

Section 2-3 Common provisions to Sections 2-1 and 2-2

Article 37 Fund management

Upon issuing a freezing [seizure] order, the [competent authority] may give directions as to the administration and management of the frozen [seized] funds.

Detailed provisions relating to the administration and management of targeted funds are beyond the scope of these Model Provisions. Special rules may be introduced concerning, among others, the management of perishable or rapidly depreciating objects, including the power to sell them, the management of possible interests produced by the frozen [seized] funds, the regime of responsibility of the administrator, etc.

National authorities might also wish to make it explicit in their legislation that, upon request by the competent authority, or of any other person or entity claiming to be affected by the freezing [seizing] measures, new/ other directions as to the administration and management of the frozen [seized] may be made.

Article 38 Notification of provisional measures

- 1) The [competent authority] shall ensure that the freezing [seizure] order be notified on the owners of the funds, on those who control it, and those persons who are reasonably believed to have an interest in the funds covered by the order,
- 2) The persons mentioned in para.1 shall be afforded an opportunity to be heard within such time as the [competent authority] determines.
- 3) The notification can be delayed for a specified period if the [competent authority] is of the opinion that serving such notice would result in the disappearance, dissipation, or reduction in the value of the funds. In such case, the serving of the notice shall be effected as soon as practicable.

The proposed article affords an opportunity to the owners of the targeted funds to be heard.

It also aims at protecting "bona fide" third parties by requiring notification of the freezing [seizure] order on all persons that might be affected by the order itself. The notification shall contain details about the right of such persons to appear before the competent authority to state their case and submit relevant evidence.

As also highlighted by the FATF, the effectiveness of the freezing action can only be guaranteed if the notification is not given prior to the adoption and enforcement of the order (see Freezing of terrorist assets, International best practices, 3 October 2003).

Article 39 Exceptions for investigative requirements

Notwithstanding article 34 [Provisional measures], the [competent authority] may decide not to adopt a freezing [seizing] order for as long as is required by specific investigative/ prosecutorial purposes

The purpose of this article is to ensure that persons that are being investigated for any of the offences set forth in these Model Provisions are not warned of this fact. This provision could be used, for example, when a covert investigation or controlled delivery is under way.

States will have to specify which authority can authorize the action described in this article.