



ASSET RECOVERY IN FINANCIAL INVESTIGATIONS

July 27-28, 2023

Grace Evelyn A. Lacerna
Bureau of Internal Revenue
Philippines



Topic Outline

1. Asset Categories and Types
2. Asset Recovery – Plan, Process and Stages
3. Practice and Strategies
4. Case Studies
5. Challenges and Key Recommendations



What is an asset?

- International Financial Reporting Standards (IFRS) framework definition:
- *“An asset is a resource controlled by the enterprise as a result of past events and from which future economic benefits are expected to flow to the enterprise.”*
- In Financial Accounting:
- *“An asset is a resource owned or controlled by an individual, corporation or government with the expectation that it will generate a positive economic benefit.”*



What is an asset?

- *The practical definition that everyone can understand is:*
- An asset is:
 - anything of value that is owned
 - anything owned that has exchange value
 - anything that can be used to produce positive result

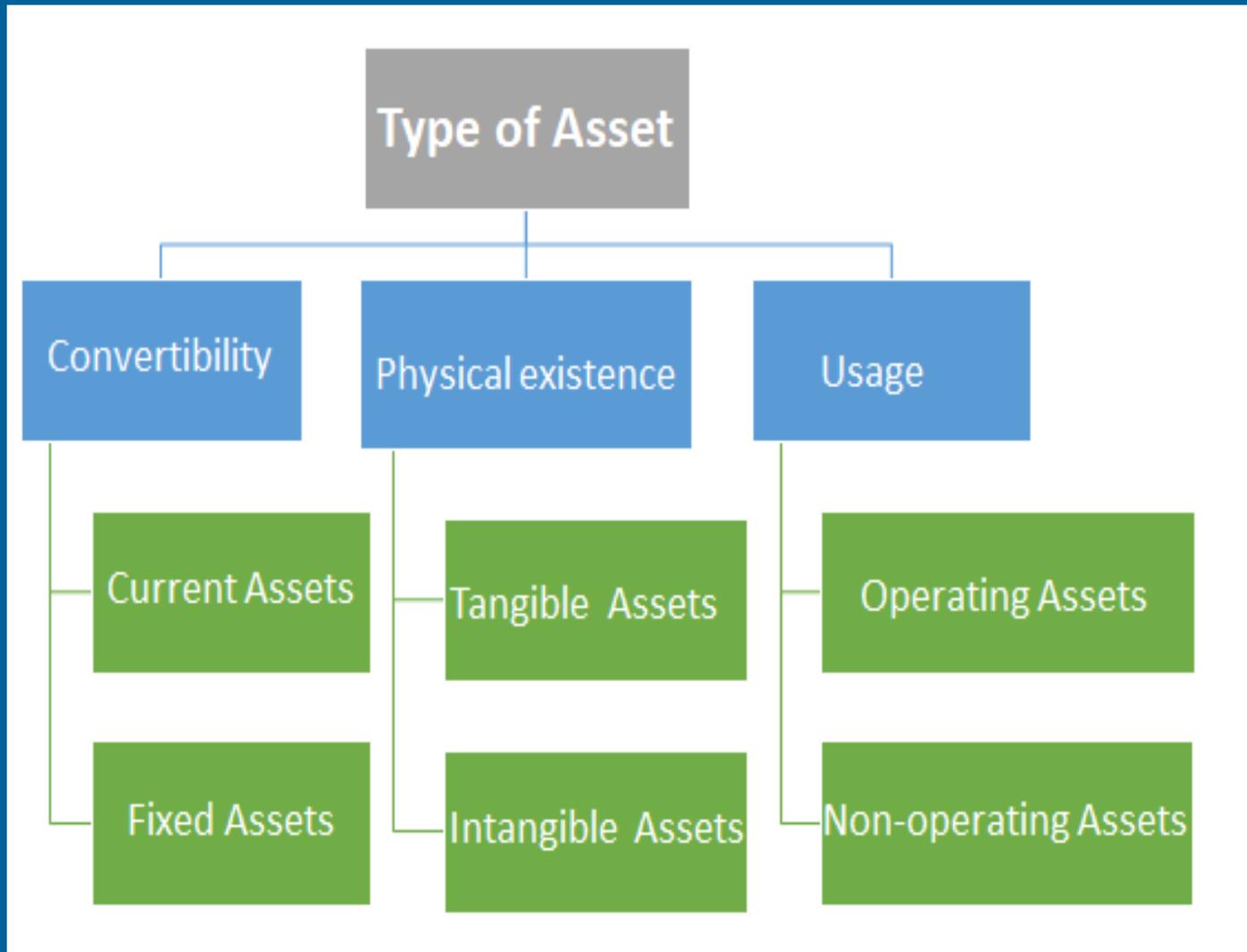


Key Properties of Assets

1. Ownership – Assets represent ownership that can be eventually turned to cash.
2. Economic Value – Assets have economic value and can be exchanged or sold.
3. Resource – Assets are resources that can be used to generate future benefits.



Classification of Assets





Convertibility

Assets

Acquired/Purchased and Owned, having Value and available to meet Debts, Commitments or Legacies.

Fixed Assets

Purchased for long-term use and are not likely to be converted quickly into cash.



Land



Machinery



Buildings

Current Assets

Either cash, a cash equivalent, or anything which can be converted into cash within one year.



Cash



Bank Balance



Investments /deposits



Inventory



Asset Categories and Types



01



Real Properties
Personal Properties

LIQUID ASSETS

NON-LIQUID ASSETS

Cash and cash equivalents

Investments



02

Liquid Assets

Cash

- includes notes and coins, cheques, travellers cheques, postal orders, bearer bonds, bearer shares, betting slips, digital cash stored in mobile phones, cryptocurrencies, gambling vouchers, casino chips, etc.

Cash Equivalents

- can be converted into cash *immediately* which include certificates of deposits, treasury bills, commercial papers, marketable securities, money market funds, short term government bonds, etc.

Investments

bonds, cash value of life insurance policies, mutual funds, index funds, pensions, retirement funds, equity funds, etc.

Non-Liquid Assets

Real Properties

- land, house, farm lot, condominium unit, warehouse, building, factory, office unit, leasehold improvements, etc.



Personal Properties

- vehicles like cars, trucks, motorbikes, boats, yachts, airplane, jewelry, collectibles, luxury bags, luxury goods, household furnishings, membership to exclusive associations like golf shares, precious metals like gold, silver, diamonds, etc.





What Motivates Crime?

Profits, Greed for Wealth, Power it brings

Profits can be consumed

invested legally

invested in future crime!

These actions always leave trails – audit trails

- Money Trails (Cash Flow)
- Paper Trails
- Electronic Trails

REMOVE ALL ASSETS LINKED TO CRIMINAL ACTS

What is Asset Recovery?



**involves multiple
jurisdiction**

**complicated by
technical, legal and/or
political barriers**



**process of tracing, freezing,
confiscating, and returning
stolen assets to their
country of origin**

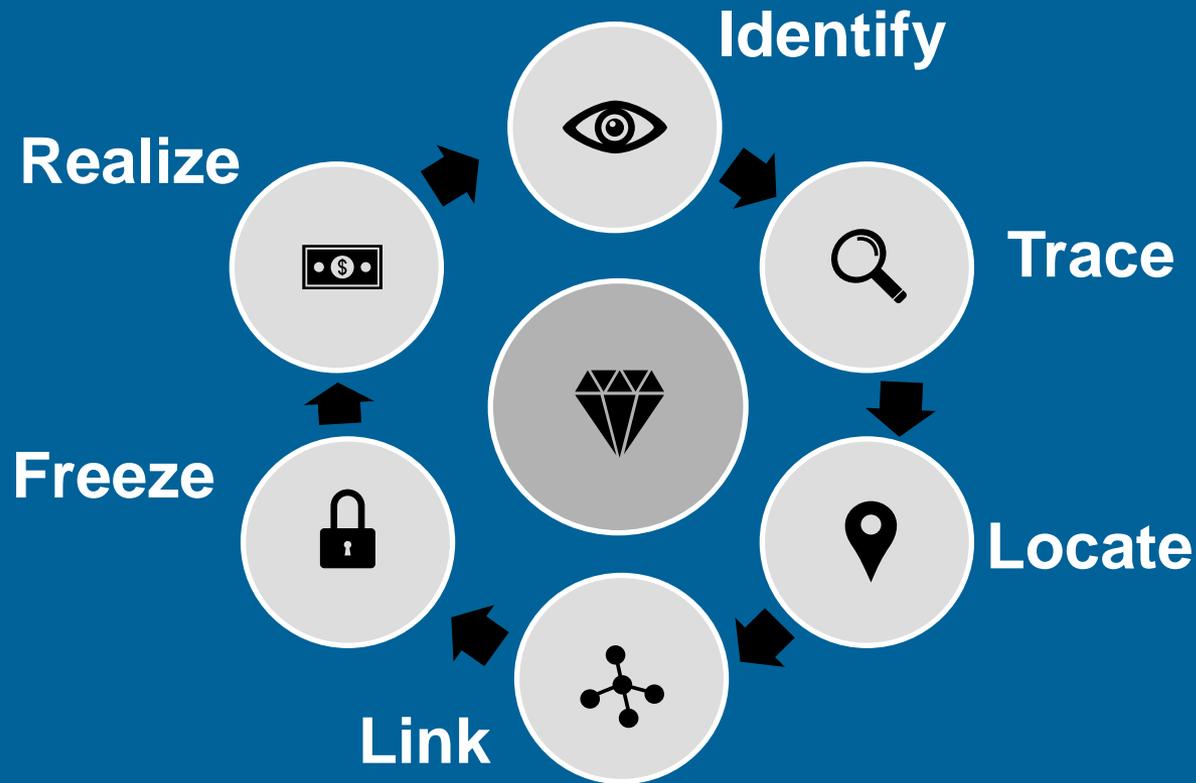
**complex and lengthy
one**



TIMING IS EVERYTHING!



The Asset Recovery Plan





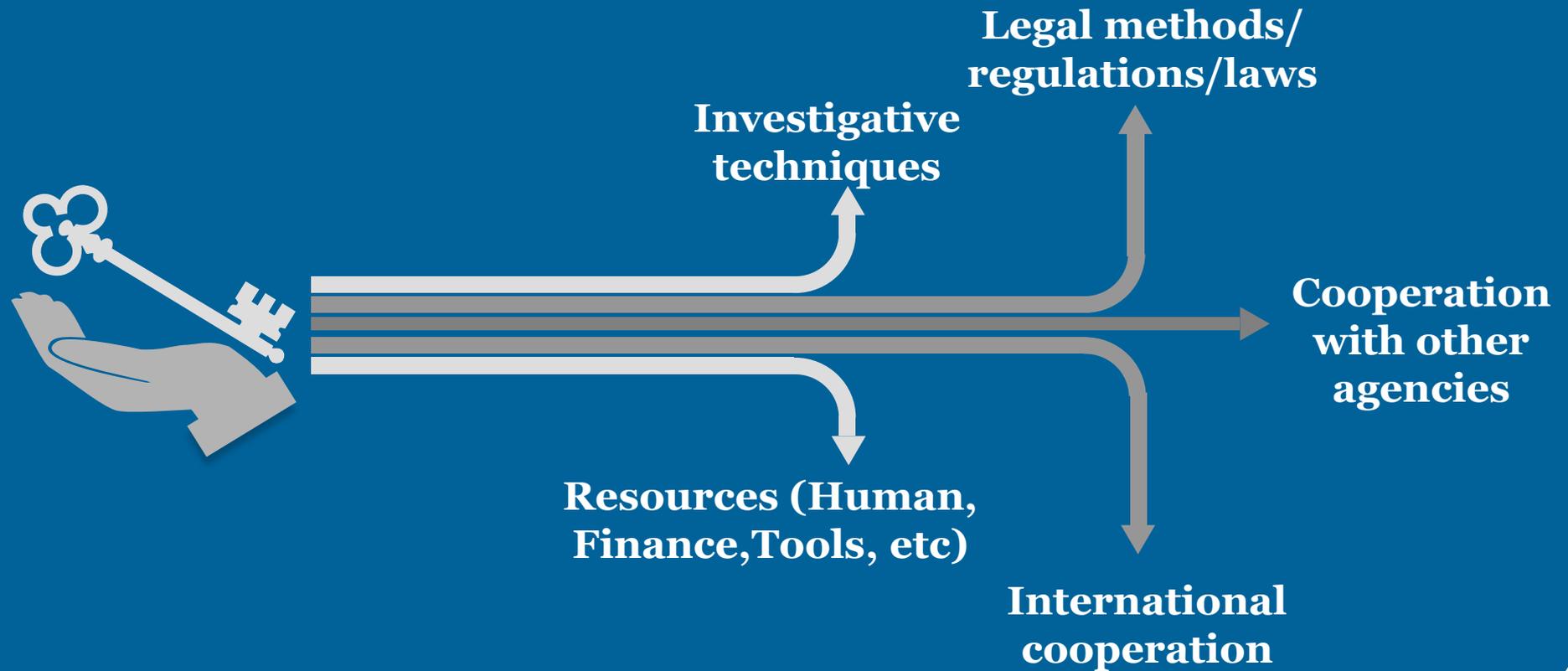
Asset Recovery

- Undertake asset recovery actions at the onset of any financial investigation
- Focus on evidence linking criminal acts to acquired assets
- Proper procedures should be followed when obtaining financial data and evidence
- Consistently pursue the need for provisional measures to seize/restrain assets

REMOVE ALL ASSETS LINKED TO CRIMINAL ACTS



Which tools are available?



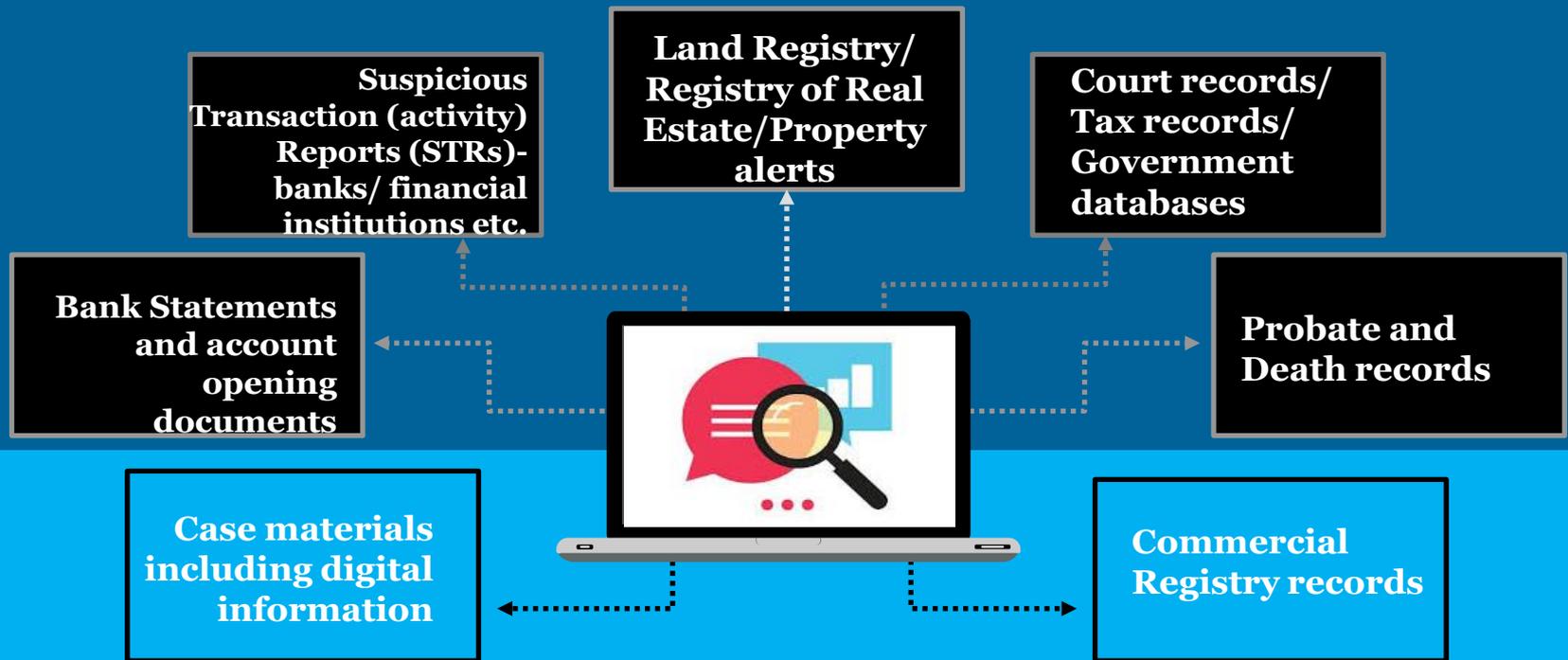


Profiling

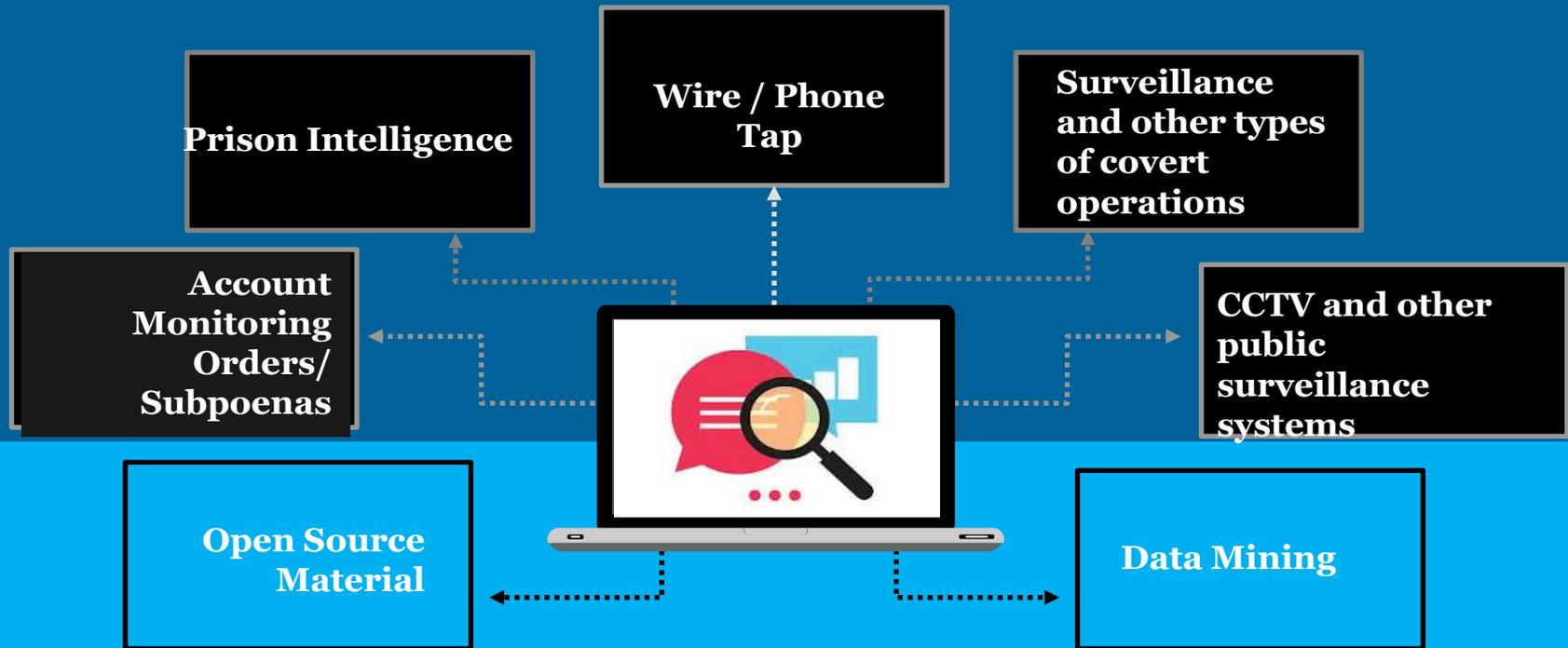
- *Collecting information from different sources to have an overall understanding of the target*
 - Individual Profiling
 - Company Profiling
 - Financial Profiling
 - Asset Profiling
 - Lifestyle Checks/Audit

REMOVE ALL ASSETS LINKED TO CRIMINAL ACTS

Sources of Information and Intelligence



Sources of Information and Intelligence





Asset Recovery – Guiding Principles

- Validate/Check at all times
(Never ever assume)
- Use all information
- Every contact leaves a trace
- Follow the money

TIMING IS EVERYTHING!



Individual Profiling

- A person's profile collates all the information under the key characteristics of physical description, personal particulars, former and present behaviours and relationships. It is similar to a resume, tailored to meet the needs of an investigation.
- The profiles are used to gain an appreciation of the history of the person of interest and how that person came to be where they are today.
- Persons related to and associated with the target (*person of interest*) are also profiled.



Individual Profiling

- Date and place of birth, passport and national ID's copies
- Names and birthdates of spouse/s, children, parents, siblings and other relatives
- Old and recent photographs
- Profession, jobs, affiliations
- Criminal records search
- Public sources search
- Real estate records
- Information on bank accounts, tax records etc.



Company Profiling

- Most criminals are using legitimate businesses and companies as fronts to disguise or facilitate criminal activities.
- A simple profile of the business or company can help the investigator understand how and why the criminal may use it.
- Company profiles look at the key characteristics of the business or company that may be relevant to an investigation



Financial Profiling

- *Involves obtaining information on the following:*
 - Bank account numbers, names, branches
 - Bank statements and balances (may include details of transactions)
 - Account opening details and signatories
 - Other relevant information required in the investigation



Financial Profiling

- *Involves obtaining information on the following:*
 - Telecoms – Mobile service providers
 - Credit Reference Bureau
 - Stock Market and FIUs
 - Tax Returns
 - Insurance Companies
 - Lifestyle – Credit cards, schools, collectibles
 - Real estate records, vehicles owned, used and driven
 - Others



Asset Profiling

- *Asset tracing of liquid, movable and immovable assets*
- Utilizes a range of techniques and information sources
- Asset types e.g. land, building, apartment, vehicles etc. – Location, Estimated Value (*depreciate/appreciate?*) Ownership Information, use and possession
- How assets were/are financed, history of ownership
- Financial information analysis and tracking money flows



Lifestyle Checks/Audit

- A study and analysis of a person's living standards to see if consistent with reported income.
- Key step in detecting corruption and other crimes possibly committed
- Lifestyle Check/Audit = Financial + Asset Profiling
- Wealth Declaration (Statement of Assets, Liabilities and Networth) for government officials

The Asset Recovery Process



PRACTICE and STRATEGY

THINGS TO REMEMBER

Best Practices

Understand that what works in other jurisdictions may not work in your jurisdiction

Terminologies

Same legal concept or procedure may have a different terminology in a different jurisdiction

Agencies/Authorities Concerned

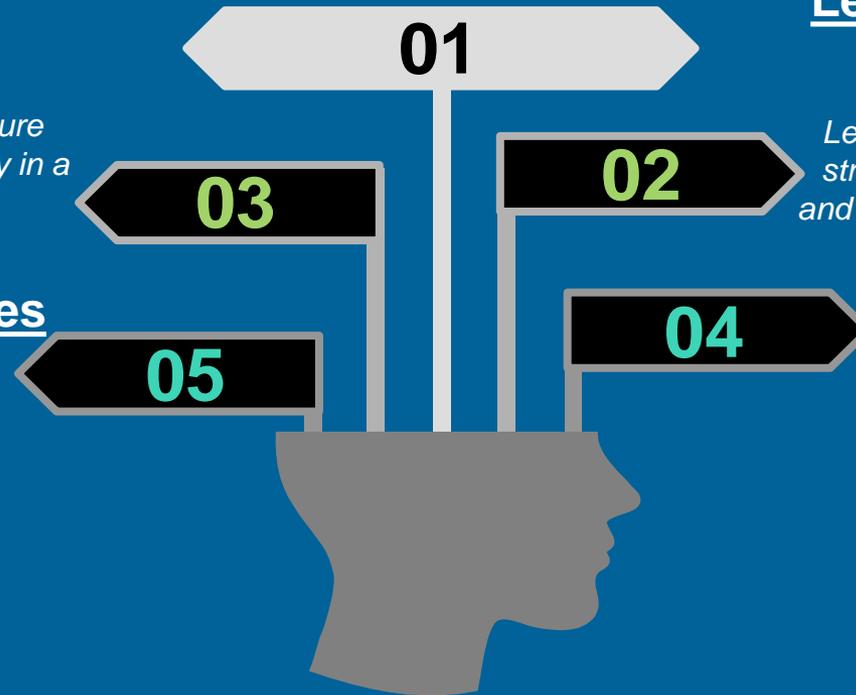
Jurisdictions may assign different roles and responsibilities to those involved in assets recovery

Legal and Procedural Frameworks

Legal systems, law enforcement structures, resources, legislation and procedures vary per jurisdiction

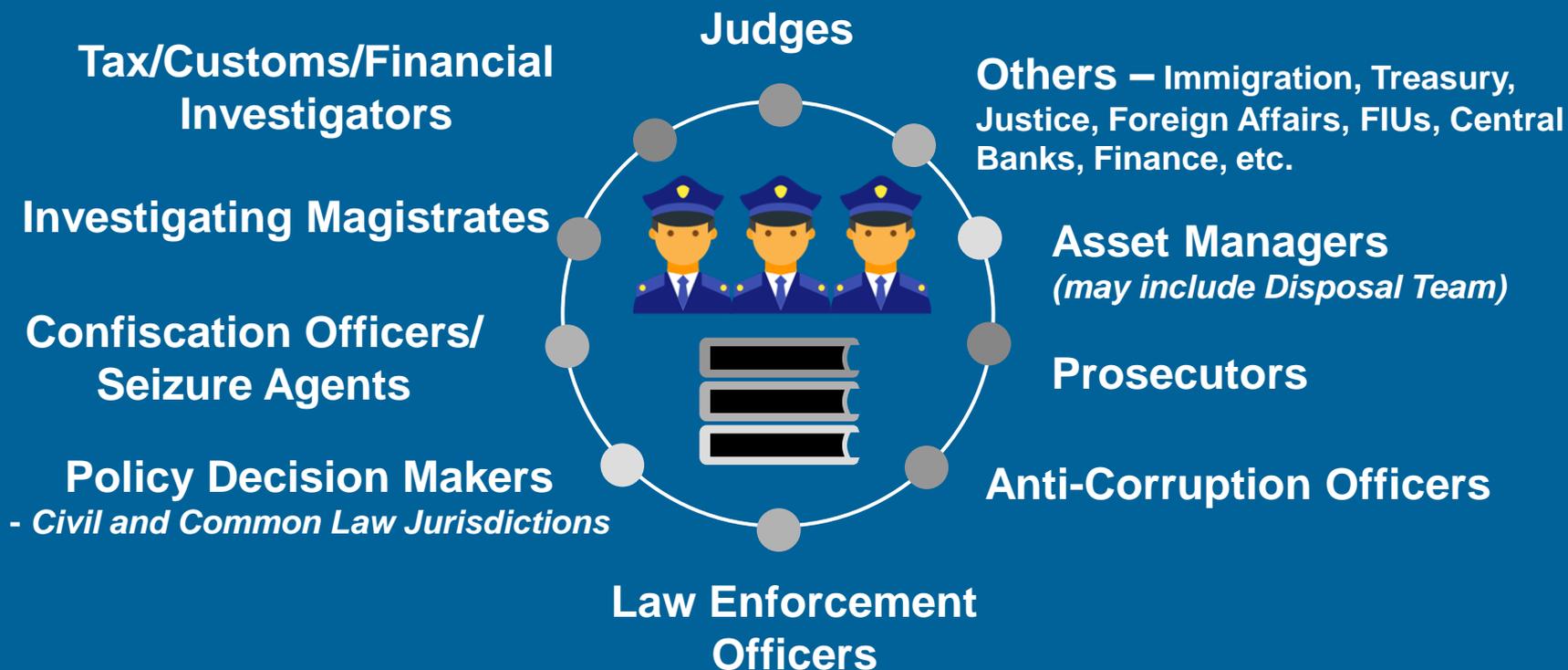
Investigative Techniques

Permitted in other jurisdictions may not be permitted in your jurisdiction or may have different procedural requirements



Source: Asset Recovery Handbook – A Guide to Practitioners by JP Brun, L. Gray, C. Scott and KM Stephenson

Stakeholders





Joint Task Forces

In some civil law jurisdictions, investigating magistrates may lead the investigation from beginning of the case until final adjudication. However, prosecutors may tend to focus on criminal conviction, not necessarily confiscation.

With the establishment of *Specialized Confiscation Units*, confiscation investigators and prosecutors develop the specialized skills needed to present evidence effectively to enforce confiscation laws. They will go farther in identifying, tracing and linking assets to criminal activities to recover the proceeds of crime.



Authorities may consider forming Joint Task Forces that comprise various agencies, law enforcement authorities and even private sectors groups who have an interest in the prosecution or recovery of assets or both.

Joint Task Forces may include representatives from departments of Tax, Customs, Justice, Foreign Affairs, Treasury, Immigration as well as participants from FIUs, regulatory authority, central authority, asset management authority and other stakeholders.



Joint Task Forces

Facilitate exchange of information and skills

Bring skills and expertise within their jurisdiction to the successful outcome of the case

Assist in discussions and reviews of latest development in the case

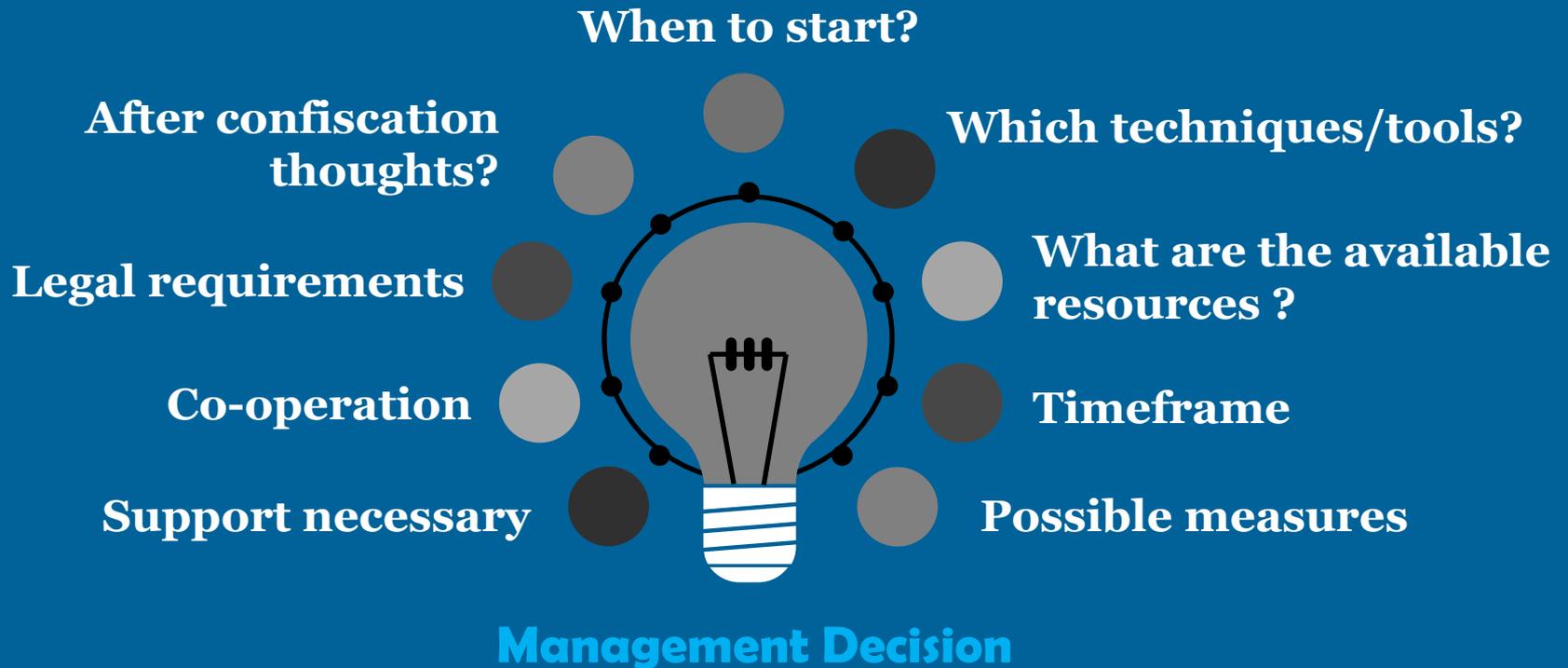
IMPORTANT:

Clarify the respective roles of team members and other law enforcement authorities to avoid confusion and rivalries among the agencies



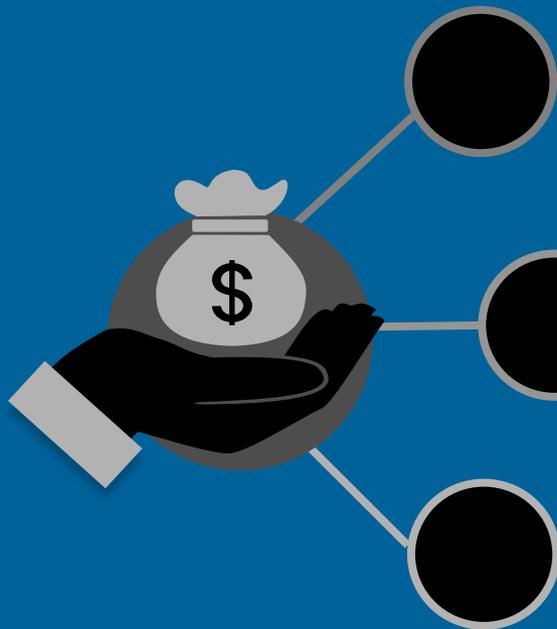


Asset Recovery – Case Management





Different Types of Procedures



Administrative

- In rem – action is against the property
- No judicial involvement

Civil Judicial

- In rem – action is against the property
- Complaint filed

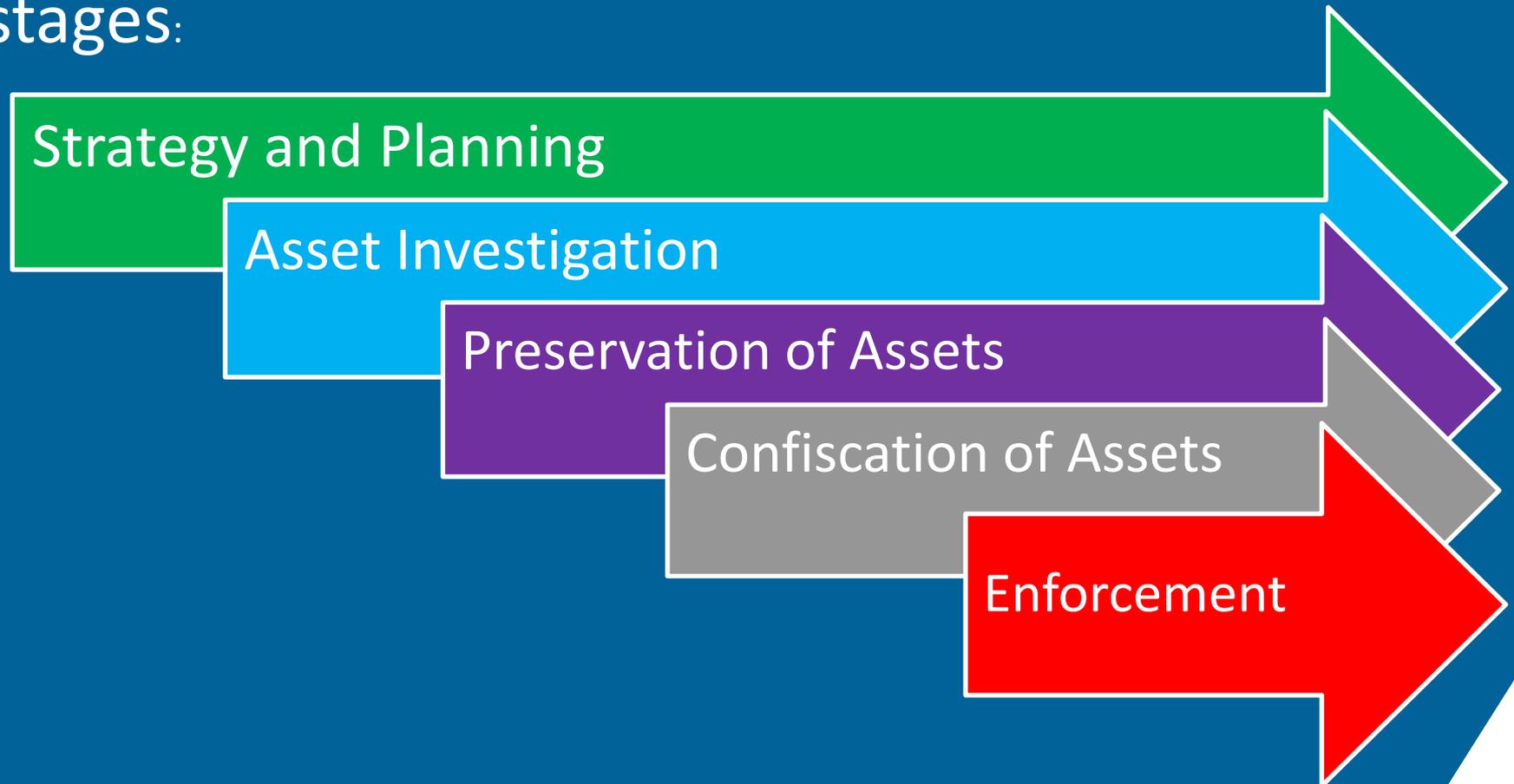
Criminal

- In personam – forfeiture is part of criminal prosecution
- Must have a criminal conviction on predicate offense and often a separate trial regarding the asset forfeiture
- In rem – forfeiture against property



Asset Recovery Investigation

Asset recovery can be broadly divided into five stages:





Preservation of Assets



Two main methods of preserving assets:

- Freezing Orders (also called Restraint Orders, Attachments or Injunctions)
- Seizure Powers





Ways to recover/proceeds from crime



Asset Forfeiture (Criminal)



Asset Forfeiture (Civil)



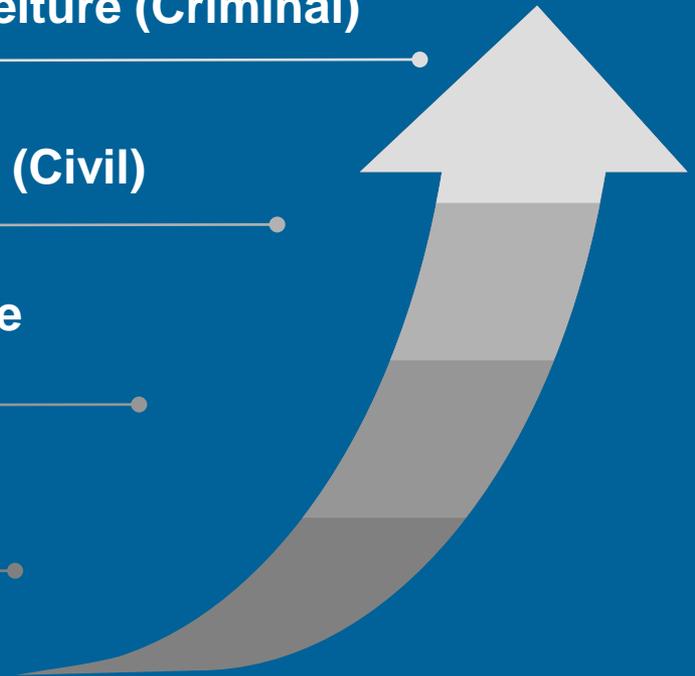
**Taxing Criminal Income
(person or company)**



Civil Claim for Damages



Bankruptcy Proceedings





Asset Forfeiture - Criminal



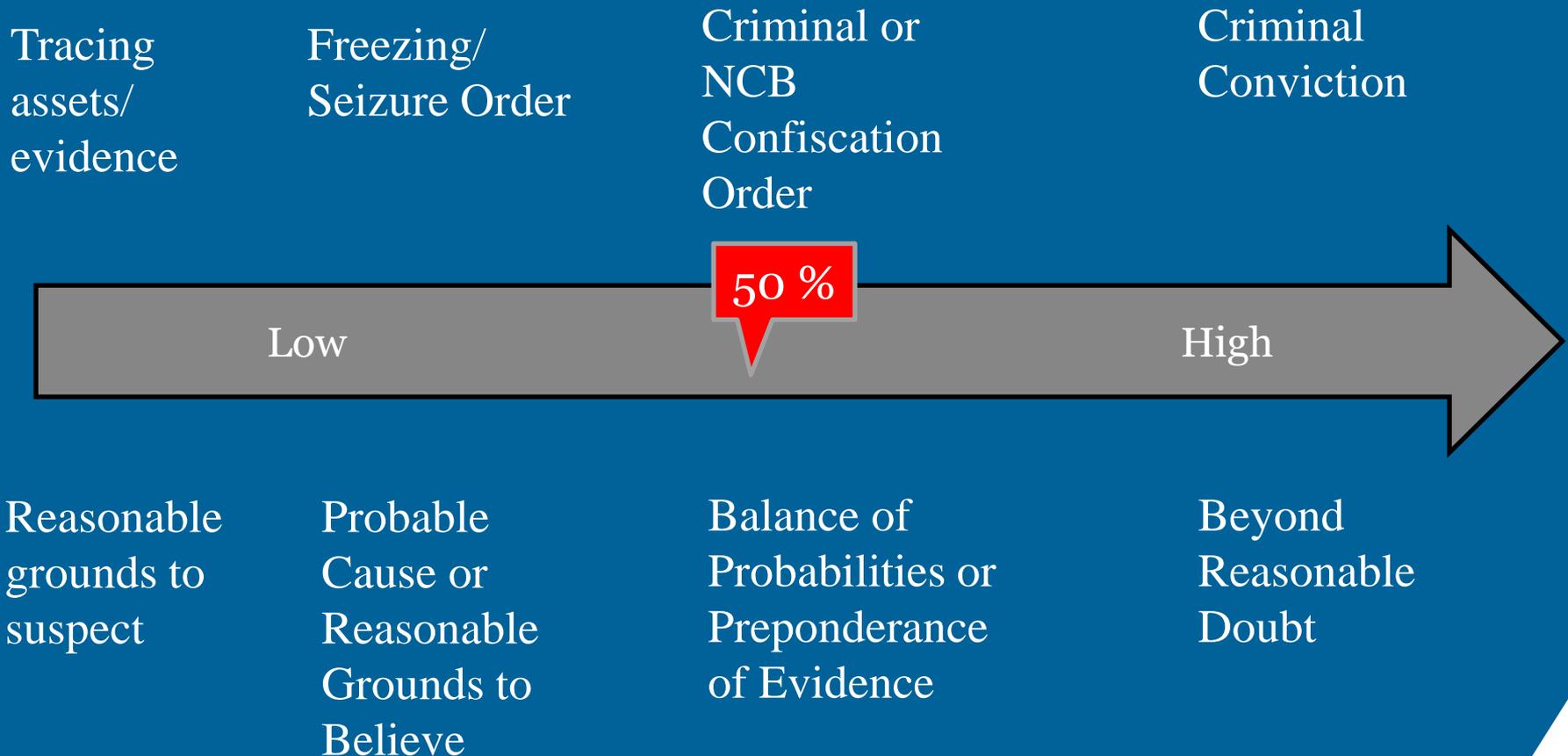
Imposed by court as part of the sentence for a crime

Must meet the standard of proof in your jurisdiction, that property was a proceed of or is significantly connected to illegal activity





Standards/Quantum of Proof





Taxing Criminal Income



With or without prior notification (depends on criminal investigation/co-operation/etc)

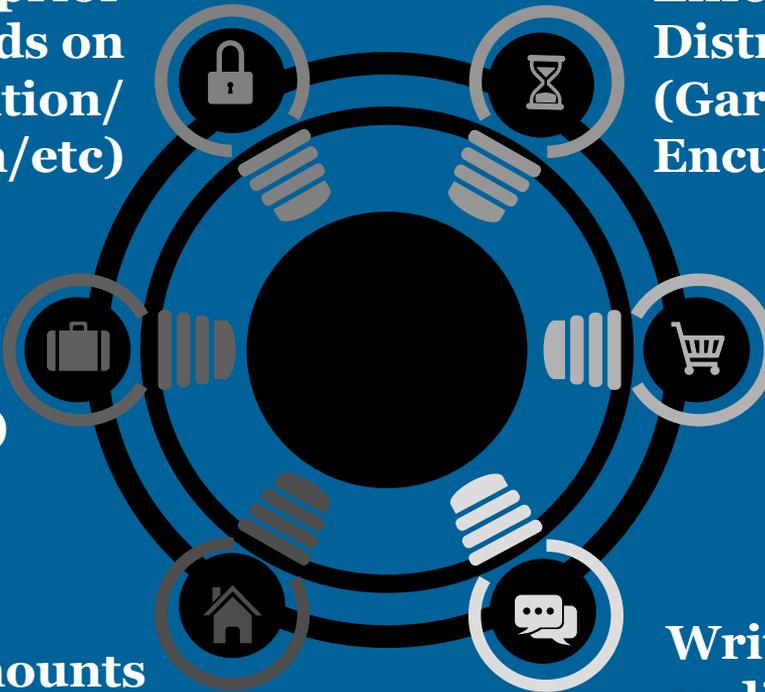
Enforcement by Distraint/Levy (Garnishment/Lien/Encumbrance)

Any taxes possible (income/VAT/GST/Excise/transfer tax etc)

Some tax administrations have their own collecting units

Assessment of tax amounts

Write tax audit/investigation reports





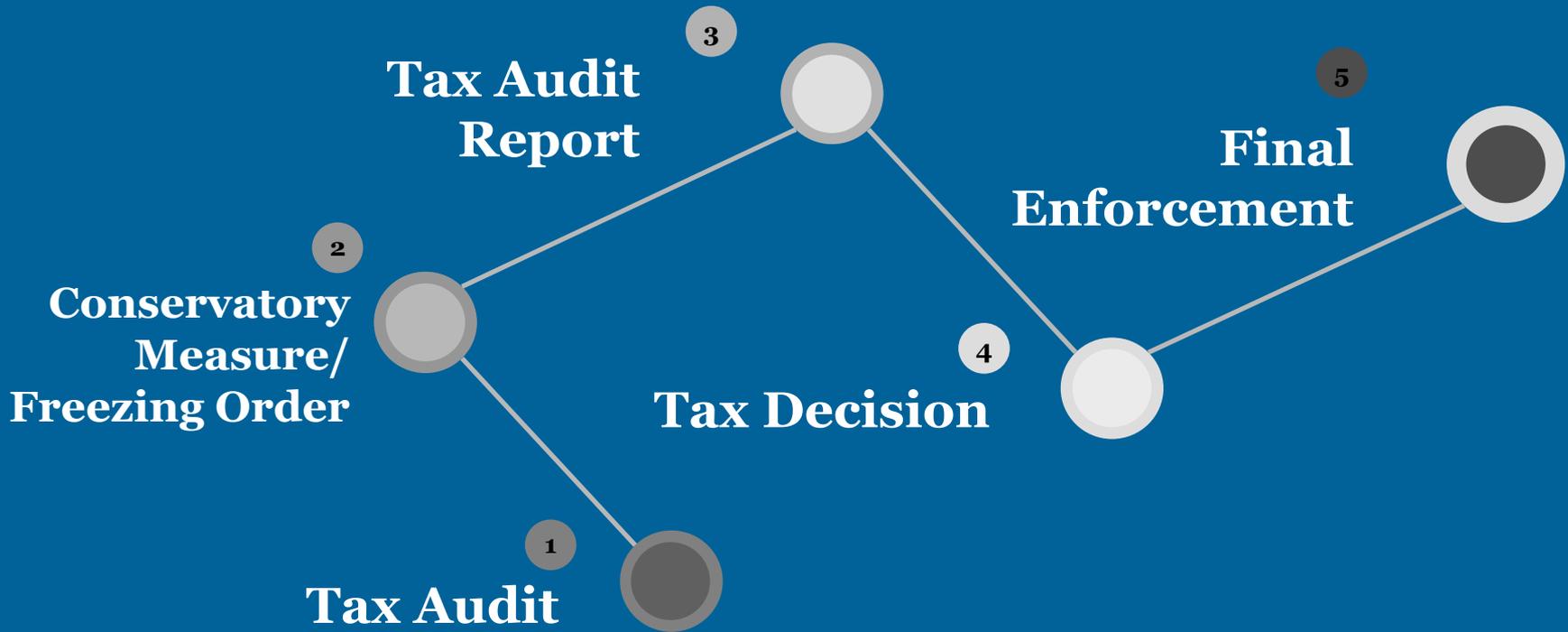
Legal Grounds



Company has submitted fraudulent tax reports? - Identify the Target/POI

- Which individual(s) is responsible for this according to rules in your jurisdiction?**
- This/these person(s) may be liable**
➤ **Problem: nominee/ straw man?**
- Also his advisors/accessories**
- More than one: Joint liability**

Taxing Criminal Income





Civil Claim for Damages and Bankruptcy



- ❖ **Your jurisdiction may have provisions to let the government sue individuals for damages**



- ❖ **Company is bankrupt**
 - **No money to pay the taxes?**
 - **Liability in negligence**

**Different types –
culpable/willful**



STRATEGY

- Criminal investigation on tax/financial fraud in line with civil recovery actions to preserve the assets
- Review your strategy from time to time if there are new information/leads
- Remember: *Timing is everything* so secure the assets as early as possible
- Civil case to freeze the assets
- Civil freezing petition to court depending on your quantum of proof



Enforcement and Conversion of Assets to Cash

- Selling of seized/frozen assets
 - Often difficult – professional knowledge
 - Objective is to get the highest possible price
 - Admin of confiscated property (Real estate, cars, animals, arts, companies, etc.)
- Dividing the outcome between creditors
 - Agencies get a share?
 - Need to share with other jurisdictions?



Asset managers must have the skills, resources and legal authority to ...

- preserve the security and value of assets pending confiscation;
- hire contractors with specialized skills to accomplish management tasks;
- liquidate assets after confiscation for a fair price; and
- following payment of all necessary expenses, distribute the proceeds in accordance with the applicable legislation.





Authorities should seek to fill the needed expertise in other ways:

- ✓ Creation of a Separate Specialized Asset Management Office (AMO);
- ✓ Creation of an Asset Management Unit within an Existing Agency; and
- ✓ Outsourcing Asset Management





Asset Recovery Fundamentals

Key Questions:

- **Who** – person/s, company involved in the commission of crime?
- **What** - damage of the offense (what was taken or what proceeds of crime were generated)?
- **When** - did the offense take place?





Asset Recovery Fundamentals

Key Questions:

- **Where** – did the offense take place? Where were the proceeds of crime transferred to, and where are they located now?
- **Why** – did the perpetrators commit the offense? (motive)
- **How** – was the offense committed?
proceeds of crime generated/
transferred





CRIMES

MONEY LAUNDERING
TERRORIST FINANCING
BRIBERY/CORRUPTION
TAX EVASION/FRAUD
FINANCIAL CRIMES
PROCEEDS OF CRIME –
DIRTY MONEY
ETC

INITIATIVES TO DETER

AML
CTF
ANTI-CORRUPTION
TAXING ILLEGAL INCOME
(FATF) – KYC/STRs/CDD
ASSETS RECOVERY

ETC



Why focus on proceeds of crime?



• **Income for the government**

• **Future prevention of crime**

• **Taking the money of the criminals upsets them/disrupts actual criminal activities and**

Blocks further crime!



Any Questions????

