



ASSET RECOVERY IN FINANCIAL INVESTIGATIONS

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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.



Asset Categories and Types



01



LIQUID ASSETS

Cash and cash equivalents

Investments

Real Properties

Personal Properties

NON-LIQUID ASSETS



02



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

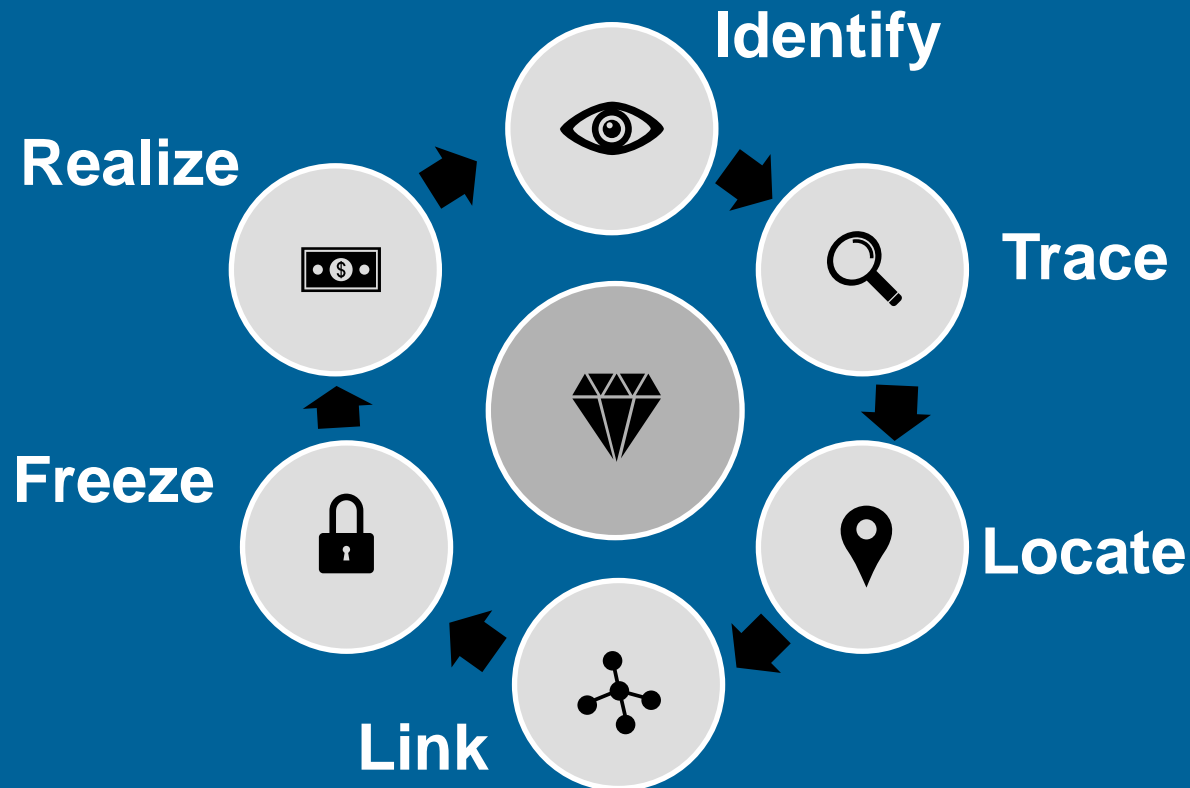
complex and lengthy
one



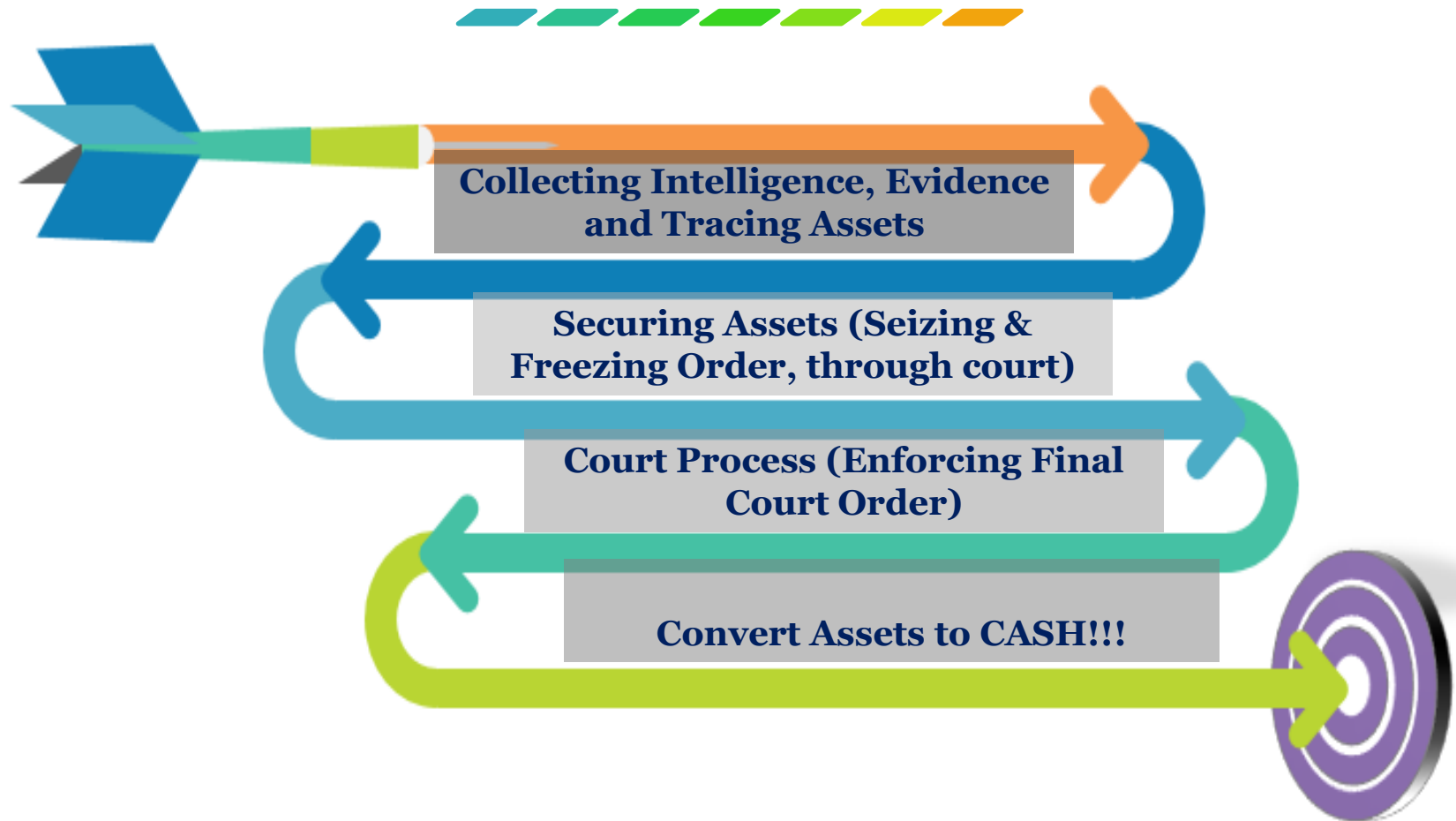
TIMING IS EVERYTHING!



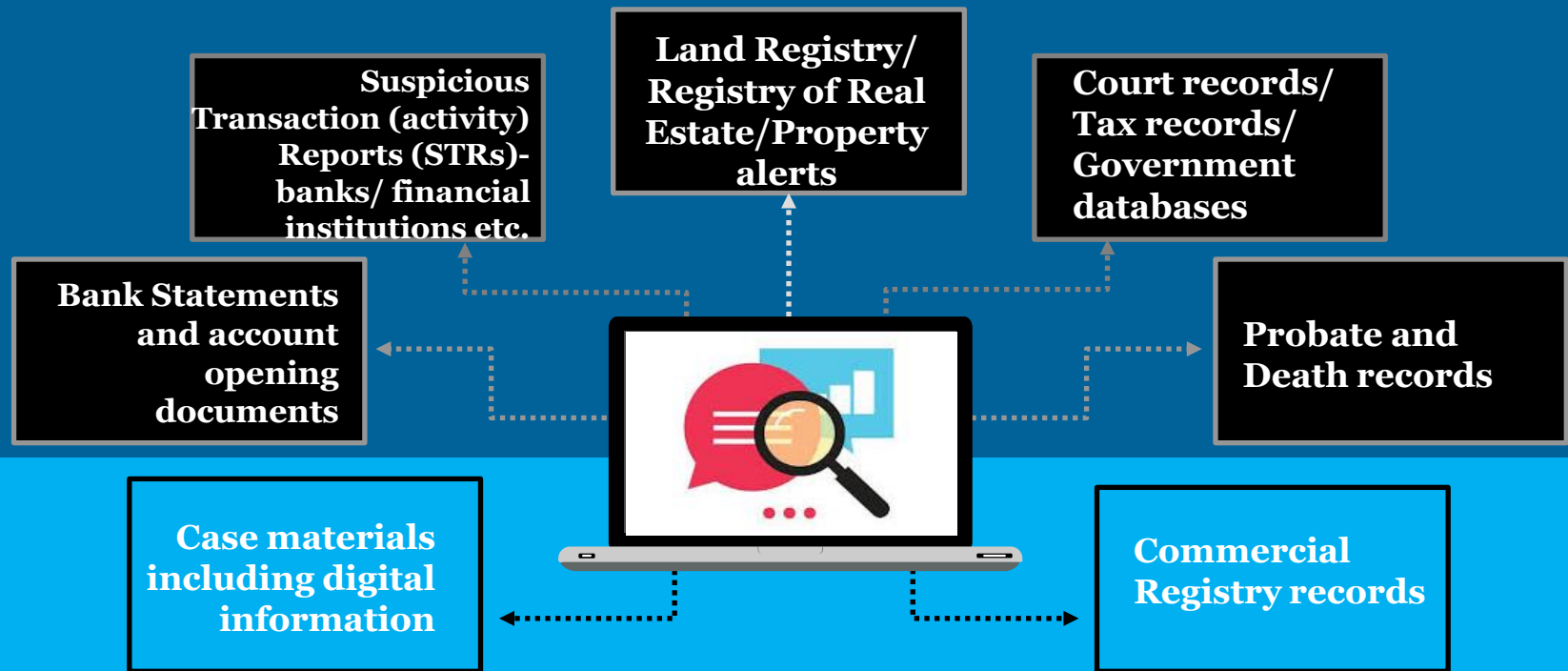
The Asset Recovery Plan



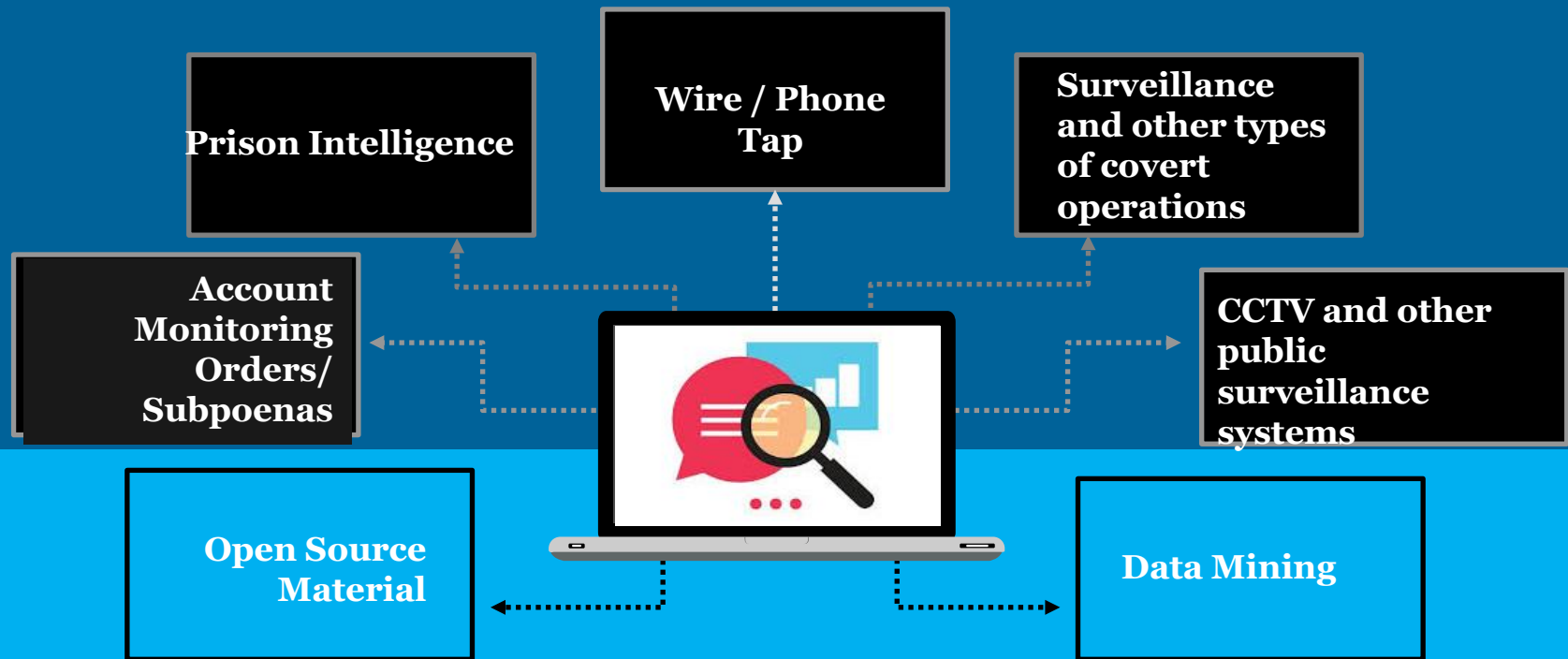
The Asset Recovery Process



Sources of Information and Intelligence



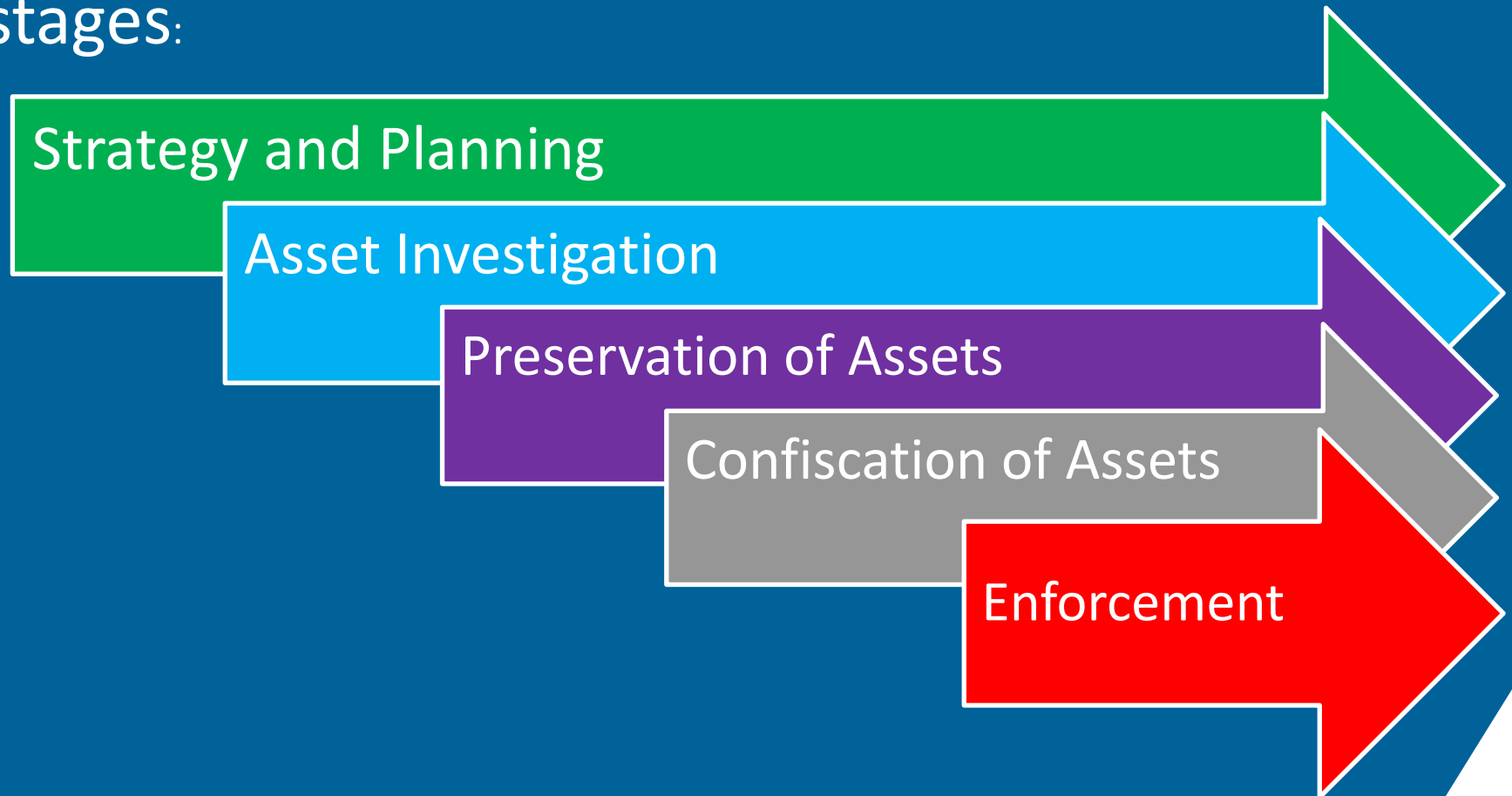
Sources of Information and Intelligence





Asset Recovery Investigation

Asset recovery can be broadly divided into five stages:





Asset Recovery - Case Management

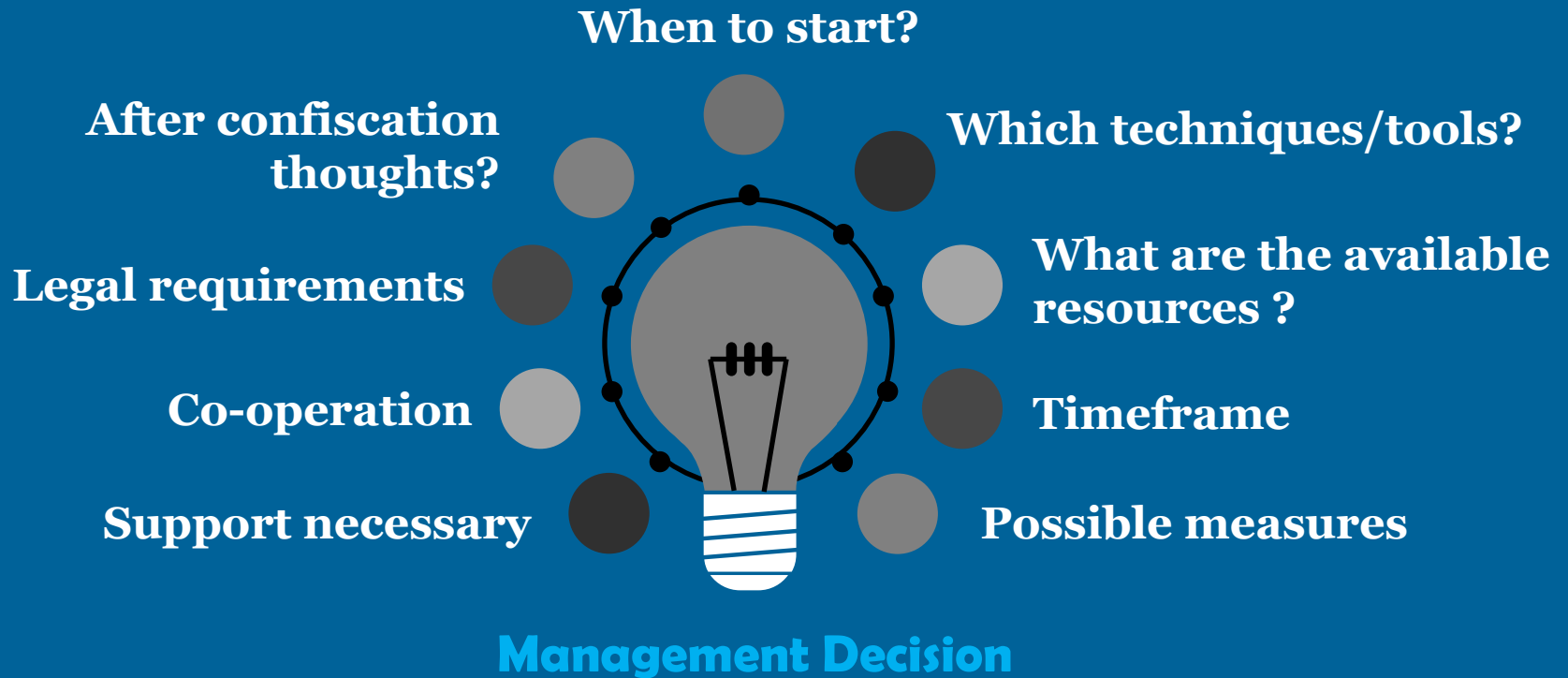
Guiding Principles

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

TIMING IS EVERYTHING!

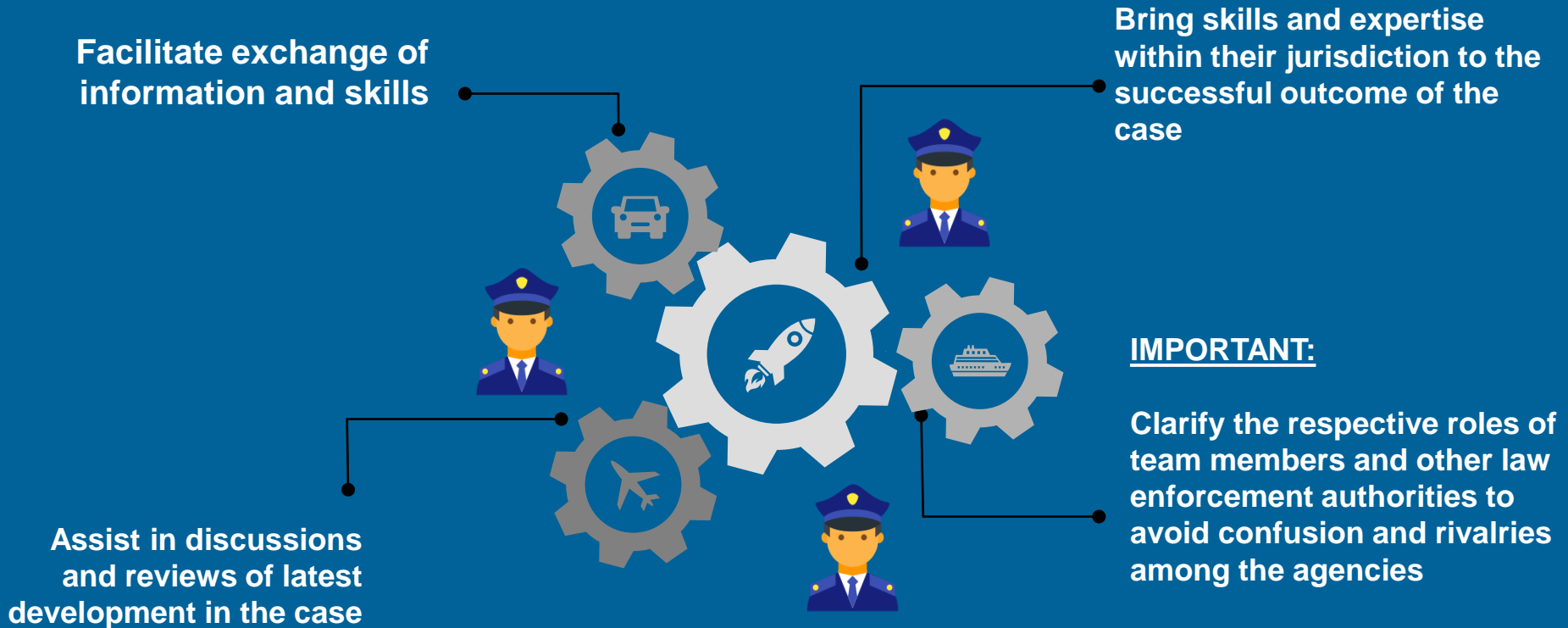


Asset Recovery – Case Management





Joint Task Forces





Preservation of Assets

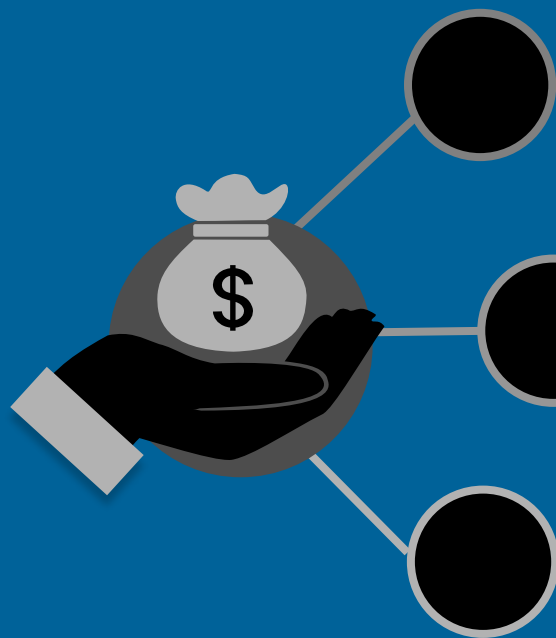
Two main methods of preserving assets:

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





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)



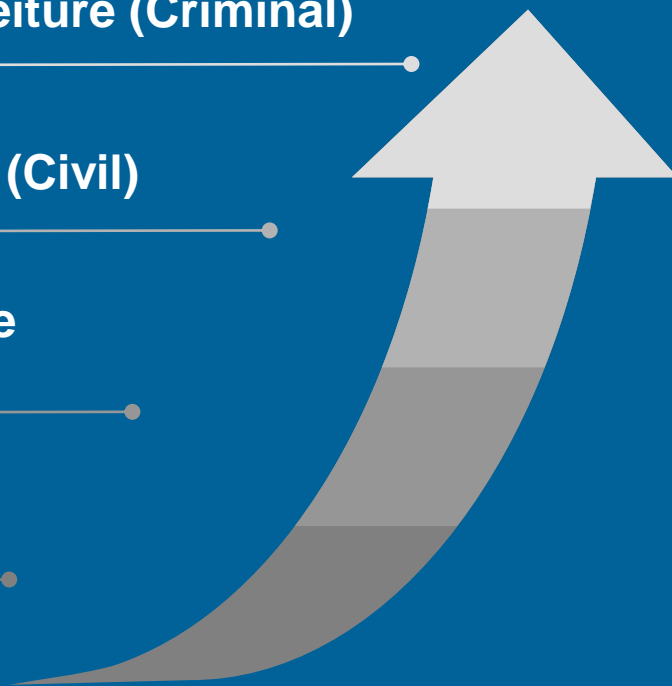
**Taxing Criminal Income
(person or company)**



Civil Claim for Damages



Bankruptcy Proceedings





Asset Forfeiture - Criminal



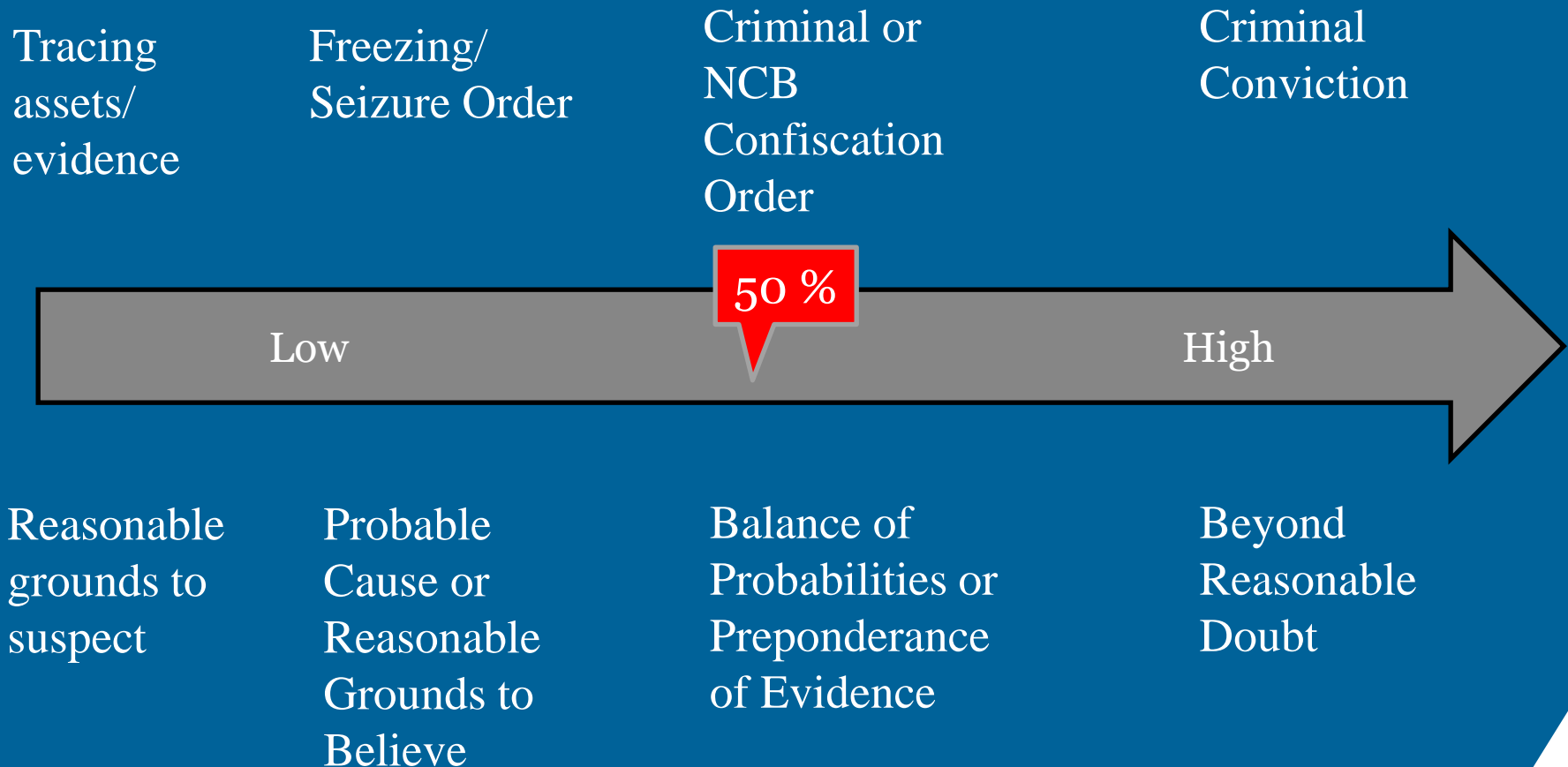
Imposed by court as part of the sentence for a crime

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





Asset Forfeiture - Civil



Important: Secure the claim as early as possible!

- Prevents the defendant from hiding assets before trial!
- By use of conservatory measures

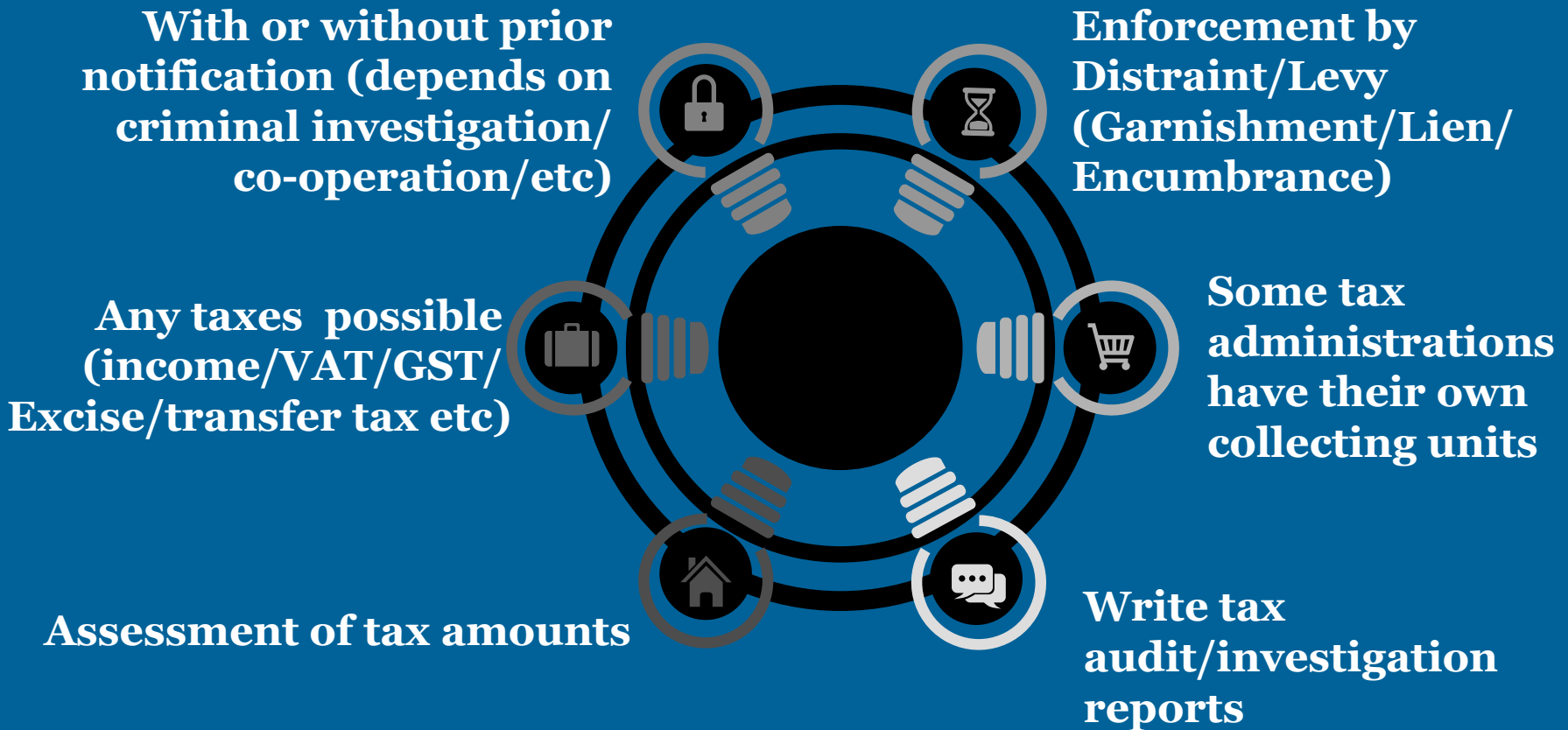
E.G.: Cash/Asset Seizure

- Securing the cash/assets for the later criminal or civil recovery action





Taxing Criminal Income





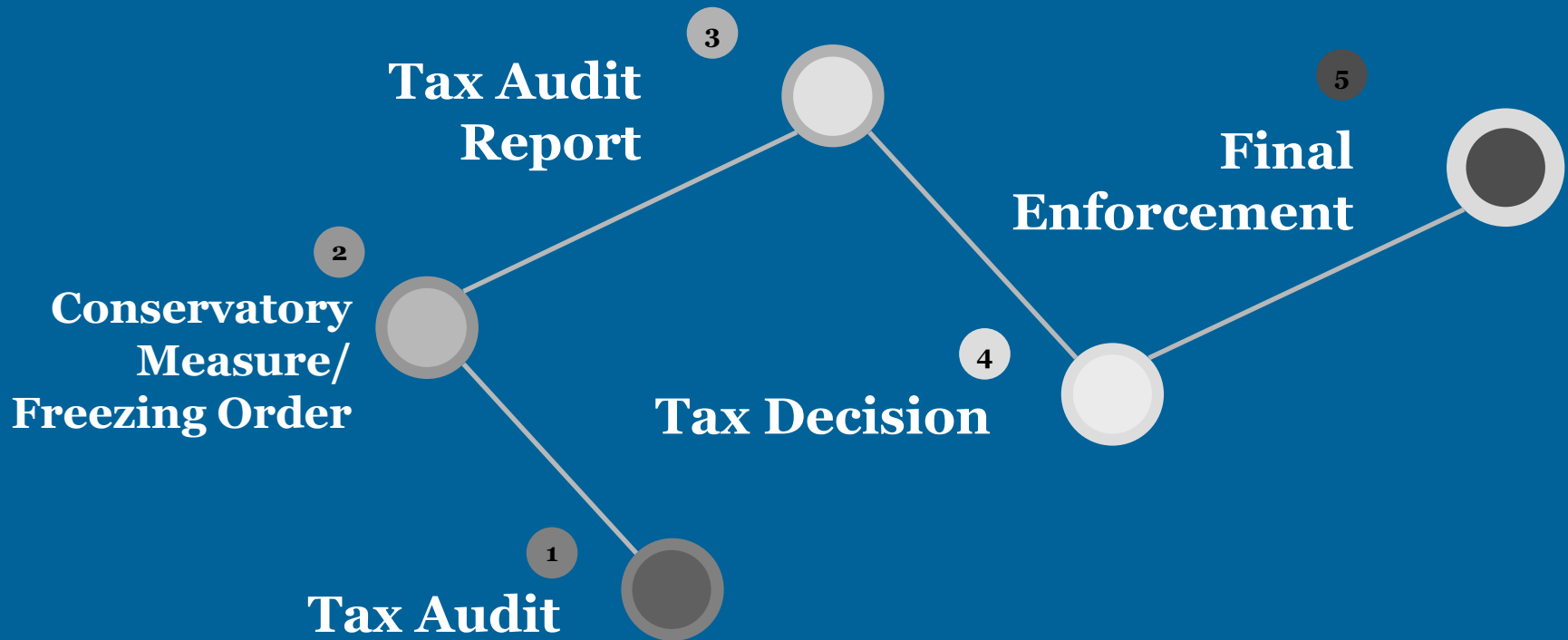
Legal Grounds



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



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?

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

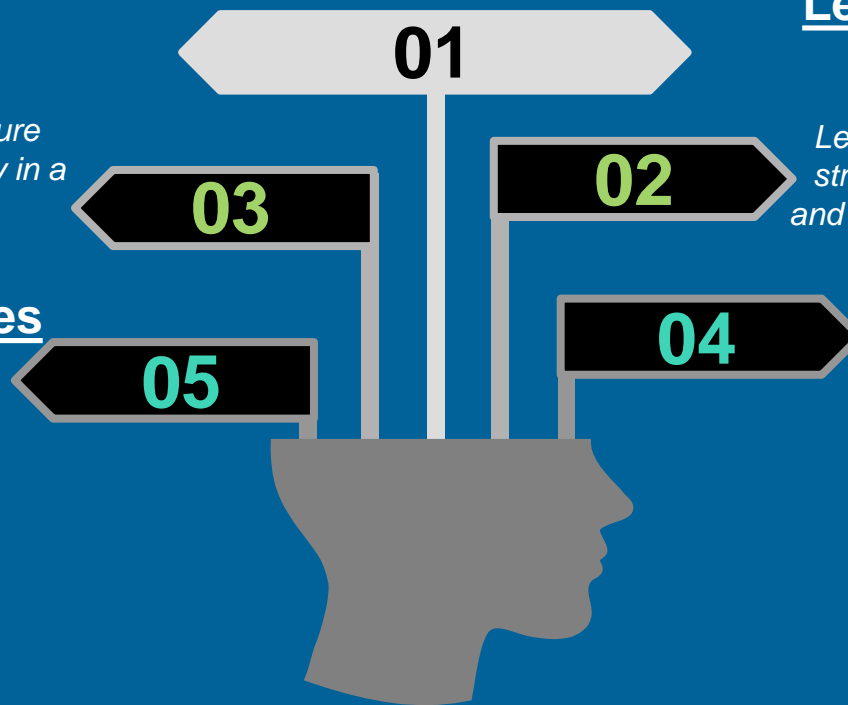
Jurisdictions may assign different roles and responsibilities to those involved in assets recovery

Legal and Procedural Frameworks

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

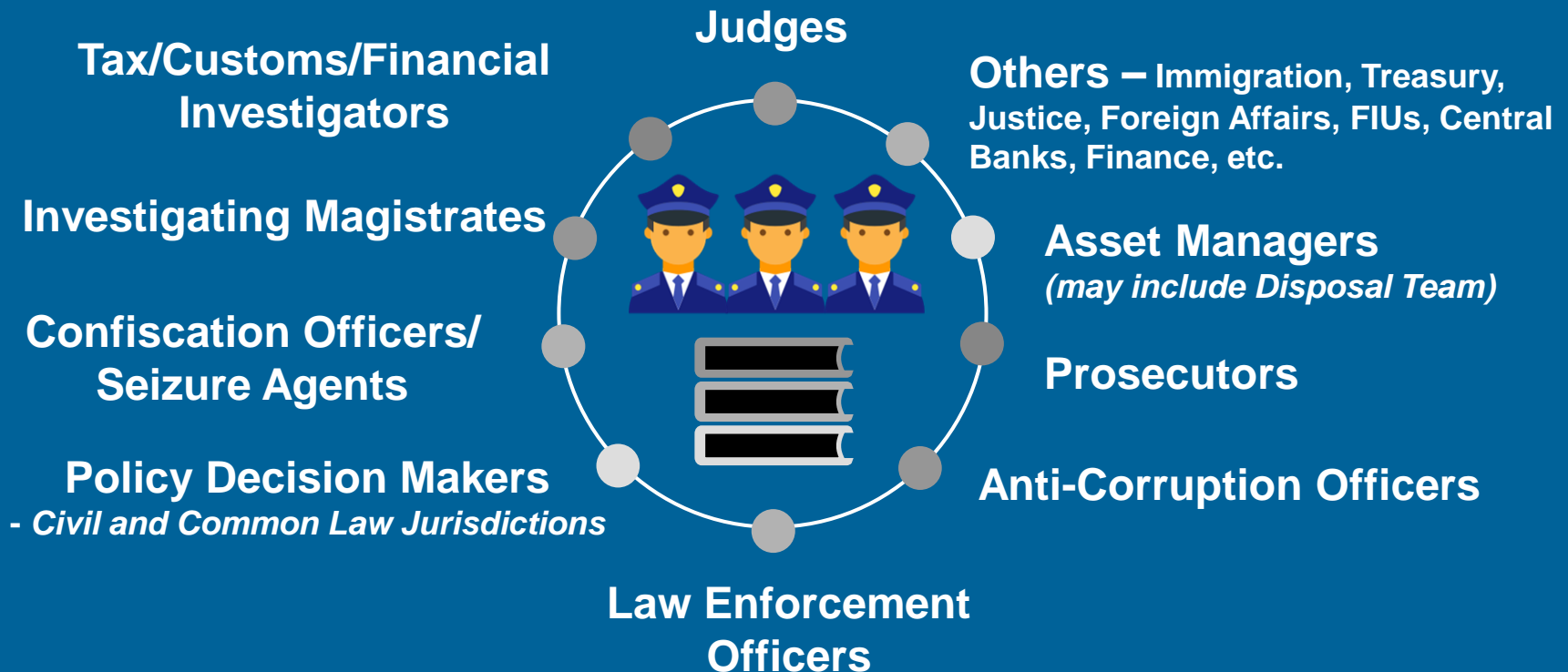
Investigative Techniques

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



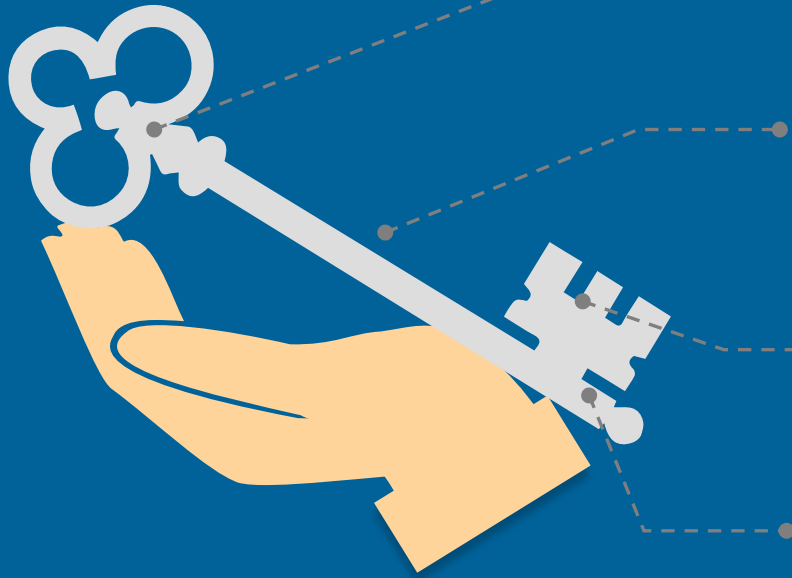
Source: Asset Recovery Handbook – A Guide to Practitioners by JP Brun, L. Gray, C. Scott and KM Stephenson

Stakeholders





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????

