



Association des Banques et Banquiers, Luxembourg
The Luxembourg Bankers' Association
Luxemburger Bankenvereinigung



The Luxembourg
Banking & Financial
Law Association

ROUNDTABLE ABBL – ALJB – BGA

Management of seized assets by the Asset Management Office

(i.e. “*Bureau de Gestion des Avoirs*” or
“*BGA*”)





Association des Banques et Banquiers, Luxembourg
The Luxembourg Bankers' Association
Luxemburger Bankenvereinigung



PRESENTATION OF THE PANELISTS



Michel TURK

Directeur - Bureau de Gestion des Avoirs

Joseph DELHAYE

*Senior Vice President & Head of Legal Department
Spuerkess*

Franz SCHILTZ

Partner - Schiltz & Schiltz Avocats à la Cour

Michel PRIESTER

*Managing Director and Head of Legal Department
Banque J. Safra Sarasin (Luxembourg) SA*

Jonathan HUG

Senior Legal Adviser - ABBL

LEGAL FRAMEWORK AND CREATION OF THE BGA

- **Directive 2014/42/EU** of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union;
- **Law of 22 June 2022** on the management and recovery of seized or confiscated assets ("**BGA Law**")

Art. 1 BGA Law

"The BGA is under the authority of the Ministry of Justice. (...)"

Art. 2 BGA Law

"The BGA is led by a director who acts as the head of administration of the BGA. (...)"



MISSIONS OF THE BGA

Art. 3 BGA Law

"The mission of the BGA is to take care of:

- 1° the **management of all sums, whether cash or balances credited to an account, claims or virtual assets seized during a national or foreign criminal procedure;**
- 2° the **management of all other assets, whatever their nature, whose preservation in kind is not necessary for the establishment of the truth** and which require management actions for their conservation or enhancement, seized during a national or foreign criminal procedure, whose management is entrusted to it (...);
- 3° the **disposal or destruction of seized assets**, ordered in application of Articles 580 and 581 of the Code of Criminal Procedure;
- 4° at the request of the State Prosecutor General, the **management of assets confiscated for the benefit of the State.** (...)"



Art. 4 BGA Law

*"The **management of assets** under Article 3 includes:*

- 1° for **all amounts, whether cash or balances credited to an account, their safekeeping with the Caisse de Consignation (...);***
- 2° for **cash that has replaced other assets alienated** or returned under points 2 and 3, their safekeeping with the Caisse de Consignation (...);*
- 3° for **seized virtual assets, their safekeeping in a wallet opened in the name of the Caisse de Consignation**, which holds them in accordance with the Law of 29 April 1999 on Deposits with the State, **or their alienation** under Article 581 of the Code of Criminal Procedure;*
- 4° for **the management of claims, their safekeeping and collection**, with the State being subrogated to the rights of the creditor;*
- 5° for **other seized assets:***
 - a) the **alienation of seized assets to replace them with the proceeds obtained**, under Articles 580, paragraphs 1 and 2, and 581 of the Code of Criminal Procedure; (...)"*

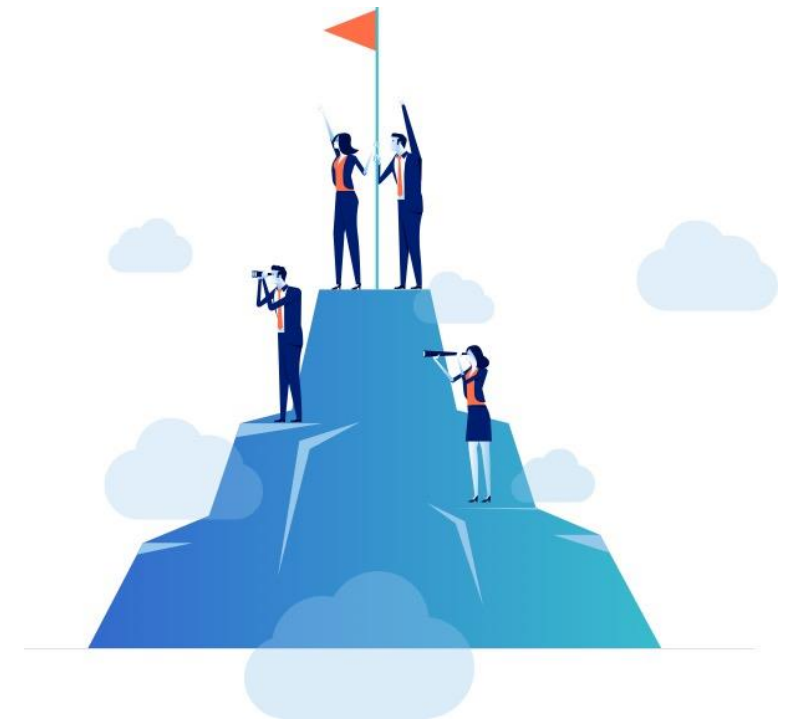


SCOPE OF THE ROUNDTABLE AND PREVIOUS EXCHANGES

1. Limitation of the scope of the roundtable to cash, financial instruments and virtual assets

2. Exchange between ABBL and BGA

- ABBL Letter of 11 July 2023 on conflicts between BGA Law and pledges or civil seizures
- 1st Meeting ABBL/BGA of 26 July 2023
- BGA Letter of 27 July 2023 regarding cash
- 2nd Meeting ABBL/BGA of 18 October 2023
- BGA email of 24 October 2023 regarding financial instruments



MANAGEMENT OF SEIZED ASSETS – CASH

Art. 67 (2) of the Code of Criminal Procedure

*"If the seizure concerns any amounts, whether cash or balances credited to an **account** or claims, the investigating judge orders their transfer in accordance with Article 579, paragraphs 1 to 3. (...)"*



Art. 579 of the Code of Criminal Procedure

*"The State Prosecutor or the investigating judge **orders the transfer to the Caisse de Consignation of all seized amounts, whether in cash or balances credited to an account or claims, during a national or foreign criminal procedure and provides the BGA with a copy of the seizure reports. (...)***

They send to the BGA all documentation evidencing the existence of a seized claim during a national or foreign criminal procedure and provide it with a copy of the seizure reports. (...)

The decision to entrust the BGA with the management of assets subject to a criminal seizure is notified to the person with whom the seizure was made."

MANAGEMENT OF SEIZED ASSETS – CASH

- **Cash seized before 1st October 2022 vs Cash seized after 1st October 2022**
- **Influence of the existence of a pledge or of a civil seizure on the cash account(s) being subject to the criminal seizure**



DISCUSSION BETWEEN PANELISTS

MANAGEMENT OF SEIZED ASSETS - FINANCIAL INSTRUMENTS

Art. 67 (2) of the Code of Criminal Procedure



*"(...). If the **seizure concerns other assets**, whatever their nature, whose preservation in kind is not necessary for the establishment of the truth and which require management actions for their preservation or enhancement, **the investigating judge may order that the management of these assets be entrusted to the BGA** in accordance with Article 579, paragraph 4."*

Art. 579 of the Code of Criminal Procedure

*"**The State Prosecutor or the investigating judge (...)** may entrust the BGA with the **management of other assets**, except for evidence, seized during a national or foreign criminal procedure, in accordance with the agreed terms."*

The decision to entrust the BGA with the management of assets subject to a criminal seizure is notified to the person with whom the seizure was made."

MANAGEMENT OF SEIZED ASSETS - FINANCIAL INSTRUMENTS

- **Financial Instruments qualify as Other Assets under the BGA Law**
- **Influence of the existence of a pledge or of a civil seizure on the financial instruments being subject to the criminal seizure**



DISCUSSION BETWEEN PANELISTS

MANAGEMENT OF SEIZED ASSETS - VIRTUAL ASSETS

Art. 67 (2) of the Code of Criminal Procedure

*"(...) "If the seizure concerns (...) **virtual assets**, the investigating judge orders their **transfer** in accordance with Article 579, paragraphs 1 to 3. (...)"."*

Art. 579 of the Code of Criminal Procedure

*"The State Prosecutor or the investigating judge (...) orders the **transfer of seized virtual assets during a national or foreign criminal procedure to a wallet opened in the name of the Caisse de Consignation** and provide the BGA with a copy of the seizure reports. (...)"*

*The **decision to entrust the BGA with the management of assets subject to a criminal seizure is notified to the person with whom the seizure was made.**"*



MANAGEMENT OF SEIZED ASSETS - VIRTUAL ASSETS

- **State Treasury Communiqué of 24 November 2023 “*First deposit of virtual assets with the Caisse de Consignation*”**

https://mfin.gouvernement.lu/fr/actualites.gouvernement2024+fr+actualites+toutes_actuualites+communiqués+2023+11-novembre+24-roth-caisse-consignation.html



DISCUSSION BETWEEN PANELISTS

SUMMARY OF THE DISCUSSIONS BETWEEN THE PANELISTS AND CLOSING REMARKS

WHAT'S NEXT?

- Further guidance from the BGA regarding the BGA Law?
- Need of legislative amendments to the BGA Law?



QUESTIONS & ANSWERS

