



Observatoire ARGA

INTERNATIONAL ANALYTICAL REPORT

**D-21. Asset Recovery
and Standards of Proof**

Confiscation and Civil Recovery Mechanisms

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Contents

Executive summary	3
1. Research question and method	3
2. Three routes and different outcomes	4
3. Standard, burden and issues to be proved	5
4. England and Wales: post-conviction confiscation	6
5. United States: criminal forfeiture and individual acquisition	7
6. Non-conviction-based confiscation	8
7. Presumptions and safeguards: the Strasbourg approach	9
8. European rules and the limits of harmonisation	10
9. France: standards cannot simply be translated	11
10. Civil claims: proprietary rights and recipient liability	12
11. Tracing value and transaction sequence	13
12. Banking evidence and calculation	14
13. Electronic records, open sources and preservation	15
14. Witnesses, experts and alternative accounts	16
15. Obtaining evidence in France and the United States	17
16. International cooperation and UNCAC	18
17. Preservation, judgment and enforcement	19
18. Third parties and competing interests	19
19. Practical scenarios: commission, transfer and presumption	20
20. Practical scenarios: sequencing, foreign orders and tokens	22
21. Litigation cost and distribution of value	24
22. Practical recommendations and conclusions	25
Sources and references	26

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Executive summary

Asset recovery requires proof of more than wrongful conduct. It also requires a legal basis for reaching particular property or recovering a defined sum. A criminal conviction, information about a suspicious transfer and an established loss answer different questions. None, on its own, guarantees that an identified asset will be taken and paid to a victim. Between identification and actual return lie separate stages: preservation, determination of the claim, examination of third-party rights, recognition, realisation and distribution.

This report compares criminal confiscation, non-conviction-based confiscation and civil claims. Its principal jurisdictions are England and Wales, the United States and France, with the United Nations Convention against Corruption and European instruments providing the international framework. The central issue is the relationship between the selected mechanism, allocation of the burden of proof, quality of evidence and achievable outcome. Particular attention is given to judicial approaches to origin, presumptions, tracing value and the rights of recipients.

The main conclusion is that a case must be built from the legal elements of the claim. First identify who may apply, against whom, in which forum and for what relief. Then match each element to evidence, its holder, a lawful means of obtaining it and the likely response. A large collection of banking records cannot compensate for the absence of the claimant's right. A persuasive account of corruption does not replace calculation of the forfeitable benefit. An established loss does not make the assets of every connected person available for enforcement.

The strategy must also address the opposing case. Legitimate income, a co-owner's independent interest, extinction of a proprietary right under the applicable foreign law and a break in the transaction chain can limit recovery. These matters should be tested before proceedings begin. Non-conviction-based confiscation is not confiscation without evidence, and a civil standard does not dispense with the need to establish every required element.

The final outcome is measured by value actually returned, taking account of costs, competing rights and distribution conditions. Evidential work therefore continues after judgment: the recipient's authority, basis for payment and absence of double recovery still require verification. Six hypothetical scenarios show how to apply this approach to corporate transfers, secret commissions, mixed funds, foreign decisions and digital assets. They illustrate a method of analysis rather than predict an outcome.

1. Research question and method

The research question is: which facts must be established, and to what level of persuasion, for a selected recovery mechanism to produce an enforceable result? The answer depends on several variables. Is the applicant a state, company, individual or authorised representative? Does the claim seek a particular asset, substitute value, the wrongdoer's benefit or compensation for the victim's loss? Has an offence been established by conviction? Where are the property, defendant and evidence? Each variable can change the available legal route and the material needed to support it.

The report compares legislation with the limited holdings of identified judgments. International guidance is used to organise practical work, not to replace national law. The later scenarios are models. They are not an empirical sample of ARGA cases and do not establish the frequency of a

result. Public materials do not permit a universal success rate, an average duration for all recovery proceedings or a reliable estimate of the proportion of politically motivated claims. No such figures are inferred from the selected authorities.

Four levels of analysis are kept separate. The first is the existence of a legal mechanism. The second is its conditions of application. The third is the sufficiency of evidence in a particular case. The fourth is the economic feasibility of enforcement. A strong legal claim may concern an asset that is heavily encumbered or no longer exists. Conversely, valuable property held by a connected person does not create a cause of action that the law does not provide. An assessment of prospects must address all four levels without substituting one for another.

The legal cut-off is 28 September 2026. European transitional provisions and the relevant versions of national legislation are particularly important. Common-law terms are retained where a translation would conceal a distinct legal concept. Tracing, knowing receipt and constructive trust, for example, are not used as loose synonyms for investigation, bad faith or an ordinary contractual management arrangement. Their legal function determines what must be proved and which remedy may follow.

The practical recommendations follow from the differences identified. They describe a method of preparing a case, not a guaranteed outcome or an additional power for an authority. A document's usefulness to a financial reconstruction does not establish a right to obtain it by any means. A power to compel production does not make the resulting information conclusive proof of liability. Separating acquisition, admissibility and weight is a central discipline throughout the report.

This method also makes uncertainty actionable. Instead of saying that more evidence is needed in general, the analysis identifies the missing legal element, the information capable of resolving it and the procedure by which that information may be sought. That is the connection between comparative legal research and a practical recovery plan.

2. Three routes and different outcomes

Criminal confiscation is ordinarily connected with established criminal liability, but benefit calculations and identification of property may be governed by special rules. Non-conviction-based confiscation is available only within a statutory mechanism, and its conditions vary substantially. A civil action rests on a private-law cause of action, such as damages, recovery of property or a remedy for breach of fiduciary duty. The route determines the facts to be proved, the participants and the result. It should be selected by reference to those features, not simply because one procedure appears faster or more forceful. [1-3, 5-8]

Route	Central evidential task	What does not follow automatically
Criminal confiscation	The statutory post-conviction basis, benefit or connection between property and offence	An entitlement for every victim to receive the entire confiscated amount
Non-conviction-based confiscation	Conditions of the independent procedure and the required link with unlawful conduct	Release of the state from its evidential obligations

Route	Central evidential task	What does not follow automatically
Civil claim	Every element of the cause of action, the claimant's right and the defendant's liability	Access to the property of every member of the same corporate group

A claim to an identified asset must also be distinguished from a personal monetary claim. The former requires the relevant proprietary right and identification of the property or legally recognised substitute. The latter requires a basis of personal liability and an amount, followed by enforcement against the debtor's property under the applicable rules. Neither route can be evaluated without considering solvency, encumbrances and competing creditors. A proprietary label is not an advantage unless its legal requirements can actually be met.

The public interest in depriving someone of criminal proceeds differs from a victim's interest in compensation. A wrongdoer's benefit may exceed one claimant's loss or be less than the combined losses of several victims. Confiscated money may pass to the state, be distributed through a special process or be returned to another state subject to conditions. These outcomes should not all be called "recovery" without identifying the recipient and legal basis for payment. The eventual destination of the value is a separate part of the analysis. [1]

Parallel routes may be possible, but require coordination. Civil disclosure may assist a criminal investigation, while criminal material may support a civil claim only where access and further use are lawful. Parallel proceedings also create costs, the possibility of inconsistent explanations and the need to prevent double recovery. A consolidated claim map should identify who alleges which loss, which asset supports the proposed recovery and which payments or judgments will need to be taken into account elsewhere.

The practical question is therefore not simply which route has the lowest threshold. It is which route fits the claimant, facts, remedy and available assets. A route with a demanding evidential burden may still be the appropriate one; a route with a civil standard may remain unavailable because the applicant lacks the required right or the property falls outside the statutory scheme.

3. Standard, burden and issues to be proved

The standard of proof concerns the degree of persuasion required. The burden of proof allocates the risk of a fact remaining unproved. The issues to be proved identify the facts that matter in the first place. These concepts must be separated. Saying that the civil standard applies does not explain who must establish unlawful origin, which presumptions operate or whether a continuing interest in specific property is necessary. The substantive rule comes first, followed by the procedural rules governing its proof.

In England and Wales, balance of probabilities is the civil standard; federal proceedings under the Civil Asset Forfeiture Reform Act (CAFRA) use preponderance of the evidence. The formulations can be compared functionally, but judicial assessment should not be reduced to counting documents. Two weak statements do not necessarily outweigh one reliable bank record. Content, consistency, provenance and alternative explanations matter. A thick exhibit bundle may contain repeated versions of the same assertion rather than independent support for it. [3, 8-9]

The criminal standard governing guilt does not necessarily govern every later confiscation question. Special legislation may prescribe a different standard for benefit, the available amount or facts concerning property. A comparison table assigning “beyond reasonable doubt” to all criminal confiscation would therefore be misleading. It should specify whether the standard concerns conviction, a particular asset, the amount of an order or a third party's separate objection. The procedural stage is part of the legal rule, not a minor qualification.

Presumptions require a separate analysis. Their operation depends on statutory starting facts and conditions for rebuttal. It is wrong to begin by saying that the owner must prove the legitimacy of all wealth if the legislation transfers only a defined issue after a particular basis has been established. A working schedule should give each presumption its own entry: source, triggering fact, presumed conclusion, method of rebuttal and any safeguard against an unjust result. This makes the allocation of work visible to both legal and financial specialists.

Consider a transfer from a company involved in fraud. The transferor's involvement does not by itself establish that the particular payment was criminal proceeds. The recipient produces a contract, but the contract alone does not prove performance. Deliverables, correspondence and price comparison may then be needed. Each step addresses a particular element. The process is not merely an accumulation of general suspicion on one side and general respectability on the other.

The strongest alternative explanation should be formulated early. If it fits the records, identify the evidence that would distinguish it from the primary theory. This does not weaken the case. It shows which material is genuinely needed and reduces the risk of expensive proceedings founded on an inference that fails when first tested. It also helps the claimant narrow a request for disclosure to evidence that can change the result.

A clear burden analysis therefore has an operational consequence. It determines which party must act next, what material would matter and what follows if the uncertainty cannot be resolved. Without it, teams may spend substantial resources proving a fact that is already accepted while leaving a decisive element unsupported.

4. England and Wales: post-conviction confiscation

Part 2 of the Proceeds of Crime Act 2002 provides a specific framework for benefit and the recoverable amount. Section 6(7) prescribes the balance of probabilities for the questions arising under the confiscation provisions it identifies. That does not reduce the standard required for the preceding determination of criminal guilt. The distinction between stages is fundamental: conviction opens the relevant route, but calculation of confiscation requires an analysis of its own. [3-4]

The inquiry includes the relevant conduct, whether the criminal-lifestyle provisions apply, benefit and the available amount. These concepts should not automatically be equated with net profit, a current bank balance or the loss claimed by a civil claimant. The statutory definition and the transaction matter. Evidence that the defendant spent money received does not necessarily reduce the benefit established. The question of property available to satisfy the order is considered separately, and the evidence should preserve that separation.

Where section 10 assumptions apply, the period, receipts and expenditure covered must be identified, together with the exceptions. The legislation provides for an assumption not to be made

where it is shown to be incorrect or would create a serious risk of injustice. A response should therefore address each disputed item: date, basis, owner and reason why the assumption is wrong or inapplicable. A general description of a legitimate financial history may not answer the particular statutory calculation. [3-4]

A confiscation report should retain several distinct totals. One concerns property or value obtained in the legally relevant sense. Another concerns property available for enforcement. A third identifies other persons' interests and encumbrances. A fourth records repayments and other circumstances requiring consideration in the calculation. Combining them in a single "net assets" figure can conceal both an overstated application and an invalid objection. The financial presentation should follow the legal questions rather than impose an accounting shortcut on them.

For the state, the task is to explain the calculation and its legal basis, not to present the largest possible number. For the defence, it is to challenge defined elements and invoke the applicable safeguards, rather than simply repeat that the property was earned long ago. For a victim, the relationship between confiscation and compensation must be established separately. The confiscation process should not be described as an automatic means of satisfying every private claim from whatever assets have been identified.

This structure also affects instructions to an expert. The expert needs to know whether a schedule is intended to measure benefit, available property or a disputed assumption. An accurate calculation answering the wrong question may be of little use at the hearing. The report should therefore explain the legal task assigned and avoid expressing a financial conclusion as if it resolved every statutory issue.

5. United States: criminal forfeiture and individual acquisition

Federal Rule of Criminal Procedure 32.2 distinguishes the forfeiture determination following guilt, a preliminary order and the later resolution of third-party interests. For specific property, the required statutory nexus with the offence must be established; for a money judgment, the amount must be determined. The court may consider properly accepted relevant and reliable material, and a contested determination is subject to a hearing on a party's request. The finding of guilt does not replace the necessary property analysis. [5]

A preliminary order concerning specific property is made without resolving third-party interests. Those interests are addressed through the ancillary proceeding under the applicable rules. A spouse, co-owner or other claimant should therefore not assume that the defendant's participation has finally determined their own rights. Notice, deadline and the content of the separate application require attention. A money judgment and forfeiture of a particular asset also have different implications for that procedure. The form of the order must be identified before the third party's response is selected. [5-6]

In *Honeycutt v. United States*, decided on 5 June 2017, the Supreme Court interpreted 21 U.S.C. § 853(a)(1) as limited to property obtained by the particular defendant, directly or indirectly, rejecting joint and several forfeiture in that context for proceeds acquired only by a co-conspirator. The holding concerns a specific statute. It is not a universal prohibition on joint and several liability across every American forfeiture regime. [7]

The practical consequence is the need to individualise acquisition. Participation in a common venture, a company position and access to records are not necessarily equivalent to obtaining the entire revenue. The analysis should examine distribution, powers over the money, economic receipts and the applicable meaning of acquisition. Conversely, the absence of a transfer into a personal account does not end an inquiry into indirect acquisition. The financial picture must correspond to the actual legal test rather than an assumed rule about account names.

Section 853 also contains separate provisions on substitute property and third-party rights. Their requirements do not follow merely from the fact that the original asset cannot be found. Preparation should distinguish the amount attributable to the defendant, identifiable property, grounds for reaching a substitute and independent interests of others. That structure assists both sides. It prevents excessive recovery and avoids a defence resting only on the disappearance of the original funds from the account. [6]

The evidence schedule should accordingly identify the purpose of each transaction record. Some records establish receipt; others establish control, onward distribution or the status of a third-party interest. If those functions are conflated, a court may be asked to infer personal acquisition from a corporate receipt without the missing factual and legal steps being addressed. A precise schedule exposes that gap before the hearing.

6. Non-conviction-based confiscation

Non-conviction-based confiscation describes a family of mechanisms, not a single process with identical conditions. Some systems provide a separate civil proceeding directed at property. Others dispense with conviction only in defined circumstances preventing completion of the criminal case. The label does not answer questions about the standard, deadlines, presumptions or ultimate recipient. Each parameter must be established from the particular legislation. A mechanism available in one country should not be assumed to exist in the same form elsewhere. [1-3, 8]

In English civil recovery under Part 5 POCA, unlawful conduct is determined on the balance of probabilities. In *Gale v. Serious Organised Crime Agency*, decided on 26 October 2011, the Supreme Court upheld the civil standard in the proceedings before it and did not treat them as a fresh determination of the applicants' criminal guilt. The decision does not mean that any recovery after an acquittal is permissible regardless of its basis or the language used to justify it. [9]

The effect of an acquittal requires examination of what the criminal court decided and what the later proceeding asks. Failure to prove guilt to the criminal standard differs from an affirmative determination of a particular fact. Finality, issue preclusion and the presumption of innocence may matter. Both blanket propositions are unsafe: that acquittal always makes property immune, or that calling a proceeding civil allows the acquittal to be ignored. The relationship between the two proceedings must be analysed rather than assumed.

In federal civil forfeiture covered by CAFRA, § 983(c) places the burden on the government to establish forfeiture by a preponderance of the evidence. For the specified theories involving property used in an offence, a substantial connection is required. The innocent-owner defence has a separate allocation of the burden under § 983(d). The government's obligation and the owner's obligation on an independent defence should therefore occupy different parts of the analysis. [8]

For an owner, it is useful to list the points the authority must establish before relying on the owner's explanation: covered conduct, the required property connection, territorial conditions and procedural compliance. Independent defences are then considered. If the legislation permits an inference from circumstantial evidence taken together, the response should address the relationship between the items, rather than merely challenge each in isolation. At the same time, a collection of gaps does not become proof simply because there are many of them.

A key practical difference from the criminal route is the independent organisation of the property dispute. A successful criminal defence does not necessarily perform the steps required to respond to notice, assert an interest or contest forfeiture. Equally, the state must satisfy the selected mechanism even if it holds serious information about a possible crime. Neither side should let the parallel criminal history obscure the distinct obligations in the recovery proceeding.

7. Presumptions and safeguards: the Strasbourg approach

In *Gogitidze and Others v. Georgia*, application no. 36862/05, judgment of 12 May 2015, the European Court of Human Rights found no violation of Article 1 of Protocol No. 1 in the confiscation examined. It considered the substantiated discrepancy between assets and income, the opportunity to present a case and the absence of arbitrary domestic findings. The judgment is not a general licence to take property from anyone unable immediately to produce old financial records. [10]

The practical issue is the conditions under which an owner can properly be required to explain origin. First identify the persons and property covered by the law. Then establish the starting facts supporting the authority's inference. Finally, examine whether rebuttal is realistically possible: notice, access to essential material, adequate time, participation and a reasoned response to the explanation. A nominal opportunity to submit documents is not always an effective opportunity to protect a property interest. The quality of the procedure matters alongside the initial financial comparison.

An assets-and-income analysis should account for the accumulation period, opening savings, loans, inheritance, asset sales and other owners' rights. Current salary is not a complete financial history. Equally, an unsupported reference to family savings does not resolve a substantiated question. The evidence should identify sources examined, sources excluded and why the remaining discrepancy persists or disappears. The calculation must be capable of review rather than rely on an impression that the owner is unusually wealthy.

Relatives' property requires particular care. A family relationship may justify a line of inquiry, but does not replace the legal test for ownership or receipt. Where the law permits action against such property, its conditions and the individual owner's safeguards must be established. One person's inadequate explanation should not simply be attributed to every family member. Dates of acquisition, funding and separate interests remain relevant even where the authority alleges a common arrangement.

For the owner, a specific answer to the calculation is usually stronger than a general assertion that all presumptions are impermissible. For the authority, it is necessary to explain why the presumption operates and why the response is rejected. The court's concern remains the fair balance between the purpose and the owner's rights. The proceeding's label, anti-corruption objective or public profile

does not replace that assessment. A legitimate objective and an appropriate means of pursuing it are distinct questions.

Comparative use of Gogitidze must also be limited. Not every NCB mechanism is equivalent to the procedure examined there. Legal nature, grounds, consequences and safeguards may differ. The case assists analysis of rebuttable inferences under particular conditions; it does not amend a national burden-of-proof rule or create a new presumption merely because it is cited in a submission. The applicant should identify the relevant similarity and any material difference.

8. European rules and the limits of harmonisation

Directive (EU) 2024/1260 addresses several forms of confiscation and asset management. The distinction between ordinary confiscation, extended confiscation, non-conviction-based confiscation and the unexplained-wealth mechanism in Article 16 is central here. Each category has conditions of its own. They should not be presented as a single power to take any asset whose origin raises a question. The legal classification determines the factual findings required and the safeguards that accompany them. [11]

Article 15 connects confiscation without conviction with defined circumstances preventing completion of criminal proceedings and the relevant safeguards. Article 16 operates where the preceding specified mechanisms cannot be applied and requires the national court to reach the prescribed conclusion that identified property derives from criminal conduct within a criminal organisation capable of producing substantial economic benefit. A discrepancy with lawful income may have evidential significance, but is not a replacement for the full statutory conditions. [11]

The transposition deadline is 23 November 2026. It has not arrived at the cut-off of 28 September 2026. A national case must therefore begin with the domestic law in force, its amendment date and transitional provisions. A future obligation on the state should not be presented as an immediately available power for the authority or applicant. Nor should it be assumed that no state has yet implemented the directive. That is a separate national inquiry. The report distinguishes the European framework from an assertion that identical domestic procedures already operate everywhere. [11]

Regulation (EU) 2018/1805 performs a different function: mutual recognition of freezing and confiscation orders within its scope. Article 33 distinguishes challenges to recognition and execution in the executing state from challenges to the substantive grounds in the issuing state. Recognition does not turn one country into a general appellate forum for every fact in the foreign case. The regulation also does not automatically cover all private civil judgments. The instrument must fit the type of decision being transmitted. [20]

A practical European case map has four layers: the confiscation basis, national evidential procedure, cross-border enforcement instrument and rules for delivering the asset or proceeds to the recipient. An error at one layer can undermine otherwise sound work. Proof of criminal benefit, for example, does not by itself establish a private victim's right to particular foreign real estate. Recognition of an interest, a distribution process and resolution of competing claims may still be needed.

Harmonisation can facilitate cooperation without eliminating national differences in evidence, representation and execution. European propositions should therefore be connected to the applicable domestic provision and the competent authority's powers. That connection makes the international

argument operational. It also tells the practitioner which point is governed by a common instrument and which still requires jurisdiction-specific evidence or procedure.

9. France: standards cannot simply be translated

French evidential law cannot be described by importing Anglo-American formulas. Article 1353 of the Code civil allocates the burden concerning an obligation: the person seeking performance must prove it, while the person claiming discharge must prove payment or the extinguishing fact. This helps identify the party's task. It does not itself provide a French equivalent of a numerical probability threshold. The function of the rule should be understood before a comparative label is applied. [12]

Article 427 of the Code de procédure pénale allows offences, subject to statutory exceptions, to be established through different forms of evidence and provides for decision according to intime conviction. The court must base its decision on evidence introduced in the proceedings and discussed by the parties. Freedom of assessment does not mean that provenance, the opportunity to challenge or the required reasoning can be ignored. The expression should not be translated as permission to rely on personal impressions outside the record. [13]

For recovery in France, the claim must first be classified. Damages, return of a specific item, invalidity of a transaction and consequences of a breached obligation involve different elements. Proof that money was transferred does not always establish a duty to return it: the payment may have performed a valid contract. The applicant must establish the absence or termination of the recipient's entitlement, the relevant breach and the connection with the remedy sought. The financial event and its legal consequence remain separate.

Evidence must also be matched to the form of the disputed relationship. It is unsafe to promise that correspondence always substitutes for a required written instrument, or that a bank statement always proves the terms of an oral arrangement. Rules concerning legal acts and facts, permitted exceptions and the weight of the material must be examined. An international case adds the law governing the substantive claim and the rules governing acquisition of evidence. Those questions need not be answered by the same legal system.

A bilingual terminology schedule can be useful where French proceedings rely on an English financial report. "Beneficial owner" in a bank's customer form may not describe the interest required by a particular civil claim. "Fraud" may express the document author's suspicion, an authority's allegation or a judicial finding. Translation must preserve those differences rather than strengthen the source. Consistency of terminology is especially important where the same records are submitted in more than one jurisdiction.

The practical approach is to work from the function of each rule. Instead of asking for a percentage of certainty, ask which facts matter, who bears the risk if they remain unproved, what evidence is admissible and how it will be tested. Comparative experience can then assist without replacing the French process with a different legal construction. It also makes expert instructions more precise: the report should answer the actual legal issue rather than a translated approximation of it.

10. Civil claims: proprietary rights and recipient liability

A civil route may be valuable where the claimant has an independent cause of action and a defendant, property or evidence can be reached. Choosing an English forum or a civil standard does not create a right that is otherwise absent. Authority to sue, applicable law, the claim's elements and the form of relief come first. Jurisdiction, time limits and enforcement follow. The analysis should not begin solely with the strength of a court's interim powers; those powers support a claim rather than supply its missing basis.

In *FHR European Ventures LLP v. Cedar Capital Partners LLC*, decided on 16 July 2014, the UK Supreme Court held that a bribe or secret commission obtained by an agent in breach of fiduciary duty is held on constructive trust for the principal. A proprietary basis can matter for subsequent tracing. The relevant relationship and breach must nevertheless be established; a commercial commission does not become the property of a dissatisfied counterparty merely because it exists. [14]

The practical evidence includes the agreement and the agent's actual role, the duty owed to the principal, payment source, disclosure and consent. A direct payment from seller to agent may be important, but its legal significance depends on those relationships. A properly disclosed and authorised commission presents a different factual case. The bundle should therefore include material capable of confirming or contradicting secrecy, rather than omit inconvenient evidence because the payment initially appears suspicious.

In *Byers v. Saudi National Bank*, decided on 20 December 2023, the Supreme Court rejected the knowing-receipt claim because the relevant equitable interest had been extinguished under the applicable law by the time the defendant received the property. Knowledge did not revive the missing interest. The decision demonstrates the independent importance of the law governing transfer and cannot be reduced to a moral assessment of the bank's conduct. [15]

A cross-border transfer may therefore require a separate analysis of foreign law. The claimant may prove a breach by the original holder yet lack the continuing interest required for the selected claim against the next recipient. Other personal causes of action can be examined where genuinely available, rather than simply relabelling the same defective claim. Knowing receipt and dishonest assistance are distinct constructions and should not be used interchangeably. Each requires its own legal and factual foundation.

A strong civil strategy connects the right with the transaction chain. It explains not only where the money came from, but why this claimant may obtain this relief from this defendant. At this stage, the most viable claim may turn out to differ from the initial intuitive demand to recover everything said to have been diverted. Recognising that early can prevent substantial spending on a legally unsuitable route.

The same discipline is useful for a recipient defending proceedings. A response may concern the claimant's interest, applicable law, the nature of receipt or another element, rather than a general denial of wrongdoing. The court should be given the precise issue on which liability depends, supported by the documents and legal materials relevant to that issue.

11. Tracing value and transaction sequence

Asset location, financial reconstruction and legal tracing are related but distinct tasks. Location identifies where property is held. Reconstruction explains the movement of funds. Tracing determines whether a continuing proprietary interest can be followed into a substitute under the applicable law. An apartment may be economically connected with a recipient of disputed money, yet a claim to the apartment may still require additional legal and factual foundations. The diagram of payments is a starting point for that inquiry, not its conclusion.

In *Federal Republic of Brazil v. Durant International Corporation*, a Jersey appeal decided by the Privy Council on 3 August 2015, the Board rejected an absolute bar on backward tracing. Where connected transactions form a proven coordinated scheme, the order of debit and credit entries is not necessarily decisive. The decision does not permit every later receipt to be treated as funding every earlier purchase; the transactional connection must be established. [16]

The practical evidence accordingly extends beyond a statement. If an asset was bought using temporary finance and the debt later discharged with disputed funds, examine prior arrangements, credit documents, timing and payment purpose. The question is whether the steps formed one coordinated transaction or separate events. Matching amounts and close dates may support an inference, but do not replace an explanation of the financing mechanism. The evidence should show the link rather than rely on a visually convenient sequence.

For mixed funds, the expert should disclose how receipts and withdrawals have been allocated. An accounting algorithm does not become a legal rule because it produces an exact figure. Present the source data, assumptions and an alternative calculation where a contested choice materially affects the amount. Legitimate receipts must be identified, together with the possibility that some property is no longer reachable through the selected claim. The degree of numerical precision should not conceal uncertainty in the legal premise.

Tracing also has limits. A complete financial chain does not automatically defeat a protected purchaser, revive an extinguished interest or supply an unavailable remedy. Those questions require separate decisions. A payment diagram should therefore be accompanied by a legal schedule identifying the object, continuing interest, applicable law, potential recipient defence and relief sought. This connection prevents an attractive graphic from becoming an unsupported promise of recovery.

The schedule should distinguish a break in information from a legally decisive break in the interest. Missing records may be obtainable; a transfer that extinguishes the relevant right may require a different cause of action. Treating both as a generic “gap in tracing” can obscure the next necessary step. Careful classification tells the team whether it needs more evidence, different legal analysis or a narrower claim.

12. Banking evidence and calculation

A bank statement proves particular account entries, but not necessarily the economic nature of each transaction. A payment description may be abbreviated, mistaken or supplied by the sender. It should be compared with the contract, invoice, performance and counterparty records. For a substantial transaction, identify not only sender and recipient but also who gave the instruction, the signatories' authority and the subsequent use of the amount. These additional facts may determine whether the payment represented an authorised expense, diverted value or another kind of transaction.

Reconstruction should cover a period sufficient to explain the opening balance. Each transaction receives a stable identifier, with posting date, value date, currency, amount and source retained. Transfers between the same owner's accounts are marked separately. Fees and conversion must not create the false appearance that money has disappeared. Where only a fragment of the records is available, identify the gap and assess its effect rather than silently assume continuity. An apparent closed chain may depend on an unverified opening amount.

Several figures need to remain distinct: the amount transferred, benefit, loss, current asset value and compensation already received. They should not be added without explanation. If a company lost EUR 400,000 and the money purchased an asset that later appreciated, a claim for the original amount and a claim to current value may rest on different grounds. Insurance payments or partial refunds may affect both the amount claimed and the rights of other parties. The report must identify which figure answers which legal question.

The working schedule should make the result reproducible. Formulae, rates and conversion dates are stated. Manual adjustments receive their own explanation. Where currencies differ, show the original values and the basis for choosing a conversion date if it affects the claim. Financial accuracy does not determine the legal issue, but makes it testable and exposes double counting quickly. A reviewer should be able to move from the total back to the underlying records without an unexplained intermediate step.

The expert must separate observation from inference. "The money entered the company's account" is an observation. "The director personally obtained the benefit" is a further conclusion requiring support. Total transfers of one million do not necessarily mean a loss of one million, because the same money may have moved more than once. Clear distinctions reduce the risk that persuasive presentation collapses when the source data are examined.

The schedule should also preserve adverse entries. A repayment, refund or legitimate contribution is part of the financial history even where it reduces the claimant's figure. Accounting for it openly strengthens the reliability of the remaining claim and allows the court to see which disagreement concerns the arithmetic and which concerns the legal treatment of a particular item.

13. Electronic records, open sources and preservation

An open source may identify a line of inquiry without proving ownership or movement of value. A photograph beside a house does not establish ownership of it. A publication about a company does not establish control over its account. A wallet address without further attribution does not identify its owner. Each item should therefore be accompanied by a precise description of what it demonstrates and what remains an inference. That distinction is important both for court submissions and for avoiding premature public accusations.

Electronic evidence should be preserved with its provenance. Record the source, acquisition time, format, person making the export and later transformations. Keep the original separate from working copies. A hash can help detect a change to a file, but does not prove the truth of its content or the lawfulness of acquisition. If a record was fabricated before preservation, the technical integrity of the later copy does not solve the problem. Authenticity and unchanged storage are related but different issues.

Correspondence requires context and completeness. A screenshot may omit an earlier message, attachment or change in participants. Lawfully available original exports with metadata and evidence linking the account to its user are preferable. Possession of a conversation on one participant's phone does not necessarily authorise publication of the entire archive or unrestricted transfer abroad. The procedural and confidentiality conditions for use must be considered alongside evidential value. The objective is a usable record, not merely a readable extract.

Blockchain analysis should distinguish observable transactions from conclusions about people. A service's attribution of an address to an exchange, group or suspected actor requires an explanation of source and reliability. A pooled exchange address may serve numerous customers. Connecting the public record with a particular owner often requires the provider's internal records obtained through the proper process. A transaction graph cannot replace that attribution step, however detailed its presentation.

Evidence should not be obtained through unlawful access, impersonation or questionable closed databases. Apart from separate legal exposure, those methods can create disputes about admissibility, reliability and interference with rights. If material arrives from a third party with uncertain provenance, assess the source, lawful retention and independent corroboration before using it. The practical goal is evidence capable of surviving adversarial examination, rather than an impressive fragment whose origin cannot be explained.

A preservation register should also record restrictions on use. Material may be appropriate for internal investigation but require additional authentication or permission before filing. Making that limitation visible prevents the team from treating every collected item as courtroom-ready and identifies the next lawful step needed to convert an investigative lead into evidence.

14. Witnesses, experts and alternative accounts

A witness must distinguish direct knowledge from information received and inference. “I signed the payment instruction” differs from “I was told that the director received the money.” The former requires examination of authority, date and document; the latter raises questions about the source and availability of first-hand evidence. Editing should not strengthen the statement beyond the witness's knowledge. A convenient formulation that the witness cannot independently support can weaken the whole evidential structure.

Interviews should be organised around events and records. First preserve the person's account and limits of recollection, then ask clarifying questions. Material inconsistencies should be investigated rather than removed by stylistic editing. Where several witnesses use the same unusual language, verify that the court will receive their own knowledge rather than a jointly settled narrative. The preparation process should be documented to the appropriate extent. A polished statement is useful only if its accuracy and provenance remain intact.

Expert instructions must fit expertise. An accountant examines movement and calculation; a digital specialist examines technical characteristics and provenance; a foreign-law expert addresses the relevant legal rules. One report should not substitute for another. An accountant should not declare criminal guilt solely from an unusual payment structure. A technical expert should not determine legal ownership merely from control of a device. Those findings may inform the legal analysis, but their limits need to be explicit.

The report should disclose inputs, method, assumptions, limitations and sensitivity. If three months of statements are missing, explain which conclusions remain possible and which require further support. Independence is also demonstrated by examining an account adverse to the instructing party. The court should be able to see why that explanation is rejected or why the available information does not yet permit a choice. A conclusion of uncertainty may be more valuable than an unjustified definitive answer.

Before filing, prepare a schedule of material contradictions: assertion, contrary material, possible explanation and required check. Not every inconsistency destroys a case, but an undisclosed one can be particularly costly. Preparation should expose the problem while there is still time to obtain a document, revise a calculation or narrow the claim to what can be proved. The aim is to strengthen the evidence, not to remove visible signs that the evidence has been tested.

This process also improves oral preparation. The witness or expert should understand the documents relied upon, the boundary of personal knowledge and the assumptions underlying the opinion. They should not be expected to defend propositions outside those boundaries merely because the propositions appear elsewhere in the claimant's case.

15. Obtaining evidence in France and the United States

Article 145 of the French Code de procédure civile permits legally admissible measures, before proceedings on the merits, to preserve or establish evidence of facts on which a dispute may depend where a legitimate reason exists. It is not general access to every piece of information about a prospective defendant. The applicant should explain the contemplated dispute, relevant facts and connection with the requested material. The choice between an application on requête and proceedings in référé is not an unrestricted option to exclude the other side. [17]

The version effective from 1 September 2025 expressly addresses territorial jurisdiction. It provides the specified choice between the court capable of hearing the merits and, where relevant, the court where the measure will be carried out. A special rule applies to measures concerning real estate, assigning jurisdiction to the court where the property is located. An old application template should not be used without checking the amended provision and its transitional conditions. [17]

In the United States, 28 U.S.C. § 1782 permits judicial assistance to obtain testimony and documents for use before a foreign or international tribunal when the statutory requirements are met. The inquiry includes the relevant person's presence in the district, the proposed use, the applicant's status and applicable privileges. The discretionary formulation matters. Meeting threshold conditions does not guarantee production of every category requested. The order must be sought from the appropriate court on a properly supported application. [18]

In *ZF Automotive US, Inc. v. Luxshare, Ltd.*, decided on 13 June 2022, the Supreme Court limited the relevant tribunal concept to bodies exercising governmental or intergovernmental adjudicative authority. The private commercial and ad hoc investment arbitral panels before it did not qualify. Section 1782 should therefore not be promised for every foreign arbitration merely because it has a foreign seat or a state is involved in the dispute. [19]

A practical request identifies bounded categories: accounts, period, counterparties, transaction types and significance. An excessively broad request increases cost and grounds for objection. An unduly narrow request may miss a connected account or performance record. The case theory supplies the balance: each category addresses a defined element, and any additional scope responds to a specific uncertainty. A request should make that reasoning apparent rather than leave the responding party or court to infer it.

After production, assess conditions on further use. Disclosure in one proceeding does not make a document freely available for publication, another claim or transfer to investigators. Restrictions, protective orders and any need for permission belong in the evidence register. That record allows strong material to be used without creating a new procedural breach. Acquisition and subsequent deployment should be planned together, particularly where the same evidence is relevant in several countries.

16. International cooperation and UNCAC

The United Nations Convention against Corruption connects asset recovery with cooperation, domestic powers and defined avenues of relief. Article 53 addresses direct recovery, including measures enabling another State Party to bring civil proceedings to establish ownership, seek compensation and have its legitimate ownership recognised in confiscation proceedings. Those obligations do not create a universal private cause of action under the Convention for every individual. The identity of the applicant and the domestic implementing framework remain important. [1]

Articles 54 and 55 address cooperation for confiscation. A practical request needs the property, facts, legal basis and action sought to be described. A request for bank records, an application for preservation and a request to enforce a final order perform different functions. The documents and level of detail should fit the stage, rather than be copied unchanged from one request to the next. The receiving authority should be able to identify the precise task it is being asked to carry out. [1-2]

International contact can reveal information, but procedural use requires the appropriate route. An investigative lead must be distinguished from evidence that can be placed before a court. If a foreign authority identifies an account, establish how authenticated records can be obtained, who can explain their provenance and what restrictions on use apply. Information exchange does not remove admissibility requirements or the other party's ability to challenge the content. Those issues should be anticipated while the request is being prepared.

The requesting side should clarify the executing state's requirements in advance: translation, authentication, particulars of alleged conduct, property connection and information about safeguards. A clear action list and urgency tied to specific dates are useful. A general reference to large-scale corruption does not identify the property or establish the requested power. An incomplete request may lose more time than preliminary clarification of the necessary elements. The evidence plan should therefore include the receiving system's requirements, not merely those of the originating investigation.

A private victim's entitlement to distribution is separate from the state's powers. Return to a foreign state does not automatically mean payment to a specified company or individual. The basis for payment, established loss and authority of the recipient must be addressed. Article 57 contains differentiated rules on return and disposal and should not be reduced to a promise to pay everything to the first applicant. [1]

Cooperation is most effective when responsibility for each stage is clear. The person obtaining records, the authority seeking recognition and the body deciding distribution may be different. The case plan should identify the required decision and competent recipient at each stage so that a favourable development does not stall between institutions. That is an organisational recommendation, not an additional treaty power.

17. Preservation, judgment and enforcement

Evidence supporting urgent preservation performs a different function from evidence supporting final recovery. An interim measure protects the possibility of enforcement; it does not replace judgment on the merits. The applicant must understand the applicable threshold, material-disclosure duties, possible counter-security and consequences of an erroneous measure. Those conditions depend on the particular legal system. There is no single international freezing order available on identical terms everywhere.

The application should explain separately the substantive claim and the risk requiring immediate intervention. A defendant's foreign address or the mobility of money is not necessarily sufficient. Specific circumstances may include a planned sale, account closure, unusual transfer or another documented step relevant to the governing test. Urgency should not be manufactured through exaggeration. Later discovery of an inaccurate account can affect both the measure and costs, even where some underlying grievance is legitimate.

Before issuing a claim, consider whether the eventual judgment can be enforced where the assets are located. Identify the recognition route, notice requirements, public-policy limits and character of the decision. A personal money judgment and a determination of rights in a particular asset may be treated differently. If the property is abroad, a domestic victory without that analysis may remain an expensive intermediate result. Enforcement questions can therefore influence the form of relief sought from the beginning.

Realisation requires an up-to-date valuation, recognition of secured interests and accounting for expenses. Storage, deterioration and currency changes may materially reduce the amount returned. The evidence strategy should include material needed for lawful management and sale where available. The objective is to preserve value for proper final distribution, rather than merely obtain the broadest possible restraint. An asset that is legally secured but economically wasted is a poor recovery outcome.

Implementation should be documented with the same care as the merits. Records of service, recognition, changes in title, sale proceeds and deductions may become necessary in a later dispute. They also allow the claimant to distinguish a judgment obtained from a payment received. Maintaining that distinction prevents overstatement in both internal reporting and communications with affected parties.

18. Third parties and competing interests

Third-party rights should be examined before a particular recovery amount is promised. Property may be subject to co-ownership, security, purchaser interests, leases or other independent rights. Group membership or kinship does not remove those interests. Conversely, nominal registration in another person's name does not always prevent recovery where the governing mechanism and proved facts support a different result. The legal basis for looking beyond the formal entry must be identified and evidenced.

US criminal forfeiture under § 853(n) provides a particular process for specified third-party rights; civil forfeiture under § 983(d) uses its own structure. They should not be addressed with one generic application form. The stage, notice, deadline, acquisition basis and legal test must be checked. A

person who regards themselves as innocent still needs to establish the type of interest protected by the relevant provision. Absence of wrongdoing and existence of a qualifying property right are different questions. [6, 8]

For a private claimant, property belonging to the debtor must be distinguished from liability of another group member. A company does not automatically answer for its shareholder's debts, and a shareholder does not own each corporate asset. If a separate wrong is alleged against a connected person, it must be proved as an independent basis. A corporate chart organises the facts but does not replace a substantive rule imposing liability. The arrows on the chart must not conceal the missing legal steps.

Where several victims compete, maintain a consolidated record of claims, payments already received and their sources. Identify overlap: one transfer may be described both as the company's loss and as an indirect reduction in share value. That does not necessarily create two independent claims for the full amount. Their availability and relationship depend on the governing law. The record should make clear which loss belongs to which claimant and which event gives rise to it.

Considering third-party interests protects the durability of the claimant's result as well as the owners concerned. A decision made without proper notice to an interested person may encounter recognition or enforcement obstacles. Early review of competing rights is therefore part of evidential reliability, rather than a concession to the opposing side. It can also help formulate a narrower, more defensible interim request.

The practical objective is an order that resolves the relevant interests and can survive implementation. Identifying a large asset without examining those interests may inflate expectations while leaving little available value. A more precise analysis can produce a smaller headline figure but a stronger and more realistic recovery plan.

19. Practical scenarios: commission, transfer and presumption

The following scenarios are hypothetical and compare mechanisms. The parties, figures and event sequences do not refer to client matters. Each begins with the claim, moves to the evidential task and only then considers the means of obtaining a result. None assumes a guaranteed outcome. The scenarios illustrate how a legal theory changes the documents and procedural steps that should be prioritised.

Scenario 1. An agent's undisclosed commission

A company appoints an agent to purchase commercial property. After completion, it discovers that the seller paid the agent EUR 300,000. The agent says this was a separate consultancy fee unrelated to the appointment. The company wants the money and seeks to reach an apartment bought by the agent later. The central issue is not just payment, but the fiduciary relationship, nature of the commission and absence of the principal's properly informed consent.

The evidence includes the agency agreement, remuneration correspondence, negotiation records and material concerning disclosure of the conflict. The alleged advice to the seller is compared with the agent's work for the buyer. The bank transfer establishes receipt, but does not determine whether the payment was permitted. If the agent relies on approval, examine the approving person's authority,

information disclosed and timing. An ambiguous reference to a fee may not resolve whether the relevant conflict was actually authorised.

Where the English approach in FHR applies, the commission may support a proprietary claim. Reaching the apartment requires additional tracing: purchase funding, mixing, credit and another owner's rights. The conclusion that a commission was secret cannot be followed immediately by a claim to the whole apartment. An alternative personal claim is assessed separately, with its basis, amount and enforceability clearly identified.

Preparation should produce two connected analyses: the commission received and the interest in substitute property that may be claimed. If acquisition records for the apartment are missing, that is a defined evidence-gathering task, not a reason to treat the entire chain as established. This preserves the strong part of the case without attaching an unsupported proprietary extension to it. It also permits a focused request for the documents capable of resolving the remaining issue.

Scenario 2. Corporate loss claimed by a shareholder

EUR 800,000 has been transferred from a company to a connected counterparty. A minority shareholder discovers the transaction and seeks the whole amount personally because the value of the shareholding fell. The first question is ownership of the cause of action. Corporate loss and a shareholder's individual loss may have different legal characteristics. Authority to pursue a corporate claim depends on the governing law and prescribed procedure.

Evidence of the shareholding does not establish an entitlement to receive the company's money. Examine corporate authority, conflicts, available proceedings in the company's interests and any independent infringement of shareholder rights. If the company is involved in foreign proceedings, establish who may act for it. Selecting a convenient representative does not create authority that the person lacks. This issue should be resolved before substantial expenditure on foreign asset searches.

The underlying transaction requires the agreement, evidence of performance, approval and information about the recipient. A connection between the parties warrants examination but does not prove a sham. If services were performed, the dispute may concern price, authority or conflict rather than a right to recover the entire payment. The calculation and legal characterisation must fit the breach actually identified.

A common practical error is to spend the main budget locating the counterparty's assets before establishing the claimant's right. A corrected strategy identifies the proper applicant and form of claim first, then secures evidence and property. This avoids a case with an impressive financial diagram that fails because the person suing is not entitled to the relief sought. It also clarifies who should receive any eventual settlement or judgment proceeds.

Scenario 3. Wealth inconsistent with official income

In an independent confiscation proceeding, the authority compares real estate worth EUR 1.2 million with official income of EUR 180,000 during the relevant period. The owner relies on earlier savings, inheritance and a loan. The first step is to examine the statute, period, conditions for the presumption and the authority's initial burden. The numerical discrepancy does not replace that legal inquiry.

A funding balance is then prepared at the acquisition dates. Inheritance requires evidence not only of the entitlement but of receipt of the relevant value. A loan requires proof of advance, terms and the parties' conduct. Savings require available earlier records. The same source is not counted twice when transferred through several accounts. Where records have been lost, independent corroboration and the realistic ability to recover them should be considered.

The authority must address explanations substantively. Absence of one type of record does not invariably establish absence of a source, while a plausible unsupported account need not be accepted. The final schedule identifies established receipts, disputed amounts and the remaining discrepancy. The court's conclusion should concern the conditions of the particular procedure, rather than a general impression about the owner's wealth.

The example also shows why an owner should not wait for a final hearing to reconstruct the history. Identifying the missing period early can make it possible to obtain archived records or evidence from another institution. The evidential response becomes a targeted reconstruction rather than an unstructured demand that the court accept a broad claim of legitimate accumulation.

20. Practical scenarios: sequencing, foreign orders and tokens

Scenario 4. A purchase preceding the disputed receipt

A defendant buys an asset for EUR 500,000 using short-term credit. A week later, allegedly misappropriated funds arrive and the credit is repaid. The claimant argues that the asset represents those funds. The defendant responds that the purchase occurred first, making tracing impossible.

The case requires examination of the connection between credit, purchase and repayment. Collect the financing application, correspondence about the anticipated receipt, credit agreement, payment records and evidence of other sources. If the credit was an independent transaction, later repayment may not supply the required link. If the steps were planned parts of one coordinated arrangement, strict entry order may not be decisive where the Durant approach applies. The factual link, not merely the sequence, is central.

The submission must identify the law permitting the proposed tracing and explain coordination. Rights of the bank, co-owner and other creditors are examined separately. A Jersey decision should not be treated as a universal rule in every jurisdiction. Even where the connection is accepted, the extent of the proprietary interest and the appropriate remedy remain to be determined. Success on the sequencing objection does not decide the entire claim.

The expert presents the chronology without rearranging dates to make the case look easier. The task is to explain the transaction as it occurred. If supporting material is insufficient, an available personal monetary claim may be explored, while preserving the distinction between established loss and an unproved connection with the specific asset. That distinction allows the claimant to proceed on a sound basis without asserting more than the records support.

Scenario 5. Confiscation without payment to the victim

A foreign court makes a confiscation order for EUR 2 million. A company claiming EUR 600,000 in loss assumes that it will immediately receive that share. The property has not yet been sold, a secured creditor exists and the order does not direct payment to the company. The nominal amount, available assets and distribution entitlement must be distinguished.

The company examines participation rights, recognition of loss, application deadlines and the payment process. It prepares evidence of loss, compensation already received and representative authority. If the proceeds are returned to a state under an international mechanism, the next legal stage before private payment must be identified. Assisting the investigation or providing crucial information does not replace that stage or establish priority over other claimants.

The expected return takes account of sale value, prior rights and applicable expenses. An asset valued at EUR 2 million may produce substantially less after satisfying a secured obligation and completing a sale. That is not necessarily improper, but each deduction needs a transparent calculation and lawful basis. A headline confiscation figure is therefore an inadequate forecast of the company's net recovery.

The practical result sought is a recognised payment entitlement and a documented route to receiving it. Payments already obtained are recorded to avoid double recovery in parallel proceedings. Communications with the authority should ask specific questions about the claim's status and distribution, rather than simply refer to the state's successful case. The evidence needed at this stage concerns entitlement and implementation as well as the original wrongdoing.

Scenario 6. A digital chain without reliable attribution

An analytics service shows tokens moving from a victim's address to one labelled as an exchange address. The victim identifies a particular businessperson as the receiving account holder because that person previously mentioned the exchange. That connection is insufficient at this stage. The public address may be pooled, and a publication does not establish control of the particular account.

Preserve the original transactions, times, network, identifiers and attribution method. Then identify a lawful route to the provider's internal records, registration information and transaction history. The request should cover the relevant period and explain its connection with the contemplated claim. If § 1782 is considered, territorial requirements and the character of the foreign proceeding are examined separately. An arbitration clause does not guarantee access to the provision.

Even after attribution, questions remain about the transfer's legal basis, protected acquisition, mixing and any continuing proprietary interest. The technical chain answers only part of the case. The recovery proposal must identify whether it seeks the same units, money value or another legally available result, and who is entitled to receive it. Those questions affect both the evidence and the eventual order.

A sound strategy does not declare identity established prematurely. It converts the digital lead into a sequence of verifiable requests and legal issues. This reduces the risk of suing the wrong person and helps preserve records while the provider can still supply them. It also allows the claimant to distinguish a promising investigative lead from evidence sufficient to support a final proprietary claim.

21. Litigation cost and distribution of value

Economic assessment should accompany legal assessment. For each route, consider representation, evidence acquisition, translation, experts, security, management and enforcement. This does not mean abandoning a difficult case merely because it is expensive. The purpose is to identify which expenditure unlocks the next evidential step and which merely duplicates work already done. A staged budget links cost to a defined result rather than to an open-ended commitment to continue.

The first stage may establish the proper defendant and claimant's right. The second may confirm movement of value. The third may assess available assets and enforcement conditions. Continuation is decided on updated information. A success percentage should not be invented without a defensible model. Instead, show scenarios: what follows if the decisive fact is confirmed, disproved or cannot be established because the document is unavailable. This gives the decision-maker a meaningful account of uncertainty without false numerical precision.

UNCAC Article 57 distinguishes the grounds for return and disposal. The treatment of embezzled public funds differs from other categories, with the stated conditions, prior ownership and victim compensation requiring attention. The Convention also addresses reasonable expenses and arrangements between states. Financial planning should therefore not assume that the whole nominal confiscation amount will unconditionally reach a single applicant. [1]

A private settlement requires examination of authority, releases, payment mechanics and the effect on parallel proceedings. Agreement with one defendant does not necessarily extinguish state powers or third-party rights. Money received must be reflected correctly in remaining claims. Where another group company makes the payment, its basis and any operative restriction on transfer must be checked. A settlement should resolve the intended issues without creating ambiguity about who has paid, what has been discharged and which claims remain.

Payment documents should be prepared in advance: the decision, evidence of its effect, recipient authority, banking details, distribution basis and prior-payment record. A cross-border matter may require additional permissions or checks arising from the actual regime. A general statement that the money is being returned to a victim is not a substitute. A clear basis for each transfer can help avoid a new banking delay after lengthy litigation.

Results should be recorded separately as identified, preserved, awarded, realised and actually returned. Those figures must not be added as independent successes where they describe the same asset at successive stages. Net value received, duration and respect for rights are more informative than the largest figure in an order. This distinction is useful for case management and public reporting. It prevents a preservation announcement from being presented as completed restitution.

The economic review should be revisited after material developments. A newly identified secured claim, a lower valuation or a change in available evidence may alter the sensible scope of the proceedings. Updating the plan is not an admission that the original claim lacked merit. It is a response to the difference between a legally arguable claim and the value that can realistically be recovered.

22. Practical recommendations and conclusions

Preparation begins with a concise legal map identifying claimant, defendant, basis, forum, relief and expected source of enforcement. An evidence matrix then links each legal element with an established fact, source, gap, acquisition method and anticipated objection. It should be updated after every material document. Its purpose is to show which issue is supported and which still requires work, rather than merely list the contents of a bundle.

The next step is separate calculation of loss, benefit and property. Reconstruction should permit the result to be reproduced from the underlying records. A tracing claim also requires examination of the continuing interest and the law governing transfers. If the cause of action changes, the evidence package must be reconsidered. A document sufficient to quantify damages may not establish a proprietary interest in a substitute asset. Legal and financial work should therefore develop together rather than in isolated stages.

Third parties should be considered before broad measures are requested. Co-owners, secured creditors and purchasers may have rights that require examination and notice. Early analysis supports a more precise application and reduces the risk of later discharge or non-recognition. Adding defendants and assets without a sound basis can increase expense without increasing recoverable value. The extent of the request should follow the evidence and the available power.

International work should be planned alongside domestic proceedings. For each country, identify the evidence needed, competent authority, procedure, translation and use conditions. Information gathering, recognition and distribution are different tasks. One successful request should not create the impression that the entire cross-border exercise is complete. The plan should identify the next legally necessary decision and the person responsible for obtaining it.

Before filing, test the strongest opposing account. What lawful explanation is available to the recipient? Which fact is missing? Has the claimant's right been extinguished? Has a sum been counted twice? Has the standard from another stage been imported? The answers allow unsupported portions to be narrowed and the provable claim strengthened. This is a substantive review of the case, rather than a formal count of citations or exhibits.

The comparison shows that differences between recovery mechanisms cannot be reduced to a higher or lower standard of proof. The decisive issue may be standing, a particular presumption, the legal connection with property, restrictions on evidence use or another person's priority. A lower standard does not cure a missing element. A conviction does not remove the need for the correct property calculation. A financial chain does not guarantee a continuing right at its endpoint.

Effective recovery combines a valid legal basis, verifiable evidence and realistic enforcement. That sequence distinguishes an asset that has been located from one that can lawfully be recovered and delivered to the proper recipient. ARGAs recommended approach is to maintain this discipline: describe the mechanism accurately, state the limits of the evidence and identify the next concrete step. The strength of a recovery strategy lies in that connection between law, proof and implementation.

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