



ASSET RECOVERY

in Financial Investigations

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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



Topic Outline

1. Asset Categories and Types
2. Asset Recovery – Case Management, Plan and Process
3. Practice and Strategies
4. Practical Exercises/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



Practical Exercise

- Give examples of different asset types
 1. Cash and Cash Equivalents
 2. Investments
 3. Real Properties/Real Estate
 4. Other Properties/Other Assets



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

1. **Convertibility** – how to convert to cash easily
2. **Physical Existence** – tangible vs intangible
3. **Usage** – business operations usage/purpose or personal use



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



Practical Exercise

- Select asset type per group and discuss with group members the assets identified per category to focus on:
 - Evidence (proof of ownership)
 - How to trace and locate this asset type
 - Source/s of information and intelligence
 - **Possibilities** (what kind of information can you get, what measures are possible)
 - Anything else that could be important...



Asset Categories and Types



01



LIQUID ASSETS

Cash and cash equivalents

Investments (stocks, bonds, mutual funds, index funds, equity funds, etc.)

**Real Estate
Vehicles/Transportation
Equipment
Intangibles
Collectibles etc.**

NON-LIQUID ASSETS



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What is Asset Recovery?



**involves multiple
jurisdiction**

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



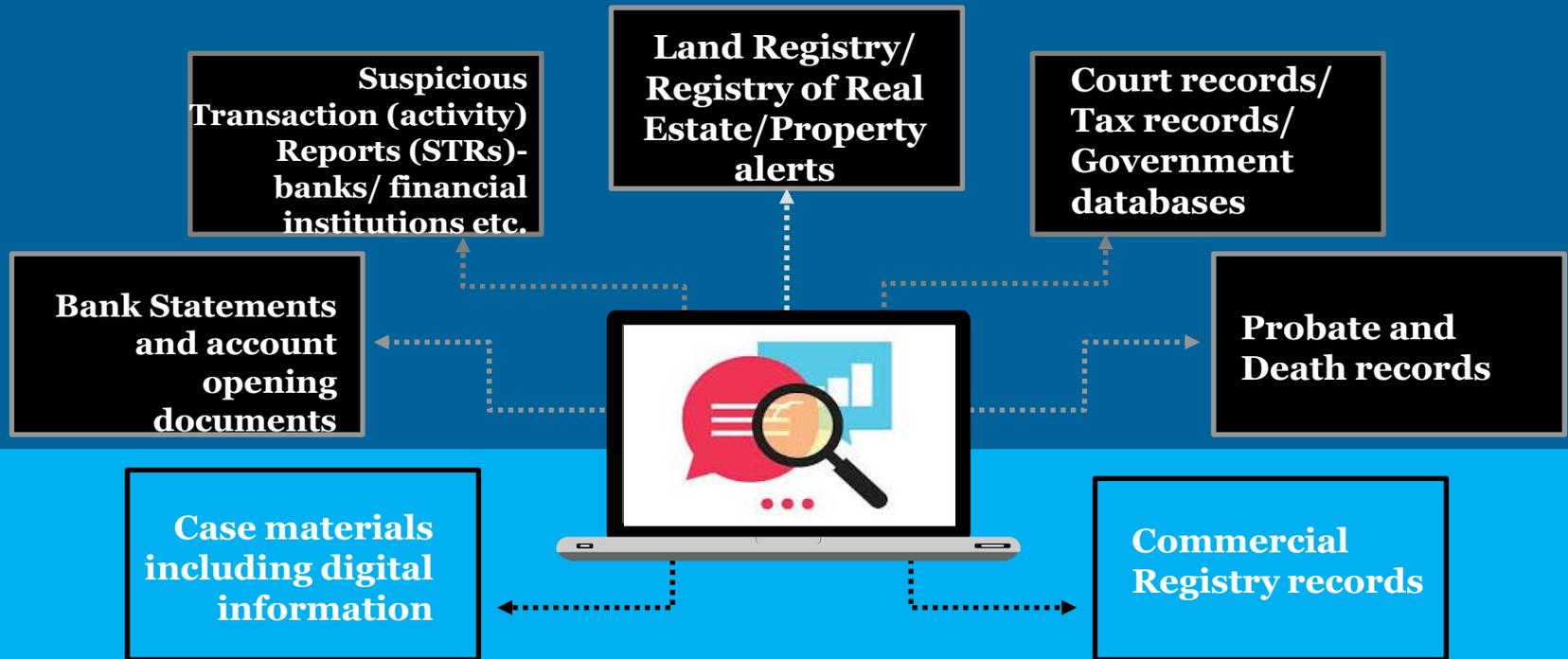
**process of tracing, freezing,
confiscating, and returning
stolen assets to their
country of origin**

**complex and lengthy
one**

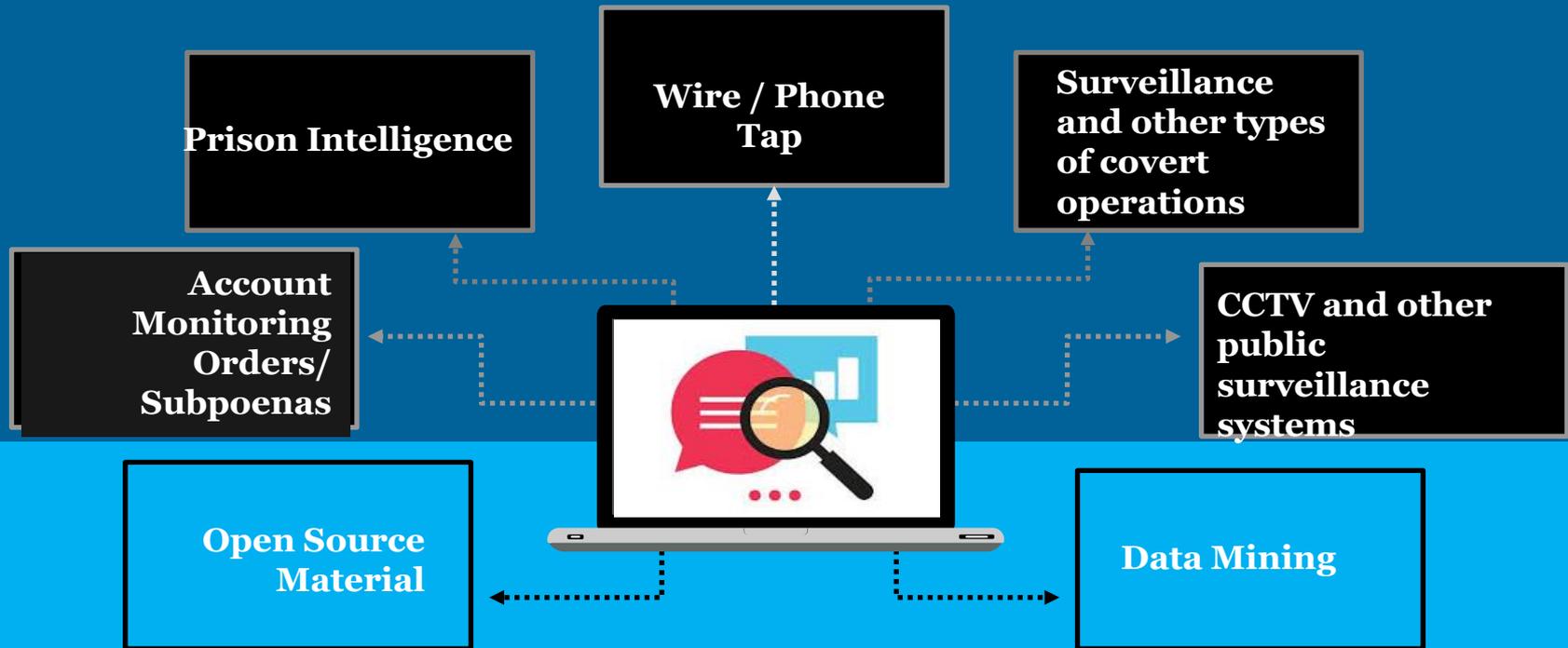


TIMING IS EVERYTHING!

Sources of Information and Intelligence



Sources of Information and Intelligence



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

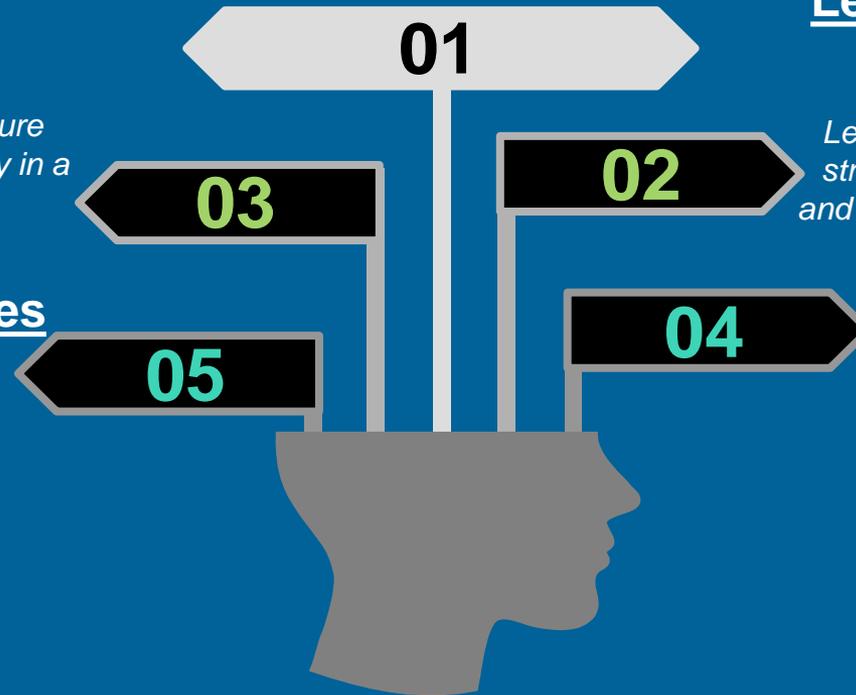
Jurisdictions may assign different roles and responsibilities to those involved in assets recovery

Legal and Procedural Frameworks

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

Investigative Techniques

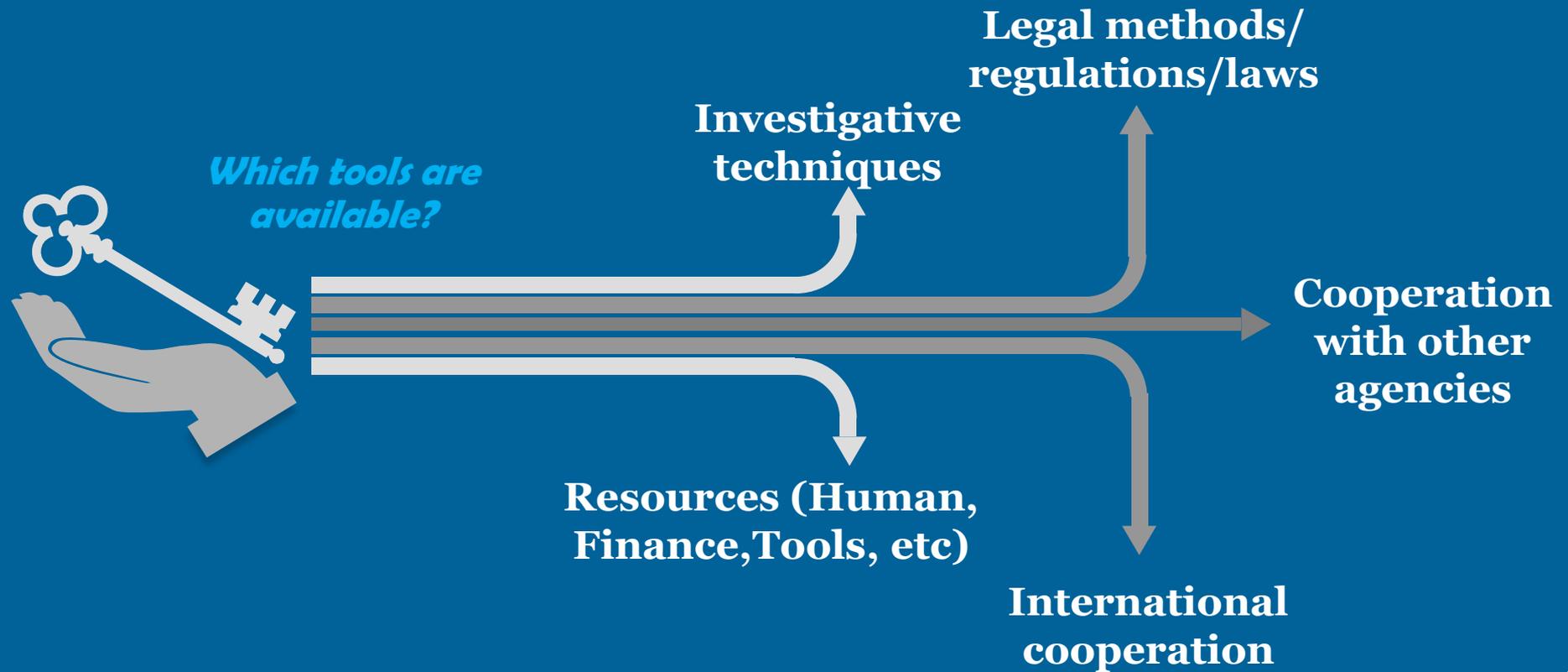
Permitted in other jurisdictions may not be permitted in your jurisdiction or may have different procedural requirements



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



Case Management

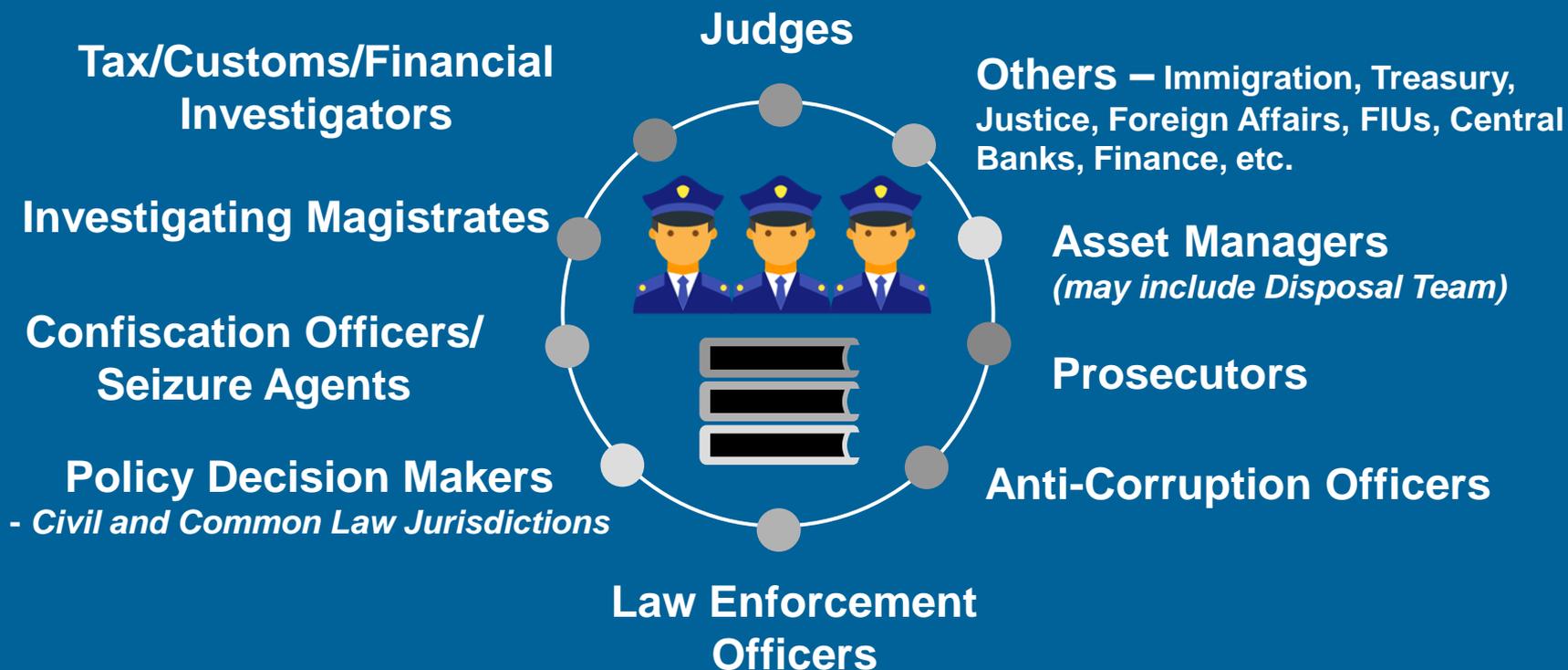




Breakout Session

- In your Group, create a Joint Task Force composed of members from various offices/agencies for successful asset recovery actions to remove all assets linked to criminal acts.
- Identify the roles of each member of the Team and name your Task Force.
- Choose a spokesperson to present.

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



Case Management

When you lead...

Be
accountable
for results



Set
directions



Allocate
Resources



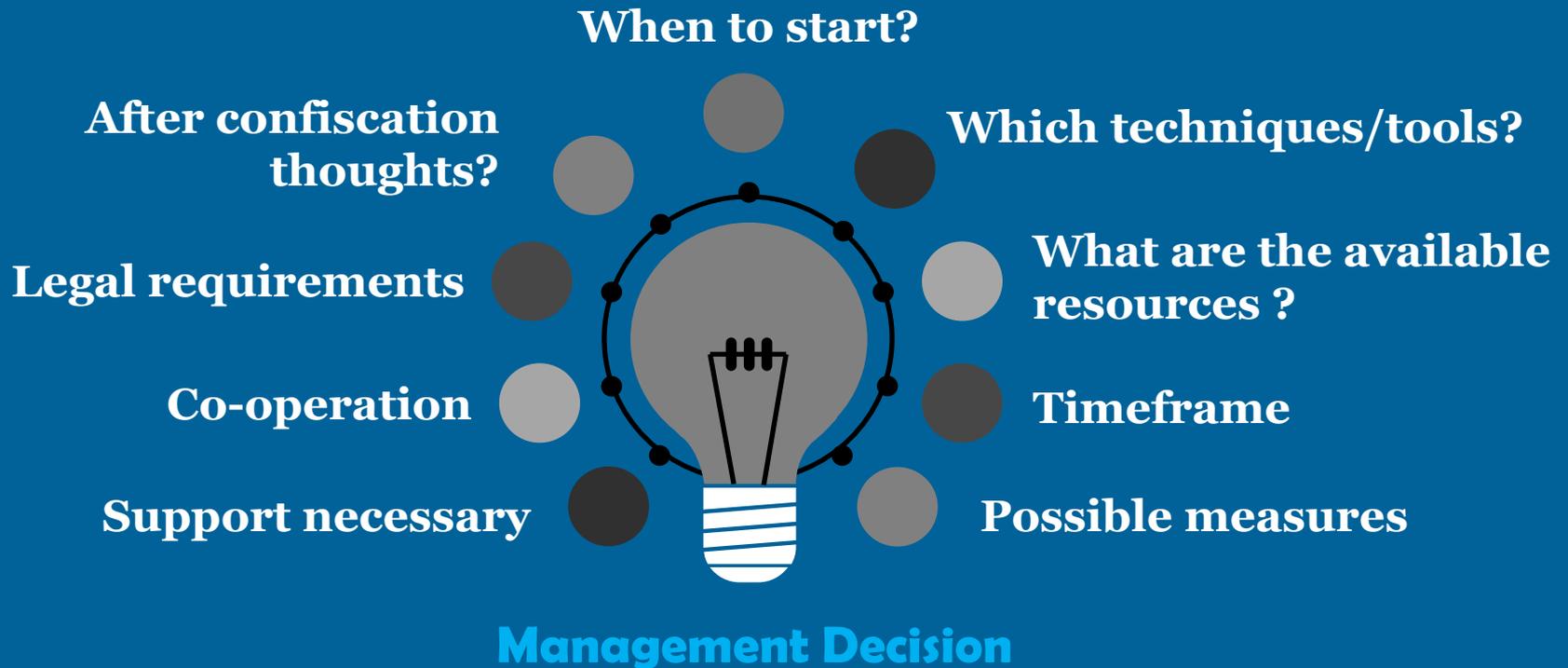
Inspire
Actions



TIMING IS EVERYTHING!

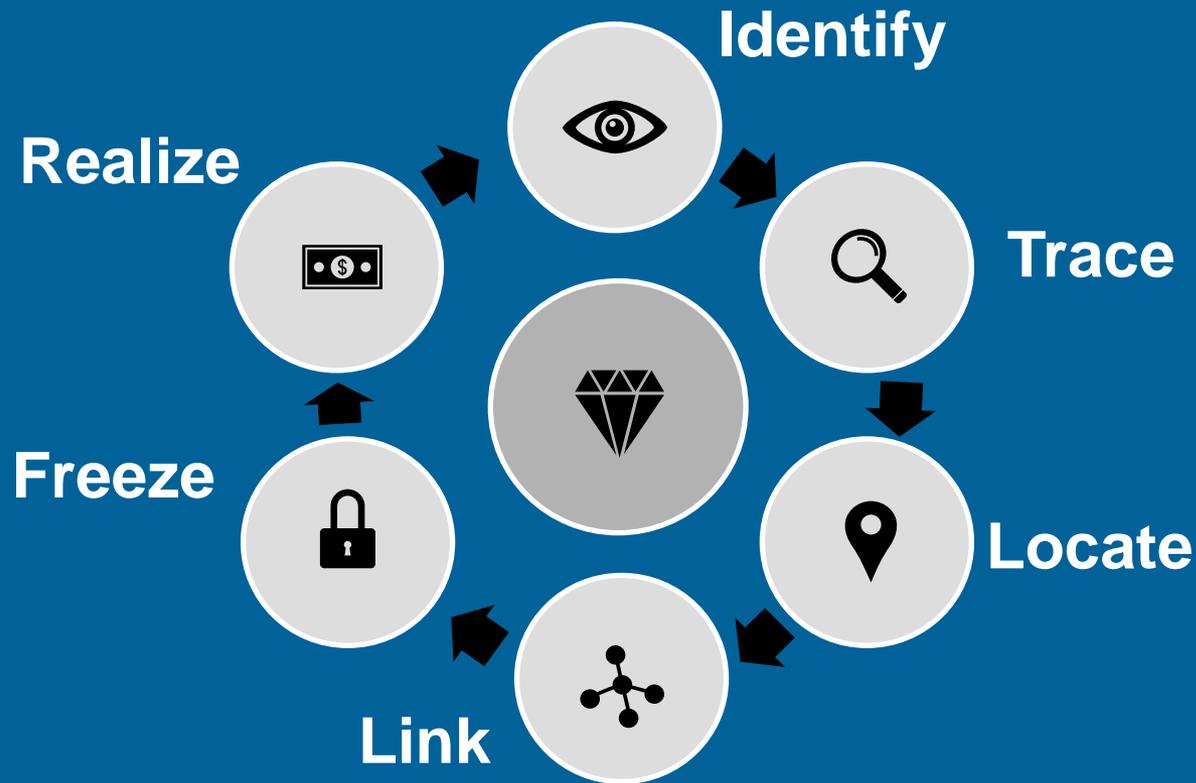


Asset Recovery – Case Management





The Asset Recovery Plan



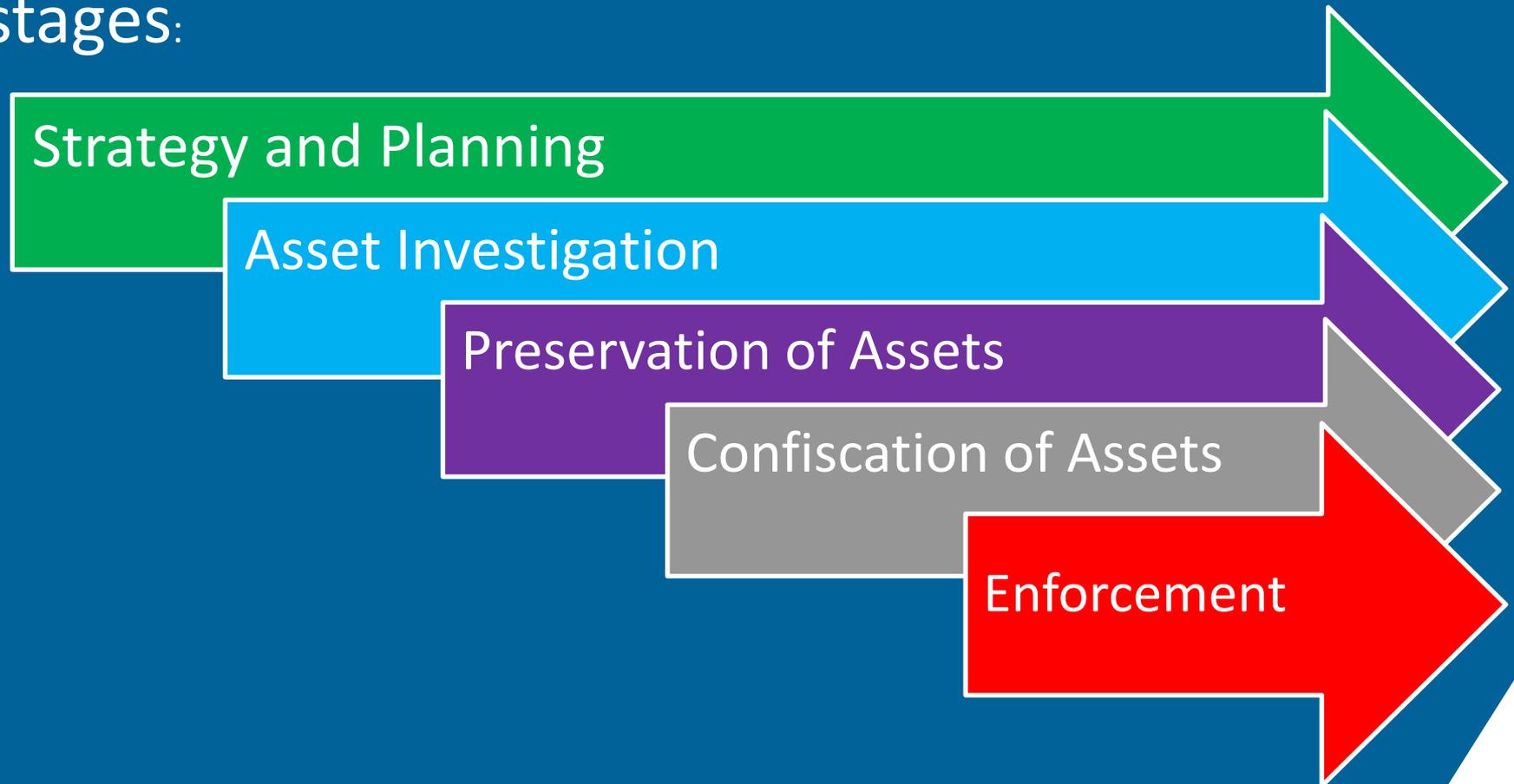
The Asset Recovery Process





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





PURPOSE

RESTRAINT/FREEZING ORDER

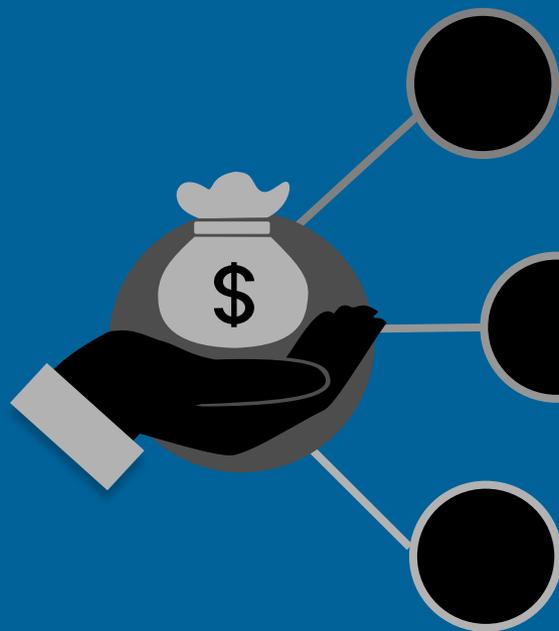
- *To ensure that assets are preserved which may be subsequently be required to satisfy a Confiscation/Forfeiture Order.*

CONFISCATION/FORFEITURE ORDER

- *To deprive the criminals of the benefits they have gained from criminal conduct.*



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



Ways to recover/proceeds from crime



Asset Forfeiture (Criminal)



Asset Forfeiture (Civil)



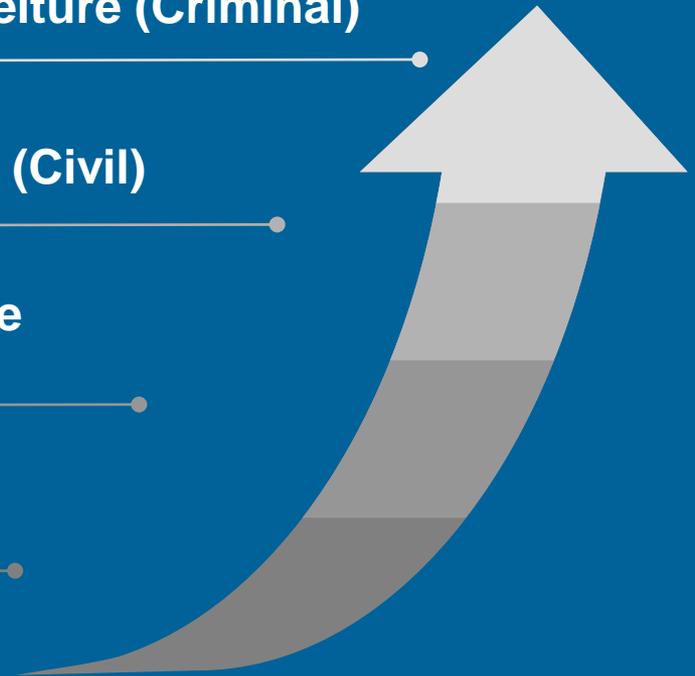
**Taxing Criminal Income
(person or company)**



Civil Claim for Damages



Bankruptcy Proceedings





Asset Forfeiture - Criminal



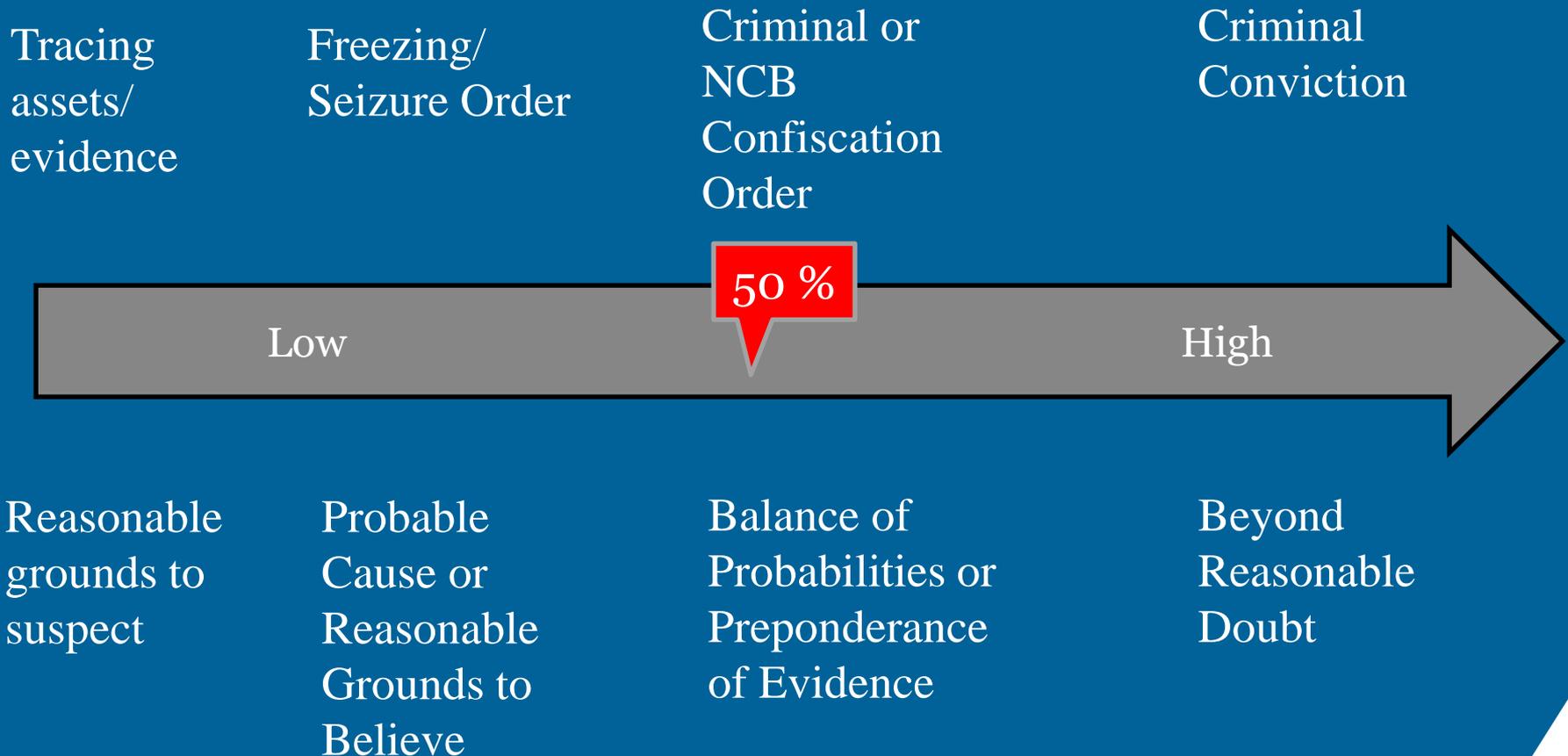
Imposed by court as part of the sentence for a crime

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





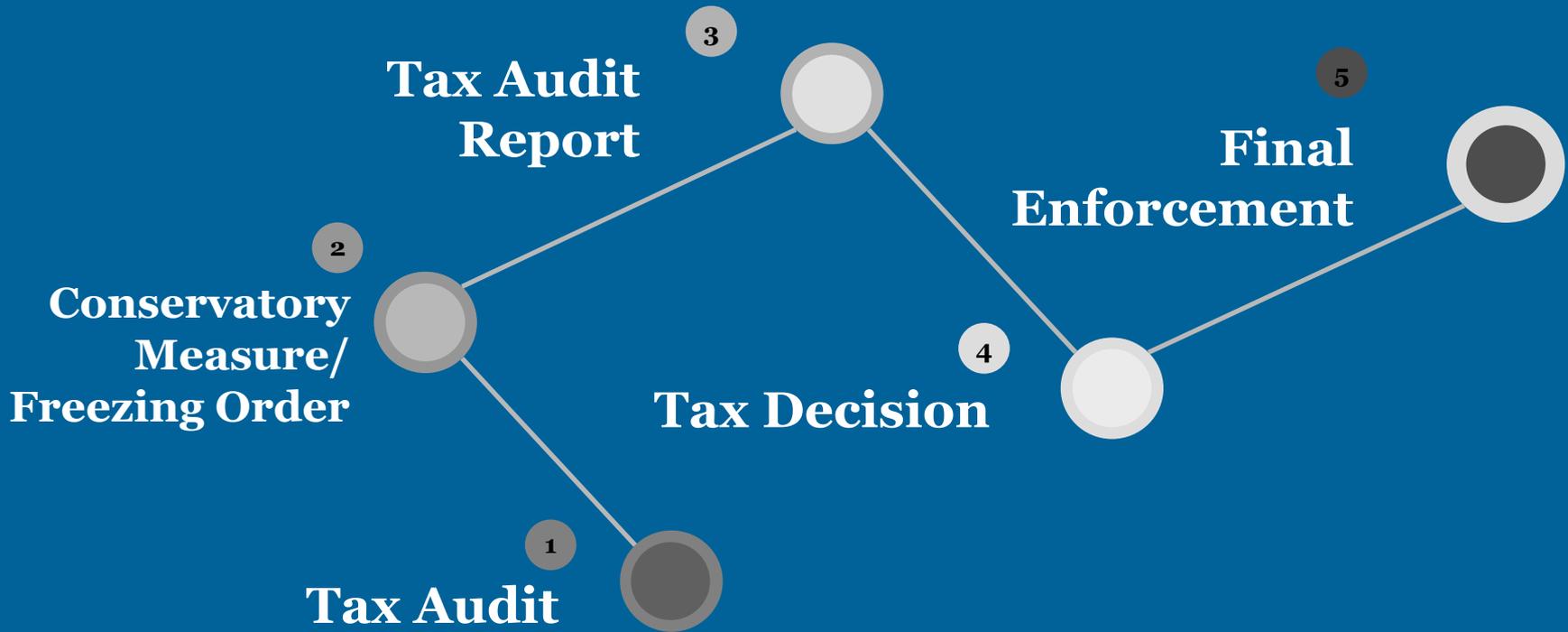
Legal Grounds



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 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

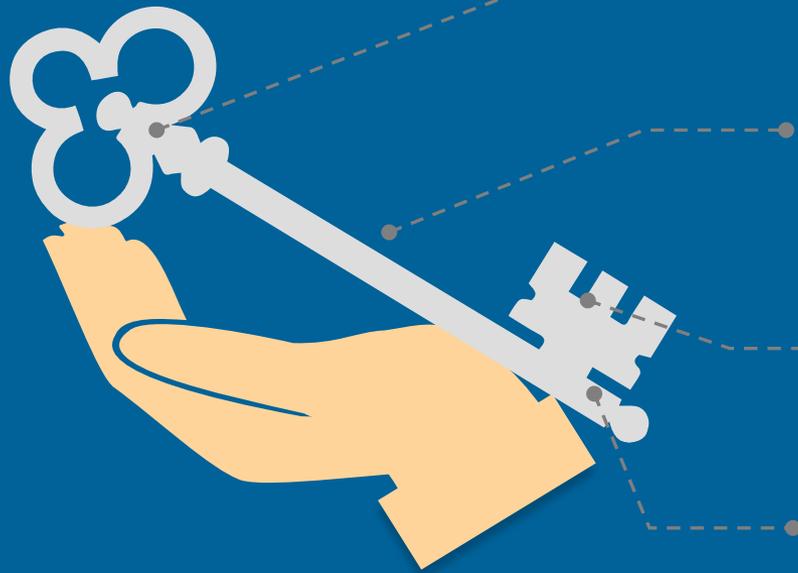


Enforcement and Conversion of Assets to Cash

- 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?



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!



Why focus on proceeds of crime?

The main **motive** for cross-border organized crime is **FINANCIAL GAIN**.

As a consequence, competent authorities should be given the means to trace, freeze, seize, manage and confiscate/forfeit the proceeds of crime.

However, the effective prevention of and fight against organized crimes should be achieved by **neutralizing the proceeds of crime** and these should be extended to any property deriving from activities of a criminal nature.



Any Questions????

