

# **CONFISCATION OF ASSETS AND FORFEITURE OF UNLAWFULLY ACQUIRED PROPERTY GAIN**

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# CONFISCATION OF ASSETS AND FORFEITURE OF UNLAWFULLY ACQUIRED PROPERTY GAIN

- General Principle - property gain directly or indirectly acquired through a criminal offence cannot be retained
- The court will issue a decision for confiscation of assets and forfeiture of property gain not only in the course of criminal proceedings, but also in cases when although a criminal offence has been committed, due to factual or legal obstacles, criminal proceedings against the perpetrator of the criminal offence cannot be instigated
- Confiscated assets can be returned to another country under conditions provided for in a ratified international agreement



# Convention of the Council of Europe on Money laundering

- GAIN - any economic gain acquired through a criminal offence
- ASSETS - any type of assets, tangible or intangible assets, movable or immovable property, as well as the legal documents proving right of ownership
- CONFISCATION - penalty or measure ordered by the court upon completion of proceedings in regard to one or more criminal offences by which assets/property is seized

# CONFISCATION OF ASSETS AND FORFEITURE OF UNLAWFULLY ACQUIRED PROPERTY GAIN

- If it is not possible to confiscate from the perpetrator the specific acquired property gain, other assets will be confiscated comparable to the unlawfully acquired property gain
- The property gain can also be confiscated from third parties to whom it has been transferred without appropriate compensation, if these parties had knowledge, could have had knowledge or were required to have knowledge that the respective assets were acquired by means of a criminal offence.
- Objects declared cultural heritage or natural rarity, as well as those of personal value to the injured party are seized in any case
- Confiscated assets are to be returned to the injured party; in case there is no injured party, they become ownership of the state

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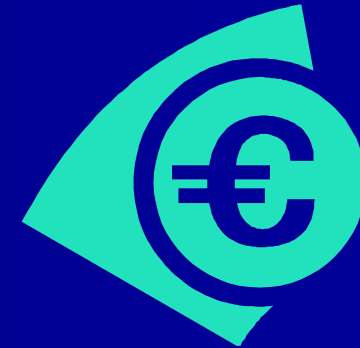
- Assets and property gain are confiscated from a legal entity, if property gain has been obtained for the legal entity through criminal offences
- Objects will also be seized from the perpetrator of the criminal offence that were aimed at or used in course of the perpetration of the criminal offence, regardless of whether they are in his ownership or in the ownership of a third party, if that is required by the interests of public safety and health of citizens or due to moral reasons, and also if there is a threat that the respective objects may be used again for perpetration of a criminal offence
- If property is seized from a third party, the respective third party is entitled to compensation of damages from the perpetrator of the criminal offence

# INTERIM CONFISCATION

- The investigation judge can in the course of the investigation proceedings, and the panel in the course of the follow up proceedings, express interim injunction of objects and assets related to the criminal offence
- Interim injunction of property includes temporary freezing, confiscation, withholding of funds, bank accounts and financial transactions or gains from criminal offences
- Injunction of immovable property will be executed through mortgage, whereas confiscation of pecuniary funds through an order; they will be kept in a safe place or deposited at a special account, without any right to disposal awarded to anyone
- Invoking banker's duty of secret is not allowed

# FINANCIAL INVESTIGATION

- What are the proceeds from crime
- Establishing assets that are to be confiscated
- Interim measures – freezing and forfeiture of assets



# Tools and Measures Used in the Investigation

- Identification, tracing and appraisal of assets subject to forfeiture;
- Implementation of interim measures such as freezing and forfeiture of assets, aimed at preventing possible sale, transfer or disposal of such assets;
- Undertaking measures to prevent actions that would deprive the state of possibilities to recover assets subject to forfeiture



# CONCLUSION

- The Republic of Macedonia made a significant leap in the promotion of issues regulating asset confiscation and forfeiture of property gains acquired through perpetration of a criminal offence,
- As a signatory to the UN Convention from Palermo on Fight against Transnational Organised Crime and the two additional Protocols, it is necessary for the state to work on harmonising national legislation especially with provisions 12 and 13 of the Convention, according to which the state is obligated in its legal system to as great an extent as possible to adopt measures necessary for the facilitation of confiscation of income acquired through criminal offences or assets in a value corresponding to the respective income, as well as the property, equipment or other means used in or aimed at being used in the perpetration of criminal offences, and also, naturally, the provisions for international cooperation addressing confiscation

# Problems in the Practical Action

- Burden of proof
- Fictitious disposal of assets
- Inconsistencies in the Law on Criminal Proceedings