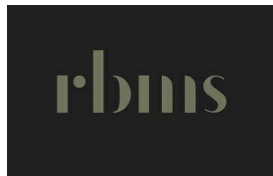


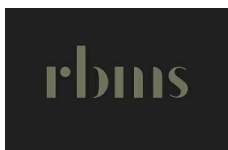


Asset Recovery Comparative Guide



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1.Civil

1. 1. Civil proceedings: (a) What remedies for asset recovery are available in your jurisdiction? (b) What type of assistance will be provided to those seeking substantive relief in your jurisdiction when faced with the dissipation of assets? (c) Can civil proceedings run in parallel to criminal proceedings relating to the same matter or does one take precedence over the other? (d) Can evidence gathered in criminal proceedings be used in civil proceedings? (e) Are foreign freezing orders/injunctions enforceable in your jurisdiction and what are the limitations to registration/enforcement of such foreign orders? (f) What other considerations should be borne in mind in relation to civil asset recovery proceedings in your jurisdiction?

Portugal
RBMS

(a) What remedies for asset recovery are available in your jurisdiction?

When addressing asset recovery in Portugal, three types of proceedings are available, as follows.

Actio Pauliana: This is a legal proceeding aimed at reverting the transfer of assets that may make it more difficult for the creditor to realise its claim. If successful, the outcome of this legal proceeding is that the assets transferred away return to the seller's patrimony.

Article 610 of the Civil Code provides that:

- a. *If the claim is due after the transfer, the creditor shall bear the burden of proof with respect to the intent to defraud future creditors. If the claim is prior no such criteria is established.*
- b. *The Creditor needs also to provide evidence that the disposition of assets results in the impossibility (or, at least, makes it more burdensome) in enforcing its claim.*

If the transaction is made in return for payment, the creditor must evidence that the party that acquired the assets acted in bad faith. Otherwise, if it is a transaction for no value (eg, a donation), no such criteria need be established.

This legal proceeding is governed by Articles 610 to 618 of the Civil Code.

In order to ensure that the outcome of this legal proceeding is successful, the creditor must proceed with registration of the legal proceeding (eg, if the legal proceeding is aimed at the recovery of real estate, it must be registered in the land register so that interested parties are aware of it).

Declaration of nullity: This is a legal proceeding aimed at obtaining a declaration that a certain transaction (or any other similar act) is null and void.

If the court declares that a certain transaction is null and void, the legal consequence is that the assets sold (or otherwise disposed of) are returned to the seller's patrimony.

The Portuguese legal framework provides that acts which are tainted by simulation or intent to defraud are deemed to be null and void.

This legal proceeding is governed by Article 605 of the Civil Code.

The requirements with respect to registration also apply to this proceeding.

Reversal of benefits in the insolvency estate: In the context of insolvency proceedings, the liquidator/bankruptcy trustee has the possibility/is duty bound to investigate certain transactions that took place up to two years before the liquidation order.

A liquidator has the power to declare a transaction null, with the consequences outlined above, where it finds that:

- the transaction was detrimental to the insolvency estate and its creditors; and
- the parties involved acted in bad faith.

Regardless of the existence of bad faith, certain transactions are deemed to be detrimental to the estate (the *juris et de jure* presumption or, as it is sometimes called, the ‘unconditional avoidance rule’), including:

- donations;
- the grant of guarantees in the six months prior to commencement of the liquidation; and
- transactions at an undervalue.

The powers vested in the liquidator determine that a simple letter (registered with notice of receipt) setting out the reasons is enough to set aside transactions. Interested parties can apply to the insolvency court within three months of receipt to challenge the liquidator’s determination.

The legal framework governing the powers vested in the liquidator and subsequent litigation is set out in Articles 120 to 126 of the Insolvency Code.

(b) What type of assistance will be provided to those seeking substantive relief in your jurisdiction when faced with the dissipation of assets?

Please see question 1.1(a)

(c) Can civil proceedings run in parallel to criminal proceedings relating to the same matter or does one take precedence over the other?

Civil proceedings can run in parallel to criminal proceedings.

(d) Can evidence gathered in criminal proceedings be used in civil proceedings?

As long as it is not considered confidential or otherwise subject to privilege, all information in the public domain may be used in civil proceedings. Documentation that is available in criminal proceedings will be considered public once the public prosecutor brings criminal charges against the defendant(s).

Despite any determination made by the judge in the criminal proceedings, the judge supervising the civil proceedings has absolute discretion to evaluate all such documents and thus is not bound by any determination made by the criminal court.

(e) Are foreign freezing orders/injunctions enforceable in your jurisdiction and what are the limitations to registration/enforcement of such foreign orders?

Foreign freezing orders/injunctions are unlikely to be enforced *per se* in Portugal. It is important to distinguish between:

- the order itself (whether issued by a court or an enforcement agent, which is unlikely to be enforced); and
- recognition of the debt that originated the foreign enforcement proceedings.

In the context of the European Union, it is possible to:

- obtain a European enforcement order; or
- in European cross-border insolvencies, apply the measures envisaged by EU Regulation 2015/848.

Otherwise, it is mandatory to initiate a legal proceeding aimed at recognition/confirmation of the international judgment that, once recognised, should be enforced through the Portuguese courts (Articles 978 to 985 of the Code of Civil Procedure. Article 706 of the Code of Civil Procedure is also relevant).

Other valid foreign enforcement titles are not subject to this proceeding and should be considered as enforceable subject to the criteria set out in Article 706(2) of the Code of Civil Procedure

(f) What other considerations should be borne in mind in relation to civil asset recovery proceedings in your jurisdiction?

In our experience, three key considerations should be kept in mind:

- The burden of proof rests with the creditor seeking to recover the assets (with the exception of the powers vested in the liquidator in the context of a reversal of benefits in the insolvency estate;
- Outside the scope of provisional/interim measures, substantive legal proceedings are lengthy; and
- There is a lack of legal education (notably among judges) that would advance an understanding of questions that arise in relation to fraud in an international context.

1. 2. Asset freezing: (a) What provisional/interim measures to secure assets are available in your jurisdiction? (b) What are the evidentiary and procedural requirements for obtaining provisional/interim measures? (c) Are any alternatives to provisional measures available in your jurisdiction? (d) Once the assets have been secured, how are they generally managed? What specific considerations and concerns should be borne in mind in this regard? (e) What other considerations and concerns should be borne in mind at this stage of the process?

Portugal
RBMS

(a) What provisional/interim measures to secure assets are available in your jurisdiction?

The most relevant and effective interim measure on which creditors may rely to secure assets that are at risk of dissipation is the attachment order (*arresto*). This is a court proceeding that is determined by the judge on an *ex parte* basis. If granted, it makes it impossible for the debtor to transfer the asset(s), thus avoiding dissipation (the rules applicable in enforcement proceedings with respect to freezing orders also apply in this case).

The *arresto* is governed by:

- Articles 391 to 396 of the Code of Civil Procedure; and
- Articles 619 to 621 of the Civil Code.

Other interim measures may be relevant in securing assets or documents, but their scope is different from the interim measure referred to above.

Interested parties may request a court to determine that certain assets or documents be listed or kept by a third party through:

- an *arrolamento*, which can be roughly translated as a ‘listing order’ (Articles 403 to 409 of the Code of Civil Procedure); or
- a non-typical interim measure (parties are afforded discretion in requesting interim measures from a court) (Articles 362 to 376 of the Code of Civil Procedure).

(b) What are the evidentiary and procedural requirements for obtaining provisional/interim measures?

Arresto: The creditor applying to court must provide evidence to the court, on an *ex parte* basis, of the following:

- Probable existence of the claim: The creditor must provide sufficient evidence to the court that it:
 - is a creditor of the defendant; and
 - thus has a reasonable prospect of success on the merits.

Unlike in substantive proceedings the burden of proof is less demanding: the court will be satisfied with a *prima facie* case.

- Grounded fear of future unenforceability of the claim: The creditor must provide evidence to the court that the assets, if transferred away from the defendant’s patrimony, will jeopardise recovery of – or at least make it more difficult to recover – the credit due to the creditor (*periculum in mora*).

The creditor must immediately provide evidence to the judge, including the witnesses. The judge will hear the witnesses appointed and decide the application on an *ex parte* basis. The defendant will then be served and may:

- challenge the order before the court of first instance; or
- appeal to the court of appeal.

(c) Are any alternatives to provisional measures available in your jurisdiction?

Under the EU anti-money-laundering legal framework, it is possible to raise reasonable suspicions about a certain bank customer, a customer’s profile or specific bank/financial activity in order to raise the alarm – for example, at a compliance level – and seek to prompt the bank or financial institution to restrain the relevant accounts or financial products. However, this would be a bold move with an uncertain outcome.

(d) Once the assets have been secured, how are they generally managed? What specific considerations and concerns should be borne in mind in this regard?

The legal framework on interim attachment measures draws heavily on the freezing order framework in the context of enforcement proceedings.

Pursuant to Article 756° of the Code of Civil Procedure, an enforcement agent will be appointed as depository of the assets that are subject to the freezing order (unless the creditor agrees that the debtor should remain in possession of the assets). In this respect, once an attachment order has been determined by the court, the interested party may request that the court appoint a third party (usually an enforcement agent) to take possession of the assets. Also, if an *arresto* is determined with respect to assets that are subject to registration (eg, real estate/vehicles/quotas in commercial companies), the decision will be registered so that all interested parties become aware of the legal status of the assets.

(e) What other considerations and concerns should be borne in mind at this stage of the process?

From our perspective, when considering an application to obtain an attachment order, two key points are relevant:

- Prior to filing the judicial application, it is important to build a case with respect to the risk of dissipation and consequently the risk of not enforcing a claim. In our experience, this is usually the factor that results in failure to obtain an attachment order.
- If successful in obtaining an attachment order, the creditor must initiate substantive proceedings within 30 days of the date on which the decision becomes final and binding; otherwise, the attachment order expires and cannot be reissued (Articles 373 and 395 of the Code of Civil Procedure). This means that a creditor must be prepared to file the substantive proceedings within a very short timeframe from obtaining interim relief.

1. 3. International cooperation: (a) What is the process for requesting assistance in asset recovery investigations? What specific considerations and concerns should be borne in mind at each stage of the process (tracing; freezing; confiscation; disclosure)? (b) What types of international assistance can be obtained in civil asset recovery proceedings? (c) With what level of detail and specificity should the documents to be obtained from other jurisdictions be described (eg, is a generic description or category of documents permissible, or is the exact date and name required)? (d) How will the courts in your jurisdiction respond to a foreign request for assistance? What specific considerations and concerns should be borne in mind in this regard?

Portugal
RBMS

(a) What is the process for requesting assistance in asset recovery investigations? What specific considerations and concerns should be borne in mind at each stage of the process (tracing; freezing; confiscation; disclosure)?

Portugal has no specific legal procedures in relation to international asset recovery investigations. Therefore, in this kind of investigation, the Portuguese authorities will provide the same type of assistance as would be given in any other foreign investigation.

(b) What types of international assistance can be obtained in civil asset recovery proceedings?

Given the lack of specific legal procedures on assistance in international asset recovery investigations, it should be determined on a case-by-case basis which of the available legal procedures would be best suited to the specific investigation.

(c) With what level of detail and specificity should the documents to be obtained from other jurisdictions be described (eg, is a generic description or category of documents permissible, or is the exact date and name required)?

Portugal is a party to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters. In the context of the application of the convention, signatory parties use letters rogatory for the purposes of obtaining evidence in other jurisdictions. In our experience, a Portuguese court will issue a letter rogatory if the documents to be obtained are sufficiently identified. For the purposes of obtaining documents from third parties in Portuguese legal proceedings, it is unlikely that a court will order the third party to provide documents where the formulated request is vague and does not allow for a clear determination of the documents to be provided. The same should apply to international cooperation.

(d) How will the courts in your jurisdiction respond to a foreign request for assistance? What specific considerations and concerns should be borne in mind in this regard?

As outlined in question 1.3(c), Portugal will cooperate with signatories to:

- the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters pursuant to the terms of the convention; or
- any other international convention to which Portugal is a party.

Traditionally, the most relevant objection to cooperation raised in Portugal relates to claims of privilege. If faced with a similar objection, the parties will need to initiate a legal proceeding in Portugal with a view to obtaining a decision on the lifting of privilege from the court of appeal.

1. 4. Cryptocurrencies: (a) Do cryptocurrencies constitute ‘property’ for interim remedy/enforcement purposes? (b) Does your jurisdiction have experience with investigations, interim remedies or enforcement actions in respect of cryptocurrencies? (c) How will the question of governing law and jurisdiction be determined in respect of cryptocurrencies? (d) Are there any other considerations that should be borne in mind in this regard?

Portugal
RBMS

(a) Do cryptocurrencies constitute ‘property’ for interim remedy/enforcement purposes?

In Portugal, ‘cryptocurrencies’ are understood to be *alternative digital currencies whose issuance, ownership and transmission is based on cryptographic and decentralised technology (‘blockchain’), which are accepted within a virtual community and are capable of perform a variety of monetary and financial functions* (Antunes, José Engrácia, “As criptomoedas”, pp 1, <https://portal.oa.pt/media/133308/jose-engracia-antunes.pdf>). In that sense, it is accepted that cryptocurrencies are ‘property’ for interim remedy/enforcement purposes.

(b) Does your jurisdiction have experience with investigations, interim remedies or enforcement actions in respect of cryptocurrencies?

To the best of our knowledge, as yet Portugal has no experience with investigations, interim remedies or enforcement actions in respect of cryptocurrencies. Issues regarding cryptocurrencies have mostly been dealt with in the context of criminal and tax matters.

(c) How will the question of governing law and jurisdiction be determined in respect of cryptocurrencies?

Although this question has not been discussed by the Portuguese courts or in the legal literature, we understand that there is some legal support for the argument that the governing law and jurisdiction should be determined by reference to the country in which:

- the blockchain is registered; or
- the resulting funds or other material assets resulting from the cryptocurrencies are mainly deposited.

(d) Are there any other considerations that should be borne in mind in this regard?

If, in theory, cryptocurrencies can be seized, it is nonetheless difficult:

- to identify them;
- to freeze the cryptocurrency wallet and its key; and
- to consolidate the assets recovered. Can the cryptocurrencies be handed over to the creditor, which must have a wallet for such purposes; or must the cryptocurrencies be converted into normal currency, with the possibility of loss of value?

2. Investigations

2. 1. Who identifies the assets in civil and criminal asset recovery proceedings?

Portugal RBMS

Typically, in a civil asset recovery proceeding, it is for the creditor to identify the assets and recover them; whereas in a criminal investigation, it is for the public prosecutors to identify the assets.

At a later stage (the enforcement of claims) or even in the context of insolvency, both the enforcement agent and the court-appointed liquidator are vested with wide-ranging investigative powers to locate the debtor’s assets.

2. 2. How are the targets of the investigation identified?

Portugal
RBMS

The targets of the investigation are usually identified by their:

- full name;
- address;
- national identity card number; and
- tax number.

It is also helpful to add any additional information that may be available, such as:

- date and place of birth;
- professional occupation;
- professional address; and
- passport number.

2. 3. What role (if any) may regulatory/law enforcement bodies play in locating assets in aid of civil proceedings?

Portugal
RBMS

In the context of civil proceedings, the courts are empowered to address any regulatory/law enforcement bodies to locate assets. The relevant regulatory/law enforcement bodies must respond to the court's determination.

2. 4. Will regulatory/law enforcement bodies share evidence to be used in civil asset recovery/tracing proceedings?

Portugal
RBMS

In a pre-trial investigation, private parties may lack effective means to persuade regulatory/law enforcement bodies to share evidence – especially where those bodies are conducting their own investigation of the same target.

If regulatory/law enforcement bodies fail to disclose information and documents, a specific administrative proceeding for obtaining documents or information may be considered, depending on the circumstances of the case (Article 104 of the Code of Procedure of Administrative Courts). However, regulatory bodies such as Banco de Portugal and the Securities Market Commission have traditionally been reluctant to share information.

2. 5. Are there restrictions on the use of documents/ information obtained as part of civil or criminal proceedings in either local proceedings or foreign proceedings?

Portugal
RBMS

The main issues regarding the use of documents and information obtained as part of civil or criminal proceedings concern the possible confidentiality or privilege of the contents. However, if the judicial proceedings in which they are obtained are under public record (which is the general rule), it is arguable that they can be broadly used in any other local or foreign proceedings. In any event, in civil cases, the parties may apply to the court in order to establish a confidential file to which only the parties to the proceeding have access, and not the general public.

2. 6. What different sources of information can be drawn upon in an asset recovery investigation (eg, public information; government agency information; company information); and what restrictions and requirements apply in this regard?

Portugal
RBMS

In general, all sources of information are acceptable in asset recovery investigations, including:

- public information;
- government agency information; and
- company information.

However, the information cannot be obtained through illegal means – for example:

- non-authorised recordings of calls or voice messages; or
- violation of private correspondence, including both personal and professional emails (see also question 3.1(b)).

Care should be taken in handling documentation that may be subject to confidentiality/privilege.

A wide array of information can be obtained from public records, including:

- registers (eg, land, commercial, civil, vehicles);
- records of ultimate beneficial owners; and
- Citius, a digital platform which contains information on legal proceedings.

In addition to these platforms, other have been developed by private parties that build profiles of individuals and companies.

Parties may also consult details of public proceedings that have been filed with certain administrative parties such as municipalities.

2. 7. Under what circumstances will a criminal asset recovery investigation be initiated in your jurisdiction?

Portugal
RBMS

If there is a suspicion that a crime has been committed, criminal proceedings will be initiated. In this context, assets relating to the crimes under investigation may be seized, together with all proceeds and advantages obtained by the criminal agents.

In other words, criminal proceedings are not initiated directly to recover assets, but this can be achieved through the seizure of assets relating to the crime under investigation.

2. 8. What specific considerations and concerns should be borne in mind in cross-border investigations?

Portugal
RBMS

An interested party should:

- have standing to proceed with a cross-border investigation;
- be ready to deal with the usual slowness of public bodies in Portugal in delivering relevant information;
- be aware that some regulatory bodies have traditionally been reluctant to share information and documents, especially with respect to private investigations; and
- retain counsel with experience in international investigations to navigate the stormy waters of regulatory bodies and avoid the pitfalls of publicly available information.

3.Criminal

3. 1. Asset tracing: (a) What different sources of information can be drawn upon in an asset recovery investigation (eg, public information; government agency information; company information); and what restrictions and requirements apply in this regard? (b) What investigative techniques can be used to gather evidence in your jurisdiction; and what restrictions and requirements apply in this regard? (c) What other considerations and concerns should be borne in mind at this stage of the process?

Portugal
RBMS

(a) What different sources of information can be drawn upon in an asset recovery investigation (eg, public information; government agency information; company information); and what restrictions and requirements apply in this regard?

When searching for and seizing assets as part of criminal proceedings, the judicial authorities will benefit from:

- the cooperation of all public and private entities; and
- access to all the information held by such entities.

(b) What investigative techniques can be used to gather evidence in your jurisdiction; and what restrictions and requirements apply in this regard?

In Portugal, all evidence that is not prohibited by law is admissible. In particular, the following is prohibited:

- evidence obtained through:
 - torture;
 - coercion;
 - physical or moral harm; or
 - duress; and
- evidence obtained through intrusion into private life, correspondence and communications, unless:
 - authorised by a judge; or
 - obtained with the consent of the person concerned.

In this sense, judicial authorities can:

- obtain evidence through direct collaboration with other entities – for example, the Public Prosecutor’s Office can ask:
 - a bank to provide all information it holds about the bank balances and movements made by a certain person;
 - the registrars for information about the existence of vehicles and real estate registered in favour of a certain person; and
 - the tax authorities for information about a certain person’s annual tax returns; and
- with the authorisation of a judge:
 - intercept communications and carry out searches, particularly of people’s homes; and
 - immediately seize all documents and goods (eg, money and jewellery) they find that could constitute evidence, an instrument or an advantage of the crime.

(c) What other considerations and concerns should be borne in mind at this stage of the process?

The Code of Criminal Procedure provides for preventive seizure mechanisms – in terms similar to the provisional civil measure of *arresto* detailed in question 1.2(a) and (b) – that can be activated right at the start of the investigation, and even before it is known to targeted individuals or companies, in order to:

- prevent the dissipation of assets which may be declared lost for the benefit of the Portuguese state; or
- satisfy other pecuniary needs related to the process.

3. 2. Confiscation: (a) What confiscation mechanisms are available in your jurisdiction? (b) How do these different mechanisms work in practice? (c) Are any procedural tools available in your jurisdiction that can enhance the effectiveness of the confiscation regime or capture a wider range of assets? (d) Can secondary proceeds be confiscated in your jurisdiction? (e) Is value-based confiscation allowed in your jurisdiction? If so, how does this work in practice? (f) Can the property of third parties or close relatives be confiscated in your jurisdiction? How are third-party interests addressed? (g) Can confiscated assets be used to provide restitution to the victims of crime? (h) Can confiscated assets be used to satisfy civil claims for damages or compensation arising from the offence? (i) Is confiscation possible without a conviction in your jurisdiction? If so, how does this work in practice?

Portugal
RBMS

(a) What confiscation mechanisms are available in your jurisdiction?

The Code of Criminal Procedure provides for the following procedural mechanisms for safeguarding assets related to criminal practices:

- seizure of assets (*apreensão*); and
- preventive seizure of assets (*arresto Ipreventive*), which can be either:
 - classic seizure; or
 - seizure for the purpose of extended confiscation of assets.

(b) How do these different mechanisms work in practice?

In Portugal, the safeguarding mechanisms for assets in criminal proceedings work as follows.

Seizure (*apreensão*): While a criminal case is pending, all instruments, products or advantages related to the crime are seized. Depending on the nature of the assets, they are held by:

- the state (eg, bank balances); or
- a trustworthy custodian (eg, real estate).

At the end of the process, if the criminal agent is convicted, the assets may be:

- declared lost for the benefit of the state (which then determines a specific destination for them); or
- used to satisfy the victims of the crime.

Seizure can be ordered by the Public Prosecutor's Office;

Preventive seizure: If there is a fear that the defendant will dissipate assets, this asset seizure mechanism can be activated (regardless of whether the relevant assets relate to the crime committed) to guarantee the payment of any amount to which the defendant may be convicted, including:

- the costs of the legal proceeding;
- any penalties or fines imposed;

- the profits and advantages obtained by the defendant through the crime; or
- compensation for victims of the crime.

This mechanism can be sought by the Public Prosecutor's Office or by the injured party, but can only be ordered by a judge. Depending on the nature of the assets, they are held by:

- the state (eg, bank balances); or
- a trustworthy custodian (eg, real estate);

Seizure with a view to extensive confiscation of assets (*arresto Ipreventive para perda alargada de bens*):

If there is a discrepancy between the defendant's lawful income and its assets (ie, if the defendant has more assets than can be justified by declared income), the difference is presumed to have an illicit origin and may be declared lost for the benefit of the state if, at the end of the process, the defendant is convicted and is unable to prove the legitimate origin of the assets. The financial analysis to determine the discrepancy always refers to the five years preceding the act of constitution of the defendant (ie, the procedure through which the target of the investigation assumes the status of defendant, with all criminal procedural rights and duties).

To safeguard the effectiveness of the loss of this presumably illicit property, the seizure mechanism can be activated, which in procedural terms works in a same manner to the preventive seizure.

However, this mechanism can only be:

- triggered if the criminal activity corresponds to a certain list of crimes (ie, it is not applicable to any type of crime); and
- ordered by a judge at the request of the Public Prosecutor's Office.

Depending on the nature of the assets, they are held by:

- the state (eg, bank balances); or
- a trustworthy custodian (eg, real estate);

(c) Are any procedural tools available in your jurisdiction that can enhance the effectiveness of the confiscation regime or capture a wider range of assets?

Any of the three mechanisms referred to in question 3.2(b) are effective, but the seizure with a view to extensive confiscation of assets has a greater reach, for the reasons outlined above.

(d) Can secondary proceeds be confiscated in your jurisdiction?

In Portugal, any assets relating to a crime committed or the corresponding value (from any type of income of the criminal agent) will be seized.

(e) Is value-based confiscation allowed in your jurisdiction? If so, how does this work in practice?

In Portugal, it is only possible to confiscate assets as part of a criminal investigation. The suspicion that a crime has been committed justifies the seizure of assets; however, the mere detention of assets (even if they are abnormally valuable) does not justify the opening of proceedings and seizure of the assets.

(f) Can the property of third parties or close relatives be confiscated in your jurisdiction? How are third-party interests addressed?

Third-party assets can be seized using any of the mechanisms referred to in question 3.2(b). This may occur if assets relating to the crime have been transferred or belong to third parties.

Third parties are afforded procedural defence mechanisms.

The party that decides whether to maintain or revoke the seizure is always a judge.

At the end of the process, any third parties involved will be left without their assets only if it is proven that they had some type of knowledge or involvement in the commission of the crime.

(g) Can confiscated assets be used to provide restitution to the victims of crime?

Yes, except in case of seizure for extensive loss of assets for the benefit of the state, since the aim of this is not to safeguard the payment of any amounts but rather to confiscate assets whose origin is presumed to be illicit.

(h) Can confiscated assets be used to satisfy civil claims for damages or compensation arising from the offence?

Yes, except in case of seizure for extensive loss of assets for the benefit of the state, since the aim of this is not to safeguard the payment of any amounts but rather to confiscate assets whose origin is presumed to be illicit.

(i) Is confiscation possible without a conviction in your jurisdiction? If so, how does this work in practice?

Under Portuguese law, products or assets related to a crime can be forfeited to the state even if it is not possible to punish the criminal responsible (eg, if the defendant dies during the process).

This possibility, however, raises some questions that are difficult to overcome, which are linked to the fact that the loss of assets (whether to the state, to satisfy the injured parties or to pay costs) must necessarily result from the conviction of a person.

In the case of other seizure mechanisms, it is not possible to have a definitive loss of assets if there is no criminal conviction.

3. 3. Repatriation: (a) What provisions (if any) govern the repatriation of assets in your jurisdiction? What specific considerations and concerns should be borne in mind in this regard?

Portugal
RBMS

(a) What provisions (if any) govern the repatriation of assets in your jurisdiction? What specific considerations and concerns should be borne in mind in this regard?

We are not aware of any provisions on the repatriation of assets.

4. Trends and Predictions

4. 1. How would you describe the current asset recovery landscape and prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?

Portugal
RBMS

There is a growing awareness of the need to provide international investigators or parties involved with international asset recovery with the means to:

- obtain swift and accurate information on fraudsters; and
- successfully freeze and recover assets.

Legislative measures regarding cryptocurrencies introduced at the EU level will also have an impact in Portugal. However, no new developments are anticipated in the next 12 months.

5. Tips and Traps

5. 1. What would be your recommendations for effective asset tracing and recovery and what potential pitfalls would you highlight?

Portugal
RBMS

Traps:

- Thus far, Portugal has dealt with asset recovery in the context of international fraud within the framework of criminal investigations. The first contact that an international interested party will have with an asset recovery investigation in the context of international fraud will be through information made available by government agencies dealing with criminal matters in an international context.
- Like many European jurisdictions, Portugal does not have effective judicial tools in relation to discovery and investigation. There is nothing similar to Section 1782 of the US Code.

Tips: Portugal has long been overlooked in asset tracing and recovery investigations in the context of international fraud. Two important issues should be highlighted:

- Portugal has a centuries-old historical relationship with Portuguese African-speaking countries and also with Brazil. In recent decades, Portugal has received substantial investments from those jurisdictions. It is a matter of public record that some of those investments may have resulted from major incidents of fraud and corruption. It is our understanding that there is much work to do to combat investment tainted by corruption.
- Portugal has enacted a golden visa programme and provided other tax benefits for non-residents over the years. Some of the criteria for the grant of such exemptions and benefits involve underlying assets.



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