

LAW No. 05/L-049

ON THE MANAGEMENT OF SEQUESTERED AND CONFISCATED ASSETS

The Assembly of the Republic of Kosovo;

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,

Approves

LAW ON THE MANAGEMENT OF SEQUESTERED AND CONFISCATED ASSETS

**CHAPTER I
BASIC PROVISIONS**

**Article 1
Scope and Purpose of the Law**

This law defines the functions and responsibilities of the Agency for the Management of the Sequestered and Confiscated Assets.

**Article 2
Definitions**

1. The terms used in this law shall have the following meaning:

1.1. **The Agency** - means the Agency for the Management of Sequestered and Confiscated Assets;

1.2. **Confiscation** - means the permanent seizure of the asset, ordered with a final decision of the court;

1.3. **The Government** - means the Government of the Republic of Kosovo;

1.4. **The Ministry** - means the Ministry of Justice;

1.5. **The Code** - means the Criminal Procedure Code;

1.6. **Asset** - means any fund or asset, including, but not limited to, financial assets, economic resources, property of every kind, whether tangible or intangible, movable or immovable, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such funds or other assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, or letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets obtained directly or indirectly through criminal offence and any proceeds into which it has been converted or mixed and terrorist funds or property;

1.7. **Sequestration** - means the temporary seizure of the asset based on the final decision of the court or of competent body, in compliance with the law;

1.8. **Asset Management** - means full disposition of the sequestered and confiscated assets that the Agency may have in compliance with the provisions set out by this law, including storage, temporary preservation, sale, renting, the giving for use without compensation and the evaluation of the value of the confiscated assets in compliance with the law, the deposition of the incomes from the sale of confiscated assets in compliance with the law, and any other activity deemed necessary to ensure the preservation and the maintenance of the property;

1.9. **Extended powers of confiscation** - are the measures for the confiscation of assets according to the procedures as determined by the Law on extended powers of confiscation of assets obtained from criminal offence;

1.10. **Asset subject to extended powers of confiscation** - is the asset in ownership of the defendant or possessed by the defendant, which is subject to the prohibitive order or sequestration according to the legislation in force;

1.11. **Terrorist property** - means:

1.11.1. proceeds from the commission of a terrorist act;

1.11.2. property which has been, is being, or is intended to be used to commit a terrorist act;

1.11.3. property which has been, is being, or is intended to be used by a terrorist organisation;

1.11.4. property owned or controlled by, or on behalf of, a terrorist organisation; or

1.11.5. property which has been collected for the purpose of providing support to a terrorist organization or funding a terrorist act.

Article 3

Principles of the Law

During operations and managing with sequestered and confiscated assets, actions are to be compliant to the principles of legality, economy, efficiency, transparency, acting with bona fide, with accountability and professionalism.

CHAPTER II

AGENCY'S FUNCTIONS

Article 4

Agency's Functions

1. Within the rights and obligations foreseen by law, the Agency exercises the following functions:

- 1.1. manages sequestered and confiscated assets used in or benefited from the criminal offence including terrorist property, except assets confiscated for the realization of collection of tax obligations;
- 1.2. executes the court order for the temporary measure of securing the asset, according to the legislation in force;
- 1.3. executes the final court decision, according to the legislation in force, may sell the assets by disbursing the funds collected from the sale into the budget of Kosovo or submitting them for utilization by the Government;
- 1.4. evaluates the value of the sequestered and confiscated asset and also determines the manner of preserving this asset;
- 1.5. preserves the evidence chain for the asset it manages and for court decisions which contain the decision for the sequestered and confiscated asset;
- 1.6. determines the manner of preserving the value of the asset under management;
- 1.7. participates in providing international legal assistance in all cases that involve sequestered and confiscated assets by managing the sequestered and confiscated asset pursuant to a request made by another state;
- 1.8. participates in drafting the state employee training program in relation to sequestration and confiscation of assets obtained through criminal offence;
- 1.9. as needed, assists in executing court decisions for the sequestration and confiscation of assets;
- 1.10. enables the sale of sequestered and confiscated assets according to the decision of the competent court;
- 1.11. manages the data pertaining to the sequestered and confiscated assets in a centralized computer system;
- 1.12. provides advices for the Prosecutor`s Office, Court and other institutions on the specific nature of the management process of the sequestered and confiscated assets, in order to provide support in the pre-sequestration planning or potential confiscation;
- 1.13. enters into Memoranda of Understanding with relevant partner bodies and institutions to agree relationships and responsibilities, and to enhance performance, in compliance with the provisions set out by this law;
- 1.14. performs other tasks as determined by law.

CHAPTER III

AGENCY'S STRUCTURE AND THE DATABASE

Article 5

Legal Status of the Agency

1. The Agency is the central body of state administration, within the Ministry of Justice.
2. The Agency has the status of a legal entity, its own identification mark and its headquarter is in Prishtina.
3. The Agency acts as an independent and sustainable mechanism of professional management and due care in good faith for the sequestered and confiscated assets, within the Republic of Kosovo and from the obligations of the Republic towards other countries.
4. The Agency performs all functions relating to the management of assets, pursuant to a court decision or ex officio.

Article 6

Independence of the Agency

1. The Agency is independent in performing its function in compliance with the constitution, laws and secondary legislation.
2. No public body or institution has the right to influence in any way on the work of the Agency.

Article 7

Leadership

1. The General Director of the Agency shall lead the work of the Agency (hereinafter: the General Director).
2. The General Director is appointed based on conditions and procedure as foreseen by provisions for appointment in senior leading positions in Civil Service of the Republic of Kosovo.
3. The General Director shall not be a member of a political party body.

Article 8

Authorizations of the General Director

1. The General Director leads, represents and presents the Agency, organizes and secures the lawful, rightful and efficient performance of tasks charged to the Agency.
2. The General Director decides for the rights, duties and responsibilities of Agency employees, in compliance with the law.
3. For his work and that of the Agency, the General Director is accountable to the Minister of Justice.

4. The General Director has the senior leading position in the Civil Service of the Republic of Kosovo, in compliance with provisions for civil servants.

5. If not determined otherwise by this law, provisions for the Civil Service of the Republic of Kosovo on the conditions of appointment, appointment procedure, re-appointment, cessation of duty and rights as well as other rights for senior leading positions in the Civil Service, are appropriately applied for the General Director as well.

6. The General Director may authorize an agency employee to sign acts, decide for certain affairs and perform other duties of the Agency's duties, except for acts and tasks which, in compliance with the law, are under the exclusive competency of the General Director.

Article 9

Determining the Internal Organization of the Agency

1. Internal organization and workplace arrangement of the Agency is determined by the respective Regulation of the Agency which is approved by the Minister of Justice and is included as a separate chapter in the Regulation for the internal organization and workplace arrangement at the Ministry of Justice.

2. The following basic organizational units of the Agency are organized in order to perform its tasks and duties:

2.1. directorates; and

2.2. sectors.

3. Provisions for the State Administration and provisions for the Civil Service of the Republic of Kosovo apply to the work, internal organization and arrangement of workplaces such as in rights, duties and responsibilities of civil employees, whereas provisions for the administrative procedure apply in deciding administrative issues.

Article 10

Professional training

Employees of the Agency shall have the right and duty to education and training in compliance with the annual program and plan which is proposed by the General Director and approved by the Minister of Justice.

Article 11

The Report on the Work of the Agency

1. Once a year, the Agency is required to submit to the Ministry of Justice the work report.

2. By a request from the court, prosecutor's office or other competent authority or by its own initiative, the Agency reports or informs on the actions relating to a concrete case or group of cases of sequestration or confiscation of assets, including the statistical reporting with the purpose to analyse the work of the Judiciary or to draft strategies in the field of rule of law with a direct or indirect impact in the sequestration and confiscation matters. Statistical reporting should represent clearly the number and type of sequestered and confiscated assets.

Article 12
Register of sequestered and confiscated assets

1. The Agency shall maintain the evidence of the sequestered and confiscated assets which is under its management, the register contains the data on:

- 1.1. number of court decision;
- 1.2. name of the court;
- 1.3. grounds and deadline of sequestration or confiscation;
- 1.4. data on the asset, appraised value of the asset;
- 1.5. name, last name, personal identification number (PIN) and address of the natural person, respectively the name, seat and business registration number (BRN) of the legal entity from whom the asset has been sequestered or confiscated if those are included in the content of the Court Decision;
- 1.6. details as to where the asset is stored;
- 1.7. details as to when last inspected;
- 1.8. details of the maintenance requirements and how these are to be met;
- 1.9. details of the costs of management and maintenance of such asset;
- 1.10. details of third parties who claim an interest in the asset;
- 1.11. details of every person that has the interest in that property except for the person whose property was taken;
- 1.12. data on any international request on that property;
- 1.13. any other details necessary for the institutions and other legal provisions in force.

CHAPTER IV
INFORMATION EXCHANGE AND INTERNATIONAL COOPERATION

Article 13
Duties of public bodies and institutions

1. The court shall submit the decision for sequestration and confiscation to the Agency on the day it has taken that decision or the following working day, but in any case not later than the maximum time frame foreseen by the provisions of the Code.

2. The Agency may request from the court, state prosecutor and other institutions and bodies submission of certain data or information necessary to perform tasks, whereas respective institutions, within the requested time frame, are required to respond and act in compliance with the request of the Agency.

Article 14

Provision and Exchange of information

1. Any natural or legal person whose asset is sequestered, or third party whether natural or legal persons, has the right to request to be informed about that sequestered asset that is under Agency's management. Such request shall be addressed to the competent Court, which may order the Agency about the type of information that can be given to the requesting party.

2. Each member of the agency's staff is obliged to keep confidentiality relating to all data that are considered to be protected by corresponding law for protection of personal data. Certain information can be disclosed only in compliance with the relevant provisions on access to official documents.

3. If the Agency, during the management of an asset, discovers that such asset is used, directly or indirectly in a criminal offence or if during its management it finds other evidence which link that asset with the criminal offence or other criminal offences, it shall deliver such information immediately to the competent prosecutor.

4. Where a competent authority in the Republic of Kosovo has information in its possession that would assist the Agency in the performance of its functions under this Law it shall transmit such information to the Agency notwithstanding any rule of confidentiality. The Agency may enter into Memoranda of Understanding to govern such exchanges of information.

Article 15

The International Cooperation

1. Where a request is received in the Republic of Kosovo from another country in respect of assets, and the Courts in Kosovo have accepted the request and assets forming the subject of the request have been transferred to the Agency for management, the Agency will have responsibility for those assets as if the case had originated in the Republic of Kosovo.

2. International cooperation in managing with sequestered and confiscated assets is implemented based on the international accord.

3. If the international accord is not established or some matters are not regulated with the international accord, the international cooperation is implemented based on corresponding legislation of the Republic of Kosovo.

CHAPTER V

AGENCY'S ROLE IN THE EXECUTION OF COURT DECISIONS

Article 16

Agency's supportive role

1. The Agency, in compliance with the Code, provides professional and technical support to

all responsible bodies for the execution of court decisions, with the aim of executing court decisions relating to sequestration or confiscation of assets.

2. The Agency, in response to a request from the State Prosecutor or the Court, provides advice on the specific nature of the management process of the sequestered and confiscated assets, and provides support in planning sequestration or confiscation of assets.

3. By request from the competent body in appropriate cases the Agency also may offer professional and technical support outside its working premises by helping in the physical removal of the asset in order to place it in the possession of the Agency.

4. The Agency is obliged at any time, to enable the physical delivery of the assets by the responsible authority for the execution of the court decision, within the Agency's storage premises.

5. At the moment of the reception of the asset in the Agency's premises, a minute for the reception of the asset is drafted which shall be signed by the representative of the Agency that receives the asset and also by the responsible person that delivers such asset.

Article 17

Agency's executive role

1. At the moment of the reception of the asset, the Agency makes complete execution of all requests set out by the relevant decision of the competent Court which sets out the manner of disposing with sequestered or confiscated asset.

2. In the absence of clear requests in the decision of the competent Court, the Agency may require concrete explanations in compliance with the legislation in force.

3. By the reception of the asset, the Agency is responsible for safekeeping, controlling and protecting the sequestered or confiscated asset.

4. The Agency will cover the expenses pertaining to the execution of the Court decisions per paragraph 1. of this Article.

CHAPTER VI

THE MANAGEMENT OF SEQUESTERED AND CONFISCATED ASSETS

Article 18

Management of sequestered assets

1. The authorised police officer who is responsible for the execution of the sequestration order shall be present in the delivery/reception of the sequestered asset.

2. The Agency undertakes the necessary actions in order to adequately maintain and preserve the value of the asset.

3. Relating to the sequestered immovable asset the Agency must inform the competent authority

for the completion of the recording work of the immovable assets with the aim of recording the burden over this immovable property in the appropriate register.

4. The Agency manages sequestered securities in compliance with the law which regulates securities. The Agency enters the note of termination of ownership and the alienation of those securities at the Central Bank of the Republic of Kosovo and with the purpose of following market fluctuations of the sequestered securities, the Agency may hire the authorized participant in the securities market.

5. The Agency undertakes the evaluation of the sequestered asset which includes also an assessment of the value in case of a mandatory sale made by the Agency. The opinion for the mandatory sale of the asset shall also include the calculation of all costs and expenses for both scenarios of being sold or not.

6. The Agency based on its own analysis will advise the court whether or not the sale of the asset will result economically in profitable incomes for the Republic of Kosovo. If the Agency decides that the mandatory sale would not be economic, it can recommend to the Court one or more alternative options of systems for the sequestered asset in compliance with the law.

7. The Agency may ensure the preservation of the value by keeping or selling the sequestered asset, in order to replace it with a monetary counter value.

8. In all cases of assets that require special administration of special companies and businesses, or specific assets which require special knowledge in the relevant field, the Agency engages independent administrators of the special field with the objective of the efficient administration and well functioning of this property.

9. The administrators as per paragraph 8. of this Article are invited by the Agency through public announcement.. The agency signs a contract with the selected administrator, which sets out the mutual rights and obligations and the conditions for the termination of the contract.

10. In some special cases the Agency may require from the Court to leave the sequestered asset with the owner for preservation of the value or use.

11. Within ten (10) days from the reception of the sequestered asset into Agency's care, the Agency informs the Court about the reception and the actual location of the asset, general conditions of the asset, specifics and the value of the asset including a copy of the recording of the asset.

Article 19

The management of confiscated assets

1. Once the Court decision for the confiscation of the asset is final (irrevocable), the asset and the money realised by the sale of the asset becomes property of the Republic of Kosovo.

2. Where the Court issues a confiscation order in respect of an asset which is not already under the control of the Agency, the authorised police officer(s) responsible for the execution of the Court judgment shall be present during the reception/delivery of the confiscated asset at the Agency.

3. By reception of the asset, the Agency preserves and controls the asset ordered to be

confiscated and ensures its protection. The Agency is authorized to undertake necessary measures to adequately preserve and secure the confiscated asset in order to preserve its value.

4. The Agency may perform the sale of the items or the handing over for use to the Government.

5. Within thirty (30) days after receiving the asset under its management, the Agency ensures the technical and financial assessment of the confiscated asset. The assessment comprises an evaluation of the market value of the asset. Except for unique (specific) assets that might require a longer deadline, the Agency may receive the opinion of the experts relating to the value of the asset.

6. The assessment includes also the opinion on the value of the asset for obligatory sale from the Agency. The opinion on the value of the asset for obligatory sale will include also the calculation of all costs and expenses that might occur if the confiscated asset would not be sold.

7. Based on its own analysis, the Agency will conclude whether the sale of the asset will be or not economically profitable for the Republic of Kosovo. Within thirty (30) days from the admission of the technical and financial assessment the Agency will decide relating to the system that the state may use for this asset. Once the decision for its confiscation is final, the asset becomes irreversibly a state property. In this case, if afterwards illegitimacy or illegality is proved the asset owner has the right to require fair compensation.

Article 20

Assests Outside the Scope of the Agency

1. The Agency does not manage sequestered and confiscated assets which fall under one of the following categories:

1.1. narcotic substances, analogue psychotropic substances or tools, equipments or narcotic materials;

1.2. weapons, ammunitions or explosive materials;

1.3. alcoholic products, tobacco and other products for which there is no customs declaration or whether they are forged;

1.4. other assets which may not be sold due to health, veterinary or public safety.

Article 21

Appraisal of the monetary value of sequestered and confiscated assets

1. Following the reception of assets, for procedural needs, the Agency performs the appraisal of its market value at the time of the reception of the asset by utilizing services of evaluators employed in the Agency or of court certified evaluators of the Republic of Kosovo.

2. Court certified evaluators from paragraph 1. of this Article, who through public announcements are invited and the Agency shall enter into a contract with certified evaluators, and this regulates mutual rights and duties and contract termination terms.

3. The agency may perform an appraisal of the movable and immovable sequestered asset for purposes of leasing it, giving it for use free of charge, or selling that asset.

4. The Agency appraises the received assets according to its current market value at the moment of reception.

Article 22

Handling items with historic and artistic importance

1. If items of special historic, scientific or artistic value have been sequestered, the Agency delivers them for storage at the respective competent institution for preservation of these items until a final decision is issued regarding the request for the confiscation of the asset.

2. After a final decision has been issued on confiscating items from paragraph 1. of this Article, without compensation, they are sent to the respective competent institution for the preservation of these items, determined by a separate law.

Article 23

Handling sequestered money and valuable assets

1. The Agency delivers the sequestered money and valuable assets for preservation at the Central Bank of the Republic of Kosovo until the decision becomes final.

2. Confiscated items from paragraph 1. of this Article become public property and are preserved as determined with the act of the competent ministry for financial affairs.

Article 24

Expenses relating to preservation and maintenance of sequestered and confiscated assets

1. Expenses relating to preservation and maintenance of sequestered and confiscated assets are the burden of the Agency.

2. The manner of determining expenses for preserving and storing the assets is regulated by secondary legislation which is issued by the Minister of Justice.

Article 25

Mandatory extermination of sequestered and confiscated assets

1. The sequestered and confiscated asset which must be destroyed for the protection of the lives and health of humans and animals, for environment protection and for other safety reasons, is destroyed under the supervision of competent bodies, in compliance with the law.

2. The final decision for the expenses of the destruction is issued by the court after the completion of procedure.

3. The Agency shall bear the expenses of asset destruction until the decision from paragraph 2. of this Article is issued.

Article 26
Return of Sequestered Asset

1. The court is required to submit to the Agency the decision by which the sequestered or confiscated asset is returned.
2. Following the reception of the final decision of the court from paragraph 1. of this Article, the Agency, without any postponement, and no later than eight (8) days from the reception of the final decision, is obliged to return the sequestered asset.
3. Where the assets mentioned in paragraph 1. of this Article are to be returned, a minute is drafted. The minute for return of assets shall contain data relating to the asset owner, state of the asset at the moment of reception, value of the asset, reception time, the manner of preservation and other relevant data.
4. If the sequestered asset has been sold, the Agency should return the amount of money obtained from the sale which at the time of return is in the account from Article 27 paragraph 3. of this law.
5. If the asset has been donated or destroyed, the owner of the asset is entitled to compensation in compliance with provisions of legislation in force.

CHAPTER VII
SALE OF SEQUESTERED AND CONFISCATED ASSETS

Article 27
Sale of assets

1. On the proposal of the Agency, the State Prosecutor or any other competent body may require from the court a decision to sell an asset that may lose value, or its storage costs exceed its value, or the storage expenses are disproportional with the value of sequestered assets. Such assets will include livestock, and assets which quickly lose value.
2. In a case under paragraph 1. of this Article, the Agency may, without public oral auction, sell such assets on the Agency's website through public announcement.
3. The realised incomes from the sale of the sequestered asset are deposited in the Agency's bank account in the Central Bank of Kosovo. Otherwise the Agency preserves the asset until its confiscation is ordered by a Court decision. The Agency may advise the Court about any change relating to the conditions of the asset or its value.
4. Monetary proceeds from the sale of sequestered assets from paragraph 1. of this Article are kept in the separate account of the Agency until the Court decision becomes final.
5. With the purpose of preserving the value of sequestered assets, the Agency may sell the movable asset either directly or through the appointed natural or legal entity.
6. If the movable asset is not sold in two (2) public auctions, the sale may be implemented

through a direct agreement, according to law.

7. If the sale has not been successful with the direct agreement or it cannot be sold for a period of more than two (2) years, the sequestered and confiscated movable asset may be donated for humanitarian purposes or may be destroyed.

8. Manner and procedure of the sale of sequestered immovable asset is regulated with a secondary legislation issued by the Minister of Justice.

9. The sale of securities is performed in compliance with provisions which regulate circulation of securities.

10. If this law does not foresee it otherwise, the procedure of the sale of confiscated assets applies appropriate provisions of the law which regulate the execution procedure.

11. Upon the proposal of the Agency and the request of the prosecutor, the court may grant the Agency that instead of selling the movable asset, it would request from the owner or the other person to deposit as a bank guarantee the monetary sum of at least fifty percent (50%) of the monetary value of the same asset. After the guarantee is deposited, the asset may be handed to the guarantee depositor.

Article 28

Procedure after the sale

1. When the decision for confiscation becomes final, the Agency may sell the asset and the proceeds from the sale of asset are placed in budget of the Republic of Kosovo.

2. Following the sale of assets the income generated replaces the value of the sold assets. The Agency informs the Court that made the decision of the result of the sale.

3. The Agency is obliged to manage every amount which is gained from the selling of the assets.

4. The income obtained by the sale is deposited in the bank account of the Agency at the Central Bank of the Republic of Kosovo.

CHAPTER VIII

SPECIAL PROVISIONS ON THE IMMOVABLE ASSETS

Article 29

The use of the immovable asset and other assets such as economic operators, trade and professional services

1. By proposition of the Ministry of Justice, the Government defines the criteria, measure and manner for the use of the immovable asset and of the economical operators, trade and professional services within the limits of destination, set out by this law.

2. For the issuance of this law the Government is based on the principles of good management of the property, improving the effectiveness of the criminal justice, and of the rehabilitation

of the fair compensation.

CHAPTER IX TRANSITIONAL AND FINAL PROVISIONS

Article 30 Continuation of the work of the Agency

1. The Agency which is established in compliance with the Law on Management of Sequestered and Confiscated Assets and its staff continue the work in compliance with the law.
2. The sale of assets and proceeds from the sale of assets, under recent legislation in force, upon entry into force of this law shall be applied in compliance with the respective provisions of this law for the sale and proceeds from the sale of assets.
3. Until the day of entry into force of this law, procedures initiated by the Law on Management of Sequestered or Confiscated Assets shall be completed according to provisions of this law.

Article 31 Sub-legal acts

The sub-legal acts for the implementation of this Law will be issued within one (1) year from the day of the entry into force of this Law.

Article 32 Repeal

Entry into force of this law shall repeal Law No. 03/L-141 on Management of Sequestered or Confiscated Assets and Administrative Instruction No. 1/2010, for the Functional and Organizational Structure of the Agency for Management of Sequestered or Confiscated Assets.

Article 33 Entry into Force

This law shall enter into force fifteen (15) days after its publication in the Official Gazette of the Republic of Kosovo

**Law No. 05/L-049
24 March 2016**

Promulgated by Decree No.DL-008-2016, dated 05.04.2016, President of the Republic of Kosovo Atifete Jahjaga