

**ANTI-MONEY LAUNDERING/COUNTER FINANCING OF TERRORISM /COUNTER  
PROLIFERATION FINANCING IN FOCUS**

**Part Six:**

**An In-depth Look at the Financial Action Task Force (FATF) Forty Recommendations-  
Recommendation 4- Confiscation and Provisional Measures**

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**“Confiscation and Provisional Measures”** is the focus of Recommendation 4 of the Financial Action Task Force’s (FATF) Forty Recommendations. This is a critical component in the drive to remove the profit from crime.

Recommendation 4 requires countries to adopt similar measures to those found in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (Vienna Convention), the United Nations Convention against Transnational Organized Crime, 2000 (Palermo Convention) and the International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention). Saint Lucia has signed on to all three United Nations conventions.

Recommendation 4 calls for giving legislative powers to competent authorities (e.g. the Royal St. Lucia Police Force, Financial Intelligence Authority, Customs & Excise Department etc.) to confiscate, freeze or seize assets. These assets include but are not limited to (a) any property which has been laundered, (b) any property which is the proceed of, has been used in or is intended for use in the financing of terrorism, terrorist organizations or in the commission of a terrorist act and (c) property from or used in or even intended to be used in money laundering or any predicate offence.

The measures being undertaken should give the competent authorities the power to identify and evaluate any property which is subject to confiscation as well as the power to trace its origins. The authority should also be empowered to carry out provisional measures such as the freezing of assets and the seizing of property to prevent any transfer or disposal of such property. Under this Recommendation, countries are encouraged to introduce measures that would allow for property or instruments used in the commission of an offence to be confiscated without a criminal conviction.

The law which covers confiscation is the Proceeds of Crime Act (POCA) Cap. 3.04 of the Revised Laws of Saint Lucia. Under the POCA the areas discussed above are addressed. Section 9 of the POCA speaks to ‘Forfeiture on Conviction’ and under subsection (1) the Director of Public Prosecutions can apply to the Court “for a forfeiture order against property in respect of a person’s conviction for a criminal conduct and if the Court is satisfied that the property is tainted property in respect of the offence, the Court may order that the property or such of the property as is specified by the Court in the order be forfeited to the Crown”.

In addition, Section 17 deals with “Confiscation Order on Conviction”. The law posits that where the Director of Public Prosecutions makes a confiscation order to the Court against a person convicted of a criminal conduct, the Court if satisfied can order the individual to pay the Crown an amount which is equal to the benefits received from the offence committed.