



# Financial investigations and asset recovery



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Financial investigations are critical to proving crimes such as corruption, fraud and trafficking in humans or illicit goods. They are also central to confiscating illegally obtained assets from criminals – so that crime doesn't pay.

Yet there is often confusion about who performs financial investigations, how, when and why, as well as their relationship to criminal investigations. All of these questions are further complicated by the fact that different countries have different legal systems, different laws and different terminology.

This quick guide explores the main ideas and trends in financial investigation in the context of financial crime and asset recovery cases, based on my experience in these areas in Portugal and Mozambique. Practitioners will need to talk openly and proactively to each other, both within their countries and across borders, to untangle the more challenging knots.

## What does a financial investigation involve?

In its *Operational Issues – Financial Investigations Guidance*, the Financial Action Task Force (FATF) defines financial investigation as “an enquiry into the financial affairs related to criminal conduct. The major goal of a financial investigation is to identify and document the movement of money during the course of criminal activity.”

To do this, investigators need to collect, process and analyse information about a person’s financial affairs, such as bank accounts, Bitcoin transactions or property ownership.

The result can include both the documentary evidence (such as a bank statement or property title) and expert analytical reports (such as a visualisation of financial transactions).

## How financial investigations support criminal cases

In its *Financial Investigations Guidance*, the FATF sets out two purposes of financial investigation in a criminal case.

First, to assist “in the prosecution of crime” by providing (financial) evidence to help convict the suspect. As the FATF explains, “The link between the origins of the money, beneficiaries, when the money is received and where it is stored or deposited can provide information about and proof of criminal activity.” Other evidence may come from surveillance, undercover operations, wiretapping, contracts, witnesses or expert evidence, for example on procurement processes.

Second, to assist “in the deprivation of the proceeds and instrumentalities of crime”. In other words, financial investigations help to locate illegally obtained money and other assets in order to confiscate them.

The most obvious assets to be recovered are those relating to a specific crime. These can be instrumentalities (used to commit the crime, such as forged documents in a corruption case) or proceeds arising directly or indirectly from the crime (such as money from bribes or embezzlement, or the profits from investing the stolen money).

## Extending beyond criminal investigations

For many years, efforts to recover criminal assets typically focused only on those assets related to a specific crime and conviction. But there’s a problem with this.

Imagine Mrs. X has amassed several million dollars over several years through corruption or organised crime. She is caught and convicted of one crime, pays a fine or goes to prison for a short period, and forfeits the proceeds of that specific crime. Afterwards, she and her family are free to enjoy her illegally obtained millions.

This is why many countries, in cases of serious financial and organised crimes and in accordance with international conventions, have introduced alternative mechanisms of forfeiture/confiscation. The purpose is to identify money or other assets that, on the balance of probability, are the result of criminal conduct and should be confiscated. This applies even if the assets cannot be related beyond reasonable doubt to a specific crime.

The aim: when Mrs. X emerges from prison, she is not able to enjoy the fruits of her criminal career.

In Mozambique, financial investigations for “extended confiscation” (*perda alargada*) typically determine the financial value of a person’s assets. This is compared with their income according to their tax returns. If a particular sum of money incompatible with their lawful income results, then prosecutors seize specific assets which, after conviction, will be confiscated, up to that amount. These financial investigations do not form part of the criminal investigation and can go back several years before the commission of the crime.

Financial investigations are central to other powerful and increasingly widespread legal mechanisms to confiscate and recover illegally obtained assets. These include various forms of non-conviction based confiscation and illicit enrichment.

## **Who performs financial investigations?**

Financial investigators need highly specialised skills and experience in understanding financial flows, corporate structures, banking systems and money laundering schemes, as well as using analytical software.

They may have a background in accounting, financial auditing or other technical areas, with additional training on criminal law and processes. In a criminal investigation, the reports of such technical specialists are considered impartial and have the value of evidence. In Mozambique, for cases of “extended confiscation”, they may be criminal investigators with an aptitude for financial analysis and specific additional training.

In addition to technical abilities, financial investigators need great attention to detail, self-motivation and communication skills.

Some countries’ law enforcement authorities have specialised units of financial investigators dedicated to supporting criminal cases. Others must appoint external consultants if they lack the in-house expertise.

## **Parallel financial investigations, the gold standard**

The FATF recommends parallel financial investigation, i.e. focusing simultaneously on the crime and on the related money laundering charges.

What happens if you don't launch a parallel financial investigation at the start of a criminal investigation?

- The criminal may take advantage of this extra time to hide his or her money or destroy paperwork.
- Evidence that may be useful to the prosecution may never be found. This might result in the case failing in court, or the criminal being convicted of a lesser crime.
- The investigation may fail to identify other suspects, witnesses or victims.
- Money or other assets considered irrelevant to the specific crime in question may be ignored, missing out on a chance to confiscate them.

That is why, in contrast to standard practice in many countries until now, parallel financial investigations are the gold standard.

## **Common challenges in financial investigations**

Weaknesses and loopholes vary hugely across countries and legal systems, but some common difficulties that we are working to overcome include:

### **Access to financial information**

Many countries have no central database of bank accounts and other financial assets. Such a database, like the Accounts Database introduced in Portugal in 2010, allows investigators with the relevant judicial authorisation to request information about all financial assets and relationships that Mr. Y has in the country.

Without this centralised information source, the investigator must contact every financial institution operating in the country separately to ask whether Mr. Y holds assets at that institution. As well as the huge time and costs involved, there is also the security risk of disclosing that an investigation is being conducted into Mr. Y.

### **Format of information – paper, really?**

Each case involves huge amounts of financial data, with transactions often reaching thousands of records per year. For an investigation going back five years, you can multiply that by five.

Now imagine that volume of data on paper. Some financial institutions still provide the information in paper format, claiming security risks in the transmission and storage of digital files. Paper information has to be manually converted into a spreadsheet for processing and analysis, hugely increasing time, tedium and risk of errors.

### **Skills and experience**

Training is vital to gain the analytical and IT skills and knowledge needed to conduct a relevant and accurate financial investigation. But these skills and knowledge can only fully be gained through hands-on experience in complex cases, which may take years. On-the-job mentoring on cases helps build

this experience quickly and solidly, supporting both those cases and the learning curve.

### **International cooperation**

Investigations can sometimes be compromised by a lack of cooperation when evidence is sought from other jurisdictions or by delayed cooperation where the evidence comes too late. On this, please see my colleague Shane Nainappan's [quick guide to international cooperation in asset recovery](#).

Internal informal cooperation is also a big challenge and a big opportunity. All parts of the criminal justice system – including new elements such as specialised asset recovery teams – must work together, understanding each other's roles and being willing to share the information that each side needs to achieve their goals.

Ultimately, mutual understanding and trust are the foundations of success in recovering illegal assets, and thereby deterring criminals and the corrupt.

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