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# Enforcing foreign non-conviction based forfeiture orders

## FATF standards and asset recovery practice in Latin America and financial centres

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### Summary

This Policy Brief analyses emerging international standards aimed at addressing recurring challenges in judicial practice with regard to the enforcement of non-conviction based forfeiture orders issued by foreign states.<sup>1</sup> It focuses in particular on the historical absence of a binding obligation on requested states<sup>2</sup> to cooperate in such cases and, where cooperation is available, on the structural tension between direct and indirect enforcement models.

Revisions in 2023 to the Financial Action Task Force (FATF) Recommendations 4 and 38 seek to, among other things, clarify and strengthen states' cooperation in the enforcement of foreign forfeiture orders.<sup>3</sup> In this context, the recognition and execution of foreign non-conviction based forfeiture orders are central components of the evolving international asset recovery framework.

Through analysis and case studies involving Latin American states and international financial centres, this Policy Brief

demonstrates that the choice of procedural model for enforcing foreign forfeiture orders – direct or indirect – has significant implications, while acknowledging the competing legal and institutional interests involved.

In line with FATF Recommendation 38, the Policy Brief argues in favour of direct enforcement in the requested state, based on the facts established by the foreign authority. This promotes efficiency, legal certainty and mutual trust. Indirect enforcement models that may require domestic investigations by the requested state, on the other hand, often lead to delays, duplication and increased costs, which hinders international asset recovery efforts.

The analysis provides empirical insight into how the revised FATF standards address practical deficiencies and the implications for judicial practice in requested states. For the Latin American context, the Policy Brief suggests to go beyond technical compliance of domestic non-conviction based forfeiture regimes with the FATF standards to strengthen the effectiveness of cross-border enforcement in practice.

The analysis is informed by the author's professional experience in supporting complex international asset recovery cases in the context of technical assistance provided by the Basel Institute's International Centre for Asset Recovery (ICAR), with a particular focus on Latin America.

1 The FATF uses the term "non-conviction based confiscation". Variations on the term and concept include non-conviction based forfeiture, civil forfeiture/confiscation, *in rem* confiscation or – in Latin America – *Extinción de dominio*. Different terms are used to refer to the permanent deprivation of assets in relation to a criminal offence in different jurisdictions. As the terms "forfeiture" and "confiscation" are often used interchangeably, both terms are understood as equivalent in this Policy Brief.

2 The "requested state" is a jurisdiction that receives a formal request for judicial cooperation from another state (the "requesting state"), in this case to execute an asset forfeiture order issued by the requesting state's courts.

3 In this text, the term "forfeiture order" is used as a standard expression in the asset recovery literature. It is intended to encompass not only court orders in the strict sense, but also judgments, decisions or any other determination issued by a judicial or other competent authority in the requesting state that provides for forfeiture of assets.

## 1 Introduction

Large and complex asset recovery cases typically involve illicit assets that have been transferred across borders and concealed through sophisticated financial and legal structures. This makes international cooperation a vital part of the successful recovery and repatriation of stolen assets held abroad.<sup>4</sup> Both informal cooperation and formal mutual legal assistance (MLA) are central to effective asset recovery.

MLA for the recognition and enforcement of foreign forfeiture orders has emerged as a critical element in the asset recovery framework. Refusing to enforce a forfeiture judgment obtained abroad – often after years of litigation – not only undermines the requesting state’s efforts but also perpetuates impunity. Moreover, such a position would be incompatible with states’ obligations under international treaty law, including those arising from the core United Nations conventions, notably Article 55 (International cooperation for purposes of confiscation) of the United Nations Convention against Corruption (UNCAC).

Despite the growing global adoption of non-conviction based forfeiture regimes and their recognition as an international standard,<sup>5</sup> cross-border enforcement of such orders continues to be the exception rather than the norm,<sup>6</sup> with significant fragmentation across legal systems and regions.<sup>7</sup> The FATF has sought to address this gap through substantial revisions to its international standards, notably Recommendation 4 (Confiscation and provisional measure) and Recommendation 38 (Mutual legal assistance: freezing and confiscation), updated in

November 2023 and restructured in October 2025.<sup>8</sup> These revisions aim to strengthen cooperation obligations, clarify procedural expectations and promote more effective enforcement of foreign forfeiture orders, including those issued without a criminal conviction.<sup>9</sup>

In particular, Recommendation 38 sets out concrete obligations for countries to cooperate in the identification, freezing and forfeiture of illicit assets and the enforcement of foreign forfeiture orders, including those issued through non-conviction based procedures.

The question of whether these revised standards will translate into meaningful change requires a nuanced response. Recognition and enforcement of foreign forfeiture orders continue to depend on compliance with core MLA conditions such as dual criminality, reciprocity or the fulfilment of basic fair trial requirements and respect for fundamental legal principles of the requested state.

The following sections outline the key elements of the revised FATF standards and explain how these rules are expected to operate in practice.

## 2 Understanding FATF Recommendation 38

This section presents the main international standards arising from the revised FATF Recommendation 38, read together with its Interpretive Note, Recommendation 4 and the FATF Methodology.

Recommendation 4, as revised in 2023, forms the basis. It requires states to establish comprehensive legal, policy and operational frameworks that prioritise asset recovery at both the domestic and international levels. In particular, countries must ensure that competent authorities have effective powers to identify, trace, freeze, seize and confiscate criminal assets, supported by rapid provisional measures and mechanisms for international cooperation. A central element of the revised Recommendation 4 is the explicit mention that the competent authorities

4 See Nainappan, Shane. “International cooperation in asset recovery.” Quick Guide 9. Basel Institute on Governance, 2019. Available at: <https://baselgovernance.org/publications/quick-guide-9-international-cooperation-asset-recovery>.

5 Solórzano, Oscar. “Targeting illicit wealth through non-conviction based forfeiture: Identifying human rights and other standards for Latin America.” Working Paper 54. Basel Institute on Governance, 2024, p. 36. Available at: <https://baselgovernance.org/publications/wp-54>.

6 Betti, Stefano, Vladimir Kozin and Jean-Pierre Brun. *Orders without Borders: Direct Enforcement of Foreign Restraint and Confiscation Decisions*. International Development in Focus. Washington, DC: World Bank, 2021, p. 1 and 55. Available at: [https://star.worldbank.org/sites/default/files/2021-12/Orders%20without%20Borders\\_final.pdf](https://star.worldbank.org/sites/default/files/2021-12/Orders%20without%20Borders_final.pdf).

7 GAFILAT. *Guía de Buenas Prácticas sobre Extinción de Dominio y Decomiso no Basado en Condena*, 2024, p. 13 et seq. Available at: <https://biblioteca.gafilat.org/?p=6917>.

8 Financial Action Task Force (FATF). *The FATF Recommendations*, as amended October 2025. Available at: <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html>.

9 For more information, please refer to: Financial Action Task Force (FATF). *Asset Recovery Guidance and Best Practices*. Paris: FATF, 2025, 141 et seq. Available at: <https://www.fatf-gafi.org/content/fatf-gafi/en/publications/Methodsand Trends/asset-recovery-guidance-best-practices-2025.html>.

should be able to “confiscate criminal property through non-conviction based confiscation”. The Recommendation thus promotes non-conviction based forfeiture as a key tool to prevent illicit assets from remaining beyond the reach of justice.

In Recommendation 38, referring to MLA for purposes of asset recovery, the FATF urges countries to provide the "widest possible range" of assistance.<sup>10</sup> Recommendation 38 makes international cooperation mandatory<sup>11</sup> and reads as follows:

**“Mutual legal assistance: freezing and confiscation**

*Countries should have measures, including legislative measures, to take expeditious action in response to requests by foreign countries seeking assistance to identify, trace, evaluate, investigate, freeze, seize and confiscate criminal property and property of corresponding value. These measures should also enable countries to recognise and enforce foreign freezing, seizing, or confiscation orders. Further, countries should be able to manage property subject to confiscation at all stages of the asset recovery process and share or return confiscated property.*

*Countries should have in place the widest possible range of treaties, arrangements, or other mechanisms to enhance cooperation in asset recovery.”*

The following figure identifies the core requirements of Recommendation 38:



Figure 1: The six basic obligations under FATF Recommendation 38.

The Interpretive Note (IN) to Recommendation 38 is an integral part of the Recommendation. It states:<sup>12</sup>

*“1. Countries should be able to take expeditious action in response to requests for cooperation in the widest possible range of circumstances. This should include requests made on the basis of conviction and **non-conviction based confiscation proceedings and related provisional measures, as set out in Recommendation 4.\****

*\*The reference to Recommendation 4 incorporates references to fundamental principles of domestic law which may relate to certain types of confiscation. With regard to requests made on the basis of non-conviction based confiscation proceedings, countries should have the authority to provide assistance, at a minimum, in circumstances when a perpetrator is unavailable by reason of death, flight, absence, or the perpetrator is unknown, to the furthest extent that such assistance is consistent with fundamental principles of domestic law.*

10 See also Financial Action Task Force (FATF). *Asset Recovery Guidance and Best Practices*. Paris: FATF, 2025, p. 279. Available at: <https://www.fatf-gafi.org/content/fatf-gafi/en/publications/Methodsand Trends/asset-recovery-guidance-best-practices-2025.html>. Recommendation 38 is broad and also deals with other basic aspects that are not further addressed in this Policy Brief, such as jurisdictional competence. For example, paragraph 3 of the Interpretive Note clarifies that it is a prerequisite for any enforcement measure that the court of the requesting state must be able to issue orders relating to criminal assets subject to confiscation that are located outside its national territory (jurisdiction to seize or confiscate assets abroad).

11 Although FATF Recommendations are formally classified as soft law, adherence to them creates binding expectations for member jurisdictions (*pacta sunt servanda*). This normative effect is reinforced by the FATF’s mutual evaluation and peer-review mechanisms, which exert substantial practical pressure to align domestic legal frameworks and judicial practices with international standards.

12 Bold parts are the author’s emphasis.

2. In recognising and enforcing foreign freezing, seizing or confiscation orders, requested countries should be able to **rely on the findings of fact in the foreign order**. Enforcement should **not be made conditional on conducting a domestic investigation**. Further, courts in the requested country may review the foreign order and issue any orders necessary to **give it effect** with regard to property located in the requested country.

3. Where the requested country requires a court order to provide assistance due to fundamental principles of domestic law or other considerations, requesting countries should ensure that their courts have authority to issue freezing, seizing, and confiscation orders for property located abroad or, if applicable, mechanisms for domestic judicial review and validation of orders to be submitted for enforcement.

4. Countries should also ensure they have the authority to provide further related assistance on an initial request, without requiring a supplemental request, in appropriate cases.

5. Countries should have effective mechanisms for managing, preserving, and, when necessary, disposing of, frozen, seized or confiscated property as set out in Recommendation 4.

6. Countries should be able to **share confiscated property** with other countries, in particular, when confiscation is directly or indirectly a result of coordinated law enforcement actions. Countries should be able to make arrangements, where appropriate, to deduct or share substantial or extraordinary costs incurred when enforcing a freezing, seizing, or confiscation order.

7. Countries should have measures to enable **informal communication** with other countries in asset recovery cases, including facilitating assistance before a request is made and updating countries, as appropriate, on the status of their requests.”

### 3 Implications for judicial practice

The revised FATF standards significantly clarify the obligations of courts when faced with requests for international cooperation in non-conviction based forfeiture cases. These standards go beyond the provisions in Articles 31 (Freezing, seizure and confiscation) and 54(1)(c) (Mechanisms for recovery of property through international cooperation in confiscation) of UNCAC, which neither require States Parties to adopt non-conviction based forfeiture regimes nor impose a binding obligation to cooperate in the enforcement of foreign forfeiture orders issued without a criminal conviction. Under UNCAC, cooperation in such cases has traditionally remained largely within the discretion of the requested state.

Paragraph 1 of the Interpretive Note to FATF Recommendation 38 expressly requires states to be able to take expeditious action in response to requests based on non-conviction based forfeiture proceedings and related provisional measures, as provided for under Recommendation 4. As a consequence, domestic courts can no longer reject enforcement solely on the basis that non-conviction based forfeiture does not exist in the requested state’s legal system or that it departs from traditional criminal confiscation models.

Judicial practice has historically shown reluctance to enforce foreign non-conviction based forfeiture orders, often due to concerns related to fair trial and due process requirements or compatibility with fundamental legal principles. While international and regional jurisprudence has required that refusals to provide MLA be reasoned, exceptional (*ultima ratio*) and proportionate, such case law has had limited systemic impact.<sup>13</sup> The revised FATF standards aim to consolidate these principles into a more predictable and uniform judicial approach.

13 International Court of Justice. *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*. Judgment, I.C.J. Reports 2008, p. 177. Available at: <https://www.icj-cij.org/sites/default/files/case-related/136/136-20080604-JUD-01-00-EN.pdf>; Solórzano, Oscar. “Targeting illicit wealth through non-conviction based forfeiture: Identifying human rights and other standards for Latin America.” Working Paper 54. Basel Institute on Governance, 2024, p. 45. Available at: <https://baselgovernance.org/publications/wp-54>.

### 3.1 Direct versus indirect enforcement of foreign non-conviction based forfeiture orders

When a requested state receives a foreign non-conviction based forfeiture order targeting assets in its territory, it must, “to the greatest extent possible”, enforce the foreign order through one of two mechanisms:<sup>14</sup>

- **Direct enforcement:**<sup>15</sup> The foreign order is given effect as issued, without reopening the merits.
- **Indirect enforcement:** The foreign request is used to initiate domestic proceedings, and confiscation is ordered under domestic law.

Indirect enforcement is usually the consequence of a legal requirement in the requested state, where a foreign

conviction or non-conviction based forfeiture order is not deemed valid or in any other way recognisable. The requested state may only be able to execute the foreign request by issuing a domestic confiscation order through a full re-examination of the merits of the case. In such an approach, evidence submitted by the requesting jurisdiction is used to support an application for a domestic confiscation order.

In some jurisdictions, the requirement to open domestic proceedings applies not only to the enforcement of final forfeiture orders but also of precautionary measures in MLA requests, such as freezing or seizure.<sup>16</sup>

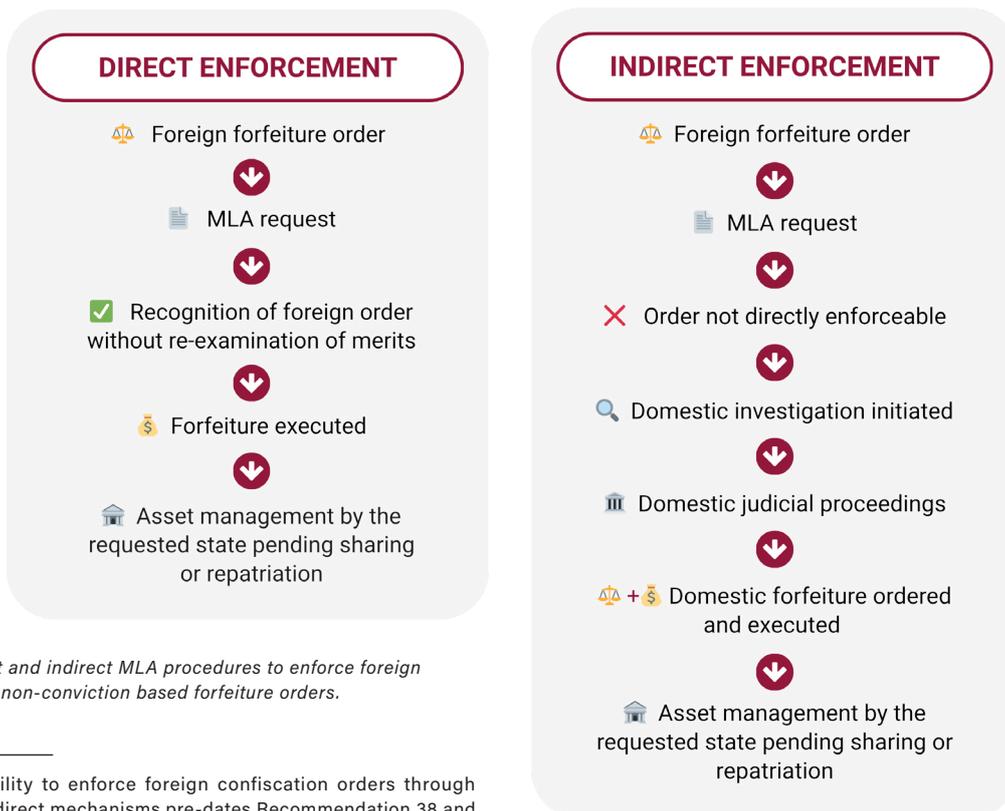


Figure 2: Direct and indirect MLA procedures to enforce foreign conviction and non-conviction based forfeiture orders.

14 The possibility to enforce foreign confiscation orders through direct or indirect mechanisms pre-dates Recommendation 38 and has been used in all United Nations conventions, see for instance art. 55 (1) UNCAC with regard to criminal confiscation.

15 “Direct enforcement” as a concept and terminology must be distinguished from measures for the “direct recovery of assets (DRA)” as stated in Article 53 UNCAC. These measures can be sought by a country before civil or criminal courts of another country to regain ownership of stolen assets or be awarded compensation or damages. These measures are “direct” in the sense that they do not engage MLA mechanisms. For more information on direct recovery of assets measures, see *Brazil – StAR Initiative Report: Survey on Direct Recovery of Assets*, of the G20 Anti-Corruption Working Group, 2 December 2024. Available at: <https://star.worldbank.org/publications/brazil-star-initiative-report-survey-direct-recovery-assets>.

16 Liechtenstein, for example, requires a domestic proceeding to be opened in parallel in order to issue a restraining order provided for in the MLA request.

### 3.2 FATF Recommendation 38 favours direct enforcement

In addition to the obligation to cooperate in non-conviction based confiscation cases, the Interpretive Note to Recommendation 38 establishes in paragraph 2 that requested courts should be able to rely on the findings of fact contained in the foreign non-conviction based forfeiture order and should not condition enforcement on the opening of new domestic investigations or proceedings. Judicial review remains permissible, but it is confined to essential safeguards rather than a reassessment of the merits of the case.

In other words, FATF Recommendation 38 strongly favours direct enforcement.

Paragraph 2 of the Interpretive Note requires the following:

- **Requested states should rely on facts established by a foreign authority.** Requested states should accept the foreign court's factual findings unless manifestly arbitrary, consistent with the MLA principle of "mutual trust"<sup>17</sup> This eliminates the need for the requested state to conduct independent fact finding or evaluate the substantive merits of the decision in the forfeiture order. In direct enforcement, the reliance on facts as established by a foreign court may mean, for instance, that the requested state does not reassess the legal nature of the assets (it does not evaluate the substantive aspects of the foreign case). The requested state's review of the foreign non-conviction based forfeiture order focuses narrowly on due process and basic fair trial requirements or other similar principles. If the requested state is satisfied that the requesting state has an impartial judicial system and that minimum due process requirements have been granted to the

affected persons in the foreign procedure, then it does not, in principle, need to delve deeper.<sup>18</sup>

- **Domestic investigation should not be a condition for enforcement.** Requested states should not make enforcement of foreign confiscation orders conditional on conducting a domestic investigation:<sup>19</sup> "The point of enforcement is to implement confiscation orders issued in another country, not to replicate the foreign investigation or legal proceedings or prompt a domestic version of the same."<sup>20</sup>

Comparative practice reveals several types of direct enforcement of foreign forfeiture orders, which differ primarily in the intensity of judicial control exercised by the requested state. At the low-intensity end of the spectrum, "automatic enforcement" allows execution with little or no substantive judicial review, the role of national authorities being largely formal.

A more structured type is "mutual recognition", most prominently developed within the European Union. Under this type, foreign orders are recognised and enforced as a rule, subject only to an exhaustive list of grounds for refusal and therefore limited judicial scrutiny.

At the other end of the spectrum, "direct judicial enforcement" under traditional MLA frameworks requires a domestic court to recognise and authorise enforcement in accordance with conditions defined by national law, often involving a broader review of legality, jurisdiction, due process or public policy.

Finally, some jurisdictions rely on crime-specific statutory regimes – for example in relation to drug trafficking or money laundering – which expressly provide for the recognition and enforcement of foreign confiscation orders within a specialised legislative framework.

17 In MLA, the requested state generally accepts the requesting state's representations in good faith, including its competence, the existence and criminal nature of the underlying facts, the factual basis and scope of the measures sought. These elements are not questioned unless there is a clear and immediate abuse. See: Swiss Federal Office of Justice (2009). *International Mutual Assistance in Criminal matters. Guidelines*. Available at: <https://www.rhf.admin.ch/dam/rhf/en/data/strafrecht/wegleitungen/wegleitung-straftsachen-e.pdf.download.pdf/wegleitung-straftsachen-e.pdf>.

18 Financial Action Task Force (FATF). *Asset Recovery Guidance and Best Practices*. Paris: FATF, 2025, p. 295. Available at: <https://www.fatf-gafi.org/content/fatf-gafi/en/publications/Methodsand Trends/asset-recovery-guidance-best-practices-2025.html>.

19 It should be noted, however, that neither FATF Recommendation 38 nor its Interpretive Note addresses a recurring practical difficulty affecting requesting states. In practice, the gathering of evidence or the execution of provisional measures abroad may be delayed or impeded where parallel investigations are conducted in the requested state, often as a result of domestic procedural rules governing the priority or exclusivity of national proceedings.

20 Financial Action Task Force (FATF). *Asset Recovery Guidance and Best Practices*. Paris: FATF, 2025, p. 284 et seq. Available at: <https://www.fatf-gafi.org/content/fatf-gafi/en/publications/Methodsand Trends/asset-recovery-guidance-best-practices-2025.html>.

These types reflect different balances between efficiency in asset recovery and the preservation of domestic procedural and fundamental rights safeguards.

The direct enforcement approach in general is also increasingly supported by case law because it promotes efficiency, reduces duplication and prevents obstruction, while preserving due process and key procedural defences (see case examples in Latin America below).

Aspect	Direct enforcement models	Indirect enforcement models
<b>General relationship with FATF Recommendation 38</b>	<ul style="list-style-type: none"> <li>Fully aligned with Recommendation 38</li> <li>Recognition and enforcement of foreign freezing, seizing and forfeiture orders (including non-conviction based forfeiture)</li> <li>Reliance on the foreign order as the legal basis for enforcement</li> <li>Expeditious cooperation</li> </ul>	<ul style="list-style-type: none"> <li>Partially aligned</li> <li>Cooperation provided by opening new domestic proceedings</li> <li>Reliance on the facts described in the MLA request as a trigger to initiate domestic proceedings</li> <li>Risk of delay and duplication</li> </ul>
<b>General relationship with FATF Recommendation 4</b>	<ul style="list-style-type: none"> <li>Enables cross-border enforcement of non-conviction based forfeiture, extended confiscation and value-based confiscation</li> <li>Gives international effect to confiscation mechanisms required under Recommendation 4</li> </ul>	<ul style="list-style-type: none"> <li>Limits the practical reach of Recommendation 4 to the domestic sphere</li> <li>Confiscation tools exist but are not effectively enforceable abroad</li> </ul>
<b>Treatment of facts and merits</b>	<ul style="list-style-type: none"> <li>No reassessment of facts</li> <li>No re-litigation of the merits</li> <li>Reliance on the findings of fact contained in the foreign order</li> </ul>	<ul style="list-style-type: none"> <li>Facts are reinvestigated and merits are re-litigated in domestic proceedings</li> <li>Foreign findings serve only as evidentiary input</li> </ul>
<b>Judicial review</b>	<ul style="list-style-type: none"> <li>Judicial review limited to core safeguards (e.g. basic fair trial and due process guarantees, legality, public order and other similar principles applicable in the requested state)</li> <li>Enforcement not made conditional on conducting a domestic investigation</li> </ul>	<ul style="list-style-type: none"> <li>Full judicial scrutiny under domestic procedural law</li> <li>Enforcement often made conditional on gathering domestic evidence and conducting parallel investigations</li> </ul>
<b>Efficiency and effectiveness</b>	<ul style="list-style-type: none"> <li>Favoured by FATF as the most effective and resource-efficient model</li> <li>Shorter timelines, reduced litigation and lower costs</li> <li>Enhanced legal certainty and predictability</li> </ul>	<ul style="list-style-type: none"> <li>Generally inconsistent with FATF emphasis on effectiveness and timeliness</li> <li>Leads to delays, higher costs and procedural uncertainty</li> </ul>
<b>Policy rationale</b>	<ul style="list-style-type: none"> <li>Gives concrete effect to the objective of depriving criminals of illicit assets wherever located</li> <li>Reflects trust in foreign proceedings that meet international standards</li> </ul>	<ul style="list-style-type: none"> <li>Preserves maximum procedural control for the requested state</li> <li>Often justified by constitutional constraints or domestic case law</li> </ul>
<b>Residual relevance</b>	<ul style="list-style-type: none"> <li>Default model encouraged by FATF for the enforcement of foreign non-conviction based confiscation orders</li> </ul>	<ul style="list-style-type: none"> <li>Exceptional relevance, including in cases where additional assets are discovered during execution that were not covered by the foreign order</li> </ul>

Table 1: Comparison of direct and indirect enforcement models.

## 4 The picture within Latin America

### 4.1 Cooperation between Latin American states

Only a few Latin American states have been confronted with MLA requests to enforce foreign non-conviction based forfeiture orders. While some have models for direct enforcement, others must instruct their authorities to open national cases to obtain confiscation orders domestically.

Non-conviction based forfeiture entails the deprivation of assets linked to unlawful conduct without the need for a prior criminal conviction and is typically subject to civil standards of proof. Owing to its hybrid character, such measures may be embedded in criminal, civil or even administrative frameworks, as illustrated by the diverse legislative models governing Extinción de dominio.<sup>21</sup>

Consistent with this functional diversity, practice in several Latin American jurisdictions indicates that Extinción de dominio orders may be transmitted and enforced internationally through either civil or criminal cooperation mechanisms, depending on their domestic legal classification and the applicable international framework.

Despite the growing adoption of Extinción de dominio legislations across Latin America, its international enforcement remains limited, uneven and procedurally challenging. Only a small number of jurisdictions have received and acted upon requests to enforce foreign Extinción de dominio orders (precautionary measures and final forfeiture orders), and even fewer have done so through direct enforcement mechanisms consistent with the revised FATF standards.

#### Guatemala and Honduras: direct enforcement in civil matters

In Guatemala's first experience with the international enforcement of Extinción de dominio, the specialised Extinción de Dominio court of the Supreme Court of Justice declared the forfeiture in favour of the Guatemalan State of a property located in Roatán, Honduras. The property had belonged to former Vice President of

21 Extinción de dominio is the main typology of non-conviction based forfeiture in Latin American. This model seems to promote the creation of a dedicated channel of judicial cooperation between countries implementing this type of law. See UNODC. *Ley Modelo sobre Extinción de Dominio. Programa de Asistencia Legal para América Latina y el Caribe*. 2011. Available at: [https://www.unodc.org/documents/legal-tools/Ley\\_Modelo\\_Sobre\\_Extincion\\_de\\_Dominio.pdf](https://www.unodc.org/documents/legal-tools/Ley_Modelo_Sobre_Extincion_de_Dominio.pdf).

Guatemala, Roxana Baldetti Elías, and was found to have been acquired with misappropriated public funds.

In May 2023, the final Guatemalan decision was recognised and enforced by the Superior Supreme Court of the Republic of Honduras through a *homologación* procedure conducted in civil matters, resulting in the restitution of USD 229,032 to Guatemala. This process followed a relatively straightforward checklist of legal conditions expressly set out in Honduran law and did not entail any re-litigation of the merits of the case, thereby operating as a direct enforcement mechanism in functional terms.

Although the procedure in Honduras was overseen by an independent judicial authority and has long been used in civil contexts, questions remain as to its full compatibility with emerging fair trial and human rights requirements in the specific context of non-conviction based forfeiture. Notwithstanding these unresolved issues, the enforcement was ultimately successful, and the asset recovery objectives pursued by the Guatemalan authorities were effectively achieved.<sup>22</sup>

#### Peru and Mexico: limitations of indirect enforcement models

A strained cooperation effort between Peru and Mexico illustrates the limitations of indirect enforcement models for non-conviction based forfeiture.

In 2021, Peru submitted a request for the enforcement of a final Extinción de dominio order targeting assets held in Mexico by a corrupt politically exposed person.<sup>23</sup> In accordance with Mexican domestic law, the competent authorities were required to initiate a new Extinción de dominio proceeding at the national level, which was formally opened in 2022 by the specialised

22 GAFILAT. *Guía de Buenas Prácticas sobre Extinción de Dominio y Decomiso no Basado en Condena*, 2024, p. 34–35. Available at: <https://biblioteca.gafilat.org/?p=6917>. See also: Supreme Court of Justice of Guatemala. *Juzgado de Letras de Privación de Dominio de Bienes de Origen Ilícito con Jurisdicción Nacional, Nota de Remisión n. 339-2023*, 2023.

23 See: Ministerio Público – Fiscalía de la Nación (Perú), "Fiscalía de Extinción de Dominio recupera más de 1.5 millones de dólares de cuenta bancaria del exministro Víctor Malca Villanueva," Noticias MPFN. Available at: <https://www.gob.pe/institucion/mpfn/noticias/544232-fiscalia-de-extincion-de-dominio-recuper-mas-de-1-5-millones-de-dolares-de-cuenta-bancaria-del-ex-ministro-victor-malca-villanueva/>.

Prosecutor's Office. Despite sustained bilateral cooperation, the enforcement process has advanced only marginally over several years. The indirect enforcement mechanism has generated significant procedural delays and legal uncertainty, compounded by parallel civil litigation concerning the same assets, which has effectively paralysed execution. As a result, the duration of the enforcement proceedings in Mexico has exceeded the time Peru had needed to investigate the case and issue the original Extinción de dominio order. This illustrates that with indirect models, the international execution phase may take longer than the entirety of the domestic investigation and adjudication process.

## 4.2 Cooperation with international financial centres

Two cases involving cooperation between Latin American states and European financial centres illustrate the benefits of more direct enforcement models, while noting that in practice the process may still be lengthy and challenging.

### Peru and Switzerland/Luxembourg: direct enforcement through exequatur proceedings

Peru's first experiences with the international enforcement of non-conviction based forfeiture arose in the context of efforts to recover bank accounts held in Switzerland and Luxembourg that were linked to large-scale corruption involving former President Alberto Fujimori.

These jurisdictions, despite being major international financial centres, do not operate autonomous and comprehensive non-conviction based forfeiture regimes comparable to Extinción de dominio. Instead, they rely on residual or subsidiary forms of non-conviction based forfeiture within their procedural penal frameworks. Nevertheless, since 2017, Peru has successfully enforced several final Extinción de dominio orders and concluded asset restitution agreements, demonstrating that effective cross-border enforcement is feasible even in the absence of fully harmonised confiscation regimes.

Switzerland and Luxembourg, as well as some other European states, apply "exequatur procedures" that allow for the recognition and enforcement of

final foreign confiscation decisions through judicial proceedings limited to verifying compliance with fundamental procedural guarantees – particularly due process and fair trial standards – without revisiting the merits of the case. Exequatur proceedings constitute a form of direct judicial enforcement, whereby a domestic court formally recognises the foreign decision and grants it enforceability within the requested state.

In principle, these proceedings are designed to be swift and streamlined, typically involving two judicial instances. In practice, however, they often extend over many years due to ancillary cooperation requirements, procedural fragmentation and extensive litigation strategies deployed by defence counsels.<sup>24</sup>

### Colombia and Guernsey: successful cooperation across different legal systems<sup>25</sup>

A landmark illustration of the emerging global standards for the enforcement of non-conviction based forfeiture occurred in September 2024: Guernsey enforced a final Colombian Extinción de dominio order, recovering more than GBP 360,000 in proceeds derived from drug trafficking in the so-called "Beauty Queen" case.

Acting in line with FATF standards, Guernsey relied on the findings of fact established by the Colombian authorities, confined judicial review to essential procedural safeguards and deliberately avoided reopening domestic proceedings

<sup>24</sup> In this regard, the Swiss-Peruvian case concerning Moshe Rothschild Chassin is illustrative. The MLA request seeking enforcement of an Extinción de dominio order was submitted by the Peruvian Central Authority in early 2021 and was only executed in Switzerland in 2023, following multiple appeals. To date, the assets have not been returned, pending an international agreement between the concerned states. In a number of cases, enforcement is further delayed by the initiation of additional constitutional review proceedings, most commonly based on alleged violations of fair trial guarantees. This practice highlights the continuing tension between formal objectives of procedural efficiency and the practical complexities of international asset recovery litigation. More information in Oscar Solórzano and Greta Fenner (2023), "A Swiss-Peruvian Asset Recovery Case Boosts Prospects for Non-Conviction Based Forfeiture in the Fight Against Transnational Corruption and Money Laundering." Available at: <https://baselgovernance.org/publications/swiss-peruvian-asset-recovery-case-boosts-prospects-non-conviction-based-forfeiture>.

<sup>25</sup> Read the full Case Study: Solórzano, Oscar, and Diana Cordero. 2026. "The Beauty Queen case: non-conviction based forfeiture across borders. Lessons learned from Colombia-Guernsey cooperation." Case Study 13. Basel Institute on Governance, 2026. Available at: <https://baselgovernance.org/publications/cs-13>.

or reassessing the merits of the case. The procedure for enforcing the judgment in Guernsey, however, involved the “designation” of Colombia as a country eligible for cooperation in non-conviction based forfeiture, and the “registration” of the Colombian Extinción de dominio decision in a simplified administrative-type procedure. Colombia, for its part, ensured full respect for procedural rights, which facilitated acceptance and enforcement of its decision in Guernsey.

The Beauty Queen case demonstrates how mechanisms for the direct enforcement of foreign non-conviction based forfeiture orders can substantially reduce delays, enhance predictability and render cross-border asset recovery viable even decades after the underlying criminal conduct.

The successful international cooperation between Colombia and Guernsey offers a promising blueprint for future cooperation between countries with different confiscation laws or even legal traditions. Guernsey has a common law tradition, while Colombia, like the majority of Latin American jurisdictions, operates within civil law system. While the case offers a compelling benchmark, its underlying legal logic and procedural architecture require careful scrutiny and contextual adaptation to domestic constitutional frameworks in Latin America in order to ensure both effectiveness and legitimacy in the regional application of non-conviction based forfeiture and of direct enforcement models.

#### 4.3 Policy relevance for Latin America: the gap between formal compliance with FATF standards and their implementation in practice

The revised FATF Recommendations make clear that countries must be able to:

- (a) conduct asset recovery in the domestic and international context, including through non-conviction based confiscation regimes (Recommendation 4); and
- (b) recognise and enforce foreign confiscation orders issued under those regimes (Recommendation 38).

A 2024 survey by the Financial Action Task Force of Latin America (GAFILAT) indicates that, of the 18 jurisdictions in the region, only two have yet to enact legislative frameworks

for non-conviction based forfeiture.<sup>26</sup> Eleven states have adopted Extinción de dominio regimes, while five provide for alternative forms of non-conviction based forfeiture, reflecting a high level of technical compliance with Recommendation 4.

Nevertheless, the limited operational practice and the continuing legal uncertainty regarding the international recognition and enforcement of such measures reveal a gap between formal legislative alignment and effective cross-border implementation. This situation increases the risk that non-conviction based forfeiture regimes, while robust at the domestic level, remain of limited practical effectiveness in international asset recovery. *Prima facie* comparative research<sup>27</sup> suggests that most Latin American states will require legislative amendments, changes in judicial practice, or both to meet these standards.

### Key takeaways

- International cooperation is essential for effective asset recovery, including in non-conviction based forfeiture cases with cross-border elements.
- 2023 revisions to FATF Recommendation 38 establish a clear expectation that states cooperate in enforcing foreign non-conviction based forfeiture orders.
- The FATF standards strongly favour *direct* enforcement of foreign forfeiture orders, without re-examining the merits of the case or requiring domestic investigations.
- Reliance on the findings of fact of foreign courts, subject to basic due process review, promotes efficiency, legal certainty and mutual trust.
- Indirect enforcement models often lead to delays, duplication and increased costs, undermining asset recovery efforts.
- Latin America has seen a growing uptake of non-conviction based forfeiture regimes, but their international enforcement remains limited and the legal frameworks for enforcement remain uncertain.

<sup>26</sup> Panama and Nicaragua. See GAFILAT. *Guía de Buenas Prácticas sobre Extinción de Dominio y Decomiso no Basado en Condena*, 2024. Available at: <https://biblioteca.gafilat.org/?p=6917>.

<sup>27</sup> Solórzano, Oscar. “Targeting illicit wealth through non-conviction based forfeiture: Identifying human rights and other standards for Latin America.” Working Paper 54. Basel Institute on Governance, 2024. Available at: <https://baselgovernance.org/publications/wp-54>.

## Keywords

- International asset recovery
- Non-conviction based forfeiture
- Extinción de dominio
- International cooperation
- Enforcement of foreign asset forfeiture orders
- Financial Action Task Force
- FATF Recommendations 4 and 38
- Latin America

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We work hand in hand with governments, civil society and the private sector to prevent corruption, recover illicit assets and foster business integrity. Our approach combines capacity building and learning, convening and peer engagement, hands-on advice and mentoring, and applied research and policy guidance. Together, they advance knowledge, practice and policy on anti-corruption and related fields.

Our work helps to safeguard public resources and address global challenges like poverty, health, climate change, environmental sustainability, security and crime – with positive impacts for citizens, governments and economies all over the world.

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