of a foreign restraining order.

Australian authorities can also take action under the MAA to register a foreign restraining order, including a non-conviction-based order, made in respect of a foreign serious offence. A foreign serious offence is an offence against the law of a foreign country, the maximum penalty for which is death, imprisonment for a period exceeding 12 months or a fine exceeding A$99,000.

In limited circumstances, Australia may also consider taking domestic action on behalf of a foreign country under POCA, including obtaining a freezing or restraining order. This action can take place without a foreign proceeds of crime order, and a mutual assistance request may not be required.

Law stated - 1 September 2025

Treaties

37 To which international conventions with provisions on asset recovery is your state a signatory?

Australia is a signatory to several international conventions with provisions on asset recovery, including the following:

- the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988;
- the United Nations Convention against Transnational Organized Crime 2000;
- the United Nations Convention against Corruption 2003;
- the Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997;
- the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime 1990; and
- the United Nations Convention for the Suppression of the Financing of Terrorism 1999.

Law stated - 1 September 2025

CRIMINAL ASSET RECOVERY – PRIVATE PROSECUTIONS

Private prosecutions

38 | Can criminal asset recovery powers be used by private prosecutors?

In no jurisdiction can a private prosecutor bring a confiscation application. Only the state agencies as set out in the Proceeds of Crime Act 2002 (Cth) (POCA) and the Confiscation Acts can apply for confiscation orders under those respective Acts. Under POCA, for example, those applications must be brought by either the Commissioner of the Australian Federal Police or the Commonwealth Director of Public Prosecutions.

Law stated - 1 September 2025

UPDATE AND TRENDS

Emerging trends

39 | Are there any emerging trends or hot topics in civil and criminal asset recovery in your jurisdiction?

The Australian Federal Police (AFP) and relevant state agencies continue to actively litigate proceeds of crime matters. As stated in the AFP's Corporate Plan 2025–26, the AFP continues to put significant resources into addressing online child exploitation, terrorism, transnational serious and organised crime, illicit drug trafficking, cybercrime and people smuggling. These areas of crime, particularly where money laundering is also involved, frequently give rise to proceeds recovery actions.

One recent trend has been the increasing use of cryptocurrency and other digital assets by criminals to benefit financially from their crimes. This has led to amendments to POCA that came into force in late 2024 to address some of the unique complexities that arise in the search for, and seizure of, cryptocurrency and other digital assets. These amendments include ensuring that the AFP's information-gathering powers and freezing orders in the regime apply to cryptocurrency exchanges and the accounts they administer.

The AFP also continues to partner with the National Disability Insurance Agency, as well as other government agencies, as part of a Fraud Fusion Taskforce, to, amongst other things, detect and take action against individuals and syndicates involved in defrauding the Australian government's multi-billion dollar National Disability Insurance Scheme, including by obtaining restraining and forfeiture orders.

The AFP has had some considerable success in investigating and prosecuting crime syndicates and confiscating assets, including taking action in the following recent matters.

- Operation Kraken involved the dismantling of the encrypted communication platform, Ghost, an alleged secret app for criminal and violent enforcers. In October 2024, the CACT restrained A$9.3 million in cryptocurrency allegedly linked to the mastermind behind the platform, who has been charged with various drug, proceeds of crime and other offences.
- There was an AFP investigation into a pharmacist who allegedly made false claims under the Pharmaceutical Benefits Scheme, in relation to whom the CACT had, by

May 2025, restrained more than A$20 million in assets, including residential and commercial properties, various bank accounts, and 12 luxury vehicles.

- A Queensland Joint Organised Crime Taskforce investigated a sophisticated money laundering scheme that allegedly washed millions of dollars of cash into cryptocurrency, with CACT by June 2025 having restrained assets across Queensland and NSW that were suspected to be the proceeds of crime with a combined value of about A$21 million, including 17 properties, bank accounts and vehicles.
- Operation Gouldian was an AFP investigation into stolen cryptocurrency and cyber hacking, in relation to which the CACT had, by May 2025, secured the forfeiture of more than A$4.5 million worth of assets, including a waterfront mansion, luxury car and Bitcoin, after identifying them as suspected proceeds of crime, even though no criminal charges were ever laid.

As at December 2024, the CACT had restrained almost A$2 billion in criminal assets since it was established in 2012.

In the foreign bribery proceeds of crime space, in mid-2023, Oz Minerals Ltd agreed to confiscation orders after previously self-reporting to the AFP that employees of a foreign subsidiary company (Oxiana (Cambodia) Limited) that later became part of the group may have bribed officials in Cambodia between 2006 and 2009 to obtain mining rights. The Commonwealth Director of Public Prosecutions chose not to initiate criminal proceedings following Oz Minerals' cooperation with the AFP's investigation and taking significant steps to remediate. The AFP has publicly indicated a willingness to enter into POCA resolutions with cooperating companies that are the subject of foreign bribery investigations.

In terms of future reforms, in November 2024, the Australian government endorsed the majority of the recommendations aimed at improving Australia's ability to disrupt serious and organised crime in response to the Independent Review of the National Cooperative Scheme on Unexplained Wealth. That scheme (to which the Commonwealth and many, but not all, states and territories are a party) enables law enforcement agencies in participating jurisdictions to better work together to investigate and confiscate unexplained wealth. This includes improved information sharing and gathering between jurisdictions, as well as providing for the equitable sharing of assets confiscated from cross-jurisdictional operations. The Australian government has said it will work with all of the states and territories to implement the recommendations, including the cornerstone recommendation to reframe and expand the scheme to criminal assets confiscations more generally, and the recommendation to explore opportunities to harmonise key procedural and definitional legislative provisions across the various jurisdictions.

Law stated - 1 September 2025

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CIVIL ASSET RECOVERY – JURISDICTIONAL ISSUES

Parallel proceedings

1 | Is there any restriction on civil proceedings progressing in parallel with, or in advance of, criminal proceedings concerning the same subject matter?

There is no general restriction in the Cayman Islands Grand Court Rules on civil proceedings progressing in parallel with or in advance of criminal proceedings concerning the same subject matter, although the Civil Court may adjourn, suspend or stay proceedings (on the application of one of the parties or of its own motion), pending the outcome of the criminal proceedings if the outcome of the criminal proceedings will impact the civil proceedings.

Law stated - 3 October 2025

Forum

2 | In which court should proceedings be brought?

Commercial claims should be brought in the Financial Services Division of the Grand Court of the Cayman Islands and will then be assigned to a specific commercial judge.

Law stated - 3 October 2025

Limitation

3 | What are the time limits for starting civil court proceedings?

The time limits for starting civil court proceedings will depend on the type of claim being brought.

The Cayman Islands Limitation Act provides that any claim based on a breach of contract must be brought within six years of the date of the breach of contract. Similarly, any action brought upon a judgment must be brought within six years of the date on which the judgment became enforceable.

Any ordinary claim based on a tort (such as negligence) must be brought within six years of the date on which the cause of action accrued. However, a special time limit applies to negligence actions where the plaintiff did not have knowledge of the relevant acts giving rise to the claim, or the right to bring the claim, for some time. In those cases, a three-year time limit applies, and time starts to run from the earliest date on which the plaintiff had the knowledge of the material facts required for bringing the action (including facts about the damage and the identity of the defendant), and the right to bring that action.

No time limit applies to an action brought by a plaintiff who is a beneficiary under a trust when the claim involves any fraud or fraudulent breach of trust to which the trustee was a

party or of which the trustee was aware, or when the claim is to recover trust property or the proceeds of trust property from the trustee.

In addition, if an action is based on the fraud of a defendant, where any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant, or the action is for relief from the consequences of a mistake, the time period for the purposes of limitation does not start to run until the plaintiff has discovered, or could with reasonable diligence have discovered, the fraud, concealment or mistake. However, this would not allow an action to be brought against any person who has purchased relevant property since the fraud, concealment or mistake as an innocent third party, that is, they did not know or have reason to believe that the fraud, concealment or mistake had taken place.

Law stated - 3 October 2025

Jurisdiction

4 In what circumstances does the civil court have jurisdiction? How can a defendant challenge jurisdiction?

The Cayman courts have jurisdiction over proceedings against Cayman-based defendants.

If the defendant is outside Cayman, the Grand Court may give leave to serve proceedings out of the jurisdiction, provided that there is a good arguable case that the claim falls within one of the classes of case set out in Order 11 rule 1(1) of the Grand Court Rules. These include:

- claims against a person who is a necessary and proper party to a claim against another person who will be duly served within or out of the jurisdiction;
- claims regarding a contract that was made in Cayman, where the cause of action arises in Cayman (ie, the contract was signed in Cayman, is governed by Cayman law or contains a jurisdiction clause in favour of the Cayman Islands courts);
- claims regarding a breach of contract that was committed in the jurisdiction;
- claims regarding a tort where the damage was sustained, or resulted from an act committed, within the jurisdiction;
- claims against a person who is or was a director, officer or member of a Cayman company relating to their status, rights or duties as such;
- claims to enforce a judgment or arbitral award; and
- claims for interim relief in support of overseas proceedings pursuant to section 11A of the Grand Court Law.

In order to get leave to serve out, the plaintiff will also need to show that there is a serious issue to be tried on the merits and that the Cayman Islands is clearly or distinctly the appropriate forum for hearing the case.

The application for leave to serve out is made on an ex parte (without notice) basis. The defendant may challenge the order granting leave to serve out on the ground that any of the criteria set out above have not been met.

Jurisdiction challenges are frequently brought where the claim is brought in breach of an exclusive jurisdiction clause or an arbitration agreement.

Law stated - 3 October 2025

CIVIL ASSET RECOVERY – PROCEDURE

Time frame

5 | What is the usual time frame for a claim to reach trial?

The time frame will depend partly on the size and complexity of the matter, how quickly each pretrial stage (including pleadings, discovery, and factual and expert evidence) progresses and whether there are any interlocutory applications (such as summary judgment or strike-out, security for costs, specific discovery). It will also be impacted by the likely length of the trial and the availability of the relevant judge to hear it. In urgent cases, it is possible for a claim to proceed to trial in a year or less, but it is also not unusual to take several years for a complex matter to reach trial.

Law stated - 3 October 2025

Admissibility of evidence

6 | What rules apply to the admissibility of evidence in civil proceedings?

The admissibility of evidence is dealt with in the Evidence Act, Part IV, which deals with evidence in civil proceedings. This provides, among other things, that hearsay evidence is only admissible at trial with the court's permission.

Grand Court Rules Order 41, rule 5(2) provides that an affidavit sworn for the purpose of being used in interlocutory proceedings may contain statements of information or belief with the sources and grounds thereof.

The rule in *Hollington v F Hewthorn & Company Limited & Another* [1943] KB 587 remains good law in the Cayman Islands. This provides that opinions expressed and findings of fact made in a previous in personam judgment delivered by a court (in both civil and criminal proceedings) are inadmissible as evidence of the truth of those opinions and facts.

Law stated - 3 October 2025

Witnesses

7 | What powers are available to compel witnesses to give evidence?

A party may issue a writ of subpoena to compel a Cayman-based witness to give evidence. Order 38, rules 14 to 18 of the Grand Court Rules set out the procedure and rules governing subpoenas.

Order 39, rule 1 of the Grand Court Rules also provides that a court may make an order for a person to be deposed, which may contain an order for the production of any document which the court considers necessary for the purpose of the deposition.

Where the person to be examined is out of the jurisdiction, Order 39 rule 2 of the Grand Court Rules provides that the court may issue a letter of request to the foreign court.

Evidence for use in foreign proceedings is governed by the Evidence (Proceedings in Other Jurisdictions) (Cayman Islands) Order, which extends the provisions of the UK Evidence (Proceedings in Other Jurisdictions) Act, which in turn implements the UK's obligations under the 1970 Hague Convention on the Taking of Evidence Abroad, to the Cayman Islands.

This provides that where evidence is needed from a Cayman party for use in proceedings overseas, the court hearing those proceedings may issue a letter of request and the Grand Court may make orders, including an order for the examination of witnesses, either orally or in writing, or for the production of documents.

In addition, the court may make orders in support of court proceedings overseas under section 11A of the Grand Court Act, and in support of arbitral proceedings, whether in Cayman or overseas, under section 54 of the Arbitration Act.

Law stated - 3 October 2025

Publicly available information

8 | What sources of information about assets are publicly available?

A public search of the Cayman Islands general registry system, CORIS, provides the date of incorporation, the address of the registered office, nature of its business, its status and its authorised share capital, for Cayman companies and other entities such as exempted limited partnerships and limited liability partnerships.

It is also possible to conduct a directors search, which provides the names of current directors only.

Shareholder registers are publicly available for local companies, but not for exempted companies. There is no obligation to file accounts.

The Cayman Islands Monetary Authority maintains online searchable registers of regulated entities.

For a fee, you can search the Land Register, which provides details of land title, ownership and charges and easements, but you would not be able to identify a beneficial owner of land if, for example, it is owned through a company or trust.

Beneficial ownership registers are maintained by the Companies Registry. Under the Beneficial Ownership Transparency (Legitimate Interest Access) Regulations, 2024, members of the public with a legitimate interest may apply to access this information.

The court maintains public registers of Originating Process and Judgments.

Law stated - 3 October 2025

Cooperation with law enforcement agencies

9 | Can information and evidence be obtained from law enforcement and regulatory agencies for use in civil proceedings?

Generally, it is not possible for information and evidence to be obtained from law enforcement and regulatory agencies for use in civil proceedings. To obtain access to information from the police or regulators, such as the Cayman Islands Monetary Authority, it would be necessary to obtain a court order. This is because much of the information held by the authorities would be confidential (although once a criminal trial is complete, some of the evidence may become public).

Law stated - 3 October 2025

Third-party disclosure

10 | How can information be obtained from third parties not suspected of wrongdoing?

A party can make an application to the Grand Court for Norwich Pharmacal relief to compel a third party to disclose information under the jurisdiction established in the English case of *Norwich Pharmacal Co v Customs & Excise Commissioners* [1974] A C 133. This provides that there must be a good arguable case that the wrongdoing has occurred, the third party is somehow involved even if innocently (eg, a registered office holding company records), the information is necessary to identify the wrongdoer or to enable the plaintiff to seek redress and the disclosure sought is proportionate to what is needed for an application to be made. These applications are often brought in Cayman against registered offices, administrators and banks.

A party can also apply for a Bankers Trust order, which is a court order requiring a Cayman bank (or other fiduciary) to disclose what would otherwise be confidential records about a customer's account to help trace and preserve misappropriated funds in support of a proprietary claim. The jurisdiction to make the order derives from the English case of *Bankers Trust Co. v Shapira and Ors* [1980] 1 WLR 1274 and is generally only granted in exceptional circumstances, provided the applicant is able to meet the relevant criteria. This involves showing that:

- there is a strong case of fraud or breach of trust;
- there is a good reason to believe the assets held by the third-party institution belong to the applicant, and delay may lead to the dissipation of the assets;

- there is a real prospect that the disclosure may lead to the location or preservation of the assets, and the disclosure is proportionate; and
- the use of the information is limited to the relevant proceedings.

Law stated - 3 October 2025

CIVIL ASSET RECOVERY – REMEDIES AND RELIEF

Interim relief

11 What interim relief is available pre-judgment to prevent the dissipation of assets by, and to obtain information from, those suspected of involvement in the fraud?

Freezing orders are available to prevent the dissipation of assets against which a judgment may be enforced in due course. They may be domestic, to cover assets located in Cayman, or worldwide, to cover assets globally. To obtain a freezing order, an applicant must show that they have a good arguable case on the merits, that there is a real risk of dissipation of the assets and that it is just and convenient to grant the order.

It is also possible, under the Chabra jurisdiction (per *TSB Private Bank International SA v Chabra and another* [1992] 2 All ER 245), to obtain a freezing order against a non-cause of action defendant, that is, a third party who is not the key defendant but who holds assets against which a judgment against the defendant may in due course be enforced.

A freezing order will typically also compel the defendant to give details of the location of their assets.

In cases where a freezing order does not grant sufficient protection, it may be possible to appoint a receiver over the assets in question pursuant to section 11 of the Grand Court Act.

Orders that are available in support of Cayman proceedings are also available in support of proceedings overseas, under section 11A of the Grand Court Act, and in support of arbitrations both in Cayman and overseas, under section 54 of the Arbitration Act.

A proprietary injunction may be granted if the applicant has a good arguable case that the assets in question belong to the applicant, and the balance of convenience favours granting the injunction.

Alternatively, a party can apply for a search order (or Anton Piller order) that would enable a successful applicant to enter a defendant's premises to search for, copy and preserve evidence.

Other forms of information orders that are available pre-judgment include the Norwich Pharmacal order, which compels a third party who has been mixed up in wrongdoing to disclose information to help a plaintiff identify a wrongdoer or to gather evidence relating to the cause of action or location of assets. This jurisdiction comes from the English case of *Norwich Pharmacal Co v Customs & Excise Commissioners* [1974] AC 133, which provides that as long as there is a good arguable case that the wrongdoing has occurred, the third party is somehow involved even if innocently (eg, a registered office

holding company records), the information is necessary to identify the wrongdoer or to enable the plaintiff to seek redress and the disclosure sought is proportionate to what is needed, an application may be made. These applications are often brought in Cayman against registered offices, administrators and banks.

A party can also apply for a banker's order or Bankers Trust order, which is a court order requiring a Cayman bank (or other fiduciary) to disclose what would otherwise be confidential records about a customer's account to help trace and preserve misappropriated funds in support of a proprietary claim. The jurisdiction to make the order derives from the English case of *Bankers Trust Co. v Shapira and Ors* [1980] 1 WLR 1274 and is generally only granted in exceptional circumstances, provided the applicant is able to meet the relevant criteria. This involves showing that:

- there is a strong case of fraud or breach of trust;
- there is a good reason to believe the assets held by the third-party institution belong to the applicant, and delay may lead to the dissipation of the assets;
- there is a real prospect that the disclosure may lead to the location or preservation of the assets, and the disclosure is proportionate; and
- the use of the information is limited to the relevant proceedings.

A party who intends to apply to wind up a company can apply for provisional liquidators to be appointed over the company pending the hearing of the winding up petition, to prevent the dissipation or misuse of the company's assets, under section 104 of the Companies Act.

Law stated - 3 October 2025

Non-compliance with court orders

12 | How do courts punish failure to comply with court orders?

Where a party knowingly disobeys a court order, or demonstrates persistent or flagrant breaches of a court order, the court can find them to be in civil or, in extreme cases, criminal contempt and impose various sanctions, including imprisonment, fines, sequestration of assets (where court officers take possession of the party's assets until they comply with the order) and committal proceedings against parties themselves or company directors or officers.

The court may draw adverse inferences against a party who fails to comply with a disclosure order, or who fails to provide evidence that the court considers it should have provided, drawing the conclusion that the relevant material would have been damaging to that party.

The Grand Court may also make an unless order, which offers the party in breach a last chance to comply and provides that, unless the defaulting party complies with the order within a specified period of time, a further order will be made. That further order could be a debarring order, which would debar that party from being able to participate any further in the proceedings, such that they would not be permitted to file any evidence or applications.

Law stated - 3 October 2025

Obtaining evidence from other jurisdictions

13 How can information be obtained through courts in other jurisdictions to assist in the civil proceedings?

Under Order 70 of the Grand Court Rules, a party to Cayman Islands proceedings can apply to the Cayman Islands Grand Court for an order that a Letter of Request (also called a Letter Rogatory) be issued by the Judge to a foreign court asking it to obtain evidence from a witness based in that jurisdiction.

An officeholder appointed in a Cayman Islands insolvency proceeding may also be able to apply to the courts of a relevant jurisdiction for recognition of their appointment and assistance in obtaining information and/or other assistance in that jurisdiction.

Law stated - 3 October 2025

Assisting courts in other jurisdictions

14 What assistance will the civil court give in connection with civil asset recovery proceedings in other jurisdictions?

Evidence for use in foreign proceedings is governed by the Evidence (Proceedings in Other Jurisdictions) (Cayman Islands) Order, which extends the provisions of the UK Evidence (Proceedings in Other Jurisdictions Act), which in turn implements the UK's obligations under the 1970 Hague Convention on the Taking of Evidence Abroad, to the Cayman Islands.

This provides that where evidence is needed from a Cayman party for use in proceedings overseas, the court hearing those proceedings may issue a letter of request and the Grand Court may make orders, including an order for the examination of witnesses, either orally or in writing, or for the production of documents.

The procedure is governed by Order 70 of the Grand Court Rules.

Interim orders that are available in support of Cayman proceedings, for example, freezing orders and orders for the appointment of receivers, are also available in support of proceedings overseas, under section 11A of the Grand Court Act, and in support of arbitrations both in Cayman and overseas, under section 54 of the Arbitration Act.

A foreign representative of a debtor may apply to the Grand Court Financial Services Division for recognition and various other ancillary orders under Part 17 of the Companies Act, headed International Cooperation. The ancillary orders available include staying the enforcement of a judgment against the debtor, requiring a person in possession of information relating to the business or affairs of a debtor to be examined by and produce documents to its foreign representative and ordering the turnover to a foreign representative of any property belonging to a debtor.

Law stated - 3 October 2025

Causes of action

15 | What are the main causes of action in civil asset recovery cases, and do they include proprietary claims?

Cayman Islands law is based on English common law and as such, the usual common law causes of action are available, including breach of contract, tort (including misrepresentation, negligence and conversion) and unjust enrichment. Equitable claims such as breach of fiduciary duty, dishonest assistance and knowing receipt are also available, as are proprietary claims.

Law stated - 3 October 2025

Remedies

16 | What remedies are available in a civil recovery action?

The remedies available in a successful claim in a civil recovery action include damages, equitable compensation, an account of profits, injunctions and declarations as to the parties' rights.

Law stated - 3 October 2025

Judgment without full trial

17 | Can a victim obtain a judgment without the need for a full trial?

A victim can obtain judgment without the need for a full trial if they are able to obtain a default judgment (governed by Order 13 of the Grand Court Rules), which may be granted when a defendant does not respond to the claim or give notice of any intention to defend it within the requisite time period. It is worth noting, however, that a default judgment is easier to appeal or have set aside than an ordinary judgment.

A victim could also obtain early judgment if they are able to successfully apply for summary judgment (governed by Order 14 of the Grand Court Rules), which is granted when the court considers that the defendant has no real prospect of defending the claim. A victim can also apply to strike out the substantive parts of the defendant's case (governed by Order 18 rule 19 of the Grand Court Rules). The threshold to be met for each of these applications is necessarily high, as a court will be slow to order that a case be concluded before the defendant has had a chance to provide evidence and have the case heard and decided by the Judge in full.

Law stated - 3 October 2025

Post-judgment relief

18 | What post-judgment relief is available to successful claimants?

A judgment creditor may avail itself of enforcement methods, including garnishee orders, charging orders and insolvency proceedings. It may also avail itself of any of the remedies that are available pre-judgment for freezing assets or disclosure of information.

Law stated - 3 October 2025

Enforcement

19 | What methods of enforcement are available?

Order 45 of the Grand Court Rules provides that a successful plaintiff may enforce a judgment for the payment of money in the following ways.

- Writs of Execution: there are a variety of these, and one of the key ones for enforcement purposes is a writ of fieri facias. If successful, such an order provides for a bailiff to attend the debtor's premises, seize their property and sell it at public auction, paying the proceeds of that sale to the judgment creditor. A writ of sequestration is similar and authorises a court-appointed officer to take possession of, receive income from and manage the property of a party who has failed to comply with a court order, but this is generally aimed more at ensuring compliance with a court order than satisfying a debt. Writs of execution are governed by GCR Order 46.
- Garnishee proceedings: this targets debts owed to the debtor by third parties and orders those third parties to pay the debts directly to the judgment creditor instead of to the debtor. GCR Order 49 governs garnishee proceedings.
- A charging order: this enables a successful applicant to create a charge over a specific asset, which can then be followed by an order for the sale of the property so that the proceeds of that sale can be used to meet the debt arising under the judgment. GCR Order 50 governs charging orders.
- Appointment of a receiver: a receiver collects or manages the debtor's assets (ie, land and shares) for the benefit of the successful plaintiff.
- Attachment of earnings order: while a garnishee order redirects debts owed to the debtor to be paid instead to the successful plaintiff, an attachment of earnings order redirects a debtor's income to the successful plaintiff to satisfy the amount due under the judgment. GCR Order 50A governs attachment of earnings orders.

A judgment creditor can also petition to wind up a debtor company if that company fails to comply with a judgment, on the basis that the company is therefore unable to pay its debts and so is insolvent. If successful, liquidators are appointed over the company and are responsible for gathering the company's assets and distributing them to its creditors. The liquidators also have the power to bring (and defend) claims on behalf of the company,

including to clawback assets and wind up other entities in a corporate group to take over a structure and thus collect a wider pool of assets for distribution. The judgment creditor would need to submit a claim (via a proof of debt) in the liquidation estate for the recovery of their debt. As the petitioning creditor, they would be able to recover their costs in applying for the winding up as part of the winding up expenses in priority to the other creditors. However, unless they have taken steps to secure their judgment debt, such as through a charging order (see above), they remain an unsecured creditor and form part of the general body of creditors.

A holder of a foreign judgment may apply for recognition of the judgment under common law principles. The court will generally recognise and enforce the judgment if the foreign court had jurisdiction, the judgment is final and conclusive, is for a definite sum of money (not including taxes, fines or penalties) and is not contrary to Cayman public policy, obtained by fraud or in breach of natural justice.

A holder of an arbitral award may apply to enforce the award under the Cayman Islands Arbitration Act 2012 or the Foreign Arbitral Awards Enforcement Act. They must first apply to the Grand Court for recognition and leave to enforce the arbitral award. Grounds for refusing enforcement are limited (for example, the award is not binding, or enforcing the award would be contrary to Cayman's public policy). Once leave is granted, the award may be enforced in the same manner as a judgment or order of the court.

Law stated - 3 October 2025

Funding and costs

20 What funding arrangements are available to parties contemplating or involved in litigation and do the courts have any powers to manage the overall cost of that litigation?

The Private Funding of Legal Services Act allows (1) conditional fee arrangements, in which the attorney agrees to waive all, or a portion, of their fee if the case is not successful, but if the client succeeds, the attorney is paid at their hourly rates plus an uplift of up to 100 per cent of their ordinary hourly rates and (2) contingency fee agreements, where the attorney foregoes their fee if the case does not succeed but is paid a pre-agreed percentage of the winnings if it is successful.

Litigation funding agreements, whereby a funder agrees to fund the provision of legal services and is paid a percentage of recoveries, are also permitted.

Generally in Cayman, costs follow the event. This means that the unsuccessful party will usually be required to pay not only its own costs but also the costs of the successful party. This is why, if a conditional or contingency fee arrangement is entered into, the party should consider purchasing After the Event insurance, which would cover the costs of the opposition if they win the case.

If the parties are unable to agree on the amount of costs payable under any particular order, costs will be taxed by the court taxing officer. To this extent, there is some control over the cost of the litigation, but the Grand Court does not otherwise have the power to make costs management orders or to require costs budgets.

Law stated - 3 October 2025

CRIMINAL ASSET RECOVERY – LEGAL FRAMEWORK

Interim measures

21 | Describe the legal framework in relation to interim measures in your jurisdiction.

In relation to interim measures to prevent the movement of funds, there are three avenues, which are restraint prior to confiscation, freezing order prior to civil recovery, and use of the Financial Reporting Authority's (the Financial Intelligence Unit) powers.

Restraint order

Restraint orders are provided for under section 44 of the Proceeds of Crime Act (2025 Revision) (POCA). The court must be satisfied that a criminal investigation (or proceedings) has been started in the Islands with regard to an offence, and there is reasonable cause to believe that the alleged offender has benefited from that person's criminal conduct. A court may then make a restraint order prohibiting a specified person from dealing with any realisable property held by that person, subject to such conditions and exceptions as may be specified in the order (section 45).

A restraint order may be made only on an application by the Director of Public Prosecutions.

A restraint order may be made on an ex parte application to a judge in chambers, but it must provide for notice to be given to persons affected by the order.

Under section 45(3), a restraint order may make provision for reasonable living expenses and reasonable legal expenses or make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation. However, under section 45(4), an exception to a restraint order shall not provide for any legal expenses of the defendant or the recipient of a tainted gift where such expenses are incurred in relation to the offences in respect of which the restraint order is made.

There are provisions for enforcement abroad under section 67 POCA.

Property freezing order

A property freezing order is an order that specifies or describes the property to which it applies, and (subject to any exclusions), prohibits any person to whom the order applies from dealing with the property in any way.

Under section 82(1) POCA, where the Director of Public Prosecutions (DPP) may take proceedings for a recovery order in the Grand Court, that Director of Public Prosecutions may apply to the court for a property freezing order (whether before or after starting the proceedings).

Under section 82(3), an application for a property freezing order may be made ex parte if the circumstances are such that notice of the application would prejudice any right of the Director of Public Prosecutions to obtain a recovery order in respect of any property.

Under section 82(4), the court may make a property freezing order on an application if it is satisfied that there is a good arguable case and that the property to which the application for the order relates is or includes recoverable property. Recoverable property is property obtained through unlawful conduct (section 123).

Alternatively, the court may make the order if it is satisfied there is a good arguable case that, so far as the property is not recoverable property, it is associated property, and that the Director of Public Prosecutions has not established the identity of the person who holds it, having taken all reasonable steps to do so. Associated property means property which is an interest in the recoverable property, and any other interest in the property in which the recoverable property subsists; where the recoverable property is a tenancy in common, the tenancy of the other tenant and if the recoverable property is part of a larger property but not a separate part, the remainder of that property (section 81).

The FRA power

The FRA may, upon a successful application to the court, order any person to refrain from dealing with a person's account for up to 21 days where information has been disclosed to the FRA under POCA or on request from an overseas Financial Intelligence Unit (section 4(2)(b) and (3)). The FRA must satisfy the court that there is reasonable cause to believe that the information or the request, as the case may be, relates to proceeds or suspected proceeds of criminal conduct.

Additionally, Suspicious Activity Report (SAR) filers must apply to the FRA for consent prior to moving any suspected proceeds of crime upon filing an SAR in order to request a defence against Money Laundering (in relation to the ML offences under sections 133, 134 and 135 POCA). According to the FRA's Notice (Industry Advisory: Defence Against Money Laundering (DAML)/Consent Regime), consent is deemed after seven days, and if consent is refused, there is a moratorium on the movement of the funds for 30 days.

In relation to other interim measures there is a power to obtain account monitoring orders under section 124 (to monitor the movement of funds in and out of a bank account), to obtain a customer information order under section 166, to compel evidence in relation to a customer from a financial institution, and to obtain a disclosure order under section 160 authorising the Director of Public Prosecutions (DPP) to require a person who is considered to have relevant information to answer questions or provide information or provide documents in relation to a confiscation investigation or a civil recovery investigation. Under section 160(5), relevant information is information which the DPP considers relevant to the investigation.

Law stated - 3 October 2025

Proceeds of serious crime

22 | Is an investigation to identify, trace and freeze proceeds automatically initiated when certain serious crimes are detected? If not, what triggers an investigation?

The police have the power to investigate money laundering and to identify, trace and freeze the proceeds of crime in relation to money laundering investigations. In the Cayman Islands, all crimes are predicate offences for money laundering.

Production orders require an investigation for money laundering, a confiscation investigation or a civil recovery investigation (section 149 POCA).

Restraint orders require that a criminal investigation has started (or proceedings for an offence are underway) and that there is reasonable cause to believe the alleged offender has benefited from unlawful conduct (section 44(1)).

Civil recovery freezing orders (property freezing orders) require, before or after issuing recovery proceedings, a good arguable case that the property is or includes recoverable property or, if not, associated property (with reasonable steps taken to identify its holder) (section 82). Recoverable property is property obtained through unlawful conduct (section 123). Associated property is property which is not recoverable property but is an interest in the recoverable property or an interest in the property in which the recoverable property subsists; if the recoverable property is a tenancy in common, the tenancy of the other tenant and if the recoverable property is part of a larger property, but not a separate part, the remainder of that property (section 81). Unlawful conduct is conduct which is unlawful under the criminal laws in the Cayman Islands or conduct which occurs in a country outside the Islands and is unlawful in that country and in the Cayman Islands (section 78).

Law stated - 3 October 2025

Confiscation – legal framework

23 Describe the legal framework in relation to confiscation of the proceeds of crime, including how the benefit figure is calculated.

Confiscation orders may be applied for under POCA and relates to the determined benefit amount. The court must decide whether the person has a criminal lifestyle or has benefited from particular criminal conduct. In relation to a criminal lifestyle, this may be determined based on the nature of the offence committed (whether it is listed under Schedule 1), the length of time over which an offence is committed or the number of offences committed. If the defendant has a criminal lifestyle, the court can make assumptions relating to property transferred to the defendant in the previous six years and expenditures made by the defendant in the prior six years (section 19 POCA).

Proceeds of crime derive from criminal conduct, which is conduct that under section 69(1) constitutes an offence in the Islands or would constitute such an offence if it occurred in the Islands.

Under section 69 and section 15(3), the court must determine whether the defendant has benefited from his general criminal conduct (where he has been found to have a criminal lifestyle) or his particular criminal conduct (the offences before the court in the same proceedings for which the defendant was convicted).

Under section 68 a defendant has a criminal lifestyle only if the offence or any of the offences taken into account by the court are specified in Schedule 1, or constitute conduct

forming part of a course of criminal activity (the defendant has benefited from the conduct and the defendant was convicted of three or more other offences each of which constituted conduct from which the defendant benefited or in the period of six years prior the person was convicted on a least two separate occasions of an offence constituting conduct from which the person benefited), or is an offence committed over a period of at least six months and the defendant has benefited from the conduct which constitutes the offence. For offences not specified in Schedule 1, the benefit must be more than $5,000. Offences listed under Schedule 1 include specified offences under the Misuse of Drugs Act, Proceeds of Crime Act and Terrorism Act, as well as offences of people trafficking, arms trafficking, counterfeiting and forgery, and intellectual property, as well as specified offences related to prostitution, blackmail and gambling.

Under section 69(4), a person benefits from conduct if that person obtains property as a result of or in connection with the conduct.

Where a person obtains a pecuniary advantage as a result of or in connection with conduct, that person is to be taken to obtain as a result of or in connection with the conduct of a sum of money equal to the value of the pecuniary advantage (section 69(5)).

Under section 69(7), where a person benefits from the conduct, that person's benefit is the value of the property obtained.

Law stated - 3 October 2025

Confiscation procedure

24 | Describe how confiscation works in practice.

The court may proceed with a confiscation order before sentencing or postpone the proceedings for a specific period not exceeding two years from the date of conviction (section 23 POCA).

In practice, the defendant will be notified of the intent to apply for confiscation usually prior to conviction, and a restraint order may already have been obtained by that stage. Following conviction, separate confiscation proceedings will commence in order for the application for confiscation to be heard and determined and any order made.

Where the court is proceeding with confiscation proceedings, the Director of Public Prosecutions shall give the court a statement of information (section 25) which, where the DPP believes the defendant has a criminal lifestyle, sets out the matters relevant to deciding whether the defendant has a criminal lifestyle, whether the defendant has benefited from general criminal conduct, and the amount of that benefit (including the section 19 assumptions on transfers and expenditure in the previous six years). The statement must also consider information regarding the assumptions under section 19 (in relation to transfers made to and expenditures made by the defendant in the previous six years). The statement must also contain information for the purpose of enabling the court to decide if the circumstances are such that it shall not make such an assumption.

Where the DPP gives the court a statement of information, the court may order the defendant to indicate, with the period ordered by the court, the extent to which the person

accepts each allegation in the statement and in so far as that person does not accept such an allegation, to give particulars of any matter that person proposes to rely on (section 26(1)).

Under section 27, the court may order the defendant to give it information specified in the order for the purpose of obtaining information to assist the court in carrying out its functions. If the defendant fails without a reasonable excuse to comply with the order, the court may draw inferences.

The court must decide whether the defendant has a criminal lifestyle. Where the court decides that the defendant has a criminal lifestyle, the court must decide whether the person has benefited from that person's general criminal conduct. If so, the court may make the section 19 assumptions referred to above.

Where the court decides that the defendant does not have a criminal lifestyle, the court must decide whether the person has benefited from his particular criminal conduct (the specific offences before the court).

Once the court has decided that the defendant has benefited, the court must decide the recoverable amount and make a confiscation order requiring that person to pay that amount.

Law stated - 3 October 2025

Agencies

25 | What agencies are responsible for tracing and confiscating the proceeds of crime in your jurisdiction?

The Royal Cayman Islands Police Service is the investigating authority in the Cayman Islands. There is a separate unit of the RCIPS, namely, the Cayman Islands Bureau of Financial Investigations, which was set up to investigate cross-border money laundering and terrorist financing. There is also a Financial Crime Unit dealing with domestic financial crime matters.

The Office of the Director of Public Prosecutions is the office charged with criminal prosecutions in the Cayman Islands (section 57 of the Cayman Islands Constitution).

The Financial Reporting Authority is the Financial Intelligence Unit and has the power to request documents in order to assist with its analysis of suspicious activity reports (section 4(2)(b) POCA).

Law stated - 3 October 2025

CRIMINAL ASSET RECOVERY – CONFISCATION

Secondary proceeds

26 | Is confiscation of secondary proceeds possible?

The confiscation relates to the benefit obtained from the crime, not to the specific property obtained.

Under section 15(3) POCA, the court must decide whether the defendant has a criminal lifestyle. Where it decides that the defendant has a criminal lifestyle, the court shall decide whether that person has benefited from that person's general criminal conduct, and where it decides that the defendant does not have a criminal lifestyle, the court shall decide whether that person has benefited from that person's particular criminal conduct.

Under section 15(4), where the court decides that the defendant has benefited from the conduct referred to, it shall decide the recoverable amount and make a confiscation order requiring that person to pay the amount.

Law stated - 3 October 2025

Third-party ownership

27 | Is it possible to confiscate property acquired by a third party or close relatives?

Under section 70 POCA, where the court has made a decision that a defendant has a criminal lifestyle, a gift is tainted if either it was made by the defendant after the relevant day (the first day of six years ending with the day the proceedings were started), or at any time and was property which was obtained by the defendant as a result of or in connection with their general criminal conduct or which in whole or part and whether directly or indirectly represented in the defendant's hands property obtained by that person as a result of or in connection with their general criminal conduct.

Where no criminal lifestyle is found, a gift is considered tainted if it was made by the defendant at any time after the date on which the offence was committed, or the earliest date if that person's criminal conduct consists of two or more offences on different dates.

Where a defendant transfers property to another person for consideration whose value is significantly less than the value of the property at the time of the transfer, the defendant will be treated as making a gift (section 71).

Law stated - 3 October 2025

Expenses

28 | Can the costs of tracing and confiscating assets be recovered by a relevant state agency?

POCA does not create a general right for agencies to recover the costs of tracing or confiscating assets. In confiscation, POCA provides for payment of the Official Receiver's remuneration and expenses from realised restraint or recovered property (sections 52(2)(d) and 53(4) POCA), and in civil recovery, via payment directions under an interim receiving order and the application of realised proceeds (sections 100 and 105(2)(b)).

The basis for incurring and managing those costs is set out in Schedule 2 (the interim receiver's powers, including management of property, carrying on a business and incurring capital expenditure to preserve value) and Schedule 3 (trustee's civil recovery powers, concerning management/realisation powers and remuneration/expenses).

Law stated - 3 October 2025

Value-based confiscation

29 | Is value-based confiscation allowed? If yes, how is the value assessment made?

Confiscation is value-based. The benefit amount is equal to the defendant's benefit from criminal conduct (section 16(1) POCA), confiscation is therefore based on the value of the benefit, not particular assets.

A person benefits if they obtain property as a result of or in connection with the conduct. A pecuniary advantage is treated as a sum equal to its value, and the person's benefit is the value of the property obtained (section 69(4), (5) and (7)). Value (other than cash) is the market value in the holder's hands and, where another holds an interest, the value of the holder's beneficial interest in the property less any encumbrances (section 72).

The court may take account of conduct and property obtained up to the time of decision (section 17(2)), for which the material time is when the court makes its decision, at which point the value will be the greater of (1) the value of the property when obtained, adjusted for changes in the value of money, or (2) the value at the material time of the property obtained or any property representing it (section 73). The same applies to tainted gifts (section 74).

If the defendant shows the available amount is less than the benefit, the order is capped at the available amount (or nominal if nil) (section 16(2)(a)), with the available amount determined per section 18.

Law stated - 3 October 2025

Burden of proof

30 | On whom is the burden of proof in a procedure to confiscate the proceeds of crime? Can the burden be reversed?

The court must decide whether the defendant has a criminal lifestyle on a balance of probabilities (section 15 POCA).

Where the court decides that the defendant has a criminal lifestyle, the court must decide, on the balance of probabilities, whether that person has benefited from his general criminal conduct.

If the defendant is not found to have a criminal lifestyle, the court must decide whether the defendant has benefited from a particular criminal conduct on a balance of probabilities.

Once the court determines there is a criminal lifestyle under section 68, it will apply the statutory assumptions when assessing benefit (under section 19), unless the defendant shows the assumption is incorrect or it would create a serious risk of injustice. If the court decides not to apply an assumption, it must give reasons (section 19(7)). The assumptions include that any property transferred to the defendant in the previous six years was obtained as a result of general criminal conduct. The second assumption is that any property transferred to the defendant after conviction was obtained by criminal conduct. The third assumption is that any expenditure made by the defendant in the prior six years was met from property obtained by that person as a result of that person's general criminal conduct. The fourth assumption is that, for the purpose of valuing a property obtained (or assumed to have been obtained) by the defendant, the defendant obtained it free of any other interests in it. (section 19(2) to (5)).

The six years are the six years prior to when the proceedings were commenced (or the earliest date if there are two sets of proceedings) (section 19(8)).

Law stated - 3 October 2025

Using confiscated property to settle claims

31 | May confiscated property be used in satisfaction of civil claims for damages or compensation from a claim arising from the conviction?

Where the court makes both a confiscation order and an order under section 33 of the Penal Code (compensation) against the same person in the same proceedings, and the court believes that person will not have sufficient means to satisfy both the order in full, the court shall direct that so much of the compensation as it specified is to be paid out of any sums recovered under the confiscation order, and the amount specified shall be the amount it believes will not be recoverable because of the insufficiency of the person's means (section 22 POCA).

Once the confiscated property order is made and the property recovered, the property belongs to the Crown and would not usually be used in satisfaction of civil claims. However, an earlier civil claim may be taken into account in determining the realisable amount in terms of what a defendant has available to pay to reach the benefit amount.

Under section 15(5), when considering whether to make a confiscation order, the court or summary court may take into account any information that has been placed before it showing that a victim of an offence to which the proceedings relate has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with the offence.

Under section 197, where property is lawfully confiscated or forfeited under POCA and all proceedings or appeal processes have been exhausted or are time-barred, no third party shall be entitled to make a claim to that property and no such claim shall be entertained by a court of law or any other person or authority.

Law stated - 3 October 2025

Confiscation of profits

32 Is it possible to recover the financial advantage or profit obtained through the commission of criminal offences?

The financial advantage or profit obtained through the commission of criminal offences is recoverable. A person's benefit is the money value of the property or pecuniary advantage obtained (section 69(5) and (7) POCA).

The value of the property (other than cash) in relation to any person holding it is its market value, and where another person holds an interest, it is the market value of that holder's beneficial interest less the amount required to discharge any encumbrance (section 72).

Under section 73, the value of property obtained by a person as a result of or in connection with that person's criminal conduct is the greater of the value of the property at the time the person obtained it, adjusted to take account of later changes in the value of money, and the value at the time of the court decision. The same principles apply in relation to the value of tainted gifts under section 74.

In *Waya* [2012] UKSD 51, it was determined that confiscation represents the interference with the property rights of defendants (peaceful enjoyment of possessions) under the first protocol to the European Convention on Human Rights; therefore, POCA must be read and given effect in a manner which avoids a violation of this right. (The Cayman Islands Constitution contains a similar right in respect of property under section 15 of the Bill of Rights.) A confiscation order which does not conform to the test of proportionality would violate this. Where the court decides that the defendant has benefited from the conduct, it must decide the recoverable amount, except insofar as such an order would be disproportionate and thus a breach of this right. Therefore, there must be a reasonable relationship of proportionality between the means employed and the legitimate aim pursued.

Law stated - 3 October 2025

Non-conviction based forfeiture

33 Can the proceeds of crime be confiscated without a conviction? Describe how the system works and any legal challenges to in rem confiscation.

The proceeds of crime can be recovered without a conviction by way of civil recovery in the Grand Court in the Cayman Islands (section 80 POCA). These proceedings are commenced by the Director of Public Prosecutions. The proceedings are against the property (and not the individual), and the DPP must satisfy the court, on the balance of probabilities, that the property constitutes the proceeds of crime. Civil Recovery is dealt with in Part 4 of POCA. The DPP must prove that the property was obtained through unlawful conduct. Unlawful conduct is conduct which is criminal in the Cayman Islands or unlawful in the country in which it occurred and unlawful in the Cayman Islands. The court must decide on the balance of probabilities whether it is proved that any matters alleged to constitute unlawful conduct have occurred. (section 78).

A person obtains property through unlawful conduct, whether by their own conduct or another's, if that person obtains property by or in return for the conduct. It is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct, and it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of a specific kind or kinds and that conduct of that kind or those kinds is unlawful conduct, or the circumstances in which the property was handled are such as to give rise to the irresistible inference that it can only be derived from unlawful conduct (section 79).

Law stated - 3 October 2025

Management of assets

34 After the seizure of the assets, how are they managed, and by whom? How does the managing authority deal with the hidden cost of management of the assets? Can the assets be utilised by the managing authority or a government agency as their own?

In confiscations, the court may appoint (on the Director of Public Prosecutions' application) a management receivership over realisable property to which a restraint order applies, or an enforcement receivership where a confiscation order has been made, remains unsatisfied, and is not under appeal. In each case, the receivership is to be performed by the Official Receiver (section 52(1) POCA). Throughout POCA, where a receivership is ordered by a court, it is to be performed by the Official Receiver unless the court finds it to be inexpedient or impracticable, in which case a private sector receiver may be appointed (section 86(3) and (4)).

The court may empower the Official Receiver to take possession of, manage or otherwise deal with the property, litigate in respect of it, and realise property to meet the receiver's remuneration and expenses, and for enforcement receivership, realise property as the court specifies (section 52(2)).

When money is paid over, the Accountant General first pays the Official Receiver's expenses (section 53(4)), and where a private sector receiver is appointed but there are no or insufficient assets, reasonable unpaid fees are paid by the Cayman Islands Government (section 54).

In civil recovery, the court may grant a property freezing order and, on the DPP's application, an interim receiving order placing the property under the Official Receiver. During an interim receiving order, the Official Receiver's powers include the power to manage property, which expressly covers carrying on a trade or business and incurring capital expenditure to preserve value (section 88 and Schedule 2, paragraph 5).

If the court later makes a recovery order, the recoverable property vests in the trustee for civil recovery (section 96(2)) (the Official Receiver per section 97(1)), whose functions include securing, preserving and realising the value of the property for the benefit of the Accountant General, acting on the behalf, and subject to the directions of, the Accountant General (section 97(2), (3) and Schedule 3).

Realised proceeds are applied first to any payment due under an agreement regarding associated or joint property (section 100), and second, to expenses incurred by a person

acting as an insolvency practitioner, with the balance paid to the Accountant General (section 105(2)). A person acting as an insolvency practitioner includes the Official Receiver acting as receiver or manager of the property concerned (section 186).

Under POCA, restrained or recoverable property is managed solely to preserve and realise value, with proceeds remitted to the Accountant General in the statutory order (section 53(1) to (7)). It does not authorise a managing authority or any government agency to use the assets as its own. Management is confined and controlled to preserve the property pending its realisation, subject to the court's orders (Schedule 2, paragraph 5 and Schedule 3).

Law stated - 3 October 2025

CRIMINAL ASSET RECOVERY – CROSS-BORDER ISSUES

Making requests for foreign legal assistance

35 Describe your jurisdiction's legal framework and procedure to request international legal assistance concerning provisional measures in relation to the recovery of assets.

Describe your jurisdiction's legal framework and procedure to request international legal assistance concerning provisional measures in relation to the recovery of assets.

The Director of Public Prosecutions is the central authority in relation to requests made under the Criminal Justice (International Cooperation) Act (2025 Revision). The Chief Justice is the central authority for requests made under the Mutual Legal Assistance (United States of America) Act (2015 Revision). The Chief Justice is assisted in this regard by the ODPP. Requests may be made via either of the central authorities. The outgoing request must comply with the requirements of the state from which the assistance is requested. Assistance may be requested to restrain assets or to enforce confiscation orders, or to obtain further evidence or identify assets belonging to a suspect.

If any section 44 restraint preconditions are met and the DPP believes realisable property is abroad, the DPP may send a request for assistance to the Governor to be forwarded to the foreign government before a confiscation order, to prohibit dealing with realisable property, and after a confiscation order (unsatisfied), to prohibit dealing with realisable property and to realise it with proceeds applied under the foreign law (section 67(1) to (5)).

Where property is realised abroad following such a request, the Cayman confiscation balance is reduced by the realised value; certificates from the requested state evidencing the realisation, date and amount are admissible; foreign currency proceeds are converted at the day of realisation rate (section 67(6) to (8)).

Separately, if the DPP requests foreign enforcement and property is recovered there, the amount payable under the Cayman order is treated as reduced by that value. A certificate from the foreign authority is admissible to prove recovery, and currency conversion is at the recovery date (sections 192 and 193).

External confiscation orders and proceedings that may lead to them are addressed in Part 8 (section 187) and Schedule 5 of POCA.

Law stated - 3 October 2025

Complying with requests for foreign legal assistance

36 Describe your jurisdiction's legal framework and procedure to meet foreign requests for legal assistance concerning provisional measures in relation to the recovery of assets.

Foreign requests for mutual legal assistance in relation to asset recovery (from countries other than the United States) are governed by the Criminal Justice (International Cooperation) Act (2025 Revision) (CJICA). Requests from the United States are specifically governed by the Mutual Legal Assistance (United States of America)*Act* (2015 Revision) (MLA).

The Director of Public Prosecutions is the Central Authority in the Islands for the purposes of CJICA (section 4), while the Chief Justice is the Cayman Mutual Legal Assistance Authority under the MLA (section 4).

Criminal Justice (International Cooperation) Act

The Director of Public Prosecutions may request assistance, among other things, to identify or trace proceeds or property and to immobilise criminally obtained assets (section 3(g) and (h) CJICA) and may only render assistance where the underlying conduct would be an offence if committed in the Islands (dual criminality) (section 2(2)).

Under section 5 CJICA, the request must be in writing (in English) and state, among other things:

- the identity of the requesting party;
- the subject matter and nature of the investigation, prosecution or proceeding;
- the name and functions of the persons conducting it;
- a summary of relevant facts (except for pure service requests);
- the assistance sought and any procedures to be followed;
- the identity, location, and nationality of any person concerned, where possible; and
- the purpose for which the evidence, information or action is sought.

To the extent necessary, the DPP may require further particulars as set out in section 5(3)(a) to (g).

Under section 8 CJICA, a request must establish reasonable grounds to believe that the specified offence has been committed and the information sought relates to that offence and is located in the Islands. Requests may be refused if the execution of the request would prejudice the security, public order or other essential interests of the Islands. The action requested would be prohibited by Cayman law if sought for a similar domestic offence, if it is otherwise contrary to Cayman law to grant assistance in the circumstances or if the

DPP is of the opinion that the requesting party would not reciprocate assistance under the Convention or a law corresponding to CJICA.

Under section 24, when a foreign request is for the purpose of identifying or tracing proceeds, property, instruments or other such things for evidentiary purposes, or for immobilising criminally obtained assets or assisting in forfeiture or restitution proceedings, sections 32 to 38 POCA and Schedule 5 apply in the same manner that they would apply to domestic proceedings subject to limited changes, such as construing the designated country as a reference to a country or territory specified in Schedule 1 CJICA, and disregarding any reference to the institution of proceedings.

Mutual Legal Assistance (United States of America) Act

On receiving a US request, the Chief Justice (as the Cayman Mutual Legal Assistance Authority) must immediately notify the Attorney General and the Director of Public Prosecutions, providing particulars and copies of any related documents. Both are entitled, in a manner analogous to amicus curiae (friend of the court), to appear or otherwise take part in any judicial or administrative proceedings in the Islands arising directly or indirectly from the request (section 5 MLA).

The request will be executed immediately, in accordance with (and subject to) the provisions of the Treaty. If execution of the request requires a subpoena, search warrant, seizure order or other necessary order, a certificate from the Chief Justice stating that such process is required is sufficient authority for a magistrate, justice of the peace or officer of the Court to issue it without further enquiry. In addition, notwithstanding any other law, if execution requires service of documents or orders or seizure of articles on the Chief Justice's instructions, any constable of the rank of Inspector or above, if so required, must assist as if acting on Grand Court directions and is deemed to have the same powers as if so directed (section 6).

Where the request requires a person in the Islands to testify or produce documentary information in their possession or control, the Chief Justice has the same powers as the Grand Court to compel compliance; wilful failure or refusal may be dealt with by the Grand Court as if the person had failed to comply with a similar order of the Grand Court. The person required to testify or produce documentary information has the right to be represented by an attorney (section 7).

Either the Chief Justice or the US authority may notify the other when it has reason to believe proceeds of a criminal offence are in the other's territory. Each party must assist to the extent permitted by its laws in proceedings relating to forfeiture of proceeds, restitution to victims and collection of criminal fines (Article 16 of the Treaty between the United States of America and the United Kingdom of Great Britain and Northern Ireland, including the Caymans Islands, dated 3 July 1986, relating to the mutual legal assistance in criminal matters).

Proceeds of Crime Act

On the Director of Public Prosecutions' application, the Grand Court may register an external confiscation order if statutory conditions are met (threshold amount or public interest, order in force and not under appeal, notice to the defendant if absent, and no

injustice); it must refuse or cancel registration where POCA so requires (section 188(1) to (4)). Proof and evidential rules for foreign orders or judgments and related proceedings are set out in sections 189 to 191, including that a foreign request accompanied by a statement of facts is deemed as the foreign government's authority for the DPP to act on its behalf in Grand Court proceedings (section 191(a) and (b)).

Schedule 5 POCA applies to registered external orders and to proceedings that have been or are to be instituted abroad and may result in such orders. The Grand Court's restraint powers are exercisable where foreign proceedings have been instituted and not concluded and an external confiscation order has been or may be made, or where the court is satisfied that proceedings will be instituted (paragraph 5). The court may make a restraint order prohibiting dealing with realisable property (subject to conditions and exceptions), with the order subject to section 45(2) to (7). It may be made ex parte on the DPP's application on behalf of the foreign government (or by a receiver after registration), varied or discharged, and may include the appointment of a receiver to take possession and manage property. Dealing includes reducing debts and removing property from the Islands, and special land-registration inhibition applies (paragraphs 6 and 7). The Schedule also provides for the realisation of property (paragraph 8) under a registered external order and associated supplementary powers.

Law stated - 3 October 2025

Treaties

37 | To which international conventions with provisions on asset recovery is your state a signatory?

The following Treaties have been extended to the Cayman Islands, all of which contain asset recovery provisions:

- the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (extended 8 February 1995);
- the United Nations Convention against Transnational Organized Crime (2000) (extended 17 May 2012);
- the International Convention for the Suppression of the Financing of Terrorism (1999) (extended 12 August 2021); and
- the United Nations Convention against Corruption (2003) (extended 14 December 2020).

Law stated - 3 October 2025

CRIMINAL ASSET RECOVERY – PRIVATE PROSECUTIONS

Private prosecutions

38 | Can criminal asset recovery powers be used by private prosecutors?

Criminal asset recovery powers cannot be used by private prosecutors. These powers are only granted to the DPP. Every POCA route concerning confiscation, restraint, receivership, civil recovery, PFO and interim receiving orders is expressly reserved to the DPP (or the court acting on the DPP's application).

Law stated - 3 October 2025

UPDATE AND TRENDS

Emerging trends

39 Are there any emerging trends or hot topics in civil and criminal asset recovery in your jurisdiction?

The introduction of the consent SAR regime in January 2025 was a major change for the Cayman Islands. Previously, filing a SAR provided a defence against money laundering when dealing with the assets suspected to be the proceeds of crime. However, the current position is that those who require a defence against money laundering (eg, those who move those proceeds) must, at the time of filing the SAR, request a defence against money laundering. According to a notice issued by the Financial Reporting Authority, if no response is received within seven days, then consent is deemed, that is, the property may be moved. However, if consent is refused, a 30-day moratorium prevents the movement of the funds as the SAR filer will have no defence against money laundering during that period.

Law stated - 3 October 2025

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CIVIL ASSET RECOVERY – JURISDICTIONAL ISSUES

Parallel proceedings

1 | Is there any restriction on civil proceedings progressing in parallel with, or in advance of, criminal proceedings concerning the same subject matter?

In general, there is no restriction on furthering civil proceedings in parallel with, or in advance of, criminal proceedings concerning the same subject matter. Civil proceedings are normally furthered by the victim for restitution purposes, whereas criminal proceedings are primarily aimed at punishing the wrongdoer.

However, where parallel proceedings are promoted to exert undue pressure on a defendant for an ulterior purpose, such as achieving a settlement in a civil dispute, the furthering of parallel proceedings may be deemed abusive of the courts' powers and processes. Courts may refuse to entertain parallel proceedings with the same subject matter when those proceedings are found abusive.

It is important to clarify that the promotion of parallel proceedings is not regarded per se as abusive or oppressive conduct.

Law stated - 3 September 2025

Forum

2 | In which court should proceedings be brought?

Civil actions, such as claims for the recovery of assets (irrespective of their value), are brought to district courts, which have jurisdiction to hear at first instance any civil action unless the subject matter of the action falls within the exclusive jurisdiction of a special court, such as the Family Court or the Admiralty Court.

The Commercial Court, which has been established through the enactment of the relevant Law in May 2022 and is due to commence operating in the next months, will hear commercial disputes of high value, including cases with cross-border elements. Pursuant to the relevant law, litigants may elect to confer jurisdiction to the Commercial Court even where the dispute has no connection to Cyprus while proceedings before the Commercial Court may be conducted in the English language.

Law stated - 3 September 2025

Limitation

3 | What are the time limits for starting civil court proceedings?

Limitation periods for civil proceedings are mainly provided by the Limitation of Actions Law of 2012 (Law No. 66(I)/2012) and are as follows:

- tort: six-year limitation period from the date of accrual of the cause of action, except for cases of negligence, nuisance or breach of statutory duty where there is a three-year limitation period from the date the injured person became aware of the cause of action; in addition, there was a suspension of 39 months of the limitation period for negligence and breach of statutory duty from 20 April 2021 (ie, until 20 July 2024);
- contract: six-year limitation period from the date of accrual of the cause of action;
- mortgage or pledge: 12-year limitation period from the date of accrual of the cause of action;
- bill of exchange, etc: six-year limitation period from the date of accrual of the cause of action; and
- cause of action for which no particular provision is made: 10-year limitation period from the date of accrual of the cause of action.

In the case of civil proceedings for fraud or where the defendant has intentionally concealed any fact relevant to the cause of action, the limitation period only commences when the claimant discovers or could, with reasonable diligence, have discovered the fraud or concealment.

Law stated - 3 September 2025

Jurisdiction

4 In what circumstances does the civil court have jurisdiction? How can a defendant challenge jurisdiction?

In general, district courts have civil jurisdiction to hear and decide any action on a first-instance level:

- when the subject matter of the action has wholly or partly arisen within the district of the court;
- when the defendant, at the time of filing the action, resides or works within the district of the court;
- when the subject matter of the action relates to immovable property within the district of the court; and
- where there is a binding jurisdiction agreement between the parties.

Furthermore, district courts may acquire civil jurisdiction from specific legislation, international treaties and conventions, including Regulation (EU) No. 1215/2012 and the Brussels and Lugano Conventions, which supersede local laws.

The newly established Commercial Court will have jurisdiction over cases when:

- the cause of action occurred wholly or in part in Cyprus;
- the defendant resides or conducts business in Cyprus;
- the parties agree in writing to confer jurisdiction on the Commercial Court; or

- the jurisdiction of the Court is otherwise established by virtue of EU or international law.

The defendant can dispute a court's jurisdiction by filing a conditional appearance followed by an application to dismiss and set aside the proceedings, before taking any further substantive steps in the proceedings.

If the defendant fails to act as provided above, then he or she may be deemed to have submitted himself or herself to the jurisdiction of the court, thereby waiving his or her right to dispute the jurisdiction of the court.

Law stated - 3 September 2025

CIVIL ASSET RECOVERY – PROCEDURE

Time frame

5 | What is the usual time frame for a claim to reach trial?

A claim in a district court usually reaches trial within three to five years from the filing of the relevant action; however delays have been caused as a result of the COVID-19 pandemic.

The time that a case reaches trial depends on, inter alia, any interim proceedings, such as applications for interim orders, which may be pursued within the time frame of the main proceedings, and the procedural behaviour of the parties during the period leading up to trial.

A number of reforms have already been implemented or are underway in an effort to minimise the time required for a case to reach trial and ensure the efficient and fair disposal of cases.

In this context, a backlog initiative is currently in place that aims to prioritise the old cases that are yet to be heard.

The new Cyprus Civil Procedure Rules, which apply to all actions filed from 1 September 2023 and set as their primary objective the promotion of all cases by the courts in a fair and proportionate manner, aim to significantly decrease the time required for a case to reach trial.

In addition, the caseload of the district courts will be decreased once the new Commercial Court commences its operation, as the pending cases falling within its jurisdiction may be transferred to the Commercial Court upon the application of the parties.

Law stated - 3 September 2025

Admissibility of evidence

6 | What rules apply to the admissibility of evidence in civil proceedings?

As a general rule, any oral, real or documentary evidence is admissible in court, provided that it is relevant or connected to the matters at issue in the case.

Evidence that has been obtained by means contrary to the provisions of the Constitution of Cyprus and evidence covered by privilege is inadmissible. Evidence obtained by illegal means, but not in contravention of the Constitution, may be admissible.

Opinion evidence is inadmissible; however, expert evidence and expert opinions are admissible when they are required to determine an issue of a scientific or technical nature.

Pursuant to the new Civil Procedure Rules, no expert evidence shall be admitted without the court's permission.

Law stated - 3 September 2025

Witnesses

7 | What powers are available to compel witnesses to give evidence?

Any person within the jurisdiction of Cyprus may be compelled to appear in court to give oral evidence or furnish the court with documents, upon being served with a witness summons (namely, a written direction by the court to appear at a specified time and date to give evidence). The court may issue a witness summons on its own motion, or further to an application by any of the parties.

The court may order any person who is present in the courtroom to give evidence, irrespective of whether that person has any connection with the proceedings, and that person will thereafter be regarded as having been summoned before the court pursuant to a witness summons.

The above applies to compellable witnesses; the classes of persons not compellable are very few.

If a person who has been summoned to give evidence and has been given reasonable notice of the time and place where he or she should appear for this purpose fails to appear before the court and does not give sufficient reason for his or her failure, he or she may be compelled to appear before the court pursuant to an arrest warrant. Furthermore, that person will be liable to imprisonment or a fine and may be ordered to pay any expenses incurred as a result of his or her failure to appear in court.

The same applies for any person who has been summoned to give evidence for the purposes of proceedings taking place outside Cyprus, further to a rogatory request made to the Cyprus competent authority by the competent authority of the state where the proceedings are taking place.

If a person who appears before the court to give evidence, further to a witness summons or an arrest warrant, refuses to give evidence as requested and does not give sufficient reason for his or her refusal, he or she will be liable to imprisonment and a fine.

Law stated - 3 September 2025

Publicly available information

8 What sources of information about assets are publicly available?

The primary sources of publicly available information about assets are the following:

- the Registrar of Companies, which maintains records concerning limited liability companies and other legal entities registered in Cyprus, including details about their registered officers, registered address, shareholders and registered charges;
- the Intellectual and Industrial Property branch of the Registrar of Companies, which registers Cypriot trademarks, patents and industrial designs;
- the Land Registry, which maintains records of the holders of the legal title of real property, as well as records of all registrable interests on real property, including mortgages and charges;
- the Department of Merchant Shipping, which maintains the Register of Cyprus Ships where details of vessels registered under the Cypriot flag are recorded, including the registered owner, details of the vessel and any mortgages registered on the vessel;
- the Department of Civil Aviation, which maintains the Cyprus Aircraft Register where details of aircraft with Cypriot nationality are registered, including the owner and operator of the aircraft, and details of the aircraft;
- the Road Transport Department, which holds details of the regis tered holders of licensed vehicles in Cyprus; and
- the Ultimate Beneficial Owner (UBO) registry, which is maintained by the Registrar of Companies and stores information on the identity of the ultimate beneficial owner of a company registered in the Republic of Cyprus. It is noted that the Registrar stores in the registry the UBO information submitted by the companies without verifying them and without such information being otherwise independently verified. Following EU case law, public access to this register has been suspended; however, access will still be granted to law firms in the context of performing client due diligence for specific purposes, such as transactions for the sale of property.

Law stated - 3 September 2025

Cooperation with law enforcement agencies

9 Can information and evidence be obtained from law enforcement and regulatory agencies for use in civil proceedings?

There are no special rules or procedures for obtaining information and evidence from law enforcement and regulatory agencies for use in civil proceedings.

However, such evidence may be obtained through the normal routes of obtaining evidence in civil proceedings, such as by compelling witnesses to produce evidence at trial or through discovery proceedings pursuant to the Norwich Pharmacal jurisdiction.

Law stated - 3 September 2025

Third-party disclosure

10 | How can information be obtained from third parties not suspected of wrongdoing?

Third-party disclosure orders against innocent parties are available on the basis of the principle set out in the *Norwich Pharmacal* case.

A third-party disclosure order may be issued by a court when the following conditions are met:

- wrongdoing was carried out, or arguably carried out, by an ultimate wrongdoer;
- the disclosure order is necessary to enable an action to be brought against the ultimate wrongdoer; and
- the person against whom the order is sought must:
    - be involved to have facilitated the wrongdoing; and
    - be able, or likely to be able, to provide the information necessary to allow the ultimate wrongdoer to be sued.

Pursuant to the latest amendment of the Courts of Justice Law of 1960 (Law No. 14/1960), the district courts can now issue disclosure orders on a pre-action basis for the purposes of substantive court or arbitral proceedings to be filed either in Cyprus or abroad. However, the courts shall only issue interim orders for the purposes of court or arbitral proceedings that are taking place, or took place, or will take place outside Cyprus, where the following conditions are satisfied:

- the defendant is located in Cyprus;
- the property or assets in dispute are located in Cyprus; or
- there is another connection with Cyprus that makes it appropriate for the court to hear and determine the application.

Disclosure orders are normally sought together with gagging orders preventing the third party from notifying the ultimate wrongdoer of the disclosure proceedings and the prospective proceedings that may be brought against the ultimate wrongdoer.

Innocent third parties may also be compelled to give evidence as witnesses at trial.

Law stated - 3 September 2025

CIVIL ASSET RECOVERY – REMEDIES AND RELIEF

Interim relief

11 | What interim relief is available pre-judgment to prevent the dissipation of assets by, and to obtain information from, those suspected of involvement in the fraud?

Under section 32 of the Courts of Justice Law of 1960 (Law No. 14/1960), in exercising their civil jurisdiction district courts have a wide discretion to issue any interim order or appoint a receiver when it is just and convenient to do so, provided that the following conditions are satisfied by the applicant:

- there is a serious question to be tried at the hearing of the main proceedings;
- the applicant will probably obtain a favourable judgment in the main proceedings;
- there is a great risk that, if the order is not issued, it will be difficult or impossible to do justice at a later stage; and
- the balance of convenience is in favour of the applicant.

Following the latest amendment of the Courts of Justice Law of 1960 (Law No. 14/1960), the district courts' jurisdiction has been expanded so that they can hear applications for interim relief, before a claim is raised, or after a judgment on the merits is given, and with regards to any court or arbitration proceedings that are taking place, or took place, or will take place either in Cyprus or abroad.

However, the courts shall only issue interim orders for the purposes of court or arbitral proceedings that are taking place, or took place, or will take place outside Cyprus, where the following conditions are satisfied:

- the defendant is located in Cyprus;
- the property or assets in dispute are located in Cyprus; or
- there is another connection with Cyprus that makes it appropriate for the court to hear and determine the application.

The unfettered discretion of the district court to issue any order that it deems necessary has been acknowledged by the Supreme Court.

The following types of interim orders that prevent the dissipation of assets, pending the final hearing of the case, have been recognised and are frequently issued by courts. These are:

- worldwide freezing injunctions prohibiting the respondent from disposing of, dealing with or otherwise reducing the value of his or her assets, up to the value of the claim;
- Chabra orders prohibiting third parties who hold property belonging to the respondent, but against whom there is no cause of action, from disposing of, dealing with or otherwise diminishing the value of the assets of the respondent that are in their control or custody; and
- receivership orders for the appointment of a receiver to hold, protect and preserve the assets of the respondent where there is cogent evidence to suggest that this is necessary under the circumstances.

Regarding obtaining information from those suspected of involvement in fraud, the following types of orders have been recognised and are frequently issued by courts:

- ancillary disclosure orders for the disclosure of assets covered by freezing injunctions;
-

Norwich Pharmacal orders for the disclosure of information that is necessary for instituting further proceedings; and

- Anton Piller orders ordering a person to allow the applicant's lawyers, a supervising lawyer, experts (if necessary) and other assisting personnel to enter premises under his or her control to search, locate, collect and preserve evidence.

Law stated - 3 September 2025

Non-compliance with court orders

12 | How do courts punish failure to comply with court orders?

Failure to comply with a court order constitutes contempt of court. The court, following a finding of contempt of court, may order the imprisonment of, the sequestration of the assets or the payment of a fine by anyone who does not conform to a court order, including an interim order.

Courts have also been willing to issue debarring orders, known as unless orders, preventing a non-compliant defendant from pursuing his or her defence until he or she complies with a court order.

Furthermore, pursuant to the new Civil Procedure Rules of 2023, upon issuing an order, the court may determine the consequences for a party when failing to comply with the order (eg, costs).

Law stated - 3 September 2025

Obtaining evidence from other jurisdictions

13 | How can information be obtained through courts in other jurisdictions to assist in the civil proceedings?

A request by a Cypriot court to a foreign court for assistance in gathering evidence in that jurisdiction for civil proceedings pending in Cyprus may be made through letters rogatory or other letters of request, under the framework provided for in:

- Regulation (EU) 2020/1783 on cooperation between the courts of the member s tates in the taking of evidence in civil or commercial matters (where the foreign court is in an EU member state);
- the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in C ivil or Commercial Matters (where the foreign court is in a state that is a signatory of the convention); or
- any other relevant international treaty or bilateral convention ratified by Cyprus.

Furthermore, pursuant to Part 33 of the new Civil Procedure Rules, a Cyprus court may issue an order for a request for the examination of a witness in another country. The specialised process set out in Part 33 shall be followed where there is a convention in

force for this purpose between Cyprus and the country where the witness resides, which is not an EU member state.

Law stated - 3 September 2025

Assisting courts in other jurisdictions

14 What assistance will the civil court give in connection with civil asset recovery proceedings in other jurisdictions?

Civil courts in Cyprus may assist with civil asset recovery proceedings in other jurisdictions by granting interim protective measures in Cyprus in aid of those proceedings. Courts have been willing to issue interim protective measures in aid of foreign proceedings under provisions found in local and EU legislation, or other international treaties, expressly empowering the courts to do so (eg, article 35 of Regulation (EU) No. 1215/2012).

In addition, Courts of Justice Law of 1960 (Law No. 14/1960) as amended in 2023, now expressly provides courts with the power to grant interim protective measures in aid of foreign proceedings or in anticipation of foreign proceedings, including pre-action disclosure orders.

Courts may also assist with foreign proceedings by assisting in the gathering of evidence in Cyprus for the foreign proceedings, further to letters rogatory or other letters of request sent by the foreign court, pursuant to the provisions of the Foreign Courts (Evidence) Law, Cap.12.

With regard to requests for evidence by another EU court, the courts will follow the provisions of the EU Regulation 2020/1783 on the cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters and the specialised process in Part 33 to the extent that it is consistent with the provisions of the EU regulation.

Law stated - 3 September 2025

Causes of action

15 What are the main causes of action in civil asset recovery cases, and do they include proprietary claims?

Civil asset recovery cases are usually founded on causes of action in tort, contract and equity. The main causes of action in civil asset recovery cases are as follows:

- fraud: a cause of action founded in tort that covers statements and representations made fraudulently to defraud a claimant who was defrauded and as a result has suffered damage (codified under section 36 of the Civil Wrongs Law, Chapter 148);
- conspiracy to defraud (deceit): a cause of action founded in tort that covers situations where two or more persons have made an agreement, the real and predominant purpose of which was to injure the claimant and the execution of the agreement caused damage to the claimant by lawful means, or one of the purposes of

the agreement was to injure the claimant and the execution of the agreement caused damage to the claimant through unlawful means (common law tort of deceit acknowledged in *Christoforou v Barclays Bank Plc* [2009] 1 AAD 25);

- breach of contract: a cause of action founded in contract law that covers substantial breaches of agreements as a result of which the claimant has suffered damage (codified by the Contracts Law, Chapter 149);
- fraudulent misrepresentation: a cause of action founded in contract law that covers situations where the defendant has presented an untrue fact as true that caused the claimant to conclude the contract (codified under section 18 of the Contracts Law, Chapter 149);
- breach of fiduciary duty and trust: a cause of action founded in equity that involves the breach of a fiduciary relationship between the claimant and the fiduciary, whether a trustee or another professional, which caused damage to the claimant as a result (codified under the Trustee Law, Chapter 193); and
- action for unjust enrichment: a cause of action that applies where the defendant has enriched himself or herself at the claimant's expense (usually failing a contract between the parties) and the enrichment is in all circumstances unjust (codified by sections 64–65 of the Contracts Law, Chapter 149; sections 68–72 of the Contracts Law, Chapter 149).

Equitable causes of action such as breach of trust may entitle the claimant to proprietary remedies.

Law stated - 3 September 2025

Remedies

16 | What remedies are available in a civil recovery action?

In a civil recovery action, the usual remedy is an award for damages for the losses suffered. Punitive damages may also be awarded at the discretion of the court, depending on the facts of the case.

Where damages are inadequate in all circumstances, perpetual injunctive relief that prohibits the defendant from engaging in certain practices, or mandatory and specific performance orders for the performance of an action, may be issued.

As an alternative to the court awarding remedies to compensate the loss suffered by the claimant, the court may order the restitution of any gains, benefits and profits received by the defendant to the claimant, in an appropriate case where it deems this suitable and fair.

Apart from remedies granted in personam, courts, under their proprietary jurisdiction, may issue tracing orders for the recovery of property owned by the claimant, or impose a constructive trust over a property for his or her benefit.

Furthermore, declaratory judgments may be issued on the rights and interests of the claimant, or obligations and liabilities of the defendant.

Law stated - 3 September 2025

Judgment without full trial

17 | Can a victim obtain a judgment without the need for a full trial?

A default judgment may be issued against a defendant for failure to file an appearance or a statement of defence in an action. Before entering a default judgment, the claim shall normally be proved before the court, usually by the submission of an affidavit attaching all relevant exhibits.

Summary judgment is generally available in civil actions where the defendant does not satisfy the court that he or she has an arguable defence to the action on the merits and there is no other compelling reason why the case should be decided further to a full trial.

However, a summary judgment is generally unavailable where fraud is alleged by the claimant.

Law stated - 3 September 2025

Post-judgment relief

18 | What post-judgment relief is available to successful claimants?

Courts have wide discretion to issue any order, pending the execution of the judgment, including freezing injunctions, disclosure orders and orders for the appointment of a receiver.

While this has been acknowledged by the Supreme Court for a while, pursuant to Courts of Justice Law of 1960 (Law No. 14/1960), as recently amended, courts have now express power and jurisdiction to issue an interim relief post judgment.

The jurisdictional basis for issuing interim orders post-judgment is the same as for the issuance of interim orders prejudgment. Accordingly, courts need to be satisfied that the necessary conditions have been met and that it is just and convenient in all circumstances for the interim orders to be issued.

Courts also have been willing, upon the issuance of a final judgment in proceedings, to extend prejudgment interim orders (that would otherwise be automatically cancelled) post-judgment in aid of execution.

Law stated - 3 September 2025

Enforcement

19 | What methods of enforcement are available?

A money judgment may be enforced in one or more of the following ways:

- writ of movables: permits the seizure of movable property owned by the judgment debtor, which may then be sold to satisfy the judgment debt;
- writ of attachment (garnishee proceedings): attaches funds or property held by a third party on behalf or for the benefit of the judgment debtor (eg, deposits in bank accounts), and orders the third party to pay the same to the judgment creditor against the judgment debt;
- memo: registration in the Land Registry of the judgment as a legal charge on the title of immovable property located in Cyprus and owned by the judgment debtor that requires the settlement of the judgment debt upon the sale of the property;
- writ of sale: orders the sale of immovable property located in Cyprus and owned by the judgment debtor to apply the sale proceeds towards the judgment debt;
- charging order: attaches shares owned by the judgment debtor in a Cyprus company while an order for the sale of shares in satisfaction of the judgment debt is normally ordered simultaneously;
- order for the appointment of a receiver by way of equitable execution: orders a receiver to hold, preserve and ultimately sell in satisfaction of the judgment debt property owned by the judgment debtor, which is available where the ordinary means of execution fail, such as in cases where the judgment debtor is not the legal but rather the beneficial owner of the property; and
- application for examination of judgment debtor: orders the judgment debtor to attend the court for examination to ascertain the amount he or she can pay per month in satisfaction of the judgment debt while an order for the repayment of the judgment debt through monthly instalments may be made thereafter.

A money judgment may be enforced outside the jurisdiction against property situated abroad under the provisions of Regulation (EU) No. 1215/12, by way of a European Enforcement Order under the provisions of Regulation (EU) No. 805/2004, by way of a European Order for Payment under the provisions of Regulation (EU) No. 1896/2006, or under the provisions of another international treaty or convention ratified by Cyprus.

Law stated - 3 September 2025

Funding and costs

20 What funding arrangements are available to parties contemplating or involved in litigation and do the courts have any powers to manage the overall cost of that litigation?

Funding of litigation proceedings is normally undertaken by the parties. A lawyer may negotiate the legal fees of litigation proceedings and can reach any special arrangement or retainer freely with his or her client.

The permissibility of conditional or contingency fee agreements and damages-based agreements has not yet been examined by the courts; however, those arrangements are in general not permissible because they are incompatible with the equitable principle against champerty (namely, an agreement where a person who maintains an action takes, as a

reward, a share in the property recovered in the action). Accordingly, lawyers involved in the conduct of litigation may be precluded from taking a share in the property recovered in the action under a conditional fee agreement or a damages-based arrangement.

Similarly, third-party funding is not available in Cyprus because of the application of the aforementioned principle of champerty, which, coupled with the principle of 'maintenance', aims to restrict the selling and funding of litigation. (The principle of 'maintenance' precludes a person from maintaining a case without just cause or excuse.) On that basis, third-party funding and assignment of a cause of action are not permissible.

However, the matter is not regulated and there is no case law or other precedent on the above.

There is also no regulated framework or availability of after-the-event insurance.

Where a party is in financial difficulty in funding litigation proceedings, it may apply to the court for legal aid. However, such an application can only be made in criminal cases, family cases and cases on the infringement of human rights.

For actions filed before 1 September 2023, courts do not have any cost-management powers other than the power to make costs orders at the end of the proceedings or stages in the proceedings. Under the new Civil Procedure Rules, the cost management powers of the courts have been expanded, in the context of managing a case fairly and in proportion both in time and costs to its complexity, subject matter and value. In addition, courts may also award costs as a means of sanctioning a party who has failed to comply with an order or directions.

Courts in general have wide discretion and power to grant different awards; however, the general rule is that the losing party must bear the costs of the proceedings.

Costs orders are made based on fixed-fee scale rules that apply depending on the financial value of the claim. The rules set out in detail the minimum and maximum costs for each particular step and describe the service provided throughout the proceedings.

Costs recoverable under the court scales usually only cover a small portion of the actual costs incurred in the litigation as legal fees. This applies especially in commercial litigation and civil asset tracing actions where the value of the claim is very high and the work to be undertaken is substantial and complex.

Law stated - 3 September 2025

CRIMINAL ASSET RECOVERY – LEGAL FRAMEWORK

Interim measures

21 | Describe the legal framework in relation to interim measures in your jurisdiction.

The legal framework for the issuance of interim measures in criminal proceedings before courts is founded in the Prevention and Suppression of Money Laundering Activities Law of 2007 (Law No. 188(I)/2007) and the Criminal Procedure Law, Chapter 155.

The Prevention and Suppression of Money Laundering Activities Law sets the framework for issuing interim freezing and charging orders concerning the realisable assets of a person where criminal proceedings for the commission of a primary offence or a money laundering offence (as defined in the legislation) have commenced or are about to commence against him or her in Cyprus; or, where the Unit for Combating Money Laundering and Financial Intelligence Unit of Cyprus (MOKAS) has information that creates a reasonable suspicion that criminal proceedings for the commission of a primary offence or a money laundering offence can commence or have commenced against him or her in Cyprus, an EU member state or in a foreign country, and in either case, the court is satisfied that there is reasonable cause to believe that he or she has gained benefit from the commission of a primary offence or a money laundering offence.

Freezing injunctions prohibit any transactions with or any disposals of the realisable property or specified property, or both, of the person against whom the order was issued. Charging orders create a charge over the interest of the person against whom the order was issued in specified realisable property, comprising real property, stocks in Cyprus, property under trust, units under trust in Cyprus or funds in court.

At any time after the issuance of a freezing order or a charging order, the court may appoint a receiver to take possession, manage or otherwise deal with the property affected by the freezing order.

At any time after the issuance of a freezing order, the realisable property may be confiscated so that its transfer or moving outside Cyprus is prevented.

Furthermore, following an application from a public interrogator, the court may issue a disclosure order for the provision of information concerning an offence under investigation, including information relating to the recovery of proceeds of crime.

Law stated - 3 September 2025

Proceeds of serious crime

22 | Is an investigation to identify, trace and freeze proceeds automatically initiated when certain serious crimes are detected? If not, what triggers an investigation?

A court that has convicted a person for a specified crime but that has not yet imposed a penalty for the conviction, further to a relevant application by the Office of the Attorney General, investigates whether the defendant has obtained any proceeds from illegal acts or the commis sion of a money laundering offence.

The Office of the Attorney General has the discretion to decide whether to apply for an investigation. The investigation is not triggered automatically for specified offences.

Law stated - 3 September 2025

Confiscation – legal framework

23 | Describe the legal framework in relation to confiscation of the proceeds of crime, including how the benefit figure is calculated.

The Prevention and Suppression of Money Laundering Activities Law provides the legal framework that regulates the confiscation of the proceeds of crime.

A confiscation order is issued regarding the product of a specified offence, which is in the possession of the defendant or a third party, or the defendant's proceeds from illegal acts or the commission of a money laundering offence, or both. The product of an offence is the financial advantage deriving directly or indirectly from a specified offence, including any investment or conversion of products and any major gain. Proceeds of the defendant from illegal acts or the commission of a money laundering offence are the total amount of remuneration or payments that have been paid towards the defendant, or the product of the illegal acts or proceeds from illegal acts, including any investment or conversion of products and any major gain.

In ascertaining the amount of income obtained as a result of the commission of illegal acts or the commission of a money laundering offence, the court will assume, unless the contrary is proved or the court considers that there is a serious risk of injustice against the defendant to so assume, the following:

- that any property obtained by the defendant after the commission of that offence, or obtained during the preceding six years before the commencement of the criminal proceedings against him or her, constitutes income, payment or remuneration from illegal acts or the commission of a money laundering offence;
- that any property obtained by the defendant (as under the first bullet point) was obtained by him or her free of any charge or interest for the benefit of any other person; and
- that any expenditure the defendant incurred during the six-year period (as in the first bullet point) was paid from the income, payment or remuneration the defendant obtained from illegal acts or the commission of a money laundering offence.

However, if the court considers that the amount of the defendant's property that can be realised is less than the amount that the court has calculated as proceeds from illegal acts or the commission of a money laundering offence, then the amount to be confiscated shall be the amount that can be obtained from the defendant's realisable property, including property in which the defendant has an interest or right and property of another person that the defendant has donated or transferred to that other person illegally.

Law stated - 3 September 2025

Confiscation procedure

24 | Describe how confiscation works in practice.

Upon the conviction of a defendant, the Office of the Attorney General may apply to the court for an investigation of the defendant's proceeds from illegal acts or the commission of a money laundering offence, together with a report providing facts and evidence relevant to the defendant's proceeds, or the product of the illegal acts or the commission of a money laundering offence.

The defendant may dispute or admit the content of the report submitted by the Office of the Attorney General. If the defendant disputes the report, he or she will be required to submit a report in response, detailing the reasons for the dispute and presenting evidence relevant to the amount that may be confiscated from his or her realisable property.

The court may then fix a date to conduct the investigation.

Upon the conclusion of the investigation, the court issues a relevant judgment. If the court concludes that the defendant has obtained proceeds from the commission of illegal acts or a money laundering offence, it shall issue a confiscation order before imposing a penalty on the defendant.

Law stated - 3 September 2025

Agencies

25 What agencies are responsible for tracing and confiscating the proceeds of crime in your jurisdiction?

The agency responsible for receiving, requesting and analysing suspicious transactions and other information relevant to money laundering is MOKAS. It provides the police and other governmental authorities with information whenever deemed necessary. Powers conferred on MOKAS by the Prevention and Suppression of Money Laundering Activities Law include conducting searches for locating and tracing the proceeds of crime and other property that may be the subject of a confiscation order.

If timely payment under the confiscation order is not effected by the defendant, the court may appoint a receiver, upon the application of the public prosecutor, to take possession of, or realise or liquidate the product of the illegal acts or the property subject to the confiscation order, or both.

Law stated - 3 September 2025

CRIMINAL ASSET RECOVERY – CONFISCATION

Secondary proceeds

26 Is confiscation of secondary proceeds possible?

The criminal confiscation regime is a value-based system, as a confiscation order does not attach particular assets or property received by the defendant. The process is rather that the court calculates the value of the benefit the defendant received from illegal acts and issues a confiscation order to confiscate any available property of the defendant equalling the value of this benefit.

To establish the value of the benefit received by the defendant from illegal acts, the court will consider any reinvestment or conversion of proceeds and any valuable gain for the defendant as a result of the commission of a crime.

Law stated - 3 September 2025

Third-party ownership

27 | Is it possible to confiscate property acquired by a third party or close relatives?

Any property of the defendant that was unlawfully transferred or gifted to a third party or a member of the defendant's family is subject to confiscation.

Property is regarded as being unlawfully transferred or gifted in circumstances:

- where the defendant has transferred the property as a gift (or for consideration that is significantly less than the real value of the property) to a third party during the past six years before the commencement of the criminal proceedings against him or her, or at any time after the commencement of the criminal proceedings against him or her;
- where the defendant has transferred as a gift (or for consideration that is significantly less than the real value of the property) to a third-party property that the defendant has previously accepted as a gift or otherwise for the commission of a primary criminal offence, which was committed by himself or herself or another; or
- where the defendant has transferred the product of crime, directly or indirectly, to another who knows or ought to have known that the purpose of the transfer was to avoid the confiscation of that property, and this can be inferred from particular circumstances, including that the transfer was effected without consideration or with consideration that was significantly lower than the market price of the property.

If no sufficient explanations have been provided for how members of the defendant's family acquired certain property during a summary inquiry process for ascertaining the benefit received by the defendant as proceeds of crime, the court is entitled to assume that any property owned by the defendant's family for which no sufficient explanations were provided, and that was transferred to members of the defendant's family during the preceding six years before the commencement of the criminal proceedings against the defendant, has been transferred to them from the defendant as gifts to avoid the law.

Law stated - 3 September 2025

Expenses

28 | Can the costs of tracing and confiscating assets be recovered by a relevant state agency?

The costs of the Unit for Combating Money Laundering and Financial Intelligence Unit of Cyprus for receiving, requesting and analysing suspicious transactions and tracing proceeds of crime, inter alia, to apply for confiscation orders are not recoverable.

Costs of the court-appointed receiver to execute a confiscation order if the defendant does not comply with it are paid with priority from the property confiscated by the receiver during the execution of the confiscation order.

In the event that the receiver's fee cannot be fully paid from the confiscated property, the payment will be arranged by the Republic of Cyprus.

Law stated - 3 September 2025

Value-based confiscation

29 | Is value-based confiscation allowed? If yes, how is the value assessment made?

The criminal confiscation regime is a value-based system, as a confiscation order does not attach particular assets or property received by the defendant. The process is rather that the court calculates the value of the benefit the defendant received from the illegal acts and issues a confiscation order for the confiscation of any available property of the defendant equalling the value of this benefit.

To establish the value of the benefit received by the defendant from the illegal acts, the court will consider any reinvestment or conversion of proceeds and any valuable gain the defendant obtained as a result of the commission of a crime.

Law stated - 3 September 2025

Burden of proof

30 | On whom is the burden of proof in a procedure to confiscate the proceeds of crime? Can the burden be reversed?

Generally, the burden of proof in a procedure to confiscate the proceeds of crime rests on the Office of the Attorney General.

However, there is a rebuttable presumption that any property obtained by a defendant after the commission of an offence, or during the preceding six years before the commencement of the criminal proceedings against him or her, constitutes income, payment or remuneration from the commission of the offence. Therefore, the Office of the Attorney General bears the burden of proving that the property was obtained by the defendant after the commission of the offence or during the preceding six years before the commencement of the criminal proceedings against him or her; following which, the defendant bears the burden of proving that the property in question does not constitute proceeds from crime, that it would be unjust for the above presumption to apply or that his or her realisable property is less than the proceeds that he or she received from the commission of the crime.

Law stated - 3 September 2025

Using confiscated property to settle claims

31 May confiscated property be used in satisfaction of civil claims for damages or compensation from a claim arising from the conviction?

In general, confiscated property cannot be used in satisfaction of civil claims for damages or compensation from a claim arising from the conviction. At the same time, the issuance of a confiscation order does not preclude the victim or the complainant from raising a civil claim for damages against the defendant. However, the Office of the Attorney General may not apply for confiscation or proceed with the execution of a confiscation order where the victim or the complainant has raised civil proceedings for damages against the defendant.

Law stated - 3 September 2025

Confiscation of profits

32 Is it possible to recover the financial advantage or profit obtained through the commission of criminal offences?

Financial advantage or profit obtained as a result of the commission of a criminal offence for which the defendant was convicted may be subject to confiscation.

Law stated - 3 September 2025

Non-conviction based forfeiture

33 Can the proceeds of crime be confiscated without a conviction? Describe how the system works and any legal challenges to in rem confiscation.

A non-conviction confiscation order may be made where the suspect cannot appear in court upon being charged with a specified crime by reason of fleeing or illness.

In addition, a non-conviction confiscation order may be made where a suspect is outside the jurisdiction or deceased and has not appeared in court further to a retention of property order being issued against him or her. A confiscation order is issued in that case provided that the prosecution has made reasonable efforts to find the suspect and opportunity has been given to any interested party to set out his or her views in court on the confiscation order to be issued.

It is noted that a retention of property order is issued against a suspect who is outside the jurisdiction or deceased, upon the application of the Attorney General, where the court is satisfied that there is prima facie proof against the suspect that he or she has committed a specified offence and his or her property may be converted or transferred or moved outside Cyprus to hide or cover up its illegal origin.

There is no legal framework for in rem confiscation.

Law stated - 3 September 2025

Management of assets

34 After the seizure of the assets, how are they managed, and by whom? How does the managing authority deal with the hidden cost of management of the assets? Can the assets be utilised by the managing authority or a government agency as their own?

The court may appoint a receiver, upon the application of the public prosecutor, to take possession of, or realise or liquidate the product of the illegal acts or the property subject to the confiscation order, or both, including to receive any realisable property of the defendant held by a third party and to execute a charging order by disposing of, selling or liquidating the property subject to the charging order. Accordingly, the property confiscated is under the management of the court-appointed receiver who holds, manages, sells and liquidates it.

Cyprus stocks may only be sold upon a relevant court order further to an application by the prosecution authority or the court-appointed receiver, by means of public auction (unless the court orders otherwise).

After the conclusion of the liquidation process, the funds held by the receiver are applied against the amount payable under the confiscation order, provided the fees and expenses of the receiver are paid, including the expenses for the management of the property. If the funds liquidated are not sufficient to satisfy the fees and expenses of the court-appointed receiver, the government pays the fees.

Law stated - 3 September 2025

CRIMINAL ASSET RECOVERY – CROSS-BORDER ISSUES

Making requests for foreign legal assistance

35 Describe your jurisdiction's legal framework and procedure to request international legal assistance concerning provisional measures in relation to the recovery of assets.

Under the Prevention and Suppression of Money Laundering Activities Law of 2007 (Law No. 188(I)/2007), freezing, charging and confiscation orders issued by Cypriot courts concerning property located in a country outside Cyprus are transmitted to the competent authorities of that country for execution or service by the Unit for Combating Money Laundering and Financial Intelligence Unit of Cyprus (MOKAS) through the Ministry of Justice.

Regarding EU member states, the relevant order should be transmitted together with a prescribed form and can be transmitted directly by MOKAS to the relevant foreign authorities. In addition, freezing and confiscation orders falling within the scope of Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders are transmitted, recognised and enforced in a straightforward manner in accordance with the Regulations' detailed provisions.

Law stated - 3 September 2025

Complying with requests for foreign legal assistance

36 Describe your jurisdiction's legal framework and procedure to meet foreign requests for legal assistance concerning provisional measures in relation to the recovery of assets.

The Prevention and Suppression of Money Laundering Activities Law of 2007 (Law No. 188(I)/2007) provides that an order of a foreign court for confiscation, freezing or retention of assets may be enforced in Cyprus pursuant to international conventions in which Cyprus is a party, following an application for enforcement submitted by the requesting state to the Ministry of Justice. The Ministry of Justice then forwards the application to MOKAS, which may then submit the order to a Cypriot court for recognition and registration if it deems that all relevant conditions are met. Upon the registration of the order, it becomes enforceable within the jurisdiction as if it was issued by a Cyprus court.

Regarding EU member states, the relevant order of a foreign court should be transmitted together with a prescribed form and can be transmitted directly to MOKAS by the relevant foreign authorities. In addition, freezing and confiscation orders falling within the scope of Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders are transmitted, recognised and enforced in a straightforward manner in accordance with the Regulations' detailed provisions.

Special procedures for requests for legal assistance may apply to other specified states, following bilateral or international conventions, which supersede the provisions of national law.

Law stated - 3 September 2025

Treaties

37 To which international conventions with provisions on asset recovery is your state a signatory?

Cyprus is a signatory to the following international conventions:

- the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988;
- the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime 1990;
- the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism 2005;
- the United Nations Convention against Transnational Organized Crime 2000;
- the United Nations Convention against Corruption 2003;
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the treaty between the government of Cyprus and the government of the United States of America on Mutual Legal Assistance in Criminal Matters, 20 December 1999;

- the International Convention for the Suppression of the Financing of Terrorism, 9 December 1999;
- the European Criminal Law Convention on Corruption 1999; and
- the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, 30 December 2020 and specifically Part Three, Title XI.

Cyprus, as a member of the European Union, is also bound by a number of EU regulations and directives with provisions on asset recovery.

Law stated - 3 September 2025

CRIMINAL ASSET RECOVERY – PRIVATE PROSECUTIONS

Private prosecutions

38 | Can criminal asset recovery powers be used by private prosecutors?

Criminal asset recovery powers cannot be used by private prosecutors. The Prevention and Suppression of Money Laundering Activities Law of 2007 (Law No. 188(I)/2007) grants extensive powers to the Unit for Combating Money Laundering and the Unit of Financial Information to receive, request and analyse suspicious transactions and other information relevant to money laundering in Cyprus, including conducting investigations and exchanging information with government bodies and the police. Furthermore, applications for the issuance of confiscation orders may only be made by the Office of the Attorney General, whereas asset disclosure orders may only be obtained following a public prosecutor's request.

Law stated - 3 September 2025

UPDATE AND TRENDS

Emerging trends

39 | Are there any emerging trends or hot topics in civil and criminal asset recovery in your jurisdiction?

First, the European Council adopted on 12 April 2024 a proposal for a Directive on Asset Recovery and Confiscation, which sets out the minimum rules on tracing, identification, freezing, confiscation and management of assets within the framework of proceedings in criminal matters on an EU level.

Second, within the framework of the wider initiative for justice reform in Cyprus, a number of reforms have already been implemented that affect asset recovery exercises.

In that context, the Civil Procedure Rules have undergone a major revision in an effort to enable the courts to manage civil cases fairly and efficiently. The new Civil Procedure Rules were approved by the Supreme Court in May 2021 and apply to all civil proceedings filed from 1 September 2023.

Additionally, following the latest amendment of the Courts of Justice Law of 1960 (Law No. 14/1960), the district courts' jurisdiction has been expanded so that they can hear applications for interim relief, even before a claim is raised, and with regards to any court or arbitration proceedings that are taking place, or took place, or will take place either in Cyprus or abroad. As a result, the Cyprus courts' 'armoury' in cross-border asset recovery cases has been substantially strengthened by enabling the Cyprus courts to issue orders for the identification and preservation of assets in Cyprus, regardless of the jurisdiction where the substantive proceedings take place or will take place.

Furthermore, the two-tier court system has been replaced from 1 July 2023 by a three-tier court system, with the establishment of the new Court of Appeal and the division of the old Supreme Court to the Supreme Constitutional Court and the current Supreme Court. The new Court of Appeal acts as an appellate court with jurisdiction to hear and decide on appeals from first-instance courts while appeals from the Court of Appeal will be made either to the new Supreme Court or the new Supreme Constitutional Court, depending on the nature of the matter to be decided, provided an issue of public interest or importance arises or this is required in view of conflicting case law.

Lastly, the Commercial Court was established through the enactment of the Establishment and Operation of the Commercial Court and Maritime Court Law of 2022 (Law No. 69(I)/2022) in May 2022 and is due to commence operation in the next months.

The Commercial Court will hear commercial claims with a value of over €2 million, including disputes relating to, inter alia, the following:

- business contracts;
- the provision of services;
- the operation of capital markets;
- commercial agency; and
- disputes between regulated entities.

The Commercial Court will also have jurisdiction to try all cases relating to arbitration, competition and intellectual property, irrespective of the value of the claim.

Pursuant to the Establishment and Operation of the Commercial Court and Maritime Court Law of 2022 (Law No. 69(I)/2022) establishing the Commercial Court, litigants may elect to confer jurisdiction to the Commercial Court even where the dispute has no connection to Cyprus while proceedings before the Commercial Court may be conducted in the English language.

Hence, the Commercial Court is expected to take up a large volume of commercial cases with cross-border characteristics, within the framework of which applications for interim orders are usually pursued for asset recovery purposes.

Law stated - 3 September 2025

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CIVIL ASSET RECOVERY – JURISDICTIONAL ISSUES

Parallel proceedings

1 | Is there any restriction on civil proceedings progressing in parallel with, or in advance of, criminal proceedings concerning the same subject matter?

No. However, civil proceedings may be suspended until a final judgment in the criminal proceedings is issued.

Law stated - 8 September 2025

Forum

2 | In which court should proceedings be brought?

A victim of fraud may file an action in tort against the defendant with the competent court of first instance seeking restitution for the loss or damage sustained (article 914 et seq of the Greek Civil Code (GCivC)).

The general rule lies with the jurisdiction of the courts of the defendant's place of residence (article 22 of the Greek Code of Civil Procedure (CCivPr)) or, concurrently in the case of tort (article 35 of the CCivPr), of the courts of the location where the damaging incident took place or where such damaging effect is threatened.

Concerning the monetary value of the claim, as a general rule, Greek courts of first instance are divided into the following:

- courts of small claims: hearing disputes up to €20,000;
- single-member courts of first instance: hearing disputes from €20,000 to €250,000; and
- multi-member courts of first instance: hearing disputes exceeding €250,000.

Law stated - 8 September 2025

Limitation

3 | What are the time limits for starting civil court proceedings?

The right of the defrauded party to issue civil court proceedings lapses five years after the claimant has acquired knowledge of the commission of the fraudulent act, and the party is liable for compensation. Furthermore, the claim is prescribed after 20 years from the date the wrongful act was committed. If the fraudulent act also constitutes a criminal offence, which is subject to a longer limitation period, preclusion of the civil claims follows the latter (article 937 of the GCivC). The limitation period of the civil action is interrupted after filing said action with the competent court of first instance.

Law stated - 8 September 2025

Jurisdiction

4 | In what circumstances does the civil court have jurisdiction? How can a defendant challenge jurisdiction?

Although the court may decide on its own initiative regarding matters of jurisdiction, the defendant may challenge jurisdiction by filing an objection during the stage of the filing of the pleadings.

Law stated - 8 September 2025

CIVIL ASSET RECOVERY – PROCEDURE

Time frame

5 | What is the usual time frame for a claim to reach trial?

According to the Greek Code of Civil Procedure (CCivPr), the claimant has to serve the civil complaint on the defendant within 30 days of its submission to the competent court. Should the defendant reside abroad or his or her address is unknown, the deadline is 60 days.

Following the submission of the civil complaint, a period of 100 days is granted to the parties to file their pleading, as well as all supporting evidence. For defendants residing abroad, the deadline is 130 days.

After the expiry of the above-mentioned deadline for the pleadings, the parties are granted 15 additional days to file their rebuttals. After the expiry of the rebuttals' deadline, the case file is considered complete and a judge is assigned to the case.

Within 30 days of the assignment of a judge, a trial date is set.

Law stated - 8 September 2025

Admissibility of evidence

6 | What rules apply to the admissibility of evidence in civil proceedings?

All information obtained lawfully may constitute means of proof and be used as such in civil proceedings before the courts. The general principle is that evidence must be relevant to the case under consideration and focus on the factual basis of the civil action (article 335 of the CCivPr). Means of proof under article 339 of the CCivPr are as follows:

- the confession of a litigant;
- the inspection of premises;

- the experts' reports;
- the witnesses and their testimonies before the courts;
- the examination of litigants;
- the documents;
- the judicial presumptions; and
- the sworn written testimonies.

The evaluation of evidence is made freely by the court, except for facts stated in public documents or facts confessed by litigants, which are accepted as true. The court may weigh the specific means of evidence in any way it deems proper to reach its ruling (article 340 of the CCivPr). Moreover, the civil court's decision must expressly state the reasons that led the judge to reach his or her ruling.

Law stated - 8 September 2025

Witnesses

7 | What powers are available to compel witnesses to give evidence?

Witnesses cannot be compelled to provide evidence in civil proceedings.

Law stated - 8 September 2025

Publicly available information

8 | What sources of information about assets are publicly available?

The Land Registry, which includes the following:

- mortgage offices (in mortgage offices, a property cannot be located by its address, but it is registered under the name of the owner of the property because properties are registered based on the legal titles (contracts) regarding their transfer); and
- cadastre offices (these are gradually replacing mortgage offices).

The General Commercial Registry (GEMH) was established by Law No. 3419/2005 to promote transparency when conducting a commercial activity, which includes corporate information on all types of companies registered with the GEMH such as corporate information on the registration, corporate status, articles of association, existing directors and their duties, annual financial statements, etc. Older information is still available through corporate announcements made in the Greek Government Gazette.

The Trademark Registry is accessible through the competent office of the Ministry of Development.

Law stated - 8 September 2025

Cooperation with law enforcement agencies

9 Can information and evidence be obtained from law enforcement and regulatory agencies for use in civil proceedings?

Evidence from law enforcement and regulatory agencies may be obtained for use in civil proceedings. The litigant must file a request in which he or she has to specify the reasons for which he or she is interested in obtaining the evidence. Permission shall be granted by the prosecutor and the investigating judge, or by the president of the court (article 147 of the Greek Code of Criminal Procedure), on the condition that the litigant proves that he or she has a legal interest in obtaining such evidence.

Moreover, if the litigant is a party to criminal proceedings and has access to documents of the case file, he or she may in, principle, use this evidence in civil proceedings.

Law stated - 8 September 2025

Third-party disclosure

10 How can information be obtained from third parties not suspected of wrongdoing?

A litigant may file an application with the court for the presentation of a specific document by another litigant or a third party (article 450 et seq of the CCivPr). The party applying shall expressly and in great detail specify in its application the document, whose disclosure is sought. An order granting or dismissing the application is issued by the competent court.

Law stated - 8 September 2025

CIVIL ASSET RECOVERY – REMEDIES AND RELIEF

Interim relief

11 What interim relief is available pre-judgment to prevent the dissipation of assets by, and to obtain information from, those suspected of involvement in the fraud?

In urgent circumstances, even before or after the commencement of ordinary proceedings, a claimant having legal interest may apply for an interim injunction or provisional order, seeking freezing of movable or real estate assets, or rights in rem over such assets, as well as claims with respect to them, such as mandatory injunctions, prohibitory injunctions and interim payments (articles 683 et seq, 691 et seq and 707 et seq of the Greek Code of Civil Procedure (CCivPr)).

The range of such injunctions is wide, thus empowering the judge to shape them in the manner most appropriate for each particular case. Interim injunctions and provisional orders are granted upon application of the claimant to the single-member court of first instance, whereas provisional orders may also be issued ex parte, even without the service of a notice to the opposing litigant. Injunctions that are granted prior to the commencement

of ordinary proceedings automatically cease to exist unless an action is filed by the claimant within 30 days or within the time frame set by the court.

Law stated - 8 September 2025

Non-compliance with court orders

12 | How do courts punish failure to comply with court orders?

Failure to comply with court orders may constitute a separate offence depending on the nature of each case or provide a basis for damages.

In particular, according to article 169A of the Greek Criminal Code (GCC), anyone who intentionally fails to comply with a temporary order of a prosecutor or court that was issued on matters related to real estate possession or to family law can be punished by up to three year's imprisonment or by pecuniary penalty.

Moreover, under Article 259 of the GCC, a public official who fails to comply with a court order for the benefit of himself, herself, or a third party may be punished by up to two years' imprisonment or a pecuniary penalty.

Article 397 of the GCC protects against a defendant who tries to conceal, transfer, destroy, etc, his or her property to prevent the enforcement of a judgment. According to this article, a debtor who acts to frustrate, in whole or in part, the satisfaction of his or her debt by damaging, destroying, transferring without value, concealing or appropriating without equivalent and marketable collateral any of his or her property, or who creates false debits of false contracts, shall be punished by imprisonment of up to two years or by pecuniary penalty. In cases of serious financial damage caused by these acts, the debtor shall be punished by imprisonment of at least two years and a pecuniary penalty.

Law stated - 8 September 2025

Obtaining evidence from other jurisdictions

13 | How can information be obtained through courts in other jurisdictions to assist in the civil proceedings?

Judicial cooperation in civil matters is based on multilateral or bilateral transnational agreements or EU regulations. Greece is a signatory state to multilateral agreements within the scope of international organisations, such as the United Nations, the Council of Europe and the Hague Convention. In this case, the Ministry of Justice operates as the competent authority that exchanges information in the field of civil law, acts as an intermediary authority for providing judicial assistance and facilitates the commencement and continuation of judicial procedures.

Evidence located in foreign jurisdictions shall be obtained through the following instruments:

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Council Regulation (EC) No. 1206/2001 on cooperation between the courts of the member states in the taking of evidence in civil or commercial matters; and

- the Hague Convention of 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters.

Greece is also a party to numerous bilateral agreements with other states regarding civil matters.

Law stated - 8 September 2025

Assisting courts in other jurisdictions

14 What assistance will the civil court give in connection with civil asset recovery proceedings in other jurisdictions?

Recognition and enforcement of foreign judgments in Greece are governed by three legal frameworks. These are:

- EU regulations, for judgments issued in EU member states;
- bilateral international conventions between Greece and other countries, ratified by Greek parliament for judgments issued by courts of those countries; and
- the provisions of the CCivPr for judgments from all other countries.

EU regulations

Greece, as an EU member, is a party to and bound by the following EU regulations in the field of judicial cooperation in civil matters:

- Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;
- Regulation (EC) No. 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (EEO Regulation); and
- Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European Order for Payment procedure (EOP Regulation).

Judgments and payment orders issued in another EU member state and falling within the scope of application of the above regulations are automatically recognised in Greece and are declared enforceable under the Regulations' provisions. Reasons that would bar enforceability of such judgments in Greece are strictly those mentioned in the above regulations. Recognition and enforcement of foreign judgments based on the EEO Regulation and the EOP Regulation are also made following the relevant provisions included therein.

Other foreign judgments

The recognition and enforcement of judgments issued in countries with which Greece has a bilateral convention regarding enforcement of judgments or countries with which Greece has not entered into such a bilateral convention are provided for in articles 323, 904 and 905 of the CCivPr.

Article 904(f) of the CCivPr provides that foreign judgments are enforceable in Greece, provided that they are declared enforceable by the competent single-member court of first instance under article 905 of the CCivPr. A foreign judgment is not declared enforceable in Greece unless the following apply:

- it is a title of enforcement in the country of issuance;
- it does not violate the Greek rules of public order; and
- it meets the requirements of article 323 of the CCivPr as follows:
    - it constitutes res judicata in the country of issuance;
    - the defeated litigant was not deprived of its right to a fair trial unless such deprivation was done based on the applicable foreign procedural law that does not discriminate in favour of its nationals; and
    - the foreign judgment is not contradictory to a previous decision of a Greek court that constitutes res judicata between the same litigants in the same dispute.

Law stated - 8 September 2025

Causes of action

15 What are the main causes of action in civil asset recovery cases, and do they include proprietary claims?

In most civil asset recovery cases, the victim may file an action in tort against the defendant with the competent court of first instance, seeking restitution of the loss or damage sustained (article 914 et seq of the Greek Civil Code). There is no fixed claim form and the content of an action in tort is determined by the claimant, provided that it meets the requirements defined in the CCivPr (articles 118 and 216). To this effect, an action in tort should at least contain the names and addresses of the litigants, the court to which it is addressed and the particulars of the claim (namely, factual allegations) that, if proved, would establish the action against the defendant along with the prayer for the relief sought. In the case of monetary claims, the action should also contain a statement of value. For an action in tort to be granted in favour of the claimant, the latter should expressly allege that the defendant acted in a liable manner (namely, under wilful default or negligence) and that the damage sustained is attributable to, and was the result in the normal course of action of the tortious acts or omissions of the defendant.

Law stated - 8 September 2025

Remedies

16 | What remedies are available in a civil recovery action?

Damages shall be awarded as compensation for the pecuniary harm caused by the defendant. This may include loss of profits.

Moral damages could also be awarded in the form of compensation owing to non-pecuniary harm (psychological) as a result of the unlawful behaviour.

Law stated - 8 September 2025

Judgment without full trial

17 | Can a victim obtain a judgment without the need for a full trial?

The CCivPr includes specific provisions encouraging the resolution of disputes without the need for a full trial as follows.

- Article 293 of the CCivPr, titled 'Procedure and results of conciliation', stipulates that litigants may, at any stage of the trial, reach a compromise, provided that the conditions of the law on the merits are fulfilled. The conciliation is done through a declaration before the court or the surrogate judge, or before a notary, and entails ipso facto the end of the trial. The minutes of the conciliation constitute an enforceable title (article 904(2) of the CCivPr).
- According to article 214A of the CCivPr, after the occurrence of pendency and until a final judgment is issued, litigants may attempt to reconcile through negotiation efforts regardless of the standing stage of the trial. The minutes of the agreement should be recorded in writing, signed by the parties and ratified by the judge or the presiding judge before whom the case is pending. The minutes of the conciliation constitute an enforceable title.

Moreover, in principle, all civil and commercial law disputes can be submitted to mediation as long as the parties have the authority to dispose of the subject of the dispute, namely, where the law does not require a court judgment for its resolution. The mediation procedure is regulated by Law No. 4640/2019.

Law stated - 8 September 2025

Post-judgment relief

18 | What post-judgment relief is available to successful claimants?

The claimant may apply for an interim injunction or provisional order before the judgment becomes final.

Law stated - 8 September 2025

Enforcement

19 | What methods of enforcement are available?

Final judgments or first-instance judgments that have been issued as provisionally enforceable may be immediately enforced. A certified copy of the enforcement order, which is provided by the presiding judge of the court that issued the relevant judgment, is required to initiate the enforcement procedure (articles 904 and 918 of the CCivPr). Once the order is served, enforcement actions may take place after three working days have passed (article 926 of the CCivPr).

Enforcement actions include garnishment (confiscation) of the defendant's assets and real estate property or auction of those assets and property, or both.

Law stated - 8 September 2025

Funding and costs

20 | What funding arrangements are available to parties contemplating or involved in litigation and do the courts have any powers to manage the overall cost of that litigation?

Legal fees and expenses are usually paid by the client. The latter includes a court duty of 0.8 per cent of the claim value. Furthermore, courts order the unsuccessful litigant to pay the costs of the proceedings, which, as a rule, are of nominal value and cover a small part of the actual costs incurred by the winning party.

Parties with limited financial resources can avoid legal costs based on the provisions of articles 194 to 204 of the CCivPr.

A person can be insured against future litigation expenses, based on his or her contract with the insurer.

Law stated - 8 September 2025

CRIMINAL ASSET RECOVERY – LEGAL FRAMEWORK

Interim measures

21 | Describe the legal framework in relation to interim measures in your jurisdiction.

Asset recovery is mainly regulated by article 248, paragraphs 6, 261 and 262 of the Greek Code of Criminal Procedure (GCCP), and Law No. 4557/2018, which contains provisions for freezing and confiscation of assets of illicit origin. It should be highlighted that, according to article 262, paragraph 4 of the GCCP and article 42, paragraph 9 of Law No. 4557/2018,

assets can remain frozen, without a decision issued by the first instance courts, for a maximum period of five years.

Law stated - 8 September 2025

Proceeds of serious crime

22 Is an investigation to identify, trace and freeze proceeds automatically initiated when certain serious crimes are detected? If not, what triggers an investigation?

A criminal investigation is initiated by the prosecutor following a criminal complaint (by an individual or entity, usually the victim of a white-collar offence) against certain persons or information submitted to the Public Prosecutor's Office by another authority, or even information that has come to the attention of the Public Prosecutor's Office through the press or other sources. The prosecutor is also responsible for initiating and supervising investigations that may be performed by other agencies (eg, the Financial and Economic Crime Unit (SDOE)).

Moreover, article 248, paragraph 6, of the GCCP stipulates that when the main investigation is conducted and there are indications that the defendant or a third person has gained a significant economic benefit from a serious offence, the investigating judge automatically initiates an investigation into the financial status of the defendant.

All other agencies have powers of investigation but need to follow the general rules of the GCCP. For example, the SDOE has the right to perform searches and seizures of documents but needs the presence or the authorisation of a prosecutor, magistrate or judge to search private premises or seize documents and data containing privileged information. However, agencies such as the SDOE and the Hellenic Financial Intelligence Unit (FIU) do not need the authorisation to obtain tax records and bank account information when conducting an investigation. A special judicial authorisation is always needed to obtain the content of confidential correspondence.

Law stated - 8 September 2025

Confiscation – legal framework

23 Describe the legal framework in relation to confiscation of the proceeds of crime, including how the benefit figure is calculated.

According to article 261 of the GCCP, during the main investigation, the investigating judge, with the consent of the public prosecutor, may order the freezing of any accounts, securities or financial products and safe deposit boxes kept at a credit or financial institution, including those owned jointly with any other person (third person). Furthermore, article 261 of the GCCP provides that freezing may be imposed on assets belonging solely to a third person, if these assets were acquired by him or her without any exchange of similar value and to hinder future confiscation. It should be noted that assets that are necessary for the living expenses, defence costs and the management of the frozen assets are excluded from the

freezing order. The above-mentioned measures may also be imposed in respect of real estate property, ships and aircraft.

Law No. 4557/2018 against money laundering also provides for the freezing of assets during the preliminary inquiry, which shall be ordered by the judicial council. According to this law, freezing may take place even at the earliest stages of information gathering by the FIU, when investigating potential money laundering activities. In this case, the head of the FIU may order the freezing of assets.

The order of the investigating judge and the judgment of the judicial council have the power of a seizure report, and thus produce the same effects as seizure, and shall be issued without prior summoning of the defendant or the third person. It is not necessary for the validity of the freezing order or judgment to mention any specific account, security, financial product or safe deposit box.

The interested party (the defendant or the third person) may appeal against the above orders to the competent judicial council within 20 days after the freezing order is served on him or her.

The value of the benefit, which was unlawfully obtained, is calculated by the authority that orders the freezing of assets. In principle, such benefit corresponds to the proceeds of the alleged crime.

These measures may be imposed provided that there are well-founded suspicions that the above assets derived from the commission of a serious offence (article 261 of the GCCP) or of money laundering or a predicate offence (Law No. 4557/2018), or are subject to confiscation according to article 40 of Law No. 4557/2018. Subject to confiscation are assets derived from a predicate or money laundering offence, or that were acquired directly or indirectly out of the proceeds of such an offence, or that constitute the means that were used or were going to be used for committing such offence.

In the case of a guilty verdict, all frozen assets derived directly or indirectly from the commission of an offence or acquired directly or indirectly out of the proceeds of such offences, or the means that were used or were going to be used for committing such offences, shall be confiscated. If there is no legal reason for returning them to the victim of the crime or their owner according to article 373, paragraphs 3 and 4 of the GCCP, they shall be confiscated as a result of the court's sentence. Confiscation shall be imposed even if the assets or means belong to a third person, provided that such person was aware that these assets are likely to originate from an offence and that the reason for their transfer to this third person was to hinder future confiscation. Where the assets or proceeds no longer exist, have not been found or cannot be seized, assets of equal value (as at the time of the court sentence) shall be seized and confiscated. Their value shall be determined by the court. The court may also impose a pecuniary penalty up to the value of the said assets or proceeds if it rules that no additional assets can be confiscated or the value of the existing assets falls short. If these assets have been 'mixed' with lawfully obtained assets, confiscation shall extend only to the value of the assets that derived from the offence. Confiscation of assets is not enforced when it is deemed as a disproportionate measure (namely, it is highly likely that it will cause serious and irreparable damage to the defendant's livelihood or that of his or her family).

Law stated - 8 September 2025

Confiscation procedure

24 | Describe how confiscation works in practice.

The freezing order or judgment is served on the defendant, on the third person and the managing officer of the credit or financial institution. When the freezing order or judgment is served to the credit or financial institution, the safe deposit box cannot be opened and any withdrawal of money from an account or any sale of securities or financial products is null and void towards the state. Any officer or employee of the credit or financial institution who intentionally violates the above restrictions shall be punished with imprisonment of up to two years and a pecuniary penalty (article 42(2) of Law No. 4557/2018). In practice, assets remain seized or frozen until the end of the trial stage (namely, when the court's decision becomes final). However, it should be highlighted that assets may remain frozen for a maximum period of five years until a decision of the first instance court is issued. In the case of a guilty verdict, all assets that have been seized or frozen are confiscated by the state as described above. If the defendant is found not guilty, previously frozen assets become available to the defendant or third parties.

Law stated - 8 September 2025

Agencies

25 | What agencies are responsible for tracing and confiscating the proceeds of crime in your jurisdiction?

Agencies such as the Prosecutor of Economic Crime (articles. 35 to 36 GCCP), the Financial and Economic Crime Unit and the FIU, along with the judicial authorities (the investigating judge and the prosecutor during the main investigation, or the judicial council during the preliminary inquiry), are responsible for tracing and freezing assets that are allegedly the proceeds of crime. Confiscation of such assets can solely be ordered by the court that tries the case if the defendant is found guilty of committing such crimes.

Law stated - 8 September 2025

CRIMINAL ASSET RECOVERY – CONFISCATION

Secondary proceeds

26 | Is confiscation of secondary proceeds possible?

Yes. Confiscation extends to all assets derived from a predicate or money laundering offence, or acquired directly or indirectly out of the proceeds of such offence, or that constitute the means that were used or were going to be used for committing the offence.

Law stated - 8 September 2025

Third-party ownership

27 | Is it possible to confiscate property acquired by a third party or close relatives?

Yes. Confiscation shall be imposed even if the assets or means belong to a third person, provided that such person was aware of the predicate offence or of the offences referred to in article 2 of Law No. 4557/2018 (money laundering offences) at the time of their acquisition (articles 42 and 40 of Law No. 4557/2018 and article 68 of the Greek Criminal Code (GCC)).

Law stated - 8 September 2025

Expenses

28 | Can the costs of tracing and confiscating assets be recovered by a relevant state agency?

No.

Law stated - 8 September 2025

Value-based confiscation

29 | Is value-based confiscation allowed? If yes, how is the value assessment made?

Confiscation of assets unrelated to the crime is allowed (namely, if the assets that originated from the crime do not exist, are mixed with legitimate assets, or are untraceable or cannot be confiscated – article 40(1to 2) of Law No. 4557/2018 and article 68(3) of the GCC). In principle, the value is calculated by the court that reached a guilty verdict and corresponds to the proceeds of the alleged crime.

Law stated - 8 September 2025

Burden of proof

30 | On whom is the burden of proof in a procedure to confiscate the proceeds of crime? Can the burden be reversed?

In criminal proceedings, the burden of proof lies primarily with the authorities that are responsible for ordering the confiscation or freezing of the proceeds of crime, namely, the head of the Hellenic Financial Intelligence Unit, the investigating judge or the judicial council. Although the defendant is not legally required to prove his or her innocence and the legality of the frozen or confiscated assets, in practice, he or she is expected to provide the authorities with all the necessary evidence concerning the legitimacy of their origin.

Law stated - 8 September 2025

Using confiscated property to settle claims

31 May confiscated property be used in satisfaction of civil claims for damages or compensation from a claim arising from the conviction?

Yes. According to the provisions found in the new Greek Code of Criminal Procedure (GCCP) (eg, articles 304; 311, paragraph 3; and 373, paragraph 3) and Law No. 4557/2018 (article 40, paragraph 5), frozen assets shall be used to satisfy the pecuniary damage, which the victim of the crime suffered.

Law stated - 8 September 2025

Confiscation of profits

32 Is it possible to recover the financial advantage or profit obtained through the commission of criminal offences?

It is possible to recover the financial advantage or profit obtained through the commission of criminal offences. Both the direct and indirect proceeds of crime are subject to asset recovery. If the financial advantage or profit is connected to the offence as either a direct or indirect proceed, it is subject to confiscation.

Law stated - 8 September 2025

Non-conviction based forfeiture

33 Can the proceeds of crime be confiscated without a conviction? Describe how the system works and any legal challenges to in rem confiscation.

Yes. Proceeds of crime may be subject to confiscation even when criminal proceedings have not been initiated or have been terminated because of the death, unavailability, etc, of the offender, or if the prosecution was terminated or declared inadmissible on other grounds. In these cases, confiscation shall be ordered by the judicial council or by the court (article 40(3) of Law No. 4557/2018). These decisions are subject to appeal on the merits and points of law according to articles 495 and 504(3) of the GCCP.

Owing to the punitive nature of confiscation in criminal proceedings, non-conviction-based confiscation has been said to be in breach of articles 2(1), 7(1) and 96(1) of the Greek Constitution, which establishes the principles of nulla poena sine processu and nullum crimen, nulla poena sine culpa.

Law stated - 8 September 2025

Management of assets

34 After the seizure of the assets, how are they managed, and by whom? How does the managing authority deal with the hidden cost of management of the assets? Can the assets be utilised by the managing authority or a government agency as their own?

Management of frozen and confiscated assets is regulated by Law No. 5042/2023. According to this law, the General Directorate of the Financial and Economic Crime Unit is assigned as the designated public authority for the management of frozen and confiscated assets (Asset Management Office), with the powers to manage or dispose assets that have been previously frozen or confiscated by the authorities, in order to prevent deterioration of their value. Law No. 5042/2023 stipulates that the owner of the frozen property is notified on any decision taken regarding its management (eg, depositing the money to a dedicated bank account and leasing any frozen real estate property).The management of a movable asset depends on its nature.

Seized or frozen money is transferred to a numbered and fixed interest deposit account, which is opened in the Consignment Deposits and Loans Fund (CDLF) and is solely managed by the Asset Management Office (article 11 of Law No. 5042/2023).

Regarding assets whose value can be accurately assessed (eg, gold, foreign currency and other types of assets included in the Bank of Greece's exchange rate sheet), they are first deposited to the CDLF. The Asset Management Office pays out the set up deposit in its entirety and supervises the liquidation of its contents through the Bank of Greece. Subsequently, it immediately transfers the money received from the liquidation to a fixed interest deposit account opened at the CDLF (article 12 of Law No. 5042/2023).

When the seizure or freezing is imposed on assets whose value cannot be accurately assessed (ie, assets that do not directly yield a financial result, such as intellectual property, tobacco and drugs), their immediate transfer is ordered to the CDLF in favour of the Asset Management Office (article 13 of Law No. 5042/2023).

When seizure or freezing is imposed on other movable assets (eg, car, aircraft and ships), the authority that orders the above measures notifies the Asset Management Office about the existence of the freezing order. Disposal of these assets is only allowed after a court orders their confiscation. In exceptional circumstances, when the length of the freezing is more than six months and the cost of their management is high or when there is a high risk of depreciation of their value, the Asset Management Office may decide on their disposal. The price of their sale is deposited in the account held at the CDLF.

Management expenses are, in principle, borne by the owner of the asset. In exceptional cases, the sale or disposal of movable assets, including those of significant economic value, is permitted by the Asset Management Office, in collaboration with the services responsible for their custody during management. The sale may take place, after a prior hearing of the owner, if their identity is known, when the following conditions are cumulatively met:

- the release of the frozen assets has not been ordered after the lapse of six months from the date of their freezing; and
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it has been determined that the custody is economically unfeasible or particularly costly, or there is a risk of reduction or loss of their economic value due to disuse, storage conditions or other risks.

Law stated - 8 September 2025

CRIMINAL ASSET RECOVERY – CROSS-BORDER ISSUES

Making requests for foreign legal assistance

35 Describe your jurisdiction's legal framework and procedure to request international legal assistance concerning provisional measures in relation to the recovery of assets.

Law No. 4478/2017 transposed the relevant provisions of Framework Decisions 2003/577/JHA, 2005/212/JHA and 2006/783/JHA and of Directive 2014/42/EU. Greece now recognises and executes freezing and confiscation orders provided that the acts that give rise to them belong to certain categories of offences and are punishable in the issuing state by a custodial sentence of at least three years. For other offences, the principle of dual criminality applies. Moreover, since 19 December 2020, Regulation (EU) 2018/1805 of the European Parliament and of the European Council of 14 November 2018 has applied in all EU member states regarding the mutual recognition of freezing orders and confiscation orders.

Law stated - 8 September 2025

Complying with requests for foreign legal assistance

36 Describe your jurisdiction's legal framework and procedure to meet foreign requests for legal assistance concerning provisional measures in relation to the recovery of assets.

Greek authorities offer broad assistance to requests for mutual legal assistance concerning provisional measures in relation to the recovery of assets. Most enforcement agencies and the Hellenic Financial Intelligence Unit, apart from being points of contact and competent to handle such requests by virtue of international instruments, enter into administrative agreements of cooperation, which enable them to exchange information faster and more efficiently. In principle, requests for freezing and seizing of assets are executed without significant delay if they meet the standards and criteria set out in the relevant agreements for mutual assistance. Moreover, since 19 December 2020, Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders applies to all EU member states.

Law stated - 8 September 2025

Treaties

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37 To which international conventions with provisions on asset recovery is your state a signatory?

Greece is a signatory to the following conventions (non-exhaustive list):

- the European Convention on Mutual Assistance in Criminal Matters (1959);
- the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990);
- the Council of Europe Convention on Corruption (1999);
- the UN Convention against Transnational Organized Crime (2000);
- the UN Convention against Corruption (2003); and
- the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005).

Law stated - 8 September 2025

CRIMINAL ASSET RECOVERY – PRIVATE PROSECUTIONS

Private prosecutions

38 Can criminal asset recovery powers be used by private prosecutors?

Private prosecution does not exist in the Greek legal system.

Law stated - 8 September 2025

UPDATE AND TRENDS

Emerging trends

39 Are there any emerging trends or hot topics in civil and criminal asset recovery in your jurisdiction?

Anti-money laundering legislation has been the key legislation for criminal asset recovery and has been extensively used by the competent authorities to detect and prosecute corruption practices, large-scale fraud and tax evasion since 1995. This legal framework has been reinforced by the Greek Code of Criminal Procedure (GCCP), which entered into force on 1 July 2019. It also provides for asset recovery measures in all types of serious criminal offences.

The current legislative framework in asset recovery is designed to protect the interests of the victims of economic crimes more efficiently; it explicitly provides that frozen assets are to be used to compensate the victims of the crime. The satisfaction of the victim's claims through the disposal of frozen assets is also a prerequisite for the successful conclusion of alternate forms of criminal adjudication, which were also introduced in 2019. According to the GCCP and recently amended Law No. 4557/2018, assets shall remain frozen for a

maximum period of five years, without a decision of a first instance court (namely, the case must be tried by a first instance court within five years from the issuance of the freezing order, otherwise the freezing order shall be lifted). The above-mentioned new provisions have the potential to shorten the length of litigation and even avoid civil litigation altogether, in cases where the assets have been allocated and frozen by the competent criminal authorities, thus making asset recovery in Greece more effective.

Looking ahead, one of the most significant developments in the field of asset recovery in Greece will be the transposition of Directive (EU) 2024/1260, which introduces a new tool of confiscation of unexplained wealth. This mechanism allows courts to order confiscation where the value of assets is disproportionate to a person's lawful income, even absent full proof of the underlying predicate offence, lowering the evidentiary threshold. While this tool is intended to target organised crime, there is a risk that its scope may gradually expand, as it has happened with other forms of confiscation over the years, such as extended and non-conviction based confiscation. If this risk is realised, it would offset the delicate balance between effective asset recovery and the protection of individual rights. The Directive's implementation in Greece will be closely monitored, as it raises important questions regarding evidentiary standards, procedural safeguards and its relationship with existing freezing and confiscation mechanisms. The implementation of the Directive is expected to be a central issue for asset recovery in the coming years.

Law stated - 8 September 2025

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UPDATE AND TRENDS

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CIVIL ASSET RECOVERY – JURISDICTIONAL ISSUES

Parallel proceedings

1 | Is there any restriction on civil proceedings progressing in parallel with, or in advance of, criminal proceedings concerning the same subject matter?

If a crime has caused damage, the person injured by the crime is entitled to bring a civil action for restitution and damages in a civil court and also stand as a civil party in a criminal proceeding.

There is no express restriction on civil proceedings progressing in parallel with, or in advance of, criminal proceedings concerning the same subject matter, with the exception that if the civil action is brought after the issuance of the criminal decision of first instance, the civil proceeding is suspended until the issuance of the final decision (article 75(3) of the Criminal Procedure Code).

Even if the main principle governing relations between criminal and civil proceedings on the same subject matter is the one of autonomy, some exceptions apply. In particular, the final criminal decision of conviction (issued after a full trial) has the effect of res judicata in a civil proceeding for restitution and damages, with respect to the assessment of the main elements of the unlawful conduct; (article 651 of the Criminal Procedure Code).

However, a final criminal decision of acquittal does not have the effect of res judicata in a civil proceeding if the civil action was brought before the civil court promptly (article 652 of the Criminal Procedure Code).

Law stated - 9 September 2025

Forum

2 | In which court should proceedings be brought?

The relevant criteria for the geographical competence of civil courts are provided for by the Civil Procedure Code. For ordinary proceedings, the court of the place where the defendant has his or her residence, domicile or abode is competent. In the absence of a residence, domicile or abode in Italy, the court of the place of residence of the claimant is competent (article 18).

For legal entities, the court of the place where the entity or defendant has its legal seat or where it has a place of business and a representative authorised to stand trial is competent (article 19).

For actions relating to civil obligations, an alternative criterion additionally provides for the competence of the court where the obligation arose or must be carried out (article 20).

For the enforcement or execution on movable goods or real property, the court of the place where the goods are located is competent (article 26).

As regards interim measures (eg, the temporary seizure of goods or properties of the defendant), proceedings should be brought in the court competent to decide the merits of the case or, in its absence, the court of the place where the interim measure should be executed (article 669-ter).

Law stated - 9 September 2025

Limitation

3 | What are the time limits for starting civil court proceedings?

If damage is derived from a crime, the fact constituting crime is considered to represent a civil tort as well, with significant consequences on the statute of limitations period concerning the civil action for damages.

According to civil law, the statute of limitations period is ordinarily five years from the moment of the civil tort. However, if the fact also represents a criminal offence and the statute of limitations for the criminal offence is longer, then the longer criminal statute of limitations period applies (article 2947 of the Italian Civil Code).

Furthermore, if the civil action is brought during the longer criminal statute of limitations period, this qualifies as an interruption of the civil statute of limitations, and the original five-year period provided for by the civil law starts running again from the moment the decision on the criminal proceeding becomes final.

Law stated - 9 September 2025

Jurisdiction

4 | In what circumstances does the civil court have jurisdiction? How can a defendant challenge jurisdiction?

The relevant criteria for the jurisdiction of civil courts are provided for by Law No. 218 of 31 May 1995 (the Law on Private International Law). According to article 3, Italian jurisdiction exists when the defendant is domiciled or a resident in Italy, or when he or she has a representative in Italy authorised to stand trial. Moreover, article 3 provides that Italian jurisdiction also exists when the criteria laid down by the Brussels Convention of 27 September 1968 (replaced by EU Regulation No. 1215/2012) are met.

As regards interim measures, article 10 of the Law on Private International Law provides that Italian jurisdiction exists when the interim measure should be executed in Italy or when the Italian court has jurisdiction on the merits of the case.

The lack of jurisdiction should be objected to by the defendant in his or her first brief of defence, to be filed at least 20 days before the first hearing. When this condition is met, the lack of jurisdiction can then be assessed in every stage and instance of the proceeding (articles 4 and 11 of the Law on Private International Law). Concerning proceedings in absentia, or when Italian jurisdiction is excluded by international provisions or if the action

concerns real property located abroad, the lack of jurisdiction can be assessed ex officio by the court.

Law stated - 9 September 2025

CIVIL ASSET RECOVERY – PROCEDURE

Time frame

5 | What is the usual time frame for a claim to reach trial?

A claim can reach the first trial hearing within 120 days if the defendant is a resident of Italy, or within 150 days if the defendant has his or her residence abroad. However, the length of civil trials is usually significant, about three years for a decision in first instance, and about six years or more for a final decision (after a possible second-instance decision before an appellate court and a third-instance decision before the Court of Cassation).

Law stated - 9 September 2025

Admissibility of evidence

6 | What rules apply to the admissibility of evidence in civil proceedings?

Discovery, as known in common law jurisdictions, is not provided for by the Italian legal system; accordingly, parties have no duty of disclosure unless the court so orders.

According to the main legal principle on the burden of proof, anyone who claims a certain right or entitlement must prove the underlying facts and the grounds for it; in turn, anyone who objects to the mentioned right or entitlement must prove the facts on which the objection is based (article 2697 of the Civil Code). The taking of evidence (eg, interrogatories, testimonies and technical expertise) is carried out within the trial and is governed by the court mainly at the request of the parties. Concerning documentary evidence, parties may produce all documents that, in their view, prove the grounds of their claim. Regarding oral evidence, prior authorisation by the court is required.

With few exceptions, the court can evaluate any evidence at its discretion (article 116 of the Civil Procedure Code) but has to provide the reasons for the evaluation in the written grounds of the judgment. The decision of the court must be based on the evidence submitted by the parties on the facts not specifically challenged and on the factual notions of common knowledge (article 115 of the Civil Procedure Code).

Law stated - 9 September 2025

Witnesses

7 | What powers are available to compel witnesses to give evidence?

Witnesses must appear and give evidence, except in the case of a legitimate impediment (owing to health or other reasons). If they do not appear without a justified reason, they can be sanctioned and compelled to appear by the police, further to a court order.

Law stated - 9 September 2025

Publicly available information

8 | What sources of information about assets are publicly available?

The main sources of publicly available information about assets concern real estate and land, vehicles and companies.

Furthermore, under certain conditions, data concerning the taxable income of a certain taxpayer (namely, yearly tax returns) can be obtained.

For real estate and land, the most relevant public source is the archive of real estate registers. This archive, comprising the local agencies of the Ministry of Economy and Finance, enables the identification of all entries in the register related to real estate in Italy by the name of a specific individual or entity. Each entry establishes ownership of the relevant property with respect to third parties, mortgages, and other recorded interests.

Regarding vehicles, the relevant register is the public register of vehicles, where all relevant information concerning a certain vehicle and its owner (eg, name, surname, date of birth, address and domicile, as well as the existence of mortgages) is recorded.

For companies, information can be obtained from the register of enterprises that records the most relevant information about a company (eg, deed of incorporation, by-laws, shareholders, directors and balance sheets).

Finally, according to the law, the relevant tax returns of a certain taxpayer may be obtained, further to a grounded request to the competent tax authority, if the applicant can prove to have a concrete and qualified interest to obtain them (article 24(7) of Law No. 241/1990, governing the transparency of public administration activity and relevant acts). Generally, this criterion is considered fulfilled when obtaining the relevant document (namely, the tax returns) is necessary to protect its juridical interest. If there is denial, an appeal can be made to the competent administrative court (the regional administrative court, which on several occasions has granted the release of tax returns).

Law stated - 9 September 2025

Cooperation with law enforcement agencies

9 | Can information and evidence be obtained from law enforcement and regulatory agencies for use in civil proceedings?

From a practical point of view, the most efficient way for a defrauded party to obtain information and evidence from law enforcement and regulatory agencies for use in a civil proceeding is to file a criminal complaint, and at the end of a criminal investigation,

access the public prosecutor file containing all actions carried out and evidence gathered by the public prosecutor in the course of the investigations, including information and documentation mentioned earlier. In compliance with case law, this request is usually granted.

If a criminal route is not pursued, information and evidence can be directly requested from law enforcement and regulatory agencies under certain criteria and conditions (eg, concrete and qualified interest to obtain that information; see article 116 of the Criminal Procedure Code). However, those requests are rarely granted, owing to the concurring needs of the relevant office or regulator (eg, investigations still pending and the duty of confidentiality).

During a civil trial, the court, on request of a party, can order a third person (including law enforcement and regulatory agencies) to produce documents or other items that it considers necessary to decide the case (article 210 et seq of the Civil Procedure Code). A party cannot request the court to order a third person to disclose a certain document possessed by him or her unless there is no way for the party to obtain it directly.

Law stated - 9 September 2025

Third-party disclosure

10 | How can information be obtained from third parties not suspected of wrongdoing?

The treatment of banking information is protected by strict rules that generally prevent any disclosure, except for criminal investigations, tax assessments and anti-money laundering compliance. On 25 October 2007, the Italian Data Protection Authority issued the Guidelines for the Processing of Customers' Data in the Banking Sector, which expressly provide strict rules for banks and other financial intermediaries from disclosing information in their possession to third parties, and even to the interested party if he or she is the owner of the account (see article 119 of the Consolidated Banking Law).

Law stated - 9 September 2025

CIVIL ASSET RECOVERY – REMEDIES AND RELIEF

Interim relief

11 | What interim relief is available pre-judgment to prevent the dissipation of assets by, and to obtain information from, those suspected of involvement in the fraud?

To prevent the dissipation of assets by the suspects of fraud (namely, any circumstances where there is a material risk of dissipation), the law provides for conservative seizure that can be requested by the claimant and ordered by the court on the suspect's assets also at the pretrial stage (articles 669-bis et seq and 671 et seq of the Code of Civil Procedure).

In terms of procedure, the seizure order can be issued ex parte where knowledge by the target could prejudice the successful execution of the order. In that scenario, a hearing is

subsequently fixed within 15 days, where the target is entitled to raise his or her defence and the order is subject to confirmation, amendment or revocation by the court. Otherwise, the court decides on the application for conservative seizure after a hearing where all relevant parties are entitled to make their representations (article 669-sexies).

The subject of the seizure order can be movable goods, real estate or rights of third persons. Usually, the order is issued not in relation to specific assets to be seized, but with the indication of a maximum amount to be subject to seizure, with the consequence that the claimant will have to trace the assets on which to carry out the enforcement of the order.

As far as the substantive requirements for conservative seizure are concerned, they are represented by the fumus boni iuris and periculum in mora. The first is prima facie evidence of the existence of the right that the seizure order is aimed at protecting; the second is the serious and concrete risk that delay could compromise the satisfaction of the right.

Conservative seizure is instrumental to a full trial on the merits, aimed at assessing the existence of the right claimed, whose sentence could then be enforced by targeting the assets subject to conservative seizure. However, conservative seizure can also be granted during the trial stage, and after a judgment on the merits, on condition that the requirements mentioned above are fulfilled.

With respect to interim relief concerning the obtaining of information, the law provides that, on request of a party, the court can order pretrial taking of testimonies when there is a serious risk that they may become unavailable during the trial, and that these testimonies could be considered necessary for a future trial. If the court grants the application, by the same order it fixes the hearing for the taking of evidence (article 692 et seq of the Code of Civil Procedure).

Law stated - 9 September 2025

Non-compliance with court orders

12 | How do courts punish failure to comply with court orders?

Intentional failure to comply with court orders is punished, under certain conditions, as a criminal offence under article 388 of the Criminal Code, provided that a criminal complaint is filed by the interested party. The punishment is imprisonment for up to three years or a fine. Prohibited conduct is that of non-compliance with a court order, carrying out sham transactions, or other fraudulent actions on his or her own or other assets to avoid order compliance.

The civil procedure ensuring court-order enforcement is provided for by Book Three of the Civil Procedure Code (articles 474 to 632).

Law stated - 9 September 2025

Obtaining evidence from other jurisdictions

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13 How can information be obtained through courts in other jurisdictions to assist in the civil proceedings?

Judicial cooperation in civil matters is mainly governed by EU legislation (concerning EU member states) and the international conventions signed by Italy, although domestic law has a residual function to supplement and regulate the aspects not regulated by the above-mentioned legislation.

Concerning all EU member states (except Denmark), requests from Italian courts for taking evidence in a foreign state are governed by EU Regulation No. 1206/2001 (the Regulation). The requests must be submitted by courts (not by private parties) using the forms contained in the annex to the Regulation, and compliance with the provisions of the Regulation. The procedure for taking evidence includes:

- executing the taking of evidence expeditiously (ordinarily within 90 days);
- limiting refusals to exceptional situations, and if a special procedure is requested under the law of the requesting state, the requested court shall comply with that requirement unless the procedure is incompatible with its own law (article 10);
- transmitting requests directly from the requesting court to the competent requested court of the foreign state (article 2);
- allowing the presence and participation of the relevant parties and of representatives of the requesting court in the foreign state (articles 11 and 12); and
- permitting the direct taking of evidence by the requesting court under certain conditions (article 17).

Regarding non-EU member states, the most relevant international convention is the 1970 Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (the 1970 Convention), which entered into force in Italy on 21 August 1982. Under the 1970 Convention, the requests to obtain evidence (or to perform some other judicial act) shall be:

- made through a letter or request (article 1);
- sent to the central authority of the foreign state designated for that purpose (article 2; in Italy, the Minister of Foreign Affairs); and
- executed under the law of the requested state, unless the special method or procedure requested by the requesting state is not compatible with the internal law of the state of execution (article 9).

The parties, their representatives and members of the requesting judicial authority can be allowed to be present (articles 7 and 8), and evidence can be taken directly in the foreign state through a commissioner duly appointed for the purpose under certain conditions (article 17).

For states that are not signatories of the 1970 Convention, where a bilateral treaty with Italy exists (Italy is a signatory of many such treaties), it will regulate the obtaining of evidence by Italian civil courts.

In the absence of an applicable treaty, Italian domestic law will apply, whose main provision prescribes that letters rogatory from Italian judges to foreign authorities for the execution of

orders on the taking of evidence shall be transmitted through diplomatic channels (namely, the Minister for Foreign Affairs and the relevant diplomatic representatives in the foreign country; article 204 of the Civil Procedure Code).

Law stated - 9 September 2025

Assisting courts in other jurisdictions

14 What assistance will the civil court give in connection with civil asset recovery proceedings in other jurisdictions?

Foreign requests to take evidence and enforce foreign judgments in Italy are mainly dealt with by EU legislation (concerning EU member states) and by the international conventions signed by Italy, although Italian domestic law ordinarily applies only to supplement and regulate the aspects not regulated by this legislation.

Foreign requests to take evidence in Italy

The most relevant domestic provision in this respect is article 69 of Law No. 218 of 31 May 1995 (the Law on Private International Law), which states that:

- the judgments and the orders of foreign judges concerning the examination of witnesses, technical assessments, swearing or other means of evidence to be taken in the Italian Republic are to be executed by decree of the Court of Appeal of the place where those acts have to be taken . . .;
- [I]f the request is made by the judge itself, the request has to be made through diplomatic channels . . .;
- the court decides in chambers and, if it grants the execution, sends the acts to the competent judge;
- the taking of evidence or the execution of other evidentiary acts not provided for by the Italian law can be ordered on condition that they do not conflict with the principles of the Italian system; and
- the taking of evidence or the execution requested is regulated by the Italian law. However, the forms expressly requested by the foreign authority are complied with on condition that they do not conflict with the principles of the Italian system.

Enforcement of foreign judgments

Concerning EU member states, the enforcement of foreign judgments is governed by EU Regulation No. 1215/2012. Its basic principle is that the procedure for making a judgment given in one member state enforceable in another must be as efficient and rapid as possible. Consequently, the declaration that a judgment is enforceable is issued automatically by the court of the requested state (for Italy, the court of appeal of the place of execution), after purely formal checks of the documentation supplied (article 33 et seq). However, in an adversarial procedure, the defendant is entitled to appeal

against the declaration of enforceability where he or she considers one of the grounds for non-enforcement to be present.

Furthermore, EU Regulation No. 805/2004 provides for the abolition of the exequatur procedure, and the creation of an EU enforcement order for uncontested claims (namely, all situations in which a creditor, given the verified absence of any dispute by the debtor as to the nature or extent of a pecuniary claim, has obtained either a court decision against that debtor or an enforceable document that requires the debtor's express consent, such as a court settlement or an authentic instrument). According to this regulation, the procedure offers significant advantages as compared with the exequatur procedure.

Concerning non-EU member states, the enforcement of foreign judgments is dealt with by several bilateral treaties signed by Italy, which regulate the requirements. In the absence of an applicable treaty, and to supplement EU and international legislation where necessary, Italian domestic law applies, whose main provisions are the ones laid down by articles 64 and 67 of the Law on Private International Law.

In particular, article 67 provides that an Italian civil proceeding aimed at the formal recognition of a foreign judgment before the court of appeal of the place of execution is necessary only in the case of a challenge to the recognition, or where forced enforcement of the foreign judgment is required.

However, where there is no challenge to the recognition or where no enforcement is required, foreign judgments are recognised in the Italian legal system without the need for a specific civil proceeding, on condition that the following requirements (article 64) are fulfilled:

- the judgment was issued by a judge who had jurisdiction according to the principles on the jurisdiction of the Italian legal system;
- the writ of summons was brought to the knowledge of the defendant according to the procedural rules of the lex fori, and the defendant's fundamental rights of defence were not breached;
- the parties had regular standing in trial according to the lex fori, or default of appearance was declared under that law;
- the judgment has become res judicata according to the lex fori;
- the judgment does not conflict with another judgment issued by an Italian judge that has become res judicata;
- there is no pending proceeding before an Italian judge on the same subject and between the same parties that started before the foreign proceeding; and
- the judgment does not produce effects contrary to Italian public order.

Law stated - 9 September 2025

Causes of action

15 What are the main causes of action in civil asset recovery cases, and do they include proprietary claims?

The main cause of action in civil asset recovery cases is a civil tort, defined by the law as any fact intentional or negligent, which causes unlawful damage to others, and that obliges the perpetrator to pay damages (article 2043 of the Civil Code). Often, the cause of action may concur with that of breach of contract (article 1218 et seq of the Civil Code). The two actions may also be exercised in parallel.

Proprietary claims have limited relevance in the typical scenario of fraudulent behaviour affecting money or other fungible goods.

Law stated - 9 September 2025

Remedies

16 | What remedies are available in a civil recovery action?

The typical remedy is restitution (where possible) and damages.

Law stated - 9 September 2025

Judgment without full trial

17 | Can a victim obtain a judgment without the need for a full trial?

A summary proceeding, originally introduced by Law No. 69/2009, is currently regulated by article 281-decies et seq of the Civil Procedure Code.

This proceeding is compulsory for cases of low value of competence of the justice of the peace, and in cases where the facts are undisputed, or where the claim is based on evidentiary evidence, or it is of easy solution or it requires a taking of evidence not complex.

Additionally, this proceeding can be selected by the claimant when the dispute falls under the jurisdiction of a single judge and not of a panel of judges.

The proceeding is identical to an ordinary one for the first stage – the filing of the writ of summons by the claimant and the first written response by the respondent – but it is much quicker (40 days for the first trial hearing if the defendant is a resident of Italy, and 60 days if the defendant has his or her residence abroad), and more concise with respect to the taking of evidence. However, if the judge evaluates that the proceeding requires an ordinary taking of evidence and declares so by a non-appealable order, the proceeding continues under the ordinary rules.

Another type of summary proceeding is represented by the injunction proceeding (article 633 et seq of the Civil Procedure Code), which can be selected by creditors of a cash amount of money or of a determined quantity of fungible goods, who have written evidence of it. If proper evidence is provided, the judge issues an ex parte order of injunction to the debtor to pay or deliver the relevant goods within a certain deadline (usually 40 days). Within that deadline, the debtor is entitled to challenge the injunction, in which case the proceeding will continue in a fully adversarial way under the ordinary rules. In the

absence of that, and in the case of non-compliance with the injunction, the procedure for its enforcement can start.

Where a defendant fails to respond to a writ of summons by the deadline provided for by the law, a default of appearance is declared by the competent court. This does not mean an automatic adjudication of the case to the claimant, but simply that the decision of the court will only be based on the evidence provided for by the claimant (with no objections from the defendant).

Law stated - 9 September 2025

Post-judgment relief

18 | What post-judgment relief is available to successful claimants?

Conservative seizure can also be granted during the trial stage and after a judgment on the merits, on condition that the related requirements are fulfilled. At this stage, the conservative seizure represents the most significant relief during the time when proceeding with the enforcement of court judgments.

Law stated - 9 September 2025

Enforcement

19 | What methods of enforcement are available?

The civil procedure for ensuring the enforcement of court orders is provided for by Book Three of the Civil Procedure Code (articles 474 to 632). In essence, the procedure provides that the successful claimant, after obtaining an enforceable decision, must provide it with the execution formula and serve it to the defendant giving him or her a deadline to comply. In the case of non-compliance, the complex procedure for forced enforcement can start, under the supervision and with the relevant intervention of the judge of execution (article 479 et seq).

Forced enforcement usually begins with garnishment (article 491 et seq). The defendant is entitled to request the judge of execution for the substitution of garnishment with an equivalent amount of money. A specific section of the Civil Procedure Code regulates the interplay among the various creditors of the defendant (with the possibility of them obtaining a forced sale of the defendant's assets and the subsequent sharing of money resulting from the sale).

Garnishment can be ordered on:

- movables at the respondent's premises (article 513 et seq);
- third parties' premises on real estate (article 555 et seq);
- undivided assets (article 599 et seq); and
-

assets of a third party subject to pledge or mortgage for another person's debt, or on assets whose transfer by the defendant was revoked for fraud (articles 602 to 604).

The defendant always has the right to raise a formal objection against the injunction (article 615 et seq), therefore starting a dispute before the judge of execution.

Law stated - 9 September 2025

Funding and costs

20 What funding arrangements are available to parties contemplating or involved in litigation and do the courts have any powers to manage the overall cost of that litigation?

Until 2006, agreements between counsel and clients aimed at determining the counsel's fees depending on the outcome of the proceedings (conditional fee agreements) were prohibited by the law. In particular, the prohibition covered the determination of fees both as a percentage or quota directly affecting the goods disputed and as a percentage of the value of the goods disputed, or the value of the entire litigation (article 2233(3) of the Civil Code and article 45 of the Lawyers Ethical Code). Those agreements were considered null and void, and they produced an ethical responsibility for the counsel.

In that scenario, however, the law allowed that an additional and extraordinary compensation could be granted to counsel owing to the positive outcome of a proceeding, on condition that this compensation is indeed additional to normal compensation, and is reasonable and justi fied by the outcome achieved.

Since 2006, the law has recognised, to some extent, and subject to a written agreement, the lawfulness of conditional fee agreements (first by Law No. 248/2006 and currently by Law No. 247 of 31 December 2012). In particular, according to article 13(4) of Law No. 247/2012, 'agreements whereby counsel receives, as a fee, all or part of the asset involved in the performance or the disputed claim are prohibited'. However, according to article 13(3) of Law No. 247/2012, 'the determination of the fees is free: it is allowed the determination based on timing, on a forfeit method [. . .] on a percentage of the value of the case or of what it is predicted could be advantageous, not only in pure patrimonial terms, to the beneficiary of the services.'

In essence, the current regime allows for the determination of fees depending on the outcome of a proceeding as a percentage of the value of the goods disputed or the value of the entire litigation, although prohibiting the determination of fees as a percentage or quota directly affecting the goods disputed.

As far as damages-based agreements are concerned, they should be considered allowed based on the principles and legislation mentioned above.

After The Event insurance is prohibited by law because it always requires as a precondition that the actionable event did not occur or in any case was not known by the insured party.

Concerning the courts' powers in managing the overall cost of litigation, losing parties in civil litigation ordinarily have to pay their legal costs, as well as the winning party's legal

costs, in the amount determined by the courts (based on a note of legal costs filed with the court by the relevant parties; articles 91 and 92 of the Civil Procedure Code). In that scenario, the amount of legal costs ordinarily decided by the courts is significantly lower than the fees that could be legally agreed upon by counsel and clients, according to the principles explained above. Consequently, it will be up to the client to pay the difference between the legal costs adjudicated by the court (and refunded by the losing party) and the higher fees agreed upon with the counsel, always within the limits of the principles explained above.

Law stated - 9 September 2025

CRIMINAL ASSET RECOVERY – LEGAL FRAMEWORK

Interim measures

21 | Describe the legal framework in relation to interim measures in your jurisdiction.

The interim measures provided for by the criminal system are as follows:

- preventive seizure (article 321 et seq of the Criminal Procedure Code), which is aimed at freezing the proceeds of crime (and the instrumentalities of crime) given a future confiscation (when the final conviction sentence will be issued);
- evidentiary seizure (article 253 et seq of the Criminal Procedure Code), which is aimed at collecting the evidence necessary to prove the commission of a certain crime; and
- conservative seizure (article 316 et seq of the Criminal Procedure Code), which is aimed at protecting and satisfying the credits of the state or the victim of the crime, or both, by freezing the assets of the defendant to prevent their dissipation (in substantial analogy with the conservative seizure provided for civil purposes).

A preventive or conservative seizure can only be ordered by a judge or court on the application of the public prosecutor (and, concerning the conservative seizure, also of the victim or civil party). An evidentiary seizure is a measure that can be adopted by the public prosecutor itself by issuing a grounded decree, without the need for a court order.

Furthermore, although in theory, the differences between the nature and aims of the mentioned forms of seizure are extremely clear, in practice, certain overlapping (and even abuse) can take place, especially between evidentiary seizure and preventive seizure, because the goods or assets that can be subject to those measures often coincide.

This is because, according to the law, the subjects of an evidentiary seizure are the corpus of the crime and the items related to the crime, when they are necessary to prove the commission of the crime (article 253(1)), and the corpus of the crime is defined by the law as the items on which or through which the crime was committed, as well as the items that represent the product, profit or price of the crime (article 253(2)).

Law stated - 9 September 2025

Proceeds of serious crime

22 Is an investigation to identify, trace and freeze proceeds automatically initiated when certain serious crimes are detected? If not, what triggers an investigation?

Yes. When serious crimes are detected, a criminal investigation is automatically initiated that is aimed at identifying and punishing the perpetrators of the crime, as well as identifying, tracing, freezing and later confiscating the proceeds of the same crime (in the framework of the same investigation and criminal proceeding).

Law stated - 9 September 2025

Confiscation – legal framework

23 Describe the legal framework in relation to confiscation of the proceeds of crime, including how the benefit figure is calculated.

A confiscation procedure (in broad terms) often starts at the pretrial stage, by freezing the proceeds and instrumentalities of the crime through a preventive seizure (article 321 et seq of the Criminal Procedure Code).

More specifically, the items that can be subject to confiscation, and the terms and conditions that apply to confiscation, are generally provided for by article 240 of the Criminal Code.

As a general rule, confiscation is ordered where a conviction judgment is issued (through the same judgment) and is executed when that judgment becomes final. Furthermore, according to consolidated case law, the notion of proceeds of crime includes profit, product and price of crime (Court of Cassation, Unified Sections, No. 26654 of 27 March 2008). In particular:

- the profit relates to the economic advantage obtained directly and in an immediate way from the crime;
- the product is the empiric result of the crime, namely the items created, transformed, adulterated or acquired through the crime; and
- the price is compensation given or promised to a determined person, as consideration for the execution of the crime.

According to the general rule above, in the case of conviction, confiscation is always compulsory (for the court) for the price of crime, although it is only discretional for the profit and product of crime. However, for the most serious crimes (eg, corruption, money laundering, market manipulation and insider trading), special provisions expressly provide for compulsory confiscation concerning the profit of crime.

Furthermore, where confiscation of the direct profit or price of crime is not possible, the same special provisions provide for the confiscation for equivalent, namely, the confiscation of other money or goods for the same value (see article 322-ter of the Criminal Code for corruption, etc).

A special form of confiscation was introduced concerning a compulsory list of crimes (eg, mafia association, extortion, usury, corruption and money laundering) according to which, in the case of conviction for these crimes, confiscation is compulsory not only on the related identified proceeds of crime, but also on money, goods and other items of value of which the individual convicted cannot justify the provenance, and of which he or she has the availability under any title in a value disproportionate to his or her income, declared for his or her income tax purposes, or his or her economic activity (article 240-bis of the Criminal Code). In essence, the provision has introduced a burden for the persons convicted for these crimes to justify the provenance of assets that appear to be disproportionate to their income or economic activity, otherwise, they will be confiscated.

Law stated - 9 September 2025

Confiscation procedure

24 | Describe how confiscation works in practice.

Confiscation is expropriation by the state of certain goods (mainly proceeds and instrumentalities of crime) relating to a determined crime. Confiscation is typically ordered where a conviction judgment is issued (through the same judgment) and is executed when that judgment has become res judicata (namely, is no longer appealable). Ordinarily, judgments of first-instance courts can be appealed before the Court of Appeal, and judgments of the Court of Appeal can be appealed before the Court of Cassation.

The court competent for the execution of confiscation is the court of execution, before which a concise adversarial proceeding can take place, on the application of the public prosecutor, the defendant and the interested party, in the case of a dispute about the execution of confiscation (articles 676 and 665 of the Criminal Procedure Code). If a dispute arises about the ownership of the confiscated assets (namely, even in the case a third party, who did not take part in the criminal proceeding, claims to be the owner of the relevant assets), the court of execution shall remit the case to the civil court of first instance, to determine legitimate ownership.

In the absence of disputes about the execution of confiscation, or when they are solved, the law provides that the clerk of the court of execution proceeds with the sale of the confiscated assets, unless special provisions provide for a particular destination of those assets, or unless the destruction of the assets has to be ordered, where a sale is considered inconvenient (article 86 of the implementing legislation of the Criminal Procedure Code). Money deriving from the sale is passed to the state. As for the particular destination of certain assets, special provisions (eg, regarding the mafia and contraband) provide that confiscated assets (either movable or real estate) can be acquired and maintained as the patrimony of the state (and of local municipalities), and destined to a particular use in the public interest.

The confiscation procedure (in broad terms) often starts at the pretrial stage, by freezing the proceeds and instrumentalities of crime through the preventive seizure (article 321 et seq of the Criminal Procedure Code), in such a way that at the moment of the final judgment of confiscation, the relevant assets are already under the control of the state authorities. Specific provisions provide for the practical modalities of executing preventive seizure,

concerning the targeted assets. According to article 104 and 104-bis of the implementing legislation of the Criminal Procedure Code, preventive seizure is executed:

- on movable goods and credits, according to the civil procedure for garnishment;
- on real estate and registered movable goods, through the entry of the seizure in the relevant registers;
- on the assets of a company or enterprise, through the entry of the seizure in the register of enterprises and, where necessary, through appointing a special receiver; and
- on shares and quotas of companies, through the entry of the seizure on the company's books and in the register of enterprises.

Law stated - 9 September 2025

Agencies

25 | What agencies are responsible for tracing and confiscating the proceeds of crime in your jurisdiction?

Public prosecutors are responsible for the investigation and prosecution of all criminal offences, and in that framework, they identify and trace the related proceeds of crime and request their freezing and later confiscation to the competent judge or court.

Public prosecutors are not part of the government but are professional magistrates, and their duty to bring criminal prosecutions is compulsory and not discretionary (unless they assess that no crime was committed and then request a dismissal from a competent judge).

Law stated - 9 September 2025

CRIMINAL ASSET RECOVERY – CONFISCATION

Secondary proceeds

26 | Is confiscation of secondary proceeds possible?

Yes, case law is consolidated in the sense that confiscation applies not only to the proceeds directly and immediately derived from crime but also to any other property acquired by the offender through the investment of such unlawful proceeds (Court of Cassation, Unified Section, No. 10,280 of 25 October 2007). However, the burden to strictly prove all the transfers and modifications deriving from the original proceeds of crime lies with the public prosecutor.

Law stated - 9 September 2025

Third-party ownership

I

27 | Is it possible to confiscate property acquired by a third party or close relatives?

The general principle (with a few exemptions), is that confiscation does not take place when the ownership of the items subject to potential confiscation is of a person extraneous to the crime (a third party in good faith). In this case, the items should be handed over to the third party. However, case law is consolidated in adopting a strict notion of a person extraneous to the crime, according to which any subject who – although not being criminally liable – has, through his or her conduct, made the commission of the crime easier, cannot be considered extraneous to the crime, and therefore is not entitled to prevent confiscation and to obtain the restitution of the relevant items. According to case law, the only subject who can be considered extraneous to the crime is the subject who does not have any kind of negligent link – direct or indirect, owing to a lack of vigilance or other causes – with the commission of the crime (Court of Cassation, No. 16,405 of 21 April 2008).

Under these principles, only in limited situations has case law maintained that close relatives could be considered persons extraneous to the crime and as such had title to prevent confiscation.

Law stated - 9 September 2025

Expenses

28 | Can the costs of tracing and confiscating assets be recovered by a relevant state agency?

Yes, all the costs of a criminal proceeding (with some exceptions) in the case of conviction are attributed to and enforced against the defendant, including the costs relating to the tracing and confiscating of the assets (see Presidential Decree No. 115/2002). At a pretrial stage, the credits of the state against the defendant (including all the costs of the criminal proceeding and the potential fines) can be secured by the interim measure of the conservative seizure (article 316 et seq of the Criminal Procedure Code), which is ordered by the competent court on the application of the public prosecutor, to prevent the dissipation of the defendant's assets.

Law stated - 9 September 2025

Value-based confiscation

29 | Is value-based confiscation allowed? If yes, how is the value assessment made?

Yes, confiscation for equivalent is allowed by special provisions only concerning a compulsory list of crimes (eg, corruption, money laundering, tax fraud, market manipulation, insider trading and usury), where recovery of the direct profit or price of crime is impossible. Confiscation for equivalent is also allowed on the company assets, under the same conditions, concerning the particular responsibility of companies for certain crimes committed by their managers or employees in the interest or for the benefit of the company (article 19 of Legislative Decree No. 231/2001).

The value assessment of assets to be confiscated is first made by the public prosecutor (even at a pretrial stage, for the interim measure of preventive seizure) by determining the quantum of the relevant proceeds of crime, where necessary by appointing an expert witness for the task. This determination, however, must be confirmed (or amended) by the competent court, when granting the interim measure and subsequently when ordering confiscation.

Law stated - 9 September 2025

Burden of proof

30 On whom is the burden of proof in a procedure to confiscate the proceeds of crime? Can the burden be reversed?

When serious crimes are detected, a criminal investigation is automatically initiated, aimed at identifying and punishing the perpetrators of the crime, and identifying, tracing, freezing and later confiscating the proceeds of the crime (in the framework of the same investigation and criminal proceeding). Therefore, under the general principles (and in particular under article 27(2) of the Constitution, which provides that a defendant cannot be considered guilty until final conviction), the burden of proof lies with the public prosecutor, either in proving beyond reasonable doubt the guilt of the defendant concerning a certain crime or in proving that money or specific assets are the proceeds of the mentioned crime and therefore must be confiscated.

The burden is reversed, to a certain extent, concerning the special form of confiscation provided for by article 240-bis of the Criminal Code. In that respect, the law provides that concerning a compulsory list of crimes, in the case of conviction, confiscation is compulsory not only on the related identified proceeds of crime but also on money, goods and other items of value of which the individual convicted cannot justify the provenance and of which he or she has the availability under any title in a value disproportionate to his or her income, declared for his or her income tax purposes, or his or her economic activity. Therefore, the burden of the public prosecutor is only to prove the existence of the mentioned disproportion (additional to the commission of the relevant crimes); however, it lies with the defendant to prove that his or her assets were acquired legitimately.

Law stated - 9 September 2025

Using confiscated property to settle claims

31 May confiscated property be used in satisfaction of civil claims for damages or compensation from a claim arising from the conviction?

If a crime has caused damage, the person injured by the crime is entitled to bring the civil action for the related restitution and damages not only before a civil court but also in a criminal proceeding, by standing as a civil party in the latter. Where a standing as a civil party takes place, the victim of the crime is entitled to request and obtain from the competent court conservative seizure (article 316 et seq of the Criminal Procedure Code).

The law provides that where there is grounded reason to believe that the guarantees of the civil obligations deriving from crime will lack or will be dissipated, the civil party can request the conservative seizure of the defendant's assets (article 316(2)). The law also provides that:

- conservative seizure ordered by request of the public prosecutor should benefit the civil party (article 316(3));
- under the seizure, the credits of the state and the civil party should be considered privileged (article 316(4)); and
- a criminal conservative seizure should be executed under the civil procedure provided for its enforcement on movable goods and real estate (article 317).

Furthermore, the law expressly provides that criminal conservative seizure is converted into garnishment when the judgment convicting the defendant to pay civil damages to the civil party becomes final (article 320(1)). The law also provides as follows:

- the forced enforcement on the assets seized takes place under the provisions of the Civil Procedure Code; and
- the money derived from the sale of the assets is first paid to the civil party under the title of damages and its refund costs for the proceeding, and subsequently, it is used for the fines, costs of the proceeding and any other amount to be paid by the defendant to the state (article 320(2)).

If the victim of the crime does not request to stand as a civil party in the criminal proceeding, it can claim the ownership of the assets subject to confiscation by intervening before the court of execution of the confiscation (as a third party in good faith or a person extraneous to the crime). If a dispute arises about the ownership of the assets to be confiscated, the court of execution shall remit the case to the civil court of first instance, to determine legitimate ownership.

Law stated - 9 September 2025

Confiscation of profits

32 Is it possible to recover the financial advantage or profit obtained through the commission of criminal offences?

Originally, public prosecutors and courts had adopted a wide definition of profits of crime. For example, where a company obtained a public procurement through the payment of a bribe, the entire value of that procurement could be subject to a preventive seizure or confiscation. In that scenario, costs incurred by the company to comply with its obligations under the procurement could not be deducted from the amount subject to seizure or confiscation. Subsequently, however, the Court of Cassation has restricted this broad notion of profits of crime, maintaining that the amount subject to seizure or confiscation should be determined by deducting from the entire value of the procurement the value of the services effectively carried out by the company under the procurement, and that

resulted to the benefit of the relevant public authority (Court of Cassation, Unified Sections, No. 26,654 of 27 March 2008 and Court of Cassation, No. 42,300 of 26 June 2008).

Law stated - 9 September 2025

Non-conviction based forfeiture

33 Can the proceeds of crime be confiscated without a conviction? Describe how the system works and any legal challenges to in rem confiscation.

The most relevant cases of confiscation without conviction relate to items whose manufacturing, use, carrying, detention or alienation constitutes a criminal offence. Concerning those items, confiscation is always ordered, even if a conviction is not issued (article 240(2), No. 2 of the Criminal Code). The rationale is that those items (eg, clothes with a counterfeited trademark, drugs, etc) are intrinsically criminal and dangerous to society and therefore must be confiscated, even if the defendant is acquitted of the related charges.

Another type of confiscation without conviction that can be assimilated to in rem confiscation is the confiscation as a preventive measure (namely, measure ante delictum), which is provided for socially dangerous people who are members of mafia organisations, concerning the assets they possess, where the value of those assets is disproportionate to their income and their economic activity and they cannot justify their legitimate provenance (Law No. 575/1965 and subsequent amendments). In that scenario, such an exceptional form of confiscation without conviction can be justified by the need to ensure public security by preventing the commission of future offences by individuals who have already been shown to be socially dangerous. Out of these exceptional cases, the introduction into the legal system of additional cases of confiscation without conviction is unanimously considered a violation of the Constitution and, in particular, of the principle laid down by article 27(2), according to which a defendant cannot be considered guilty until final conviction.

Law stated - 9 September 2025

Management of assets

34 After the seizure of the assets, how are they managed, and by whom? How does the managing authority deal with the hidden cost of management of the assets? Can the assets be utilised by the managing authority or a government agency as their own?

The law provides that where the subject of preventive seizure is an enterprise or company as a whole, or relates to assets for which management is necessary, the competent court appoints a special receiver (article 104-bis of the implementing legislation of the Criminal Procedure Code). The receiver performs its task under the instructions, and under the supervision of the competent court, which can be addressed by the public prosecutor and the defendant for any matters related to the above.

The costs of asset management are ordinarily provided by the state; however, in the case of conviction, they are attributed to and enforced against the defendant, as are all other costs relating to the criminal proceeding, and the tracing and confiscating of the assets.

As a general principle, assets seized (eg, cars and houses) can be used by state authorities as their own only after the confiscation procedure has been completed and where the specific attribution to the authorities of the confiscated assets has taken place, under the special laws on the subject. However, where the subject of preventive seizure is an enterprise or company as a whole, the assets of the enterprise or company can be used by the receiver, to the extent necessary to grant the continuation of the enterprise or company's activity. The same principle applies to the seizure of other assets for which management is considered necessary.

Law stated - 9 September 2025

CRIMINAL ASSET RECOVERY – CROSS-BORDER ISSUES

Making requests for foreign legal assistance

35 Describe your jurisdiction's legal framework and procedure to request international legal assistance concerning provisional measures in relation to the recovery of assets.

Requests for mutual legal assistance to foreign countries, including with respect to provisional measures relating to the recovery of assets, are governed by the international treaties signed and ratified by Italy, including the Treaty on European Union (TEU) and the related EU law. They include the following:

- the European Convention on Mutual Legal Assistance in Criminal Matters (Strasbourg, 1959);
- the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, 1990); and
- many bilateral treaties.

In the absence of a treaty, requests for mutual legal assistance are governed by specific provisions of the Code of Criminal Procedure (articles 727 to 729).

The relevant international treaties and EU law usually significantly simplify the conditions for requesting and obtaining assistance, particularly by reducing the role and powers of the Minister of Justice.

Law stated - 9 September 2025

Complying with requests for foreign legal assistance

36 Describe your jurisdiction's legal framework and procedure to meet foreign requests for legal assistance concerning provisional measures in relation to the recovery of assets.

Mutual legal assistance with foreign countries is governed by the international treaties signed and ratified by Italy, including the TEU and the related EU law. Those treaties also include:

- the Strasbourg European Convention on Mutual Legal Assistance in Criminal Matters of 1959;
- the Strasbourg Convention on Money Laundering, Search, Seizure and Confiscation of the Proceeds of Crime of 1990; and
- many bilateral treaties.

In the absence of a treaty and EU law, mutual legal assistance is governed by specific provisions of the Criminal Procedure Code (articles 696 and 723 et seq).

Where a request is made by a foreign authority to the Italian authorities, in principle, both the Italian Minister of Justice and the Italian public prosecutor or judge who is geographically competent (depending on the place of execution of the request) have to approve it.

In essence, the Minister of Justice can deny the request where:

- the actions requested compromise the sovereignty, security or other essential interest of the state;
- the actions requested are expressly prohibited by Italian law or they conflict with the fundamental principles of the Italian juridical system;
- there are grounds to believe that considerations relating to race, religion, sex, nationality, language, political opinions or personal or social conditions can negatively affect the carrying out or the outcome of the trial, and the defendant has not freely given consent to the assistance to the foreign state; or
- the requesting state does not provide proper guarantees of reciprocity (article 723 of the Criminal Procedure Code).

Moreover, the competent public prosecutor or judge can subsequently deny the request where the conditions under the second and third bullet point above have been met or the dual criminality principle is not fulfilled, and the defendant has not freely given consent to the assistance to the foreign state (article 724 of the Criminal Procedure Code).

The competence for the execution of the request pertains to the Italian prosecutor or judge (the judge for the preliminary investigations) based on what is provided for by Italian law concerning the nature of the action to be carried out.

Foreign requests aimed at freezing assets located in Italy must, in principle, be approved by an Italian judge for the preliminary investigations.

The relevant international treaties and EU law usually significantly simplify the conditions for the assistance to be granted, particularly by reducing the role and powers of the Minister of Justice.

Law stated - 9 September 2025

Treaties

37 To which international conventions with provisions on asset recovery is your state a signatory?

The most relevant convention signed by Italy on the subject is the Strasbourg Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990.

The additional international and EU instruments of which Italy is a signatory or addressee that can have a certain relevance on asset recovery are as follows.

European Union

- The Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of the Member States of the European Union, Brussels, 26 May 1997 (ratified by Law No. 300/2000, which entered into force on 26 October 2000);
- the EU Framework Decision 2003/577/JHA on the execution in the European Union of orders freezing property or evidence of 22 July 2003; and
- the EU Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders of 6 October 2006.

Council of Europe

- The Criminal Law Convention on Corruption, Strasbourg, 27 January 1999 (ratified by Law No. 110/2012, which entered into force on 27 July 2012); and
- the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, Warsaw, 16 May 2005 (signed but not yet ratified by Italy).

International

- The Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Paris, 17 December 1997 (ratified by Law No. 300/2000, which entered into force on 26 October 2000);
- the United Nations Convention against Transnational Organized Crime, New York, 15 November 2000 (ratified by Law No. 146/2006, which entered into force on 12 April 2006); and
- the United Nations Convention against Corruption, New York, 31 October 2003 (ratified by Law No. 116/2009, which entered into force on 15 August 2009).

Law stated - 9 September 2025

CRIMINAL ASSET RECOVERY – PRIVATE PROSECUTIONS

Private prosecutions

38 | Can criminal asset recovery powers be used by private prosecutors?

Private individuals or organisations are not entitled to prosecute within the Italian legal system because criminal action is always and only public, and criminal asset recovery powers must only be exercised by public prosecutors.

Law stated - 9 September 2025

UPDATE AND TRENDS

Emerging trends

39 | Are there any emerging trends or hot topics in civil and criminal asset recovery in your jurisdiction?

No updates at this time.

Law stated - 9 September 2025

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CIVIL ASSET RECOVERY – JURISDICTIONAL ISSUES

Parallel proceedings

1 | Is there any restriction on civil proceedings progressing in parallel with, or in advance of, criminal proceedings concerning the same subject matter?

Generally, there is no restriction on parallel proceedings. A civil proceeding can be conducted in parallel with criminal proceedings concerning the same subject matter. For criminal convictions, the civil court is bound regarding the facts and conviction; however, there is no binding effect in case of an acquittal. Nevertheless, civil law decisions are never binding for a criminal proceeding, but such decisions can be relevant for preliminary questions. In the course of criminal proceedings, victims of the offence under investigation can also join as a private party and assert their civil claims in criminal proceedings. If the outcome of a criminal proceeding is expected to be significantly relevant for the civil proceeding, the judge can suspend the civil proceeding until the decision in the criminal proceeding is final and binding (article 191(1) of the Civil Procedure Code (CPC)).

Law stated - 25 September 2024

Forum

2 | In which court should proceedings be brought?

There is only one first instance court in Liechtenstein, namely the Princely District Court in Vaduz, which deals with all civil matters, unless the matter is subject to arbitration. There are various proceedings, such as civil, non-contentious and enforcement proceedings, which have different procedural requirements. The competence of the District Court does not have any limitation in terms of amount in dispute. In selected proceedings such as claims for state liability, the Court of Appeal is the first instance. In accordance with article 31 of the Jurisdiction Act (JA), civil proceedings are generally brought before the court if the defendant's domicile (natural person) or seat (legal entity) is in Liechtenstein (general forum rule). However, it is also possible to bring a claim before the Liechtenstein courts if the defendant is domiciled abroad but holds assets in Liechtenstein (asset-based jurisdiction, article 50 JA).

Law stated - 25 September 2024

Limitation

3 | What are the time limits for starting civil court proceedings?

The rules dealing with statute of limitations are found in articles 1478 et seq of the General Civil Code (GCC). The general statute of limitations is 30 years after the emergence of a claim. However, there are several exceptions and particularities. For claims arising out of a breach of contract, the statute of limitation is five years (article 1486 GCC). Claims for

damages have a statute of limitation of three years starting from the time the damaging person, the damaging party and the causal connection become known. The absolute statute of limitation for such cases, however, is 30 years. If the damage has been caused by a criminal offence, the statute of limitation is 30 years, too (article 1489 GCC). Additionally, for claims for damages in correlation with financial services business conducted by a financial intermediary, the above three-year rule applies. However, a special absolute time limit of 10 years after the conduct also applies (article 1489a of the General Civil Code).

Law stated - 25 September 2024

Jurisdiction

4 | In what circumstances does the civil court have jurisdiction? How can a defendant challenge jurisdiction?

As a general rule for international jurisdiction, the District Court has international jurisdiction if it has domestic jurisdiction according to the JA. Since in Liechtenstein there is only one court of first instance, domestic jurisdiction can be at the same level as international jurisdiction. It falls upon the court to examine on a case-by-case basis whether international jurisdiction is to be given. According to article 31 JA, the District Court generally has domestic jurisdiction if the defendant resides or is based in Liechtenstein. Civil proceedings are generally to be brought before the court if the defendant's domicile (natural person) or seat (legal entity) is in Liechtenstein. It is also possible to bring a claim before the Liechtenstein courts if the defendant is domiciled abroad but has assets in Liechtenstein (asset-based jurisdiction, article 50 JA). Furthermore, there are additional provisions for jurisdiction, in particular in the Persons and Companies Act.

A defendant can challenge jurisdiction only before pleading on the merit itself by raising an objection before court. Afterwards, the defendant is prohibited from this procedural action.

Law stated - 25 September 2024

CIVIL ASSET RECOVERY – PROCEDURE

Time frame

5 | What is the usual time frame for a claim to reach trial?

A trial is initiated by filing the statement of claim with the court, which will serve it to the defendant, as soon as the court fee has been paid by the claimant, requesting him to submit a written response or set a first hearing. Therefore, no pre-trial proceedings or similar steps are required.

Law stated - 25 September 2024

Admissibility of evidence

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6 | What rules apply to the admissibility of evidence in civil proceedings?

The Liechtenstein Civil Procedure Code (CPC) provides for five types of admissible evidence:

- documentary evidence (articles 292 et seq CPC);
- evidence by witnesses (articles 320 et seq CPC);
- evidence by qualified experts (articles 351 et seq CPC);
- evidence by legal inspection (articles 368 et seq CPC); and
- evidence of examination of the parties (articles 371 et seq CPC).

However, the listed types of evidence are not exhaustive and the law also accepts other types of evidence, such as tape and video recordings, electronic data and biological evidence. Furthermore, subject to minor exceptions illegally obtained evidence can also be used in a proceeding and can be considered by the judge if presented by a party or witness.

The general rule is that each party has to provide evidence of the facts that form the basis of his or her claim and are favourable to the respective party. Each party is entitled to offer evidence to substantiate the claim or the non-existence of the claim and can do so until the taking of evidence is closed. However, the court may reject such offers if they are deemed insignificant or are used to delay the proceedings. Generally, the later that evidence is filed in the course of a proceeding the more that justification effort is required.

Law stated - 25 September 2024

Witnesses

7 | What powers are available to compel witnesses to give evidence?

A duly summoned witness who refuses to attend the hearing without good reason can be punished with a fine and be presented by the police if he or she has residence in Liechtenstein. In addition, a witness is liable for any damages that have arisen from the intentional delay of the procedure of taking evidence. Specific groups of persons are entitled to refuse to make a witness statement.

Law stated - 25 September 2024

Publicly available information

8 | What sources of information about assets are publicly available?

There are several sources of information that are publicly available and provide information on assets in Liechtenstein. The companies register contains information on, inter alia, companies, trusts, foundations and institutions that are based in Liechtenstein. This information includes name, seat, purpose and directors. The companies register is publicly

accessible. However, with regard to some entities, the publicly available information is limited. The land register contains information on every plot of land in Liechtenstein. The land registry can be consulted by anyone who can substantiate a legal interest in the information therein.

Law stated - 25 September 2024

Cooperation with law enforcement agencies

9 | Can information and evidence be obtained from law enforcement and regulatory agencies for use in civil proceedings?

None of the parties of a civil proceeding may directly obtain evidence from law enforcement agencies if no further requirements are met. If the party is either a victim or a suspect in a criminal proceeding or a third party proves a particular legal interest in the files of a criminal investigation, access to the files of a particular proceeding shall be granted. According to article 183 CPC, the District Court can obtain documents that are deposited with a public authority if a proceeding party has referred to them in the pleadings. Since the term should be interpreted broadly, it encompasses any entity established and financed by the state.

Law stated - 25 September 2024

Third-party disclosure

10 | How can information be obtained from third parties not suspected of wrongdoing?

Information from third parties can in particular be obtained by hearing them as witnesses. If third parties are offered by a party as evidence and are thereafter summoned by the court, they generally have the duty to comply with the summoning and to testify completely and truthfully. However, third parties are allowed to refuse to answer questions that could lead to dishonour, criminal prosecution or pecuniary disadvantages against them or their family or could constitute a breach of confidentiality or professional secrecy obligations, such as trustees secrecy, attorney secrecy or bank secrecy (article 321 CPC). Furthermore, it is illegitimate to have a third party testify if they are unable to communicate what they perceived or were unable to perceive the facts in question or if they are bound by secrecy obligations (eg, clerics and civil servants; article 320 CPC).

Law stated - 25 September 2024

CIVIL ASSET RECOVERY – REMEDIES AND RELIEF

Interim relief

11 | What interim relief is available pre-judgment to prevent the dissipation of assets by, and to obtain information from, those suspected of involvement in the fraud?

In terms of civil asset recovery, it is possible to prevent the dissipation of assets through the means of an injunction. The general regulations of the Enforcement Act (EA) regarding injunctions are found in articles 270 et seq EA. Provisions specifically regarding monetary claims are regulated in articles 274 et seq EA. According to these regulations, relief can be obtained by seizing the movables of the debtor and putting them into the District Court's safekeeping. The debtor can be judicially forbidden to alienate or pledge any of his or her movables. Furthermore, any third person against whom the debtor has a claim or receivable can be prohibited from fulfilling his or her obligations or to surrender any objects that are due to the debtor. Using these means, all assets located in bank accounts of the debtor and also all receivables of the debtor can be seized. Through an injunction, the claimant can obtain a lien on the assets and receivables that are seized and attached by the injunction. In particular, all rights can be frozen and pledged, which allow either direct or only indirect access to funds, including founder's rights, beneficiary rights, instruction rights and shareholder rights.

Regarding non-monetary claims, the court can order that the objects in custody of the debtor at which the claim for restitution is aimed are to be deposited at court (article 277 EA). Furthermore, the court can make orders to uphold a status quo and forbid certain actions that would amend that status quo. An application for injunctive relief can be made separately from or within the action. This application must substantiate the claim and the endangerment of the claim and therefore the necessity of the injunction (article 282 EA).

Law stated - 25 September 2024

Non-compliance with court orders

12 | How do courts punish failure to comply with court orders?

Regarding the maintenance of order in the court hearings, the judge can forbid any person who does not comply with court orders to make further statements. Any person who disturbs the hearing despite having been cautioned can be excluded from the hearing. A party to the proceedings who is excluded from the hearing must be informed of the possibility of a judgment by default. It is also possible for the court to impose fines and short detention sentences of up to three days. If a court decision rules for an obligation of the party for a personal act, omission or performance to the other party, this order, if it is final and enforceable, can be enforced by the entitled party in an enforcement proceeding. If the act or omission is a matter of personal action of the obligator that may not be taken by a third person (article 257 EA), the court can enforce the title by threat of penalty, penalty payments and imprisonment of up to six months. If the action can also be taken by a third party, it will be taken by a third party at the costs of the obligator (article 256 EA).

Law stated - 25 September 2024

Obtaining evidence from other jurisdictions

13 | How can information be obtained through courts in other jurisdictions to assist in the civil proceedings?

On the basis of the 1970 Hague Convention on the Taking of Evidence abroad in Civil or Commercial Matters, it is admissible to request legal assistance by the competent authorities in the respective country (provided that it has also ratified the convention). These requests of the court are sent to the Department of Justice, which forwards the request to the foreign country. The foreign authority may take appropriate coercive measures in order to execute the request. Usually, the Hague Convention is used to execute the questioning of witnesses who are not able or willing to personally appear before a court in Liechtenstein. Furthermore, Liechtenstein has concluded a multilateral treaty agreement on the obtention of information regarding foreign law and, through this agreement, the Liechtenstein courts in civil matters can obtain information regarding foreign law.

Law stated - 25 September 2024

Assisting courts in other jurisdictions

14 What assistance will the civil court give in connection with civil asset recovery proceedings in other jurisdictions?

According to article 27 JA, the District Court has a general duty to provide legal assistance upon the requests of foreign courts, provided that international agreements do not specify differently. The court is obliged to refuse requests for legal assistance if it is not competent to take the requested action (it may, however, transfer the request to the competent authority), if the requested action is prohibited by legal provisions that are binding for the court or if mutuality between Liechtenstein and the requesting state is not preserved. If the requesting state has also ratified the Convention, its provisions apply. Liechtenstein, however, is not a contracting party of the Lugano Convention.

Law stated - 25 September 2024

Causes of action

15 What are the main causes of action in civil asset recovery cases, and do they include proprietary claims?

The most important cause of action is the claim for damages (articles 1293 et seq GCC). This cause of action is relevant for both damages caused by a breach of contract and by tort. The latter is particularly applicable to cases of fraud. Another relevant cause of action is provided by a claim for unjustified enrichment (articles 1041 et seq GCC). Furthermore, the Persons and Companies Act (PCA) also provides for an additional basis for liability action in the form of claims for responsibility against the organs of an entity if the organs have taken action damaging the entity (article 218 et seq PCA). Proprietary claims are possible as well. Any owner who is deprived of their ownership regarding assets can claim its restitution under article 20(2) of the Property Law (PL).

Law stated - 25 September 2024

Remedies

16 | What remedies are available in a civil recovery action?

Following the principles of the law of damages, restitution is the primary remedy (article 1323 GCC). If restitution is not feasible, the claimant can sue for monetary damages. This applies for both contractual and tort claims. In the context of a contractual relationship, the claimant is able not only to request the defendant to fulfil their contractual duties (specific performance) but also to claim damages on the basis of breach of contract. Liechtenstein law also provides for several reasons for restitution due to unjust enrichment. In general, however, unjust enrichment is subordinated to the claim for damages. Regarding liability claims against organs, the entity may request payment of damages because of actions to the detriment and damage of the legal entity based on articles 218 et seq PCA. Furthermore, restitution is also a possible remedy with regard to proprietary claims, especially a claim for surrender of property (article 20(2) PL). Monetary damages can also be claimed under certain specific circumstances, such as intentional or negligent infringements of personality rights (article 40 PCA).

Law stated - 25 September 2024

Judgment without full trial

17 | Can a victim obtain a judgment without the need for a full trial?

Liechtenstein civil procedure law provides for a simplified civil procedure that is intended to be more efficient than a regular litigation with regard to its duration and costs. Upon a corresponding petition by the claimant, the court issues a payment order without an evidentiary hearing. This payment order is only based on the assertions of the claimant. If the defendant does not oppose the payment order becomes binding and, thus, an enforceable title. If the defendant objects to the payment order it becomes invalid. The claimant thereafter has to file his or her claim by the means of a regular civil litigation. Alternatively, the claimant may request the lifting of the objection in a judicial annulment procedure if certain conditions are fulfilled (article 49 of the Injunction Proceedings Act). If this request is followed by the court, the defendant may file a claim for disallowance of the claim. Furthermore, the court can render a default judgment if the defendant fails to appear at a court hearing to which he or she was duly summoned. In such a case, the court, upon application of the claimant, would issue a default judgment based solely on the assertions of claimant (articles 396 et seq CPC).

Law stated - 25 September 2024

Post-judgment relief

18 | What post-judgment relief is available to successful claimants?

If the decision becomes final and binding and the defendant has not complied with the obligations according to the decision within the performance period, the decision is enforceable. The claimant as creditor can thereafter request the enforcement of his or her claim under the provisions of the EA. The enforcement proceedings are initiated by a respective application that must refer to the enforceable judgment, payment order or settlement, among others, and must contain the methods of enforcement that are to be applied as well as the assets that shall be recovered.

Law stated - 25 September 2024

Enforcement

19 | What methods of enforcement are available?

The methods of enforcement are specified in the EA. Regarding the enforcement of monetary claims, the applying creditor can request the seizure and auctioning of the debtor's immoveables and moveables (articles 58 et seq and 168 et seq EA). The latter also includes the most common enforcement method, namely the seizure of any receivable or monetary claim of the judgment debtor (articles 210 et seq EA). This includes any type of claim that only indirectly grants access to assets or funds. If the decision orders the judgment debtor to a specific action or performance, the application for enforcement can also request the obtainment of an act or an omission of the judgment debtor. If the act or omission is a matter of personal action of the debtor that cannot be taken by a third person (article 257 EA), the court may enforce the title through threat of penalty, penalty payments, or imprisonment of up to six months. If the action can also be taken by a third party, it will be taken at the costs of the debtor (article 256 EA).

Law stated - 25 September 2024

Funding and costs

20 | What funding arrangements are available to parties contemplating or involved in litigation and do the courts have any powers to manage the overall cost of that litigation?

In general, the parties to the dispute are required to fund their own legal counsel based on a remuneration agreement between the party and the legal counsel. If a party cannot afford the costs of litigation without preventing itself providing for its own maintenance, he or she can ask for legal aid (article 63 CPC), subject to certain strict prerequisites. As regards the relation between the parties to the dispute, the losing party shall reimburse the costs of the successful party according to the lawyer's tariff. If the party is only partly successful, only a part of the costs shall be reimbursed based on the ratio of success. The law, however, also provides for several exceptions and special rules. Furthermore, a foreign claimant is required upon request of the defendant to provide a security deposit for the presumed procedural costs of the defendant if he or she resides in a country where Liechtenstein cost decisions are not enforceable. The deposit may be made not only by wire transfer but also by bank guarantee and is deposited with the court. The fees and

costs for hearings and pleadings, among others, are strictly regulated by tariffs, and, thus, the courts can manage the overall cost of the litigation in an indirect way. The court has to comply with the principle of procedural economy and proceedings must be conducted as efficiently and cost-effectively as possible. On that basis, applications for the taking of evidence can be dismissed if the court finds that they only serve the purpose of delaying the proceedings.

Law stated - 25 September 2024

CRIMINAL ASSET RECOVERY – LEGAL FRAMEWORK

Interim measures

21 | Describe the legal framework in relation to interim measures in your jurisdiction.

Liechtenstein criminal procedure law provides for various regulations on interim measures. Regarding the recovery of assets, the seizure of assets that are suspected to stem from criminally relevant behaviour plays an important role. Other interim measures include the execution of a search warrant, the arrest of a suspect and pre-trial detention. During the preliminary proceedings seizures are ordered by the court in accordance within the applications of the public prosecutor. In the context of the final hearing, the court itself is able to order interim measures. Any orders concerning seizures (or any interim measure) must be passed by a written decision with legal reasoning and may be appealed.

Law stated - 25 September 2024

Proceeds of serious crime

22 | Is an investigation to identify, trace and freeze proceeds automatically initiated when certain serious crimes are detected? If not, what triggers an investigation?

In Liechtenstein, criminal investigations in general are not automatically initiated but require either a complaint or a report submitted to the public prosecutor. If the public prosecutor finds that a criminal complaint or report contains sufficient grounds for a criminal prosecution, it requests the District Court to initiate a preliminary investigation and take certain investigation measures. In the course of the investigation proceeding, upon application of the prosecutor, documents are seized, assets are frozen, witnesses are heard and the information is analysed by the prosecutor regarding criminal offences.

Law stated - 25 September 2024

Confiscation – legal framework

23 | Describe the legal framework in relation to confiscation of the proceeds of crime, including how the benefit figure is calculated.

Regulations regarding seizure during a preliminary investigation are found in articles 96 et seq of Criminal Procedure Code (CrPC). Article 97a CrPC specifically regulates the seizure of proceeds stemming from criminal offences. According to this provision, the court can seize immoveables, moveables, cryptoassets or bank receivables and prohibit the disposal of the assets or take a lien on them. The confiscation of assets is regulated in articles 20 and 20b of the Criminal Code (CrC). By a decision of skimming off of unjust enrichment (article 20 CrC), the convicted person is obliged to pay the state an amount equal to the unjust enrichment arising out of the offence. It is not necessary for the authorities to locate the proceeds of the crime. Assets of criminal or terrorist organisations as well as proceeds stemming from money laundering or criminal offences committed outside the jurisdiction of Liechtenstein are subject to forfeiture according to article 20b CrC. For forfeiture, it must be evidenced that the assets in question stem from a criminal offence. Assets that stem from a crime can also be forfeited if they are in the hands of a third party. Finally, the procedural provisions regarding the skimming off of unjust enrichment and forfeiture of the proceeds of crime as well as the confiscation of items are regulated in articles 353 et seq CrPC. In cases of forfeiture a separate objective forfeiture proceeding is usually conducted. In using these procedural provisions, foreign forfeiture or confiscation decisions may also be enforced in Liechtenstein.

Law stated - 25 September 2024

Confiscation procedure

24 | Describe how confiscation works in practice.

Within the context of a preliminary investigation, the public prosecutor requests the investigating judge to order the seizure of assets or specific measures provided in article 97a CrPC. The investigating judge bases the decision on the known facts, the suspicion of a criminal offence and whether the requested measure is appropriate and necessary in order to secure a possible future forfeiture or skimming off of the enrichment. The investigating judge regularly orders that the assets located in a bank account of the suspect or an entity of which the suspect is beneficial owner are frozen. With the seizure, the state of Liechtenstein obtains a lien on the frozen assets. If the preliminary proceedings and investigations take longer than two years, the court can extend the seizure upon application of the prosecutor and with consent of the Court of Appeal. If the suspect is convicted in Liechtenstein, the court can order as a side decision the skimming off of the enrichment from the criminal offence. Should the criminal offence have been committed abroad, the prosecutor would initiate an objective forfeiture proceeding, which deals with the forfeiture of the assets located in Liechtenstein only and in which only the holder of these assets is a party. In this case, a forfeiture decision of the court would be issued. If the decision on forfeiture or skimming off of enrichment becomes final, it will be enforced in an enforcement proceeding that is similar to a civil enforcement proceeding and the assets would be confiscated for the benefit of the state. Confiscation in particular is excluded according to the CrC in articles 20a and 20 if the assets shall be used to satisfy civil claims of the victims that have been damaged by the offence or if such persons have claims to the assets that have not participated in the offence. Therefore, frozen assets shall primarily be used to settle claims of the damaged persons.

Law stated - 25 September 2024

Agencies

25 | What agencies are responsible for tracing and confiscating the proceeds of crime in your jurisdiction?

It is the responsibility of the public prosecutor to establish what kind of measures need to be taken in the context of the preliminary proceedings. Therefore, the public prosecutor is the driving force in the preliminary proceedings. The investigating judge decides on the applications and whether the requested measure is appropriate and necessary. Furthermore, the police are often involved in analysing seized documents and tracing assets as assistants to the court.

Law stated - 25 September 2024

CRIMINAL ASSET RECOVERY – CONFISCATION

Secondary proceeds

26 | Is confiscation of secondary proceeds possible?

Through the skimming off of enrichment and forfeiture proceedings, the confiscation of secondary proceeds is also possible. In the event of a skimming off of enrichment, according to article 20 of the CrC, the court shall determine who is enriched by the criminal offence and the conversion of the proceeds of the crime into other property. In a forfeiture proceeding, according to article 20b CrC, it is required to prove that the assets that shall be forfeited stem from the criminal offence. Furthermore, the forfeiture proceeding, according to article 20b CrC, is particularly relevant if the assets that are to be forfeited stem from a criminal offence committed outside the jurisdiction of Liechtenstein.

Law stated - 25 September 2024

Third-party ownership

27 | Is it possible to confiscate property acquired by a third party or close relatives?

In both confiscation procedures, the skimming off of enrichment and forfeiture proceedings, it is possible that assets held by a person or an entity that neither committed the offence nor participated in it are confiscated. In cases of the skimming off of the enrichment, it is sufficient that the person or entity directly received the proceeds of a crime and was enriched in an unjustified way. In this case, a judgment for payment would be rendered against the recipient of the proceeds. In cases of forfeiture, it is generally only relevant whether the assets held by the entity or person evidently stem from a criminal offence. In this case, the assets will generally be declared forfeited. However, some exclusions can

apply. Therefore, assets held by relatives and spouses, among other individuals, can also be confiscated if it is proven that they are proceeds of a criminal offence.

Law stated - 25 September 2024

Expenses

28 Can the costs of tracing and confiscating assets be recovered by a relevant state agency?

There are no specific regulations in Liechtenstein regarding the recovery of costs with regard to tracing and confiscating assets. However, in cases of confiscation of assets by the skimming off of enrichment and forfeiture, the assets generally go to the state, which then recovers its costs of the proceedings from the confiscated assets.

Law stated - 25 September 2024

Value-based confiscation

29 Is value-based confiscation allowed? If yes, how is the value assessment made?

In general, the skimming off of unjust enrichment, according to article 20 CrC, is a value-based confiscation since the offender is ordered to pay an amount equivalent to the enrichment to the state, disregarding the assets found and located in Liechtenstein. In cases of forfeiture, however, there is no value-based confiscation; only the assets that are actually found and located in Liechtenstein can be declared forfeited.

Law stated - 25 September 2024

Burden of proof

30 On whom is the burden of proof in a procedure to confiscate the proceeds of crime? Can the burden be reversed?

As a general rule, in criminal proceedings the burden of proof lies with the criminal authorities. This also applies to the confiscation of any proceeds of crime. In particular, in cases of forfeiture there is a strict obligation to prove that the assets stem from a crime.

Law stated - 25 September 2024

Using confiscated property to settle claims

31 May confiscated property be used in satisfaction of civil claims for damages or compensation from a claim arising from the conviction?

The skimming off of the enrichment is excluded, according to article 20a CrC, if the enriched person has settled civil claims of persons damaged by the offence or uses the assets to settle civil claims, or by final and binding decision is obliged to settle civil claims of the damaged persons. Furthermore, forfeiture is excluded, according to article 20c CrC, in the event that persons having claims on the assets that shall be forfeited have not participated in the criminal offence or if there is a foreign confiscation decision that shall be enforced in Liechtenstein.

Law stated - 25 September 2024

Confiscation of profits

32 Is it possible to recover the financial advantage or profit obtained through the commission of criminal offences?

The provision of article 20 CrC and the skimming off of the enrichment provides that all profits and benefits obtained from the commission of the criminal offence are skimmed off. Forfeiture, according to article 20b CrC, however, does not take into consideration the financial advantage obtained but is only an asset-based confiscation of those assets found in Liechtenstein that are proceeds of a crime.

Law stated - 25 September 2024

Non-conviction based forfeiture

33 Can the proceeds of crime be confiscated without a conviction? Describe how the system works and any legal challenges to in rem confiscation.

The skimming off of the unjust enrichment and the forfeiture of assets does not necessarily require a conviction. The skimming off of unjust enrichment can also be made without a conviction in an 'objective forfeiture proceeding' if the objective requirements for the offence are fulfilled but the offender has not acted culpably. Regarding forfeiture, the only prerequisites are that the proceeds from a criminal offence committed abroad are located in Liechtenstein and that the criminal offence committed abroad must be punishable under Liechtenstein law as well as under foreign law. It is, however, sufficient if the objective requirements of the offence are fulfilled in Liechtenstein and abroad. Culpability of the offender and a conviction abroad are therefore not required.

Law stated - 25 September 2024

Management of assets

34 After the seizure of the assets, how are they managed, and by whom? How does the managing authority deal with the hidden cost of management of the assets? Can the assets be utilised by the managing authority or a government agency as their own?

Bank assets that have been seized remain in the account of the legal owner. The active management of assets is restricted. An act of management generally requires the consent of the court. Therefore, the management or change in investment requires an application and the courts are rather restrictive in allowing the management. The question of management of assets, however, is dealt with on a case-by-case basis by the courts, and parties may apply for consent to undertake certain categories of management actions. In cases of seizure, the entity owning the assets is still entitled to use a portion of the assets to cover the running costs of necessary administration as well as the costs of legal defence. The entity, however, must apply to the court for the release of the respective amounts.

Law stated - 25 September 2024

CRIMINAL ASSET RECOVERY – CROSS-BORDER ISSUES

Making requests for foreign legal assistance

35 Describe your jurisdiction's legal framework and procedure to request international legal assistance concerning provisional measures in relation to the recovery of assets.

The basic legal framework for requests for international legal assistance in general (including measures in relation to the recovery of assets) consists of the European Convention on Mutual Legal Assistance in Criminal Matters 1959 (ECMLA). This Convention provides a mutual basis for legal assistance between Liechtenstein and the member states of the European Council that have ratified this treaty. Regarding national law, the basis for legal assistance in criminal matters is the Criminal Legal Assistance Act (CLAA). In matters of criminal legal assistance, the provisions of the CrPC apply as far as the CLAA does not provide any other regulation. Any measure such as seizure of documents or freezing of assets is then conducted according to the provisions of articles 97a et seq CrPC. Generally, foreign prosecution authorities send a letter rogatory to the Liechtenstein Department of Justice requesting the Liechtenstein authorities to take certain measures. This request is usually for seizure and handover of documents because the documents are important for foreign investigations and the assets will be confiscated abroad or a foreign confiscation decision will be enforced in Liechtenstein.

Law stated - 25 September 2024

Complying with requests for foreign legal assistance

36 Describe your jurisdiction's legal framework and procedure to meet foreign requests for legal assistance concerning provisional measures in relation to the recovery of assets.

The ECMLA has been signed by all member states of the Council of Europe. There are further bilateral or multilateral agreements on legal assistance in criminal matters such as a treaty with the United States on criminal legal assistance. In terms of national law, the CLAA is relevant. In matters of criminal legal assistance, the District Court is competent to

decide on the measures applied for (article 55(1) CLAA). In criminal legal assistance, the foreign prosecution authorities have the same role as the Liechtenstein public prosecutor in domestic proceedings. As in domestic proceedings, the court decides on the applications in the letter rogatory based on the respective provisions of the CrPC. Measures taken by the District Court in legal assistance proceedings may be appealed against by the directly affected entity or person. However, the provisions are more restrictive than in domestic proceedings. Furthermore, under article 64 CLAA, foreign countries may apply for the enforcement of a foreign confiscation decision in Liechtenstein if the respective conditions are fulfilled. The proceeding may follow the provisional freezing of assets. The District Court is also competent for enforcement proceedings.

Law stated - 25 September 2024

Treaties

37 | To which international conventions with provisions on asset recovery is your state a signatory?

Liechtenstein is a signatory to several international conventions with provisions on asset recovery. They include in particular:

- the European Convention on Mutual Legal Assistance in Criminal Matters1959;
- the Convention on Money Laundering, Search, Seizure and Confiscation of the Proceeds from Crime 1990;
- the UN Convention for the Suppression of the Financing of Terrorism1999;
- the UN Convention against Transnational Organized Crime 2000; and
- the UN Convention against Corruption 2003.

Law stated - 25 September 2024

CRIMINAL ASSET RECOVERY – PRIVATE PROSECUTIONS

Private prosecutions

38 | Can criminal asset recovery powers be used by private prosecutors?

In Liechtenstein, there are no private prosecutors. Private persons can only initiate criminal investigations and seizures by reporting criminal offences to a prosecutor who then takes the measures that he or she deem appropriate and necessary. Furthermore, they can assist the prosecutor and the court by providing documents and information that is material to an investigation.

Law stated - 25 September 2024

UPDATE AND TRENDS

Emerging trends

39 Are there any emerging trends or hot topics in civil and criminal asset recovery in your jurisdiction?

In joined cases E-1/24 and E-7/24 dated 07/05/2025, the EFTA Court found that the right of access to beneficial ownership information encompasses any natural or legal person who is able to demonstrate a legitimate interest with respect to the purpose of the directive. In that regard, substantiating a legitimate interest is both necessary and sufficient to access information. A correct application of the national law implementing the European anti-money laundering regulations ensures that information on beneficial ownership is disclosed only when appropriate, necessary and proportionate in relation to the objective pursued.

Law stated - 25 September 2024

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CIVIL ASSET RECOVERY – JURISDICTIONAL ISSUES

Parallel proceedings

1 | Is there any restriction on civil proceedings progressing in parallel with, or in advance of, criminal proceedings concerning the same subject matter?

Victims in criminal proceedings are entitled to be a party to the criminal investigation and court proceedings and to demand and receive damages. Parallel proceedings before civil courts can also be maintained, although the maxim is that penal proceedings hold civil proceedings in abeyance. It is therefore likely that any independent civil proceeding will be suspended awaiting the outcome of the criminal proceeding.

A decision from the criminal court determining guilt and liability for the defendant and granting damages to the civil party victim will be considered res judicata for purposes of the civil proceeding. A decision acquitting the defendant of criminal responsibility will not definitively determine the outcome of the civil liability.

Law stated - 11 September 2025

Forum

2 | In which court should proceedings be brought?

As a microstate, Monaco has a single court building where all courts sit (ie, the civil, penal and criminal courts), and thus there is no choice of forum.

Law stated - 11 September 2025

Limitation

3 | What are the time limits for starting civil court proceedings?

Civil statutes of limitations apply to civil actions. However, the victim cannot begin a criminal action requesting damages if the statute of limitations for the crime has run. Penal infractions are classed into three categories: contraventions, delicts and crimes.

Delicts are tried before the correctional tribunal and crimes before the criminal tribunal. The statute of limitations for an offence is three years from the date of the infraction. The statute of limitations for a crime is 10 years (a special five-year statute of limitations applies to the offence of corruption and influence-peddling).

The civil statute of limitations is generally five years from the time the claimant knew or should have known of the facts giving rise to the right to sue, although certain actions are time-barred only after 10 years and others 30 years.

Where there is an action founded on the obtaining of consent based on intentional misinformation the limitation period is five years, which starts to run from the date of discovery.

Any act taken to investigate a criminal offence in a formal proceeding suspends the running of the statute. The civil statute of limitations is suspended during the criminal procedure if the civil action has been initiated and suspended.

Law stated - 11 September 2025

Jurisdiction

4 In what circumstances does the civil court have jurisdiction? How can a defendant challenge jurisdiction?

Jurisdictional rules are set out in the Code of Civil Procedure and the Code of Private International Law (CDIP) adopted in 2017. Monégasque courts have jurisdiction over any defendant domiciled in the principality. They also have jurisdiction over matters involving:

- obligations created in the principality or requiring execution there;
- inheritance issues where the equivalent of probate has begun in Monaco;
- cases involving companies with cases whose principal establishment is located in the principality;
- the execution of foreign judgments; and
- real property situated within the principality.

This list is not exhaustive.

The CDIP introduced the possibility for the judge to declare that the court does not have jurisdiction, even where neither party has contested jurisdiction.

In respect of civil cases, the CDIP rules on recognition of foreign judgments will consider whether a foreign court does not have jurisdiction in the following cases:

- the principality has exclusive jurisdiction; and
- the litigation did not have a sufficient nexus with the state that claims jurisdiction, notably:
    - where the foreign state's jurisdiction is based on the temporary presence of the defendant in the territory; or
    - when jurisdiction is based on the presence of assets belonging to the defendant and not related to the litigation, or to the exercise of a commercial activity unrelated to the litigation.

Law stated - 11 September 2025

CIVIL ASSET RECOVERY – PROCEDURE

Time frame

5 | What is the usual time frame for a claim to reach trial?

The usual time frame to reach a final judgment before the Court of First Instance is 18 months. This is shorter if the procedure is urgent. Appeals will usually be heard within nine months. Appeals of refusals to issue freezing orders will be heard within six months, with sometimes less than one week's notice to the parties.

Criminal investigations take, on average, three to four years to come to trial, but have been known to take much longer.

Law stated - 11 September 2025

Admissibility of evidence

6 | What rules apply to the admissibility of evidence in civil proceedings?

Written evidence is admissible in civil proceedings, provided that it has been translated into French by a sworn translator. The evidence is communicated (by a Monégasque defence counsel, as members of the Monaco Bar – which is restricted to Monaco nationals – have a monopoly on communicating evidence, even where they are not leading a counsel, as is often the case) to the defence counsel of the other party. Irrelevance to the proceedings and hearsay will not prevent written evidence from being introduced. Foreign documents will in certain cases require an apostille.

Oral testimony is not ordinarily taken during civil proceedings. Witness statements must be handwritten and signed with an acknowledgement that they will be used as evidence and that any false statement can be sanctioned in criminal proceedings. Parties to the civil action do not make witness statements or affidavits, as they are considered to be parties in interest. Related parties and employees may be witnesses, but their written testimony will be attacked as unreliable and not impartial because of their relationship with a party having an interest in the outcome. Nonetheless, the statements will not be excluded for that reason alone.

A reform of the Code of Civil Procedure in December 2021 introduced the possibility of obtaining a court order to have the opposing party produce evidence, but also to preserve evidence prior to trial. There is otherwise no process similar to deposition and discovery, and no obligation for either party to disclose evidence. Before the start of proceedings, a party may request and be granted a compulsion order from the court to produce evidence. The order will be served by a bailiff, sometimes in the presence of police officers. However, there is no sanction for failing to produce the evidence despite the court order. Once proceedings have begun, the court can more formally be requested by a party to order the production of a document. The consequence for failing to produce the document without justification can be a fine until the document is produced, and the court will infer that it contains information contrary to the interests of the party failing to produce it.

Where documents are produced solely to damage a party's reputation with the court, the opposing party may request that they are excluded and that the portions of the written pleadings referring to the libellous material be deleted. Lawyers are immune from prosecution for defamatory statements contained in their written pleadings or oral arguments, and there are no sanctions imposed in such cases.

Law stated - 11 September 2025

Witnesses

7 | What powers are available to compel witnesses to give evidence?

The Code of Civil Procedure provides for the possibility of compelling evidence (article 329 et seq) and sanctions, including fines for a refusal to testify. In practice, however, such coercive measures are unknown. Spouses – including former spouses – parents and children (ascendants and descendants) cannot be compelled to testify.

Recently, the court of first instance refused to enforce a common law court's order to produce evidence against a party and against a child of that party.

A compulsion order can seek documents from a witness.

Law stated - 11 September 2025

Publicly available information

8 | What sources of information about assets are publicly available?

Information is publicly available about real property and companies.

For real property, the Registry of Deeds will provide a report for any individual or company of any real property transaction carried out in the principality (however, the reverse is not the case: it is not possible to search the record to identify the owner of a particular piece of property or flat). The report will include the purchase price, liens and mortgages – both voluntary and judicial, which can lead to uncovering banking relationships. It will also include the description of the land and the name of the notary before whom the act or execution was signed. All transfers of property must be signed before one of the Monégasque notaries, of which there are three. A copy of the act of purchase can be ordered from the registry.

For commercial companies, there is a company register that will provide information on the company, its objects clause and the names of the directors. Further information can be obtained in respect of voluntary or judicial liens filed on the business. With sole proprietorships, partnerships and limited liability closely held companies, it is possible to obtain information identifying the shareholders. This is not possible for Monégasque public limited companies and civil companies, although the compulsion order may order that information to be released. The information on managers of civil (non-trading) companies has recently been made publicly available.

A register of beneficial owners has been established under anti-money laundering legislation. Parties require a court order to obtain access, and the new law indicates that the request must involve money laundering, terrorism or corruption investigations.

For civil companies (companies that are considered not to be trading commercially and are usually used to hold real property in Monaco or France) the public record will reveal the address, corporate purpose and the name of the manager or managing director. A court order will be required to obtain the statutes from the civil company registry, and these will name the shareholders.

Law stated - 11 September 2025

Cooperation with law enforcement agencies

9 | Can information and evidence be obtained from law enforcement and regulatory agencies for use in civil proceedings?

Lawyers for the civil party victims who have become civil parties in a criminal action have access to the criminal file throughout the preliminary investigation and during the main portion of the investigation, which follows the formal indictment of the defendant. Copies can be made of the file and produced to the lawyers defending the accused or the civil parties. However, the documents in the criminal investigation file are subject to professional secrecy requirements, and use in a separate civil proceeding without authorisation can be considered a violation of professional secrecy and subject to sanction under article 308 of the Penal Code.

Once a matter has been tried in the criminal courts and all appeals exhausted, the information in the criminal file can be freely used. The risk of using the documents from the criminal investigation in a civil action is that the opposing party can file a criminal complaint for violation of the secrecy of the criminal investigation.

As a civil party, the victim through his or her lawyers may demand that the investigating magistrate take any steps that are considered necessary for the investigation, including requesting information both locally and internationally, hearing witnesses, holding a confrontation with the accused and naming experts to examine the evidence. Costs for such investigations are borne by the state, although the civil party will be requested to file a deposit at the time that it joins the criminal procedure.

Law stated - 11 September 2025

Third-party disclosure

10 | How can information be obtained from third parties not suspected of wrongdoing?

The judge in a criminal investigation can obtain any information that is considered useful for the manifestation of truth, including any banking information. In civil cases, a compulsion order may be obtained, forcing disclosure from public officials (eg, for statutes of civil companies, which are not otherwise publicly available, or employment information).

A bailiff may be instructed to request or demand information from a third party. This has no force of law, but the answers to the bailiff from the third party may sometimes be revelatory and form the basis for a request for compelled evidence (a compulsion order). It is a frequently used tactic but may disclose to the potential defendant the fact that an action is planned (thereby giving advance warning of the intention to seek interim relief).

The Penal Code provision making it a crime to reveal confidential information (article 308) is very broad and covers people who, by their profession or position, have received confidential information. Bankers, lawyers, doctors and accountants are covered, but it is not clear whether other professionals (eg, corporate service providers, tax representatives and building managers) are also covered.

Under the new Code of Civil Procedure provisions (article 277-1), the judge can order the production of documents held by third parties, provided that they will then be produced as evidence in the proceedings.

Law stated - 11 September 2025

CIVIL ASSET RECOVERY – REMEDIES AND RELIEF

Interim relief

11 What interim relief is available pre-judgment to prevent the dissipation of assets by, and to obtain information from, those suspected of involvement in the fraud?

In criminal cases, the investigating magistrate may order the seizure of assets. If a declaration is made to the financial intelligence unit of the principality (AMSF) by a professional of a suspect transaction (and a fraudulent transaction will be among these), the AMSF may act very quickly to request the prosecutor to block accounts.

In civil cases, a party may file an ex parte request to seize assets with the court of general jurisdiction of the principality. The request need not identify specific bank accounts, but it must name banks in which such accounts are likely to be situated. The order freezing the accounts will specify a specific amount to be blocked. Regardless of pending actions in other jurisdictions, an action will have to be filed in Monaco to validate the seizure. The existence of assets in Monaco will be sufficient to justify jurisdiction for the action invalidation.

A party may declare temporarily indisposable funds held by a third party by filing a request with the clerk of the court, before obtaining a court order. This measure must be contained in the request for a seizure order, and it cannot be filed independently. However, if the order is then refused, the debtor or opposing party will have been warned of the attempt to seize assets.

A party may also request authorisation to register a judicial mortgage on real property owned by the opposing party. The cost for registering a judicial mortgage is 0.65 per cent of the amount.

The action and request for seizure must be filed through a Monégasque defence counsel even where drafted by foreign counsel (or a member of the Monaco Bar). The Monaco

defence counsel has a statutory right to fees of 0.4 per cent of the amount at issue. Although this percentage should be applied only on the stated amount in the request and seizure orders, there have been cases of statutory fees being awarded for much larger percentages when these have been mentioned in subsequent pleadings. The statutory amount will often be claimed whether or not assets have been found, and if litigation ensues, the defence counsel of the winning party (and each defence counsel if there is more than one) is entitled to the statutory fees. Care must be taken when instructing Monégasque counsel that the issue of statutory fees is determined at the outset.

Seizure orders can apply to bank accounts, real property, movable property (eg, art collections), motor vehicles and yachts having either a Monaco registration or found in Monaco and safety deposit boxes.

The seized party may move to have the seizure lifted, but must do so (by an urgent action known as an expedited summons) before the first hearing of the action on the merits.

Law stated - 11 September 2025

Non-compliance with court orders

12 | How do courts punish failure to comply with court orders?

There is no equivalent to a contempt of court citation for failing to observe court orders. Both civil and criminal courts may order a defendant to do or to cease doing something, and assess a fine for each day that he or she fails to comply. This fine is paid to the party requesting the measure.

Law stated - 11 September 2025

Obtaining evidence from other jurisdictions

13 | How can information be obtained through courts in other jurisdictions to assist in the civil proceedings?

Monaco has ratified the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters of 1970 (the Hague Convention). Monaco will not, however, entertain requests for pretrial deposition and discovery. The authority for the receipt of requests for assistance is the Director of Judicial Services. Monaco is not a member of the European Union, and therefore EU regulations for the taking of evidence will not apply.

For countries that have not ratified the Hague Convention and where bilateral judicial assistance treaties do not exist (Monaco has several bilateral treaties for judicial assistance, notably with France), article 975 of the Code of Civil Procedure provides that Monégasque judges may issue rogatory commissions through the appropriate authorities, but this is seldom issued in civil matters.

Law stated - 11 September 2025

Assisting courts in other jurisdictions

14 What assistance will the civil court give in connection with civil asset recovery proceedings in other jurisdictions?

Monaco's ratification of the Hague Convention provides the framework for assisting foreign courts in obtaining evidence in Monaco. Furthermore, article 975 of the Code of Civil Procedure provides that requests from foreign courts may be entertained, provided that they are transmitted in French or Italian translation through diplomatic channels unless the Prince (as the high authority) authorises otherwise.

Enforcement of foreign judgments

Monaco will order the enforcement of foreign judgments (known as exequatur) under the provisions of article 13 et seq of the Code of Private International Law (CDIP). The court will order the judgment to be effective in Monaco without examining the matter on the merits, provided that it is not proven that:

- it is issued by a court whose assertion of jurisdiction conflicts with Monégasque rules on the matter;
- the parties have not had an opportunity to defend;
- the judgment is definitive and can be executed in the country that issued it;
- it contains nothing contrary to public order; and
- there is no prior action pending in the principality between the same parties on the same subject.

(The CDIP introduced lis pendens so that where there is a prior pending action in another jurisdiction, the Monégasque court can now suspend proceedings.)

In no event can a judgment rendered by a foreign court be re-examined on the merits. The Monaco court may not issue a revised judgment.

The request for exequatur is filed as an adversarial summons. The defendant can then oppose recognition of the judgment in the course of the procedure.

Documents accompanying the request for exequatur are:

- an authentic (certified) copy of the judgment;
- the original of the service documentation, or any other act proving service of the judgment in the foreign jurisdiction; and
- a certificate delivered by the foreign judge or by the clerk of the court confirming there has been no appeal and that the judgment can be executed in the foreign country.

Documents must either be legalised or carry an apostille and must be translated into French.

Law stated - 11 September 2025

Causes of action

15 What are the main causes of action in civil asset recovery cases, and do they include proprietary claims?

The main cause of action in civil recovery cases is the existence of a debt, and is thus an action based on the failure to repay an obligation. However, the action can also be the equivalent of tort (article 1229 et seq of the Civil Code), which provides that any act that causes another person damage obliges the person by whom the damage was caused to repair it. An action requesting rescission or nullity of a contract because consent was obtained with intentional misinformation (as provided in article 1152 of the Civil Code) is also used. The *action paulienne*, against a third party that has received assets from a debtor, can also be used.

Law stated - 11 September 2025

Remedies

16 What remedies are available in a civil recovery action?

The typical remedy is damages, although rescission of a fraudulently obtained contract can be ordered, with restitution.

Law stated - 11 September 2025

Judgment without full trial

17 Can a victim obtain a judgment without the need for a full trial?

A procedure known as an expedited summons can be initiated to obtain temporary relief or a money judgment. The claimant suing by this method must allege that the issues cannot be seriously contested by the other party (although they almost inevitably will) and that there is urgency. The judge is said to be the judge of appearances and will judge only on the issues presented and according to the documentation. If there are serious legal arguments, the judge will declare that it is not within his or her jurisdiction to decide. The procedure is similar to an action on the merits, although oral argument and a judgment can be issued relatively quickly.

The order issuing from an expedited summons can be appealed but can be executed despite an appeal.

The civil trial is not similar to the full trial known at common law. There are no witnesses and no jury. The case will advance through the exchange of written pleadings, and there will be an oral argument presented by each parties counsel (in French). Foreign counsel are authorised to appear and plead, provided that they do so in French.

Law stated - 11 September 2025

Post-judgment relief

18 | What post-judgment relief is available to successful claimants?

Pre-judgment conservatory measures such as seizures of assets can become definitive post-judgment and will render the assets subject to execution.

Law stated - 11 September 2025

Enforcement

19 | What methods of enforcement are available?

Title IV of the Civil Code is dedicated to the compulsory execution of judgments, following notification of the judgment and expiration of the time to appeal (unless the judgment orders provisional execution). If third parties are holding funds and the judgment is by default (the defendant having failed to appear), execution can be enforced two months following the notification. If the judgment provides for provisional execution, only notification of the judgment to the defendant and the third party is required.

Where the assets seized are real property, objects or shares of companies, then a procedure for public sale at auction is required.

Special provisions in the Commercial Code apply to pledges of assets, depending on their nature and depending on whether (for companies) the shares are traded on a public exchange.

Law stated - 11 September 2025

Funding and costs

20 | What funding arrangements are available to parties contemplating or involved in litigation and do the courts have any powers to manage the overall cost of that litigation?

Contingency fee arrangements are prohibited for Monégasque and French lawyers. However, fee arrangements providing for retainers on an hourly fee basis and to cover costs, with additional payments based on the outcome, are allowed. An agreement should be reached with the Monégasque defence counsel who will be assisting foreign counsel (whether or not Monaco-based) as to the statutory fees. Some counsel will require that the statutory fees be deposited with them to commence proceedings. Other counsel request their clients to pay the statutory fees awarded against the opponent, before requesting the opponent to pay. There does not appear to be an agreed route among the defence counsel at the Monégasque Bar as to how the statutory fees apply, and these can be a source of both surprise and contention as they come in addition to fees paid for the Monaco counsel's intervention. There is no agreement possible with opposing counsel, and as indicated, if

there is more than one opposing counsel, the statutory fees will be requested by each. Statutory fees are again applicable on appeal.

Law stated - 11 September 2025

CRIMINAL ASSET RECOVERY – LEGAL FRAMEWORK

Interim measures

21 | Describe the legal framework in relation to interim measures in your jurisdiction.

Interim measures, including seizure of assets, are available to preserve evidence and the interests of the parties or third-party victims.

The basic principle is that the investigating magistrate takes all measures that he or she considers useful for the manifestation of truth (for the establishment of the facts) or to safeguard the interest of the parties, including third parties. All evidence useful to establish the facts can be seized and put under seal, including objects, papers, cash and coins, and correspondence.

Communication of seized documents without the authorisation of the accused, or of parties having rights to the documents, to a person not qualified to receive them can result in a fine of up to €15,000.

In matters relating to money laundering, corruption or influence-peddling, the investigating magistrate can seize all property after obtaining the opinion of the Prosecutor General of the principality.

Law stated - 11 September 2025

Proceeds of serious crime

22 | Is an investigation to identify, trace and freeze proceeds automatically initiated when certain serious crimes are detected? If not, what triggers an investigation?

When serious financial crimes are detected (even where there is a mere suspicion of serious financial crimes), including fraud, Ponzi schemes, money laundering, corruption and influence-peddling, the prosecutor or the investigating magistrate will seek to identify any related funds, including bank accounts directly or indirectly held by the perpetrators, and seize the funds to protect the interests of third parties or civil victims and eventually with a view to confiscation. Article 596-1 of the Penal Code allows the freezing of assets for serious financial crimes until adjudication of the matter, and article 12 of the Penal Code allows confiscation of the proceeds of crime.

Law stated - 11 September 2025

Confiscation – legal framework

I

23 Describe the legal framework in relation to confiscation of the proceeds of crime, including how the benefit figure is calculated.

Article 12 of the Penal Code provides for confiscation of the proceeds of crime as one of the penalties to which a person condemned for a contravention, offence or crime can be sentenced.

Article 105 of the Code of Civil Procedure provides for restitution during the investigation to any party claiming the assets seized (including a civil party victim). All parties concerned (defendant, civil party victim and the prosecutor) will be informed and the matter will be decided by the investigating magistrate. The decision can be appealed before the Court of Appeals in closed session.

Where there is a money laundering allegation and conviction, confiscation is provided for by article 219 of the Penal Code. Ordinance No. 15,457 of 9 August 2002 applies the Council of Europe Convention of 8 November 1990 in the principality. Both assets and funds of illicit origin, or other funds in an amount equal in value to those having been determined to be of illicit origin, can be confiscated. Real and personal property can be confiscated. The court can order the confiscation of assets held by third parties that they knew to be of illicit origin.

Law stated - 11 September 2025

Confiscation procedure

24 Describe how confiscation works in practice.

The tribunal can order the confiscation of objects that are the proceeds of crime (article 32 of the Penal Code). Decisions have been known to create a conflict between the confiscation orders and the interests of third-party victims in financial fraud cases, as the assets confiscated will escheat to the state, rather than be applied to the reimbursement of the victims.

The criminal court can specifically order (and should be requested by the civil parties to order) that seized assets be first applied to indemnify civil party victims.

Monaco will cooperate with requests to seize and confiscate assets in the principality at the request of foreign authorities under the applicable conventions and under the general provisions of article 87 of the Penal Code, allowing the investigating magistrate to take all appropriate measures necessary for the manifestation of the truth and the protection of third-party interests.

However, execution of a foreign decision to confiscate under a treaty will only be granted if the foreign decision is final and not subject to appeal. A Court of Appeals' decision not only refused confiscation but granted release of the seized amounts (*MP v dS*, Court of Appeals, Monaco, 6 March 2006, Legimonaco) when the decision of the foreign court (Italy, in this case) was determined to have been appealed.

Law stated - 11 September 2025

Agencies

25 | What agencies are responsible for tracing and confiscating the proceeds of crime in your jurisdiction?

The Prosecutor General is responsible for the investigation and prosecution of all criminal offences. The Prosecutor General will also receive and respond to requests of the financial intelligence unit of the principality (AMSF). The Prosecutor General will transmit to an investigating magistrate (of which there are three in the principality) all documents relating to complaints and denunciations that require investigation. The investigating magistrate will then conduct the investigation independently and can mandate the judicial police for all acts of investigation, other than the taking of live testimony from the accused.

The decision on seizure will be made by the investigating magistrate or by the court. The decision to confiscate will be made by the court trying the accused.

Prosecutors and investigating magistrates are named by the Prince and are drawn from a professional corps of magistrates of French and Monégasque nationality trained in France .

Law stated - 11 September 2025

CRIMINAL ASSET RECOVERY – CONFISCATION

Secondary proceeds

26 | Is confiscation of secondary proceeds possible?

Although this is not specifically provided for by the statutes or case law, the proceeds of crime are understood to include the fruits of the proceeds.

Law stated - 11 September 2025

Third-party ownership

27 | Is it possible to confiscate property acquired by a third party or close relatives?

It is possible to confiscate property acquired by a third party (whether or not related), but the confiscation must not affect the rights of third parties who legitimately acquired it, and the third party or relative must be given the right to oppose the confiscation. If a foreign confiscation order to be executed in the principality includes property held by third parties, then it will be executed unless it is shown that the third parties were not allowed to defend in the same conditions available under Monégasque law. Confiscation from third parties who knew or should have known of the illicit origin is specifically provided for where there is a conviction for money laundering offences.

In civil matters, it is possible to pursue a third party who knowingly received assets from a debtor in fraud of the creditor's rights. This is known as the *action paulienne*.

Law stated - 11 September 2025

Expenses

28 Can the costs of tracing and confiscating assets be recovered by a relevant state agency?

Yes, the costs of the prosecution (including the investigation) can be recovered from a defendant who is found guilty.

Law stated - 11 September 2025

Value-based confiscation

29 Is value-based confiscation allowed? If yes, how is the value assessment made?

Confiscation of illicitly obtained funds will be applied to other assets or funds if the funds considered to be illicitly obtained have been commingled, or if the funds specifically determined to have been of illicit origin are insufficient to cover the entire amount in question.

Law stated - 11 September 2025

Burden of proof

30 On whom is the burden of proof in a procedure to confiscate the proceeds of crime? Can the burden be reversed?

The basic principle in Monégasque law is that any accused is presumed innocent. However, in practice, in matters where money laundering is alleged in particular, for action initiated after 2018, the burden of proof is on the person owning the funds to prove that the funds do not have an illicit origin and, in the case of third parties, that they were not aware of the illicit origin even where there has been no criminal accusation in the country of origin. The investigating magistrate can name an expert to review financial movements on accounts, foreign and local, and provide an opinion. The expert analysis may take several years and the expert's determination may seek to apply French and Monégasque generally accepted accounting practices to foreign offshore structures holding accounts, without taking into consideration custom and practice in the home jurisdiction.

Law stated - 11 September 2025

Using confiscated property to settle claims

31

May confiscated property be used in satisfaction of civil claims for damages or compensation from a claim arising from the conviction?

Yes, under the provisions of article 32 of the Penal Code, which specifically delegates jurisdiction to the tribunals charged with the matter, the confiscated property can be used to settle damages awarded to civil claimants in a criminal action.

Law stated - 11 September 2025

Confiscation of profits

32 Is it possible to recover the financial advantage or profit obtained through the commission of criminal offences?

Articles 12, 32 and 219 of the Penal Code do not exclude the confiscation of fruits of the assets obtained through the commission of a criminal offence.

Law stated - 11 September 2025

Non-conviction based forfeiture

33 Can the proceeds of crime be confiscated without a conviction? Describe how the system works and any legal challenges to in rem confiscation.

The Penal Code does not provide for confiscation where there is no conviction. However, in matters relating to illegal drugs or counterfeiting, confiscation can occur despite the absence of a conviction.

Law stated - 11 September 2025

Management of assets

34 After the seizure of the assets, how are they managed, and by whom? How does the managing authority deal with the hidden cost of management of the assets? Can the assets be utilised by the managing authority or a government agency as their own?

The procedures for confiscation of assets were modified by Law 1535 of 9 December 2022 and as subsequently supplemented by Ordinance 10,245 of 7 December 2023. A service for the management of confiscated assets has been created (SGA) under the authority of the Direction of Judicial Services. The SGA may prioritise payments to victims who are civil parties in criminal proceedings.

Law stated - 11 September 2025

CRIMINAL ASSET RECOVERY – CROSS-BORDER ISSUES

Making requests for foreign legal assistance

35 Describe your jurisdiction's legal framework and procedure to request international legal assistance concerning provisional measures in relation to the recovery of assets.

As a signatory of the Council of Europe conventions on judicial assistance in criminal matters (Strasbourg, European Convention on Mutual Legal Assistance in Criminal Matters of 20 April 1959) and on money laundering (Council of Europe Convention on Money Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990, Strasbourg), Monaco regularly issues commissions rogatory to foreign states concerning information and assets situated there.

In the absence of a treaty, article 203 of the Code of Civil Procedure (CCP) confirms that when it is necessary to obtain information in a foreign state, the investigating magistrate or the competent jurisdiction will request these through the Prosecutor General's Office.

Law stated - 11 September 2025

Complying with requests for foreign legal assistance

36 Describe your jurisdiction's legal framework and procedure to meet foreign requests for legal assistance concerning provisional measures in relation to the recovery of assets.

The international conventions to which Monaco has adhered provide the framework to meet foreign requests for legal assistance. In the absence of bilateral treaties relating to the exchange of information on fiscal matters – Monaco has now signed 35 such treaties – Monaco has exempted tax issues from its undertaking to provide legal assistance. However, Monaco will meet foreign requests in matters relating to value added tax fraud and to other infractions related to fiscal issues that consist of criminal activity, provided that these are also sanctioned in Monaco.

Article 204 of the CCP provides the legal framework if the country requesting the measures is not a signatory of the treaties in question.

Requests can be refused where:

- they will affect sovereignty, security or public order;
- the facts to which they relate have already led to a final penal judgment in the principality;
- the infraction is political or relates to tax (with the exceptions listed above);
- the rights of the defendant in the foreign state were not guaranteed; and
- the criminal infraction alleged, or for which a conviction was obtained, is not a sanctioned criminal act in Monaco.

Law stated - 11 September 2025

Treaties

37 To which international conventions with provisions on asset recovery is your state a signatory?

Monaco is not a member of the European Union, but as a member of the Council of Europe it is a signatory of the following:

- the Strasbourg Convention on Money Laundering, Search, Seizure and Confiscation of the Proceeds of Crime of 8 November 1990;
- the Strasbourg European Convention on Mutual Legal Assistance in Criminal Matters of 20 April 1959; and
- the Strasbourg Convention on Corruption of 27 January 1999.

The principality has also ratified the following:

- the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 3 July 1991;
- the United Nations Convention against Transnational Organized Crime of 15 November 2000; and
- the United Nations Convention against Corruption of 31 October 2003.

Monaco has also signed several bilateral treaties on mutual judicial assistance, notably with France, and an agreement exists with the United States in respect of confiscation of the proceeds of crime.

Law stated - 11 September 2025

CRIMINAL ASSET RECOVERY – PRIVATE PROSECUTIONS

Private prosecutions

38 Can criminal asset recovery powers be used by private prosecutors?

Although civil party victims can have a strong role in public prosecution, only the Prosecutor General can prosecute (other than in specific matters dealing with defamation and calumnious denunciation).

Law stated - 11 September 2025

UPDATE AND TRENDS

Emerging trends

39 Are there any emerging trends or hot topics in civil and criminal asset recovery in your jurisdiction?

The court of first instance has been particularly protective of the right to privacy of third parties when evaluating requests for compulsory orders to reveal the source of funding (eg, in cases where plaintiffs are seeking to identify assets). The same court is now taking a less restrictive attitude than in the past in granting freezing orders, but will not hesitate to retract such orders if the defendants can show that the ex parte order was obtained without full and fair disclosure of the facts.

The court of first instance has pierced the corporate veil by allowing a plaintiff benefiting from a judgment of a foreign court against an individual to seize assets owned by a Panamanian company on the basis that the debtor was the beneficial owner, even though in a separate proceedings the same court of first instance had refused to recognise the validity of the same foreign judgment because the Panamanian company was not a party to the foreign judgment. The court of first instance ruled that the Panamanian company was a sham because it could not show that it had any economic activity (beyond the ownership of an apartment in Monaco). The lower court's decision was confirmed on appeal, including punitive damages awarded by the foreign court, which are normally not available in civil proceedings.

Law stated - 11 September 2025

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CIVIL ASSET RECOVERY – JURISDICTIONAL ISSUES

Parallel proceedings

1 | Is there any restriction on civil proceedings progressing in parallel with, or in advance of, criminal proceedings concerning the same subject matter?

Whenever a crime is committed and damage has been caused, the person who has suffered such damage is entitled to see that damage repaired and seek redress through a civil action that can take place before a civil court or before a criminal court within the criminal proceedings, depending on the circumstances.

The claim for damages incurred as a result of a crime must be filed before a criminal court within the criminal proceedings (article 71 of the Portuguese Code of Criminal Procedure (CCP), unless the plaintiff decides not to file a criminal complaint and pursues only the civil action path or the situation falls into one of the legal exceptions (article 72 of the CCP).

The most relevant exceptions that allow the civil claim for compensation to be filed separately before civil courts include:

- criminal proceedings that do not lead to prosecution within eight months from the time the crime was reported or that have not been in progress for that period of time;
- criminal proceedings that rely on a complaint or private accusation;
- damages that are not yet known or not fully known at the time of the indictment;
- claims whose value qualifies for civil intervention by the collective court, while the criminal proceedings fall within the jurisdiction of that court;
- criminal proceedings that are conducted as summary proceedings; and
- injured parties who are not informed of the possibility of filing a civil claim within the criminal proceedings, or who are not notified to do so (article 72 of the CCP).

Law stated - 5 October 2025

Forum

2 | In which court should proceedings be brought?

Territorial jurisdiction of Portuguese civil courts in civil and commercial matters is determined, first, by EU Regulation No. 1215/2015. According to this regulation, the competent courts are the courts of the member state where the defendant has their domicile (article 4 of Regulation No. 1215/2015).

In tort cases, the plaintiff may alternatively choose the courts of the place where the harmful event occurred or may occur. In contractual matters, the courts with jurisdiction are the courts for the place of performance of the obligation in dispute (article 7 of Regulation No. 1215/2015).

Whenever EU regulations and international treaties are not applicable, territorial jurisdiction of civil courts is determined by the Portuguese Civil Procedure Code.

As a rule, in civil proceedings, the competent court is the court of the place where the defendant has its domicile, if the defendant is a natural person (article 80 of the Civil Procedure Code) or the court of the place where the defendant has its legal headquarters if the defendant is a legal person (article 81 of the Civil Procedure Code).

In proceedings regarding obligations and contractual liability, the claim must be filed in the court of the place where the defendant has its domicile, but the plaintiff may choose to initiate legal proceedings before the court of the place where the obligation should have been fulfilled or carried out as an alternative criterion (article 71(1) of the Civil Procedure Code).

In proceedings regarding tort law and extracontractual liability, whenever the civil action is intended to enforce civil liability based on an unlawful fact or based on risk, the claim must be filed in the court of the place where the fact occurred (article 71(2) of the Civil Procedure Code).

In proceedings regarding interim remedies, the competent court criteria depend on which interim remedy is being requested. As a rule, interim measures must be requested before the court with jurisdiction to hear the merits of the case (article 78(1)(c) of the Civil Procedure Code). However, if the plaintiff intends to request the preventive attachment of assets, goods and belongings of the defendant or the listing of assets, the action can be brought either before the court with jurisdiction to decide the merits of the case or before the court where such assets, goods and belongings are located (article 78(1)(a) of the Civil Procedure Code).

Law stated - 5 October 2025

Limitation

3 | What are the time limits for starting civil court proceedings?

Under Portuguese civil law, the ordinary statute of limitations period is 20 years (article 309 of the Civil Code), and so the ordinary limitation period for contractual civil liability arising from a breach of a contract is 20 years. However, shorter deadlines may apply for certain types of obligations, as well as for interests. Therefore, this matter should always be reviewed by a lawyer in the case at hand.

Differently, the claim for damages due to a civil tort must be filed within a period of three years as of the date when the injured party became aware of the right to which it is entitled (article 498(1) of the Civil Code), except when the unlawful act that caused damage constitutes a crime for which the law establishes a longer statute of limitations, in which case the longer statute of limitations shall apply (article 498(3) of the Civil Code). If a criminal complaint is lodged, the statute of limitations will not run while the case is pending.

Additionally, the claim for compensation due to unjust enrichment must be filed within a period of three years from the date the plaintiff became aware of his or her right and of the

person responsible, without prejudice to the ordinary statute of limitations if the respective period of 20 years has elapsed since the enrichment (article 482 of the Civil Code).

Law stated - 5 October 2025

Jurisdiction

4 In what circumstances does the civil court have jurisdiction? How can a defendant challenge jurisdiction?

To determine civil courts' jurisdiction, one must pay attention not only to the rules provided by the Civil Procedure Code, especially as regards international jurisdiction, but also to the rules established by Law No. 62/2013 of 26 August 2013.

In addition to what is laid down in European Regulations and International Treaties, Portuguese civil courts have international jurisdiction:

- whenever the claim may be filed in a Portuguese court in accordance with the rules of territorial jurisdiction established by Portuguese law (article 62(a) of the Civil Code), which means that, as a rule, Portuguese jurisdiction exists when the defendant is domiciled in Portugal;
- whenever the fact that serves as the cause of action or any of the facts that comprise it were committed in Portuguese territory (article 62(b) of the Civil Code), which means that if the crime from which the damage arose was committed in Portugal, Portuguese courts will have jurisdiction; and
- whenever the right invoked by the plaintiff cannot become effective except by means of an action brought in Portuguese territory or when the plaintiff encounters appreciable difficulties in bringing the action abroad, provided that between the object of the litigation and the Portuguese legal system there is a weighty element of personal or real connection (article 62(c) of the Civil Code).

Portuguese courts have jurisdiction to issue interim measures whenever Portuguese courts have jurisdiction to decide the merits of the case (article 78(1)(c) of the Civil Procedure Code), and in concerning the preventive attachment of assets, goods and belongings of the defendant or the listing of assets, Portuguese courts can also issue interim measures if such assets, goods and belongings are located in Portugal (article 78(1)(a) of the Civil Procedure Code).

The defendant must object to lack of jurisdiction in its first written pleadings, which must be lodged within 30 days from service of process (depending on the circumstances, the deadline may be longer) (eg, when the defendant is served abroad the deadline is 60 days (articles 245(4), 569(1) and 571 of the Civil Procedure Code)). In interim measure proceedings, the deadline will be much shorter as the deadline to object is 10 days (article 293(2) of the Civil Procedure Code) with the possibility of extending these deadlines if service of process is made abroad but not longer than 10 days (article 366(2) of the Civil Procedure Code). However, the lack of jurisdiction can also be acknowledged ex officio by the court, except when the lack of jurisdiction derives from the disregard of choice of forum clause, the disregard of the competence rules on the amount of the claim or the disregard

of the competence rules on domestic territorial competence or venue (articles 97 and 578 of the Civil Procedure Code).

Lack of jurisdiction can be assessed in every instance of the proceedings until the case is final (article 97(1) of the Civil Procedure Code), except if the lack of jurisdiction derives from the disregard of the competence rules on the subject matter that can only be known until the preliminary phase of the proceedings where the judge assesses the existence of the court's jurisdiction (article 97(1) of the Civil Procedure Code).

Law stated - 5 October 2025

CIVIL ASSET RECOVERY – PROCEDURE

Time frame

5 | What is the usual time frame for a claim to reach trial?

In our experience, a civil claim takes at least one year to reach the first trial hearing. Nevertheless, the length of civil proceedings in Portugal is usually significant as, on average, a civil action takes, in the first instance, more than 30 months to reach its conclusion. (In 2019, the average duration of civil proceedings was 31 months, in 2020, the average duration of civil proceedings was 33 months and, in 2021, the average duration of civil proceedings was 38 months.)

Law stated - 5 October 2025

Admissibility of evidence

6 | What rules apply to the admissibility of evidence in civil proceedings?

In accordance with the established rules on the burden of proof, it is the responsibility of the person invoking a right to prove the facts constituting the alleged right (article 342(1) of the Civil Code), and it is the responsibility of the party against whom the claim is made to prove the facts that impede, modify or extinguish the right claimed (article 342(2) of the Civil Code). Nonetheless, there are specific rules regarding the burden of proof, for example, article 799 of the Civil Code that enshrines the inversion of the burden of proof in situations of breach of contract regarding the requirement of guilt. However, despite the rules of the burden of proof, it is the judge's duty to take or order, even on his or her own initiative, all the necessary steps to ascertain the truth and the fair composition of the dispute (article 411 of the Civil Procedure Code).

As for the relevant moment to present such evidence, as a rule, evidence must be presented with the written pleadings. There are specific rules concerning the submission of documents, as documents must be presented with the written pleading where the facts that such documents intend to prove are pleaded (article 597 of the Civil Procedure Code). As for the probationary requirement, it can be altered in the preliminary hearing and the list of witnesses that must be presented with the written pleadings can be modified up to 20 days before the date of the final hearing.

Concerning the evaluation of evidence, the principle in force is that of discretion, as the judge freely examines the evidence according to his or her prudent conviction about each fact. However, the free examination and evaluation of evidence do not cover facts for which the law requires a special formality for proof, nor those that can only be proven by documents or those that are fully proven, either by documents, or by agreement or confession of the parties.

Law stated - 5 October 2025

Witnesses

7 | What powers are available to compel witnesses to give evidence?

In civil proceedings, witnesses are obliged to appear in court and give evidence unless they have a legitimate impediment. There is a legitimate impediment that allows the witness to decide whether or not to testify if they have any of the following relationships to any of the parties:

- a relative in the ascending or descending line;
- adopters and adoptees;
- a father-in-law or mother-in-law;
- a son-in-law or daughter-in-law;
- a current or ex-spouse; or
- a partner they've lived with in a non-marital relationship for more than two years.

There is also a legitimate impediment that demands the witness to abstain from testifying when what is at stake are facts covered by professional secrecy and the person who is called to testify is subject to professional secrecy. If a witness does not appear in court without due justification, the judge can compel the witness to appear and the witness can be sanctioned to a fine.

Law stated - 5 October 2025

Publicly available information

8 | What sources of information about assets are publicly available?

In Portugal, there is publicly available information regarding real estate and land, vehicles and vessels, and balance sheets of companies. Real estate and land information can be found in the Land Register, vehicles and vessels information can be found in the Automobile Register, and balance sheets can be found in the Commercial Register.

Law stated - 5 October 2025

Cooperation with law enforcement agencies

9 Can information and evidence be obtained from law enforcement and regulatory agencies for use in civil proceedings?

In civil proceedings, the judge must, even ex officio, take all the necessary steps to ascertain the truth and the fair composition of the dispute (article 411 of the Civil Procedure Code), which means that it can require the presentation of evidence from both parties in the dispute and it can depend on law enforcement and regulatory agencies to obtain information and evidence.

However, one must consider that the easiest way to obtain evidence from law enforcement and regulatory agencies is through criminal proceedings, which ultimately means that the easiest way to obtain evidence useful for the civil claim is to present a criminal claim and take advantage of the public prosecution and the investigation that takes place within criminal proceedings.

Moreover, the obtainment of evidence in civil proceedings regarding the assets not publicly accessible to one of the parties always demands the intervention of the court, as the data available in the administrative services, in manual or computerised form, shall not prevent the judge of the case, ex officio or at the request of any of the parties, from determining the disclosure of information to the court (article 418 of the Civil Procedure Code).

Law stated - 5 October 2025

Third-party disclosure

10 How can information be obtained from third parties not suspected of wrongdoing?

The first aspect to be taken into consideration is that bank information and bank details are protected by banking secrecy, which is established for the benefit of the clients, for the benefit of third parties (indirect clients) and also for the benefit of banking activity itself (confidence in the financial system).

In accordance with article 79 of General Regime of Credit Institutions and Financial Companies, the facts and elements covered by the duty of secrecy may only be disclosed:

- to the Bank of Portugal, within the scope of its attributions;
- to the Portuguese Securities Market Commission, within the scope of its power;
- to the Insurance and Pension Funds Supervisory Authority, within the scope of its responsibilities;
- to the Deposit Guarantee Fund, the Investor Compensation System and the Resolution Fund, within the scope of their respective attributions;
- to the judicial authorities, within the scope of criminal proceedings;
- to the parliamentary committees of inquiry of the Assembly of the Republic, to the extent strictly necessary to fulfil their object, which specifically includes the

investigation or examination of the actions of the authorities responsible for the supervision of credit institutions or legislation relating to such supervision; and

- to the tax administration, within the scope of its attributions and when there is another legal provision that expressly limits the duty of secrecy.

However, Portuguese courts tend to understand that, under exceptional circumstances, bank secrecy may be lifted to safeguard other rights, particularly those relating to the Right of Access to Justice and the Effective Protection (article 20(1) and 20(5) of the Portuguese Constitution). Nonetheless, the lifting of bank secrecy can only happen when it is essential, which means that it is subject to case-by-case appraisal and can only be justified if necessary and proportional. Moreover, the information disclosed as a result of the lifting of banking secrecy should only be accessible to the parties and for the purposes of the proceedings, being excluded from the publicity of the process.

Therefore, in a civil action, the lifting of bank secrecy is exceptional and should be assessed on the basis of strict necessity, following a logic of indispensability. In the application of the incident of lifting bank secrecy, the facts that tend to duly justify the lifting of the said secrecy must be invoked and complemented with the evidence to prove such justification, to enable the High Court to ponder on the adequacy and the proportionality of the dispensation.

Law stated - 5 October 2025

CIVIL ASSET RECOVERY – REMEDIES AND RELIEF

Interim relief

11 What interim relief is available pre-judgment to prevent the dissipation of assets by, and to obtain information from, those suspected of involvement in the fraud?

In civil procedure, the dissipation of assets can be avoided through the interim measure of preventive attachment of assets and through the interim measure of listing and deposit of assets.

The first one must be requested by the plaintiff and is issued upon the verification of two requirements, namely the probability of the existence of the credit (fumus boni iuris) and the fair fear of the loss of the property guarantee (periculum in mora), and it consists of a judicial attachment of such assets.

The second one must be requested by the plaintiff, and it consists of a listing, evaluation and deposit of such assets and is issued upon the verification of two requirements, namely the probability of the existence of the credit or right over such assets and the serious risk of loss of the property guarantee.

As for the prejudgment obtaining of information, the law prescribes that if there is a justifiable fear that it will be impossible or very difficult for certain people to testify or to verify certain facts by means of an investigation or inspection, the testimony or inspection may take place in advance and even before the action is brought (article 419 of the Civil Procedure Code), which ultimately means that there is the possibility of producing such testimonies before the judgement of the merits of the case and using such testimonies in the corresponding civil proceedings.

Law stated - 5 October 2025

Non-compliance with court orders

12 | How do courts punish failure to comply with court orders?

In civil proceedings, all persons, whether they are parties or not, have the duty to collaborate in the discovery of the truth, by answering any questions they are asked, submitting to any inspections deemed necessary, providing whatever is requested, and carrying out any acts that are determined (article 417(1) of the Civil Procedure Code). If third parties refuse to cooperate, they shall be sentenced to a fine, without prejudice to the use of any possible coercive means; if a party in the dispute refuses to cooperate, the facts intended to be investigated shall be considered proven (article 417(2) of the Civil Procedure Code).

Moreover, a party is considered a litigant in bad faith and therefore sentenced to a fine and compensation to the opposing party if, with malice or serious negligence, they engage in a serious omission of the duty to cooperate or they use the process or the procedural means in a manifestly improper manner with the purpose of preventing the discovery of the truth (article 542 of the Civil Procedure Code).

Law stated - 5 October 2025

Obtaining evidence from other jurisdictions

13 | How can information be obtained through courts in other jurisdictions to assist in the civil proceedings?

Judicial cooperation is a fundamental aspect of Justice in a globalised world as states can no longer decide without taking into consideration the dispersion of people and assets, the scattering of interests and values, and the interconnection of states. Having that in mind, states have resorted to judicial cooperation mechanisms. In particular, in civil claims and civil proceedings, judicial cooperation in European countries is mostly ruled by EU regulations.

Judicial cooperation between EU member states in what concerns the taking of evidence in civil or commercial matters was ruled by Regulation (EC) No. 1206/2001, which intended to facilitate judicial cooperation between the member states in civil and commercial matters, particularly by devising, progressively establishing and updating an information system for members of the network; however, this was reformulated by Regulation (EU) No. 2020/1783 (with the same ambitions) that applies in civil and commercial matters in which the court of a member state requests the competent court of another member state to take evidence or requests the taking of evidence directly in another member state. These regulations implemented a system of a central body responsible for supplying information to the courts and expedited the procedure of taking evidence in another country by simplifying requests

through a standardised application form and by demanding that such requests be executed without delay and, at the latest, within 90 days of receipt of the request.

Judicial cooperation between non-EU member states or Denmark is ruled by treaties, conventions and agreements. The most pertinent international convention on these matters of taking evidence and asking for assistance from foreign jurisdictions – which lost its importance among EU member states because of the aforementioned Regulations – is the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (also known as the 1970 Convention). Its pertinence and relevance are due to the large number of contracting parties as 64 states have become signatory states of this convention. This instrument established that the courts that intend to ask for judicial assistance from courts of another jurisdiction should issue a letter of request specifying the evidence that must be obtained and the nature of the proceedings for which the evidence is required, as well as the names and addresses of the parties in the proceedings and their representative and the authority requesting its execution and the authority requested to execute it. The letter of request should be in the language of the authority requested to execute or translated into that language and the judicial authority that executes such request shall apply its own law as to the methods and procedures to be followed. Finally, the person concerned may refuse to give evidence in so far as he or she has a privilege or duty to refuse to give the evidence under the law of the state of execution, under the law of the state of origin, and the privilege or duty has been specified in the letter, or, at the instance of the requested authority, has been otherwise confirmed to that authority by the requesting authority.

In the absence of these multilateral or bilateral treaties, domestic law rules that taking evidence in such states requires Portuguese courts to issue a letter rogatory asking for judicial assistance and to perform the taking of evidence necessary to a proceeding taking place in Portugal.

Law stated - 5 October 2025

Assisting courts in other jurisdictions

14 What assistance will the civil court give in connection with civil asset recovery proceedings in other jurisdictions?

Portuguese courts are also bound by Regulation (EU) No. 2020/1783, which ultimately means that they must respond to the EU member state's court's request to take evidence in the terms previously explained. The same is entirely valid as that stated about the 1970 Convention when a request from one of the other 63 signatory states is at stake.

Whenever the regulation and the convention are not applicable and there are no international treaties on such matter, domestic law determines that, once received, the letter rogatory must be presented to the Public Prosecutor's Office, so that it can oppose its recognition and execution if it is deemed to be of public interest so that, afterwards, a decision can be taken by the court as to the recognition and execution of the letter rogatory request (article 181(2) of the Civil Procedure Code). The execution of a letter rogatory follows the Portuguese rules on taking evidence (article 182(1) of the Civil Procedure Code); however, if the letter rogatory requests the observance of certain formalities that

are not contrary to Portuguese law, the request will be granted (article 182(2) of the Civil Procedure Code).

Law stated - 5 October 2025

Causes of action

15 | What are the main causes of action in civil asset recovery cases, and do they include proprietary claims?

In asset recovery cases, the main causes of action are extracontractual and contractual liability due to malice or fraud in the celebration of the agreement, as well as an error in the formation of the will.

Law stated - 5 October 2025

Remedies

16 | What remedies are available in a civil recovery action?

In civil proceedings, restitution is the preferred remedy as whenever possible the court must determine the restitution in kind (restitution in natura). When such restitution is not possible, such restitution is not sufficient to cover all damage or such restitution represents an excessive burden to the defendant, compensation must be awarded (article 566 of the Civil Code).

Law stated - 5 October 2025

Judgment without full trial

17 | Can a victim obtain a judgment without the need for a full trial?

The recent 2013 amendment to the Civil Procedure Code implemented a single form of process, eliminating the summary forms of process.

Nonetheless, Law Decree No. 269/98, of 1 September has established a simplified procedure for the fulfilment of pecuniary obligations arising from contracts of a value not exceeding €15,000, but that has become applicable to any cases involving commercial transactions irrespective of the sum involved (see article 10(1) of Law Decree No. 62/2013, of 10 May). This means that a victim of a fraudulent scheme that intends to claim damages for the violation of the contract can make use of this simplified procedure to seek redress. However, in complex cases, this is likely not an adequate manner to seek recovery of assets.

Furthermore, despite eliminating the summary forms of procedure and implementing a single form, in the single form, it is possible to obtain a sentence after the preliminary hearing through what is called an early judgment or summary judgment (article 595(1)(a)

of the Civil Procedure Code). This early judgment happens when the judge understands that he or she is in a position to immediately decide on the merits of the case because it is not necessary to produce more evidence than the one provided in the pleadings phase and in the preliminary hearing, which will happen necessarily when the defendant admits all the facts (either expressly or by not contesting the facts alleged by the plaintiff).

Law stated - 5 October 2025

Post-judgment relief

18 | What post-judgment relief is available to successful claimants?

After the judgment, if the defendant does not comply with the court judgment, the plaintiff must bring an enforcement action on the basis of the judgment (article 703 of the Civil Procedure Code) requesting the execution of the sentence. In the enforcement proceedings, an enforcement agent will be appointed with powers to take all steps necessary to identify, locate and seize attachable assets. The enforcement agent is also empowered to appoint a trustee or custodian of the assets to be attached.

Prior to trial, during the trial and post-trial, it is possible to ask the court to determine a conservative preventive attachment as an interim measure. Such conservative measure is dependent on the main action (declaratory action or enforcement action) and will be issued if there is a probability of the existence of the credit and the fair fear of the loss of the property guarantee as long as such attachment is adequate to prevent the risk invoked proportionally.

Law stated - 5 October 2025

Enforcement

19 | What methods of enforcement are available?

After a declaratory action, having a court decision convicting the defendant, the plaintiff must bring an enforcement action petitioning for the enforcement of such decision. The procedure of such action is provided in articles 724 to 858 of the Civil Procedure Code, where it is laid down that a successful plaintiff must use the court sentence as an enforcement order and ask for the enforcement of the decision.

All assets and goods of the defendant are subject to foreclosure (article 735 of the Civil Procedure Code), save for a few exceptions. There are some assets and goods that, by law, cannot be subject to foreclosure (such as inalienable rights and goods or public assets – article 703 of the Civil Procedure Code) and there are other assets and goods that cannot be subject to foreclosure to some extent (such as the salary as only one-third of the net salary can be attached and with the minimum wage as a limit – article 737 of the Civil Procedure Code). The enforcement judge must respect the wishes of the creditor regarding which assets he or she prefers to have attached first, except if such wishes are in contravention of imperative norms, are contrary to the principle of proportionality of the

attachment or are shown to be inadequate to the credit or difficult to turn into pecuniary value (article 751 of the Civil Procedure Code).

Law stated - 5 October 2025

Funding and costs

20 What funding arrangements are available to parties contemplating or involved in litigation and do the courts have any powers to manage the overall cost of that litigation?

In what concerns conditional fee agreements or damages-based agreements, article 106 of the Statute of the Bar Association prohibits any type of agreement between lawyer and client that is based solely and exclusively on the future outcome of the case, which in legal jargon is called a quota litis pact. According to the aforementioned legal provision, the lawyer must refuse, prior to the conclusion of the matter, any agreement that is solely dependent on the outcome of the case.

However, this prohibition does not cover the possibility of establishment of the amount of the fees at the outset of the case, even if calculated as a percentage, depending on the value of the dispute or matter entrusted to the lawyer, nor does it cover the establishment of a success fee depending on the result obtained, provided that such success fee is established in addition to the fees calculated according to other criteria.

Concerning third-party funding, in Portugal, it is not forbidden. It is also not regulated. However, there are a few aspects that must be considered when talking about third-party funding. The first aspect is that a third-party funder is someone that is willing to cover the expenses of the legal process but that is not obliged by law to comply with such expenses, which means that if the party that is being funded does not comply with its obligations regarding the costs of the process, there is no possibility of demanding the third-party funder to comply with them alternatively. Nonetheless, this obligation could be established by means of a contract. The second aspect is that a third-party funder continues to be, at least formally, a third party in what concerns the legal strategy, which ultimately means that despite paying the attorney fees, the same attorney that is being paid by that funder is not obliged to follow the strategy suggested by the funder, as he or she represents the client and not the funder, being obliged to think about the client's best interest and not that of the funder. A third aspect is client-attorney privilege, which will prevent the lawyer to disclose privileged information to the funder. Even if the client would waive it, this does not exempt the lawyer from privilege, since only the Bar association (and in some cases the courts) may lift privilege. Of course, in practice, the clients may reveal to the funder information covered by lawyer-client privilege, which will then no longer be protected. Finally, lawyers are not allowed to share their fees with other professionals (article 107 of the Statute of the Bar Association). Thus, a third-party funding agreement may not involve such clauses that would violate this requirement.

Law stated - 5 October 2025

CRIMINAL ASSET RECOVERY – LEGAL FRAMEWORK

Interim measures

21 | Describe the legal framework in relation to interim measures in your jurisdiction.

Freezing with the purposes of confiscation may refer to seizure with a view to confiscation. Article 178 of the Portuguese Code of Criminal Procedure (CCP) establishes the precautionary seizure of the instruments, products, rewards (including the price) and proceeds (profits) of the commission of a typical unlawful act. That is, everything that results, directly or indirectly, from the crime and what can be materially confiscated in kind, should be seized. It may also give rise to other criminal precautionary measures, namely economic bail or preventive attachment. According to article 227(1) CCP, these aim at securing the payment of the pecuniary penalty, the costs of the proceedings and any other debt to the state related to the crime, as well as the confiscation of the instruments, products and proceeds of a typical unlawful act or the payment of the corresponding amount. If the bail is insufficient to satisfy the precautionary needs with a view to satisfying the victim's financial interests, the preventive attachment of assets of the accused or even of third parties serves to guarantee the value of the proceeds that are impossible to recover in kind, under the terms of articles 228(1) of the CCP.

Law stated - 5 October 2025

Proceeds of serious crime

22 | Is an investigation to identify, trace and freeze proceeds automatically initiated when certain serious crimes are detected? If not, what triggers an investigation?

If serious crimes are reported or come to the knowledge of the authorities, the opening of an investigation is mandatory. However, in certain cases (eg, less serious frauds) there must be a report made by the victim. Investigations with the aim of identifying, tracing and freezing proceeds should be initiated, too, but often, authorities may not trigger those in an expeditious manner. Therefore, the victim should be proactive in seeking that such investigations are made. If there is a report by financial institutions, it may trigger the use of money laundering prevention mechanisms. If such a report is made, the Finance Intelligence Unit (FIU) will analyse it within three working days and also seek to trace any relevant assets. The prosecutor's office (DCIAP) will have to decide within four working days from receiving the FIU's report whether to issue an order to suspend bank transactions (known as SOB), debiting the account in question (and any associated accounts), thus preventing the dissipation of the proceeds of the fraud. This will have to be confirmed by the investigating judge within two days of this decision (see articles 47(4), 48(1) and 49(1) of Law No. 83/2017 of 18 August). The order in question may also be ordered by the DCIAP following a report by the victim (see article 48(2) of Law No. 83/2017 of 18 August).

Law stated - 5 October 2025

Confiscation – legal framework

23 Describe the legal framework in relation to confiscation of the proceeds of crime, including how the benefit figure is calculated.

According to the law in force today (there were relevant amendments in 2017), the proceeds subject to confiscation are those objects that have resulted from the commission of the offence or the gains obtained through the commission of the offence (things, rights, any economic advantages, which result directly from the offence, including rewards given or promised to the perpetrators of the offence). Secondary proceeds are also included (see article 110 of the Criminal Code (CC)).

Assets belonging to third parties at the time of the commission of the offence will only be subject to confiscation if the holder has concurred in a blameworthy manner to their use or production, or benefited from the offence. Third parties that acquired proceeds after the commission of the offence may also be liable to confiscation if they knew or should have known about their origin, or if the transfer was made to avoid confiscation (article 111 of the CC).

For certain offences, there is also the extended confiscation (eg, money laundering, corruption, etc). Under this regime, if the person is convicted for such offences, there is a presumption that any difference between the amount of the assets of the convicted person and their lawful income is proceeds of crime. The assets of the convicted person are:

- those owned by a person, or over which they have the dominion and benefit, at the date of being placed as an accused or afterwards;
- those transferred to third parties free of charge or for a derisory price, in the five years prior to being placed as an accused; and
- those received by the defendant in the five years prior to placement as an accused, even if it is not possible to determine what they were used for (see article 7 of Law No. 5/2002 of 11 January).

Law stated - 5 October 2025

Confiscation procedure

24 Describe how confiscation works in practice.

In Portugal, seizure aiming at confiscation may be ordered by the Public Prosecutor's Office (article 178(3)) of the Code of Criminal Procedure (CCP) and, in certain cases, even by the police, subject to validation by the judicial authority within 72 hours (article 178(4), (5) and (6) of the CCP). However, in the case of bank balances, the seizure must be ordered by a court, under the terms of article 181 of the CCP. During the process, it is up to the victim's attorney to maintain a vigilant attitude, to prevent the eventual lifting of the seizure. The restitution of assets can be ordered pursuant to article 186(1) and (2) of the CCP, during the proceedings, or pursuant to article 374(3)(b) of the CCP, in the sentence itself.

According to article 227(1), (2), and (3) of the CCP, if there is well-founded fear that the guarantees will be lacking or will substantially diminish, economic bail may be ordered by the judge either at the request of the Public Prosecutor's Office or at the request of

the victim. Once the quantum of the economic bail has been determined, the convicted person is obliged to pay this amount. If the bail is insufficient to satisfy the precautionary needs with a view to satisfying the victim's financial interests at the request of the Public Prosecutor's Office or the victim, the judge may order the preventive attachment of assets of the accused or even of third parties, sufficient to guarantee the value of the proceeds that are impossible to recover in kind, under the terms of articles 228(1) and 268(1)(b) of the CCP. If economic bail has been previously set and not paid for, the applicant is exempt from proving the well-founded fear of loss of the guarantee, under the terms of article 228(1) of the CCP.

Confiscation will be declared in the final judgment (article 374(3)(b) of the CPP), or, in the absence of an indictment, it may be declared by the investigative judge after the decision to close the case without an indictment. The bill of indictment indicates which amounts or objects should be confiscated. In the cases of extended confiscation, the prosecutor may also do this within 30 days from the indictment. The defendant should contest the confiscation in the defence at the trial stage (or, in some cases, within 20 days from being served with the calculation for purposes of extended confiscation). In the cases of extended confiscation, the preventive attachment in the sum of the amount claimed in the indictment is always ordered (see articles 8 to 10 of Law No. 5/2002 of 11 January).

Law stated - 5 October 2025

Agencies

25 What agencies are responsible for tracing and confiscating the proceeds of crime in your jurisdiction?

Whenever an asset is transferred between bank accounts, it leaves an audit trail (namely, a record that allows the reconstruction of flows and leads to the identification and location of assets). To this end, the Financial Intelligence Units can collect financial information, including through international cooperation with its counterparts. This set of information, in addition to contributing to the process of locating assets may also be used as evidence in the criminal case. Others relevant to the Public Prosecution Office level include the Central Criminal Investigation and Prosecution Office, the Judicial Police and the Asset Recovery Offices (GRA). These agencies may also cooperate with similar agencies from other countries. The GRA has investigative powers similar to those of the criminal police and carries out financial or asset investigation, by determination of the Public Prosecutor's Office, when instruments, goods or products related to crimes punishable by a prison sentence of three years or more are involved and their estimated universal value is greater than 1,000 units of account (€102,000).

Law stated - 5 October 2025

CRIMINAL ASSET RECOVERY – CONFISCATION

Secondary proceeds

26 Is confiscation of secondary proceeds possible?

Secondary proceeds may be confiscated. That is, everything that results, directly or indirectly, from the crime and what can be materially confiscated in kind, should be seized. The seizure thus covers all economically assessable increments resultingfromthe crime, such as profits, interest (eg, from bank accounts used by the perpetrator to deposit the assets), prizes, etc.

Law stated - 5 October 2025

Third-party ownership

27 | Is it possible to confiscate property acquired by a third party or close relatives?

Assets belonging to third parties at the time of the commission of the offence will only be subject to confiscation if the holder has concurred in a blameworthy manner to their use or production, or benefited from the offence. Third parties that acquired proceeds after the commission of the offence may also be liable to confiscation if they knew or should have known about their origin, or if the transfer was made to avoid confiscation (article 111 of the Criminal Code).

Also, properties by third parties can be confiscated in the following extended confiscation cases:

- if the assets are owned by third parties but the defendant has the dominion and benefit at the date of being placed as an accused or afterwards; or
- if the assets were transferred to third parties free of charge or for a derisory price in the five years prior to the defendant having been formally declared as accused ('arguido') (see article 7 of Law No. 5/2002 of 11 January).

Law stated - 5 October 2025

Expenses

28 | Can the costs of tracing and confiscating assets be recovered by a relevant state agency?

This is very difficult in practice. Costs incurred by private parties, including the victim, may only be claimed as part of compensation amounts. Compensation awarded by a court may, in turn, be paid out of the confiscated assets (article 103(2) of the Criminal Code), since restitution and compensation to the victim in principle have priority in relation to confiscation to the benefit of the state.

Law stated - 5 October 2025

Value-based confiscation

29 | Is value-based confiscation allowed? If yes, how is the value assessment made?

Value-based confiscation is allowed (article 110(4) of the Criminal Code). The assets' values may be determined by an expert assessment or other relevant information provided to the case.

Law stated - 5 October 2025

Burden of proof

30 On whom is the burden of proof in a procedure to confiscate the proceeds of crime? Can the burden be reversed?

The burden of proof is incumbent on the prosecution (public prosecutor) and also on the victim, to the extent they collaborate with the prosecution, or invoke the amount as grounds for their civil compensation or restitution claims.

In extended confiscation cases, there is a reversal of the burden of proof in relation to any assets that are not coherent with the lawful income of the defendant or convicted person. Under this regime, if the person is convicted for such offences, there is a presumption that any difference between the amount of the assets of the convicted person and their lawful income is a proceed of crime. The assets of the convicted person are:

- those owned by the person, or over which they have the dominion and benefit, at the date of being placed as an accused or afterwards;
- those transferred to third parties free of charge or for a derisory price, in the five years prior to being placed as an accused; and
- those received by the defendant in the five years prior to placement as an accused, even if it is not possible to determine what they were used for (see article 7 of Law No.5/2002 of 11 January).

Law stated - 5 October 2025

Using confiscated property to settle claims

31 May confiscated property be used in satisfaction of civil claims for damages or compensation from a claim arising from the conviction?

If the victim has suffered financial damage arising from the crime that cannot be recovered through restitution, they will have to assert their rights by filing a civil claim for damages within criminal proceedings – if an indictment is filed, this normally has to be lodged within the criminal case, subject to exception – or in a separate civil action.

The possibility of using confiscated assets to the satisfaction of the victim's financial claims is established in Portuguese laws. Articles 110(6) and 130(2) of the Criminal Code (CC) indicate that the satisfaction of the victim's interests prevails over confiscation. This means that, for example, assets seized for the purposes of confiscation that are not the assets in which the victim was defrauded, or even secondary proceeds, may nevertheless be used to satisfy the victim's claims for civil compensation. The confiscation order is, however,

of a different and independent nature than that of the civil compensation claim, and the confiscation does not depend on the victim's will or intention to make a civil claim.

Law stated - 5 October 2025

Confiscation of profits

32 Is it possible to recover the financial advantage or profit obtained through the commission of criminal offences?

In principle, this is possible, but the link to the offence has to be proved. In the context of extended confiscation and offences covered by Law No 5/2002 of 11 January (as is the case of corruption), the law explicitly states that 'interest, profits and other benefits obtained with goods that are under the conditions provided for in article 111 of the Criminal Code (ie, products, instruments or gains) shall always be considered as advantages of criminal activity' (see article 7(3) of Law No. 5/2002 of 11 January).

Law stated - 5 October 2025

Non-conviction based forfeiture

33 Can the proceeds of crime be confiscated without a conviction? Describe how the system works and any legal challenges to in rem confiscation.

Generally speaking, in rem confiscation of proceeds of crime outside the scope of a criminal case is not permitted in Portugal (namely, civil asset forfeiture in rem). However, there are cases in which even in the absence of a conviction, confiscation may be ordered within a criminal case. One of such cases is if there is enough evidence of the commission of the crime but it is not possible to convict the person due to the person passing away or being declared an absconder (articles 109(2) and 110(5) of the Criminal Code).

Law stated - 5 October 2025

Management of assets

34 After the seizure of the assets, how are they managed, and by whom? How does the managing authority deal with the hidden cost of management of the assets? Can the assets be utilised by the managing authority or a government agency as their own?

In Portugal, according to article 10 of Law No. 45/2011 (the same that created the Asset Recovery Office within the scope of the Judiciary Police), the administration of assets seized, recovered or declared forfeited in favour of the state, in the context of national proceedings or acts of international judicial cooperation, is ensured by an office of the Management Institute for Finance and Justice Equipment, IP, named Asset Management Office (GAB). There's a legal duty to manage frozen assets well, with a view to return them fully to the community, if possible, with some equity increase. Leaving frozen assets to be

abandoned would be considered a clear contradiction, as, in the end, they would be of no use neither to reimburse nor compensate the victim, nor to return to society, nor to deliver to the defendant, if he or she, in the end, despite all that was foreseen, was acquitted. In certain cases during the investigation phase, the GAB needs authorisation from the Public Prosecutor's Office or the investigating judge to proceed with the sale of the assets. Seized assets may also be managed by public or private institutions that are appointed and the custodian of the assets. The related costs have to be borne by the state, namely the procedure in which the seizure was ordered. Often there have been conflicts between the private custodians, the authorities leading the criminal case and the owner of assets that in the end have not been confiscated (eg, since they belonged to bona fidethird parties) about who bears the costs.

Law stated - 5 October 2025

CRIMINAL ASSET RECOVERY – CROSS-BORDER ISSUES

Making requests for foreign legal assistance

35 Describe your jurisdiction's legal framework and procedure to request international legal assistance concerning provisional measures in relation to the recovery of assets.

Any authority (prosecutor or judge) who is entitled to order provision measures in relation to the recovery of assets may also issue international legal assistance requests to foreign authorities.

Nowadays, it is often permitted to send those requests directly to the competent authorities in the requested state. It is also possible to use police channels, namely Interpol (particularly in urgent cases), to transmit such requests. Certain international conventions, however, still require that those requests are sent via the Portuguese central authority. In the absence of applicable international instruments, these may have to be transmitted via diplomatic channels.

In the field of money laundering, reports on suspicious operations reported by financial institutions may also give rise to a communication to foreign authorities, leading to the freezing of foreign bank accounts, which will either be ordered in the scope of the criminal proceedings opened in the foreign jurisdiction, or later on be undertaken pursuant to mutual legal assistance or mutual recognition request for implementing provisional measures of the destination bank accounts (Law No. 83/2017 of 18 August).

The use of money laundering prevention mechanisms may prove crucial in not losing track of the amounts unduly obtained. Furthermore, taking into account that, within the European Union, this type of mechanism is present in several member states, it should be possible to trigger its cross-border application, in the sense that requests for the return of transfers communicated between banking institutions on the basis of fraud may give rise to communication by the recipient credit institution to the respective Finance Intelligence Units (FIUs) or judicial authorities, with the consequent intervention and delivery of decisions to suspend operations that allow the safeguarding of subsequent freezing requests issued in the jurisdiction of the originating institution. The communication by the credit institution of the originating jurisdiction to its FIU shall oblige the latter to forward such communication

to the FIU of the jurisdiction of destination. Once the prevention mechanisms have been activated, within the European Union, it is possible to make use of Regulation (EU) 2018/1805 to request the freezing of accounts in other EU member states, taking into account that the European concept of freezing is a very broad concept. The Regulation allows a freezing order to be obtained in another EU member state within 48 hours, enforced within 48 hours thereafter. Outside of the European Union, other instruments may be used.

Law stated - 5 October 2025

Complying with requests for foreign legal assistance

36 Describe your jurisdiction's legal framework and procedure to meet foreign requests for legal assistance concerning provisional measures in relation to the recovery of assets.

There are a multitude of requirements to be able to meet foreign requests, which will depend on the applicable conventions. Generally, Portugal does not require an international convention to cooperate and is able to do so on the basis of reciprocity assurances given on a case-by-case basis. To freeze or confiscate assets, double criminality is normally a requisite (although within the European Union, this is mitigated).

Furthermore, the law of judicial cooperation in criminal matters establishes some mandatory negative bars to cooperation, for example:

- where the proceedings do not comply with the requirements laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, or other relevant international instruments ratified by Portugal;
- where there are well-founded reasons for believing that cooperation is sought for the purpose of persecuting or punishing a person on account of that person's race, religion, sex, nationality, language, political or ideological beliefs, or his or her belonging to a given social group;
- where the risk exists that the procedural situation of the person might be impaired on account of any of the factors indicated in the preceding sub-paragraph;
- where the cooperation sought might lead to a trial by a court of exceptional jurisdiction or where it concerns the enforcement of a sentence passed by such a court;
- where any of the facts in question is punishable with the death sentence or with a sentence resulting in any irreversible injury of the person's integrity;
- where any of the offences in question carries a life-long or indefinite sentence or measure; and
- where there's lack of reciprocity where this is required (article 6 of Law No. 144/99 of 31 August).

There are also further refusal grounds, such as *ne bis in idem*.

Within the European Union, the procedures are dealt with in a different manner, under Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders. Refusal of cooperation within this framework is more limited.

Portuguese authorities are very prone to execute requests from foreign authorities.

Law stated - 5 October 2025

Treaties

37 | To which international conventions with provisions on asset recovery is your state a signatory?

Portugal has undersigned multiple international conventions in this field and there is no exhaustive list. Each case will have to be analysed to find out which international conventions may apply (depending on the jurisdictions involved and the type of offences involved). The most relevant covering the field of fraud are the following.

At the United Nations level:

- the UN Convention against Transnational Organized Crime (also known as the Palermo Convention) of 15 November 2000; and
- the UN Convention against Corruption (also known as the Mérida Convention) of 14 November 2005.

At the Council of Europe level:

- the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141) of 8 November 1990; and
- the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS 198) of 16 May 2005 (also known as the Warsaw Convention).

At the European Union level the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part [2020] OJ L 444/14.

Law stated - 5 October 2025

CRIMINAL ASSET RECOVERY – PRIVATE PROSECUTIONS

Private prosecutions

38 | Can criminal asset recovery powers be used by private prosecutors?

The Portuguese system grants a participatory position to the victims in the criminal proceedings (since they are often the ones who initiate the proceedings), namely through their participation as assistants to the prosecution (article 68 et seq of the Code of Criminal

Procedure (CCP)) or civil parties (article 71 et seq, of the CCP). The victims thus have an important role, being able to claim civil compensation for the damages suffered within the scope of the criminal proceedings, and having procedural powers to present their arguments, as well as to examine and cross-examine the witnesses or the defendant himself or herself (through a lawyer), and also to make use of several instances of appeal. Although Portugal has a few cases of private prosecution, they are irrelevant in the context of fraud or corruption cases. In any event, private parties, irrespective of their acting capacity (as assistants, private prosecutors or civil claimants) do not have any powers to use criminal asset recovery tools. They are only able to ask the investigative authorities and the court to issue orders within their respective powers.

Law stated - 5 October 2025

UPDATE AND TRENDS

Emerging trends

39 Are there any emerging trends or hot topics in civil and criminal asset recovery in your jurisdiction?

A draft legislative proposal currently under discussion could change the landscape of confiscation in Portugal, implementing Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation. The proposed legislative text introduced a clearer procedural regulation of confiscation proceedings, including for cases of non-conviction based confiscation. The Government has announced that the legislative proposal should be ready by the end of the year.

Law stated - 5 October 2025

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CIVIL ASSET RECOVERY – JURISDICTIONAL ISSUES

Parallel proceedings

1 | Is there any restriction on civil proceedings progressing in parallel with, or in advance of, criminal proceedings concerning the same subject matter?

There are no categorical restrictions precluding civil cases from advancing in parallel with or prior to criminal proceedings concerning the same subject matter. Nonetheless, civil cases may be judicially stayed or postponed in favour of criminal proceedings. As such, managing parallel civil and criminal proceedings may present certain challenges. In particular, a witness' assertion of Fifth Amendment privileges against self-incrimination can delay civil proceedings, especially before the resolution of criminal proceedings. In scenarios where simultaneous adjudication is impossible, civil proceedings would likely be delayed while criminal proceedings are resolved.

Nevertheless, civil litigants should neither delay commencing civil proceedings in anticipation of a possible stay nor rely on the outcome of the criminal case. Such a delay could result in the statute of limitations expiring, and even if the debtor is ordered to pay restitution in the criminal proceedings, there is no guarantee that victims will be fully compensated or receive as much as they would through their own civil litigation. Note that, given the differences in burden of proof, it is possible that a civil claim can succeed where a criminal prosecution has failed.

Law stated - 8 September 2025

Forum

2 | In which court should proceedings be brought?

The United States is a common law jurisdiction with a dual-court system of federal courts and state courts. Both federal and state courts offer an independent and skilled judiciary, broad discovery and effective mechanisms for enforcing judgments. Asset-recovery-related claims can often be brought in more than one court, and determining which would be most favourable requires an analysis of each potential federal and state court in which the action may proceed. The common law governing fraud is generally a matter of state law, although it has been incorporated into many federal fraud statutes. Fraud claims are generally brought in state courts unless federal law conferring federal court jurisdiction applies or a party is able to and does invoke federal diversity jurisdiction.

As a result, the ultimate determination of the best forum will depend on a variety of factors, including:

- the state or states in which the defendant has assets (or, for a corporate defendant, its place of incorporation or operations);
- the state or states in which the activity at issue took place; and
-

the legal basis of the claim, including whether the claims arise under state or federal law (such as bankruptcy provisions) and, for state law claims, whether the facts justify or allow bringing a claim in federal court. [C1]

Additionally, the available causes of action and related remedies vary by state. The elements of a claim, the available defences and even the statute of limitations may materially differ from state to state. As such, counsel should analyse the relevant laws of all potential jurisdictions before determining where to pursue asset recovery.

Law stated - 8 September 2025

Limitation

3 | What are the time limits for starting civil court proceedings?

Time limitations for commencing civil court proceedings vary widely depending on the claim asserted and the jurisdiction where the action is brought. There are several potential claims, with fraud being the most common. Statutes of limitations for fraud claims vary from state to state. For example, New York state law requires a fraud claim to be commenced within six years of the event or within two years of its discovery (NY CPLR, section 213(8)). Florida law requires a fraud claim to be commenced within four years of when it was or reasonably could have been discovered and within 12 years of the commission of the fraud (Florida statutes 95.11(3)(j) and 95.031(2)(a)). Plaintiffs may also consider a claim under the Racketeer Influenced and Corrupt Organizations (RICO) Act (18 United States Code section 1962). The statute of limitations for civil RICO claims is generally four years from the date a claimant knew or should have known about the offence.

Although courts generally cannot extend a statute of limitations, under the doctrine of equitable tolling, a court may toll the commencement of the limitations period for certain reasons, including where the defendant's misconduct prevented the plaintiff from filing a suit.

Counsel should conduct a thorough statute of limitations analysis on applicable claims in the relevant jurisdictions.

Law stated - 8 September 2025

Jurisdiction

4 | In what circumstances does the civil court have jurisdiction? How can a defendant challenge jurisdiction?

In the United States, jurisdiction comprises two distinct concepts: personal jurisdiction over the defendant or defendants and subject matter jurisdiction over the action.

Personal jurisdiction in a civil case is determined by reference to a series of factors, including:

- the location of assets;

- the location of the transactions;
- the defendant's residence or citizenship, or both;
- the defendant's contacts with the jurisdiction;
- the subject matter of the action; and
- the contractual provisions concerning the jurisdiction for claims arising from or related to contracts.

Subject matter jurisdiction concerns the specific types of disputes that certain courts may hear. For example, in federal district courts (first instance courts), subject matter jurisdiction may be exercised in terms of diversity jurisdiction and federal question jurisdiction. Diversity jurisdiction requires that the amount in controversy must exceed US$75,000 and that there is complete diversity – that no plaintiff shares a state of citizenship with any defendant. Federal question jurisdiction requires that the dispute arise under federal law.

Failure to raise an objection concerning the exercise of personal jurisdiction can result in a waiver of that defence. Subject matter jurisdiction objections can be raised at any time.

Law stated - 8 September 2025

CIVIL ASSET RECOVERY – PROCEDURE

Time frame

5 | What is the usual time frame for a claim to reach trial?

The time frame to reach trial in a civil asset recovery case depends on a variety of factors, including the court before which the case is pending and the complexity of the claims. The overwhelming majority of civil cases never reach trial and are instead resolved by dispositive motion or through settlement. According to a 2021 report by the federal judiciary, the median time to trial for federal cases was 29.2 months. That study tracked 207,841 cases resolved that year, only 1,562 of which actually reached trial. Of the remainder:

- 52,653 were resolved without court action (median time: 5.7 months);
- 122,124 were resolved before discovery (median time: 8.5 months); and
- 31,502 were resolved after discovery commenced but before trial (median time: 18.6 months).

Law stated - 8 September 2025

Admissibility of evidence

6 | What rules apply to the admissibility of evidence in civil proceedings?

For actions in the US federal courts, litigants should consult the Federal Rules of Evidence and the Federal Rules of Civil Procedure (FRCP). For state court actions, litigants should

consult the relevant jurisdiction's evidentiary and procedural rules. These rules vary from state to state, but many states closely follow the federal model, although the rules can have some important differences. Litigants should also review any relevant case law interpreting the applicable evidentiary and procedural rules, as rules that appear similar to one another may be interpreted differently from state to state.

Law stated - 8 September 2025

Witnesses

7 | What powers are available to compel witnesses to give evidence?

A litigant's ability to compel witnesses to testify depends on whether the case is pending in a state or federal court and whether the testimony would infringe on a witness's rights, most notably rights under the Fifth Amendment against self-incrimination. Assuming that Fifth Amendment rights are not implicated, the rules can vary somewhat from state to state. As such, litigants should consult the applicable procedural rules that govern procuring or compelling testimony and documents.

In matters in federal court, FRCP 30 allows a party to a civil action to depose any person, including a party to the litigation. FRCP 34 allows a civil party to request documents from any person or entity, including a party to the litigation. FRCP 45 allows a party to command a third party's attendance at a trial, hearing or deposition, or a third party's production of documents and other things. A party to litigation may be deposed in the federal district where the case is pending and may be ordered to appear at a trial or evidentiary hearing. Unless they consent, third parties may only be deposed or ordered to appear at trial within 100 miles of their residence or place of business.

A witness may object to producing documents or providing testimony on the grounds that his or her deposition testimony would not be relevant to any party's claim or defence or proportional to the needs of the case. If the objection cannot be resolved without judicial intervention, the party seeking the witness's documents or deposition may move to compel attendance at the deposition.

FRCP 37 governs most discovery disputes. A witness that fails to provide testimony or documents may be ordered to do so by a court. A disobedient witness may be forced to pay the requesting party's fees and may be subject to other sanctions, including monetary sanctions and contempt of court. If the disobedient witness is a party, party representative or employee, a lack of compliance can result in:

- the striking of pleadings, including individual claims or defences;
- a court making adverse inferences against the disobedient party;
- prohibiting the disobedient party from supporting his or her claims or defences;
- rendering a default judgment or dismissing the disobedient witness's claims; and
- the witness being held in contempt.

Law stated - 8 September 2025

Publicly available information

8 | What sources of information about assets are publicly available?

Throughout the United States, there are various public offices and agencies that collect and maintain information concerning assets, and, in some instances, they make that information available to the public. Depending on the jurisdiction in which the asset is located and the type of asset at issue, there can be various public records available. It is often helpful to investigate the relevant federal and state agencies charged with regulating certain asset types and inquiring about their records. For example, publicly traded companies are required to make certain regulatory filings, including annual and quarterly accounting reports, which are available for review (sometimes for a fee). Publicly available records include real estate ownership and transfers, property tax records and lien filings, as well as filings for automobiles, boats and aircraft. Business entity filings, such as registrations, assumed names and trademarks, and corporate records are generally available although access may vary from state to state. Additionally, almost all court records are open, and most party filings and court decisions are publicly accessible electronically in federal cases, through the Public Access to Court Electronic Records (PACER) system. For state cases, electronically accessible systems similar to PACER are maintained on a state-by-state basis.

The most prominent publicly available asset-related records include real estate records, such as deeds, mortgages and tax assessments; vehicle ownership records and corporate registration records. Less common sources, including civil litigation filings (discussed above), lien filings and certain regulatory disclosures, can also illuminate previously unknown assets.

These records are maintained by local and state-level government agencies. Beyond official records, media reports and social media platforms can offer valuable insight into an individual's assets or financial activity and can provide potential leads for further investigation. Other non-traditional sources include blockchain explorers, which can be used to investigate specific transactions and address activity, and publicly available import/export data, which include the classification and value of international shipments.

Access to these records enables interested parties to verify or uncover asset ownership and asses a subject's financial standing. However, the availability, scope and accuracy of public records can vary by jurisdiction and asset type, and some information may be restricted to protect privacy or other sensitive information. The collection and analysis of publicly available asset records can often be a laborious and time intensive process. As assets are often being hidden under multiple layers of ownership, nearly every lead and connection must be explored. Despite these challenges, a comprehensive review of public records is critical for the discovery and recovery of assets.

Law stated - 8 September 2025

Cooperation with law enforcement agencies

9 | Can information and evidence be obtained from law enforcement and regulatory agencies for use in civil proceedings?

Many litigants hope to use criminal investigative information. However, such information usually remains strictly confidential in the United States, even from the victim.

Under limited circumstances, a litigant can obtain evidence from law enforcement and regulatory agencies and use that evidence in civil proceedings. Evidence entered in criminal proceedings is often useful in civil proceedings. Once evidence is used at trial, it becomes public.

Litigants can use various discovery tools to seek information from regulatory agencies. The United States also has the Freedom of Information Act, which permits access to information in the federal government's possession under appropriate circumstances.

Certain governmental agencies (such as the Securities and Exchange Commission) maintain reporting requirements, including financial reporting. That information is obtainable through civil discovery.

Certain foreign officials and prosecutors can use mutual legal assistance treaties to obtain evidence in connection with foreign investigations.

Law stated - 8 September 2025

Third-party disclosure

10 | How can information be obtained from third parties not suspected of wrongdoing?

Under both federal and state legal systems, discovery from third parties is available by subpoena. Although the requirements vary between jurisdictions, the process tends to be quite similar. Under the Federal Rules, there are a few ways to obtain discovery from third parties. The main vehicle is FRCP 45, which governs discovery from non-parties. It also permits gathering documents and interrogatories, as well as taking testimony from non-parties. Subpoenas under FRCP 45 require the underlying substantive action to already be pending. There are some exceptions under the Federal Rules, notably FRCP 27, which allows a party contemplating an action to depose a witness and obtain testimony under certain circumstances.

Certain states allow discovery by prospective plaintiffs before commencing an action. For example, in New York, pre-lawsuit discovery is allowed to aid in bringing an action, to preserve information or to aid in arbitration but must be obtained by court order (NY CPLR 3102(c)). Although the requirements vary, many states have similar statutes that allow prospective plaintiffs to obtain varying degrees of information before bringing their claim. Most of these provisions, however, require the prospective plaintiff to make a showing (eg, that the plaintiff has a meritorious cause of action, and that the information sought is material and necessary to the actionable wrong) or obtain court approval before doing so, or both. The availability of such discovery and the process for obtaining it varies by state.

Finally, third-party discovery is permitted in aid of judgment enforcement. For example, FRCP 69 allows a judgment creditor to take discovery, including third-party discovery, in aid of judgment enforcement. This discovery is geared towards locating assets that could be executed against, or other information that could help lead to such assets. A judgment creditor may seek discovery from the judgment debtor or third parties such as

banks, investment companies and business associates, including parents, subsidiaries and affiliates.

Law stated - 8 September 2025

CIVIL ASSET RECOVERY – REMEDIES AND RELIEF

Interim relief

11 What interim relief is available pre-judgment to prevent the dissipation of assets by, and to obtain information from, those suspected of involvement in the fraud?

Obtaining information from a litigant or a third party is available in connection with any civil action and, under certain circumstances, before an action is commenced.

Interim remedies are also available from state and federal courts. Generally speaking, state law provides for arrest, attachment, garnishment, replevin, sequestration and other remedies. Federal courts can grant the same remedies but must apply the law of the state in which the court is located, under the Federal Rules of Civil Procedure (FCRP) 64. State laws are not uniform on the availability of, or requirements for, these remedies.

Both during and after litigation, any party can seek equitable relief to prevent the dissipation of assets. However, the party seeking such relief must make a substantial showing that:

- it is likely to succeed on the merits;
- the judgment will be rendered ineffective without relief;
- its claims are greater than any potential counterclaims; and
- the public interest will be best served by the remedy.

Although a US court will not enforce worldwide freezing orders entered by a foreign court, it can grant broad-ranging injunctions covering parties subject to its jurisdiction and prevent those parties from moving any assets over which the party has custody or control, regardless of location. Such injunctions can be issued during litigation or at its conclusion.

Law stated - 8 September 2025

Non-compliance with court orders

12 How do courts punish failure to comply with court orders?

Failure to comply with a court order can result in the non-compliant party being held in contempt of the court. A contempt finding has consequences ranging from monetary fines to imprisonment. If the disobedient party is a party to the litigation, the court may fashion remedies that make the claimant whole, such as precluding evidence, allowing adverse inferences and striking claims and defences.

Law stated - 8 September 2025

Obtaining evidence from other jurisdictions

13 How can information be obtained through courts in other jurisdictions to assist in the civil proceedings?

The main avenue for obtaining information through courts in other jurisdictions to assist in the civil proceeding is the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (the Hague Evidence Convention), to which 64 countries including the United States are contracting parties. The litigant will generally request that the court overseeing the plenary action issue a letter of request to the foreign court. The letter of request can seek documents or witness testimony, although whether such relief will be granted is dependent on the target jurisdiction's rules. All parties to the litigation will be made aware of the request and the request will usually be accessible on the public docket. Each Hague Evidence Convention member state has its own procedure for processing and implementing requests for information.

For jurisdictions not party to the Hague Evidence Convention, a litigant can avail itself of other international treaties, such as the Inter-American Convention on Letters Rogatory, or it can seek the aid of the court overseeing the underlying action for the issuance of letters rogatory directly to the foreign court, a process that will still be respected in a number of jurisdictions.

Law stated - 8 September 2025

Assisting courts in other jurisdictions

14 What assistance will the civil court give in connection with civil asset recovery proceedings in other jurisdictions?

A party seeking assistance in connection with civil asset recovery proceedings in other jurisdictions may petition the US federal district courts for discovery in aid of foreign litigation under 28 United States Code (USC), section 1782. Notably, as of June 2022, the US Supreme Court has limited the scope of section 1782 discovery in the context of foreign arbitration, requiring a foreign or international tribunal to be a governmental or intergovernmental body, not a private adjudicative body.

There are two ways to initiate a 28 USC section 1782 request. The first is by a letter rogatory issued by a non-US tribunal and delivered directly to the district court. The second is an application, without letter rogatory, by a party or other interested person, directly to the US federal district court. To obtain discovery under 28 USC section 1782, an applicant must satisfy the following threshold requirements:

- the target of the requested discovery is a person or entity found in the federal judicial district;
- the requested discovery by the applicant is for use in a proceeding before a foreign tribunal that is either pending or reasonably contemplated; and
- the applicant is an interested person with respect to those proceedings. [C2]

Provided these conditions are met, a district court is authorised – but not required – to order discovery. The decision whether to grant such discovery is in the discretion of the district court and is based on a balancing of certain public and private interests relating to the requested discovery. Eligible foreign legal proceedings include proceedings before foreign courts, including administrative proceedings and government investigations.Although the proceeding need not be pending or imminent, it must be within reasonable contemplation.

Discovery under 28 USC section 1782 includes the full scope of discovery available under the federal rules of civil procedure, such as deposition testimony and document production. If the application is granted, the applicant may serve subpoenas requesting such discovery. A federal district court may allow broad discovery. It is typically irrelevant that such discovery is broader than the discovery authorised by the foreign forum or that the foreign jurisdiction does not grant reciprocal discovery rights.

For a deposition request, a person's mere physical presence in the district can be sufficient to compel his or her deposition. For document discovery, there is a split of federal authority regarding whether courts are empowered to authorise discovery of documents outside the United States, even when the person from whom discovery is sought is located in the relevant federal judicial district. A business will likely be found in a district for purposes of 28 USC section 1782 if the business would be subject to personal jurisdiction in that district by virtue of its systematic and continuous activities there, even if its headquarters or place of incorporation are located elsewhere. The Second Circuit (which includes New York, Connecticut and Vermont) reviews many 28 USC section 1782 applications and has recently extended the reach of the section to materials held outside the United States but controlled by a person in the district.

A foreign tribunal may also seek evidence by a letter rogatory made directly to the Department of State, pursuant to 28 USC section 1781. The Department of State will then send the request to the US-based tribunal, agency or officer from which the evidence is sought. The scope of the discovery under 28 USC section 1781 is the same as that under section 1782.

Parties that have obtained a foreign judgment also have other options in both state and federal courts. One option for such discovery (for both domestic and foreign actions) is Federal Rules of Civil Procedure (FRCP) 69. FRCP 69(2) allows parties possessing a valid money judgment (foreign or domestic) to take discovery from any person in aid of the judgment or execution. Additionally, many states have adopted a version of the Uniform Foreign-Country Money Judgments Recognition Act, which permits foreign money judgments to be enforced in domestic courts. If the foreign judgment is recognised, the claimant will be entitled to use the same enforcement mechanisms that are available for domestic judgments.

Law stated - 8 September 2025

Causes of action

15 What are the main causes of action in civil asset recovery cases, and do they include proprietary claims?

There are numerous causes of action for civil recovery within the United States. Those claims arise under both statute and common law.

Fraud

This is one of the most common causes of action used in asset recovery. Fraud claims arise under both common law and, in some cases, statute. Under common law, fraud claims arise when a defendant intentionally makes a material misrepresentation or omission, on which the victim justifiably relies when choosing to act or refrain from acting. There are a number of federal and state statutes that create civil remedies for fraud in certain contexts, such as in connection with securities, real estate, banking and consumer finance, among others. Under federal and state law, fraud must be pleaded with particularity, although there is usually an exception that relaxes the particularity requirement for pleading facts that would be solely within the wrongdoer's knowledge, such as intent.

Breach of contract

When a perpetrator breaches a contractual obligation to the victim, the victim can bring a breach of contract claim to seek recovery of assets impacted by the breach.

Tort claims

If it can be established that the perpetrator owed the victim a duty of care, but that duty did not arise under contract – such as a fiduciary duty owed by one party holding money – then the victim can bring a claim for breach of that duty. The most common tort claims include breach of fiduciary duty, negligence and gross negligence.

Aiding and abetting, and civil conspiracy

Most jurisdictions also allow victims to bring claims against those that knowingly assisted the perpetrator of fraud.

Conversion, replevin and property-based claims

When a perpetrator wrongfully exercises dominion over property, a victim can bring a variety of claims, but the most common claims are conversion (which generally seeks recovery of the value of the property) and replevin (which seeks recovery of the specific property).

Unjust enrichment, and money had and received

These are equitable claims available when a party has received and retained a benefit at the expense of a victim, and under principles of equity and good conscience, the benefit should be awarded to the victim.

Additional statutory claims

Fraudulent conveyance

Most states have adopted the Uniform Fraudulent Transfer Act and have incorporated its provisions into their local statutes. Fraudulent conveyance claims arise when a debtor transfers assets for insufficient value or in bad faith, typically to frustrate creditors. Under most states' fraudulent conveyance laws, creditors can bring claims against debtors and third-party transferees that received assets from a debtor.

California Penal Code section 496

California Penal Code section 496(c) provides a private right of action for any person who has been injured by a wrongdoer's knowing receipt of stolen property. A prevailing plaintiff may recover up to three times the actual market value of the property, the costs of bringing suit and reasonable attorney's fees.

Law stated - 8 September 2025

Remedies

16 | What remedies are available in a civil recovery action?

Generally speaking, a claimant can recover actual damages (including, potentially, consequential damages) for any claim. For most common law tort claims, a claimant might be able to recover exemplary damages when the defendant's acts are deemed sufficiently egregious.

State and federal courts also have broad powers to award equitable remedies when money damages alone are insufficient or when assets are being wasted, or both. Such remedies include, without limitation:

- an accounting of assets;
- attachment, seizure and turnover of assets, including property, accounts, etc;
- the creation of a constructive trust for the benefit of the claimant;
- rescission and reformation of a contract; and
- injunctions and other equitable relief to ensure the claimant's compensation.

Law stated - 8 September 2025

Judgment without full trial

17 | Can a victim obtain a judgment without the need for a full trial?

In both federal and state courts, a claimant can obtain a default judgment if the defendant has been properly served but either fails to appear or properly defend the case. Likewise, a

court can grant a judgment on the pleadings if the defendant's answer concedes liability. A claimant can also seek summary judgment if, after discovery, the court finds that there is no genuine dispute of material fact and the claimant is entitled to judgment as a matter of law. In deciding such motions, the court construes every inference in favour of the non-moving party.

Law stated - 8 September 2025

Post-judgment relief

18 | What post-judgment relief is available to successful claimants?

The post-judgment relief available to successful claimants in the United States varies according to jurisdiction and judgment type.

Disclosure

Successful claimants can seek post-judgment disclosure under state laws and FRCP 69. Such disclosure often includes post-judgment asset discovery, which is widely available against the defendant and any non-parties that have information concerning the defendant's assets.

Freezing orders and injunctions

US courts can issue freezing orders enjoining a defendant from transferring assets.

Receivers

Under both state and federal law, a successful claimant can seek the appointment of a receiver.

Law stated - 8 September 2025

Enforcement

19 | What methods of enforcement are available?

Enforcement methods vary and depend on state law. Under FRCP 69, a US federal court will look to the recognition and enforcement laws of the state where the federal court is situated. Judgments issued in one state (whether issued by a state or federal court) can be enforced in other states.

The enforcement of money judgments typically begins with the court's issuance of a writ of execution. Once the writ is issued, the judgment creditor can use the writ with law enforcement, which is authorised to seize assets and dispose of those assets for the judgment creditor's benefit.

Most jurisdictions provide for both garnishment and attachment.Garnishment allows a judgment creditor to obtain existing and future payments owed to the judgment debtor. Once the court issues a writ of garnishment and it is served on relevant third parties, monies owed to the judgment debtor are paid instead to the claimant. A successful claimant can also seek a court order of attachment, which seizes specific property.

Most states have additional enforcement measures. In New York, for example, a judgment creditor can issue a restraining notice to third parties that may be in possession of a judgment debtor's assets, therefore preventing the transfer of those assets (NY CPLR section 5222). A claimant does not need court approval to issue the restraining notice. Likewise, many states such as New York permit the court to issue turnover orders (NY CPLR section 5225). A turnover order can require the judgment debtor to turn over assets, including assets owned or controlled by the judgment debtor outside of the jurisdiction. A turnover order can also require the turnover of a debtor's assets that are in the possession of another party.

Law stated - 8 September 2025

Funding and costs

20 What funding arrangements are available to parties contemplating or involved in litigation and do the courts have any powers to manage the overall cost of that litigation?

A variety of arrangements can be tailored to the claimant's needs. Although many cases proceed based on traditional hourly fee arrangements, alternative fee arrangements (AFAs) have become much more prevalent. AFAs are generally based on success or fee caps.

The most common AFA is a contingency fee agreement, under which an attorney's compensation is derived, on a percentage basis, from the recovery, if any. AFAs can be fully contingent or partially contingent (eg, a client paying a smaller percentage of hourly fees and a portion of recoveries). Another common AFA is an estimate with a cap for each stage of the case.

Third-party litigation funding has become increasingly popular. Third-party funding can help an underfunded claimant bring a meritorious claim by paying at least a portion of counsel fees and expenses (such as experts, investigators and other vendors). Third-party litigation funding terms vary greatly from funder to funder and from state to state. In general, the third-party funder pays for a certain amount of costs and fees in exchange for a percentage of the recovery. Third-party funding and acceptance are still evolving, and some states restrict the practice.

Generally speaking, in the United States, each party must bear its own litigation costs, including counsel fees. If a statute or contract contains a fee-shifting clause, then a court will award reasonable fees as appropriate. US courts can also control costs by imposing reasonable limits on discovery, motion practice and the length of hearings and trials. Such limits are designed to prevent undue burden and expense.

Law stated - 8 September 2025

CRIMINAL ASSET RECOVERY – LEGAL FRAMEWORK

Interim measures

21 | Describe the legal framework in relation to interim measures in your jurisdiction.

There are a variety of statutes addressing interim remedies – which vary based on the type of criminal activity at issue – that provide the government broad interim measures upon suspicion of crime including, without limitation, restraining orders, injunctions and seizures.

Certain statutes authorise courts to grant restraining orders on an ex parte basis. For example, if the government demonstrates that notice will jeopardise the availability of the property for criminal forfeiture that would otherwise occur on a guilty verdict, the court can issue a restraining order against the disposition of the property (21 United States Code (USC) section 853). The same remedies can apply to civil forfeiture (18 USC section 981). Likewise, under the PATRIOT Act, the government can also obtain a restraining order to ensure that the property is available to satisfy a judgment (18 USC section 1956).

Law stated - 8 September 2025

Proceeds of serious crime

22 | Is an investigation to identify, trace and freeze proceeds automatically initiated when certain serious crimes are detected? If not, what triggers an investigation?

No. The government has discretion as to whether and when to undertake asset tracing and freezing efforts. However, it is entirely possible that a civil action implicating criminal activity can trigger the interest of both state and federal prosecutors and result in the filing of parallel criminal action.

Investigations into the proceeds of crime can also be spurred on at the request of a victim (almost always through their counsel). Under some circumstances, a victim could also seek to trigger an investigation into the proceeds of crime by requesting a preliminary injunction with an asset freeze. Once asset forfeiture specialists are involved, they may coordinate further with the victim's counsel.

Law stated - 8 September 2025

Confiscation – legal framework

23 | Describe the legal framework in relation to confiscation of the proceeds of crime, including how the benefit figure is calculated.

Generally speaking, there are three types of asset forfeiture actions: administrative, civil and criminal.

Administrative forfeitures are uncontested, in rem processes that require no court proceedings. Once the property has been seized, the government provides notice of its

intent to seek confiscation to all interested parties (18 USC section 983). If someone files a claim contesting the forfeiture, the government must return the property, commence a civil forfeiture action or include the property in a criminal indictment.

Civil forfeiture actions are in rem judicial proceedings commenced against the property derived from or used in connection with a criminal offence (18 USC section 983). As the action is against the property, a criminal conviction is not necessary. The property owner must make an affirmative challenge for which various grounds exist, including that the property owner is an innocent owner. The property owner may also petition for a reduction in the amount of the property forfeited. There are a number of state and federal statutes that authorise civil forfeiture, including for money laundering and wire fraud, among others (18 USC section 981).

Criminal forfeiture is an in personam action requiring a criminal conviction (ie, the action is against the person, not the property), and is determined at the sentencing stage. As criminal forfeiture actions are against the defendant's property interest, third-party interests in the property must be resolved before the forfeiture order is issued. The criminal forfeiture process is governed by the Federal Rule of Criminal Procedure 32.2. Criminal forfeiture must be authorised by the statute governing the underlying offence. Various federal statutes authorise criminal forfeiture including, for example, for controlled substances (21 USC section 853), money laundering and other delineated financial crimes such as mail fraud and wire fraud (18 USC section 981), racketeering (18 USC section 1963), and terrorism (28 USC section 1963). In criminal proceedings, the court will calculate the value of the amount of the forfeiture based on the proof submitted by the government.

Law stated - 8 September 2025

Confiscation procedure

24 | Describe how confiscation works in practice.

The seizing agency commences the administrative forfeiture on its own initiative, or brings a claim in the appropriate state or federal court, to commence the civil or criminal forfeiture proceeding.

In a civil forfeiture proceeding, the government is only required to establish a connection between the property and a criminal offence by a preponderance of the evidence.

In criminal forfeiture actions, the government identifies the property in its charge. If the defendant is convicted and the court determines that the elements of forfeiture are satisfied, the defendant's property will be forfeited to the government during sentencing.

Prosecutors may convert a criminal forfeiture action into a civil forfeiture action.

Forfeited property may be transferred to third-party claimants that establish a valid ownership interest, restored to victims or transferred to the Asset Forfeiture Fund or the government agencies that contributed to the forfeiture.

Law stated - 8 September 2025

Agencies

25 What agencies are responsible for tracing and confiscating the proceeds of crime in your jurisdiction?

There are a variety of federal, state and local agencies through which the governments can operate to trace and confiscate the proceeds of crime. Some of the major federal agencies supporting asset recovery are:

- the Department of Justice, including, without limitation:
    - the Criminal Division, Asset Forfeiture and Money Laundering Section;
    - the Office of International Affairs;
    - the Federal Bureau of Investigation; and
    - the Drug Enforcement Administration;
- the Department of Homeland Security;
- the Department of the Treasury, Financial Crimes Enforcement Network;
- the Internal Revenue Service;
- the Securities and Exchange Commission; and
- Customs and Border Protection.

Law stated - 8 September 2025

CRIMINAL ASSET RECOVERY – CONFISCATION

Secondary proceeds

26 Is confiscation of secondary proceeds possible?

Confiscation of secondary proceeds is possible in most instances, provided that it is authorised by the relevant statute. In general, where secondary proceeds are subject to forfeiture, the government must establish that the assets in question are traceable to or derived from the underlying claim (18 United States Code (USC) section 982 and 21 USC section 853). In such settings, challenges may arise when distinguishing tainted from non-tainted funds. Generally, the government must identify the proceeds of crime in the defendant's bank account and trace them to the property at issue. Certain statutes provide a broader basis for confiscation. For example, the government may confiscate virtually all assets of a person engaged in planning, perpetrating or concealing terrorism (18 USC section 981) and all property of any kind affording a defendant influence over a racketeering enterprise (18 USC section 1963).

Law stated - 8 September 2025

Third-party ownership

27 | Is it possible to confiscate property acquired by a third party or close relatives?

Yes. Civil forfeiture proceedings are brought against the property. If third parties seek to prevent the forfeiture, they must file a claim to the property and answer the government's forfeiture complaint. The government will prevail unless the third party can establish that the property was not involved in the criminal conduct or that the third party is an innocent owner. The innocent-owner defence requires the third party to show that either it was a bona fide purchaser for value after the criminal conduct at issue or when it owned the property or asset prior to the criminal conduct, it was unaware of the conduct or acted to halt it.

In criminal forfeiture proceedings, any claims by third parties are resolved in ancillary proceedings after the conviction and following the entry of a preliminary order of forfeiture (21 USC section 853). To prevent confiscation, the third party must similarly establish either a superior interest in the forfeited property relative to that held by the defendant or show that it is a bona fide purchaser for value.

Law stated - 8 September 2025

Expenses

28 | Can the costs of tracing and confiscating assets be recovered by a relevant state agency?

Yes. The Comprehensive Crime Control Act of 1984 established the Assets Forfeiture Fund (AFF), which receives the proceeds of forfeiture and aids in paying the costs associated with forfeitures. The AFF is managed by the Department of Justice and can be used to finance expenses in connection with the tracing and confiscation of assets. Investigative expenses are also recoverable by federal agencies that participate in the Treasury Department Forfeiture Fund (31 USC section 9703).

Law stated - 8 September 2025

Value-based confiscation

29 | Is value-based confiscation allowed? If yes, how is the value assessment made?

Yes. US federal law empowers courts to order the confiscation of substitute assets that are equal in value to the original property (21 USC section 853(p) and 18 USC section 1963(m)). Circumstances allowing such substitution include if the property sought to be confiscated has been:

- dissipated;
- commingled with non-forfeitable property; or
- placed beyond the court's jurisdiction.

Substitution is also allowed when the property at issue cannot be found through reasonable due diligence. The government can obtain a money judgment enforceable against any of the defendant's assets. The government may also constructively seize and forfeit funds located in a foreign bank abroad by restraining, seizing and forfeiting an equivalent amount of funds from a corresponding or interbank account held in the United States (18 USC section 981(k)). Value assessments are typically made through expert testimony.

Law stated - 8 September 2025

Burden of proof

30 On whom is the burden of proof in a procedure to confiscate the proceeds of crime? Can the burden be reversed?

The government bears the burden of proof in forfeiture proceedings. In civil forfeiture proceedings, the government must demonstrate by a preponderance of the evidence that the property is subject to forfeiture (18 USC section 983(c)). In criminal forfeiture proceedings, the government first bears the burden of proving beyond a reasonable doubt that the defendant committed the underlying crime. After conviction, the government bears the burden of proof of showing, by a preponderance of evidence, the nexus between the property and the offence.

Law stated - 8 September 2025

Using confiscated property to settle claims

31 May confiscated property be used in satisfaction of civil claims for damages or compensation from a claim arising from the conviction?

Yes, under 18 USC section 981(e) and 21 USC section 853(i). There are a variety of ways that a victim can apply for and receive confiscated assets (28 CFR part 9). Such compensation is used to offset the victim's losses and may not exceed the victim's share of the net proceeds associated with the forfeiture.

Law stated - 8 September 2025

Confiscation of profits

32 Is it possible to recover the financial advantage or profit obtained through the commission of criminal offences?

Only some criminal statutes provide for forfeiture. In enforcing those statutes, the government may recover all proceeds of crime, including traceable property interests that arise out of, or are related to, the illegal activity. This can include appreciation, dividends and interest (18 USC section 981 (a)(1) to (a)(2)).

Law stated - 8 September 2025

Non-conviction based forfeiture

33 Can the proceeds of crime be confiscated without a conviction? Describe how the system works and any legal challenges to in rem confiscation.

Yes. Administrative forfeitures and civil forfeitures do not require a criminal conviction. In administrative forfeitures, the property has been seized and the government provides notice to all interested parties of its intent to seek confiscation (18 USC section 983). If someone files a claim contesting the forfeiture, the government must return the property, commence a civil forfeiture action or include the property in a criminal indictment.

Civil forfeiture actions are also in rem. The government is only required to establish a connection between the property and a criminal offence by a preponderance of the evidence. The property owner must affirmatively challenge. Various grounds exist for so doing, including that the property owner is an innocent owner. The property owner may also petition for a reduction in the amount of property forfeited. There are a number of state and federal statutes that authorise civil forfeiture, including for money laundering and wire fraud (18 USC section 981).

Law stated - 8 September 2025

Management of assets

34 After the seizure of the assets, how are they managed, and by whom? How does the managing authority deal with the hidden cost of management of the assets? Can the assets be utilised by the managing authority or a government agency as their own?

After assets are seized or confiscated by the Department of Justice, they are managed and disposed of by the US Marshals Service (28 CFR section 0.111). In the event that there are complex businesses or assets, a third-party expert – such as a monitor, custodian or trustee – may be appointed.

Generally speaking, seized property pending forfeiture may not be used by the government until a final order of forfeiture is issued. However, under certain circumstances, the seized assets may be used where such use is necessary to preserve the value of the asset, such as for a business or property (eg, a farm).

Law stated - 8 September 2025

CRIMINAL ASSET RECOVERY – CROSS-BORDER ISSUES

Making requests for foreign legal assistance

35 Describe your jurisdiction's legal framework and procedure to request international legal assistance concerning provisional measures in relation to the recovery of assets.

The United States is a signatory to mutual legal assistance treaties (MLATs) with over 70 other nations. Under these treaties, the United States and other jurisdictions may submit requests for assistance. The United States is also involved in the Camden Asset Recovery Inter-Agency Network, the Stolen Asset Recovery Initiative and the Asset Recovery Focal Point Initiative.

Law stated - 8 September 2025

Complying with requests for foreign legal assistance

36 Describe your jurisdiction's legal framework and procedure to meet foreign requests for legal assistance concerning provisional measures in relation to the recovery of assets.

There are a variety of avenues through which foreign requests for legal assistance are handled. The United States responds to inquiries that come through MLATs and to certain letters of request that are made under 28 United States Code (USC) sections 1781 and 1782. The US government can also issue restraining orders to preserve assets (28 USC section 2467) and obtain orders necessary to assist foreign governments in criminal and asset recovery matters (18 USC section 3512). Incoming requests can be handled by the Money Laundering and Asset Recovery Section of the Department of Justice, which may involve the relevant law enforcement agencies, and can institute forfeiture and recovery actions.

Law stated - 8 September 2025

Treaties

37 To which international conventions with provisions on asset recovery is your state a signatory?

The United States is a party to multiple conventions with provisions on asset recovery. The Department of State website keeps a list of all such conventions, including:

- the Inter-American Convention Against Corruption;
- the Inter-American Convention on Mutual Assistance in Criminal Matters;
- the Inter-American Convention Against Terrorism and Inter-American Convention on Letters Rogatory as well as Additional Protocol to the Convention;
- the International Convention for the Suppression of the Financing of Terrorism;
- the Organisation for Economic Co-operation and Development Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions;
- the United Nations (UN) Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;
- the UN Convention Against Corruption; and

- the UN Convention Against Transnational Organized Crime.

Law stated - 8 September 2025

CRIMINAL ASSET RECOVERY – PRIVATE PROSECUTIONS

Private prosecutions

38 | Can criminal asset recovery powers be used by private prosecutors?

Generally, criminal asset recovery powers cannot be used by private prosecutors. However, private victims can bring civil claims or may seek to recover forfeited property where the government exercises its remission or restoration authority (28 CFR part 9).

One exception is a qui tam action. A qui tam action is a type of whistle-blower lawsuit that allows a private person to prosecute a lawsuit for the government under the False Claims Act (31 United States Code sections 3729 to 3733). If the claim is successful, the whistle-blower is entitled to a reward.

Law stated - 8 September 2025

UPDATE AND TRENDS

Emerging trends

39 | Are there any emerging trends or hot topics in civil and criminal asset recovery in your jurisdiction?

Section 1782 of the US Code provides broad discovery for participants in a proceeding before a foreign or international tribunal. In *ZF Automotive US, Inc v Luxshare, Ltd* [2022]-142 S Ct 2078, the US Supreme Court unanimously resolved a Circuit split holding that private adjudicative bodies, namely, private arbitrations, do not fall within the definition of foreign or international tribunal. The decision looked to the US Congress's intent when creating the statute, as well as other canons of statutory construction, to explain that a foreign tribunal 'is a tribunal imbued with governmental authority by one nation' and an international tribunal 'is a tribunal imbued with governmental authority by multiple nations'. These definitions provided support for the Court's decision that section 1782 can only apply to proceedings before governmental and intergovernmental tribunals, effectively ending the use of section 1782 discovery for foreign commercial arbitrations and certain investor-state disputes. The Supreme Court left open the 'possibility that sovereigns might imbue an ad hoc arbitration panel with official authority'. It also did not address whether International Centre for Settlement of Investment Disputes arbitrations, which – unlike the ad hoc investor-state arbitration between Russia and Latvia governed by the United Nations Commission on International Trade Law Rules – are investor-state disputes brought within the self-contained legal framework of the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States. These open issues will likely be the subject of litigation going forward.

Digital assets

The growth of digital assets ranging from cryptocurrency to non-fungible tokens (NFTs) has provided numerous opportunities for fraud in the United States. In 2021 alone, cryptocurrency crime had a record-breaking year with scammers receiving US$14 billion. Investor-related cryptocurrency fraud is a notable example. Fraudulent crypto-trading websites, particularly those claiming high guaranteed returns and riskless investments, are commonly used by hackers and scammers. Rather than provide the promised high returns or risk-free investments, those behind these fraudulent websites transfer investors' cryptocurrencies to new wallets, prevent the original owners from accessing them, and cut off contact with the investor. Hackers have also used social media to fraudulently convert investors' digital assets. For example, in April 2022, the Bored Ape Yacht Club's Instagram account was hacked, and hackers led followers to a link claiming that users could mint 'land'. The link compromised the digital wallets of users who clicked on it and hackers transferred at least 54 NFTs, totalling US$13.7 million, to new wallets. The current administration and US financial regulators and law enforcement have taken an interest in protecting consumers of digital assets from fraud. Because digital assets are decentralised and the internet is not strictly regulated, consumer protection and regulatory enforcement are challenging, and fraud involving digital assets will likely be addressed in both the civil and criminal context.

Asset recovery in the digital asset and cryptocurrency space is rapidly evolving, driven by technology and recent legislative frameworks, such as the GENIUS Act. New legislation and developments are shaping how professionals approach tracing and recovering digital assets, especially as the market matures and adoption grows.

Current asset recover procedures now rely on comprehensive data-driven frameworks that leverage blockchain analytics and machine learning, as well as no-traditional sources like internal records of exchanges and behavioural analytics. These tools allow forensic investigators to trace funds across complex networks, reconstruct transaction flows and link wallet addresses to real-world entities. Cross-border coordination and collaboration with Virtual Asset Service Providers (VASPs) are increasingly vital, particularly when assets are moved across jurisdictions or platforms.

Challenges continue to persist, including anonymity, advanced privacy technologies and technical complexity. Effective recovery requires a multi-disciplinary approach combining forensic expertise, legal acumen and international cooperation. Recent cases have demonstrated the value of integrating on-chain analytics with off-chain intelligence enabling successful recoveries in bankruptcies, fraud investigations and receiverships. As the GENIUS Act provides greater clarity and structure, the use of advanced tracing tools and creative investigative techniques will continue to define the future of digital asset and traditional finance recovery.

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