



Law n.º 45/2011 of June 24 (as amended by Law no 60/2013, of 23 August):

Setting up an Asset Recovery Office (ARO) (*Gabinete de Recuperação de Activos – (GRA)*) under the Criminal Police

Under Article 161, sub-paragraph c), of the Constitution, the Assembly of the Republic decides as follows:

CHAPTER I
General provision

Article 1
Subject-matter

1 – This law sets up an Asset Recovery Office, according to Council Decision n° 2007/845/JAI, of 6 December 2007, concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime.

2 – It also lays down provisions for the management of assets recovered, seized or confiscated to the State, with a view to safekeeping them and, if possible, increasing their value.

CHAPTER II
Asset Recovery Office

Article 2
Scope

The Asset Recovery Office (in short ARO/GRA) is set up under the Criminal Police. It has investigative powers, similar to those of criminal police bodies.

Article 3
Mission

1 – GRA's mission consists of identifying, tracing and seizing property or proceeds related to crimes, both at internal and international level, ensuring cooperation with



asset recovery offices set up by other States and of carrying out any other duties as committed to it by law.

2 – The GRA is also responsible for the collection, analysis and processing of statistical data on seizure, confiscation and destination of property or proceeds related to crime.

Article 4

Competence

1 – The GRA carries out the financial or patrimonial investigation mentioned in Article 3 above by decision of the Public Prosecutor:

a) Where the instrumentalities, property or proceeds are related to crimes punishable with a custodial penalty of three years or more; and b) Where the estimated value of the instrumentalities, property or proceeds is higher than 1000 units of account.

2 – Whenever authorised by the Prosecutor General of the Republic or upon delegation by the district deputy prosecutors-general, the GRA may carry out the financial or patrimonial investigations in cases not covered by the preceding paragraph, taking due account of the economic, scientific, artistic or historical estimated value of the property to be recovered and of the complexity of the investigation.

3 – The seizure of property is carried out by the GRA under the provisions of the Code of Criminal Procedure. Within 10 days after being notified, the owner of the property or rights may request to the investigating judge to change or revoke the decided measure.

4 – The notification mentioned in the preceding paragraph is done by edicts or by advertisement when the owner of the property or the rights is not found.

5 – The proceedings implemented by the GRA are documented in annexes to the files.

6 – For the purposes of article 8 (2) of Law no. 5/2002, of 11 January, the financial or patrimonial investigation may be carried out after the end of the criminal inquiry is closed.

Article 5

Composition and coordination

1 – The GRA is composed of officers from the following bodies:



- a) Criminal Police;
- b) Register and Notary Services Institute, *I.P.*;
- c) Directorate-General for Taxation;
- d) General Directorate for Customs and Excise Duties.

2 – The composition and coordination of the GRA are established by joint ministerial order of Government Members responsible for the areas of Finance and Justice.

3 – Officers integrating the GRA are appointed on secondment, for a term set out in the order mentioned in the preceding paragraph.

Article 6

Operation

The rules for GRA's activity are established by order of the National Director of the Criminal Police or upon delegation by the Deputy National Director.

Article 7

Branches

1 – The GRA has its seat in Lisbon and includes the following branches:

- a) North Branch, located in Porto;
- b) Central Branch, located in Coimbra;
- c) South Branch, located in Faro.

2 – GRA's officers mentioned in Article 5 (1), subparagraphs c) and d) perform their duties in Lisbon.

3 – The territorial jurisdiction of GRA's Branches coincides with the territorial jurisdiction of the Criminal Police Directorates where they are seated, as well as of the Criminal Investigation Departments depending upon the latter.

Article 8

Access to information

1 – In order to carry out the financial or patrimonial investigation referred to in this chapter, the GRA may have access to information hold by national or international



bodies, in the same way as the criminal police bodies in charge of the criminal investigations.

2 – For the purposes established in the preceding paragraph, the GRA may have access, in particular, to the data bases held by:

- a) The Registration and Notary Services Institute;
- b) The Directorate-General for Taxation and of the General Directorate for Customs and Excise Duties;
- c) The Social Security;
- d) The Real Estate Market Committee;
- e) The Bank of Portugal.

3 – Where access depends upon permission by a judicial authority, the authorising order shall identify the natural or legal persons covered by the measure and shall specify the information to be provided, the delays for its production and the documents to be provided. Whenever such specification is not possible, the order may take a generic form for each of the subjects involved.

4 – In the case of information regarding banking accounts and where the holders of such accounts, or the persons intervening in the transactions, are not known, it shall be sufficient to identify the accounts and the transactions in respect of which the information shall be provided.

Article 9 Cooperation

1 – The GRA shall cooperate, at police level, with the asset recovery offices set up by other States and shall exchange information, data and best practices.

2 – The GRA also assists judicial authorities when carrying out any relevant judicial cooperation acts.



CHAPTER III

Property management

Article 10

Property management

1 – The management of property seized or recovered in the framework of national proceedings or of international legal cooperation acts is ensured by a unit of the Institute for Financial and Justice Infrastructures Management, I.P. (*Instituto de Gestão Financeira e de Infra-Estruturas da Justiça (IGFJ, I.P.)*), hereinafter Asset Management Office (AMO) (*Gabinete de Administração de Bens (GAB)*)

2 – The board of directors of IGFJ, I.P. is competent to carry out all acts of administration and management of the GAB.

3 – When performing its administration powers, the GAB shall:

- a) Protect, preserve and manage property recovered or placed in custody of the State;
- b) Determine the sale, allocation to public service or destruction of property mentioned in subparagraph a) above, without prejudice to the enforcement of the relevant EU law provisions;
- c) Exercise any other powers provided for by law.

4 – The GAB carries out its duties in strict compliance with the principle of transparency, aiming at a rational, efficient management of administered property and, if possible, at increasing its patrimonial value.

5 – The GAB carries out the examination, the description and the registration of the asset's evaluation, for the purpose of establishing the value of a possible compensation.

6 – The GAB provides the GRA with statistical data for the purposes of Article 3 (2).

Article 11

Competence

The GAB acts, under this chapter, upon request of the GRA or of the judicial authorities, whenever the value of the seized asset is higher than 50 units of account.



Article 12

Evaluation

1 – After the deadline set in Article 4 (3), or after the decision mentioned therein, the GAB shall evaluate the seized asset to the effect of managing it and of establishing the value of a possible compensation.

2 – Whenever the evaluation reveals a particular complexity or requires special knowledge, the GAB may request the collaboration of entities of recognized competence.

3 – An appeal may be lodged with the competent judge, against the decision of the President of IGFIJ, I.P. that homologates the evaluation. The judge shall decide, by unappealable order, after having carried out the legal steps found useful. The provisions of Article 68 (5) of the Code of Criminal Procedure shall apply accordingly.

4 – The owner or the legitimate holder of an asset which is not a relevant piece of evidence, may request to the competent judicial authority to deliver the relevant asset against the deposit of the assessed value in the bank account of IGFIJ, I.P.

Article 13

Preliminary information

1 – Before selling, allocating or dismantling property, the GAB shall request to the Public Prosecutor information about its worthiness as evidence and about the probability of its confiscation to the State. Such information is urgent.

2 – The Public Prosecutor shall decide whether the worthiness as evidence may be assessed through a sample of the seized asset.

Article 14

Anticipated sale

The GAB shall sell any perishable goods or any property subject to deterioration or devaluation or shall allocate them to public purposes or to useful social purposes, before the decision becomes final, where those assets do not constitute relevant evidence.



Article 15

Exemption from road traffic single tax

When seized, deposited or provisionally allocated to public service, by the entities referred to in Article 5 (1), subparagraph a) of the Code on the Road Traffic Single Tax, vehicles shall be exempted from such tax.

Article 16

Immoveable property

1 – Immoveable property is preserved and managed by the GAB and may not be disposed of until the relevant decision has become final.

2 – Without prejudice to the provisions of paragraph (1) above, the GAB may carry out the anticipated sale or the allocation of the managed immoveable property, whenever that property is in serious risk of devaluation or may affect public health and security and does not constitute relevant evidence.

3 – In cases provided for in paragraph (2) above, where the immoveable property constitutes relevant evidence, the GAB may carry out the necessary rehabilitation works.

4 – The GAB shall collect the municipal tax on real estate (*imposto municipal sobre imóveis - IMI*) regarding immoveable property under its administration.

Article 17

Destination of income

1 – The income generated by the management of property recovered or confiscated to the State shall revert as follows:

- a) 50% to the Modernization of Justice Fund;
- b) 50% to the IGFIJ, I.P.

2 – The preceding paragraph does not apply to:

- a) The provisions of Article 39 of Decree-Law no. 15/93, of 22 January, Article 110 of Law no. 144/99, of 31 August, Article 18 of Law no. 88/2009, of 31 August, as well as the provisions contained in agreements, treaties or conventions binding the Portuguese State;
- b) The proceeds of the revenue of property related to tax offences, as well as the revenue corresponding to EU's own resources;



- c) The proceeds of the revenue of property related to offenses of trafficking in persons, which reverts to the coordinating entity of the National Plan against Trafficking in Human Beings and is intended to support actions, measures and prevention programmes regarding trafficking in human beings, as well as support to, and protection of, its victims.

Article 18

Compensations

1 – Expenses incurred in relation to real estate, under Article 16, and with movable property allocated to public service shall be recovered, in case the real estate or the movable property is returned to its owner.

2 – For the purposes of paragraph (1) above, the value of any works or betterments made by the GAB in the buildings under its administration shall be assessed, together with the IMI tax paid. Expenses with movable property, allocated to public purposes or to a useful social purpose shall also be assessed.

3 – Upon deduction of the compensation, as may be due, the credit holder is compensated with any surplus detected.

4 – In case of an anticipated sale, the amount thus collected shall be returned to the owner, plus interests due since the date of the sale, at the legal rate, after deducting the expenses referred to in paragraphs (1) and (2) above.

CHAPTER IV

Data and information exchange. Protection

Article 19

Data and information exchange

The exchange of data and information requested or provided between asset recovery offices, or with other authorities in charge of facilitating, tracing and identifying the proceeds of crime, shall take place in accordance with the law.

Article 20

Data protection

Personal data are protected under the provisions of the Data Protection Act, as adopted by Law no. 67/98, of 26 October. Data transmission shall comply with the regime prescribed by law.



Chapter V Final provisions

Article 21 Subsidiary provisions

The financial and patrimonial investigation and the evaluation, use, management and disposal of seized property or of property confiscated to the State that are not covered by this law shall take place in accordance with the general law.

Article 22 Transparency and monitoring

1 – The offices set out by this law shall jointly prepare, until 31 March of the following year a report on the previous exercise in terms to be defined by joint order of the Members of Government responsible for the areas of Finance and Justice.

2 – The report referred to in paragraph (1) above shall be submitted to the Ministry of Justice.

3 – After a period of five years, the activity of the offices set out by this law shall be subject to evaluation.

Article 23 Application of the law *ratione tempore*

1 – The provisions of this law shall apply to proceedings started from the date when this law entered into force.

2 – Without prejudice of the provisions of paragraph (1) above, in the circumstances of Article 4 (2), the Prosecutor General of the Republic or, upon delegation, the District Deputy Prosecutors General, may require the GRA to carry out a financial or patrimonial investigation in proceedings started before the entry into force of this law.

3 – In the cases referred to in paragraph (2) above, the GRA or the judicial authorities may request the intervention of the GAB, under the provisions of Article 11.

Approved on 6 April 2011

The President of the Assembly of the Republic, Jaime Gama

Promulgated on 20 May 2011



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The President of the Republic, ANÍBAL CAVACO SILVA.

Approved on 9 June 2011.

The Prime Minister, José Sócrates Carvalho Pinto de Sousa

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