



**OECD International Academy for Tax Crime Investigation**

*Asset Recovery: Freezing and Seizing Assets*



# INTERNATIONAL ASSET FREEZING

International Asset Recovery

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# What are freezing orders?

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“Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item...”

UN Convention Against Corruption (2003, New York), Art. 31(2)

UN Convention against Transnational Organised Crime (2000, Palermo), Art. 12(2)

“Freezing” or “seizure” shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority”

UN Convention Against Corruption (2003, New York), Art. 2(f)

UN Convention against Transnational Organised Crime (2000, Palermo), Art. 2(f)



## How do we freeze assets?

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- Court orders to prevent the dissipation of assets belonging to a particular individual
- Provisional measure
- May involve seizure or placing the asset under the control of a receiver/curator.



# Freezing Orders: Common Legal Requirements

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- Proceedings have been instituted or are about to be instituted
- A risk that the assets will not be available ('risk of dissipation')
- The assets are potentially subject to confiscation
- Undertaking in damages



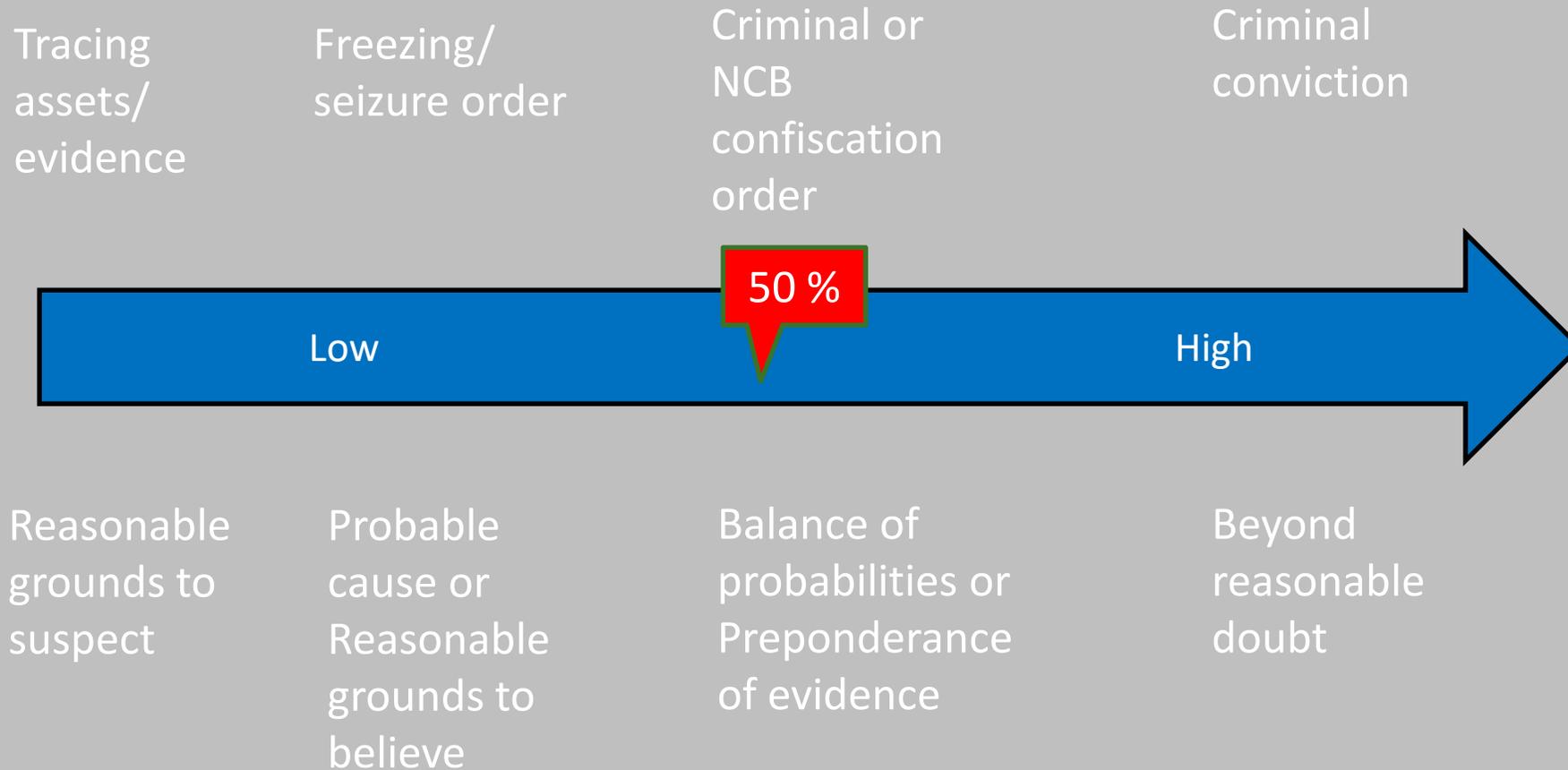
## A quick poll...

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What is the standard to which the requirements for a freezing order must be proved?



# Standards of Proof





# Freezing Orders: Common Procedural Requirements

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Authorised by a judge or investigating magistrate in most jurisdictions.

Jurisdictions generally fall into one of two groups (occasionally they have traits of both):

## Civil Law Jurisdictions

- Summary of relevant facts demonstrated by documents or evidence contained in the case file before the judicial authority





# Freezing Orders: Common Procedural Requirements

## Common Law Jurisdictions

- A draft order
- A witness statement or affidavit in support of the application setting out:
  - the essential evidence to meet the requirements
  - consent to use information obtained as a result of mutual legal assistance from foreign jurisdictions
  - hearsay is generally permitted
  - supporting documents annexed
  - obligation to ensure complete and accurate disclosure

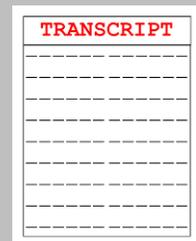




# Freezing Orders: Common Procedural Requirements

## Both

- Applications may be made in private, without notice to the defendant (“ex parte”)
- Orders may have time limit or may provide the defendant with an opportunity to have the order discharged on a set date (“a return date”)
- Often require that a record or transcript of a hearing in private is also served
- Service of the order on interested parties with an interest in the assets covered by the orders





## A quick poll...

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### What type of system do you have?

When applications are made for a freezing order in your country, what type of documentation must be provided to the court?



# Freezing Orders: Scope

- Normally limited to assets controlled, held or gifted by the defendant to include:
  - Beneficial ownership of Property
  - Property held by corporate entities owned or controlled by the defendant
  - Property gifted to associate, company or family member
- Piercing/Lifting the corporate veil may be required
- Definition of ownership may change between different jurisdictions





# Freezing Orders: Exceptions

Common exceptions:

- Living expenses
- Legal expenses (including/excluding those arising from related criminal or confiscation proceedings)
- Bona fide debts
- Business expenses



Often discretionary and dependant on non-availability of other assets which could be used for this purpose



A quick poll...

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Which exceptions can be made to freezing orders in your jurisdiction?



# Freezing Orders: Measures to increase effectiveness

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## Types of Ancillary Orders

- Disclosure of assets (and/or their location)
- Repatriation of assets
- Examination under oath
- Production of documents by interested parties in relation to the defendant's assets

## Limits to Ancillary Orders

- Use of evidence obtained as a result
- Enforcement where there is a lack of evidence





# Freezing Orders: Interested Parties

- Typically permitted to challenge orders
- May be entitled to compensation or damages if confiscation is unsuccessful
- May be treated as a creditor and paid from the proceeds when the assets are realised
- Some jurisdictions may require them to take part in confiscation proceedings





A quick poll...

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Can interested parties intervene in freezing order proceedings?



## International Standards

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“The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.”

UN Convention Against Corruption (2003, New York), Art. 31(9)

UN Convention against Transnational Organised Crime (2000, Palermo), Art. 12(8)

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Everyone has the right to recognition everywhere as a person before the law.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”

Universal Declaration of Human Rights (1948, Paris), Arts. 5 - 8



ANY QUESTIONS?