



ASSET RECOVERY AND MANAGEMENT MANUAL

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This Manual was developed by the Asset Recovery and Management Unit (ARMU) of the Federal Ministry of Justice, in collaboration with the African Center for Governance, Asset Recovery and Sustainable Development.

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*Produced by
Office of the Attorney-General of the Federation and the Minister of Justice
Federal Ministry of Justice,
Nigeria*

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ACRONYMS AND ABBREVIATIONS

ARIN - Asset Recovery Interagency Network

AUCPCC - African Union Convention on Prevention and Combatting Corruption

CAPAR - Common African Position on Asset Recovery

DOJ - Department of Justice

EFCC - Economic and Financial Crimes Commission

FATF - Financial Action Task Force

FEC - Federal Executive Council

FIU - Financial Intelligence Unit

ICPC - Independent Corrupt Practices and Other Related Offences Commission

NCB - Non-Conviction-Based

POCA - Proceeds of Crime (Recovery and Management) Act 2022

StAR - Stolen Assets Recovery Initiative

UNCAC - United Nations Convention Against Corruption

UNODC - United Nations Office on Drugs and Crime

FOREWORD

The Asset Recovery and Management Manual (the Manual) is a comprehensive guide developed by the Asset Recovery and Management Unit (ARMU) of the Federal Ministry of Justice, in collaboration with the African Center for Governance, Asset Recovery, and Sustainable Development, to support the effective implementation of Nigeria's Proceeds of Crime (Recovery and Management) Act 2022 (POCA). POCA is the primary legal framework for domestic and international asset recovery and management.

The Manual provides a practical and simplified overview of the Federal Government's legal framework for the recovery, management, return and use of proceeds of crime. It may be used to equip practitioners with the skills they need, as well as familiarize them with appropriate procedures under POCA. It is also a guide towards the complex procedures associated with recovery, return and management of recovered assets.

This manual aims to facilitate the understanding and application of POCA, ensuring that recovered assets are not only employed towards improving government revenue and supporting infrastructural development but also to restore justice to victims of crime and corrupt practices. This is in line with the United Nations Sustainable Development Goals and the African Union Agenda 2063. It highlights the link between POCA and international and regional standards on asset recovery and outlines the mandates of relevant organizations and agencies.

The primary objectives of the Manual are to provide a comprehensive guide for practitioners and to be a key support for ARMU of the Federal Ministry of Justice in its programs. It is relevant as a learning tool for judges, prosecutors, and investigators and will contribute to the efficient recovery of proceeds of crime.

It is my hope that asset recovery practitioners in Nigeria will benefit from the application of this Manual as they continue to work towards efficient implementation of POCA.

Lateef O. Fagbemi, SAN

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EXECUTIVE SUMMARY

The recovery and return of proceeds of crime have been acknowledged as one way to fight corruption and deter the misappropriation of public funds. Recovering the proceeds of crime has also been described as an approach to reversing the negative effect of corruption and illicit financial flows on the African continent, while ensuring that these proceeds are returned from safe havens for use in financing sustainable development projects.

The Federal Government has demonstrated commitment to fulfilling its obligations under the United Nations Convention Against Corruption (UNCAC, 2003), the African Union Convention on Preventing and Combating Corruption (AUCPCC, 2003), and the Financial Action Task Force (FATF) Recommendations, as well as other relevant international and regional frameworks by enacting the Proceeds of Crime (Recovery and Management) Act (POCA) in 2022.

The Asset Recovery and Management Manual (the Manual) aims to guide officials and asset recovery practitioners in implementing the various aspects of Nigeria's proceeds of crime regime. In developing this Manual, the Federal Ministry of Justice collaborated with legal experts and the African Center for Governance, Asset Recovery, and Sustainable Development. It presents a synopsis of the legal framework for Nigeria's recovery, management, return, and use of illicit funds. Whilst the provisions of POCA have not yet been fully explored through the judicial process, practitioners can rely on previous Superior Court decisions based on other relevant laws discussed in the Manual as a guide.

The Manual also outlines the mandates of the relevant organizations and agencies as provided in POCA, 2022. The Act provides for the administration of the law through the setting up of the Proceeds of Crime Directorate in each relevant organization to oversee data management, internal coordination, domestic coordination, and disposal of assets. Additionally, it sets out the general and specific powers of the Asset Recovery and Management and the Central Authority Units in the Federal Ministry of Justice, in the collection of data on domestic recovered assets, initiation of international asset recovery, return and use of returned assets. The need for coordination of the roles of different stakeholders - investigators, prosecutors, and the judiciary in the recovery, return and management of proceeds of crime is considered critical in ensuring the successful implementation of POCA.

The Manual provides a clear roadmap for ensuring that recovered assets are used to improve government revenue, restore justice to victims of crime and corruption, and support the United Nations Sustainable Development Goals (SDGs) and the African Union Agenda 2063. It urges relevant organizations, departments and units to ensure that domestic and internationally recovered assets are used transparently and in a manner that benefits all Nigerians.

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INTRODUCTION

The Asset Recovery and Management Unit (ARMU) of the Federal Ministry of Justice and the African Center for Governance, Asset Recovery, and Sustainable Development collaborated to develop the Asset Recovery and Management Manual (the Manual) to guide asset recovery practitioners and deepen knowledge about this field of study. The Manual provides an overview of the international, regional and national legal and policy frameworks for the recovery, management, return and use of proceeds of crime. It is the first in a series of guidance that will be published on applying the Proceeds of Crime (Recovery and Management) Act, 2022 (POCA) in Nigeria.

1. OBJECTIVES OF THE MANUAL

The Manual provides a simplified overview of the various international, regional and national dimensions of how proceeds of crime could be effectively managed using national legislation. It provides an overview of the Nigerian Proceeds of Crime (Recovery and Management) Act, (POCA) 2022 to make it easily accessible for practitioners. Efforts were made to use selected cases to explain the application of the various provisions in POCA. The Manual also aims to simplify POCA and provide guidance to officials and practitioners in implementing the various aspects of the proceeds of crime regime in Nigeria. Other objectives of the Manual are to:

- Support ARMU of the Federal Ministry of Justice in its mandate by developing a fit-for-purpose asset recovery manual;
- Train prosecutors, judges, civil society actors, asset recovery agents, and other professionals; and
- To use cases to simplify and facilitate the comprehension and practical application of the legal procedures outlined in POCA.

2. OVERVIEW OF THE PROCEDURE FOR THE RECOVERY OF STOLEN ASSETS OR PROCEEDS OF CRIME

2.1. WHAT IS ASSET RECOVERY OR THE RECOVERY OF PROCEEDS OF CRIME?

Asset Recovery, or the recovery of proceeds of crime, is at the core of the fight against corruption, economic and financial crimes. When effective, it is expected that the recovery of proceeds of crime will serve the twin purposes of *enforcement and prevention* tools. This means that *enforcement* - the recovery of stolen assets through a conviction or non-conviction-based process – not only punishes the perpetrator by ensuring that stolen assets are confiscated and returned to victims or legitimate owners but that the act of recovering those assets *prevents* other would-be perpetrators from the abuse of public funds¹. To achieve these goals, countries must have a comprehensive legislative framework and technical skills, including prosecutorial, investigative, intelligence and judicial capability to trace, identify, freeze, seize, confiscate and manage confiscated assets and proceeds of crime.

Corrupt practices and other forms of economic and financial crimes have a significant economic and social impact, especially in developing countries. Unfortunately, public funds that should be used to tackle economic and social problems often end up in financial centres worldwide. Corruption affects both developed and developing countries alike². These crimes undermine and erode confidence in governments, banks, companies, and society at large.³ Therefore, the legal frameworks on the recovery and return of assets that originate from proceeds of crime have become both a social, economic and political compromise by countries in various international and regional instruments to address the negative impact of organized crime, white-collar crime, illicit financial flows, and corruption.

Various International Conventions guide the recovery of assets or proceeds of crime. In particular, the United Nations (UN) Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances (1988), the Convention on the Suppression of the Financing of Terrorism (1999), the UN Convention against Transnational Organized Crime (UNTOC, 2000) and the UN Convention Against Corruption, (UNCAC, 2003) are relevant to this topic.

In comparison with the other Conventions, the UNCAC has been described as the most comprehensive and legally binding framework for the recovery and return of assets⁴. As of 2024, 190 parties, including non-UN member states and territories, had ratified the UNCAC⁵. However, the UNCAC does not clearly define “Asset Recovery” but defines relevant terms, as listed below, to guide practitioners.

Article 2 definition in UNCAC defines *Property* as “assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets”. *Proceeds of crime* are defined as “property derived

from or obtained directly or indirectly, through the commission of an offence”. UNCAC uses *property and assets* interchangeably. Although the scope of application of UNCAC is limited to the offences in the Convention, the tools used in the prevention, investigation, prosecution, freezing, seizure, confiscation and return of proceeds of crime in UNCAC apply to proceeds of crime committed in other international Conventions.⁶

Definition of Terms			
Proceeds of crime -“property derived from or obtained directly or indirectly, through the commission of an offence”	Property -assets of every kind, whether corporeal or incorporeal, movable, or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets”	Freezing and Seizure -temporarily prohibiting the transfer, •-conversion, disposition or movement of property or temporarily assuming •-custody or control of property based on an order issued by a court or •-other competent authority	Confiscation -includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority

Figure 1: Definition of Terms

In the process of recovering proceeds of crime, UNCAC expects that a country will take steps to identify, trace, freeze, seize and confiscate stolen assets⁷. **Freezing of assets** is defined as “temporarily prohibiting the transfer, conversion, disposition, or movement of property or temporarily assuming custody or control of the property based on an order issued by a court or other competent authority.” The purpose of this is to prevent the dissipation or removal of such assets from the reach of investigators. UNCAC defines **confiscation** to include forfeiture where applicable to mean “permanent deprivation of property by the order of the court or other competent authority”.

2.2. WHY RECOVER ASSETS?

According to the Stolen Asset Recovery Initiative (StAR), the United Nations Office on Drugs and Crime (UNODC) and the World Bank initiative, the number of countries pursuing cross-border asset recovery cases involving corruption proceeds are growing rapidly. StAR estimates that between 2010 and 2023, about USD 16 billion have been frozen, confiscated or repatriated to countries of origin – most of the returns were made to countries in the global South.

However, the Financial Action Task Force (FATF) has observed that the amount recovered

represents only 1 % of what has been embezzled or siphoned out of developing countries to other jurisdictions⁸.

The international support for asset recovery is based on a growing realisation that sustainable development goals can be achieved through the repatriation of stolen funds. Recent asset recovery cases such as the one concluded among Nigeria, the United States of America and the Bailiwick of Jersey and Kenya have shown that returned funds could contribute to development finance urgently required in many developing countries. The recovery of proceeds of crime has been linked to the enjoyment of human rights as reflected in the work of civil society organizations and the Office of the Human Rights Commissioner (OHRC)⁹. It is remarkable that since 2011, the Human Rights Council has considered the impact of corruption and diversion of public funds on the enjoyment of rights to development and has adopted resolutions to highlight the negative impact of non-repatriation of recovered funds to their countries of origin.

Recovery of proceeds of crime is also seen as a form of deterrence. Scholars have often pointed out that criminal conviction without the forfeiture of the proceeds or profit generated from a crime will not dissuade corrupt officials or offenders from committing the same offence and will not deter others from taking the same path¹⁰.

Sources of Proceeds of Corruption

According to UNCAC, the following are the types of offences from which proceeds of corruption may come from¹¹:



Figure 2: Offences under UNCAC

UNCAC, articles 31 and 51 to 59, provide guidance on the legal requirements to be adopted by countries to ensure effective identification, tracing, freezing, seizure, confiscation, and return of proceeds of crime to countries of origin or for the purpose of applying the Convention within a specific jurisdiction. While Article 31 covers domestic procedures, articles 51 to 59 focuses on a combination of domestic and international procedures.

Figure 3: Article 31 of UNCAC

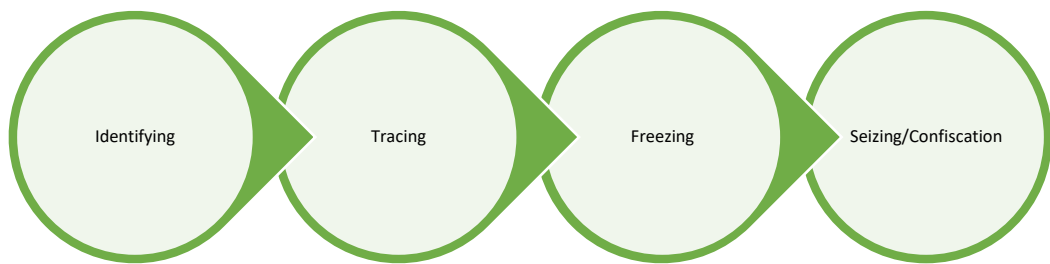


Figure 4: Chapter V of UNCAC

2.3. WHAT IS ASSET RETURN?

In contrast to asset recovery, asset return refers to the process of repatriating or returning proceeds of crime that have been confiscated to foreign jurisdictions¹². It is regarded as the methods through which the proceeds of corruption relocated abroad or also amassed within a country are recovered and returned to the rightful owners.¹³

Although most definitions of asset return refer to international procedures for recovering and returning assets from one country to another, they could also apply to assets recovered by law enforcement agencies at the domestic level.

When assets recovered within a jurisdiction belong to the public or were embezzled from public funds, they are expected to be returned to either the subnational or federal treasury where the funds were stolen from or to individuals or entities who have a legitimate claim to the recovered funds¹⁴ (Article 57, UNCAC).

However, it must be pointed out that UNCAC is unclear as to whom the returned assets should be given to once it is repatriated to their countries of origin. However, over the years, the practices on the return and use of returned assets in various countries have evolved, thus leading to the development of good practices such as the ten principles of the Global Forum on Asset Recovery (GFAR)¹⁵ and that of the UN Coalition Against Corruption (UNCAC Coalition)¹⁶. These principles reiterate the importance of transparency, accountability, inclusion, and partnership in using returned assets.

There are circumstances in which a country or a law enforcement agency may form the opinion that returning to a sub-national may lead to complex debate about the likelihood of diversion of such funds again. In such circumstances, law enforcement agencies are expected to follow the procedures set out in the laws or regulations to determine whether to obtain a judicial order to keep the funds in an escrow account or interest-yielding account until the condition and procedure for the use of the funds for the benefits of the sub-national entity are agreed on.

Across the international, regional, and intergovernmental frameworks examined, the three pillars of recovery, return, and disposal/management/social reuse can be identified:

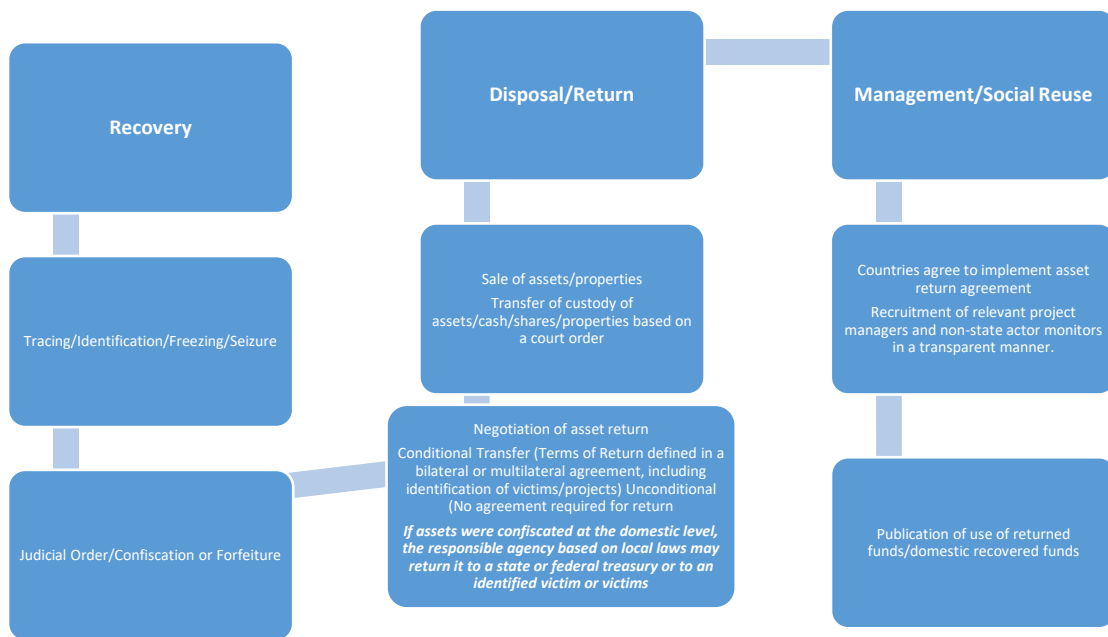


Figure 5: Three Pillars of Proceeds of Crime Regime

3. REGIONAL FRAMEWORK

The African Union adopted the African Union Convention on Preventing and Combating Corruption (AUCPCC) on 11 July 2003 to fight rampant political corruption in the African continent. The Convention represents the regional anti-corruption framework on what African States should do in the areas of ***prevention, criminalization, international cooperation and asset recovery***. The Convention provides for a framework for Asset Recovery in Article 16 which states that “*Each State Party shall adopt such legislative measures as may be necessary to enable its competent authorities*” undertake the following responsibilities:

- to search, identify, trace, administer and freeze or seize the instrumentalities and proceeds of corruption pending a final judgment;
- confiscation of proceeds or property, the value of which corresponds to that of such proceeds, derived, from offences established by this convention; and repatriation of proceeds of corruption.”

Article 18 provides measures for international cooperation and mutual legal assistance in asset recovery. Additionally, in February 2020, during its 33rd Ordinary Session, the AU adopted the Common African Position on Asset Recovery (CAPAR)¹⁷. The CAPAR serve as a continental policy and advocacy tool to strengthen the fight against corruption and illicit financial flows. CAPAR has four pillars: Asset Detection and Identification, Asset Recovery and Return, Asset Management, and Cooperation and Partnerships¹⁸.

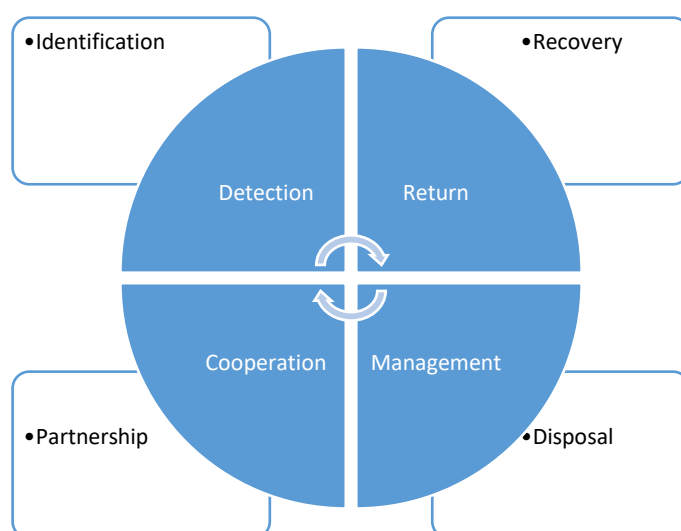


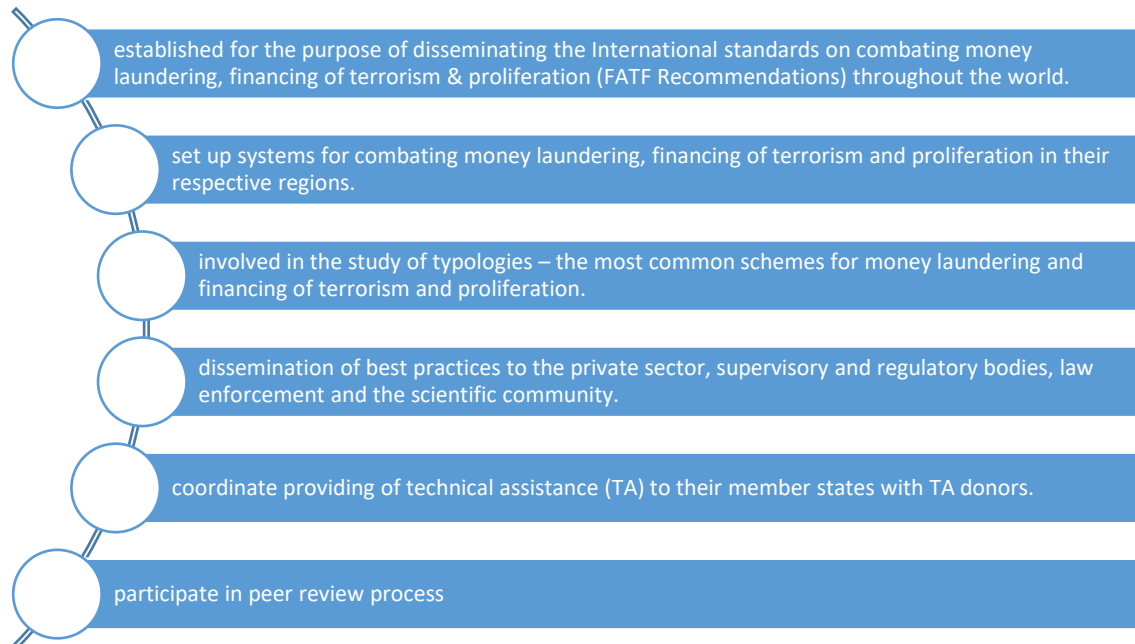
Figure 6: The CAPAR Framework:

4. FINANCIAL ACTION TASK FORCE RECOMMENDATIONS ON THE CONFISCATION OF PROCEEDS OF CRIME

The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 on the initiative of the G7 to develop policies to combat money laundering and to maintain certain interests. Though not a binding international convention, many countries in the world have made a political commitment to combat money laundering by implementing the 40 Recommendations. The mandate of the FATF is to set standards to promote the effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and the financing of proliferation (AML/CFT/PF) and other related threats to the integrity of the international financial system. The FATF has 40 Recommendations, adopted in 2012 but which have been revised over the years with the latest amendment in 2023¹⁹.

Over 200 jurisdictions across the world have committed to the FATF Recommendations through the global network of FATF Regional Bodies (FSRBs) and FATF memberships²⁰. Nigeria is represented under the ECOWAS/FSRB – the Intergovernmental Action Group against Money Laundering and Financing of Terrorism in West Africa (GIABA).

Figure 7: Role of regional bodies²¹ The FATF-Styled regional bodies are set up to undertake the following tasks:



Governments rely on FATF procedures to develop international cooperation to counter transnational organized crime, terrorism, and weapons proliferation. Nearly all UN member states have committed to meeting its standards. Most states have joined regional iterations of FATF.

FATF Recommendations 4 and 38 deal with Confiscation. FATF recommends that countries should ensure that they have policies and operational frameworks that prioritize asset recovery in both the domestic and international context, including legislative measures, to enable their competent authorities to:

- identify, trace and evaluate criminal property and property of corresponding value; suspend or withhold consent to a transaction;
- take any appropriate investigative measures; expeditiously carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of criminal property and property of corresponding value;
- confiscate criminal property and property of corresponding value through conviction-based confiscation;
- confiscate criminal property through non-conviction-based confiscation;
- enforce a resulting confiscation order; and
- ensure effective management of property that is frozen, seized or confiscated.

5. OVERVIEW OF THE PROCEEDS OF CRIME (RECOVERY AND MANAGEMENT) ACT 2022, NIGERIA

Before 2022, the efforts of the anti-corruption and law enforcement agencies to recover proceeds of crime were frustrated by the gaps in extant laws, particularly the lack of an institutional framework for the recovery and management of the proceeds of crime; absence of non-conviction-based forfeiture laws; the deterioration or loss of value of assets recovered from unlawful activities; lack of expertise in asset tracing; and limited domestic and international inter-agency cooperation. In line with international standards as elaborated above, Nigeria has taken some important steps with the enactment of the POCA Act 2022 to improve and enhance its asset recovery regime for complex cases and to address several key concerns related to corruption and financial crimes.

This Manual outlines the policies and procedures for the effective implementation of POCA by the Asset Recovery and Management Unit (ARMU), and the Central Authority Unit (CAU) of the Federal Ministry of Justice (FMOJ) as well as relevant organizations (ROs).

POCA's primary objectives are to provide for:

- Effective legal and institutional framework for the recovery and management of the proceeds of crime, benefits derived therein, instrumentality of unlawful activities, and unclaimed properties reasonably suspected to be proceeds of crime;
- The restraint, seizure, confiscation and forfeiture of property derived from unlawful activities and any instrumentalities used or intended to be used in the commission of such unlawful activities;
- Non-conviction-based procedure for the recovery of proceeds of crime;
- Strengthen the criminal confiscation procedure by ensuring that the total benefit from a person's criminal activity is calculated and an equivalent amount, where recoverable, is confiscated on behalf of the Federal Government;
- Ensure that the relevant organisations establish the Proceeds of Crime (Management) Directorate to carry out the functions conferred on it under the Act;
- Strengthen collaboration among the relevant organisations in tracing and forfeiting properties reasonably suspected to be proceeds of unlawful activity through non-conviction-based (NCB) forfeiture proceedings; and
- Handover, management and disposal of properties forfeited to the Federal Republic of Nigeria.

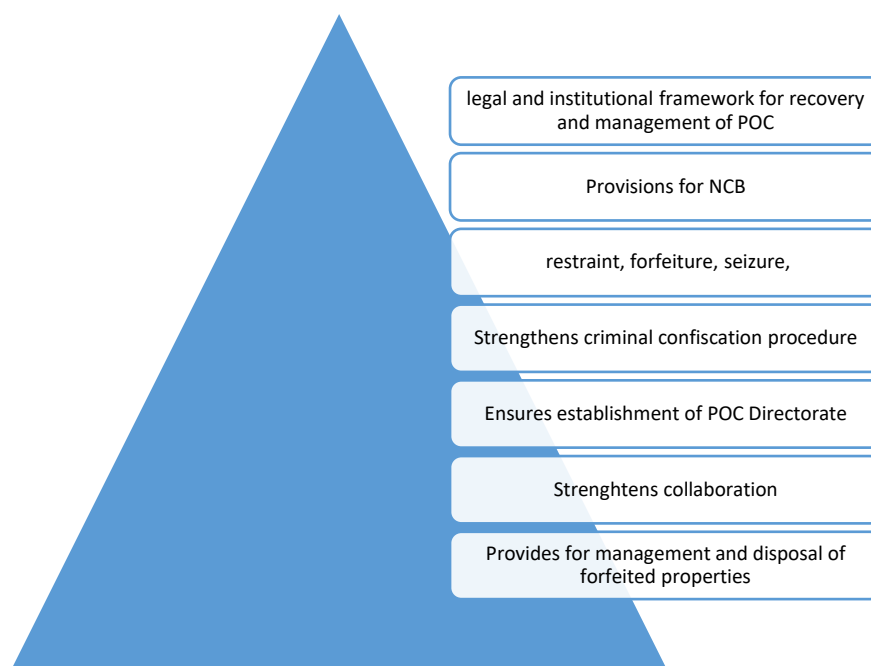


Figure 8: Primary Objectives of POCA

5.1. RELEVANT ORGANIZATIONS UNDER POCA, 2022

The figure below sets out the mandates of each RO under their establishment laws and specifically the requirement in section 3 of POCA for each RO to set up a **Proceeds of Crime and Management Directorate** (or unit where the organization is small)

EFCC	•Section 13 (1) (c) and (d)
ICPC	•Section 37 and 45)
NDLEA	•Section 3(1) (c) of NDLEA
NAPTIP	•Section 34-49 of NAPTIP Act
NAFDAC	•Section 24 of NAFDAC Act
NFIU	•Section 15-25 of NFIU Act
NCS	•Section 245-254 of NCS Act
CCB	•Section 23(2) of Code of Conduct Bureau and Tribunal Act
NPF	•Section 28 of NPF
Armed Forces	•Section 6 of Armed Forces Act
SON	•Section 15, 16(8) and 18
NIMASA	•Section 58
NIS	•Section 20
NPA	•Section 32 (1) (n) (o)
NIWA	•Section 23 (3)
NSCDC	•Section 3 (1) (f)
FIRS	•Section 8 (1) (g)

Figure 9: Relevant organizations

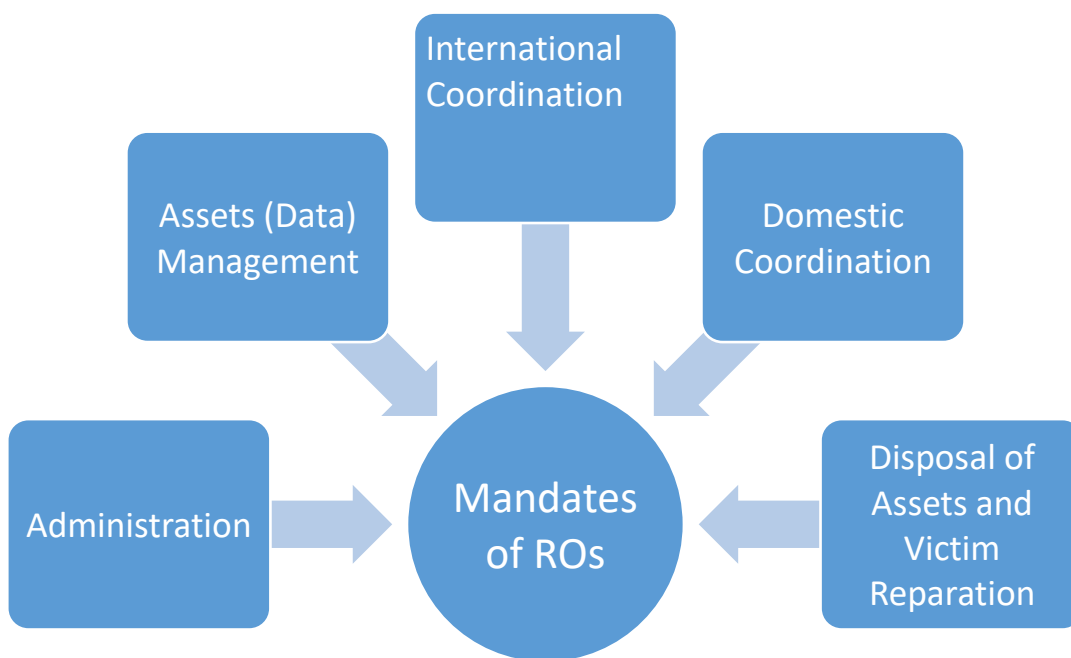


Figure 10: Mandates of relevant organization

1. Administration:

- carry on the enforcement and administration of the Proceeds of Crime Act;
- create Proceeds of Crime (Management) Directorates;
- carry out such other necessary or expedient functions as may be assigned to the Proceeds of Crime and Management Directorate by the head of the relevant organisation to ensure the efficient performance of its functions under the Proceeds of Crime Act.

2. Assets (Data) Management;

- establish and maintain assets management and disposal systems, lists of approved auctioneers and valuers, and issue instructions for the realisation or security of assets whilst ensuring fair process;
- establish and maintain a central database of all seized and recovered assets by the relevant organization;
- establish and maintain asset managers, auctioneers, insurers, and other necessary support services; maintain statistics as to amounts recovered and managed; maintain an accurate inventory of all assets, with records of their location, value, condition, and description of their status about any proceedings before the Court.

3. International Coordination

- Collaborate with the Federal Ministry of Justice to negotiate the return and management of all assets seized from foreign countries on behalf of the Federal or State Governments, or any other victim or for the benefit of Nigerians; collaborate with other government bodies outside Nigeria that are carrying on functions, wholly or in part similar to it;

4. Domestic Coordination

- Execute such contracts or other arrangements, as it considers necessary and particularly engage contractors, asset managers, auctioneers, accountants, consultants, brokerage

companies, investment advisers, financial investigators and other experts for the effective performance of its functions under the Proceeds of Crime Act;

5. Disposal of Assets and Victim Reparation

- dispose assets subject to a forfeiture order of a Court that is perishable or susceptible to deterioration; or may be excessively burdensome or expensive to maintain or administer, leading to a reduction of the recoverable amount; recommend reparations to victims of crime, where proceeds have been recovered;
- do anything it considers appropriate for facilitating, or which is incidental to the performance of its functions.

5.2 GENERAL POWERS OF RELEVANT ORGANIZATIONS INCLUDE:



Figure 11: General Powers of the ROs

5.2.1 Freezing

Freezing refers to the placement of a legally authorized order on assets suspected to be linked to criminal activity.

- It is an administrative law enforcement action that suspends rights over the asset and for example, may apply to bank accounts, cash, and other negotiable instruments pending the conclusion of an investigation.
- It is a crucial step that prevents the assets from disappearing while authorities investigate and potentially recover them later. It also secures the assets as potential evidence and ensures their availability if the court decides they were obtained illegally.
- It could also be described as a legal order that restricts the movement or sale of assets,

even if they remain in the physical possession of the suspect.

According to the UNODC²², freezing of assets involves “temporarily prohibiting the transfer, conversion, disposition or movement of assets or temporarily assuming custody or control of assets based on an order issued by a court or other competent authority”.

The FATF, in Recommendation 38, recommends that:

“Countries should ensure that they have the authority to take expeditious action in response to requests by foreign countries:

- *to identify, freeze, seize and confiscate property laundered;*
- *proceeds from money-laundering, predicate offences and terrorist financing;*
- *instrumentalities used in, or intended for use in, the commission of these offences; or property of corresponding value.*

This authority should include being able to respond to requests made based on non-conviction-based confiscation proceedings and related provisional measures unless this is inconsistent with fundamental principles of their domestic law.

- *Countries should also have effective mechanisms for managing such property, instrumentalities or property of corresponding value, and*
- *arrangements for coordinating seizure and confiscation proceedings which should include the sharing of confiscated assets.”*

5.2.2. Seizure:

Another critical role of investigators and ROs is the ability to seize assets, cash or negotiable instruments, or request a relevant RO with a statutory mandate to seize on its behalf.

- The essence of seizure in asset recovery is to take legal control of assets suspected to be linked to criminal activity. This preliminary step, which may be preceded by a freezing order if it is held in a financial institution sets the stage for further investigation and potential asset recovery actions.
- A seizure functions by physically removing the assets from the possession of the individuals suspected to be involved in criminal activity. This prevents them from

accessing, hiding, or disposing of the assets. A seizure acts as a form of evidence preservation.

- The seized assets can be examined and analyzed to strengthen the case against the suspects. By seizing the assets, authorities pave the way for further legal proceedings like applying for a restraint or preservation order.
- These orders can then be used to freeze the assets for a longer period while the investigation and potential court case unfolds.
- It can be likened to the initial strike in asset recovery. It disrupts the criminals' access to the assets and allows for further investigation to determine if they were truly obtained illegally.
- In Nigeria, seized properties are kept under the custody of the relevant organisations.
- Obstruction of the execution of a search and seizure warrant is an offence which is punishable by conviction to a fine of N5,000,000 or imprisonment for a term of at least two years or both.

5.3 SPECIFIC POWERS OF THE FEDERAL MINISTRY OF JUSTICE IN THE PROCESS OF MANAGEMENT OF FORFEITED PROPERTIES:

The Proceeds of Crime (Management) Directorate (hereinafter the Asset Recovery and Management Unit) of the Federal Ministry of Justice (FMOJ) is empowered by the Act to carry out several tasks in the management of forfeited assets in collaboration with relevant organizations as set out in Section 3. However, ARMU's specific mandates can be categorized as *domestic and international as well as regulatory and coordinating in nature*.

International Mandate

Initiate the identification, tracing, confiscation, recovery and return of assets of Nigerian origin located in another jurisdiction

Assuming responsibility for the proper and effective management of properties forfeited to FGN by other jurisdictions

Provide guidelines to be applied in the recovery of proceeds of crime located in another jurisdiction

Work with CAU and other relevant agencies in the request for intelligence, and confiscation of assets belonging to another jurisdiction, entity or individuals based on a Mutual Legal Assistance Request, or Bilateral or Multilateral Agreements

Ensure accountability in the management of all properties forfeited

Identify relevant partners, and CSOs that will enhance the transparency, accountability, and engagement with the public on the use of returned assets

Figure 12: International Mandate

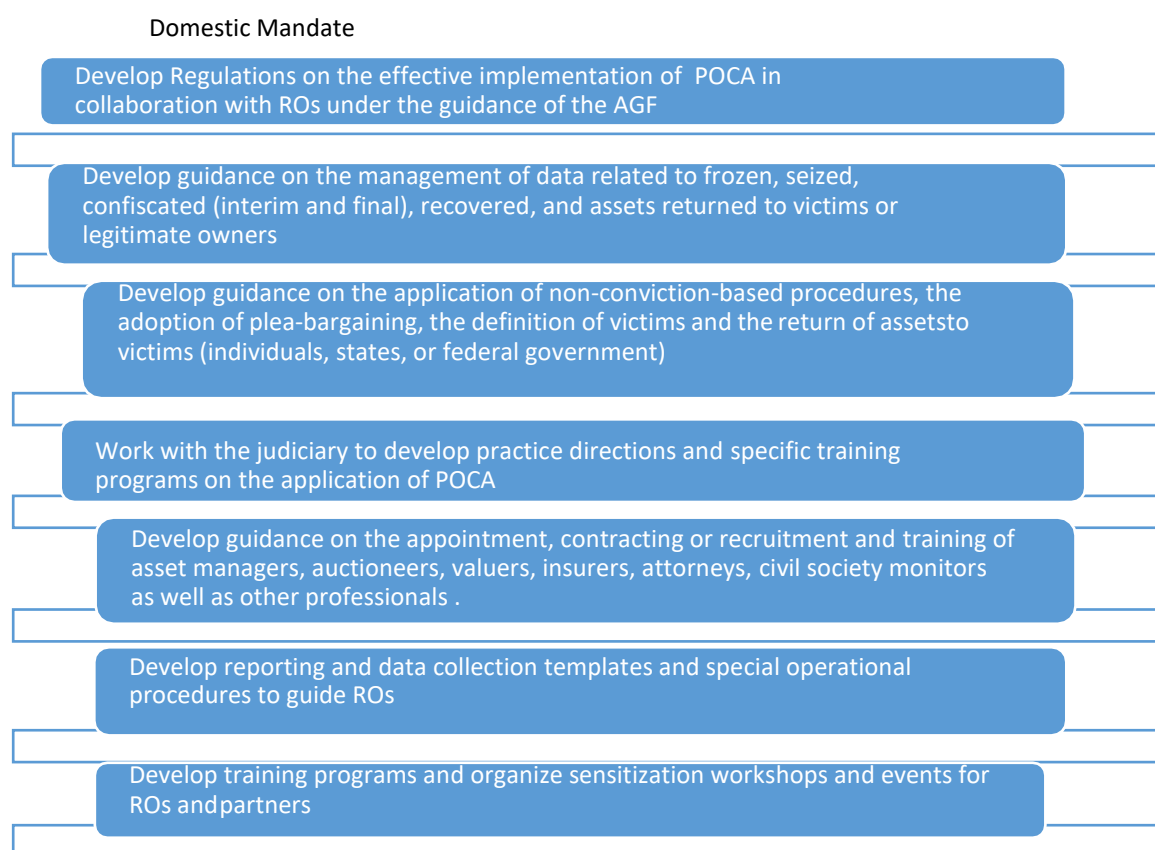


Figure 13: Asset Recovery and Management Unit of the FMOJ

5.3.1. Co-ordination between Relevant Organisations and other Entities

The FMOJ is required to encourage cooperation between asset recovery agencies and other entities essential for successfully tracking, freezing, and recovering stolen or illegally obtained assets (Section 6, POCA). Collaboration is crucial to address the challenges of recovering proceeds of crime which may be hidden in various locations or jurisdictions:

- **Complex Investigations:** Many asset recovery cases involve complex financial trials that transcend the organizational capacities of certain agencies and sometimes, even geographic boundaries. Cooperation allows information sharing and coordinated action across different jurisdictions and organizations.
- **Location of Assets:** Assets can be hidden or transferred across borders. Collaboration between agencies facilitates tracing and taking the necessary legal steps to freeze or seize them.
- **Sharing Expertise:** Different agencies might have specialized knowledge or resources. Collaboration allows for the sharing of expertise and best practices, leading to more effective asset recovery strategies.
- **Information Sharing:** Agencies share information about suspects, assets, financial transactions, and relevant legislation. This allows for a more comprehensive picture of the case and faster identification of hidden assets.
- **Joint Investigations:** In complex cases, different agencies might form joint investigative teams. This allows for coordinated action and resource sharing to trace assets and build a stronger case.

- **Recovery and Repatriation:** Once assets are recovered, agencies work together to determine the rightful owner and repatriate the assets efficiently. In some cases, recovered assets might be used to compensate victims of the crime.

The benefits of international cooperation are numerous. Here are some of them:

- **Increased Success Rates:** Collaboration significantly increases the chances of successfully recovering stolen or illegally obtained assets.
- **Combating Transnational Crime:** Cooperation helps combat transnational crime by disrupting criminal networks that operate across borders.
- **Deterrence:** Effective asset recovery deters criminals by taking away the financial gains from their crimes.



Figure 14: International Cooperation

Overall, domestic and international cooperation between asset recovery agencies and among countries are powerful tools in the fight against crime. By sharing information, coordinating efforts, and leveraging expertise across borders, these agencies can significantly improve the chances of recovering stolen or illegally obtained assets and deterring future crimes. In Nigeria, section 6 of POCA allows other relevant entities (other government agencies, institutions, civil society organisations, the private sector and any other entity), to participate in the asset recovery process with all relevant organizations.

6. NON – CONVICTION – BASED (NCB) RECOVERY

POCA defines NCB as “*the recovery and forfeiture of proceeds of crime, instrumentality of unlawful activity, abandoned properties, or unclaimed properties reasonably suspected to be proceeds of unlawful activity, without conviction*”. (Part IV, Section 7)

6.1 APPLICATION OF NCB

Essentially, non-conviction-based recovery of the proceeds of crime (NCB) is a legal mechanism that allows authorities to recover assets suspected to be linked to criminal activity without requiring a criminal conviction.

The key features of NCB are:

- **No Conviction Needed:** Unlike conviction-based or traditional asset recovery, NCB allows authorities to pursue assets even if they haven't secured a criminal conviction against the suspected owner.
- This can be helpful in situations where obtaining a conviction is difficult due to insufficient evidence for a criminal trial or that the suspect is deceased, on the run, immune from prosecution, or there is a statute of limitations preventing criminal charges.
- **Civil Proceedings:** NCB typically falls under civil law, meaning the authorities initiate proceedings to demonstrate that the assets are more likely than not (balance of probabilities) to be proceeds of crime. This is a lower standard of proof compared to the "beyond a reasonable doubt" standard required in criminal trials.

The potential outcome of a successful NCB case can result in a court order to either freeze the assets to prevent them from being dissipated or confiscate them and potentially sell them, with the proceeds used for various purposes, like victim compensation or crime prevention initiatives.

The relevant authorities need only show a connection between the assets and criminal activity, but a full criminal conviction isn't mandatory or necessary. The advantage of the NCB approach is that it leads to faster asset recovery by passing the need for a criminal conviction, thereby expediting the recovery of stolen or illegally obtained assets. Another advantage is that it disrupts criminal activity by taking away the financial gains from criminals and weakening their operations.

6.2 NATURE OF PROCEEDINGS:

According to Section 8 of the POCA,

- The nature of NCB proceedings is civil proceedings, and the standard of proof required is on the balance of probabilities, that is, the relevant authority must demonstrate that the assets are more likely than not to be proceeds of crime.
- A lower standard of proof than the "beyond a reasonable doubt" standard is required in

criminal trials.

- The rules and or practice relating to hearsay evidence, given in furtherance of these proceedings, is admissible.

6.3 PRESERVATION ORDER:

- In asset recovery, a preservation order is essentially a legal tool that freezes specific assets suspected to be linked to illegal activity.
- This order prevents the assets from being disposed of, transferred, or hidden, making it easier for authorities to recover them. A preservation order acts like a placeholder, ensuring the assets remain readily available throughout the investigation and potential legal proceedings, thereby securing the assets.
- It also stops individuals from selling, destroying, or otherwise disposing of the assets.
- It can be seen as a temporary freeze on the assets, like how a police officer might secure a crime scene to preserve evidence (in this case, the assets) for further investigation and potential use as compensation for the wronged party.

6.4 JUDICIAL MANDATE OVER THE APPLICATION OF NCB

- By the provisions of POCA, a preservation order shall be granted by the Court to preserve property reasonably suspected to have been derived from unlawful activities and represents proceeds of unlawful activity or unclaimed property.
- The life span of a preservation order is 60 days which can be renewed before it expires for a cumulative period of 180 days. The mode of application for Preservation Orders is via ex parte applications.

6.5 RIGHT TO A FAIR HEARING

- The relevant organisation should notify any interested party of the preservation order within 14 days after making it by publishing it in any widely circulated national newspaper.
- A person, who has an interest in any property that is subject to a preservation order may give notice of their intention to the relevant organisation within 14 days of the publication stating their identity, the nature and extent of their interest in the property concerned, and the reasons for opposing the preservation order or applying for the exclusion of their interest from the operation of the preservation order.
- It is important to highlight that according to POCA, a preservation order can be issued for an asset regardless of whether it is currently held by the individual who initially obtained it through illegal means or by any subsequent possessor of the property.

6.6 POWER TO DISPOSE OF ASSETS DURING PRESERVATION ORDER

Where there are reasonable grounds to believe that a preserved property may lose its value, get destroyed or be illegally moved/sold, the Court is empowered to grant the following orders or direct the relevant organization to take the following steps:

- Appoint an asset manager to assume control of the property
- Administer the property
- Carry on the business or undertaking where the property is a going concern based on applicable laws
- An order to sell the property at the prevailing market value where the property is perishable, liable to deterioration, decay or injury.
- The proceeds from the sale of the sold property shall be invested in the Central Bank of Nigeria treasury bills, pending the determination of the case.

However, if the preservation order is revoked or the sale is reversed by the court, the proceeds of the sale will be returned to the owner along with any accrued interest.

A Court making a preservation order may at the same time make any ancillary orders that it considers appropriate for the proper, fair and effective execution of the preservation order.

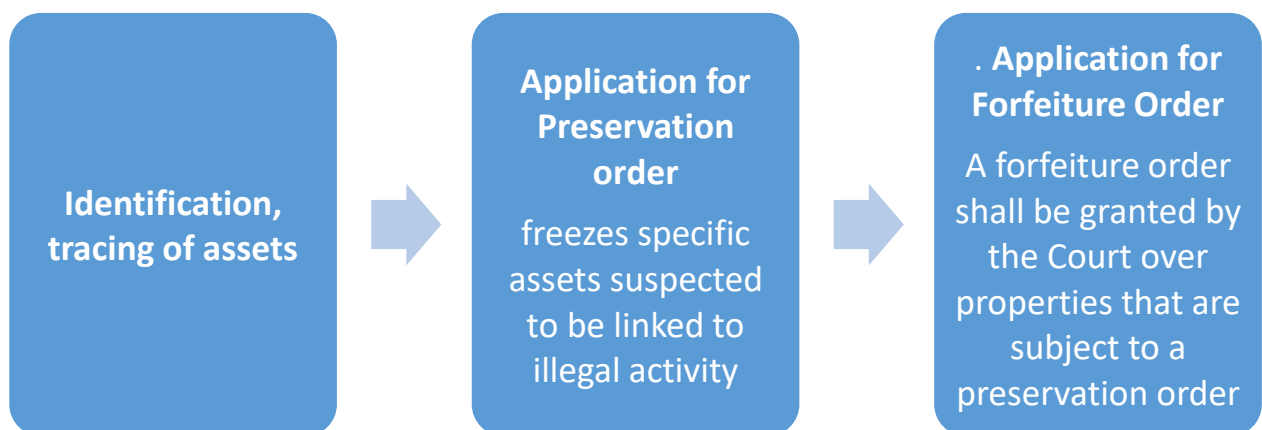


Figure 15: Non-Conviction based recovery stages

7. FORFEITURE ORDER

7.1. INTERIM FORFEITURE:

Interim forfeiture is the temporal seizure of assets believed to be linked to criminal activity. It is a powerful tool used before a final decision is reached on the fate of the assets. It allows authorities to act quickly and secure the assets while the investigation and legal proceedings unfold before a final ruling.

Main features:

- Unlike a final forfeiture order, interim forfeiture is not a permanent seizure.
- The burden of proof for interim forfeiture can be lower than that of a final forfeiture order.
- At this point, ROs need only demonstrate reasonable suspicion rather than conclusive proof of the assets' illegal origin to temporarily secure them.
- This allows the investigation and legal case to proceed while ensuring the assets are available if a final decision rules in favour of forfeiture.
- This helps prevent criminals from benefiting from their crimes.
- It increases the chances of successful asset recovery if a court ultimately rules in favour of forfeiture.

7.2. FINAL FORFEITURE ORDER

The essence of a final forfeiture order in asset recovery is to permanently take ownership of assets proven to be illegally obtained or linked to criminal activity. A forfeiture order shall be granted by the Court over properties that are subject to a preservation order.

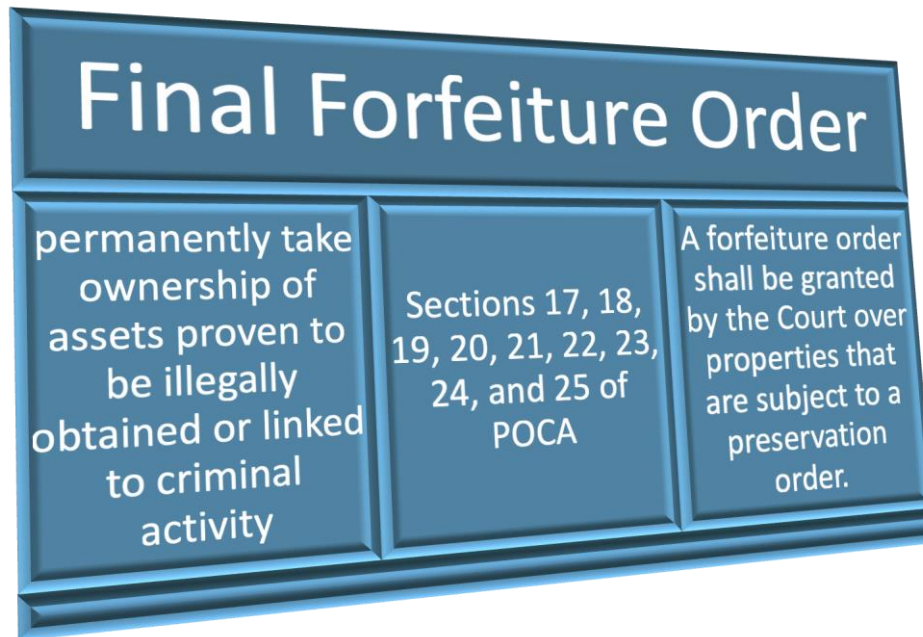


Figure 16: Final Forfeiture Order

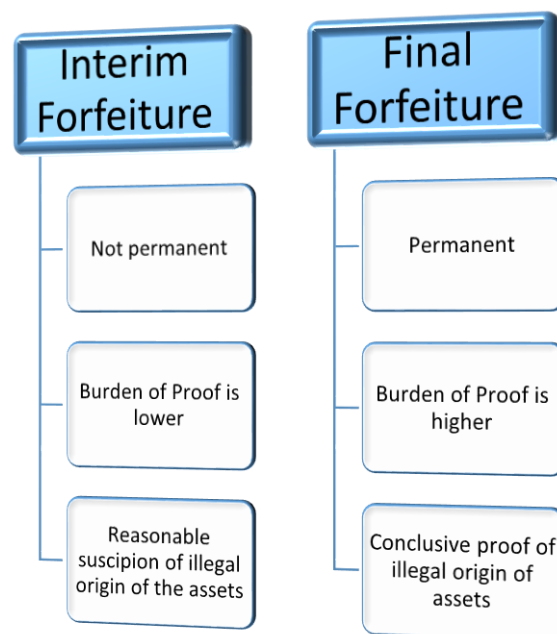


Figure 17: Interim Forfeiture vs Final Forfeiture Order

7.3. INTERNATIONAL FORFEITURE:

There are three instances in which international forfeiture proceedings shall be triggered under POCA:

Firstly, in a situation where a forfeiture order is given over any property which is the proceeds of unlawful activity in Nigeria and parts of the property are situated in a foreign country, the following steps shall be taken:

- The RO shall submit a request to the Central Authority Unit (CAU) in the office of the Attorney-General of the Federation.
- The CAU is expected to work closely with ARMU in the engagement and coordination of international requests for the recovery of proceeds of crime located in another jurisdiction.

Secondly, where it is established that a convicted person has any asset or property in a foreign country, acquired as a result of an unlawful activity:

- The RO shall submit a request to the CAU in the office of the Attorney-General of the Federation. The CAU shall collaborate with ARMU in coordinating international asset recovery requests.
- The AGF shall apply for the asset or property, subject to any treaty or arrangement with that foreign country, to be forfeited to the Federal Government of Nigeria.

Thirdly, where a foreign country forfeits or confiscates any property that is a proceed of unlawful activity under its laws, or as a result of MLA request from Nigeria, and repatriates the whole or part of the asset or a sum of money that represents its value to Nigeria,

- the proceeds or the sum of money will be paid into the Confiscated and Forfeited Properties Account.
- The management of the returned assets shall be undertaken by ARMU based on the asset return agreement. In the absence of an asset return agreement, the returned assets shall be managed in line with public procurement laws, transparently to ensure that citizens are duly informed and benefit from the returned assets.

7.4. RELEVANCE OF FORFEITURE ORDERS

- It is a major milestone in the asset recovery process. It is usually given after a preservation order (which freezes the assets).
- A forfeiture order seizes the assets definitively, removing them from the possession of the criminals. It denies the benefit(s) from crime, acting as a form of punishment and deterring future crimes.
- Forfeited assets can be used to compensate victims of the crime or directed towards relevant government programs. At this stage, the ill-gotten gains are no longer just frozen but permanently confiscated.
- This discourages criminal activity by taking away the financial incentive and potentially returning the assets to those who were wronged.

The RO may apply to the Court by way of a motion on notice. Where the Court grants the forfeiture order, the property shall be forfeited to the Federal Government of Nigeria. Section 19 of POCA states that the standard of proof for forfeiture orders is on the balance of probabilities. This means that the relevant authorities need not adduce evidence beyond a reasonable doubt. (See the case of **BALA v. CHAIRMAN OF EFCC (2021) LPELR- 56469(CA)**, where the Court ruled that it is vested with the power to make an order of forfeiture of unclaimed property or proceeds of unlawful activity without conviction for any offence.

7.5 CASE STUDY 3

BOX A²³

DAME PATIENCE IBIFAKA JONATHAN V. FEDERAL REPUBLIC OF NIGERIA (2019) LPELR - 46944 (SC)

CASE SUMMARY

On 26 April 2017, the EFCC brought an ex-parte application before the Federal High Court, Lagos in Suit No. FHC/L/CS/640/17 seeking an order of interim forfeiture of the sums of \$5,842,316.66 (Five Million, Eight Hundred and Forty- Two Thousand, Three Hundred and Sixteen United States Dollars and Sixty-Six Cents) in account No. 2110001712 domiciled with Skye Bank Plc in the name of Dame Patience Jonathan and the total of N2,421,953,522.78 (Two Billion, Four Hundred and Twenty-One Million, Nine Hundred and Fifty-Three Thousand, Five Hundred and Twenty-Two Naira, Seventy-Eight Kobo) in account No. 2022000760 domiciled with Ecobank Nigeria Ltd in the name of La Wari Furniture and Baths Ltd.

The EFCC also sought an Order of the Court directing the publication in any national newspaper for anyone interested in the property sought to be forfeited to appear before the Court to show cause within 14 days why the final order of forfeiture should not be made in favour of the Federal Government of Nigeria.

The application was brought under the provisions of Section 17 of the Advance Fee Fraud and Other Related Offences Act, 2006. The Federal High Court granted the application.

Dissatisfied with the Order of the Federal High Court, the Defendant filed an Appeal on 3 May 2017. The Court of Appeal delivered its judgement on 12 January 2018 dismissing the appeal.

The Defendant, dissatisfied with the decision of the Court of Appeal, filed a further appeal to the Supreme Court on 15 January 2018. The apex court, in dismissing the appeal, held that the essence of the interim forfeiture order is not to deprive the holder of the account of his property or asset but to preserve the property from being dissipated.

The Supreme Court stated that non-conviction-based forfeiture was legalized through Section 17 of the Advance Fee Fraud and Other Related Offences Act, 2006 in line with Article 54 of the United Nations Convention Against Corruption (UNCAC) of which Nigeria is a member State and signatory to. The Court went further to state that the provision is not limited only to Nigeria but is provided for in Part 5 of the Proceeds of Crime Act, 2002 (POCA) of the United Kingdom.

The assets were eventually forfeited to the Federal Government as the former first lady was unable to justify that the assets were not proceeds of criminal activity.

What happens after the granting of a forfeiture order?

The law requires the Directorate of the relevant organisation to sell the forfeited property and deposit the proceeds of the sale or any money forfeited into the Confiscated and Forfeited Properties Account established under section 68 of POCA.

- An interested party (or bonafide third party) has the right to make an application to the court to oppose the granting of the order, and request the court to exclude his interest in the property from the operation of the order, or vary the operation of the order in respect of the property.
- Where there is no ongoing appeal, if an international party or another jurisdiction requests for such an asset to be confiscated, under Articles 57, Nigeria may enter into a negotiation with such a country for the return of the value of the property after disposal. Nigeria may also enter into a bilateral or multilateral agreement with such parties.
- ARMU and CAU at the FMOJ will collaborate with the RO to ensure successful repatriation and transparent use of the funds when it is returned to another jurisdiction.
- If such an asset belongs to entities, individuals or other states within Nigeria, the relevant organization will follow extant laws and regulations provided by the FMOJ to ensure transparent asset return.
- ROs are required to provide statistics of interim, and final forfeitures, as well as the procedure for the return of assets and the monitoring of the use of such assets to the FMOJ for the purpose of transparency and accountability and in line with best practices. This practice provides an opportunity for the government through the FMOJ to constantly update the citizens who are the ultimate victims of corruption or economic crime.

BOX B

The NCB Case: - In the analysis of the case study in Box A, the following were identified

- Focus on Assets:** The Nigerian government, through the EFCC, focused on demonstrating a link between Dame Patience's wealth and her position of power, suggesting the assets were likely proceeds of corruption.
- Lower Burden of Proof:** NCB proceedings have a lower burden of proof compared to criminal trials. The prosecution only needed to show it was more likely than not that the assets were obtained illegally.

The Outcome:

- Millions Recovered:** Nigeria successfully secured a court order to seize millions of dollars hidden in various bank accounts, and investments.

Key Takeaways:

- NCB as a Valuable Tool:** This case demonstrates how NCB proceedings can be a valuable tool alongside criminal prosecutions for recovering assets linked to corruption.
- Faster Results:** NCB can achieve asset recovery quicker than waiting for a criminal conviction, especially in complex cases.
- Challenges Remain:** Even with a successful outcome, NCB can be controversial due to concerns about due process and the potential for misuse by authorities.

8. RECOVERY OF CASH

Cash recovery is a crucial aspect of asset recovery, this is because cash can be easily hidden, moved, or spent, making it a prime target for criminals.

Relevance of recovering cash that are proceeds of crime

Recovery of illegally obtained cash removes the financial benefit from crime, acting as a deterrent to future offenders. Cash represents the most direct financial gain from criminal activity. Recovering it disrupts the criminal cycle, helps those who were harmed, and potentially improves law enforcement capabilities.

Cash holds a particular significance due to its ease of concealment and its role as the core financial gain from crime.

POCA defines *cash* to include notes and coins in any currency; cheques of any kind, including travelers' cheques; bankers' drafts as well as negotiable instruments that are easy to convert to cash such as bearer bonds, bearer shares; and jewellery and gold.

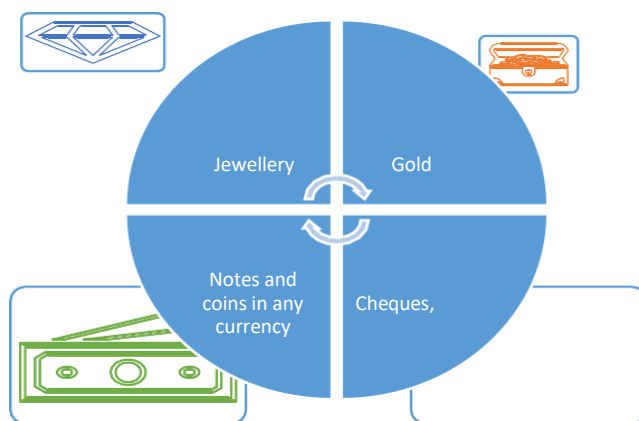


Figure 18: Proceeds of Crime

8.1. PROCEDURE:

Section 26 of POCA empowers a designated officer of a relevant organization to seize and detain any cash in the process of being moved within or outside Nigeria, where he suspects that it represents proceeds of crime or is intended to be used to commit a crime or is above the prescribed amount under the law:

- US \$10,000 or its equivalent - S. 3(3) Money Laundering (Prohibition) Act;
- Customs and Excise Management Act;
- US \$5,000 or its equivalent - S. 12(2) Foreign Exchange (Monitoring and Miscellaneous) Provisions Act; or
- In an order or regulations issued by the Attorney-General, in consultation with the

Central Bank of Nigeria;

- Cash or negotiable instrument that has not been declared to the appropriate authorities.
- Designated officers are defined for seizure of cash as Nigeria Customs Service, National Drug Law Enforcement Agency, Economic and Financial Crimes Commission, Nigeria Police Force, Nigeria Immigration Services. However, other officers of other relevant organizations may seize cash in the course of their investigation.

A designated officer may initially detain cash for up to seven (7) working days to enable the filing of an application to the Court for an order to detain the cash. The Directorate of the Relevant Organization shall be immediately notified within seven (7) days of detention and the detained cash shall be documented by the Directorate and paid into the Designated account of the Relevant Organization. If granted, the detention order shall not exceed three (3) months, commencing from the date of the order. Subsequent orders for the continued detention of the cash may be made by the Court but no order shall authorise the further detention of the cash beyond a cumulative period of twelve (12) months commencing from the date of the first order.

8.2. CASE STUDY 4

BOX C²⁴

CASE STUDY - The Ikoyi N13bn Cash Recovery

Agents of the Economic and Financial Crimes Commission discovered the sums of \$43,449,947, £27,800 and N23,218,000 from No. 16, Osborne Road, Flat 7B Osborne Towers, Ikoyi, Lagos. The funds had been stashed in iron cabinets and 'Ghana-must-go' bags in the apartment before they were discovered and recovered on April 11, 2017. The EFCC obtained an interim court order in the first instance to temporarily apply for the forfeiture of the funds to the Federal Government on 13 April 2017. Since no one came forward to contest or claim ownership of the funds, the court awarded a final forfeiture order to the Federal Government of Nigeria on 6 June 2017.

9. CRIMINAL CONFISCATION OF PROCEEDS OF CRIME:

The objectives of the criminal-based confiscation approach of proceeds of crime (CCB) in Part VI POCA include:

- preventing convicted individuals from benefiting from criminal proceeds,
- calculating and confiscating the proceeds on behalf of the Federal Government of Nigeria,
- enabling relevant organizations to pursue confiscation proceedings after conviction
- preserving realizable properties, and ensuring they are available to satisfy confiscation orders, awarded by the courts after conviction.

9.1.Procedure

POCA defines “*Realizable properties*” in Section 48 to include assets held by the defendant concerned; assets held by a person to whom that defendant has directly or indirectly made any affected gift; and assets subject to the effective control of the defendant as provided in section 63 of the Act when disposed. It covers assets that can be easily sold, liquidated, or used to generate funds. These assets may include cash, bank accounts, stocks, bonds, real estate, jewellery, and artwork.

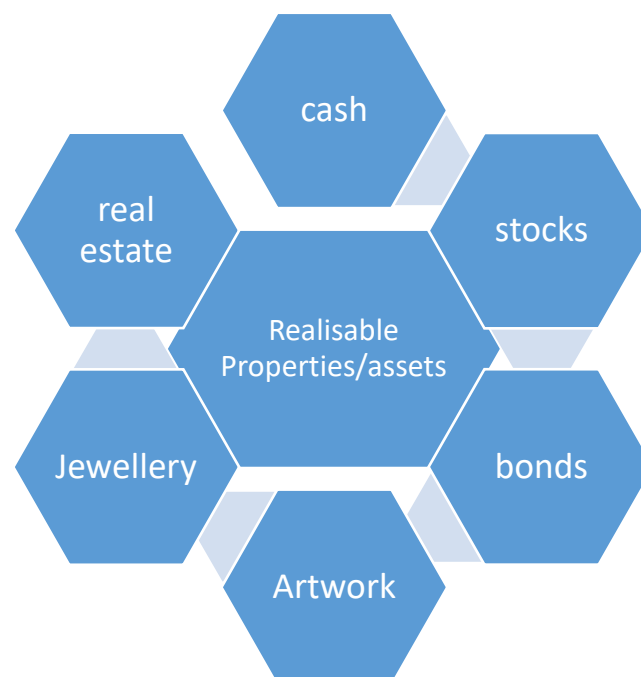


Figure 19: Realisable Properties/Assets

10.WHAT IS THE RELEVANCE OF A CONFISCATION ORDER?

Confiscation orders serve three functions:

Restraint Orders:

This is an order that provides for the temporary freezing of assets suspected to be linked to criminal activity. They are designed to prevent a defendant from dealing with realisable assets held under his custody or control;

Permanent Seizure or transfer of ownership to the prosecuting authority

This is the permanent seizure of assets proven to be illegal through a criminal conviction. They aim to secure payment which is equivalent to the amount that a convicted person has acquired from the offence committed; and

Management of realisable property

In this instance, the Order allows the Directorate to retain custody of the property.

10.1. Procedure for Obtaining a Confiscation Order

Upon an application by the RO, the court will take the following action:

- may grant a restraint order over all realisable property held by or under the effective control of the relevant person, even if the property is transferred to the specified person after the order is made.
- The application must be supported by an affidavit and can be made ex parte.
- Upon the granting of a restraining order, the relevant organisation shall give notice to all persons affected or may be affected by the restraint order or by an order to seize in furtherance of the restraint order.
- The relevant organisation is to register the particulars of every restraint order with the registration authority that keeps a register of properties of a particular kind where applicable.
- It is an offence to knowingly sell or otherwise deal with a property which is subject to a restraint order, upon conviction, such a person will be liable to a fine of at least N5,000,000 or imprisonment for two years or both.
- The Court may set aside the sale or dealing and declare the rights of any person, who acquired interest over a property that is subject to a restraint order void if the property was acquired in bad faith or for insufficient consideration.
- To prevent abuse of a restraint order, a relevant organization may seize a realisable property.

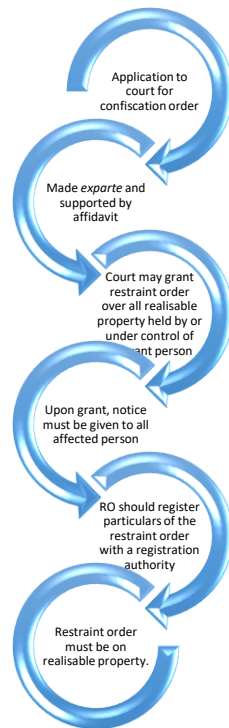


Figure 20: Procedure of Obtaining Restraint Order

Section 44 of POCA provides for the instances whereby a restraint order will cease to be in force:

- if within 28 days after the charge or all the charges that relate to the restraint order are withdrawn, or the defendant is acquitted of the offence or all the offences with which he was charged;
- if the defendant's conviction for the offence(s) of which he was convicted is reversed;
- if a restraint order covers unrealisable property;
- if the Court is satisfied that the order was obtained fraudulently;
- if the confiscation order has been satisfied or discharged;
- if the restraint order is rescinded by the Court.

Restraint Order ceases where:

- within 28 days charges relating to order is withdrawn or defendant is acquitted
- defendant's conviction is reversed
- order was fraudulently obtained
- confiscation order is satisfied or discharged
- rescission of order by court

Figure 21: Cessation of Restraint Order

Where a person is convicted, a confiscation order may be granted by the court on application of the RO under section 45.

- The court may make a confiscation order requiring a person to pay an amount equal to the total proceeds of a person's criminal activities to the relevant organisation for deposit into the Confiscated and Forfeited Properties Account.
- The court can also, where it considers that it is in the public interest to do so, direct the relevant organisation to apply for the confiscation order if the relevant organisation fails to apply. It is important to note that a confiscation order can be made against a convicted defendant who derives benefit from a criminal activity and dies before the confiscation order is made.
- Alternatively, the relevant organization could apply for the confiscation order and the Court may grant it if it is satisfied that the person has benefited from any offence/criminal activity of which the person has been convicted at the trial.

How much is a convicted person expected to pay?

- The amount that the Court may order a convicted person to forfeit to the relevant organisation shall not exceed the value of the convicted person's proceeds from the criminal activity; or
- an amount, which in the Court's opinion may be realised if the Court is satisfied that the amount stipulated under POCA is less than the value of the proceeds of the criminal activity;
- Confiscation orders are enforced as a civil debt due to the Federal Government of Nigeria; and
- failure to comply with a confiscation order made by the Court is punishable by a sentence of imprisonment.

Case Study

BOX C²⁵

CASE STUDY - Recovering Alamieyeseigha's Billions:

In July 2007, Alamieyeseigha pleaded guilty before a Nigerian High Court to six charges of making false declaration of assets and caused his companies to plead guilty to 23 charges of money laundering. Alamieyeseigha was sentenced to two years in prison and the court ordered the seizure of assets in Nigeria. Alamieyeseigha's guilty pleas effectively voided his defense in the civil proceedings and in December 2007 the United Kingdom High Court issued a summary judgment confiscating property and a bank account in the United Kingdom. A subsequent judgment in July 2008 led to the confiscation of the remaining assets in the United Kingdom, Denmark and Cyprus.

11.ROLE OF INVESTIGATORS:

Part VII of POCA provides for the safeguards of the constitutional and individual's right to privacy in the conduct of investigation, search, and seizure. It also provides relevant organisations with investigative tools relating to the establishment of the whereabouts and extent of a person's realisable assets, identification and recovery of property and the instrumentalities that may be subject to civil forfeiture, confiscation, and detained cash investigation. It applies to all relevant organisations in the conduct of investigations, searches, and seizures in connection with the recovery of proceeds of unlawful activities under POCA and other relevant laws.

In Nigeria, it is an offence to falsify, hide, destroy or permit the falsification, concealment, destruction or disposal of relevant documents, or make any disclosure which is likely to negatively affect an asset recovery investigation. The exception is where there is no knowledge that the disclosure is likely to negatively affect the investigation or if it was made under any Law in force in Nigeria.

BOX D²⁶

CASE STUDY - Freezing Yachts and Mansions:

This case study examines the use of freezing, seizing, and interim forfeiture of assets in response to a suspected large-scale embezzlement scheme. A government official in Country X is suspected of embezzling millions of dollars from public funds. Authorities believe he used the stolen money to acquire luxury assets, including yachts, mansions, and expensive jewellery.

The Challenge:

- **Preventing Dissipation of Assets:** Authorities need to act quickly to prevent the suspect from selling, hiding, or transferring the assets, making it difficult to recover them later.
- **Building a Strong Case:** While there might be suspicion of embezzlement, a full criminal conviction hasn't been secured yet. Authorities need to convince the court there's reasonable suspicion to justify freezing or seizing the assets.
- **Balancing Rights:** Freezing or seizing assets can have a significant impact on the suspect, even if they're ultimately proven innocent.
- Striking a balance between protecting public funds and upholding due process is crucial.

The Approach:

- **Investigative Findings:** The Anti-Corruption Agency gathers evidence suggesting the suspect's lavish lifestyle doesn't match their legitimate income.
- **Freezing Orders:** Authorities petition the court for freezing orders on the yachts, mansions, and jewellery to prevent the suspect from disposing of them.
- **Seizure and Interim Forfeiture:** If the court finds reasonable suspicion of embezzlement, they might grant a seizure order, taking temporary physical control of the assets. An interim forfeiture order could also be issued, granting temporary ownership to the state while the legal case progresses.

The Outcome:

- **Assets Frozen:** The court grants freezing orders on the suspect's assets, preventing them from being sold or transferred.
- **Ongoing Investigation:** The Anti-Corruption Agency continues its investigation to build a stronger case for criminal charges and potential permanent forfeiture of the assets.
- **Potential Return or Forfeiture:** Depending on the outcome of the investigation and trial, the assets might be returned to the suspect if found innocent. However, if guilt is established, the court could order permanent forfeiture, with the recovered funds potentially used for public benefit projects.

12.ROLE OF PROSECUTORS

Prosecutors play a key role in asset recovery by spearheading legal efforts to track, freeze, and seize assets suspected to be linked to criminal activity. Below is a breakdown of their central functions:

- **Building the Case:** Prosecutors gather evidence and build a strong legal case to demonstrate that the assets were obtained through criminal activity. This might involve analyzing financial records, tracing ownership trails, and working with law enforcement to gather proof.
- **Securing Preservation, Restraint, Freezing and Seizure Orders:** They present evidence in court to obtain legal orders to preserve, freeze, restrain or seize the assets. This prevents the assets from being dissipated while the case progresses and ultimately aids in their recovery.
- **Negotiating Plea Bargains:** Prosecutors might negotiate plea bargains with defendants, where surrendering stolen assets or cooperating with asset recovery efforts becomes part of the deal. This can be an efficient way to recover assets without a lengthy trial.
- **Representation of the State in Court:** During trials related to asset recovery, prosecutors represent the state and argue for the forfeiture or confiscation of the assets based on the evidence they've compiled.
- **Working with Law Enforcement, Financial Institutions, and Relevant Organizations:** Prosecutors collaborate with law enforcement agencies and financial institutions to track,

locate, and freeze assets. This often involves international cooperation in cases where assets are hidden across borders.

Overall, prosecutors act as the legal engine driving asset recovery efforts. They utilize legal tools, build strong cases, and represent the state's interest in recouping funds obtained through criminal activity. Prosecutors often work alongside other specialists in asset recovery, such as financial investigators and accountants. Their success in asset recovery can deter future crimes by taking away the financial incentive associated with criminal activity. By effectively fulfilling their role, prosecutors play a crucial part in disrupting criminal operations, recovering stolen or ill-gotten gains, and potentially offering compensation to victims.

13.ROLE OF THE JUDICIARY

The courts with jurisdiction to entertain proceedings on asset recovery in Nigeria are the Federal High Court, the High Court of the Federal Capital Territory, and the State High Courts.

The Heads of Courts are also empowered to designate special Courts to hear asset recovery cases.

By Section 73 (4) of POCA, the court is empowered to adopt all legitimate measures it deems necessary to avoid unnecessary delays and abuse in the conduct of proceedings.

Applications for a stay of proceedings will also not be entertained. Any notice published in a widely circulating national newspaper is deemed to be sufficient notice.

An action cannot be commenced against a relevant organization without a pre-action notice of at least 30 days stating the cause of action, particulars of the claim, name and place of abode of the intending plaintiff, and the relief sought.

Likewise, execution or attachment against the property of a relevant organisation cannot be done without at least 30 days' notice of intention to execute having been given.

Burden of Proof

POCA shifts the burden to the defendants based on the Money Laundering Prohibition Act, 2022. A defendant who fails to prove legitimate ownership of the assets suspected to be proceeds of crime or derived from unlawful activity, or that the assets are of legitimate origin and not proceeds of criminal activity shall forfeit such property. It is the role of the court to determine whether the prosecution has adduced enough evidence to allow the burden of proof to shift. The defendant is deemed innocent until proven guilty, where he/she decides to go through a criminal conviction approach.

14. ADMINISTRATION AND MANAGEMENT OF PROCEEDS OF CRIME

PROCEDURES FOR THE MANAGEMENT OF CONFISCATED AND FORFEITED PROPERTIES ACCOUNT:

Part IX of POCA provides for establishing a designated account known as the *Confiscated and Forfeited Properties Account* to be maintained at the Central Bank of Nigeria (CBN). First, it is assumed that each RO shall request CBN to open an account to place all recovered assets (cash). It is also expected that the accounts shall be managed by the head of the relevant organisation who shall be responsible for providing reports to the Minister of Finance.

14.1. Payment into the Confiscated and Forfeited Properties Account:

Given its regulatory mandate, the FMOJ is expected to develop guidelines for the ROs on the management of interim and final forfeiture accounts, and the reporting requirements to ensure transparency and accountability in line with fiscal transparency laws.

In this regard, Section 69 requires that a central account shall be opened to receive the following payments:

- Money realised from the proceeds of sale, management or other form of disposal of forfeited assets under POCA and other relevant laws.
- Proceeds of any property forfeited under section 23 (2) (c) of the Code of Conduct Bureau and Tribunal Act, which relates to forfeiture to the Federal Government of any property acquired in abuse or corruption of office.
- Money paid to Nigeria by a foreign country under any treaty or arrangement providing for mutual assistance in criminal matters.
- Proceeds of forfeited or confiscated property under the laws of a foreign country; In this regard, if Nigeria recovers funds based on the request from another country, it shall be paid into this account, pending the negotiation of an asset return agreement or conclusion of a bilateral agreement as the case may be in line with Article 57 and 59 of UNCAC. It is expected that the FMOJ shall issue guidelines on this aspect of international cooperation.
- Money paid to the relevant organisation on behalf of the Federal Government in settlement of proceedings connected with POCA and other relevant laws.

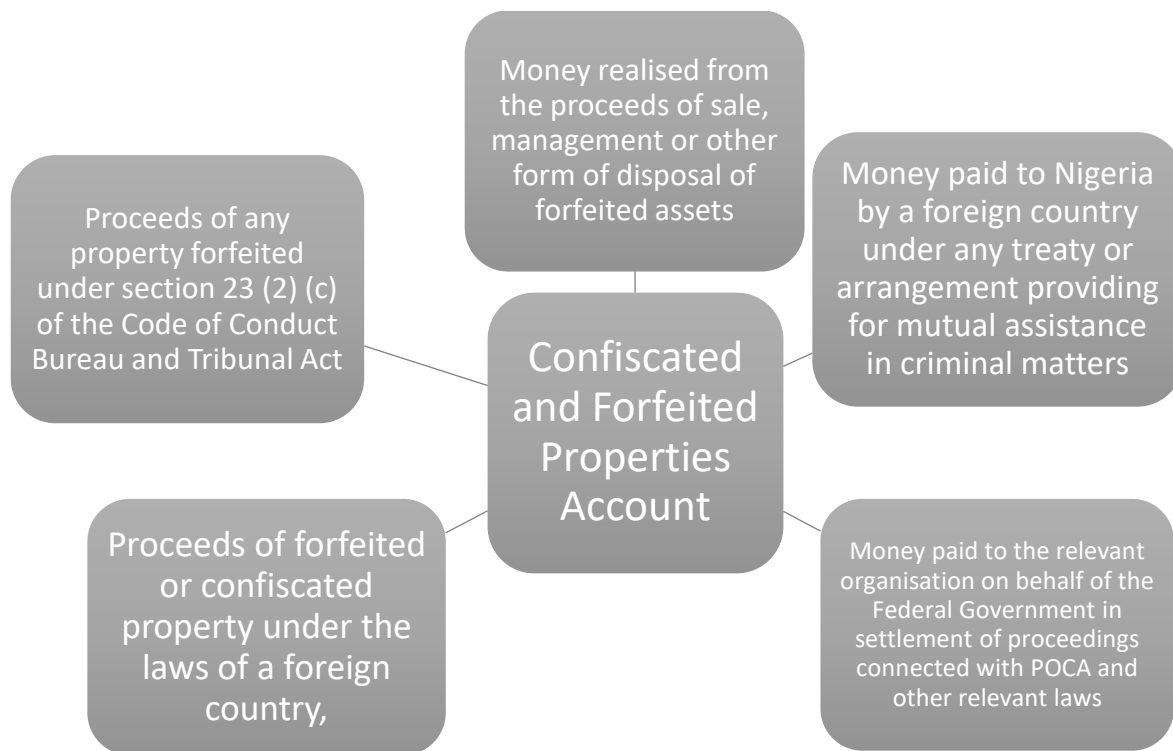


Figure 22: Confiscated and Forfeited Properties Account

14.2. Use of Proceeds of Crime:

In line with international standards and best practices, Section 70 of POCA has contemplated that there is a need to guide the government on how funds paid into the Confiscated and Forfeited Properties Account shall be utilized for the benefit of the citizens and to address social and economic needs as well as restore victims (including the FGN, States, individuals, and other entities) to their original status before the embezzlement of the funds.

POCA provides that the President may with the approval of the Federal Executive Council authorise the expenditure for money in the Confiscated and Forfeited Properties Account to be used to:

- a. Permit the relevant organisation to invest in various government portfolios to ensure that the funds can accrue interest that would be applied for the implementation of development projects as approved by the Federal Executive Council (FEC) or the National Assembly.
- b. Compensate any State which has suffered grave pecuniary losses on account of the offence or conduct that gave rise to the confiscation or forfeiture order.
- c. Compensate any person who has suffered grave pecuniary losses on account of the offence or conduct that gave rise to the confiscation or forfeiture order.
- d. Pay any foreign country or agency under the provisions of any treaty agreement or scheme for mutual legal assistance.
- e. Make payments under any programme approved by the President.
- f. Make any payment necessary to satisfy Nigeria's obligations in respect of a registered foreign forfeiture order.
- g. Make such other payments, on behalf of the Federal Government, directed to be made under any relevant law.

- h. Pay, with the approval of the National Assembly, a two per cent allocation to the relevant organisation for the recoveries made by the relevant organisation in any given year.
- i. Cater to judicial, criminal justice reform and crime prevention measures; law enforcement measures; measures relating to the treatment of drug addiction; measures outlined for the rehabilitation of victims of human trafficking; education, health, youth development, mass housing, rural electrification, agricultural reform, water and sanitation; measures relating to the compensation and rehabilitation of victims of terrorist activities; humanitarian and social investment programmes; tracing and recovery of assets and management of the assets and properties to ensure its preservation; legal fees and expenses anticipated under this Act; major infrastructure reforms; and such other development programmes, as may be approved by the Federal Executive Council or the National Assembly.
- j. Finance, with the approval of the National Assembly, approved programmes of the relevant organisations.

14.3. **Audit:**

Audit of the Confiscated and Forfeited Properties Account will be done following the guidelines supplied by the Auditor-General for the Federation.

Payment In	Payment Out
<div style="border: 1px solid #ccc; height: 20px; width: 100%; background-color: #e6f2ff; margin-bottom: 10px;"></div> <div style="display: flex; justify-content: space-between; align-items: center;"> <input type="checkbox"/> <div> <p>Money realised from the proceeds of sale, management or other form of disposal of forfeited assets under POCA and other relevant laws</p> <p>proceeds of any property forfeited under section 23(2) (c) of the Code of Conduct Bureau and Tribunal Act</p> <p>Money paid to Nigeria by foreign country</p> <p>Proceeds of forfeited or confiscated property</p> <p>Money paid to relevant organisations on behalf of FG</p> </div> </div>	<div style="border: 1px solid #ccc; height: 20px; width: 100%; background-color: #e6f2ff; margin-bottom: 10px;"></div> <div style="display: flex; justify-content: space-between; align-items: center;"> <input type="checkbox"/> <div> <p>Investments in government portfolio</p> <p>Compensation to state</p> <p>Compensation to person</p> <p>Pay foreign country or agency</p> <p>Payment under approved programme</p> <p>Payments necessary to satisfy Nigeria's obligation in respect to registered foreign forfeiture order</p> <p>Payments on behalf of FG</p> <p>Pay with NA approval, a 2 percent allocation to relevant organizations</p> <p>Cater to judicial, criminal justice reform, law enforcement measures etc or development programmes</p> </div> </div>

Figure 23: Payments in and Out of Confiscation and Forfeited Properties Account

15.BEST PRACTICES IN THE PRESERVATION OF SEIZED AND INTERIM FORFEITED ASSETS:

The preservation of seized and interim forfeited assets can be achieved in asset recovery through the following strategies:

15.1. Safeguarding the Assets:

- **Secure Storage:** Assets like cash, jewellery, or artwork should be stored in secure facilities with proper insurance to prevent damage, theft, or loss.
- **Management of Real Estate:** For seized real estate, a property manager can be assigned to oversee maintenance and prevent deterioration. Renting the property can generate income to offset holding costs, but occupancy agreements should be carefully crafted to avoid damage and ensure easy retrieval if a final forfeiture occurs.
- **Investment of Funds:** Cash obtained through seizures or interim forfeitures can be invested in low-risk, interest-bearing accounts. This helps preserve the value and potentially generates some returns while the legal case progresses.

15.2. Legal Framework and Procedures:

- **Clear Legal Standards:** Having clear legal guidelines outlining the criteria for seizure, interim forfeiture, and preservation procedures is crucial. This ensures consistency and reduces the risk of challenges by individuals whose assets have been seized.
- **Inventory and Documentation:** Maintaining a meticulous record of all seized and interim forfeited assets including detailed descriptions, valuations, and secure storage locations. This documentation is essential for court proceedings and helps track the assets throughout the process.
- **Timely Court Decisions:** Streamlining court procedures to reach decisions on the final status of seized or interim forfeited assets within a reasonable timeframe is vital. Delays can lead to deterioration of assets or complicate their management.

15.3. Collaboration and Expertise:

- **Law Enforcement and Asset Recovery Teams:** Collaboration between law enforcement agencies and specialized asset recovery teams is essential. Law enforcement can secure the assets, while asset recovery teams can manage and preserve them effectively.
- **Financial Professionals:** Involving financial specialists can be valuable. They can help value assets, identify appropriate investment options for seized cash, and manage real estate holdings.
- **International Cooperation:** For cross-border cases, international cooperation between law enforcement and legal authorities is crucial. This ensures effective tracking, freezing, and preservation of assets located in different jurisdictions.

By implementing these strategies, authorities can effectively preserve seized and interim forfeited assets throughout the asset recovery process. This protects the value of the assets and ensures they

are readily available for potential return to victims or use for other legitimate purposes if a court ultimately rules in favour of forfeiture.

16.DISPOSAL OF ASSETS:

In asset recovery, disposal of assets refers to the process of selling seized or forfeited assets after a legal decision has been made. This typically occurs after a preservation order or a final forfeiture order has been granted by the court. The goal is to dispose of the assets in a way that generates the maximum possible return. This could involve public auctions, sealed bids, or even direct sales depending on the type of asset.

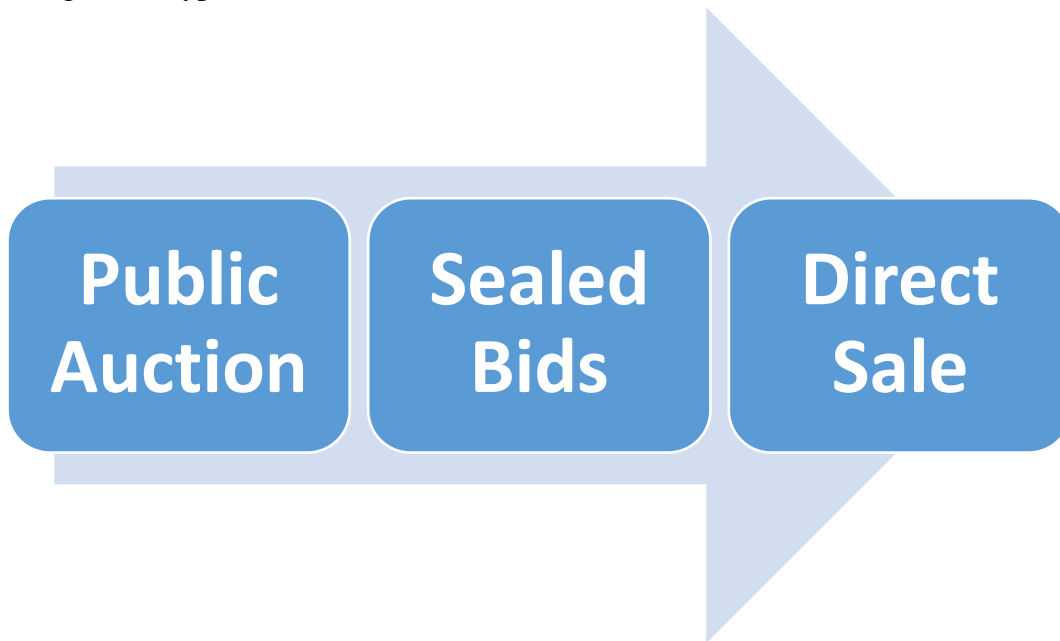


Figure 24: Common methods for disposal of assets in asset recovery

The disposal process should be transparent and accountable. Public records or announcements about the disposal can help ensure fairness and prevent corruption.

Common methods for disposal of assets in asset recovery are:

Public Auction: This is a common method for selling assets like vehicles, jewellery, or real estate. Open bidding allows for competitive offers and potentially generates the highest return.

Sealed Bids: For some assets, like businesses or complex investments, sealed bids might be a better option. This allows potential buyers to submit confidential offers and can be useful when the fair market value is uncertain.

Direct Sale: In specific cases, directly selling the asset to a government agency or a qualified buyer might be more efficient. This could be the case for certain types of real estate or assets that require specialized handling.

The disposal method should be tailored to the specific type of asset being sold. For example, artwork might benefit from a specialized art auction, while cars might be best suited for a public auction.

Speed and Efficiency: Balancing the need to maximize the return with the need for a swift disposal process is crucial. Finding the right balance depends on the specific circumstances of each case.

In Nigeria, where there is a reasonable belief that a property, which is subject to a preservation order, may have its value diminished, destroyed, or damaged, or may deteriorate in terms of quality or utility, the relevant organisation can apply to sell the property at the prevailing market value. The proceeds from the sale will then be invested in the Central Bank of Nigeria treasury bills, pending the determination of the proceedings. Where the sale/disposal of the property is revoked by the Court, the relevant organisation shall pay to the owner of the property the proceeds of sales together with any accrued interest.

17.DISCHARGE OF CONFISCATION ORDERS:

The discharge of confiscation orders refers to a situation where the relevant organisation pays monies into the designated account in satisfaction of a defendant's liability under a confiscation order. The defendant's liability under the order is, to the extent of the payment, discharged.

18. IMMUNITY:

The relevant organisation will not be held liable for loss or damage in respect of property in its custody, taking custody and control of any property, and shall not bear the cost of proceedings taken to establish an interest in the property.

When managing a controlled property, the relevant organisation is also exempt from paying any rates, land tax, municipal, or statutory charges imposed under any law on the controlled property, except for the payment from the rents or profits that accrued from the controlled property.

19.CONCLUSION

The Asset Recovery Manual set out to provide guidance on the international, regional and national standards on the tracing, freezing, recovery, return and use of returned assets. The Manual took into consideration judicial pronouncements from Nigerian courts on various aspects of international standards. However, POCA's far-reaching provisions have not yet been given judicial oversight as most of the cases in court have not reached a final stage. This Manual is comprehensive in the sense that it did not just cover the legal frameworks in Nigeria, it adapted international best practices in the return and use of returned assets and linked these principles to the need for transparency and accountability in the interest of victims of crime and corruption – the citizens and populations - who have been deprived of their right to sustainable development. The Manual calls for re-orientation and reframing of the procedure for asset recovery, and return as an issue that the government can leverage on in improving revenue generation through the active monitoring of domestic and internationally returned assets.

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**ASSET RECOVERY AND
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