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LEGAL OBSTACLES TO RECOVERING STOLEN ASSETS FROM OFFSHORE JURISDICTIONS: SECRECY, OWNERSHIP OPACITY AND THE LIMITS OF INTERNATIONAL COOPERATION

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Abstract: *Offshore financial centres remain the principal destination for the proceeds of grand corruption, and the legal architecture of secrecy that they offer – bank confidentiality, opaque legal persons and arrangements, protective trust law and professional privilege – continues to defeat asset recovery efforts even after two decades of international transparency reform. This article analyses the legal obstacles to recovering stolen assets from offshore jurisdictions from the perspective of the requesting state. It examines the nature and scale of offshore wealth, identifies the specific doctrines and practices that impede tracing, freezing and confiscation, and evaluates the strategies that states have developed in response: non-conviction based forfeiture, unexplained wealth orders, administrative freezing of the assets of foreign politically exposed persons, registers of beneficial ownership and automatic exchange of financial account information. Drawing on leading judgments of the courts of England and Wales and the Privy Council and on the revised FATF and OECD standards, it argues that the decisive shift lies in the transfer of the burden of transparency from the requesting state to the asset holder and the intermediary, and outlines the implications for the Republic of Uzbekistan.*

Keywords: offshore jurisdictions; asset recovery; financial secrecy; beneficial ownership; trusts; non-conviction based forfeiture; unexplained wealth orders; automatic exchange of information.

Introduction

The recovery of stolen assets from offshore jurisdictions is the point at which the international anti-corruption regime meets its most determined resistance. The proceeds of embezzlement and bribery are moved abroad because the jurisdictions that receive them offer what the country of origin cannot: legal certainty for the owner, confidentiality against outsiders and procedural rules that place the burden of proof on whoever seeks to disturb the status quo. The scale is considerable. UNODC has estimated that the equivalent of 2 to 5 per cent of global GDP is laundered each year [1]; macroeconomic estimates place the stock of household wealth held offshore at roughly 10 per cent of world GDP, with far higher ratios for countries with weak institutions [2, 3]. A meaningful share of that wealth is the product of corruption.

The international response since the early 2000s has been substantial: the United Nations Convention against Corruption made asset recovery a fundamental principle [19]; the Financial Action Task Force required transparency of beneficial ownership; the OECD introduced automatic exchange of financial account information; and financial centres such as Switzerland, the United Kingdom and the Crown Dependencies adopted new tools to freeze and confiscate the assets of foreign kleptocrats. Yet the Panama Papers of 2016 and the Pandora Papers of 2021 showed that the offshore system had adapted rather than disappeared [7]. The persistence of the problem suggests that its roots are legal as much as political.

This article accordingly examines the obstacles to offshore asset recovery as legal phenomena. Section 1 describes the architecture of offshore secrecy. Section 2 analyses the specific doctrines that impede recovery. Section 3 evaluates the strategies developed by requesting states and financial centres. Section 4 assesses the international transparency initiatives and draws conclusions for states such as Uzbekistan that are constructing national asset recovery systems.

1. The Legal Architecture of Offshore Secrecy

An offshore jurisdiction is not defined by geography but by a combination of legal features: low or zero taxation of non-residents, strict confidentiality of financial and corporate information, minimal substance requirements for legal entities and a body of law designed to protect property from external claims. The Financial Secrecy Index, which ranks jurisdictions by the secrecy they provide weighted by their share of global financial services, places the United States, Switzerland and Singapore at the top, demonstrating that secrecy is supplied by major economies as well as by small islands [4]. The distinction between the tax haven and the onshore financial centre has become one of degree.

The instruments of concealment are well documented. The World Bank–UNODC study *The Puppet Masters*, based on more than 150 grand corruption cases, found that legal persons – above all private companies and their bearer or nominee shareholders – were used in the overwhelming majority of cases, that trusts and foundations were used to add a further layer, and that the entities in question were most often created by corporate service providers in jurisdictions where no information on beneficial ownership was collected [5]. The structures are typically stacked: a bank account in one jurisdiction held by a company in a second, owned by a trust in a third, administered by a trustee in a fourth, with the settlor and beneficiaries resident in a fifth.

Trust law adds distinctive protections. Asset protection trusts in several offshore jurisdictions provide short limitation periods for challenges by creditors, refuse to recognise foreign judgments that conflict with local trust law and permit flee clauses that automatically

transfer the trust to another jurisdiction on the occurrence of a triggering event such as a foreign court order. Legal professional privilege and the confidentiality obligations of corporate service providers supply a further shield: the information that would identify the beneficial owner is held by professionals who are entitled, or obliged, to refuse disclosure. As the critical literature has emphasised, this is not an accident of history but a business model, maintained by a professional industry that sells confidentiality and legal resilience as a product [6].

2. Specific Legal Obstacles to Recovery

The first obstacle is the identification of the asset and its owner. Where beneficial ownership information is not collected, or is collected only by intermediaries who are not obliged to share it, the requesting state cannot describe the property with the precision that a freezing request requires. The revision of FATF Recommendation 24 in 2022 and Recommendation 25 in 2023 responded to this problem by requiring countries to ensure that adequate, accurate and up-to-date information on the beneficial ownership of legal persons and arrangements is available to competent authorities through a register or an equally effective mechanism [16]. Implementation, however, is uneven, and verification of the information held in registers remains weak.

The second obstacle is the burden and standard of proof. Common law courts in financial centres will freeze and ultimately confiscate assets only if the claimant establishes, at least to the civil standard, that the property represents the proceeds of a specific wrong. In *Attorney General of Zambia v Meer Care & Desai* the High Court in London found that former President Chiluba and his associates had conspired to misappropriate public funds and gave judgment for the Republic, yet the Court of Appeal reversed the findings against the professional firms for want of sufficient evidence of dishonesty, and the judgment was never registered for enforcement in Zambia [9]. The case shows that even a successful claim in the financial centre may founder on the evidential threshold applied to intermediaries and on the political conditions in the victim state.

The third obstacle is tracing through mixed funds and complex structures. Equitable tracing traditionally required that the claimant follow the value through a chain of substitutions, a task that sophisticated laundering is designed to defeat. The Privy Council's decision in *Federal Republic of Brazil v Durant International Corp*, on appeal from Jersey, relaxed the rule against backward tracing and held that a claimant may trace into an asset acquired before the misappropriated funds were received, provided that the transactions formed part of a coordinated scheme [8]. The judgment is significant for corruption cases precisely because bribes and embezzled funds are often used to reimburse, rather than to fund, the acquisition of assets.

The fourth obstacle is the historic legislation that criminalised disclosure. Confidential relationships statutes in several Caribbean jurisdictions and the Swiss banking secrecy provisions in force for most of the twentieth century made it an offence for a bank or professional to disclose client information to foreign authorities. Most have been repealed or substantially amended, but their legacy persists in the culture of the professions concerned and in the reluctance of local courts to assist foreign claimants absent a formal mutual legal assistance request. The fifth and newest obstacle is the migration of concealment to virtual assets, where pseudonymous wallets, unhosted storage and non-compliant exchanges replicate the secrecy of the classic offshore structure without any jurisdiction at all.

3. National Strategies of Recovery: Shifting the Burden to the Asset Holder

The most consequential development in the last two decades is the adoption by financial centres of legal tools that no longer depend on a conviction in the victim state. Non-conviction based forfeiture allows the state to confiscate property shown on the civil standard to be the proceeds of unlawful conduct, irrespective of whether any person is convicted. The World Bank's good practices guide identified the key design features – an action in rem against the property, a civil standard of proof, protection for bona fide third parties and the availability of the mechanism to foreign states – and these have since been reflected in UNCAC Article 54(1)(c) and in the 2023 revision of FATF Recommendation 4 [15, 16]. Part 5 of the United Kingdom's Proceeds of Crime Act 2002 and the civil forfeiture provisions of United States federal law have been the principal vehicles for the recovery of foreign corruption proceeds in those jurisdictions.

Unexplained wealth orders go a step further by reversing the burden of explanation. Introduced by the Criminal Finances Act 2017, they require a person who is a politically exposed person or is suspected of involvement in serious crime to explain how property was acquired where their known lawful income appears insufficient; failure to comply raises a presumption that the property is recoverable [12]. The first order, upheld by the Court of Appeal in *National Crime Agency v Hajiyeva*, concerned the wife of a former state banker from Azerbaijan and confirmed that the order is an investigative measure whose statutory requirements, including the assessment of income and the status of the respondent, had been properly applied [10]. The subsequent discharge of orders in *National Crime Agency v Baker*, where the High Court found that the agency had relied on assumptions about the source of funds rather than evidence and criticised its treatment of complex trust structures as inherently suspicious, demonstrated the limits of the tool and the continuing evidential demands of offshore cases [11]. The Economic Crime (Transparency and Enforcement) Act 2022 subsequently expanded the scope of orders and limited the costs exposure of the enforcement agency, alongside the creation of a register of beneficial owners of overseas entities holding United Kingdom real estate [13].

Switzerland has developed a distinct administrative model. The Federal Act on the Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons, in force since 2016, empowers the Federal Council to freeze the assets of foreign politically exposed persons and their entourage where the state of origin is unable to conduct proceedings, and permits confiscation in administrative proceedings on the basis of a rebuttable presumption that assets are of illicit origin where the person's wealth grew exorbitantly during the exercise of public functions and the state of origin is notoriously corrupt [14]. The statute codifies the practice developed in the Duvalier and Abacha cases and provides the legal basis for negotiated restitution agreements, including the 2020 framework agreement with Uzbekistan.

The common thread in these strategies is the displacement of the burden of transparency. Rather than requiring the victim state to prove, under the rules of the financial centre, the criminal origin of specific assets, the newer tools require the asset holder to explain the origin of wealth and the intermediary to disclose the ownership of structures. This shift is the practical answer to the architecture of secrecy described above, and its legitimacy depends on the procedural safeguards that accompany it – judicial authorisation, the right to be heard and protection of third parties – which the European Union has now codified in its 2024 Directive on asset recovery and confiscation [18].

4. International Transparency Initiatives and Implications for Uzbekistan

Three multilateral initiatives underpin the national strategies. The OECD Common Reporting Standard, adopted in 2014, established the automatic exchange of financial account information between more than one hundred jurisdictions and ended the era in which an undeclared foreign bank account could be assumed to remain invisible to the account holder's home tax authority. Its extension to virtual assets through the Crypto-Asset Reporting Framework, with first exchanges scheduled from 2027, addresses the migration of concealment into digital assets [17]. The FATF beneficial ownership standards, discussed above, and the UNCAC review mechanism complete the framework by subjecting the transparency of legal persons and the availability of recovery mechanisms to peer evaluation.

The results are real but partial. Automatic exchange has reduced the volume of undeclared bank deposits in traditional secrecy jurisdictions, but wealth has migrated into real estate, private companies and jurisdictions outside the exchange network. Beneficial ownership registers exist in many jurisdictions but are frequently unverified, and the Court of Justice of the European Union's 2022 judgment restricting public access to such registers on privacy grounds has narrowed their reach. Trust transparency lags behind corporate transparency. The Pandora Papers demonstrated that jurisdictions in the United States now compete with traditional offshore centres in the provision of secretive trust services [7]. The empirical picture remains one of assets frozen in the billions and returned in the hundreds of millions [20].

For Uzbekistan the analysis yields three lessons. First, the country's own transparency regime – the collection and verification of beneficial ownership information for legal persons registered in Uzbekistan, and the supervision of the professionals who create them – determines its credibility as a requesting state and its exposure as a destination. Second, the national legal toolkit must include the instruments that financial centres now expect to see reciprocated: non-conviction based confiscation in the circumstances contemplated by UNCAC Article 54(1)(c), a mechanism for the recognition of foreign non-conviction based orders and a specialised authority able to trace assets through offshore structures. Third, participation in the international infrastructure – the Common Reporting Standard, the Crypto-Asset Reporting Framework and practitioner networks – converts the abstract obligations of UNCAC into operational access to the information on which recovery depends.

Conclusion

The legal obstacles to recovering stolen assets from offshore jurisdictions are the product of deliberate design: a body of law that shields ownership from disclosure, protects property from foreign claims and places the burden of proof on the claimant. International transparency initiatives have eroded the outer layers of this architecture – bank secrecy in its classic form, the anonymity of bank accounts – but its inner layers, the opacity of legal arrangements and the resilience of trust law, remain largely intact, and concealment is migrating into virtual assets.

The most effective responses have been those that reverse the burden: non-conviction based forfeiture, unexplained wealth orders, administrative freezing on the basis of presumptions and mandatory disclosure of beneficial ownership. Their legitimacy rests on procedural safeguards, and their effectiveness rests on verification and international reach. For a requesting state such as Uzbekistan, the path to successful recovery lies in adopting the same instruments domestically, in strengthening its own transparency regime and in joining the exchange networks through which offshore wealth has become traceable. Offshore

secrecy cannot be abolished by the victim state, but it can be made irrelevant to the assets that matter most.

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