



17th St. & Constitution Avenue N.W.
Washington, D.C. 20006
United States of America

Organization of American States

P. 202.458.3000
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**INTER-AMERICAN DRUG ABUSE
CONTROL COMMISSION**

CICAD

Secretariat for Multidimensional Security

XXXIII MEETING OF THE GROUP OF EXPERTS FOR THE
CONTROL OF MONEY LAUNDERING
September 27-28, 2011
Caracas, Venezuela

OEA/Ser.L/XIV. 4.33
CICAD/LAVEX/doc.17/11
28 September 2011
Original: Spanish

FINAL REPORT
(DRAFT)

i) BACKGROUND

The Commission, during its forty-second regular session in the city of Santa Marta (Colombia), accepted, as a basis for the work of the Group of Experts to Control Money Laundering (GELAVEX), areas of action identified by GELAVEX in the XXIV plenary Meeting held from 07 to 09 November, 2007 in Santiago de Chile, namely, forfeiture, *in rem* forfeiture, asset recovery agencies, coordination and integration between the Financial Intelligence Units (FIUs) and agencies of prosecution and investigation, and terrorism financing.

The Commission, during its forty-second regular session in the city of Santa Marta (Colombia), also agreed to conduct two annual GELAVEX meetings: one during the first half, exclusively for the working subgroups (a subgroup on asset seizure and a subgroup on coordination and integration) and another meeting during the second half of the year for the plenary group, and at the same time, another meeting for subgroups. The subgroup of forfeiture would be responsible for the following: 1) Study on the identification, seizure or freezing, administration and use of confiscated property, 2) recovery of criminal proceeds, asset recovery agencies, 3) exchange of experiences in property management and 4) international cooperation in detecting, identifying, seizing and confiscating assets abroad. The subgroup of coordination and integration will carry out similar studies on: 1) identification of applicable regulations, 2) good practices, 3) inter-agency cooperation, and 4) common projects.

During the last meeting, the subgroup of forfeiture was coordinated by Costa Rica and experts from Argentina, the Bahamas, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Surinam, the United States and Venezuela, and the subgroup of coordination and integration was coordinated by Chile with the participation of experts of the Bahamas, Belize, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Dominica, Mexico, Panama, Paraguay, Peru, the Dominican Republic, Surinam, the United States and Venezuela.

According to the 2010-2011 work plan approved by the Commission, the subgroup of forfeiture will continue working on a guide on internal procedures for requesting mutual legal assistance in locating and identifying assets and their recovery, headed by the United States. The creation of a basic document on the legal nature of forfeiture is headed by Uruguay. Also under the same work plan approved by the Commission, the subgroup of coordination and integration will continue working on the project of information sources, as well as the preparation together with the Executive Secretariat of CICAD, on an evaluation of the work done by the Group in the last ten years. The subgroup of coordination and integration also received a mandate to prepare the following documents: 1) a situational analysis of needs for money laundering and related areas present in countries, 2) an evaluation on the projects currently being carried out by the group, and 3) a proposal for basic guidelines necessary to structure a strategic plan regarding the work to be developed for the Group.

ii) AGENDA: APPROVAL AND REVIEWING OF THEMES.

Inaugural session

- Opening remarks were given by Chairman of the Group of Experts to Control Money Laundering of CICAD, Mr. Engels Jimenez Padilla, Ms. Annalibe Ruiz, Director of Anti-Laundering Section of the National Anti-Drug Office of Venezuela, General Nestor Reverol, Vice Minister of Prevention and Citizen Security of Popular Power of Ministry of Interior Relations and Justice

and President of the National Anti-Drug Office and Mr. Tareck El Aissami, Minister of Prevention and Citizen Security Popular Power of Ministry of Interior Relations and Justice

Approval of Agenda and Revision of Themes

- The Chair submitted for consideration by the plenary on the draft agenda, asking the representative of the UNODC, who asked the group to provide a space on the agenda to present a progress report regarding the implementation of the Model Law on *In Rem* Asset Forfeiture of the UNODC. The Plenary approved the proposal and asked the point be added into the Agenda.
- The Group adopted, without more modifications, the draft agenda (CICAD/LAVEX/doc.1/11) as presented (Annex I).

- GROUP DELIBERATIONS

- i) Presentation of the SE on its Report of Activities for the period 2010-2011. The Plenary welcomes the report, in particular the delegation of Dominica expressed his thanks to GELAVEX and the ES for legislative assistance that will be provided in the immediate future to his country on the best implementation of the FATF 40 +9 Recommendations . Also, the Plenary approved the report in question, which will be added as an appendix to this report (CICAD/LAVEX/doc.15/11) (Annex II).
- ii) Presentation of the Progress Report of the Draft Model Law on *In Rem* Asset Forfeiture of the United Nations Office on Drugs and Crime (UNODC).

The representative of the UNODC, Andrew Ormaza, presented the progress report on those countries that expressed interest in receiving technical assistance after the submission of the draft "Model Law on *In Rem* Asset Forfeiture," in May in Washington, DC this year. In this regard, it was reported that requests have been received from El Salvador, Costa Rica and Paraguay.

He also mentioned that in the Republic of El Salvador there was an initial mission to raise awareness with some institutions and high-level representatives who currently have an action plan, which will start activities through the creation of an inter-institutional working group for the development of a bill of law for the end of this October.

The UNODC representative in his report mentioned several countries that have adopted special forms of forfeiture going above the enforcement of traditional penal forfeiture. However, Ecuador and Argentina solicited incorporation to the document their special forms of forfeiture wherever they appear to be missing.

- iii) Report on the progress of the execution of the BIDAL Project in El Salvador and the Dominican Republic. Dennis Cheng, Project Coordinator.

The Project Coordinator of the BIDAL (Forfeited Assets in Latin America) Project, Dennis Cheng, presented the progress report on the Project which is currently being carried out in El Salvador and the Dominican Republic, giving mention to the diagnostic situational results and the progress of the inter-institutional working groups as well as the national seminar on "*Investigation of Seized and Forfeited Assets,*" carried out during the month of August in El Salvador.

Additionally, it was indicated that the project has the terminal goal of providing technical assistance in material of administration of assets for the creation and strengthening of national

systems of administration of seized and forfeited assets in OAS member countries. However, there was given a brief review of the project's history and beginnings in 2008 and the relation that GELAVEX has with BIDAL as well as its principal goals and the methodology used.

Furthermore, results were given for countries like Guatemala, Uruguay and Venezuela, which took as a basis the “*Document of Best Practices of Systems of Administration of Assets in Latin America*” to create their specialized bodies of administration of seized and forfeited assets, as well as the bills of laws found in El Salvador and Honduras.

The group welcomed the report and made comments on the importance of the BIDAL Project, its tangible results, and the impact in some member countries. Comments were offered by Guatemala, Costa Rica, the United States and Uruguay.

- iv) Presentation of the Guide of internal proceedings for the solicitation of Mutual Legal Assistance in the Identification and Recovery of Assets, carried out by the delegation of the United States. The distinguished delegation of the United States presented the Guide, noting that it was developed based on the answers of the questionnaires that 20 member countries responded to, document is annexed at the end of this final report (CICAD/LAVEX/doc.3/11) (Annex III). Additionally, the Plenary charged the ES with soliciting those countries that have not submitted the required information to the questionnaire for the Hemispheric Guide on Mutual Legal Assistance on Forfeiture to do so before the 31 of January of 2012 so that the ES can update information so each country can be included in the document.
- v) Report on the document on Juridical Nature on Forfeiture. The document was presented by the distinguished delegation of Uruguay and was approved by the Plenary (CICAD/LAVEX/doc.2/11) (Annex IV), along with the proposed compilation and publication of different models that additionally were found by this delegation on the systems and legislation on forfeiture. The ES was given the responsibility with compiling the different documents that contain these initiatives at the different levels of international organizations, legislation and bills of laws that the different member states have implemented or plan on implementing. Furthermore, the Plenary recognized the importance and interest of the member states on the Model Law on *In Rem* Asset Forfeiture by the UNODC, recommending that this initiative be adopted as a reference model and forms part of the compilation and publication of the different existing models of forfeiture. The ES will upload on the CICAD website this publication once this final report is approved by the CICAD Plenary.
- vi) Proposal for the development of a process of Strategic Planning for the Group of Experts for the Control of Money Laundering of the CICAD. The coordinator of the sub-working group of Coordination and Integration between FIU and OIC presented the report corresponding to the work carried out and the contributions and commentaries provided on this proposed plan. Among documents and opinions contributed, a presentation was made with the objective of generating the discussion among different experts of LAVEX, noting the creation of an *ad hoc* group that would develop a proposal plan, which would be discussed in the following session of the Plenary. The *ad hoc* planning group underlined the following points: I) define the mission and vision of LAVEX that would allow for the orientation of work to be carried out in the next years; ii) identify the work guidelines of the group; iii) define the methodology of work; and iv) establish the time period of work. The proposal referenced is added to the annex of this form at the end (CICAD/LAVEX/doc.11/11) (Annex V).

- vii) Progress on the guide of best practices for the exchange of information between FIUs and OICs. The sub-working group coordinator of the Coordination and Integration between FIUs and OICs presented the report of work carried out, as well as the contributions and commentaries provided by the different delegations. The Plenary, regarding the development of principles and material of exchange of information between FIU/OIC, agreed to work on a proposal to be presented at the next meeting of the sub-working groups, using as a foundation the document developed by the delegations of the United States and Mexico (CICAD/LAVEX/doc.4/11) (Annex VI) and the contributions made by the delegation of Argentina and other countries.

viii) **CONCLUSIONS AND RECOMMENDATIONS OF THE SUB-WORKING GROUPS OF GELAVEX**

- I) Reports by coordinators of the working subgroup of Asset Forfeiture (CICAD/LAVEX/doc.16/11) (Annex VII) and those of Coordination and Integration of FIU/OIC (CICAD/LAVEX/doc.12/11) (Annex VIII) and the Activity Report of the Executive Secretariat are received.
- II) Work Plan for 2011-2012

Sub-Working Group on International Cooperation and Forfeiture

1. Elaboration of normative aspects for the creation and development of specialized bodies on the administration of seized and/or forfeited assets that will be carried out through the BIDAL Project.
2. Elaboration of a report on the progress on the implementation of the different systems of asset forfeiture and on the identification, among member countries on the efficient mechanisms to share forfeited assets.

Sub-working Group between FIU and OIC

1. Presentation of a first progress report on the elaboration of recommendations, principles and best practices that permit countries to unify criteria regarding the information that is shared among Financial Intelligence Units and Criminal Investigation Agencies.
2. Presentation of a first progress report on the elaboration of recommendations for the identification and analysis of risk factors on material of money laundering and financing of terrorism at the hemispheric level.

ix) **OTHER MATTERS**

Chair and Vice Chair

The panel welcomed the applications of the delegations of Argentina and Brazil to the Chairmanship and Vice Chairmanship, respectively, for the period of 2012-2013, recommending that these delegations submit these nominations of their delegates before the next ordinary session of CICAD, the forum at which the positions will be elected.

Next Meeting

The group agreed that future meetings of the working groups and the plenary will be set by the Chair and the Executive Secretary, who will communicate, when appropriate, the times and places established.

The group expressed gratitude to the Group Chair, exercised by the Delegation of the Bolivarian Republic of Venezuela, for the excellent organization of this meeting and for the outstanding leadership of this Plenary.

ANNEXES

**AGENDA
(ANNEX I)**

Tuesday September 27

Registration and Inaugural Session

08:00 – 09:00 Registration of Participants

09:00 – 10:00 Welcome remarks by:

Mr. Engels Jiménez Padilla, Chief of the Unit of Asset Administration of the Costa Rican Institute on Drugs, Chair of the Group of Experts for the Control of Asset Laundering of CICAD

Mrs. Annalibe Ruiz, *Directora contra Legitimación de Capitales* (Anti-Money Laundering Director) *de la Oficina Nacional Antidrogas (ONA)*.

Mr. Néstor Reverol, Vice Minister of Prevention and Citizen Security of the Ministry of Popular Power for Interior Relations and Justice, and President of the National Antidrug Office (ONA).

Dr. Tareck El Aissami, Minister of Popular Power for Interior Relations and Justice of the Bolivarian Republic of Venezuela.

10:00 – 10:30 Break

Second Plenary Session

10:30 – 10:45 Approval of the Agenda and Review of Themes

10:45 – 11:00 Report on activities. Executive Secretariat

11:00 – 12:00 Progress report on Project BIDAL in El Salvador and the Dominican Republic. Dennis Cheng, Project Coordinator.

12:00 – 13:00 Presentation of the internal guide on procedures for soliciting Mutual Legal Assistance in Localizing and Recovering Assets, carried out by the

delegation of the United States.

13:00 –14:30

Lunch

Third Plenary Session

14:30 –15:15

Report on the preparation of the document on the legal nature of asset forfeiture in order to promote study and analysis among delegations. Compilation and publication proposal of different asset forfeiture models. Delegation of Uruguay.

15:15 –15:30

Discussion and proposals

15:30 –16:00

Break

16:00 –17:30

Proposal and discussion for the development of a Strategic Planning process for the Group of Experts for the Control of Asset Laundering of CICAD. Delegation of Chile.

19:00 – 21:00

Welcoming Reception

Wednesday September 28

Working Group Sessions

09:00 – 10:30

Best practices in information exchange of the FIU/OIC.

10:30 – 11:00

Break

11:00 – 13:00

Proposals for the development of the Work Plan of the Subgroups for 2011-2012.

13:00 –14:30

Lunch

Fourth Plenary Session

14:30 – 16:30

Conclusions and Recommendations of the Group of Experts
Proposals for the Final Report

16:30 – 17:30

Conclusions and Recommendations for the CICAD Plenary. Other issues. Closing

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28 August 2011
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REPORT OF ACTIVITIES
EXECUTIVE SECRETARY
(ANNEX II)

Report of Activities. Executive Secretary

The Executive Secretary reported on activities of the Anti-Money Laundering section of CICAD/OAS have been identified by the Panel of Experts to Control Asset Laundering (GELAVEX), through the subgroups of Asset Forfeiture and Interaction and Integration among Financial Intelligence Units (FIUs) and Criminal Investigation Agencies, as well as the mandates of CICAD.

The priorities of activities during 2010-2011 were established also in accordance with the mandates of CICAD and GELAVEX, and were developed according to the availability of resources assigned.

During the period of 2010-2011, the greatest regional impact of programs and projects planned for specific target has been sought, trying to surpass the objectives used in their design.

The project of Seized Assets in Latin America (BIDAL), based on the success of the program in its pilot phase and the support of the Group of Experts, has been extended to Central America and the Caribbean, and currently running in Phase I in El Salvador and the Dominican Republic. It seeks to harmonize and strengthen procedures for administration of seized and forfeited assets. The ES also has received requests for technical assistance from other Member States, such as Colombia, Panama and Peru.

Within the framework of the BIDAL project in El Salvador and the Dominican Republic, several steps have been carried out during the month of August, including the 1st national workshop in El Salvador and plans for the following two months a national training workshop in the Dominican Republic as well as a regional seminar, which will benefit more than 180 experts from the administrative units of seized assets of participating countries and other countries in the region of Central America.

In addition, the BIDAL Project continues to provide support, along with the Legal Assistance Programme for Latin America and the Caribbean of the United Nations Office on Drugs and Crime (LAPLAC/UNODC), Interpol and the Executive Secretariat of the South American Financial Action Task Force (GAFISUD), for the consolidation of the Network for Asset Recovery of GAFISUD (RRAG), which is a network of contacts in order to facilitate the identification, tracing and recovering of assets, products or instruments of unlawful activities of transnational capacity.

The RRAG has already conducted four meetings during the months of April and October 2010, and March and September 2011, all in Buenos Aires, Argentina, in which points of contact identified training needs, mainly on the issue localization and identification and recovery of assets and the need for sharing experiences with other similar networks in Europe such as CARIN and the Offices of Asset Recovery (ORA's). The RRAG has developed an automated system for the exchange of insurance information (RRAG-LIVE) and designed arrays of information about open and closed sources of information to locate and identify assets and points of contact.

In addition the ES, on behalf of GELAVEX, participated in two meetings of experts on seizure, organized by UNODC in Bogota, Colombia: the first August 16 to 20, 2010, and the second from January 23 to 28 2011, these meetings were aimed at the design and development of the Model Law on Forfeiture. This paper was presented at the last meeting of the Sub-Working Groups of GELAVEX, which took place on May 26 and 27, 2011 in Washington, DC. Model legislation was received with great interest by all delegations of member countries, recommending that it be submitted for review and study the elements within each country.

During the second half of 2010, aspects regarding financing of terrorism were carried out, along with CICTE and UNODC, such as two monitoring missions on implementation of legislation and law enforcement in Bolivia and Ecuador.

Moreover, most of the activities carried out by the host country contribute to their development of counterparts.

The agenda for 2010-2011 of the Group of Experts to Control Asset Laundering included two work sessions, the first one held in San José, Costa Rica in September 2010 and the second corresponding to that of sub-Working Groups in Washington, DC in May 2011. The central themes of the meetings are being addressed in the sub-groups of Seizure and coordination and interaction between FIUs and OICs, to discuss specific issues.

The subgroup of seizures, according to work plan 2010 - 2011, defines two issues on which to focus their goals and work during this period: 1) Development of internal guidance procedures for requesting mutual legal assistance and asset localization, identification and recovery, and 2) Creating a study document on the legal nature of forfeiture. In the case of Sub-cooperation and integration among OIC FIU, according to work plan 2010 - 2011, defines two issues on which to focus their goals and work during this period: 1) Project Information Sources; and development a GELAVEX Strategic Planning and the Anti-Money Laundering Section of CICAD, for the quinquennium 2011-2015.

The Anti-Money Laundering Section of CICAD/OAS, the UNODC and the NAS Office of the U.S. Embassy in Lima continued in the development of comprehensive training program techniques and tools for judges, prosecutors, public defenders, law enforcement agents and FIU analysts to Combat Money Laundering and Terrorism Financing. Within this program, in 2011, two more workshops were conducted in May and August on Technical Analysis, Links and Relations (AVR). This program also runs the Research Program and Mock Trial of money laundering cases during the months of March and April, respectively. Finally, during the month of November the fourth and final phase of Methodological Research Plan (IP) will be held in Peru, which has spread to 1,000 staff in four areas of the country's unified research manual, adopted by the Prosecutor's Office and the National Police of Peru.

Also, with the participation of UNODC and under the auspices of the Inter-American Development Bank (IDB), a Research Program and Mock Trial of a case of money laundering was carried out in Paraguay. The first held in Asunción from June 6 to 10, 2011 and the second July 26 to 29, 2011. Another Mock Trial was held in Cartagena, Colombia, from February 1 to 4, 2011. The Mock Trials are designed to train the specialists of these countries in the subject of asset laundering through the study and analysis of a case to which judges, prosecutors, public defenders, specialized police and the FIU work together to prosecute the case.

In April 2011, in Bogota, Colombia, CICTE, with participation of the United Nations Office on Drugs and Crime (UNODC) carried out a workshop on cross-border cash transportation.

Along similar lines, within the framework of the Memorandum of Understanding signed by the OAS/CICAD with the Superintendency of Banks (SBS) of Peru, the necessary steps aimed at establishing a Regional Training Center on ML/FT in Lima have taken place so far in 2011, anticipating the opening of a workshop, scheduled for dates between October and November 2011.

Moreover, CICAD/OAS has participated as an observer within the framework of GAFISUD in the mutual evaluation process in Ecuador, whose on-site visit by the evaluation team conducted May 16 to 24, 2011.

By the beginning of this coming October, the ES, with CICTE and the United Nations, will hold a Legislative Assistance Mission Dominica, which is to develop a training workshop on Combating the Financing of Terrorism in Dominica and technical assistance and legislation to implement the FATF 40 +9 recommendations.

Finally, the Anti-Money Laundering Section of CICAD/OAS has initiated the implementation of the Workshop on Maintenance, Protection and Disposition of Seized and Forfeited Assets, which has as main objective to contribute to improving the technical capabilities of officials to conduct financial investigations and heritage, and become part of the forfeiture proceedings, management and allocation of assets of illicit origin. This program will benefit officials from 7 countries in Latin America between 2011 and 2012 (Argentina, Chile, Mexico, Panama, Paraguay, Dominican Republic and Uruguay). For the moment, it is scheduled to conduct two workshops, one in Argentina, from October 17 to 21) and one in Panama from November 21 to 25).

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20 septembre 2011
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GUIDE ON PROCEDURES FOR SOLICITING MUTUAL ASSISTANCE
IN LOCALIZING AND RECOVERING ASSETS
-DRAFT-
(ANNEX III)



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ARGENTINA

I. Points of Contact

- Juan Gasparini
Dirección de Asistencia Jurídica Internacional del Ministerio de Relaciones Exteriores, Comercio Internacional y Culto
Esmeralda 1212, 4° piso (C.P. 1007)
Ciudad de Buenos Aires, República Argentina
Tele/Fax: +54 11 4819 7170/2
Email: cooperación-penal@mrecic.gov.ar; jgs@mrecic.gov.ar
- Ministerio de Justicia
Seguridad y Derechos Humanos
Dirección Nacional de Cooperación Internacional Jurídica y en Sistemas Judiciales
Sarmiento 329, 2do. Anexo, Capital Federal
Teléfono: 5300-4040.
Director: Juan José Cerdeira, email: jcerdeir@jus.gov.ar
Advisor: Andrea Gáldiz, email: agaldiz@jus.gov.ar
Advisor: Ana Belén Menegozzi, e-mail: amenegozzi@jus.gov.ar

II. Legal Bases of Cooperation: International Instruments and National Laws

- Ley de Cooperación Internacional en Materia Penal (24.767)
- International Bi-lateral Treaties and Multi-lateral Conventions

III. Mechanisms to Locate and Identify Goods Abroad

A. Informal Mechanisms: Egmont Group, Iberred, RRAG, Interpol, etc.
N/A

B. Formal Mechanisms: Diplomatic or by Central Authorities or Others

A foreign authority may submit a formal request directly to the *Cancillería Argentina*, the designated Central Authority for all but the bi-lateral treaty with the United States. Upon receipt of the request, the *Canillería Argentina* identifies the competent judicial authority in the best position to execute the request, and refers the request to them for processing. While the designated competent authority is processing the request, the *Canillería Argentina* serves two roles – a consultant to the competent authority executing the request and the point of contact between the competent authority and the requesting country. The *Canillería Argentina* will execute a request for assistance submitted by a foreign authority through diplomatic channels even in the absence of an applicable international treaty or convention.

IV. Procedures to Enforce Confiscation, Restraint, and/or Seizure Orders

A. Legal Authorization

Argentina's Law 24.767 provides for the enforcement of foreign forfeiture/confiscation, restraint, and seizure orders (relating to proceeds or criminal instrumentalities) where the request is made under an agreement (treaty, convention, or diplomatic means). Foreign authorities may submit requests for assistance in executing judicial orders as they would any other request for assistance. However, it is important to note that forfeiture is not considered a precautionary measure in Argentina and therefore can only be granted if the legal assistance request contains a final judgment order. Moreover, the legal assistance request must also meet dual criminality requirements in order to be executed under Argentinean law.

B. Go-Bys

See ATTACHMENT A

V. Requirements to be Included in the Request for Mutual Legal Assistance

Generally, a legal assistance request should:

- Be submitted through diplomatic channels or through the designated Central Authority;
- Provide information regarding the identity of the requesting authority
- Explain the reason for which assistance is requested, as well as information regarding the accused and the victim;
- Provide full citation and legal text for all relevant crimes charged;
- Provide In-depth description of what is being requested; and
- Provide information regarding the official(s) who participated in the creation of the request, if applicable.

VI. Mechanisms of International Cooperation for the Management of Assets Seized and Forfeited during the Delay of their Recovery and/or Sharing

N/A

ATTACHMENT A

SOLICITUD DE ASISTENCIA JURIDICA INTERNACIONAL EN MATERIA PENAL

AUTORIDAD REQUIRENTE

Nombre y cargo:

Dependencia:

Datos de contacto:

Tel/Fax: s

Correo electrónico:

Dirección postal:

AUTORIDAD REQUERIDA¹

Nombre y cargo:

Dependencia:

IDENTIFICACION DEL PROCESO PENAL

Número de causa:

Carátula:

I) **HECHOS QUE SE INVESTIGAN²**

II) **MEDIDAS SOLICITADAS³**

¹ Si se desconocen los datos de la autoridad a quien se dirige la solicitud o si ésta no se dirige a ninguna autoridad en particular, el campo deberá ser completado con la frase "A la autoridad jurisdiccional que corresponda".-

² Incluir una reseña clara y precisa, con referencias de tiempo y lugar, acerca de los hechos investigados en el proceso haciendo mención de los sujetos que hubieren participado si fueren conocidos.-

³ Las medidas solicitadas deberán ser enumeradas y descriptas claramente. Resulta conveniente agregar a la descripción una breve reseña del supuesto que se intenta probar con la medida. Debe tenerse en cuenta que en los casos en que la ejecución de una medida se encuentra condicionada al aporte de determinada información (p.e.: el domicilio o posible localización de un testigo que deberá ser citado o los datos de una cuenta bancaria o de una entidad de la que se requiere información, etc.) deberán agotarse todas las vías posibles para obtener tal información antes de solicitar la asistencia a las autoridades extranjeras.-

I) PARTES DEL PROCESO¹

Imputado:
Fiscalía / Querrela:
Víctima:

II) NORMAS APLICABLES²

--

III) TRATADO EN EL QUE SE FUNDA LA SOLICITUD U OFRECIMIENTO DE RECIPROCIDAD³

--

IV) OTRAS ACLARACIONES⁴

--

V) DOCUMENTACION QUE SE ACOMPAÑA⁵

ANEXO A:
ANEXO B:
ANEXO C:
OTROS ANEXOS:

VI) TRANSCRIPCION DE LA RESOLUCION QUE ORDENA LA SOLICITUD

--

LUGAR Y FECHA:

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¹ Si no estuviere individualizado el imputado deberá constar en el campo correspondiente.-

² En este campo deberán transcribirse las normas de fondo que tipifican los delitos investigados. Si fuere el caso también deberán incluirse las normas procesales que establecen las formalidades específicas que deberán observar las autoridades requeridas en el cumplimiento de la medida para que posteriormente ésta tenga validez en el proceso que origina la solicitud.-

³ En este campo debe citarse expresamente el tratado en el que se funda la solicitud si lo hubiere. Si la solicitud se funda en un tratado, sea bilateral o multilateral, no resulta necesario ofrecer reciprocidad toda vez que el otorgamiento de la asistencia constituye una obligación generada por ese mismo tratado. Si no resulta aplicable ningún tratado deberá efectuarse un expreso ofrecimiento de reciprocidad a las autoridades requeridas.-

⁴ En este campo deberá incluirse cualquier información adicional que se estime de utilidad como las etapas procesales cumplidas hasta el momento o los extremos formales específicos exigidos por el tratado aplicable que no hayan sido volcados en otro punto de la solicitud.-

⁵ La documentación que se acompañe deberá contar con la certificación correspondiente. Debe tenerse en cuenta que no siempre es necesario acompañar documentación. Los adjuntos serán necesarios siempre que el tratado aplicable así lo exija o bien, cuando los documentos aporten claridad o sean de utilidad en el cumplimiento de la medida solicitada.-

BOLIVIA

I. Points of Contact

Ministerio de Relaciones Exteriores y Culto
La Paz: Plaza Murillo c. Ingavi esq. C. Junín
Tele: (591-2) 2408900-2409114
Fax: (591-2) 2408642
Email: mreuno@rree.gov.bo

II. Legal Bases of Cooperation: International Instruments and National Laws

- Código de Procedimiento Penal
- Código Penal
- International Bi-lateral Treaties and Multi-Lateral Conventions

III. Mechanisms to Locate and Identify Goods Abroad

A. Informal Mechanisms: Egmont Group, Iberred, RRAG, Interpol, etc.
Pursuant to Bolivia's Código Penal, Bolivian authorities may coordinate joint-investigations with foreign countries and international groups, in order to gather information relevant to a criminal investigation. All joint-investigations must be approved by the Attorney General.

B. Formal Mechanisms: Diplomatic or by Central Authorities or Others
Foreign authorities should submit their requests for assistance to the Ministerio de Relaciones Exteriores y Culto, the designated Central Authority for execution. Once received, the Central Authority will refer the request to the competent authority for execution. The Central Authority will serve as the point of contact for both the competent authority executing the request and the requesting country. If a request is urgent, requests for assistance may be made verbally first, and then followed by a formal written request.

IV. Procedures to Enforce Confiscation, Restraint, and/or Seizure Orders

A. Legal Authorization

Bolivia's Código de Procedimiento Penal provides for the enforcement of foreign confiscation, restraint, and seizure orders (relating to proceeds or criminal instrumentalities) where the request is made pursuant to an agreement (treaty, convention or case-specific administrative arrangement).

B. Go-Bys

N/A

V. Requirements to be Included in the Request for Mutual Legal Assistance

Generally, legal assistance requests should contain the following:

- Name of the requesting authority;
- State purpose of the request and a brief description of the assistance requested;
- Describe the facts under investigation, legal description of the crime alleged, and official text of the relevant law;
- Provide time constraints;

- Provide any other information needed in order to adequately fulfill the request; and
- Provide Spanish translation of all documents, including attachments.

VI. Mechanisms of International Cooperation for the Management of Assets Seized and Forfeited during the Delay of their Recovery and/or Sharing

Pursuant to Article 257 of the Código de Procedimiento Penal, the *Dirrección de Registro, Control y Administración de Bienes Incautados* (DRCABI), is responsible for the management of proceeds that are seized, restrained, and/or forfeited in relation to a judicial proceeding. This provision also allows DRCABI to organize the interlocutory sale or destruction of the seized assets that are perishable or rapidly depreciate property.

BRAZIL

- I. Points of Contact**
- II. Legal Bases of Cooperation: International Instruments and National Laws**
- III. Mechanisms to Locate and Identify Goods Abroad**
 - A. Informal Mechanisms:** Egmont Group, Iberred, RRAG, Interpol, etc.
 - B. Formal Mechanisms:** Diplomatic or by Central Authorities or Others
- IV. Procedures to Enforce Confiscation, Restraint, and Seizure Orders**
 - A. Legal Authorization**
 - B. Go-Bys**
- V. Requirements to be Included in the Request for Mutual Legal Assistance**
- VI. Mechanisms of International Cooperation for the Management of Assets Seized and Forfeited during the Delay of their Recovery and/or Sharing**

CANADA

I. Points of Contact

- Interpol Ottawa
Crime Section
1200 Vanier Parkway
Ottawa, Ontario,
Canada K1A 0R2
OPERATIONS DESK: 613-990-9595
Ipottawa@rcmp-grc.gc.ca
- International Assistance Group
Litigation Branch, Criminal Law Division
Department of Justice Canada
284 Wellington Street, 2nd Floor
Ottawa, ON K1A 0H8
Telephone: 613-957-4832
After hours number: 613-851-7891
Fax: 613-957-8412
e-mail: cdncentralauthority@justice.gc.ca

II. Legal Bases of Cooperation: International Instruments and National Laws

- Mutual Legal Assistance in Criminal Matters Act (MLA Act)
- Canada Evidence Act
- International Bi-Lateral Treaties and Multi-lateral Conventions

III. Mechanisms to Locate and Identify Goods Abroad

A. Informal Mechanisms:

Where no court order is required to trace the assets, a request for assistance will be submitted either directly or via the Canadian Central Authority to Interpol for execution.

B. Formal Mechanisms:

If a court order is required to trace assets (e.g. obtaining banking information or executing a search warrant), the Canadian court must generally be satisfied, on reasonable grounds, that an offence has been committed and that the evidence sought will be found in Canada. Therefore, when seeking assistance that requires the issuance of compulsory measures, a requesting country must provide Canada with sufficient and clear information to establish a connection between the foreign investigation/prosecution and the evidence or assistance requested. Court-ordered assistance is only available under treaty/convention requests and, in certain circumstances, through letters rogatory requests.

IV. Procedures to Enforce Confiscation, Restraint, and/or Seizure Orders

A. Legal Authorization

Canada's MLA Act provides for the enforcement of foreign confiscation/forfeiture, restraint, and seizure orders (relating to proceeds or criminal instrumentalities) where the request is made under an agreement (treaty, convention or case-specific administrative

arrangement). If no forfeiture order has been issued in the requesting State, Canada may be able to assist in cases where the conduct underlying the investigation/prosecution in the requesting state could result in proceeds of crimes charges being laid in Canada. In such cases, the Canadian investigating authorities may launch a domestic proceeds investigation that could ultimately lead to forfeiture proceedings.

If the Minister of Justice of Canada authorizes the Attorney General of Canada or the Attorney General of one of the Canadian provinces to proceed with the enforcement of a foreign forfeiture order or of a restraint/seizure order, the attorney general may file a copy of the foreign order with the superior court of the province in which all or part of the property is believed to be located. Once registered, the order is enforceable anywhere in Canada.

B. Go-Bys

See Attachment A

V. Requirements to be Included in the Request for Mutual Legal Assistance

Generally, a request for legal assistance and/or a related confiscation, Seizure, or restraint order must:

- Be made in writing and presented to the Canadian Minister of Justice (Canada's Central Authority in mutual assistance matters) via the International Assistance Group, Department of Justice Canada;
- Be made by (1) a treaty partner; (2) a State or entity designated in the Schedule of the MLA Act; or (3) by a State or entity with which Canada has entered into a case-specific administrative arrangement;
- Pertain to property situated in Canada;
- Have been issued by a court of criminal jurisdiction of the requesting State or entity;
- The person whose property is the subject of the order must be the subject of criminal charges in the jurisdiction of the requesting State or entity;
- Pertain to property that was determined by the court of criminal jurisdiction of the requesting State to be the proceeds of crime or offence-related property. In other words, a link between the foreign offence charged and the Canadian property to be restrained/seized as proceeds of that offence must be established; and
- The foreign offence(s) with which the person is charged must be an indictable offence under Canadian law had the conduct been committed in Canada.

VI. Mechanisms of International Cooperation for the Management of Assets Seized and Forfeited during the Delay of their Recovery and/or Sharing

Under the *Seized Property Management Act*, the Seized Property Management Directorate, part of the Department of Public Works and Government Services Canada, is responsible for the management of proceeds that are seized, restrained and forfeited in

relation to Federal Statutes. Sections 490.81 of the *Criminal Code* allows the Attorney General or a person acting with the consent of the Attorney General to apply for a management order appointing the Minister of Public Works and Government Services to manage or otherwise deal with offence-related property that has been restrained. Seized property cannot be put into official use. Once an asset is seized or restrained, it is, subject to the terms of the relevant court order, subject to an obligation to be preserved and available for subsequent court proceedings, including forfeiture (confiscation) applications. Between the period of seizure or restraint and final disposition, the asset remains the property of the person from whom it was seized or the true owner. That said, interlocutory sale or destruction is available in relation to perishable, rapidly depreciating property or property of little or no value

ATTACHMENT A
OFFICIAL REQUEST TO CANADA
BY _____ FOR TREATY ASSISTANCE
INTRODUCTION

The (set out the name of the competent prosecuting and/or investigating competent authority) is investigating alleged violations of----- criminal laws, namely: (set out the offences, i.e. fraud, forgery, drug trafficking, money laundering, etc.), contrary to (identify the relevant legislation). These violations are alleged to have been committed by (identify as precisely as possible the subjects of the investigation or prosecution, including: name, date of birth, address, etc.)

In relation to this investigation or prosecution, (identify the competent authority) requires assistance (briefly describe nature of evidence requested i.e. obtaining certified copies of documents; taking statements; obtaining telephone toll records etc.) This assistance is required because (describe, generally, why evidence is needed i.e. as evidence for use in the anticipated prosecution, to identify alleged co-conspirators, to trace the proceeds of the alleged criminal activity, etc.)

SUMMARY OF THE LAW

In this section, identify and set out the full text of all relevant provisions under investigation and/or prosecution

Title of offence (for example, Fraud)

Section number----- of the (relevant legislation) ----- states that:
(provide full text in one of Canada's official languages)

SUMMARY OF INVESTIGATION AND ALLEGATIONS

This section should briefly describe the theory of the case, the nature of the investigation or proceedings, and a summary of the relevant allegations. Since the applicable standard for obtaining most Canadian court orders is "reasonable grounds to believe", the requesting country should provide not only a conclusion with respect to a particular suspect or other aspect of the case, but also some basis for the allegation. It should be possible for a Canadian judge to objectively conclude that there is a reasonable basis for an order authorizing the particular investigative measures (search warrant, compelled statement, etc) requested. The judge's conclusion cannot be based on mere speculation and he/she must have reasonable grounds to believe that an offence has been committed and that the evidence of the offence will be found in Canada. In all cases, the particular source of information needs to be identified. In more critical areas, the source needs to be specified with a greater degree of detail, i.e. by name or function, e.g. "the bank manager at XYZ Bank has told investigators etc."

This section should include the following information:

- (a) where possible, the identity, nationality and location of proposed witnesses;
- (b) in the case of requests to take evidence from a person, a clear indication of whether the person is a subject of the investigation or simply a witness;
- (c) in the case of requests to take evidence from a person, a clear indication of the grounds to believe that the witness will have relevant evidence and reason the evidence is useful to your investigation;

- (d) where documentary evidence is requested, including Internet Service Provider (ISP) records, a clear indication of the grounds to believe that the documents will provide evidence of the commission of the alleged offence (e.g., bank records from date A to date B because fraud can be shown to have occurred during the same period) and the relevance of this evidence to your investigation. For ISP records, please indicate if the records have been preserved;
- (e) if you are asking for the restraint of funds you believe represent proceeds of crime, ensure that an objectively reasonable basis for believing that these funds constitute proceeds of crime is set out in the request. For instance, it is not sufficient to simply state that Mr. X is a drug trafficker and that all accounts related to him directly or indirectly are to be restrained; a reasonable basis must be provided to believe that X is a drug dealer (e.g., observed carrying out transactions, convicted of offences, etc.) and that the accounts in question substantially contain proceeds of crime (e.g., Mr. X has no other source of income, he is the sole authorized account-holder, etc.) from the alleged offences.

Also refer to bilateral or multilateral treaty for content requirements.

REQUEST PORTION

The competent authority [*insert name of competent authority*] requires the following assistance: This section should set out, in specific terms, exactly what you are seeking to obtain, including certification requirements under your country's law. Please note that under Canada's mutual legal assistance legislation, Canada is bound to use evidence gathering orders unless the circumstances suggest that a search warrant is the more appropriate tool. Canada will decide which mechanism for gathering evidence will be used based on the facts set forth in the request. If you have a reason to believe that a search warrant should be used to obtain the evidence, please provide as much information as possible about why that is the case.

- (a) where documentary evidence is requested, to the extent possible, identify the particular documents sought (ie: bank records for a specified period, signature cards, account opening statements, etc.);
- (b) where necessary, set out the details of any particular procedure or requirement that the you wish to be followed and reasons i.e. if you would like the Canadian authority to authenticate/certify the copies of the bank records, you should append a draft "fill-in-the-blanks" affidavit/certificate for our use;
- (c) in the case of requests to take evidence from a person, clearly
 - indicate whether investigators/prosecutors/judicial officials from the requesting country intend to take the statement themselves and why or simply be present (if so, identify the persons who will travel with name, title)
 - if the statement is to be taken by officials of the requested State, a questionnaire should be provided (since Canadian officials will not know for sure what questions and answers are relevant under the law of the requesting State);

- include instructions as to whether sworn or affirmed statements are required and whether a verbatim transcript of the statement is required (such a record may generate extraordinary expenses under the relevant treaty);
 - if the witness will be asked or compelled to provide documents in the course of his testimony, a list of such documents or at least a clear description of the categories of relevant documents should be provided..
- (d) if it is decided that search warrants are to be applied for, it will be necessary to know precisely the location to be searched and as precisely as possible the evidence or the category of evidence to be seized;
- (e) where the restraint of assets is sought, please restrict yourself to asking for the restraint of assets demonstrated (...with respect to which there is a reasonable basis to believe,...) to represent the proceeds of crime;
- (f) where you ask for real or physical evidence, please specify if any analysis will be done and specify commitment, if any, to returning the evidence;
- (g) if you are asking Canada to lend you exhibits from its judicial proceedings, please provide as much detail as possible concerning the current location of the exhibits (i.e. the address of the courthouse or police station) and the proceedings in which they were used and undertake to return such exhibits when proceedings in your country have been concluded

CERTIFICATION

Ideally, a form should be included to meet the formal requirements of the requesting State to render admissible the evidence sought via the request. If not, a clear description of the formal requirements should be provided. It must be understood that if no form is provided, the certification requirements of the requesting State may not be satisfied.

TIME CONSTRAINTS

Please identify any time limit within which compliance with the request is desired and the reason for the time constraints (e.g., a trial date or statutory limitation period, etc.). Simply marking the matter as urgent will not be very helpful since there are often a very significant number of other requests marked "urgent". If you face limitation periods, please set out the precise dates and highlight such dates in the covering letter, as well.

CONFIDENTIALITY

If confidentiality is required, that requirement and the reasons for it should be expressly set out. It is Canada's position that all requests for assistance to and from Canada are confidential State-to-State communications. However, as a practical matter, it is recognized that the process of executing the request in the Canada may require its disclosure. For instance, a copy of the request may be filed in open court in support of an application to gather evidence, or the request may be provided to those from whom evidence is requested. Canadian law generally favours openness and transparency in its proceedings. The need to depart from this approach will have to be justified before a Canadian judge. Particularly sensitive requests should be identified when submitted to the International Assistance Group and the grounds for confidentiality provided, so that confidentiality concerns can be discussed. If confidentiality is a paramount concern, such

that the requesting State would prefer to forego execution if confidentiality cannot be guaranteed, this should be clearly stated.

CONTACT NAMES

In order to expedite the execution of your request, you should include the names and contact numbers for key Canadian and foreign law enforcement/prosecution authorities familiar with the file. You should include your name and contact number in the event the Canadian authority wishes to contact you for the purpose of clarification or obtaining additional information.

Dated at _____, this _____ of _____

COLOMBIA

I. Points of Contact

- Fiscalía General de la Nación
Dr. Francisco Javier Echevarri Lara
Dirección de Asuntos Internacionales
Diagonal 22B No. 52-01, Bloque C, Piso 4
Tele: 5702000-4149000 Ext. 2560/62/63
Fax: 2564-79/83
- Ministerio de Relaciones Exteriores
Dr. Raúl Esteban Sánchez Niño
Director de Asuntos Migratorios
Consulares y Servicios al Ciudadano
Dirección de Correspondencia 5 No. 9-3
Edificio Marco Fidel Suárez
Tele: 5627708-5620268 Ext. 3111, 3112

II. Legal Bases of Cooperation: International Instruments and National Laws

- La Constitución Política de Colombia (1991)
- Código de Procedimiento Penal
- Ley 600
- Ley 906
- International Bi-lateral Treaties and Multi-lateral Conventions
- International Memorandum of Understandings (MOU)
- Letters Rogatory

III. Mechanisms to Locate and Identify Goods Abroad

A. **Informal Mechanisms:** Egmont Group, Iberred, RRAG, Interpol, etc.
N/A

B. **Formal Mechanisms:** Diplomatic or by Central Authorities or Others
Foreign authorities may submit legal assistance requests, pursuant to an applicable international treaty, convention, or letters rogatory, directly to the *Dirrección de Asuntos Internacionales* or through the *Ministerio de Relaciones Exteriores*.

IV. Procedures to Enforce Confiscation, Restraint, and/or Seizure Orders

A. Legal Authorization

Foreign authorities may submit legal assistance requests to enforce confiscation, restraint, and/or seizure orders directly to the *Dirrección de Asuntos Internacionales* or through the *Ministerio de Relaciones Exteriores*. Assistance requests must be made pursuant to an applicable international treaty or convention or through letters rogatory.

B. Go-Bys

N/A

V. Requirements to be Included in the Request for Mutual Legal Assistance

Generally, legal assistance requests should:

- Describe the facts and legal elements required by law to establish the illicit origin of the assets for which confiscation or seizure is sought; and
- Describe the foreign civil or criminal proceeding or investigation upon which the legal assistance request is based.

VI. Mechanisms of International Cooperation for the Management of Assets Seized and Forfeited during the Delay of their Recovery and/or Sharing

Pursuant to Article 86 of the *Código de Procedimiento Penal*, assets seized/forfeited as part of a criminal proceeding shall be placed in the protective custody of the *Fondo Especial Para la Administración de Bienes de la Fiscalía General de la Nación* and shall be registered in the National Public Registry of Assets. Assets seized pursuant to a civil proceeding shall be placed in the protective custody of the *Dirrección Nacional de Estupefacientes* via the *Fondo para la Rehabilitación, Inversión Social y Lucha contra el Crimen Organizado*. The custodian will then place the seized/forfeited assets in an administrative trust, held at any financial institution regulated by either the *Superintendencia Bancaria* or an independent trustee, until the conclusion of the legal proceedings. The Custodian may arrange the interlocutory sale of perishable assets or assets subject to rapid depreciation.

COSTA RICA

I. Points of Contact

- Oficina de Asesoría Técnica y Relaciones Internacionales de la Fiscalía General de la República

Central Authority for all requests made pursuant to the UN Convention against Transnational Organized Crime and the Inter-American Convention against the Illicit Manufacturing or and Trafficking in Firearms, Ammunition, Explosives, and other Related Materials.

Segundo Piso de los Tribunales de Justicia, Primer Circuito Judicial de San José

Avenidas 6 y 8

Calles 13 y 15

Barrio González Lahman

Código Postal: 8-1003

San José, Costa Rica

Tele: (506) 2295-3458/3449/3862/4495; (506) 2294-4853

Fax: (506) 2223-2602; (506) 2295-3449

Email: oatri-mp@poder-judicial.go.cr

- Instituto Costarricense sobre Drogas

Central Authority for all requests made pursuant to the UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances

Bulevar de Barrio Dent, 400 metros norte de la Subarú de San Pedro de Montes de Oca

Tele: (506) 2527-6444

Fax: (506) 2524-0148

Email: mauricio.boraschi@icd.go.cr

- Procuraduría General de la República

Central Authority for all requests made pursuant to the Mutual Legal Assistance Treaty between the Republics of Costa Rica, El Salvador, Guatemala, Honduras, and Panama, the UN Convention against Corruption, and the Inter-American Convention against Corruption.

De Doctores Echandi, 50 metros norte, frente al Hotel Flor de Lis, Calle 13 Avenida 2-4

Tele: (506) 2233-7010/8370

Fax: (506) 2233-7010; (506) 2255-0997

- Ministerio de Seguridad y Gobernación Pública

Central Authority for all requests made pursuant to the Central-American Treaty for the recuperation and return of vehicles illegally or wrongfully stolen, robbed, appropriated or restrained.

Barrio Córdoba, Frente al Liceo Castro Madriz

Tele: (506) 2586-4000

Fax: 506) 2226-0726

Email: mcoto@msp.go.cr

- Patronato Nacional de la Infancia (PANI)

Central Authority for all requests made pursuant to the Inter-American Convention of the International Traffic in Minors and the Inter-American Convention on Conflict of Laws Concerning the Adoption of Minors

Barrio Luján, San José, de la casa de Matute Gómez, 400 metros al sur, antigua Fábrica Dos Pinos

Tele: (506) 2523-0736/0794/0792

Fax: (506) 2258-1494; (506) 523-0895

Email: ccarvajal@pani.go.cr; paniadop@racsa.co.cr

II. Legal Bases of Cooperation: International Instruments and National Laws

- Constitución Política de Costa Rica
- International Bi-Lateral Treaties and Multi-Lateral Conventions
- Código Procesal Civil

III. Mechanisms to Locate and Identify Goods Abroad

A. Informal Mechanisms: Egmont Group, Iberred, RRAG, Interpol, etc.

N/A

B. Formal Mechanisms: Diplomatic or by Central Authorities or Others
Foreign authorities may submit requests for assistance via their Central Authority, directly to the Costa Rican Central Authority designated by the applicable international treaty or convention. The Central Authority will work together with the appropriate authorities to execute the request. For example, if the foreign prosecution or investigation involves a drug-trafficking or money laundering offense, the request should be sent to the *Instituto Costarricense Sobre Drogas* a the *Ministerio Público*, who will work with the *Organismo de Investigación Judicial* and the *Unidad de Inteligencia Financiera* to execute the legal assistance request.

If an applicable international treaty of convention does not exist, foreign authorities may submit letters rogatory requests via diplomatic channels.

IV. Procedures to Enforce Confiscation, Restraint, and/or Seizure Orders

A. Legal Authorization

Foreign authorities may submit a formal request for assistance in enforcing confiscation, restraint, and/or seizure orders directly to the appropriate Costa Rican Central Authority for execution. The request must be made pursuant to an international treaty or convention, or a letters rogatory request.

B. Go-Bys

A foreign legal assistance request should be structured in the following way:

1. Name of Authority who is making the request and to what authority they are making the request
2. Facts
3. Legal Basis
4. Reason for Request
5. Information and/or Documents Requested
6. Time Constraints

V. Requirements to be Included in the Request for Mutual Legal Assistance and Confiscation and Seizure of Property

Generally, a request should include the requirements listed in the specific international treaty or convention pursuant to which the request is being made.

VI. Mechanisms of International Cooperation for the Management of Assets Seized and Forfeited during the Delay of their Recovery and/or Sharing

Once assets related to a drug-trafficking offense have been seized or restrained, they will be put under the protective custody of the *Unidad de Administración de Bienes* (UAB). The UAB will then manage the assets as appropriate, including selling the asset when appropriate. If an asset is encumbered by a lien or mortgage at the time its seizure/restraint is ordered, the UBA may still sell the asset upon notifying the creditor or interested third-party.

DOMINICA

[only submitted copy of the Mutual Assistance Law]

- I. Points of Contact**
- II. Legal Bases of Cooperation: International Instruments and National Laws**
- III. Mechanisms to Locate and Identify Goods Abroad**
 - A. Informal Mechanisms:** Egmont Group, Iberred, RRAG, Interpol, etc.
 - B. Formal Mechanisms:** Diplomatic or by Central Authorities or Others
- IV. Procedures to Enforce Confiscation, Restraint, and/or Seizure Orders**
 - A. Legal Authorization**
 - B. Go-Bys**
- V. Requirements to be Included in the Request for Mutual Legal Assistance**
- VI. Mechanisms of International Cooperation for the Management of Assets Seized and Forfeited during the Delay of their Recovery and/or Sharing**

DOMINICAN REPUBLIC

I. Points of Contact

- Ambassador Jocelyn Pou
Ministerio de Relaciones Exteriores
Av. Independencia No. 752
Santo Domingo, Dominican Republic
Tele: (809) 987-7001 Ext. 7361
Fax: (809) 985-7339
Jocelynpou@hotmail.com; jpou@serex.gov.do

- Magistrada Gisela Cueto González
Deputy Attorney General
Departamento de Asistencia Jurídica Internacional y Extradición
Procuraduría General de la Republica
Av. Jimenez Moya esq. Juanventura Simó
Santo Domingo, Dominican Republic
Tele: (809) 533-3522 Ext. 227-212
Fax: (809) 533-4098
Email: gcueto@procuraduria.gov.do

II. Legal Bases of Cooperation: International Instruments and National Laws N/A

III. Mechanisms to Locate and Identify Goods Abroad

- A. Informal Mechanisms:** Egmont Group, Iberred, RRAG, Interpol, etc.
Dominican authorities may provide informal assistance in locating and identifying goods abroad through law enforcement cooperation. Moreover, foreign authorities may also seek informal assistance by submitting Egmont Group requests to the *Unidad de Análisis Financiera*.
- B. Formal Mechanisms:** Diplomatic or by Central Authorities or Others
Foreign authorities may submit legal assistance requests via their designated Central Authority directly to the *Departamento de Asuntos Internacionales y de Extradiciones de la Procuraduría General de la Republica* via the *Ministerio de Relaciones Exteriores de la Republica Dominicana*. Foreign authorities may also submit letters rogatory requests through formal diplomatic channels. Upon receipt of the legal assistance request or letters rogatory, the *Departamento de Asuntos Internacionales* will, upon the approval of the Attorney General, refer the request to the *Unidad de Anti-Lavado* for execution. If necessary to fully execute the request, the executing authority may petition a judge to issue a search warrant and/or a restraining or seizure order.

IV. Procedures to Enforce Confiscation, Restraint, and/or Seizure Orders

A. Legal Authorization

Foreign authorities may submit legal assistance to enforce confiscation, restraint, and/or seizure orders directly to the *Departamento de Asuntos Internacionales y de Extradiciones de la Procuraduría General de la Republica* via the *Ministerio de Relaciones Exteriores de la Republica Dominicana*. Foreign authorities may also submit letters rogatory requests through formal diplomatic channels. If seeking the enforcement of a final forfeiture or confiscation order, the foreign authority must attach a copy of the judicial order certified by both a competent authority and the Dominican Consulate located in the requesting country.

B. Go-Bys

N/A

V. Requirements to be Included in the Request for Mutual Legal Assistance

Generally, legal assistance requests should:

- Provide date;
- Name the authority requesting assistance;
- Name the authority to whom the request is addressed;
- Provide a brief summary of the facts, crimes alleged, and description of investigation and procedural history of the matter for which assistance is requested;
- Name the applicable international legal instrument upon which assistance is requested;
- Provide a detailed account of what is being requested, i.e. list of assets to be seized and/or forfeited; and
- Attach copies of the crime allegedly violated and orders issued by judges or competent authorities.

VI. Mechanisms of International Cooperation for the Management of Assets Seized and Forfeited during the Delay of their Recovery and/or Sharing

Pursuant to Article 59 of the *Ley 72-02 sobre Lavado de Activos provenientes de Tráfico Ilícito de Drogas y otras Infracciones Graves*, the *Oficina de Custodia y Administración de Bienes Incautados y Decomisados* (OCABID) has the authority to manage, administer, and sell all seized and forfeited assets. OCABID may sell or auction off any seized or forfeited asset as long as the owner of the assets has been criminally charged and is not expressly opposed to the sale. Seized or forfeited assets may also be used by Dominican law enforcement to combat and prevent crime prior to the resolution of the criminal matter.

Assets seized pursuant to mutual legal assistance requests are managed by the *Ministerio Público*, as the designated Central Authority. However, if a criminal indictment regarding the same matter is filed in the Dominican Republic, the assets are managed by OCABID.

ECUADOR

I. Points of Contact

- Ministerio de Relaciones Exteriores
Comercia e Integración
Corrión E1-76 y Av. 10 de Agosto
Quito, Ecuador
Tele: (5932) 2245992
- Corte Nacional de Justicia
Ab. Lorena Naranjo
Tele: (5932) 2245992
Email: inaranjo@cortenacional.gov.ec

II. Legal Bases of Cooperation: International Instruments and National Laws

- Constitución de la República de Ecuador
- Código Orgánico de la Función Judicial
- International Bi-lateral Treaties and Multi-Lateral Conventions

III. Mechanisms to Locate and Identify Goods Abroad

A. Informal Mechanisms: Egmont Group, Iberred, RRAG, Interpol, etc.

When the assistance requested does not require compulsory measures, foreign authorities may submit informal requests for assistance to the National Police via Interpol. Requests may also be sent to the *Unidad de Inteligencia Financiera* (UIF) via an Egmont Group request, is applicable.

B. Formal Mechanisms: Diplomatic or by Central Authorities or Others

When the assistance requested require compulsory measures, foreign authorities must submit formal requests for assistance to the Ecuadorian Central Authority designated by the applicable international treaty or convention. Upon receipt, the designated authority will work with the courts and other competent authorities to execute the request.

V. Procedures to Enforce Confiscation, Restraint, and/or Seizure Orders

A. Legal Authorization

Ecuadorian authorities may assist foreign authorities in executing confiscation, restraint, and/or seizure orders. However, such requests must be made through via formal channels and pursuant to an applicable international treaty or convention.

B. Go-Bys

N/A

V. Requirements to be Included in the Request for Mutual Legal Assistance

Generally, a request for legal assistance should:

- Provide an in-depth description of the facts associated with the crime alleged, as well as the assistance request; and
- Describe and attach the rule(s) governing the procedure.

VI. Mechanisms of International Cooperation for the Management of Assets Seized and Forfeited during the Delay of their Recovery and/or Sharing

Once precautionary measures have been ordered by a competent judge, a judicial sheriff will seize the assets and give them over to the *Consejo Nacional Contra el Lavado de Activos*, or another designated judicial depository to be managed until the resolution of the matter.

EL SALVADOR

I. Points of Contact

- Ministerio de Relaciones Exteriores
Licdo. Carlos Alfredo Castaneda Magaña
Vice-Ministero de Relaciones Exteriores
Calle El Pedegral, Boulevard Cancillería
Antiguo Cuscatlán, San Salvador
El Salvador
Tele: (503) 2231-2905
- Corte Suprema de Justicia (Letters Rogatory)
Corte Plena y Unida de Asesoría Técnica Internacional
Licda. Ana Elizabeth Villalta Vizcarra
Coordinadora
Edificio Corte Suprema de Justicia
Centro Gobierno, Tercer Nivel, San Salvador
El Salvador
Tele: (503) 2271-3767
Fax: (503) 2271-8839

II. Legal Bases of Cooperation: International Instruments and National Laws

- Código Penal
- Ley Lavado de Dinero y de Activos
- Ley Reguladora de las Actividades Relativas de las Drogas
- International Bi-lateral Treaties and Multi-lateral Conventions

III. Mechanisms to Locate and Identify Goods Abroad

A. Informal Mechanisms: Egmont Group, Iberred, RRAG, Interpol, etc.

N/A

B. Formal Mechanisms: Diplomatic or by Central Authorities or Others

Foreign authorities may send requests for legal assistance to the *Ministerio de Relaciones Exteriores* or through the Central Authority designated in the relevant international convention or treaty. If the request is sent to the *Ministerio de Relaciones Exteriores*, the request will be sent to the Supreme Court via the *Ministerio de Justicia y Seguridad de Justicia*. If the request is sent to the designated Central Authority, it will be sent directly to the Supreme Court. The Supreme Court will then determine whether the request provides sufficient evidence to be executed. If the Supreme Court deems the request sufficient, it will issue a finding referring the execution of the request to the competent

authority. If the request is deemed deficient, the Supreme Court will issue a finding ordering the return of the request to the *Comisión Rogatoria* noting the deficiencies and additional information needed.

Once the request has been processed, the executing authority will send the results back to the Supreme Court, who will determine if the information obtained fully or partially fulfills the request. If Supreme Court deems that the request has been fully satisfied, the Supreme Court will issue an order directing the return of the results and the original request to the requesting country via the appropriate channels. If the Supreme Court deems the request to not have been fully satisfied, the Supreme Court will send the request back to the executing authority for completion.

IV. Procedures to Enforce Confiscation, Restraint, and/or Seizure Orders

A. Legal Authorization

Foreign authorities may submit legal assistance requests to enforce confiscation, restraint, and/or seizure orders directly to Supreme Court or the designated Central Authority. Assistance requests must be made pursuant to an applicable international treaty or convention.

B. Go-Bys

N/A

V. Requirements to be Included in the Request for Mutual Legal Assistance

Generally, a request for legal assistance should:

- Name the competent authority to which the request should be sent;
- Name the authority requesting assistance, the reason for seeking assistance, and the legal authority pursuant to which assistance is sought;
- Provide all information and items required by the applicable international treaty or convention;
- Identify the crime being alleged, as well as a brief explanation of its required elements, identify the relevant investigation or prosecution involved, and give a description of the relevant facts establishing the crime and need for assistance requested;
- Identify the law upon which the request is made
- Describe the procedures or other special requirements that should be followed when executing the request;
- Provide a Spanish translation of the request; and
- Provide any other requirements listed in the applicable international treaty or convention.

VI. Mechanisms of International Cooperation for the Management of Assets Seized and Forfeited during the Delay of their Recovery and/or Sharing

When items have been seized or forfeited, they shall be properly inventoried and a judge will appoint a competent agency employee or worker to manage them until the matter is resolved. Any agent employee or worker may be tasked with managing seized/forfeited property except judicial police or employees of the *Ministerio Público*. Items seized by customs agents may only be managed by a customs employee. If the property seized is a vehicle, airplane or ship it may be given to the National Police or Armed Forces, at the *Fiscalía General de la República's* request, to fight organized crime.

GUATEMALA

I. Points of Contact

- Ministerio Público de Guatemala
15 Av. 15-16 Zona 1

Barrio Gerona

Ciudad de Guatemala, Guatemala 01001

Tele: (502) 2411-9191

Fax: (502) 2411-9191

- Ministerio de Relaciones Exteriores
2a Av. 4-17 Zona 10

Ciudad de Guatemala, Guatemala 01010

Tele: (502) 2410-0000

- Intendencia de verificación Especial
Oficina Central

9a Av. 22-00 Zona 1

Guatemala

Tele: (502) 2429-5000/2204-5300

Fax: (502) 2232-0002

- Oficina Regional de Occidente
Av. Las Americas 7-62 Zona 3

Edificio Torre Pradera Xela

Primer Nivel, Oficina 102

Quetzaltenango, Quetzaltenango

Tele: (502) 7930-4421/7930-4422

Email: info@sib.gob.gov

II. Legal Bases of Cooperation: International Instruments and National Laws

- Código Procesal Penal
- Ley Contra el Lavado de Dinero y otros Activos
- Ley para Prevenir y Reprimir el Financiamiento del Terrorismo
- Ley de Extinción de Domino

III. Mechanisms to Locate and Identify Goods Abroad

A. Informal Mechanisms: Egmont Group, Iberred, RRAG, Interpol, etc.
N/A

B. Formal Mechanisms: Diplomatic or by Central Authorities or Others
Foreign authorities may submit legal assistance requests to locate and identify goods abroad directly to the Central Authority designated by the applicable international treaty or convention.

IV. Procedures to Enforce Confiscation, Restraint, and/or Seizure Orders

A. Legal Authorization

Foreign authorities may submit legal assistance requests to enforce confiscation, restraint, and/or seizure orders directly to the Central Authority designated by the applicable international treaty or convention.

B. Go-Bys

N/A

V. Requirements to be Included in the Request for Mutual Legal Assistance

Generally, legal assistance requests should include all the information that is required by the international treaty or convention under which the request for assistance is made.

VI. Mechanisms of International Cooperation for the Management of Assets Seized and Forfeited during the Delay of their Recovery and/or Sharing

Generally, seized/forfeited items shall be inventoried and shall be placed under the protective custody of the relevant authority as so ordered by the Supreme Court. If the Supreme Court chooses, it may order that seized/forfeited goods be put under the protective custody of any of its agencies or social assistance centers. The proceeds from the sale or auction of seized items shall be deposited into the judiciary's private account. However, the mechanisms for managing assets may be set-forth by the international instrument under which the request for assistance is made.

JAMAICA

I. Points of Contact

N/A

II. Legal Bases of Cooperation: International Instruments and National Laws

- Mutual Assistance (Criminal Matters) Act
- The Proceeds of Crime Act
- The Financial Investigations Division Act
- The Sharing of Property Act
- International Bi-lateral Treaties and Multi-lateral Conventions
- Letters Rogatory

III. Mechanisms to Locate and Identify Goods Abroad

- A. Informal Mechanisms:** Egmont Group, Iberred, RRAG, Interpol, etc.
The Mutual Assistance (Criminal Matters) Act allows Jamaican law enforcement authorities to coordinate with foreign law enforcement in order to provide informal assistance in their criminal investigations and prosecutions. Such assistance is only available to the requesting countries criminal law enforcement authorities. Moreover, such countries must be either a Commonwealth Country or a Treaty Country.
- B. Formal Mechanisms:** Diplomatic or by Central Authorities or Others
Foreign authorities may submit legal assistance requests to locate and identify goods abroad directly to the Central Authority designated by the applicable international treaty or convention or through a letters rogatory request.

IV. Procedures to Enforce Confiscation, Restraint, and/or Seizure Orders

A. Legal Authorization

The Mutual Assistance (Criminal Matters) Act provides that the relevant Central Authority may assist foreign countries in obtaining or enforcing confiscation, restraint, and/or seizure orders against property believed to be located in Jamaica. Specifically, if the Central Authority determines that the foreign assistance request sufficiently establishes that the tainted property in relation to the alleged offense is located in Jamaica, it has the authority to authorize a police officer to apply to a magistrate for a search warrant to enter the premises and seize all tainted property. If the request seeks the enforcement or issuance of a confiscation, restraint, and/or seizure order, the Central Authority may, at its discretion, apply to the Supreme Court for the issuance of a restraint order and the Supreme Court may satisfy the request. A copy of the restraint order shall be registered with the Registrar of the Supreme Court and with the Registrar of Titles who shall record the particulars of the order in the Register Book of Titles. A restraint order will have no effect with respect to the registered land unless it is registered.

In addition, before issuing the order, the Supreme Court may require that notice be given to, and may hear, any person who, appears to have an interest in the

property. However, the Supreme Court may waive this requirement if it has reason to believe that it may result in the depreciation of the property's value.

B. Go-Bys

N/A

V. Requirements to be Included in the Request for Mutual Legal Assistance

- The elements that foreign authorities must include in a request for legal assistance are:
 1. The name of the agency or authority initiating the request;
 2. Time limit within which the request should be executed;
 3. The purpose for which the assistance is being sought;
 4. The subject matter and nature of the investigation, such as who is being investigated and the relevant address;
 5. Summary of the relevant facts;
 6. Whether or not criminal proceedings have commenced; and
 7. The person or persons under investigation.

- Where the person has been charged with a criminal offence, the request must state in addition to paragraphs 1 – 7 above:
 1. the court exercising jurisdiction in the proceedings or any other law enforcement agency or authority conducting such proceedings;
 2. the identity of the accused person (s);
 3. the offences to which the request relate; and
 4. the stage in the proceedings and the dates fixed for further stages.

- If criminal proceedings have not been instituted the brief must state in addition to paragraphs 1 – 7 above:
 1. the offence believed to have been committed;
 2. the specific nature of assistance needed;
 3. if the request relates to documents, where the documents are located and whether originals or certified copies would be required;
 4. whether it is contemplated the witnesses attend Jamaica to testify; and
 5. If paragraph (d) is being contemplated, then some indication of what should be in the statement should be given.

VI. Mechanisms of International Cooperation for the Management of Assets Seized and Forfeited during the Delay of their Recovery and/or Sharing

Pursuant to the Financial Investigations Divisions Act, the Financial Investigations Division is responsible for maintaining all seized, restrained, and/or forfeited property in connection with financial criminal proceedings. For all other crimes, the executing authority may petition the court to appoint an Interim Receiver to manage the seized/forfeited property.

MEXICO

I. Points of Contact

- Dirección General de Extradiciones y Asistencia Jurídica
Procuraduría General de la Republica
Avenida Paseo de la Reforma
Número 211-213, piso 2
Colonia Cuauhtémoc
Delegación Cuauhtémoc, Mexico
Distrito Federal, C.P. 06500
Tele: (55) 53 46 01 25
Fax: (55) 53 46 02 09 and (55) 53 46 03 09
Email: dgeaj@pgr.gob.mx; kroman@pgr.gob.mx
- Dirección General de Asuntos Jurídicos de la Secretaría de Relaciones Exteriores

II. Legal Bases of Cooperation: International Instruments and National Laws

- Ley Federal de Extinción de Dominio
- International Bi-lateral Treaties and Multi-lateral Conventions

III. Mechanisms to Locate and Identify Goods Abroad

- A. **Informal Mechanisms:** Egmont Group, Iberred, RRAG, Interpol, etc.

N/A

- B. **Formal Mechanisms:** Diplomatic or by Central Authorities or Others

When there exists an international treaty or convention for mutual legal assistance in criminal matters, a foreign authority may send a request for legal assistance to Mexico's Central Authority, the *Procuraduría General de la República*, via the *Dirrección General de Extradiciones y Asistencia Jurídica*. When there is no applicable international treaty or convention, a foreign authority may send a letters rogatory request via the appropriate diplomatic channels.

If the request is urgent, a verbal request for assistance to the Central Authority may be made, but must be supplemented with a formal, written request.

IV. Procedures to Enforce Confiscation, Restraint, and/or Seizure Orders

- A. **Legal Authorization**

Foreign requests for assistance in executing confiscation, restraint, and/or seizure orders shall be executed if they provided sufficient information. The seizing authority will provide a certified inventory of the seized asset(s), its current condition, and name of the entity entrusted with its care and management. All eventual forfeitures shall be in favor of Mexico and not the requesting country. However, Article 69 of the *Ley Federal de Extinción de Dominio* allows for the non-conviction based forfeiture of assets and their eventual return to the requesting country. This law only applies to assets involving crimes set forth by Article 8 of the law.

B. Go-Bys

N/A

V. Requirements to be Included in the Request for Mutual Legal Assistance

Generally, a request for legal assistance should:

- Provide a written request, translated into Spanish;
- Name the competent authority in charge of the investigation, prosecution, or assignment;
- Describe the facts and the procedural history of the investigation, prosecution, or assignment;
- Describe the evidence or information requested;
- Describe the purpose for which the information or evidence is requested;
- Describe the relevant procedures to be followed when executing request;
- If possible, provide the identity, affiliation, or location of the person to be located or asked to produce evidence;
- Provide detailed description of the search requested and the items to be seized;
and
- Provide any other necessary information pursuant to the requested Country's laws.

VI. Mechanisms of International Cooperation for the Management of Assets Seized and Forfeited during the Delay of their Recovery and/or Sharing

Pursuant to Article 6 of the *Ley de la Administración y Enajenación de Bienes del Sector Público*, the *Servicio de Administración de Bienes* (SAE) shall manage all seized/forfeited assets pending the conclusion of the criminal proceedings. SAE may contract management responsibilities to outside businesses or agencies. If the

seized/forfeited assets are flora or fauna, they shall be deposited at a zoo or a similar institution. If the seized assets are works of art, antiquities or historical pieces, they shall be deposited in museums, cultural centers or institutions. If they are vehicles, they shall be deposited with their user or their registered owner. Real property shall stay in the possession of its manager, tenant, or owner. The SAE, or the designated contractor, may sell or dispose of any assets which are subject to deterioration or rapid devaluation seized assets cannot be put to official use.

NICARAGUA

I. Points of Contact

- Procuraduría General de la República
Apartado Postal 2361
KM 3 ½ Carretera Sur, Antigua Edificio Cancillería
Tele: 266-4416/266-4721 Ext. 237
Email: procuraduria@pgr.gob.ni
- Ministerio de Relaciones Exteriores
De donde fue el cine González
1 cuadra al Sur, Sobre Avenida Bolivar
Tele: (505) 2244-8000/2244-8007
Managua, Nicaragua

II. Legal Bases of Cooperation: International Instruments and National Laws

- Ley 735/2010
- International Bi-lateral Treaties and Multi-lateral Conventions

III. Mechanisms to Locate and Identify Goods Abroad

- A. Informal Mechanisms:** Egmont Group, Iberred, RRAG, Interpol, etc.

N/A

- B. Formal Mechanisms:** Diplomatic or by Central Authorities or Others

Foreign authorities should submit requests for legal assistance locating and identifying goods abroad directly to the Central Authority designated by the applicable international treaty or convention. The relevant Central Authority will assign the execution of the request to the appropriate authority. The *Ministerio Público*, National Police, or the National Army may communicate their findings directly with the foreign authority, pursuant to that established by the relevant international treaty or convention.

IV. Procedures to Enforce Confiscation, Restraint, and/or Seizure Orders

- A. Legal Authorization**

Foreign authorities should submit requests for legal assistance in enforcing confiscation, restraint, and/or seizure orders directly to the Central Authority designated by the applicable international treaty or convention. However, Nicaragua can only enforce those orders which have been issued in a judicial proceeding within a criminal prosecution related to money laundering or terrorist financing offenses.

B. Go-Bys

See ATTACHMENT A

V. Requirements to be Included in the Request for Mutual Legal Assistance

Generally, requests for legal assistance should:

- Name the authority under which request is made;
- Explain the facts establishing the alleged crime;
- Name the subjects of the investigation;
- Describe each subjects individual involvement in the alleged crime;
- Name the authority leading the investigation or prosecution;
- Provide the procedural history of the prosecution and/or the investigation; and
- Provide the last order issued but the judge.

VI. Mechanisms of International Cooperation for the Management of Assets Seized and Forfeited during the Delay of their Recovery and/or Sharing

Article 43 of the *Ley de Prevención, Investigación, y Persecución del Crimen Organizado y de la Administración de los Bienes Incautados, Decomisados y Abandonados*, vests the *Unidad Administradora de Bienes Incautados, Decomisados o Abandonados* (UABIDA) with the authority to manage seized goods that are the subject of a criminal investigation and/or prosecution of organized crime.

ATTACHMENT A

FORMULARIO DE SOLICITUD DE ASISTENCIA

1. La solicitud de asistencia deberá de formularse por escrito y contendrá la siguiente información:

- a) La Autoridad competente que solicita la Asistencia.
- b) Propósito de la solicitud y descripción de la Asistencia solicitada.
- c) Descripción de los hechos que constituyen el delito objeto de la Asistencia de conformidad a las Leyes del Estado requirente. Debe de adjuntarse o transcribirse el texto de las disposiciones legales pertinentes.
- d) Detalle y fundamento de cualquier procedimiento particular que el Estado requirente desea que se lleve a cabo.
- e) Especificaciones sobre el termino dentro del cual el Estado requirente desea que la solicitud se cumplida.

2. En los casos pertinentes, la solicitud de Asistencia también incluirá:

- a) La información disponible sobre la identidad y supuesto paradero de la persona o personas a ser localizadas.
- b) La identidad y supuesto paradero de la persona o personas que deben de ser notificadas y la vinculación que dichas personas guardan con el caso.
- c) La identidad y supuesto paradero de aquellas personas que se requieran a fin de obtener pruebas.
- d) La descripción y dirección precisa del lugar objeto de registro y de los que deben ser aprehendidos.
- e) Cualquier otra información que sea necesaria para la ejecución de la solicitud de asistencia.

3. Si el Estado requerido considera que la información contenida en la solicitud de asistencia no es suficiente para permitir el cumplimiento de la misma, podrá solicitar información adicional al Estado requirente.

Observaciones.

PANAMA

I. Points of Contact

- Licenciado Giuseppe A. Bonissi C.
Procuraduría General de la Nación
Procurador General de la Nación Suplente
- Licenciada Greta Marchosky de Turner
Secretaría de Asuntos Internacionales
- Licenciado Vladimir Franco
Ministerio de Relaciones Exteriores
Dirección General de Asuntos Jurídicos y Tratados
- Licenciado Raúl Andrade Abrego
Ministerio de Gobierno y Justicia
Dirección Nacional para la Ejecución de los Tratados de Asistencia Legal Mutua

II. Legal Bases of Cooperation: International Instruments and National Laws

- International Bi-lateral Treaties and Multi-lateral Conventions

III. Mechanisms to Locate and Identify Goods Abroad

- A. Informal Mechanisms:** Egmont Group, Iberred, RRAG, Interpol, etc.

N/A

- B. Formal Mechanisms:** Diplomatic or by Central Authorities or Others

The procedure for seeking assistance in locating and identifying good abroad differs depending on the international legal instrument being used. Generally, requests for assistance should be sent directly to the Central Authority designated by the applicable international treaty or convention for execution.

IV. Procedures to Enforce Confiscation, Restraint, and/or Seizure Orders

- A. Legal Authorization**

Panama will enforce foreign confiscation, restraint, and/or seizure orders. Foreign authorities should submit requests for assistance pursuant to the procedures set forth by the applicable international treaty or convention.

B. Go-Bys

See ATTACHMENT A

V. Requirements to be Included in the Request for Mutual Legal Assistance

What to include in a request for assistance differs depending on the international legal instrument used. However, if seeking assistance to enforce a seizure, restraint, and/or confiscation order, the request must include a copy of the judicial order certified in accordance to the procedures set forth by the relevant treaty or convention. If a request seeks assistance for obtaining bank records, the request must clearly identify the specific bank account identification number. Lastly, if making a request pursuant to the Vienna Convention, the request must include a summary of the relevant facts, copy of the applicable laws, as well as a description of the assets that are the subject of the request.

VI. Mechanisms of International Cooperation for the Management of Assets Seized and Forfeited during the Delay of their Recovery and/or Sharing

Ley 38 de 10 de Agosto de 2007 sets forth that a *funcionario de instrucción* may appoint a third party to take temporary custody of seized/forfeited assets. The *funcionario de instrucción* may also appoint a third party to donate seized asset(s) to public or private institutions or to sell those seized/forfeited assets which are perishable or subject to rapid deterioration.

ATTACHMENT A

ESTADO REQUIRENTE

ASISTENCIA JUDICIAL N° _____

AUTORIDAD REQUIRENTE

A la AUTORIDAD REQUERIDA
para la ejecución de la Convención de Viena, sobre narcotráfico de 1988.

REQUIERE:

Se le brinde ASISTENCIA JUDICIAL al amparo de lo dispuesto por el artículo 7 de la Convención de las Naciones Unidas contra el Narcotráfico (CONVENCIÓN DE VIENA DE 1988).

En el ESTADO REQUIRENTE, se adelanta una investigación por (DESCRIPCIÓN TÍPICA DE LOS DELITOS).

MOTIVOS POR LOS CUALES SE SOLICITA LA ASISTENCIA JUDICIAL:

(NARRACIÓN SUSCINTA DE LOS HECHOS QUE MOTIVAN EL REQUERIMIENTO INTERNACIONAL, CON EL DETALLE DEL OBJETO Y LA ÍNDOLE DE LA INVESTIGACIÓN, DEL PROCESO O DE LAS ACTUACIONES A QUE SE REFIERA LA SOLICITUD, Y LA AUTORIDAD QUE ESTÉ AFECTUANDO DICHO REQUERIMIENTO. FINALIDAD PARA LA QUE SE SOLICITA LA PRUEBA, INFORMACIÓN O ACTUACIÓN.

CUANDO SEA POSIBLE, LA IDENTIDAD Y LA NACIONALIDAD DE TODA PERSONA INVOLUCRADA Y EL LUGAR EN QUE SE ENCUENTRE).

En base a los hechos antes señalados, la AUTORIDAD REQUIRENTE, ruega a las autoridades competentes de la AUTORIDAD REQUERIDA, se le dé la siguiente Asistencia Judicial:

LO QUE SE PIDE:

(DETALLE DE LAS PRUEBAS, INFORMACIONES O ACTUACIONES QUE REQUIERE LA ASISTENCIA JUDICIAL INTERNACIONAL.

PORMENORES SOBRE CUALQUIER PROCEDIMIENTO PARTICULAR QUE LA PARTE REQUIRENTE DESEE QUE SE APLIQUE)

Respetuosamente, se solicita que las pruebas se remitan debidamente autenticadas por la autoridad o funcionario competente.

La AUTORIDAD REQUIRENTE, se permite ofrecer reciprocidad para los casos similares conforme a la Ley del ESTADO REQUERIDO, a los tratados y costumbres, en igual forma se hace propicia la oportunidad para manifestarle nuestro agradecimiento y colaboración.

FECHA DE LA ASISTENCIA JUDICIAL.

NOMBRE, CARGO, FIRMA y SELLO FRESCO de la
AUTORIDAD REQUIRENTE

PERU

I. Points of Contact

- Ministerio Público
Av. Abancay Cuadra 5 s/n

Lima, Peru

Tele: (051) 625-5555

Email: ministeriopublico@mpfn.gob.pe

II. Legal Bases of Cooperation: International Instruments and National Laws

- Código de Procedimientos Penales
- Código Procesal Penal
- Ley de Pérdida de Dominio
- International Bi-lateral Treaties and Multi-lateral Conventions

III. Mechanisms to Locate and Identify Goods Abroad

A. Informal Mechanisms: Egmont Group, Iberred, RRAG, Interpol, etc.

N/A

B. Formal Mechanisms: Diplomatic or by Central Authorities or Others
Foreign authorities may submit legal assistance requests, in Spanish, to the Central Authority designated by the applicable international treaty or convention. If the request is sent through diplomatic channels, the request does not need to be duly certified.

IV. Procedures to Enforce Confiscation, Restraint, and/or Seizure Orders

A. Legal Authorization

Foreign authorities may submit legal assistance and letters rogatory requests for assistance in enforcing confiscation, restraint, and/or seizure orders to the appropriate Peruvian authority. The request may only be executed if it pertains to a serious crime and is not solely subject to military law.

B. Go-Bys

See ATTACHMENT A

V. Requirements to be Included in the Request for Mutual Legal

Generally, a request for assistance should:

- Name the foreign authority leading the investigation or prosecution;
- Name the crime alleged, as well as provide a description of the facts, the purpose of the investigation or prosecution, and how the facts and crime alleged are related to the assistance requested; and

- Describe the assistance requested.

VI. Mechanisms of International Cooperation for the Management of Assets Seized and Forfeited during the Delay of their Recovery and/or Sharing

The administration of assets seized/forfeited during the course of a proceeding will be handled by the *Fondo de Pérdida de Dominio* (FONPED) which is overseen by the *Ministerio de Justicia*.

ATTACHMENT A



LEYEN SUPREMA DE JUSTICIA
DE LA REPÚBLICA



MODELO DE SOLICITUD DE ASISTENCIA JUDICIAL RECÍPROCA

SOLICITUD DE ASISTENCIA JUDICIAL RECÍPROCA

A nombre de la Nación, el Sr. Juez a cargo del Juzgado Penal de
la Corte Superior de Justicia de (República del Perú)

Al Sr. Juez de igual jurisdicción y competencia en la ciudad de.....,
(País) .

Por intermedio de la Autoridad Central, los Fiscales de la sección –Unidad de
Cooperación Judicial Internacional y Extradiciones:

SALUDA, EXHORTA Y HACE SABER que por ante el Juzgado a su cargo,
Secretaría..... se tramita la causa N° seguida contra por
delito de en la cual se ha ordenado el libramiento de la
presente solicitud de Asistencia Judicial Recíproca, bajo el amparo y
marco legal de (Nombre del Tratado) (si no hay tratado: bajo
ofrecimiento de reciprocidad en casos análogos), a fin de solicitarle
tenga a bien disponer las medidas necesarias para el cumplimiento la
asistencia judicial que más adelante se detala.

DEL PROCESO POR EL QUE SE SOLICITA LA ASISTENCIA JUDICIAL

PARTES DEL PROCESO: Detallar las partes del proceso: Juzgado, Juez,
Fiscal, Promotor, aprehendidos, delitos. Es importante señalar un teléfono
de contacto directo con la autoridad judicial.

HECHOS QUE SE INVESTIGAN: Señalar cuáles son los hechos
investigados, y como estos hechos están previstos dentro de un
castigamiento tipo legal. Explicar cual es la conducta típica (es vital en
caso que los tipos legales no coincidan pero por la descripción del tipo
penal el Estado requerido pueda inferir que es conducta típica del
otro delito)

OBJETO Y MOTIVO DEL PEDIDO DE ASISTENCIA



Se debe explicar el propósito de la asistencia. Mencionar los medios viables, quienes la solicitan dentro del proceso, detallando como se vinculan con los hechos investigados y su necesidad dentro del proceso, en especial sobre lo que se desea probar. Responder a las preguntas: ¿cuál es la necesidad de la prueba que se espera conseguir con la asistencia? ¿cuál es su importancia en el proceso? se debe aportar datos para facilitar la ejecución de la asistencia (nombres y apellidos, fecha y lugar de nacimiento, nacionalidad y direcciones de las personas de quien se trata) (nombre y domicilio de las diligentes que deben aportar información) (nombres, apellidos y domicilio de testigos en el caso de pliego de preguntas) (datos de las cuentas bancarias o lugar donde se encuentran). Se debe tener presente que se debe velar en condiciones de poder resolver las consultas que pudiera efectuar el Estado Requerido. Se debe detallar como objeto que se ejecuta en su de acuerdo con la legislación del Estado Requerido o el caso alguna forma especial para ejecutarla. En este último caso debe llenar el cuadro siguiente.

MÓDALIDAD DE LA EJECUCIÓN DE LA ASISTENCIA

Si se desea que se aplique un procedimiento conforme a nuestro derecho, debe indicar cuál es el procedimiento a seguir y copiar el texto de las disposiciones legales aplicables, así como explicar por qué se desea que se aplique esta modalidad de asistencia, si se desea que una persona participe en la ejecución de la asistencia, incluir su designación y explicar por qué se requiere que participe.

ANEXOS

Copia del auto que ordena se solicite la asistencia judicial. Añadir que otros documentos se adjuntan (de preferencia solo instrumentales que tengan que ver directamente con la solicitud de asistencia, por ejemplo pliego interrogatorio).

HAZ FE, en la ciudad de ... a los ... días del mes de ... de ...

FIRMA Y SELLO DEL JUEZ

CERTIFICACION

Certificamos de la firma del Juez por el Presidente de la Corte Superior respectiva

SURINAME

I. Points of Contact

Mr. Subhaschandre PUNWASI
Attorney General
Parket van de Procureur-generaal
Henck Arron Straat Number 3
Paramaribo, Suriname
Email: proc.gen@sr.net

II. Legal Bases of Cooperation: International Instruments and National Laws

- Criminal Procedure Code
- Law of 2002 (State Decree 2002 number 71)
- Act of the 5th of September 2002, *SB 2002, 76*
- Bi-Lateral Treaties and Multi-lateral Conventions

III. Mechanisms to Locate and Identify Goods Abroad

A. Informal Mechanisms: Egmont Group, Iberred, RRAG, Interpol, etc.
N/A

B. Formal Mechanisms: Diplomatic or by Central Authorities or Others
The government can provide assistance to locate and identify assets pursuant to a bilateral or multilateral agreement. Assistance may also be granted even when there is no bilateral or multilateral agreement. The Office of the Attorney General is responsible for instructing the judicial police in money laundering cases and the Financial Investigative Unit for Suriname is the “MOT (*Meldpunt Ongebruikelijke Transacties*) which has the responsibility for receiving, analyzing, and investigating all unusual transactions. The Ministry of Justice and Police is responsible for the detection and prosecution of all criminal offenses and for the preparation of legislation.

IV. Procedures to Enforce Confiscation Orders, Freezing, and Seizure

A. Legal Authorization

Suriname authorities can enforce confiscation, restraint, and seizure orders submitted in a formal legal assistance request made pursuant to an applicable bi-lateral treaty and/or multi-lateral convention. Assets can be seized for the requesting State and a rogatory commission can be appointed to forfeit the assets on behalf a requesting State.

B. Go-Bys

N/A

V. Requirements to be Included in the Request for Mutual Legal Assistance and Confiscation and Seizure of Property

Generally, a request for legal assistance should:

- identify the requesting authority;
- describe the purpose and nature of the investigation;
- describe the prosecution or proceeding to which the request relates;
- identify the name and functions of the authority that is leading this investigation, prosecution or the procedure;
- provide a summary of the relevant facts is needed;
- describe the assistance required and details of any particular procedure the requesting

- State wishes to be followed;
- if possible, provide the identity, the residence, and nationality of the persons concerned; and
 - describe the purpose for which the evidence, information or action is requested.

VI. Mechanisms of International Cooperation for the Management of Assets Seized and Forfeited during the Delay of their Recovery and/or Sharing

There is no central repository for confiscated goods. Goods are stored at police stations under the supervision of the Chief of police. Seized property cannot be put into official use - only forfeited property can be put into official use.

UNITED STATES OF AMERICA

I. Points of Contact

- Office of International Affairs
Department of Justice, Criminal Division
1301 New York Ave., NW
Washington, DC 20005
Tele: (202) 514-0000
Fax: (202) 514-0080
- Asset Forfeiture and Money Laundering Division
Department of Justice, Criminal Division
1400 New York Avenue, NW
Washington DC 20005
Tele: (202) 514-1263
Email: afmlspublications@usdoj.gov

II. Legal Bases of Cooperation: International Instruments and National Laws

- Title 18, United States Code, Section 2467 and 981-983
- International Bi-lateral Treaties and Multi-lateral Conventions

III. Mechanisms to Locate and Identify Goods Abroad

A. Informal Assistance

United States law enforcement agents can provide investigatory assistance to foreign law enforcement agents to support foreign investigations to identify and trace the proceeds of criminal offenses through investigative means available for domestic law enforcement matters. This type of informal assistance through law enforcement channels is ordinarily not limited by what type of property may be sought. United States agents can also provide assistance by obtaining seizure warrants under United States law to seize United States-based assets which qualify for administrative forfeiture, as discussed above. Foreign Financial Intelligence Units (FIUs) may also request assistance through Egmont requests to FinCEN.

B. Formal Assistance

Foreign authorities can seek compulsory production of evidence (called a Commissioner's Subpoena in the United States) to trace or identify proceeds of crime through a formal request for assistance, such as by Mutual Legal Assistance Treaty (MLAT) or OAS or UN Convention request, provided that a showing is made that the requested information is needed to assist in an ongoing criminal investigation. Certain information, such as financial institution records, can only be obtained through formal requests. Other actions which may be sought through formal request include: search and seizure warrants, interviews with potential witnesses, and, of course, restraint or confiscation of assets.

IV. Procedures to Enforce Confiscation, Restraint, and/or Seizure Orders

A. Legal Authorization

Title 28, United States Code, Section 2467 provides for the enforcement of foreign (relating to proceeds or criminal instrumentalities) where the request is made under an agreement (treaty, convention, or letters rogatory). If no forfeiture order has been issued in the requesting State, the United States may be able to assist in cases where the conduct underlying the investigation/prosecution in the requesting state could result in proceeds of crimes charges being laid in the United States. In such cases, United States authorities may launch a domestic investigation that could ultimately lead to forfeiture proceedings. In addition, the United States may seek an order from a court to restrain property for 30 days as long as the foreign country has arrested or charged someone in connection with criminal conduct which may give rise to forfeiture, pursuant to Title 18, United States Code, Section 981(b)(4). The purpose of this 30-day period is to preserve the property while the other country transmits the evidence necessary for further action in the United States.

B. Go-Bys

See Attachment A

V. Requirements to be Included in the Request for Mutual Legal Assistance and Confiscation and Seizure of Property

Generally, a request for legal assistance should:

- Provide a description of the purpose for which the evidence is sought;
- Provide a summary of the relevant facts, including the connection between the subject of the investigation and the crimes being investigated, as well as identifying information on the subject(s) of the investigation;
- Provide a description of relevant foreign law, including the nature of the offenses charged or being investigated;
- Provide a detailed description of the evidence sought, including names, addresses, time period for records, account information, etc., as well as its connection to the investigation or prosecution;
- Provide contact information for persons wishing to be present during interviews, depositions or searches;
- Provide precise instructions and forms that may be required for authentication of evidence; and
- If execution of a search warrant is requested, also provide an affidavit setting forth probable cause (reasonable basis) to believe that evidence sought at the location (a) is relevant to the investigation, and (b) can be found at that location.

Generally, formal requests for Restraint or Confiscation should:

- Provide a detailed description and location of the property in question, such as address, bank name, account number, and title holder, including the value of and any encumbrances on such property, if known;

- Provide a recitation of the factual background of the investigation, including description of the illegal activity, the connection between the asset and the illegal activity, and vital statistics on the subject(s) of the investigation and their connection to the assets;
- Provide a description of relevant foreign law, including the violation for which forfeiture is sought and the criminal penalties for such an offense. If enforcement of a foreign restraining order or final forfeiture order is sought, include an explanation of the procedures for obtaining such orders;
- Provide an explanation of the status of the investigation or proceedings, including certified copies of a forfeiture judgment or judgment of conviction (if available);
- Provide sufficient physical and/or testimonial evidence sufficient to establish probable cause that the property is subject to forfeiture under any provision of United States law;
- Provide a formal request to enforce a final foreign confiscation judgment must include: (1) a certified copy of the judgment; and (2) an affidavit by a government official stating - (i) that the defendant and all parties with potential interest in the property received notice in time to defend against the forfeiture action, (ii) that the judgment is in force and not subject to appeal, and (iii) that the foreign court had proper subject matter and personal jurisdiction to enter the forfeiture order;
- Provide a list of all persons or entities known or believed to have an interest in the property to be seized, restrained, or forfeited, including relevant addresses and identifiers;
- Provide additional documentary, physical, and/or testimonial evidence that may be required by the USG, from time to time during the proceeding that would establish a nexus between the property located in the United States and the foreign offense.

VI. Mechanisms of International Cooperation for the Management of Assets Seized and Forfeited during the Delay of their Recovery and/or Sharing

In the United States, there are two Asset Forfeiture Funds, one managed by the Department of Justice and one managed by the Department of the Treasury. If the law enforcement agency involved in the investigation is a DOJ agency (such as the FBI or DEA), the United States Marshals Service (USMS) will manage and dispose of any property named for forfeiture. If the law enforcement agency involved is a Treasury agency (such as the IRS or ICE or a Department of Homeland Security agency), the Treasury Executive Office for Asset Forfeiture (TEOAF) will manage and dispose of the property. Both the USMS and TEOAF use contractors to meet these obligations, although the use of contractors may differ. Both agencies hire receivers or business managers to assist with maintaining the assets of ongoing business operations. Both hire real estate brokers to assist in the sale of forfeited real properties. The USMS has more of a hands-on method of managing properties subject to forfeiture. For example, the

USMS will contract with garages and sometimes state or local police departments to store seized vehicles and other craft, but will oversee the seizures and maintenance of those assets directly. Both agencies use online auction services to sell forfeited assets. Before a final judgment of forfeiture, no seized asset may be used for any reason by United States Government (USG), state or local, or contractor personnel.

Business managers or receivers appointed by the court to operate ongoing businesses while the litigation is pending may be paid from the business income where permitted by court order. In addition, the Asset Forfeiture Funds of both DOJ and Treasury have seized asset funds accounts from which expenses of maintaining property while litigation is pending (such as insurance costs) may be paid. Also, if the USG proves to the court that property is dissipating or diminishing in value (either because it has been abandoned or because property owners are allowing it to go to waste), the USG can petition the court to order an interlocutory sale before the entry of a final forfeiture judgment. Interlocutory sales may occur, with court permission, upon the agreement of all interested parties. The proceeds are then deposited to the seized asset account until a final judgment of forfeiture is entered, at which time they are moved to the forfeited assets account. If the USG does not prevail on the forfeiture, the proceeds are released back to the successful claimants.

ATTACHMENT A

To: [In MLAT requests, “The Central Authority” of the Requested State; in other cases, “The Appropriate Authority” of the Requested State.]

From: [In MLAT requests, “The Central Authority” of the Requesting State; in other cases, the name of the judge or other authority seeking help.]

Reference: [Here insert the name by which the Requesting State knows the case.]

Summary [Here name the authority conducting the investigation, prosecution, or proceeding, then succinctly summarize the matter under investigation and the assistance requested.]

Subject Matter and Nature of the Case

The Facts [Here set out a succinct summary of who is under investigation and the relevant facts of the case, including the persons or companies under investigation, and the critical evidence or information obtained thus far.]

The Offenses [Here describe the exact crimes under investigation, including legal citations, and quote the relevant portions of the statutes if possible.]

Description of the Assistance Needed

Documents Needed [Here describe, as specifically as possible, any documents needed and the person or entity from which they are to be obtained (e.g., for bank documents, provide: name and location of the bank; account name or number; specific types of records needed, such as signature card and monthly statements; and relevant time periods for the records).]

Testimony Needed [Here identify any person from whom testimony is to be obtained and his or her location. To the extent possible, also provide a list of topics to be covered and specific questions to be asked. If the list is lengthy, it can be attached as an addendum.]

Other Assistance Needed [Here describe, as specifically as possible, any other types of assistance needed (e.g., serving documents, locating persons, transferring persons in custody for testimonial purposes, immobilizing and assisting in the forfeiture of assets, etc.).]

Purpose for Which Assistance is Sought

[Here describe what the evidence or other assistance sought is expected to show or prove. In other words, explain why the Requesting Authorities believe that the evidence or other assistance sought is important in, and how it is connected to, this investigation or prosecution.]

Procedure to be Followed

[Here describe any procedures that should be followed by the Requested State's authorities when gathering or transmitting the evidence or other assistance requested, so that it will fully serve the purpose for which it was requested. For example, for the taking of testimony, describe the manner in which the testimony should be taken and recorded (e.g., summary, verbatim, videotaped, under oath), and whether the Requesting State's authorities wish to participate. For documentary evidence, specify any special certification or authentication procedures to be followed.]

Signature
and Date

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URUGUAY

I. Points of Contact

- Asesoría Autoridad Central de Cooperación Jurídica Internacional
Ministerio de Educación y Cultura
Reconquista 535 Piso 5
Montevideo, Uruguay 11000
Telephone: (45982) 9159780/8836
Fax: (45982) 9159780
Email: autoridadcentraluru@mec.gub.uy

II. Legal Bases of Cooperation: International Instruments and National Laws

- International Bi-Lateral Treaties and Multi-Lateral Conventions

III. Mechanisms to Locate and Identify Goods Abroad

A. Informal Mechanisms: Egmont Group, Iberred, RRAG, Interpol, etc.

N/A

B. Formal Mechanisms: Diplomatic or by Central Authorities or Others
Foreign authorities may submit legal assistance requests to locate and identify goods abroad directly to the Central Authority designated by the applicable international treaty or convention. In the absence of an applicable international treaty or convention, foreign authorities may submit requests via diplomatic channels.

IV. Procedures to Enforce Confiscation, Restraint, and Seizure Orders

A. Legal Authorization

Foreign authorities may submit legal assistance requests to enforce confiscation, restraint, and seizure orders directly to the Central Authority designated by the applicable international treaty or convention. In the absence of an applicable international treaty or convention, foreign authorities may submit requests via diplomatic channels.

B. Go-Bys

N/A

V. Requirements to be Included in the Request for Mutual Legal Assistance

N/A

VI. Mechanisms of International Cooperation for the Management of Assets Seized and Forfeited during the Delay of their Recovery and/or Sharing

N/A

VENEZUELA

I. Points of Contact

N/A

II. Legal Bases of Cooperation: International Instruments and National Laws

- Código Orgánico Procesal Penal
- Ley Orgánica Contra el Tráfico Ilícito y el Consumo de Sustancias Estupefacientes y Psicotrópicas
- Ley Orgánica contra la Delincuencia Organizada
- International Bi-lateral Treaties and Multi-lateral Conventions

III. Mechanisms to Locate and Identify Goods Abroad

A. Informal Mechanisms: Egmont Group, Iberred, RRAG, Interpol, etc.

N/A

B. Formal Mechanisms: Diplomatic or by Central Authorities or Others
Foreign authorities may submit requests for assistance in locating and identify assets directly to the *Ministerio Público*. All requests should be made pursuant to an applicable international treaty or convention.

IV. Procedures to Enforce Confiscation, Restraint, and/or Seizure Orders

A. Legal Authorization

Foreign authorities may submit requests for assistance in enforcing confiscation, restraint, and/or seizure orders directly to the *Ministerio Público*. All requests should be made pursuant to an applicable international treaty or convention.

B. Go-Bys

N/A

V. Requirements to be Included in the Request for Mutual Legal Assistance

N/A

VI. Mechanisms of International Cooperation for the Management of Assets Seized and Forfeited during the Delay of their Recovery and/or Sharing

During the investigatory stage, the Prosecutor of the *Ministerio Público* may petition the judge to order the precautionary seizure/restraint of an asset related to or the product of a crime. Once seized/restrained, the asset will be managed by the *Oficina Nacional Antidroga* (ONA) until a final sentence is issued in the corresponding criminal case.

XXXIII MEETING OF THE GROUP OF EXPERTS FOR THE
CONTROL OF MONEY LAUNDERING
September 27-28, 2011
Caracas, Venezuela

OEA/Ser.L/XIV. 4.33
CICAD/LAVEX/doc.2/11
28 de agosto de 2011
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DETERMINING THE LEGAL STATUS OF
FORFEITURE
(ANNEX IV)

DETERMINING THE LEGAL STATUS OF FORFEITURE

Their impact on the scope and objective
of the subjective measure

INTRODUCTION- PREVIOUS CONSIDERATIONS

Taking into consideration the terms of the task given to the Uruguayan delegation on occasion of the XXXI Meeting of the GLAVEX Group, it must be pointed out that the following document does not pretend another thing that, on the basis of the consideration and development of jurisdiction and doctrine regarding the institution of forfeiture, to develop a support for the analysis and discussion which would allow to surpass difficulties which may turn out in the opportunity of the forfeiture of goods of an illicit origin, based upon its traditional conception as an accessory crime.

Given that the meaning given the term seizure is not the same in all legal systems and in order to prevent possible confusion, it is necessary to undertake a conceptual order accuracy: This analysis refers to the seizure and ultimate loss of property in favor of the state, relating to the commission of a crime by means of a court decision.

That finality is precisely what distinguishes the forfeiture of the precautionary measures that can be taken on certain assets at the beginning or during the conduct of criminal proceedings, which by definition have insured character and do not cause state.

Issues relating to the confiscation of assets of illicit origin are of particular relevance with the actions of criminal organizations involved in trafficking illicit drug trafficking, illicit arms trafficking, smuggling, etc., which increasingly operate in terms of leveraging corporate schemes and profiting from the benefits of a globalized world economy, generates large profits, in addition to the direct benefit they represent to its members, and that help continue to fund large-scale illegal activities.

Similarly, it is of fundamental importance to have tools suitable for the recovery of assets derived from crime corruption, which are considerable when such illegal crimes are committed at the higher institutional levels.

The legal patrimonial consequences played a secondary role in the Classic criminal law, whose main concern was located in the sanction of the author of the criminal offense as an individual, but now appears as necessary within the scope of the repression of organized crime and corruption as a profile oriented to the investigation of patrimony derived from criminal origin, their seizure and confiscation.

When the economic benefits that can be derived from this crime are of such magnitude, it can be said that the possibility of imprisonment as a result of criminal persecution appears as a calculated risk taken by the offender. The gains are then obtained to justify the risk.

In this context, compared to crimes that may affect both economic and social order as well as the same institutional foundations themselves of the rule of law, it prevails search of effective means to deprive

those responsible of any economic benefit derived from the commission of such crimes.

But in that search should be present at all times the system of guarantees of rights and freedoms, since the situation deserves strong action by public authorities, stripped of innocence itself, but without yielding to the facilities offered by the temptation to prioritize efficiency over legitimacy, being that the latter should always be the hallmark of the democratic legal systems.

The effectiveness cannot be in conflict with constitutional guarantees. *Ius puniendi* should be implemented in conjunction with fundamental rights. Otherwise, it leads to the denial of the rule of law.

Among the instruments for the deprivation of illicit profits, it can be distinguished at continental level, two schools that differ substantially from the legal concept of seizure as has traditionally been enshrined in the legal systems of Latin American countries.

The laws of the United States of America for its part, provides for the confiscation civil "in rem" based substantially on the fiction that "the thing is the offender" as a result of the application of the theory of embodiment - that locates its origins in maritime law, under which an inanimate object is imbued with a personality that makes him responsible for his actions. the action pursues the object, regardless of its owner.

Even by leaving aside criticism that the application of civil forfeiture has deserved within the whole field of its establishment, it seems clear that this figure is completely alien to civil law legal systems, which leads us to the conclusion that such figure could represent for latin american countries, a plausible alternative for solving the problems presents the confiscation of criminal assets.

Later on, Colombian legislation developed the action of forfeiture. The Norm which established its creation- Law 333/996- finds its support in the reform of Article 34 of the Colombian Constitution of the year 1991, which allows the declaration by means of a judicial sentence of the forfeiture over all the assets acquired by illicit means, by harm to the Public Treasury or by a grave deterioration of social mores, starting from the basis that on Article 58 of the Fundamental Charter the property is one that is acquired according to law. The forfeiture action is defined as an action constitutional nature; real nature as the property lies independent of the operator and that there is criminal prosecution, being inalienable and retroactive application.

It should be noted that even in the particular circumstances that led to the approval of original standard, one aspect of which was the termination of criminal proceedings by death which prevented adjudication of property acquired with money derived from illicit activities, the implementation of this model was not simple, requiring that the Supreme Court should rule in various opportunities over whether some of its provisions could be considered enforceable It should be noted that even in the particular circumstances that led to the approval of original standard, one aspect of which was the termination of criminal proceedings by death which prevented adjudication of property acquired with money derived from illicit activities, the implementation of this model was not

was simple, requiring that the Supreme Court should rule in various opportunities over whether some of its provisions could be considered enforceable and first determined the suspension of the Law 333/996 By Decree 1975/2002 covered in the declaration of state of internal disturbance August 2002 and, afterwards, its substitution by the Law 793 of December 27, 2002.

The forfeiture action has managed an ultimately successful operation in the Colombian context and if it is true that his model has been picked up by other legislation, however its extrapolation has proven to be not quite so simple, generating quite a resistance in these new areas, which has made it very difficult to give it a practical application.

Therefore, we consider as a necessary task to explore other roads which offer a different alternative for obtaining the goal established at the beginning and towards that direction we consider that the model adopted by the Spanish legislation, placing forfeiture as an additional juridical consequence of an illicit activity, presents itself as an interesting model for analysis, given the similarities of its judicial system to that of the great majority of judicial systems of latin american countries.

Finally, it is clear that this work does not address the issue concerning precautionary measures in view of responding to a different purpose than the institution of forfeiture and that ultimately determine the scope and scope of it, and also ultimately will have an impact on the scope and extent of precautionary measures against the property in criminal proceedings. neither will it touch upon it due to reasons of length and because it would justify a separate treatment for the issue of punitive measures for juridical persons.

THE JURIDICAL NATURE OF FORFEITURE

The importance of determining the legal nature of this institution, resides in that which is also ultimately assigned, and will determine its scope, both from an objective and subjective point, as we shall see.

Traditionally forfeiture has been considered as an additional penalty, and therefore related to a conviction, orienting itself towards the deprivation of material objects employed for carrying out such objectives- the instruments of crime- as well as its effects, that is the objects which are obtained by achieving the typical conduct.

The latter can involve both immediate objects from the crime as those stemming immediately from it as long as the legislation does not set restrictions. Some jurisdictions such as the Spanish one refer particularly the confiscation of profits.

The seizure has also been described as a security measure or a special security measures based on an objective danger, instrumental.

Thus the basis of the seizure, may be placed on the danger objective of certain assets, in order to prevent such objects be used in the commission of future crimes, it can be clearly seen in the case of instruments-or the inability to respond to consenting to the acquisition and preservation of heritage enrichment achieved through

the commission of a crime, as in the case confiscation of proceeds broadly speaking and more specifically the profits.

Within this context, questions have arisen regarding the conceptualization of forfeiture as a penalty or security measure.

This has indicated that it would be a penalty, because it seeks to impose a evil that is felt as-such retributive function to some extent meet the penalties depending on the degree of culpability of the perpetrator, but only preventive, obeying its imposition of the need to avoid or prevent effects and instruments can be used to commit new crimes. neither will it touch upon a security measure, either because it has no functions of re-education or improvement, is not based on the dangerousness of the person, or considering that any equity security measure is incompatible with the purpose of rehabilitation or safety of the offender.

In this sense, its worth pointing out that the European Court of Human Rights who had initially viewed the confiscation as a penalty (Welch case), currently denies in its pronouncements a punitive character giving substantially the quality of preventive measure designed to remove outstanding assets linked to the commission of a crime.

In the same vein, the German Constitutional Court has held that a asset forfeiture of benefits from the crime does not seek to blame the accused the commission of the unlawful act, but aims to get establish means of order of the patrimony and stabilization of the norm standards, for the purposes of remedy an unlawful financial position following the commission of a crime that generates economic benefits and correct the disruption of the legal norm derived from the growth of patrimony through the commission of crimes.

FORFEITURE IN INTERNATIONAL INSTRUMENTS

The need to facilitate the prosecution of illicit proceeds within a context which we made reference at the beginning has led to the international legal instruments insisting on the extension of forfeiture both from the objective and subjective point.

In this regard, the Vienna Convention (United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted in Vienna on December 20, 1988), after defining the seizure as "the deprivation with a definitive character of property by order of a court or other competent authority "requires the adoption by States, of measures that give a broader scope than traditionally attributed with the only limitation of the rights of third parties in good faith. This also provides confiscation of the instruments used or intended to be used in any form to commit the offenses under it and the product derived from them, that of:

- Equivalent assets;
- Assets that have been transformed, converted or the product blended, in this latter case to the assessed value of the mixed product;
- Income or other benefits derived from proceeds and property in which it is been transformed, converted or mixed in the same manner and at the same as the product mix.

It is understood by product “*the goods obtained or derived directly or indirectly from the commission of a crime*” and by goods “*the assets of any type, corporeal or incorporeal, real state, tangible or intangible, and documents or legal instruments which prove property or other rights over the said assets*”.

The Vienna Convention also provides that States to consider reverse the burden of proof regarding the illicit origin of proceeds or other property subject to confiscation, to the extent compatible with its domestic law.

The terms set forth in the Palermo Convention (UN Convention Against Transnational Organized Crime, signed in Palermo in December 2000), essentially agree with those reported previously, and Similarly, those contained in the Merida Convention (UN Convention Against Corruption, signed in Merida in December 2003).

In Europe, the Framework Decision 2005/212/JHA Council of the European Union, considers that the effective prevention and crime organized requires a focus on tracing, freezing, seizure and confiscation of the proceeds of crime and particularly in scope, provides that necessary measures shall be taken in order to enable confiscation, at least when “*a national court, based on facts particular, is convinced that the goods in question come from criminal activity carried out by the convicted person for a period prior to conviction for the offense (...), the court considers reasonable in the circumstances of the case “or regarding similar criminal activities carried out by the person convicted for a previous period”* or “it is known that the value of the property is disproportionate to the lawful income of the convicted person and (...) Be fully convinced that the goods in question come from the criminal activity of the person convicted. ”

It also states that consideration should be given to adopt the “*forfeiture in whole or in part, of property acquired by the relatives of the person concerned and property transferred to a legal person in which the person concerned exercise effective control individually or together with their stakeholders*”.

This coincides with the lines established in the proposed norms drawn in the framework of the Falcone Project coordinated by the city of Palermo and the Max-Planck Institute developed between 1998 and 2001, that regarding the forfeiture of the earnings of criminal organizations establishes that “*the Judge will order the forfeiture of the earnings of criminal organizations, its goods and other effects upon which the accused has power of disposal and of whose lawful origin has not been able to provide a justification capable of contradict the proof collected by the accusing party, as long as the value of the said goods is disproportioned regarding the rent declared or the economic activity that it develops*”. being able to confiscate property acquired earlier in the day on which it has kept the convicted criminal activity, when “*the judge available fit facts to justify a reasonable connection with the same criminal activity, “states that” be considered in the power of disposition of the offender appear fictitious goods on behalf of others, or otherwise possess legal person through intermediate ”*

Also in the same direction to expand the scope of the seizure, we can locate the Recommendations of the Financial Action Task Force (FATF / FATF) and CICAD Model Regulations on

Money Laundering Crimes Related
with Illicit Drug Trafficking and other serious crimes.

SEIZURE AS AN ACCESORY CONSEQUENCE

As we have seen, the seizure as a penalty conceptualization determines that it necessarily requires a conviction and that its imposition, given the personal character of the sentence, is limited exclusively to the person responsible of the crime, and from the objective standpoint, the assets, proceeds or instrumentalities linked to the crime for which he was convicted in preventing or hindering greatly expanded the possibility of for an amplified forfeiture.

In order to make progress in overcoming such limitations, and from the doctrinal questions to the traditional positions in their legal nature, the Spanish Penal Code of 1995, inspired by the German legislation goes on to consider the seizure as a legal consequence incidentally, the penalties as well as security measures, constitute a penalty "sui generis", a third gender, whose foundation is outside the criminal culpability and dangerousness of the subject, but subject to the principle of proportionality.

This body of law, as amended by Law No. 15/2003, of November 25, 2003 and the Organic Law No. 5 / 2010 of June 22 2010, establishes general rules in Arts. 127, 128 and 129-this latter dedicated to specific measures applicable to legal persons, 'and specifically for the crimes of drug trafficking and money laundering, in art. 374.

In art. 127 two types of confiscation can be distinguished: the instruments and effects of crime (the standard also includes faults) and earnings derived from it, although it is the same regulation, which has earned it some criticism, considering that both consequences have different purposes and are governed by different principles, particularly in the case of gains in the context of organized crime. It should be noted that while maintaining a single regulation, the latter hypothesis was expressly provided from the LO 5 / 2010 cited by the inclusion of a second paragraph to paragraph 1 of art. 127, referring specifically to the seizure of "effects, assets and profits proceeds from criminal activities committed in the context of an organization or criminal or terrorist group, or a crime of terrorism. "

While still requiring the existence of a relationship between the seizure and criminal offense, particularly since the reform done by The LO 15/2003, the measure ceases to be subject to the imposition of a penalty-which originally required that the transgression of reference was a typical fact, unlawful, guilty and punishable, being enough that it would be an typical and unlawful action.

By not demanding the imposition of a sentence in a ruling that may be established for the forfeiture, the link is broken between the institute linking the with the principles of personality and incidental nature, allowing the measure to transcend the goods directly related to the offense subject to prosecution and even when there is evidence of

an illicit financial position, can be adopted, as we will see, when a cause of exemption or extinction of criminal liability is also present.

The regulation for an amplified forfeiture as an accessory result adopted by Spanish law, contained in the current general and special rules relating to the above, then serves to determine the expansion of both the scope and objective subjective application of the measure.

OBJECTIVE SCOPE OF FORFEITURE

From the perspective of the property subject to for an amplified forfeiture, the measure will include:

-Toxic drugs, narcotics or psychotropic substances; EQUIPMENT, MATERIALS AND SUBSTANCES PROHIBITED (RULE 374.1) 33 .- Based on the dangerousness of the object and peacefully accepted traditional view of the institute, this hypothesis does not deserves further comment. Art. 374.1 in the development established by the LO 15/2003, provides for particularly in the If the offenses of drug trafficking and money laundering arising from such crimes, the confiscation of property, instrumentalities and proceeds, referring to the general regulation of art. 127, for whose the considerations apply to be formulated below.

THE EFFECTS DERIVED FROM THE CRIME OR FAULT (RULE 127.1) 34 .- Refers particularly the direct product of the offense, being understood by such as those that are created, changed or altered through the same as any object or that is in the possession of the offender as result of it, even those that are object of the typical action.

PROPERTY, FACILITIES OR INSTRUMENTS TO HAVE BEEN PREPARED OR EXECUTED (RULE 127.1) .- This hypothesis includes the tools and means used in preparatory acts, was built by the LO 15/2003, dispelling any doubts that could be presented seize on the possibility of what has been used in a stage prior to the execution, whether simple attempt or preparatory act punishable. the reform also included the words "property" and "media," which earned it some criticism for considering the definition of instrument, as sufficiently comprehensive of all kinds of "medium" or "good."

Profits from the crime or offense, regardless THOSE PROCESSING IT MIGHT EXPERIENCE (art.374.1 and art. 127.1). It is thus clearly established as a punitive result the loss of economic benefit obtained directly or indirectly with the crime.

Now, in this scenario and in order to prevent a restricted interpretation, the term profits will be identified with the benefits obtained by the specific fact that has been the subject of the sentence, leading a major limitation if not to the derogation from the norm in most cases, the Plenum of the Criminal Chamber of the Supreme Court, adopted on 5 October 1998, an agreement assuming a broader interpretation, enabling the application of confiscation and property owned by the offender prior to the act for which he was convicted, provided that: a) the illicit origin of the goods is proven, and b) the accusatory principle is respected. The illicit origin may be proved by circumstantial evidence, not requiring the identification of specific operations for which the goods originate, being enough for this purpose that is sufficiently and the criminal activity generally proven.

Constitute evidence to consider, those such as:

- (a) that the accused had been for some time devoting himself to the criminal activity for which he was convicted;
- (b) that the goods were acquired during the period in which the convicted was dedicated to the criminal activity in question;
- (c) that the goods to be seized have not been proven legally financed, this is income, business or economic activities capable of justifying the increase in equity;
- (d) the existence of circumstances or procedures other than normal traffic of economic mechanisms such as opacity in the ownership and transfer of assets, operating through transfers to tax havens, excessive cash flows, and so on.

Proof by evidence requires: a) a plurality of base facts or evidence, or as an exception a single fact of a unique proof potential b) need that these facts-base are accredited by direct evidence; c) that are peripheral or concomitant with the factual data to be proven d) there is interaction of evidences, so that they are mutually reinforcing; e) rationality of the inference that requires the existence of a precise and direct link under the rules of standard and human experience between base facts and the fact accordingly and that in turn, leaves no doubt as a reasonable inference other than that obtained, and f) the expression of the intellectual process through which the judgment of inference has being reached.

The constitutionality of the Agreement on the Supreme Court, was endorsed by the Constitutional Tribunal when it came to resolve disputes holding that the the same temperament, implied an impairment of the right to effective judicial protection and the presumption of innocence.

In this sense, the court held that the presumption of innocence operates as "the defendant's right not to be convicted unless proved guilty been established beyond reasonable doubt ", so that the accused right to presumption of innocence is no longer in question, where there is evidence from which judges and courts have deemed "reasonably credited" the guilt of the subject, that is, when it has already been convicted.

And as it regards the right to effective judicial protection, the Constitutional Court understood to be checked whenever there is founded a reasoned decision, this is, when based on a plurality of fully accredited evidences and trough the means of a reasoned statement on its resolutions which could not be qualified as patently wrong in its factual assumptions, illogical or unreasonable, the judicial organs conclude that such goods of the accused were acquires, or in the cases judged by the Tribunal, with money derived from the sale of narcotic drugs.

Such an assumption is in line with the arguments put forward by the European Human Rights Court in cases of confiscation under the English and Dutch legislation providing similar assumptions of order, noting substantially that the right to presumption of innocence only deploys its effects in relation to a specific offense of which defendant is accused, while the procedures for ordering the seizure are not intended to conviction or acquittal thereof, that is, do not decide on the basis of a charge on criminal, but whether the assets that have been shown to have been obtained are of a criminal origin, and if so, specify the amount to be confiscated (cases Phillips c. Royaume-Uni, Butler c. Royaume-Uni and Geerings v. The Netherlands).

However, there is the observation that the agreement of the Full Supreme Court refers exclusively to crimes related to drugs, thus it limits its scope. In accordance with the provisions of the rule of art. 127.1, any transformations of the property or assets that are proceeds of crime, does not preclude in any way their confiscation.

The term "transformations which have been able to experience" should not be understood only in a purely factual or descriptive sense, but also legally, which enables confiscation of assets that have been invested in the proceeds of crime (confiscation by subrogation).

EFFECTS, property, instrumentalities and proceeds from COMMITTED CRIMINAL ACTIVITIES COMMITTED IN THE FRAMEWORK OF AN ORGANIZATION OR CRIMINAL OR TERRORIST GROUP OR A CRIME OF TERRORISM (art. 127.1, second paragraph, incorporated by LO 5 / 201043) .- To this end, establishing a presumption understanding that comes from criminal activity, the assets of each and every one of those sentenced for offenses committed within the criminal organization or terrorist group or whose value is disproportionate in respect to income earned legally through each of these people.

The inclusion of this paragraph is, as expressed in the "Report of Audit Committee on the Draft Law amending the Law 10/1995, of November 23 of the Penal Code", the implementation in the national legislation for the adaptation to Spanish law directives to the 2005/212/JHA Framework Decision (...) and the very doctrine of the Criminal Division of the Supreme Court ruled in the House of 5-X-1998", this being the statement referred by us above.

Regarding the presumption of illicit origin, the Report quoted points that "the inclusion of the legal presumption (...) does not affect by itself the fundamental right to the presumption of innocence" since "it is a presumption which does not incide neither in the nucleus of the criminal action being judged nor in the accusation of such action to given persons" operating "with regards to persons condemned in a trial carried out with all due guarantees and in which the accused has carried out his right to defend itself from the accusations" thus the consequences "are exclusively of a patrimonial and economic character, derived in any case of the determination of illicit activities related to organized crime, being also susceptible to being proven by proof to the contrary which asserts or justifies the licit origin of the patrimony in question".

These concepts are repeated after the adoption of the law in the quoted Circular No. 4 / 2010 of the Attorney General. It is also worth to have reproduced here, the references made above with respect to the position of the European Court of Human Rights and the Spanish Constitutional Court.

It will not be necessary from the LO 5 / 2010, the proof of the cause-effect relationship or specific connection between the crime that the sentence declared proven and property whose forfeiture is ordered, but will be necessary to prove and thus shown in the sentence, that the subject has been conducting illegal activities within the framework of a criminal organization, criminal or terrorist group or has made a crime terrorism and that the value of his possessions is disproportionate in relation to income which has been obtained legally by the defendant.

Such budgets constitute a rebuttable presumption of the origin of this patrimony, which can be controversial and unnerved by a justification of lawful origin of the goods concerned, or even proving they do not come from activities carried out within the framework of an organization, group or criminal terrorist or derived from the conduct of a terrorism offense.

According to the formula used by the Spanish legislator in the second paragraph Art. 127.1, concrete acts of the owner of the property are detached from the origin of good itself, being sufficient the membership in the organization and the holding of assets in order to relate these properties to the criminal activities of the organization, without having to prove the effective participation (in the criminal and technical sense) of the holder thereof in a particular criminal act. of all However, one comment that has been made is that the possibility of seize the assets disproportionate to income, should serve as criteria for offenders which are not integrated into any kind of organization (eg. in cases of corruption).

THE EFFECTS, PROPERTY, FACILITIES, INSTRUMENTS AND PROFITS -REGARDLESS OF THE PROCESSING they could have EXPERIENCED-FROM THE COMMISSION OF A RECKLESS CRIME WITH AN ESTIMATED imprisonment exceeding one year (art.127.2 built by LO 5 / 201047) .-

Unlike other cases of art. 127 127.4, except as we shall see, this accessory consequence can be empowered by the judge or court, and only reckless crimes legally contemplated under a sentence with more than one year, excluding reckless misconduct.

REAL EQUIVALENT VALUE (374.1 4°, 127 348) - If it turns impossible to carry out the confiscation of proceeds of crime effects, or goods, means or instruments which had been prepared or executed or profits from the infringement, agreed incidentally as a result of sentence for intentional crime or misdemeanor, becomes from that of other goods belonging to persons criminally responsible.

The provision of the confiscation of equivalent value, allows a response appropriate to the circumstances in which the proceeds for any reason no longer at the disposal of the subject, either because the object of seizure has been consumed, destroyed or hidden in order, or because it is a decrease in patrimony or because for any other reason it is impossible to proceed with the forfeiture. It also allows for resolving cases of goods that can not be confiscated because they were legally contemplated acquired by a third party in good faith and not responsible for the crime being possible in such cases, to order the forfeiture of other assets belonging to the criminally responsible for an equivalent value to the object which has been legally acquired by the third party in good faith.

SUBJECTIVE SCOPE OF THE APPLICATION OF FORFEITURE

In accordance with the requirement of the second sentence of art.127.1, the limit on their application is determined by their belonging to third parties in good faith and not responsible for the crime, which have been acquired legally, which means that, for the protection which the legal system gives to be effective, it requires the concurrence of four conditions: 1) that the goods belong to a third party; 2 °) that ownership is flaunted in good faith, this is that the third party should have acted under the rules of ethics, 3 °) the acquisition is conducted legally, and 4) that the owner of the property is not responsible for the crime. Therefore, when the effects, instruments, products and profits liable to be confiscated property of others not guilty of the crime who have not acted in good faith in its acquisition or transmission, or when

having acted in good faith, had not acquired them legally, the seizure must be accorded, notwithstanding that they must be called to the process for purposes of exercising the defense of their interests.

It is appropriate to briefly mention a particular figure contained in the Spanish law, which is that of participation for profit, regulated by art. 122 of the Penal Code, under which anyone who has obtained an asset derived from either a felony or misdemeanor for free, without a consideration that warranted it, must return it, with the difference between this figure and possession of property derived from laundering proceeds of crime or its reception, is in the subjective element, i.e. in the absence of fraud, since the figure is that the subject is unaware of the illicit origin of the property.

In this context, property belonging to the purchaser in good faith for profit, also would be in condition to be seized, subject to compliance with guarantees of due process.

APPLICATION OF SEIZURE-Even when not imposing a penalty TO ANY PERSON TO BE EXEMPT FROM CRIMINAL LIABILITY OR HAVE

Extinguish the criminal responsibility (art. 127.4) 55 .- This is one of the hypotheses that most clearly demonstrates the separation between forfeiture and sentencing, and therefore the principle of guilt, from its consideration as an accessory. It is not an imposition of a prescriptive nature but is an option of the judge.

Not imposing a sentence of a person due to it being exempt from criminal responsibility may be due to the person having acted without guilt or capacity of innocence due to the lack of an objective condition of criminality or the presence of an excuse for acquittal. In this case, to concur in the illicit financial condition the measure of forfeiture may be imposed, but always it will require the performance of a typical and unlawful conduct.

The cases of extinction of criminal responsibility referred to by the norm are those that take place before or without a penalty imposed by final sentence, because once this fact is verified, apply the provisions mandatory contained in art. 127.1 or 127.3.

The Spanish doctrine, discusses essentially two hypotheses: the death of the person responsible and the statute of limitations, pointing out that anyway the appreciation of forfeiture in these cases is limited.

In this regard it is noted that the subject's death not only extinguishes the liability but also the criminal prosecution, so there being no justiceable, there is also no statement of facts that may have less incardinate or intervene and conduct in a criminal type expected in criminal law. It Therefore, whether the subject had died before the criminal proceedings in the pre-trial or during trial there will be no resolution that proves that he has made a crime, so to appreciate whether the seizure is necessary the realization of an unlawful and a typical conduct with a subsequent criminal proceeding, the absence of such conduct, would be closing the applicability of the measure.

For what has been said, procedural reasons would be preventing the imposition of forfeiture if it is a single subject. Now if there were others prosecuted as well as the deceased that have made atypical and an unlawful behavior, the process will end with a ruling that will demonstrate the commission of a crime specified the instruments used to it and the profits and it would be permissible the imposition of the forfeiture of property used or obtained, even by the deceased. Although there remained the presumption of innocence on him, this corresponds to impose the measure of items that were in his power, provided it is proved that they had been used to commit the crime or were derived from proceeds from the same.

Then, untying the seizure with the imposition of a sentence, would allow the application when the extinction of criminal liability by prescription of a crime takes place. However, in practice, based on the supposition of finding an unlawful conduct and a typical antijuridical conduct, this hypothesis would be operating if the prescription is alleged in a trial phase, in which the judge or court have reached a

conclusion in this regard, since nothing would prevent the extinction rule prescription, the court would decree the confiscation of effects, instruments and proceeds of the criminal forfeiture or the equivalent value.

THE VALIDITY OF THE ADVERSARIAL PRINCIPLE

The nature of the seizure as an accessory result does not undermine the full effectiveness of the regulation of the adversarial principle and the principle of contradiction, which makes it imperative that its imposition is specifically requested by the plaintiffs when appropriate.

This results in an opportunity to bring charges, prosecutors must identify the effects, media, property or earnings to extend the application specifying the factual circumstances of the resulting connection with the offense, either because they have served in the preparation, execution or because they come from the same, indicating where appropriate, changes have been verified in each scenario and invoking the applicable regulations. It should also be seen the full force of the right of defense of all who may be affected by the accessory consequence of the forfeiture, including those that may be exempt from criminal liability or whose liability may have been extinguished.

THE PRINCIPLE OF PROPORTIONALITY

In accordance with the provision contained in art. 128 of C. Penal, the judge may not order the forfeiture or order it only in part if the effects and instruments of lawful commerce and its value are not proportional to the nature and severity of criminal offense and civil liabilities are satisfied.

DECLARATION OF INVALIDITY OF LEGAL ACTS OR BUSINESSES

Without prejudice as to the powers of criminal jurisdiction in order to define fraud or verify the true reality behind stacker apparent legal title, that is, the application of the doctrine of "piercing the veil," Spanish jurisprudence maintains the existence of sufficient regulatory mechanisms for this purpose, the special legislation contained in art. 374.3 of C. Criminal expressly attributes to the criminal courts the power to declare the nullity of the acts or legal transactions under which they transfer, encumber or modify real ownership or rights relating to goods and property subject to forfeiture.

BRIEF REFERENCE TO THE URUGUAYAN LEGISLATION CONCERNING SEIZURES

Law No. 18,494 of June 5, 2009, introduced, following the Spanish model, the conceptualization of incidental seizure as a result of unlawful activity, by modifying the art. 63 of Decree Law 14,294 on the illicit drug trafficking, applicable by reference to money laundering and related crimes. The current text, which also define which determines the objective and subjective areas of application of the measure and instituted forfeiture hypothesis full rights, states:

"ARTICLE 63. (Confiscation) .

63.1. (Concept). The seizure is the permanent deprivation of property, proceeds or instrumentalities, by decision of the competent criminal court at the request of the Public Prosecutor, the legal consequence of unlawful activity accessory. The ruling will be forceable as provided by way of transfer of the domain and will be recorded in the corresponding Public Registry.

63.2. (Objective scope). In the final sentence of conviction for any offense under this law or related crimes, the competent criminal court shall, upon request of the Public Ministry, dispose the confiscation of: a) narcotics and psychotropic substances that were seized in the process; b) the assets or instruments used to commit the offense or punishable preparatory activity; c) goods and products from the criminal act;

d) goods and products derived from the application of those from the criminal offense, including: the goods and products which have been transformed or converted from the criminal offense and the goods and products that are mixed from the offense until arriving at estimated value thereof; e) Income or other benefits derived from goods and products from the criminal offense.

63.3. (Confiscation by equivalent). When such goods, products and instruments can not be confiscated, the competent criminal court will dispose the forfeiture of any other property of equivalent value convicted or, if not possible provide that they pay a fine of equal value.

63.4. (Forfeiture of right). Notwithstanding the foregoing, the competent criminal court at any stage of the process in which the defendant was not investigated, will deliver the imprisonment order and after six months respectively without having changed the situation, all rights will expire that the same may have on goods, products or instruments that had been seized as a precautionary measure, operating the forfeiture of right.

In cases where the competent criminal court had ordered the freezing of assets pursuant to the edict by Article 6 of Law No.17, 835 of 23 September 2004, if the holders did not offer proof that they have an origin different to the offenses under this law or related crimes within six-month will expire any right they may have on those frozen funds, operating the full forfeiture.

In cases where the competent criminal court had ordered the seizure of funds or securities not reported, pursuant to the edict by Article 19 of Law N ° 17,835 of 23 September 2004, if the holders did not provide evidence that themselves have a different origin of the crimes enumerated in this law or related crimes within six months, any right they may have on those frozen funds expires, operating the full forfeiture.

In cases where the occurrence of the discovery of assets or proceeds from crimes under this law or related crimes, if within six months does not appear any interested party, will operate the forfeiture.

63.5. (Personal Scope). The seizure can reach the property listed in the preceding paragraphs of which the person convicted of any offense under this law or related crimes is the final beneficiary and for whose illegitimate origin has not provided a justification able to contradict the evidence collected in the indictment, provided that the value of such property is disproportionate to the lawful activity that develops and declared.

May be subject to forfeiture money, goods and other effects acquired earlier in the year in which it has developed the defendant's criminal activity, provided that the competent criminal court have elements available to justify a reasonable connection to the same criminal activity

For the purposes of the forfeiture shall be deemed guilty of offenses under this Act or related to these, the final recipient of goods, even when appearing on behalf of third parties or otherwise possess, through individual intermediate or entity.

The determination and objective and subjective scope of the forfeiture shall be decided by the competent criminal court. "

As can be seen, stating that it is an accessory consequence of unlawful activity, in both the Uruguayan and Spanish legislations-is conceptually independent of the penalty the full forfeiture and hence a decision to declare a responsible person of a crime.

This has allowed us to extend the extent of forfeiture to property that may not be directly linked to the criminal offense subject to prosecution and forfeiture assumptions to be fully enabled on four scenarios: a) escape of the suspect or imputed (Article 63.4paragraph one); b) disinterest of the holder of fixed assets at the request of the Unit of Financial Information and analysis (Article 63.4second paragraph), c) disinterest of the holder of funds or securities by undeclared border crossing (Article 63.4 third paragraph), and d)abandonment of property (Article 63.4 paragraph four).

It also establishes the concept of beneficial owner, to prevent the frustration of the measure against fraudulent transfers or by the use of legal persons.

Unlike the Spanish Penal Code is not expected in the possibility Uruguayan law enforcement exemption in case of forfeiture or termination of the criminal responsibility, but once it was disconnected as the principle of guilt and the imposition of a sentence, leaving the door open to enter in the analysis of such assumptions.

At the time, which corresponds to point out, is that the legislation referred to has been

implemented smoothly, particularly in the jurisdiction of the Criminal Justice Specialized in Organized Crime.

Dr. Ricardo Perez Blanco
Director of Legal Services
Ministry of Economy and Finance
URUGUAY
rperez@mef.gub.uy
Montevideo, September 2011

XXXIII MEETING EXPERT GROUP FOR THE CONTROL OF MONEY LAUNDERING
September 27-28 2011
Caracas, Venezuela

OEA/Ser.L/XIV. 4.33
CICAD/LAVEX/doc.11/11
28 September 2011
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GLAVEX PLANNING PROPOSAL PERIOD 2012-2014
-LAVEX-CICAD-

(ANNEX V)

GLAVEX PLANNING PROPOSAL PERIOD 2012-2014
(LAVEX-CICAD)
XXXIII EXPERT GROUP MEETING FOR THE CONTROL OF MONEY LAUNDERING

I-. Background

In 2010, after the meeting in San Jose, Costa Rica, a proposal by the expert group was raised to the CICAD-OAS, in which there was a need to structure the work of the group through a strategic planning process. This proposal was approved by CICAD in December 2010.

During the last meeting of LAVEX, held in May 2011 in Washington, DC, a proposal was established within the work plan for the Sub-group of coordination and integration of FIU / OIC with objective of discussing a plan at plenary meeting that would be held in Caracas, Venezuela, in September 2011.

II-. Form of Work

In consideration of the mandate carried out by CICAD, it was urged that countries provide their input or comments regarding the development of a planning proposal.

In this context, the contributions were received by the different delegations, and were circulated and translated by the Executive Secretariat.

Based on documents and views provided, a presentation was made in order to foster discussion among various experts of LAVEX, taking into account the creation of an *ad hoc* group that would develop a planning proposal, which would be discussed at the next plenary session.

Among the points addressed by the *ad hoc* group for the preparation of the proposal include: i) Definition of a LAVEX mission and vision to guide the work, ii) Identify the work guidelines of the group, iii) Methodology of work and iv) Timetables.

1-. Mission

Is defined by the CICAD-OAS.

2-. Vision

Being a technical body of hemispheric character that supports the work developed by the different countries against money laundering, terrorist financing and recovery of assets, proceeds and instrumentalities of criminal origin, according to the competencies of CICAD.

3-. Work Guidelines

The work of the group is divided between two sub-groups supported by the Executive Secretariat. Currently, the two sub working groups operate on the following guidelines:

a. Sub-Working Group of FIUs / OIC

III) Principles and best practices governing the sharing of information between FIU / OIC.

IV) Identification and Analysis of risk factors on asset laundering, terrorist financing and recovery of assets, proceeds and instrumentalities of criminal origin in the hemisphere.

V) Development of recommendations to enable countries to unify criteria regarding the shared information between FIUs and OICs.

b. Subgroup of international cooperation and forfeiture in its various forms.

x) International Cooperation

- Identification of the forms and mechanisms of international cooperation (formal and informal) to allow a proper and efficient exchange of information for the prevention and suppression of money laundering, terrorist financing and recovery of assets, proceeds and instrumentalities of criminal origins.
- Comparison of mechanisms of international cooperation with the objective of determining those that have the better utilization.
- Creation, if necessary, a new mechanism to improve information exchange.
- Identification of strategic partners of the Group, in order to seek synergies between work and mechanisms that are being developed.
- Presentation of reports on the work and projects in various international forums, in order to analyze what is necessary for the development of the work by the group.

xi) **Forfeiture**

- Develop a policy guide that includes the creation and implementation of management agencies of seized and / or forfeited assets.
- Development of proceedings referred to in the progress of the implementation of various systems developed in asset forfeiture.
- Identify efficient mechanisms to share assets.

4- Methodology

Regarding this issue, the following items are proposed to complement the methodology agreed at the meeting in San José de Costa Rica.

- iii) **Minimum number of participants.** In each of the lines of action or tasks carried out, a subgroup at least two delegations must participate.
- iv) A new line of action or task will not start without having an end or accounting for activities that were pending, unless under the exception that the work group prefers to address point of urgency. This should have at least the approval of a majority of delegates present at the meeting.

5- Time Period

The group proposes a deadline for implementation of this plan between the years 2012 to 2014.

III- Proposal to elevate to the CICAD/OAS

To elevate to the CICAD the consideration of the purpose of the study group that was not strictly confined to the crime of drug trafficking, in order to incorporate a broad view of various criminal activities referred to in various international instruments.

XXXIII MEETING OF THE GROUP OF EXPERTS FOR THE
CONTROL OF ASSET LAUNDERING
September 27 and 28, 2011
Caracas, Venezuela

OEA/Ser.L/XIV. 4.33
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21 September 2011
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RECOMMENDED PRINCIPLES FOR THE COORDINATION
AND INTEGRATION OF FIU/OIC WORKING GROUP

(ANNEX VI)

As of September 21, 2011

**Recommended Principles for the Coordination
and Integration of FIU/OIC Working Group**

Organization of American States, Inter-American Drug Abuse Control Commission (OAS/CICAD)

On the Use and Protection of FIU Information

Introduction

A financial intelligence unit (FIU) is an agency within a jurisdiction that collects, analyzes and disseminates information for anti-money laundering and counter financing of terrorism (AML/CFT) purposes. FIUs have unique authority to exchange information with their foreign counterparts in furtherance of law enforcement investigations.

The FIU information exchange is premised on trust and reciprocity. Therefore, many of the Organization of American States (OAS) member states are concerned with confidentiality breaches of FIU information in their region.

In several cases information derived from a foreign FIU to further develop a criminal investigation and eventual prosecution has been disclosed to unauthorized third parties, including the criminal defendant or even to the general public by a range of government officials. In many instances, the disclosure might have been avoided if there were a more consistent understanding among all parties involved of the need to treat FIU information differently from other information that might have been developed in the course of the investigation.

At the XXXII Meeting of the Group of Experts for the Control of Money Laundering, held in Washington D.C. in May 2011, a number of FIUs in the region identified some of the challenges that they face in keeping FIU information confidential when it is shared with law enforcement, prosecutors and the judicial authorities (third parties). At that meeting it was noted that information shared between FIUs is intended to identify intelligence leads, not to be used as evidence in court or divulged to any unauthorized third parties.

FIU reports and communications are highly sensitive in nature because they often contain private and personal identifiable information of citizens and legal persons who have not been found guilty of a crime. Leaks of FIU information may have a devastating effect on the reputation of those whose personal information has been divulged inappropriately, especially if they are not charged with a crime or if they are not found guilty after prosecution. Leaks can also compromise law enforcement investigations, alert targets of an inquiry and erode the trust of reporting entities in the AML/CFT regime.

If left unchecked, the leaks of FIU information will seriously undermine cooperative efforts to combat financial crime in the region. A direct consequence of this type of breach is the breakdown of trust and willingness to cooperate between FIUs in the exchange of sensitive information. In fact, there

have been instances where information exchange has been suspended between FIUs due to unauthorized disclosures of FIU information.

Many of the OAS member states have noted similar challenges that their FIUs face in working with law enforcement, prosecutors and judicial authorities to protect sensitive FIU information and a general misunderstanding by some prosecutors and law enforcement of the proper use of FIU information. It has also been noted that FIUs do not feel responsible for leaks that occur outside of their FIU, once information is forwarded to third parties.

Given the above, the OAS member states should consider fundamental that their FIUs follow rigorously the Egmont Group “Principles for Information Exchange Among Financial Intelligence Units for Money Laundering and Terrorism Financing Cases” adopted at The Hague, on June 2001, which are included below. These principles refer to the process by which FIUs share information that they collect and analyze. These principles do not govern the sharing of information between law enforcement and prosecutors via formal channels, such as mutual legal assistance treaties and letters rogatory.

Furthermore, it is considered the OAS member states would benefit from adopting the recommended principles for the use and protection of FIU information shared with FIUs and authorized third parties, which are also included below.

These principles are meant to outline generally-shared concepts, while allowing countries to maintain necessary flexibility. A follow-up piece to this document will discuss best practices involving the use and protection of FIU information.

Proposed Principles for the Use and Protection of FIU Information

I. FIU-to-FIU Information Exchange

A. Introduction

1. The Egmont Group works to foster the development of Financial Intelligence Units (“FIUs”)¹ and information exchange.
2. The Egmont Group agreed in its Statement of Purpose, adopted in Madrid on 24 June 1997, to pursue among its priorities the stimulation of information exchange and to overcome the obstacles preventing cross-border information sharing.
3. Information-sharing arrangements should have the aim of fostering the widest possible co-operation between FIUs.
4. The following principles for information exchange among FIUs are meant to outline generally-shared concepts, while allowing countries the necessary flexibility.

B. General Framework

¹ For more information on the Egmont Group, see the Egmont Group’s web site: www.egmontgroup.org

5. International co-operation between FIUs should be encouraged and based upon a foundation of mutual trust.
6. FIUs should take steps to seek information that may be used by other identified domestic law enforcement or financial supervisory agencies engaged in enforcement and related regulatory activities.
7. FIUs should work to encourage that their jurisdiction's national legal-standard and privacy laws are not conceived so as to inhibit the exchange of information, in accordance with these principles, between or among FIUs.
8. Information-sharing arrangements must recognize and allow room for case-by-case solutions to specific problems.

C. Conditions for the Exchange of Information

9. FIUs should be able to exchange information freely with other FIUs on the basis of reciprocity or mutual agreement and consistent with procedures understood by the requested and requesting party. Such exchange, either upon request or spontaneously, should produce any available information that may be relevant to an analysis or investigation of financial transactions and other relevant information and the persons or companies involved.
10. An FIU requesting information should disclose, to the FIU that will process the request, at a minimum the reason for the request, the purpose for which the information will be used and enough information to enable the receiving FIU to determine whether the request complies with its domestic law.

D. Permitted Uses of Information

11. Information exchanged between FIUs may be used only for the specific purpose for which the information was sought or provided.
12. The requesting FIU may not transfer information shared by a disclosing FIU to a third party, nor make use of the information in an administrative, investigative, prosecutorial, or judicial purpose without the prior consent of the FIU that disclosed the information.

E. Confidentiality–Protection of Privacy

13. All information exchanged by FIUs must be subjected to strict controls and safeguards to ensure that the information is used only in an authorized manner, consistent with national provisions on privacy and data protection. At a minimum, exchanged information must be treated as protected by the same confidentiality provisions as apply to similar information from domestic sources obtained by the receiving FIU.

Principles for FIU Information Sharing Between Financial Intelligence Units and Third Parties

A. Responsibilities of FIUs vis-à-vis law enforcement, prosecutors and judiciary authorities (“Third Parties”)

Recognizing that as the primary point of contact and gateway for financial intelligence information, FIUs are accountable to their foreign counterparts for the protection of information that they receive from those counterparts through sharing mechanisms:

1. The FIU that wishes to share foreign FIU information with Third Parties must obtain prior authorization from the foreign FIU and must notify in writing the Third Parties that the foreign FIU’s information is for intelligence purposes only.
2. The FIU information cannot be used as evidence within an administrative, investigative, prosecutorial or judicial process without the prior consent of the requested FIU. Even if permission is granted to use FIU information as evidence, there may be additional legal requirements such as those in Mutual Legal Assistance Treaties (MLATS) and the use of letters rogatory, for the information to be used as evidence in legal proceedings.
3. In order to protect the information that an FIU receives from foreign FIUs, the FIU should take steps to raise awareness on the part of Third Parties on the proper use and protection of FIU information.
4. FIUs that receive information from foreign FIUs and intend to share that information with Third Parties must collaborate with Third Parties to ensure that the Third Parties take necessary measures to maintain the confidentiality of the foreign FIU’s information.
5. In cases of an unauthorized disclosure of a foreign FIU’s information, the FIU in possession of a foreign FIU’s information must immediately notify that foreign FIU if it discovers that a misuse or unauthorized disclosure of FIU information has occurred. The FIU in possession of a foreign FIU’s information must take immediate action to remedy the situation, limit further disclosure, work with the foreign FIU to resolve the matter, and provide certainty that future similar situations will not occur.

B. Responsibilities of Third Parties vis-à-vis FIUs

1. Third Parties requesting foreign FIU information from their national FIU should disclose, to the FIU that will process the request, at a minimum the reason for the

request, the purpose for which the information will be used and enough information to enable the foreign FIU to determine whether the request complies with its domestic law;

2. Third Parties must follow appropriate FIU procedures in handling FIU information when receiving FIU information that their jurisdiction's FIU has obtained from a foreign FIU;
3. Authorized Third Parties must protect FIU information from dissemination to and access by unauthorized parties;
4. Third Parties that have received FIU information from a foreign FIU may only use the FIU information for intelligence purposes (i.e., as lead information) unless they obtain the prior consent of the foreign FIU.
5. Third Parties cannot use foreign FIU information as evidence within an administrative, investigative, prosecutorial or judicial process absent prior consent of the requested FIU. Even if permission is granted to use FIU information as evidence, there may be additional legal requirements such as those in Mutual Legal Assistance Treaties (MLATS) and the use of letters rogatory, for the information to be used as evidence in legal proceedings.
6. Third Parties may use FIU information only for the specific purpose for which the information was sought or provided;
7. Third Parties cannot share a foreign FIU's information with other third parties (e.g., with other competent authorities) without the prior consent of the requested FIU;
8. Third Parties cannot use FIU information to circumvent formal information sharing mechanisms such as mutual legal assistance treaties or letters rogatory to produce evidence; and
9. Third Parties in possession of foreign FIU information must immediately inform their country's FIU if it discovers that a misuse or unauthorized disclosure of FIU information has occurred. The FIU in possession of a foreign FIU's information must take immediate action to remedy the situation, limit further disclosure, work with the foreign FIU to resolve the matter, and provide certainty that future similar situations will not occur.

XXXIII MEETING OF THE GROUP OF EXPERTS FOR THE
CONTROL OF MONEY LAUNDERING
September 27 and 28, 2011
Caracas, Venezuela

OEA/Ser.L/XIV. 4.33
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26 September 2011
Original: Spanish

FINAL REPORT OF THE SUBGROUP ON FORFEITURE
(ANNEX VII)

FINAL REPORT OF THE SUBGROUP ON FORFEITURE

The work plan of 2010 - 2011, identified two issues on which the subgroup of forfeiture had worked on during this period, which were determined taking into consideration the proposed methodological change.

The first point proposed is to develop an internal guide of proceedings for requesting mutual legal assistance in locating and identifying and recovering assets.

In this section, the U.S. delegation announced that it has not been able to conclude with the guide mentioned to date. Information from 20 questionnaires has been gathered, but several countries' information is missing and are requested to send the necessary information to complete and process the information required.

It is important to remind the countries that have not submitted the information for completing the questionnaire, which was agreed upon during the meeting in Washington, include the following:

1. Points of Contact

Name of Functionary

Institution name, physical address of the office and the institution or governmental body to which it belongs.

Functionary contact information and institution contact information (telephone, fax and email.)

2. Legal basis for cooperation: international instruments and national laws

Determine if they exist or not.

3. Mechanisms to locate, identify and localize assets abroad.

Indicate what are the possibilities of each country to use informal or formal mechanisms and what kind, for example:

Informal Mechanisms: networks (Egmont Group, Iberred, RRAG, etc.)

Formal Mechanisms: diplomatic channels and through central authorities and others.

4. Procedures to enforce orders of seizure, freezing and forfeiture

Identify whether judicial authorization is required from the public prosecutor or the police depending on the instrument of international law.

Existence of forms, formats or other document to carry out the solicitation process

5. Requirements that must be contained in the request for mutual legal assistance and seizure and forfeiture of property

In addition to the requirements and conditions established by the relevant conventions, in general the application should be structured considering at least the following:

- Indication of who is requesting and to whom the request is being directed
- Description of the facts
- Legal basis
- Purpose of the request
- Information and documentation required
- Deadline to comply with the request
- Additional information required by national law

6. International cooperation mechanisms for managing the assets seized and forfeited during the delay of recovery and / or sharing

If there is a property management office, does there exist a legal system in the administration of property? Who is the contact point, an indication of whether there are guidelines on the management and maintenance of seized or forfeited assets by a foreign authority.

In conclusion, it is proposed that as indicated by the delegation of the United States, countries that have not yet filed their respective answers to the form, submit it no later than January 2012. At this time, the mentioned guide must be concluded.

2- Creation of a paper on the legal nature of forfeiture, which will be subjected to analysis by members of the Group and refined with observations and comments to be included in the final version.

It is submitted and accepted the document drafted by our good friend Ricardo Perez, representative of the Republic of Uruguay. As agreed yesterday, the document must be placed on the website of the Secretariat as a reference.

It is also established that the Executive Secretariat, incorporate into its website, the different laws and policy instruments and related various doctrinal forms of forfeiture, so that all they are constituted as means of consultation for all countries.

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CONCLUSIONS AND RECOMMENDATIONS OF THE SUBGROUP OF COORDINATION AND INTEGRATION
OF FIU/OIC
(ANNEX VIII)

**Conclusions and Recommendations of the Subgroup of Coordination and Integration of FIU/OIC
(27 to 28 September 2011, Caracas, Venezuela)**

Subgroup of Coordination and Integration

Conclusions

- The subgroup's progress reports were analyzed with respect to the work done on developing a planning proposal and referred to the development of principles and best practices in information exchange between FIUs/OIC.
- A presentation of the proposals was made by various delegations in order to promote discussion, taking notes on proposals made by delegations in order to complement the work done by the Sub-group.
- The proposed plan was discussed at the plenary session and all participating delegations agreed to the creation of an ad hoc group, which developed a proposal that was presented and discussed in the plenary. This proposal addresses the following points: i) Definition of a LAVEX mission and vision, to guide the work, ii) Identify work guidelines the group, iii) Methodology and iv) Time Period.
- On the other hand, regarding the creation of principles for information exchange between FIUs/OIC, it was agreed to work on a document to be presented at the next meeting based on the document developed between the delegations of the United States and Mexico and the contributions made by the delegation of Argentina and other countries.

Recommendations

- Calls on countries to work on different projects and tasks that were agreed, noting that members follow the plan agreed to by the group of experts.
- With the support of the Executive Secretary, at the next meeting a discussion paper on principles and best practices for exchanging information between FIU and OIC will be presented.
- Also it was presented a first step towards the development of recommendations to enable countries to unify criteria regarding the information shared between the FIU and OIC, as well as to discuss how we will address the identification and analysis of risk factors on asset laundering and terrorist financing at the hemispheric level.

