

REGULATION

on the handling, custody and sale of seized, frozen and confiscated assets

CHAPTER I

General provisions

Art. 1

Scope

This Regulation applies to assets which have been seized or frozen on the basis of the Act on Criminal Procedure, No. 88/2008; the Customs Act, No. 88/2005; the Act on Withholding of Public Levies at Source, No. 45/1987; the Act on Withholding of Tax on Financial Income, No. 94/1996; the Income Tax Act, No. 90/2003; and the Act on Value-added Tax, No. 50/1988, as well as assets which have been confiscated on the basis of Chapter VII of the Criminal Code, Act No. 19/1940.

Those authorities authorised to seize and freeze under the Acts referred to in the first paragraph fall within the scope of the Regulation.

Art. 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- a. *Caretaker*: An external party responsible for the storage of seized assets on behalf of a specific public authority or authorities.
- b. *Caretaking agreement*: An agreement concluded with a caretaker for the storage of seized assets.
- c. *Assets*: All valuables and property, including both real estate and movable property and electronic data and valuables, which can be the object of seizure, freezing and/or confiscation.
- d. *Experts*: Parties possessing special knowledge of the condition and value of certain assets, such as real estate agents, automobile dealers, art dealers and goldsmiths.
- e. *Vendor*: An independent third party who undertakes the sale of seized, frozen and confiscated assets pursuant to a sales contract.
- f. *Authority*: Law enforcement agencies and public bodies authorized to seize, freeze and confiscate under the Acts referred to in the first paragraph of Art. 1 of the Regulation.
- g. *Custodian*: A party other than the owner who has assets in its possession.

CHAPTER II

Seized assets

Art. 3

Notification

The owner of an asset shall be notified of its seizure as soon as possible unless the interests of an investigation preclude this. Such notification shall then be given as soon as such interests no longer exist. If the owner of the seized assets is not known, the owner shall be notified of the seizure as soon as he/she is discovered and can be contacted.

Notification pursuant to the first paragraph shall generally be in writing. It must state precisely what has been seized, on what basis and for what purpose, unless the interests of an investigation preclude the provision of such information. It must also state the owner's authorisations to refer the seizure to the courts and to demand a copy of the asset inventory referred to in Art. 6.

A corresponding notification shall be provided to the custodian of the seized assets *mutatis mutandis*, if other than the owner.

Art. 4

Seizure report

When assets are seized, a report must be prepared including at least the following information as applicable:

1. the name and number of the case;
2. the name of the owner or custodian of the assets;
3. where and when the assets were seized;
4. who carried out the seizure, including both the name of the authority and the name of the employee who was responsible for the operation;
5. a description of the assets that were seized, such as their type, number, weight, colour etc. Where appropriate, photographs of the assets may be included in the report;
6. an assessment of the condition of the assets, if applicable.

Experts may be consulted for the assessment of the condition of the assets referred to in point 6, as appropriate.

The seizure report shall be signed by the employee of the authority present at the seizure, as well as the owner or custodian of the assets if possible and if the interests of an investigation do not preclude this.

A copy of the seizure report shall be attached to the asset inventory.

Art. 5

Marking

All seized assets must be clearly and informatively marked. The marking shall be of good quality and durable and must not cause damage or any other deterioration to the value of the seized assets. Each asset shall be marked with the number of the case in question together with a special number for identification in the asset inventory. Furthermore, the marking shall indicate where and when the asset was seized and, if possible, who its owner and/or custodian is.

Art. 6

Asset inventory

The authorities are obliged to keep a detailed inventory of all assets they seize. The asset inventory shall include, in addition to those aspects listed in the seizure report pursuant to Art. 4, the following:

1. the numbers assigned to the seized assets as referred to in Art. 5;
2. where the assets are stored, as provided for in Art. 7;
3. other details which are to be listed in the asset inventory pursuant to other provisions of the Regulation or considered appropriate to include there for other reasons.

The asset owner or custodian shall be provided with a copy of the asset listing in the asset inventory upon request.

Art. 7

Storage

The authority seizing assets is in each case responsible for their storage. Assets shall generally be stored by the authority seizing them for the entire period the seizure lasts.

Each authority shall have at its disposal at least one locked and secure facility specifically intended for the storage of seized assets. Access to the asset storage shall be restricted as far as possible and the officer responsible for the matter shall keep a record of parties with such access.

A special receipt shall be issued for each asset that has been deposited for storage and it must be ensured that it is registered in the asset inventory. Assets may only be released from the asset storage against a receipt from the recipient.

The authorities may contract with private parties to handle the storage of seized goods on their behalf. A storage agreement shall be concluded for such arrangements, stating specifically that the caretaker bears all the same responsibilities for the handling and storage of assets as are incumbent upon the authorities under this Regulation.

Efforts shall be made to keep goods seized in the same case in the same location. If seized goods are to be transferred from one storage facility to another, the transfer must be noted in the asset inventory. Once another authority has acknowledged receipt of the items, it becomes responsible for their storage from that time forth. The same applies when a caretaker receives items for storage under a contract.

If it is impossible for the authority responsible for the seizure or the caretaker to store the asset, for instance, due to the size of the object or its nature, it shall be deemed sufficient to record in the asset inventory where the asset is located.

Art. 8

Handling of assets

Handling of seized assets must be carried out as carefully as possible to ensure that they are not damaged during transport and storage. To this end, it may be necessary to place sensitive or fragile items in special containers or packing, so that they do not suffer shocks, or provide for their special storage. Particular care should be taken to ensure that any assets seized because of their probative value do not suffer any external effects during their transport and storage, such as might risk ruining their probative value.

Art. 9

Authorisation to sell seized assets

In cases where there is a risk that the value of seized assets, which may be confiscated, could deteriorate in value during the period of seizure, the authority responsible for seizure may request a court order to authorize the sale of the assets. However, obtaining a court order is not necessary if the consent of the owner of the assets is

available. Such consent shall be obtained in writing or other verifiable manner. In addition, assets may be sold at the request of the owner.

Before a court order is sought, as referred to in the first paragraph, an appraisal shall generally be obtained from an impartial person with expert knowledge of the assets in question, a certified professional in his/her field wherever possible and appropriate, with the aim of assessing the risk of the value of the assets deteriorating during an investigation. Should the value of the assets prove to be so little that it will not cover the cost of their storage and sale, no authorisation for their sale shall be sought, and instead they shall continue in storage until a decision has been reached on their confiscation or the seizure is terminated.

Actions taken as referred to in the first and second paragraphs shall be recorded in the asset inventory.

Art. 10

Sale of seized assets

After obtaining a court order as appropriate, the seized assets shall be placed for sale with an impartial vendor, who is either employed professionally in selling such assets or is in other respects, because of expertise and experience, qualified to handle their sale. Similarly, if a public entity exists which handles sale of the assets concerned this can be entrusted with the sale. In some cases, it may be appropriate to turn to two or more vendors for the sale.

Before assets are placed in a sales process, an examination shall be made of whether they are subject to any liens or other encumbrances. If this is the case, an effort shall be made to consult with the holder of the rights, including in cases where there is a probability that the sales proceeds will not suffice for their payment.

Before assets are placed for sale a special contract shall be concluded for the sale with the vendor stating, among other things:

1. the type, quantity and other characteristics of the items being sold;
2. that the seller is the authority in question and that seized assets are concerned;
3. that the assets are sold in their current state;
4. the amount of the sales commission;
5. the period of validity of the sales contract;
6. the bank account number where the sales proceeds are to be deposited;
7. a requirement that the items referred to in points 1, 2 and 3 must be specified in the sales description.

A decision on whether to accept an offer for the seized assets rests with the authority responsible for the seizure.

The sale of seized assets pursuant to this Article shall be recorded in the asset inventory.

Art. 11

Collateral

A request from the owner or custodian of an asset to suspend its sale as referred to in Art. 10 may be acceded to if that party provides collateral equivalent to a bid received for purchase of the seized asset. The collateral must be provided the same day as the request to suspend the sale is made.

The collateral must be in the form of funds to be deposited into a special account with the authority responsible for the seizure. The provisions of Art. 17 apply to the handling of such accounts as applicable.

If satisfactory collateral has been provided under this provision, the seizure of the asset is transferred to the funds and the asset shall then be returned to the owner as provided for in Art. 13. This action shall be recorded in the asset inventory.

Art. 12

Handling of proceeds from assets sold

Once seized assets have been sold pursuant to Art. 10, the seizure is transferred to their sales proceeds. The proceeds, net of selling and storage costs where applicable, shall be preserved in a special bank account until a decision is pronounced on their confiscation or their seizure terminates. The disposition of the proceeds shall be recorded in the asset inventory.

Art. 13

Seizure is terminated

If seizure terminates without an order for confiscation, the seized assets, or the funds obtained from their sale pursuant to Art. 10, shall be returned to their owner unless otherwise provided for by law. The authority with ultimate responsibility for the case shall be responsible for returning the assets or funds.

If items are in storage with another authority when the seizure terminates, that authority shall see to the return of the assets at the request of the authority responsible for the case. Returns must be made as promptly as possible and as a rule within three days of the termination of seizure. The disposition of the proceeds shall be recorded in the asset inventory.

Art. 14

Cost of handling assets

If assets are seized by a court order, any costs which may be incurred in connection with the handling and storage of the assets are considered legal costs according to provisions of the Act on Criminal Procedure.

If seizure is terminated without a judgment of confiscation, so that assets must be returned to their owner or custodian, the owner or custodian of the assets may not be required to pay costs which may have been incurred in connection with their handling and storage. If assets have been sold pursuant to Art. 10, their owner shall be reimbursed for the costs incurred in their sale which were deducted from the sales proceeds under Art. 12.

Art. 15

The owner is unknown or refuses delivery

When assets are to be returned to their owner or custodian after seizure has terminated but the owner or custodian is unknown and no one lays a legitimate claim to the assets within 5 years, they may be confiscated, cf. Art. 69 f of the Criminal Code. Such assets shall then be sold in accordance with the rules set out in Art. 10, as applicable.

If the owner is known, but relinquishes the goods in a verifiable manner, they may be sold in accordance with the rules set out in Art. 10, as applicable.

The proceeds of goods sold pursuant to the first and second paragraphs shall be disposed of as provided for in Art. 31.

If the owner or custodian refuses to take delivery of the assets they shall be placed in storage with a caretaker. The owner or custodian shall be notified of the measure and where the assets may be obtained in return for payment of storage costs. If the owner or custodian has not sought the assets within one year of being verifiably notified where they can be obtained, they shall be sold in accordance with the rules set out in Art. 10. Proceeds of assets sold under this paragraph, net of sale and storage costs, shall be delivered to their owner.

CHAPTER III

Special provisions for certain types of confiscated assets

Art. 16

Cash

When cash is seized, a detailed breakdown of the notes and amounts shall be recorded in the seizure report. At least two parties shall take part in counting the cash and confirm its amount by signing the seizure report.

When the cash is delivered for asset storage, it should be recounted if possible, and then placed in a locked safe in the asset storage facility. As soon as practicable, and never later than two working days after the seizure took place, a bank account shall be opened, a separate account for each case or each owner, if there are more than one, where the cash shall be deposited.

The deposit of the money, the date of deposit and the number of the bank account shall be recorded in the asset inventory. In other respects, the provisions of Chapter II shall apply *mutatis mutandis*.

If cash has been seized on the basis that it comprises evidence in a criminal case, e.g. due to biometrics it preserves, or when the value of the cash is due to its value as a collector's item, its handling is governed by the provisions of Chapter II.

Art. 17

Bank accounts

In those instances where funds in bank accounts are seized, either in ISK or foreign currency, the amount and number of the bank account shall be recorded in the seizure report.

As soon as practicable, and never later than two working days after the seizure took place, a bank account shall be opened, a separate account for each account seized, if there are more than one, where the funds shall be deposited.

The deposit of the funds, the date of deposit and the number of the bank account shall be recorded in the asset inventory. In other respects, the provisions of Chapter II shall apply *mutatis mutandis*.

Art. 18

Foreign currency

When foreign currency is seized, the provisions of Art. 16 shall be complied with as appropriate. In the case of currency which is not accepted by Icelandic banks, it shall be handled in accordance with the provisions of Chapter II, as far as appropriate; however, the currency shall be stored in a locked safe in a storage facility.

Art. 19

Foreign bank accounts

In those cases where funds in foreign bank accounts have been seized, in addition to the amount and number of the bank account the type of currency shall be recorded in the seizure report, the name of the financial institution where the bank account was kept and what foreign authority or sister agency provided assistance with the seizure.

If possible, the seized funds shall be transferred to a bank account in Iceland opened as provided for in the second paragraph of Art. 17. If this is not possible, an attempt should be made to open a bank account in a financial institution in the country where the seizure took place into which the funds should be deposited. In other respects, the provisions of Art. 17 and provisions of Chapter II shall apply *mutatis mutandis* to seizure of funds in foreign bank accounts.

Art. 20

Electronic data

When electronic data is seized by copying it on-site, the composition and contents of the data shall be recorded in the seizure report in as clear and organised a manner as at all possible. The data may be stored in the information systems of the authority ultimately responsible, but care should be taken that access to it is restricted to those persons who necessarily need such access for their work. At least one copy of the data in question must also be taken and saved on a hard disk to be stored in a storage facility.

When electronic data is seized along with computer equipment, the composition and contents of the data shall be recorded in the seizure report in as clear and organised a manner as at all possible, together with a detailed description and identification of the seized computer equipment. The computer equipment shall be kept in a storage facility. At least one copy of the data in question must also be taken and saved on a hard disk to be stored in another storage space. A copy of the data may also be stored in the information systems of the authority ultimately responsible, provided that access to it is restricted in the manner specified in the first paragraph.

In other respects, the provisions of Chapter II shall apply *mutatis mutandis*.

Art. 21

Dematerialised assets

When dematerialised securities are seized, such as electronically registered equities and bonds, the type of asset, electronic identification and amount, as applicable, shall be recorded in the seizure report. Furthermore, the name of the securities depository responsible for registration of title shall also be recorded.

When such assets are seized, the respective securities depository shall record that the rights to the assets have been seized by the authority in question. This action shall also be recorded in the asset inventory.

Other dematerialised assets shall be treated in accordance with this provision as applicable.

In other respects, other provisions of this Chapter and of Chapter II of the Regulation shall apply *mutatis mutandis*.

Art. 22

Virtual currency

When virtual currency is seized, the seizure report shall state the type, amount and the medium or equipment in which it was seized, as well as what foreign authority or sister agency assisted in the seizure, if any.

If the seized virtual currency is stored in an account for the purpose or in a digital wallet, the authority concerned shall endeavour to transfer it to an account it opens specifically for that purpose. The same applies when the seized virtual currency is stored on a particular computer, memory key or other appropriate equipment. If this is not possible, for example, because the said equipment is locked, it shall be moved to a storage facility. In other respects, other provisions of this Chapter and of Chapter II of the Regulation shall be complied with *mutatis mutandis*.

Art. 23

Illegal assets

Where illegal assets, assets that have been or were intended to be used to commit an offence, or assets whose ownership is a criminal offence are seized, their handling and storage must comply with the rules of Chapter II of the Regulation as applicable.

Weapons seized must be stored in a locked safety locker in a storage facility or other restricted and locked space. Firearms and ammunition shall be stored in separate locations. In the case of fireworks and explosives seized, care shall be taken that the objects are stored in such places and in such a manner that no danger can arise from them. If necessary, other authorities may be contacted concerning the storage of such assets, and such actions shall be recorded in the asset inventory.

Art. 33 shall apply to the destruction of assets covered by this provision.

Art. 24

Narcotics

The registration, handling and destruction of seized narcotics and other illegal substances and drugs are governed by the internal rules of the authorities responsible for these areas.

CHAPTER IV

Frozen assets

Art. 25

Provisions of Chapter II

The following provisions of Chapter II of the Regulation shall apply to frozen assets *mutatis mutandis*:

- a. Art. 3 On notification.
- b. Art. 4 On the seizure report.
- c. Art. 6 On the asset inventory.
- d. Art. 10 On sale of seized assets.
- e. Art. 11 On security.
- f. Art. 12 On handling of proceeds from assets sold.
- g. Art. 13 When seizure is terminated.
- h. Art. 14 On the cost of handling assets.

Art. 26

Authorisation to sell frozen assets

With the same conditions as are stated in Art. 9 of the Regulation, the authority responsible for freezing assets, which were frozen to secure payment of a fine, legal costs or other claims, may request a court order to sell the assets.

Art. 27

Provisions of Chapter III

The following provisions of Chapter III of the Regulation shall apply to frozen assets *mutatis mutandis*:

- a. Art. 17 On bank accounts.
- b. Art. 19 On foreign bank accounts.
- c. Art. 21 Dematerialised assets
- d. Art. 22 on virtual currency.

Art. 28

Measures to ensure rights

When the freezing has been ordered of an asset, which requires certain measures to be taken to ensure rights to the asset, such as official registration in the case of real estate and an endorsement in the case of commercial paper, such measures must be implemented as soon as the action is carried out or, failing this, as promptly as practicable.

Even in cases concerning the freezing of assets where measures to ensure rights are not specifically required but the assets are subject to official registration, notification of the freezing shall be given to the public entity maintaining records of such assets.

Art. 29

Notification to third parties

If an asset is in the possession of an unsuspecting third party when freezing occurs, the party must be notified of the freezing as promptly as possible.

CHAPTER V

Confiscated assets

Art. 30

Registration

If seized or frozen assets have been confiscated by a court judgment as provided for in Chapter VII A of the Criminal Code, this shall be recorded in the asset inventory.

Art. 31

Sale

If an asset has not already been sold when its confiscation is approved, and it is not to be destroyed as referred to in Art. 33, it shall be sold in accordance with the rules of Art. 10 as applicable and taking into account the provision of the third paragraph of Art. 69 d of the Criminal Code.

Art. 32

Allocation of proceeds of confiscated assets

The proceeds of confiscated assets shall accrue to the National Treasury unless otherwise provided for by law or if a court has decided that their proceeds shall be used to pay damages to a party who suffered a loss due to an offence, cf. Art. 69 g of the Criminal Code.

Art. 33

Destruction of assets

If it is evident that assets which have been confiscated or relinquished have no value, or their value is so little that it will foreseeably not cover the cost of their sale, they shall be destroyed by a party accredited to perform such tasks. The same applies to assets which have been seized or confiscated and the destruction of which is required by law.

Assets such as those referred to in the first paragraph may be destroyed even if they have not been confiscated if their owner has given consent for their destruction. Such consent shall be obtained in a verifiable manner.

Destruction of items that have been held for evidence can only be done in consultation with the prosecutor responsible for the case.

The authority ultimately responsible for the case shall be responsible for the destruction of assets as provided for under this provision. Destruction of assets shall be recorded in the asset inventory.

CHAPTER VI

Miscellaneous

Art. 34

Entry into force

This Regulation is issued on the basis of Art. 88a in the Act on Criminal Procedure, No. 88/2008 with later amendments, and shall enter into force immediately.

Ministry of Justice, 10 October 2019

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