Asset recovery measures under Swiss criminal law – an overview following recent developments

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Key takeaways

- **The Swiss Supreme Court recently issued an important decision which clarifies the mechanism of asset recovery measures under criminal law.**
- **There are three main measures: restitution, confiscation-allocation, and compensation claim-allocation. They apply to different assets of an offender or a concerned third party. Some of these measures offer advantages over others, particularly in protecting victims from competing civil creditors.**
- **While the system appears simple on paper, it can lead to complex questions in practice. This is illustrated by the recent decision mentioned above, which, in our view, unduly deprives victims of their right to immediate satisfaction.**

Introduction

The Swiss Supreme Court recently issued an important decision on criminal asset recovery measures (3 March 2026, n° 7B_109/2023 and 7B_110/2023).

With this decision, the scope of the three main asset recovery measures under Swiss criminal law is now clearer.

Asset recovery measures

In substance and subject to exceptions, the existing asset recovery measures are the following:

1) Restitution: assets must be restituted to the victim if they are (i) direct proceeds of a crime or (ii) indirect proceeds of the same nature as the direct proceeds as long as the paper trail can be established;

2) Confiscation-allocation: if assets cannot be restituted, they have to be confiscated by the State and allocated to the victim if they are (i) direct proceeds of a crime or (ii) any indirect proceeds as long as a paper trail can be established;

3) Compensation claim-allocation: if neither a restitution nor a confiscation can be ordered, because direct or indirect proceeds of the crime cannot be found or the paper trail cannot be established, the authority has to seize definitively any assets of the perpetrator (regardless of their origin and up to an amount equivalent to the proceeds of the crime), order a corresponding compensation claim, and allocate said compensation claim to the victim.

The three above-mentioned measures can be ordered against the perpetrator, but also against third parties who benefited from the direct or indirect proceeds of a crime, unless they cumulatively accepted such proceeds without knowing their criminal origin (good faith) and provided the perpetrator with an equivalent consideration.

Restitution (1), and confiscation/allocation to the victim (2), take precedence over civil creditors of the perpetrator or the relevant third party, except for creditors holding a lawful pledge over the restituted or confiscated assets. By contrast, a compensation claim allocated to the victim (3) does not take precedence over civil creditors, which may constitute a significant disadvantage.

The main "advantage" of a restitution (1) over a confiscation/allocation to the victim (2) is that, theoretically, the victim does not need to have a civil judgment or a settlement against/with the perpetrator to obtain a restitution, while it is mandatory for an allocation. That civil judgment can, however, be obtained within the criminal proceedings, and at lower cost than in separate civil proceedings. Another advantage of restitution could be the lack of any time limitation, but the case law is not (yet) decisive on this point.

Recent decision and complex questions

While the system appears simple on paper, it can get complex in practice and raise many other unsolved questions.

The last decision of our Supreme Court mentioned in the above introduction is a demonstration of it. Indeed, for part of the perpetrator's real estate assets, our Supreme Court refused their restitution (1), by retaining that these real estate assets were indirect proceeds of crime which had a different nature than the direct proceeds of a crime (i.e. transformation of bank assets into real estate assets). This result is, in our view, incorrect, as it means that victims may be wrongfully denied recovery of their losses or forced to wait longer to recover only part of them.

This shows how important it is to consult an experienced white collar crime lawyer when trying to recover assets obtained through a criminal offense or, adversely, when trying to protect a civil attachment from criminal measures when you only have a civil claim against an offender.

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No legal or tax advice

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