



Guidelines

for the Management of Seized
& Confiscated Vehicles by
Asset Management
Agencies/Offices

Guidelines for the Management of Seized and Confiscated Vehicles by Asset



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Introduction

Background

Asset management offices or agencies (AMOs) are responsible for managing and disposing of frozen assets while preserving the best value of those assets. Vehicles are a commonly seized asset type during investigations and judicial proceedings. The method and means of seizure can differ between jurisdictions. However, the phases of managing and disposing of vehicles remain the same irrespective of jurisdiction or means of seizure, freezing and confiscation.

The management of vehicles can be broken down into four distinct phases:

- Pre-Seizure Planning
- Short-term Management
- Long-term Management
- Disposal

These four phases should always be followed by an ***Analysis and Review*** stage, which will allow agencies to reflect, refine and ultimately improve practices.

While managing and disposing of vehicles, and preserving their value, the AMO should do so in conjunction with the interests of all parties involved in the proceedings.

Additionally, seized and confiscated vehicles should be managed effectively and efficiently, and in line with good governance practices which at their core include:

- Accountability
- Transparency
- Adherence to the Rule of Law

Methodology

The development of this Guideline was done collaboratively with the members of the Balkan Asset Management Interagency Network (BAMIN) in 2022. The Guideline aims to meet the needs of the BAMIN members and act as a reference document for them to effectively and efficiently manage vehicles in line with good governance practices.



The Guideline was developed based on the results of a survey, clinics and a two-day training involving all BAMIN members, observing and associate jurisdictions. The survey probed the institutional practices and the personal views of participants who were actively working in the area of asset management. It was provided to each participant in their language of choice. The survey was circulated to seventeen jurisdictions, all of which are active members or observers of BAMIN (this includes one pending observer). Seventeen replies were received from ten jurisdictions.

Three online clinics were also held. All clinics were one hour in duration. The clinics were established to allow participants to seek clarifications regarding the survey and also nominate

topics/difficulties that they (or their jurisdiction) were encountering (real-life problems), which could be incorporated into the research and Guideline, if appropriate. Areas for capacity building/training were identified as a result of the survey and three one-hour clinics.

A two-day training and development program was also held online. The training days took an informal approach to self-directed learning while utilizing the four phases of asset management as a roadmap. Specifically, real-life cases were used during both days, which allowed participants to proffer solutions, and personal experiences and collaboratively identify areas requiring additional capacity building.

Ultimately, there was unanimous agreement that the drafting and publication of a guide in the area of vehicle management would be of great assistance to all those who work in the areas of managing frozen, seized and confiscated assets.

Summary

This Guideline describes the four phases of asset management, the considerations that should be given to each phase and the options for effective and efficient management of vehicles. The Guideline is envisaged as a living document. When new practices are identified, they should be considered and evaluated in the context of all options for effective and efficient management of assets. Where deemed appropriate they should then be added to the Guideline.

Ultimately, for any jurisdiction to effectively manage vehicles, all government authorities, policymakers, and the judiciary should work together to ensure the best interests of all stakeholders are considered and preserved.

1 Pre- Seizure Planning

“Plan and organize ahead of time”

Pre-seizure planning is not simply holding meetings with stakeholders so as to be informed that an asset may be seized. Pre-seizure planning is the stage at which the AMO and other stakeholders should put in place adequate agreements, resources, logistical support, legislation and policies in order to be adequately prepared to seize, manage and dispose of assets in an organized and professional manner.

At a minimum, the following should be available and in place.

1.1 There should be agreed processes in place for early notification to the AMO by the seizing authority

- This may be set out in law or agreed between parties. Namely, the seizing authority should notify the AMO in a certain manner and within a certain timeframe.
- The AMO should not become responsible for the vehicle simply due to its seizure. The procedures should set out how and when the AMO is responsible for the asset.
- The AMO should ensure that processes/policies are clearly understood and easy to adhere to.
- The AMO should be involved at an early stage in any operation where vehicles may be seized. However, this should be balanced with the security/integratory of the operation. Therefore, the AMO should minimize any risk by way of having dedicated liaison persons in place for each agency. Those delegates should have the necessary security clearance to be in a position to carry out their functions without any risk to operations.

1.2 Agreement on the minimum information to be provided to the AMO by the seizing agency on the background/history of the seizure/case

- The AMO should have the legal or procedural possibility to assess information pertinent to the seizure of the vehicle. Examples of the information that should be available are, the name(s) of the beneficial owner(s) the vehicle was seized from, what risks (if any) are associated with the seizure and retention of the vehicle, who holds the registration documentation for the vehicle, etc.
- Where the AMO requires additional information, they should have the legal or procedural possibility to request it from the seizing authority. In circumstances where that access is denied, the AMO should have the ability, legally or procedurally to request the information via an oversight/judicial (third-party) process.

1.3 Agreements and contracts for transportation

- The AMO should have the ability to transport vehicles. This can be done by having their own transportation, a direct contract with a private industry supplier or having a memorandum of understanding with the seizing authority(s) whereby they arrange transport.
- The AMO should have clear guidance and policy surrounding who is liable for the costs incurred in the transportation of any seized vehicle when being brought into the possession of the AMO.
- The AMO should only be responsible for costs incurred after the vehicle has been delivered to their custody.
- The AMO should have adequate structures in place to ensure that all agencies have equal access to transportation. (E.g. a seizing agency or authority cannot be adversely penalized by virtue of their location or

distance from the AMO storage facility). To facilitate this, the AMO should have structures in place to minimize cost.

Examples of this are:

- a) have storage facilities in place that are within a reasonable distance for all seizing authorities;
- b) have favourable contracts for transportation in place that seizing authority can utilize;
- c) have a system by which the costs are equal to all. This may include the AMO subsidizing the transportation costs for agencies where they cannot provide local storage facilities;
- d) the seizing authority should have the right to make a claim against the sales proceeds of the seized vehicle in order to recoup the transportation costs involved where they are deemed excessive. In such circumstances, the AMO should have a standardized compensation scheme in place, e.g., €X.XX per km.

1.4 Agreements and contracts for storage

- The AMO should have in place adequate storage facilities. This can be either a centralized store or multiple storage locations at different geographical locations.
- Where possible the AMO should have its own storage location, which is state-owned.
- Where it is not possible to have a state-owned storage location the AMO should have adequate private industry storage facilities sourced and in place.
- If using private storage facilities, the AMO should ensure that they are paying a price that is in line with standard market rates. This is to ensure that they are not being overcharged for the service.
- Where the AMO is expected to store vehicles long-term on

behalf of another state agency/body (e.g. vehicle retained as evidence in judicial proceedings) they should have the option to offset storage costs by charging the seizing body/agency for use of facilities. Any fees charged should be at a very low rate and cannot be used as a source of additional revenue/income for the AMO.

- Where a beneficial owner (or another interested party) refuses to allow a vehicle to be sold consideration should be given to the possibility of charging that person/entity for the cost of management/storage. Payment of such charges should be made in advance, e.g., payment received by/on February 28th for storage in March. In such circumstances, the AMO should have a policy/schedule of fixed fees, which they make the person/entity aware of. Where such fees are to be applied, there should be oversight of their application. Such fees should not be viewed/used as a source of revenue/income for the AMO but instead utilized to offset costs incurred for that particular vehicle.

1.5 Agreed processes for inspection (condition and true identification)

- Any experts used in this area (either valuer or mechanical) should be sufficiently qualified and experienced to be in a position to withstand judicial scrutiny at a later date.
- The AMO should have either internal or privately contracted external experts available to provide a market value for that vehicle (a price the vehicle can be sold for). That expert should be appropriately qualified and registered as a valuer or industry expert.
- The AMO should also have the ability to mechanically inspect the vehicle to ensure that it is roadworthy. To do so, the AMO should have access to relevant experts. These

experts can either be state employees or privately contracted specialists.

1.6 Agreed processes for valuation

- The AMO should have a clear policy on how it values vehicles. Every valuation should be documented and available for review and audit. It should be carried out by a recognized industry expert or qualified nationally registered valuer. The valuation should be provided to the seizing body/authority as soon as practicable after the vehicle comes into the possession of the AMO.

1.7 Contracts for technical assistance. (e.g. recording of keys, gaining access, servicing, repairs, new battery, etc.)

- The AMO should have adequate resources in place to be in a position to take full custody of any vehicle. This includes having the resources to gain access to vehicles, duplicate keys and having service providers in place to carry out repairs, replace batteries etc. It may not be necessary to utilize these service providers on every occasion. However, they should be available where the need arises.

1.8 Providing feedback reports (including valuation and condition) to the seizing authority and/or within the judicial proceeding

- It should be within the AMO's mandate to engage with any state body/agency, prosecutor or court that is or may act on behalf of in managing vehicles.
- The AMO should be in a position to provide an asset management plan for each vehicle that comes into its possession.
- The AMO should have the possibility of applying to the seizing state body/agency, prosecutor or court, as

appropriate, to dispose of or sell a seized vehicle. However, this should only occur where the disposal/sale does not compromise any ongoing judicial proceedings or investigations.

1.9 Agreed procedures regarding registering/re-registering vehicles

- The AMO should have the facility/ability to register vehicles that have come into their possession.
- The AMO should have the ability to reregister vehicles if necessary. Re-registering a vehicle does not mean changing its chassis number. Instead, the action simply changes the registration number displayed on the vehicle.

1.10 Identification of options for disposal including having contracts in place, where appropriate

- The AMO should ensure it has a policy in place regarding the sale/disposal of vehicles.
- The AMO should not restrict itself to only one method of sale or disposal. Instead, the AMO should have multiple options regarding the method of sale available to them.

1.11 Options for the disposal of not roadworthy vehicles, e.g. destruction, sale for parts

- Where a vehicle is deemed dangerous/not roadworthy the AMO should be in a position to either destroy or sell the vehicle for parts.

2 Short-term Management

2.1 Overview

Short-term management is the phase during which the vehicle

is transported to the AMO, assessed/inspected, valued and an asset management plan for the vehicle is identified. During this phase, the AMO should submit a report, including the asset management plan to the seizing authority, prosecutor and/or within the judicial proceedings outlining its findings including the value of the vehicle. The valuation and assessment of the vehicle should be carried out by an industry expert or nationally registered/recognized expert. The individual(s)/system used to value and inspect the asset should be of a standard that it will stand up to judicial review/scrutiny.

2.2 Interlocutory sale

Part of this phase is evaluating whether the vehicle is suitable for interlocutory (pre-final judgement) sale. Therefore, the option of interlocutory sale should be available to the AMO, where appropriate. Interlocutory sales should not be the norm. Instead, vehicles need to be evaluated on a case-by-case basis.

2.3 Interlocutory sale versus the need to retain

When considering an interlocutory sale, the AMO should be cognitive of any need to retain the vehicle, e.g. evidence in an ongoing prosecution, investigation or judicial proceedings. Before taking such an action, the AMO should consult with relevant stakeholders and identify the next appropriate step to be taken, i.e. long-term management, return to the beneficial owner, sale, destruction, etc.

2.4 Return of asset to the beneficial owner

In certain circumstances, it may be necessary, prudent or appropriate to return the vehicle to the beneficial owner. In such circumstances, the AMO should have the option to

release the vehicle upon payment of a bond, which can be the value of the vehicle, or another amount deemed appropriate to preserve the value of the vehicle. In accepting such a bond, the AMO should be cognitive as to the source of the funds being used.

2.5 Preparation for long-term management

After initial review during the short-term management phase, the AMO should put a long-term plan in place. Various options, including but not limited to, long-term storage, social re-use via a rental/lease scheme, return to the beneficial owner until final order etc. may form part of a management plan at the long-term storage phase.

3 Long-term Management

A long-term management plan can include storage, social re-use or return of the vehicle to the suspect with payment of a bond. Where it is necessary to store a vehicle long-term, the AMO should be in a position to facilitate this need.

3.1 Long-term storage

3.1.1 In some cases, it will be necessary to place the vehicle in long-term storage, which can incur considerable costs. Therefore, the AMO should make every effort to have storage available at a reasonable cost either through the use of a state-owned facility or a private industry facility. Where costs (e.g. storage) are incurred, it should be clearly defined who is liable to pay them.

3.1.2 Where the AMO is storing a vehicle on behalf of another state agency, the AMO should consider the possibility

of recouping those costs from the agency they are acting on behalf of. However, this option should not be used/viewed as a revenue or source of income for the AMO. Such costs should be passed on to the seizing authority at cost value (i.e. if storage costs €3 per night, the AMO should pass the charge on to the seizing authority at €3 per night). In circumstances where the AMO is using a state-owned facility, there should be no charge to the seizing authority.

- 3.1.3 In some cases, the beneficial owner or another interested party may have objected to the interlocutory sale of the vehicle. In such cases, consideration should be given to the possibility of charging the costs of management/storage to the beneficial owner/interested party.

3.2 Social re-use

Consideration may also be given to the option of social re-use of the vehicle during the long-term management phase. If considering this option, the AMO should be cognitive of the circumstances of the case and the reason the vehicle has been placed in long-term storage/management. If the vehicle is needed as exhibit/evidence then it should be preserved so as not to compromise any ongoing investigation or judicial proceedings. Should social re-use be identified as a viable option, the AMO should secure a bond to the value of the vehicle from the entity/body/agency that will be utilizing the vehicle. Such a bond is necessary to preserve the value of the vehicle in the interest of all stakeholders. In circumstances where the final decision of the court is to return the vehicle to the beneficial owner, the bond can be used to compensate the

beneficial owner for any depreciation or losses as a result of the seizure. The balance of the bond can then be returned to the entity/body/agency that had use of the vehicle.

4 Disposal

The disposal phase is the point at which the vehicle is sold, permanently allocated for social re-use, returned or destroyed. Ultimately, it will no longer be in the possession of the AMO. It is incumbent upon the AMO to identify the best method of disposal for each vehicle. In some circumstances, the court may specify the method of disposal. However, the AMO may find that it is not possible to comply with that order. Therefore, the AMO should have a legal or procedural possibility of returning to the court so that they may outline how they propose to dispose of the vehicle.

4.1 Ownership and disposal/sale

The AMO should not be stopped/restricted in disposing of a vehicle once a final order of the court has been made. In circumstances where there is joint ownership or a person/entity has a right to make a claim against the vehicle, the AMO should be allowed to dispose of the vehicle and any claims/disputes that arise can be settled over the proceeds of the sale. Where a claim/dispute arises, it should not be a matter for the AMO to adjudicate over. Instead, there should be a legal mechanism for such a claim to be assessed.

4.2 Options for disposal

The AMO should not be legally restricted in how it disposes of

vehicles, nor should not restrict itself by way of contract or policy. It should have multiple options available for disposal, e.g. online auctions, in-person auctions, state-owned shops, contracted sales agents, etc. Ultimately, the AMO should have the flexibility to assess vehicles on a case-by-case basis and identify the best method of disposal.

4.3 Social re-use

Jurisdictions should consider the use of confiscated vehicles for public or social purposes. This is sometimes called social re-use. However, social re-use should not be the norm or used in every circumstance. Instead, it should be considered alongside all other disposal options. To only consider or utilize social re-use as a disposal method could leave an AMO open to acquisitions mismanagement of assets, failing to secure reasonable or proper value for assets or failing to independently preserve the value or interests of assets for all the stakeholders in any proceedings.

4.4 Costs incurred

Jurisdictions should give consideration to allowing the AMO to recoup reasonable costs incurred in the management of vehicles. These costs could be reimbursed to the AMO from the proceeds of the sale of the vehicle (i.e. vehicle X is sold for €10,000, the total cost of management costs was €1000. Therefore, the AMO returns €9000 to the state funds/central exchequer). The AMO should also utilize industry experts to assess vehicles prior to sale to identify any repairs or actions that can be carried out to increase the potential value of the vehicle at sale. The AMO should also have the financial ability to carry out any recommended repairs or actions that will result



in an increased or better price being achieved for the vehicle.



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