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Secretariat for Multidimensional Security

**XLVII MEETING OF THE GROUP OF EXPERTS
FOR THE CONTROL OF MONEY LAUNDERING
September 24 to 25, 2019.
Bogota – Colombia**

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**PRESENTATION
CHALLENGES TO IN REM FORFEITURE
IN ARGENTINA**

CHALLENGES TO IN REM FORFEITURE IN ARGENTINA

Lic. Aurora Micucci

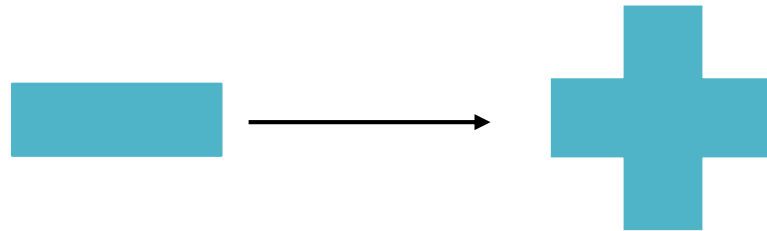
Consultant

National Coordination for the Fight against Money Laundering
and Financing of Terrorism



Ministerio de Justicia y Derechos Humanos
Presidencia de la Nación

Confiscation without prior criminal conviction / In rem forfeiture



CRIMINAL
CODE SCOPE
LIMITED ONLY
TO CERTAIN
CRIMES

LEGISLATIVE
INITIATIVES
D.N.U.
62/2019
WIDE SCOPE

Background of in rem forfeiture

CRIMINAL
CODE
CRIMES
AGAINST
THE
ECONOMIC
AND
FINANCIAL
ORDER

Money laundering

In money laundering operations, the assets will be definitely forfeited, without the need of a criminal conviction, when their illicit origin or the material fact to which they were linked have been proved, and the defendant cannot be prosecuted due to decease, flee, statute of limitations or any other motive of suspension or extinction of the criminal action, or when the defendant has recognized the illicit origin or use of these assets.

LEGISLATIVE INITIATIVES

2016 CHAMBER OF DEPUTIES

2018 CHAMBER OF SENATORS



2016 BILL

AUTONOMY OF ACTION

DIFFERENT AND INDEPENDENT
FROM THE CRIMINAL
PROSECUTION AND
RESPONSIBILITY

NOT SUBJECT TO STATUTORY
LIMITATION

2016 BILL

TIME SCOPE

REGULATES SITUATIONS TAKEN
PLACE BEFORE ITS ENTRY INTO
FORCE

(since the right to ownership has not
been consolidated given its origin in
illicit activities found in the law)

2016 BILL

SMUGGLING

PRODUCTION
TRAFFICKING
TRANSPORT
COMMERCIALIZATION
OF DRUGS

TERRORIST ACTS

TRAFFICKING IN
PERSONS

CRIMES AGAINST
THE ECONOMIC
AND FINANCIAL
ORDER

BRIBERY AND
TRADING IN
INFLUENCE

MISAPPROPRIATION
OF PUBLIC FUNDS

NEGOTIATIONS
INCOMPATIBLE WITH
THE EXERCISE OF
PUBLIC FUNCTIONS

EXTORTION

ILLICIT ENRICHMENT
OF CIVIL SERVANTS
AND EMPLOYEES

PREVARICATION

2018 BILL

AUTONOMY OF ACTION IS MODIFIED

The in rem forfeiture action is a civil action exercised within the framework of criminal procedure

In every case where conviction is achieved for any of the crimes found in this Code or in special criminal laws, the sentence will decide the confiscation

2018 BILL

RIGHT TO CLAIM COMPENSATION

If after the in rem forfeiture action sentence is dictated, the sentence in the main proceeding declares the inexistence of material facts to which the assets where linked, its lack of criminal definition, or the absence of criminal responsibility of the person linked to the assets subject to the action, the party affected by the in rem forfeiture will have the right to claim compensation in civil court

DECREE 69/2019

Entry into force 22/01/2019

The Bill took over 2 years of legislative negotiation without a resolution. Due to the risk of loss of parliamentary state, it was considered necessary to grant the Justice system tools to deprive criminal organizations of their finances and ensure the state's patrimony

DECREE 69/2019

In rem forfeiture is declared through an independent and autonomous procedure of any other judicial proceeding, not being able to accumulate any claims

DECREE 69/2019

The Prosecutor's Office for
in rem forfeiture in favor
of the National State is
created

DECREE 69/2019

Guidelines

CIVIL ACTION OF PRATRIMONIAL NATURE THROUGH WHICH, GIVEN THE SOURCE OF SUSPICION FOUNDED ON THE COMMISSION OF A SERIOUS CRIME

EXTINGUISH THROUGH A CIVIL ACTION THE RIGHT OVER THE ASSETS THAT HAVE BEEN WRONGFULLY OBTAINED THROUGH THE EFFECT OF ACTS OF CORRUPTION OR ORGANIZED CRIME

IT IS REQUIRED THAT THE COMPETENT JUDGE IN THE CRIMINAL PROCEEDING HAS PREVIOUSLY DICTATED SOME PRECAUTIONARY MEASURE OVER THE ASSETS, GIVEN THEIR ALLEGED CONNECTION TO THE CRIME

COMPETENCE TO FEDERAL JUSTICE IN CIVIL AND COMMERCIAL MATTERS

EXCEPTIONS ARE GIVEN WHEN IT IS EVIDENT THAT THE ASSET WAS INCORPORATED TO THE DEFENDANT'S PATRIMONY PRIOR TO THE ALLEGED COMMISSION OF THE INVESTIGATED CRIME

DECREE 69/2019

The contemplated crimes
are similar to the Bill
approved in Senate in
2018

DECREE 69/2019

“OPERACION CLAN LOZA”
First application of this
procedure since its entry
into force

The MPF demanded the in
rem forfeiture of assets and
money of a narco -riminal
organization that operated
in Peru, Spain, Italy and
Argentina

LOZA CLAN PROCESSING BY CRIME

DRUG
TRAFFICKING

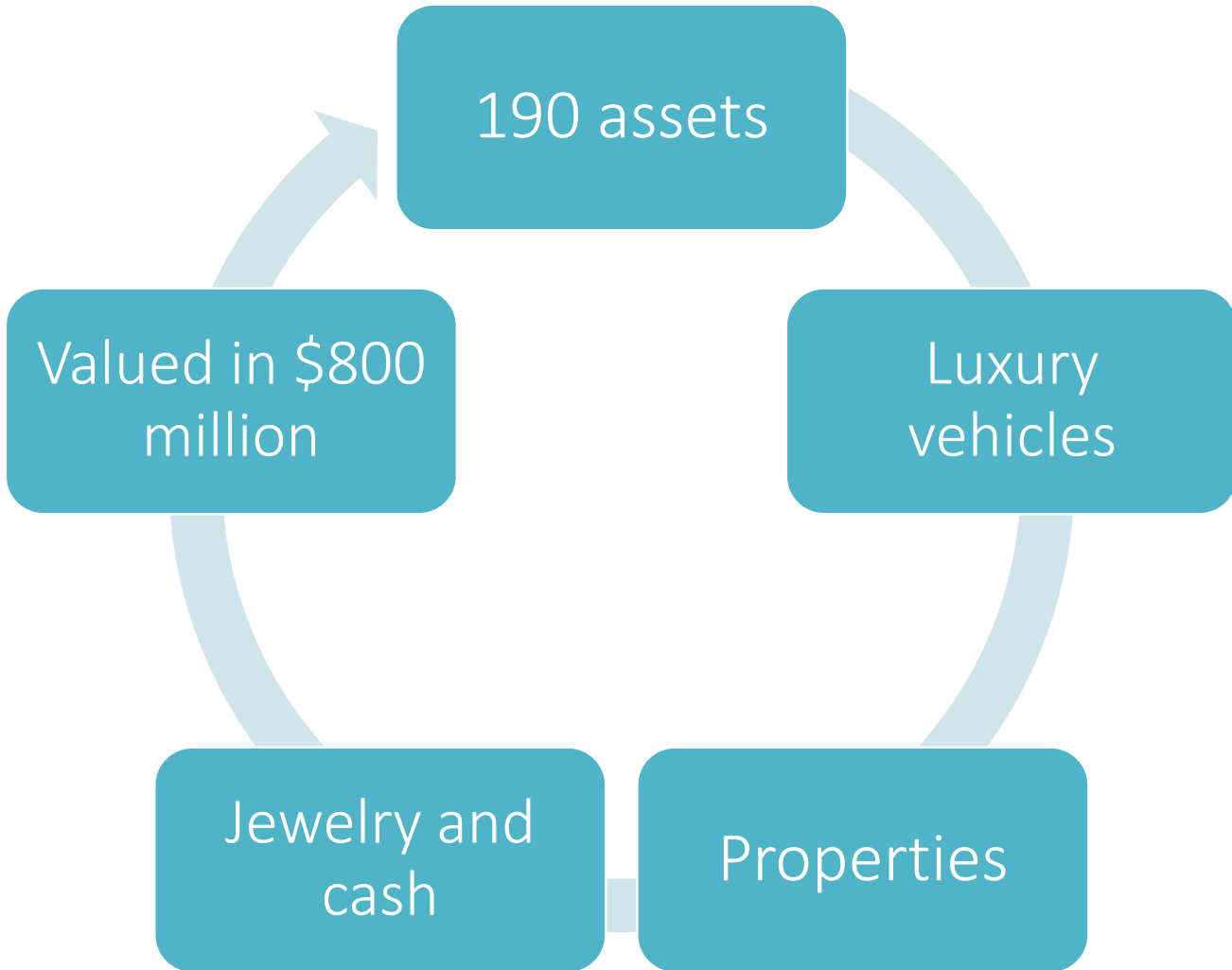


CURRENCY
SMUGGLING



MONEY
LAUNDERING

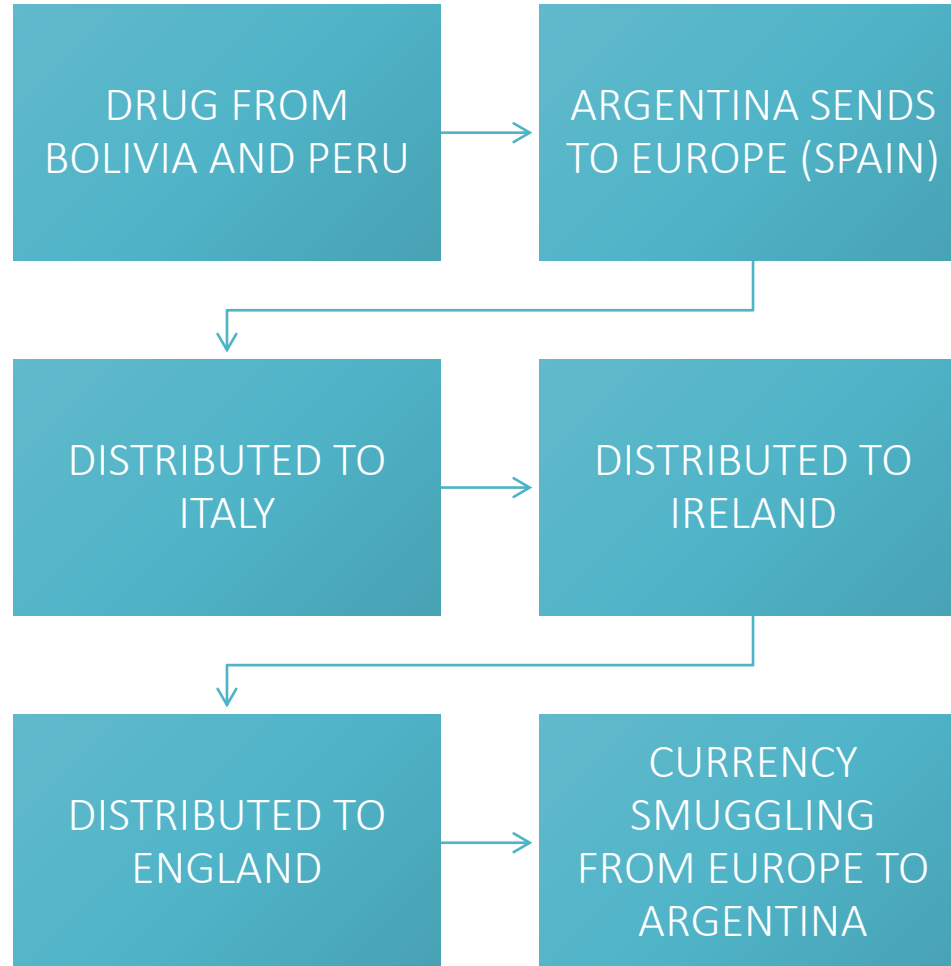
LOZA CLAN



LOZA CLAN

This criminal organization was dismantled in December 2018 –in the framework of 73 simultaneous interventions in Argentina and Spain- where 35 people were arrested

LOZA CLAN OPERATION

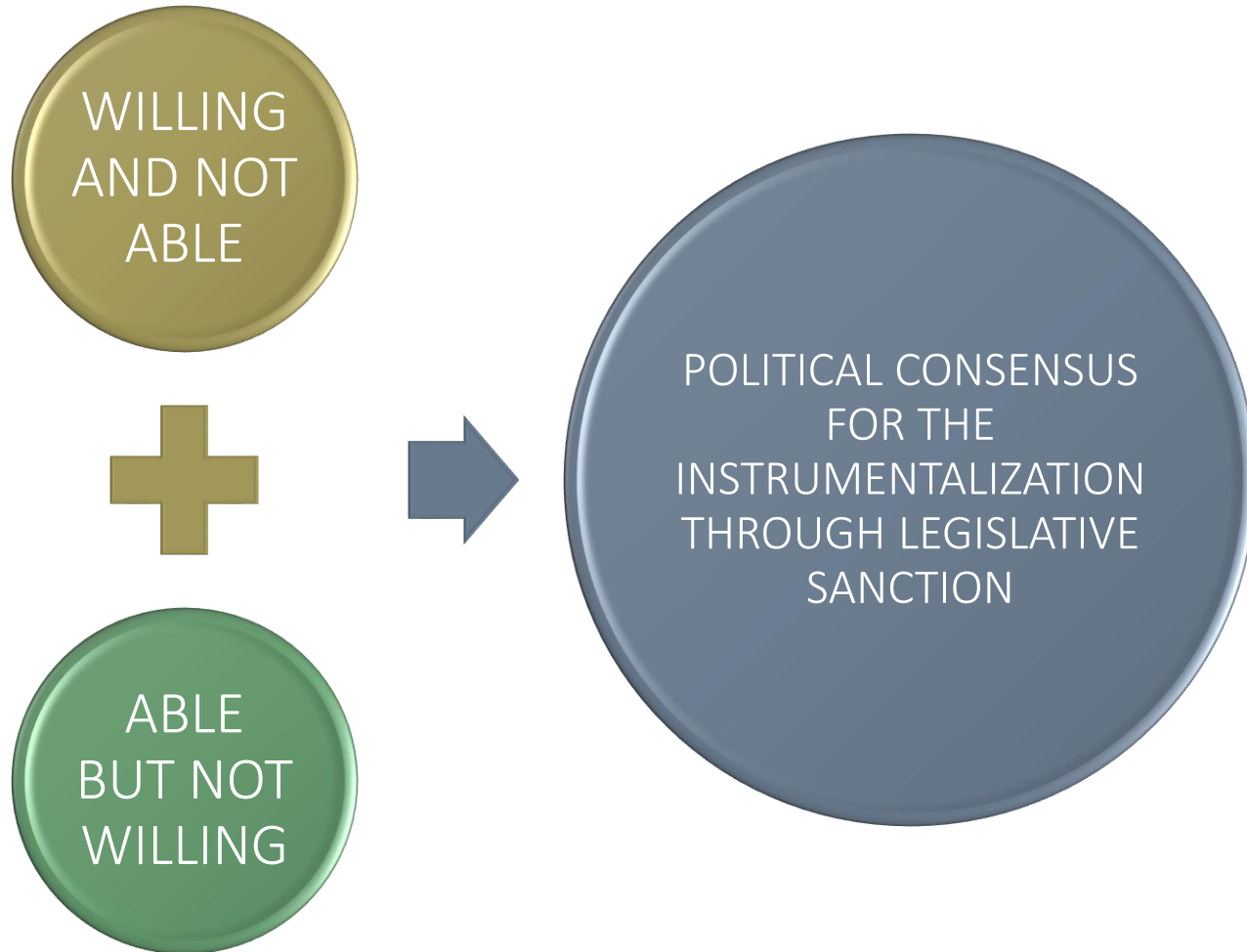


CHALLENGES TO IN REM FORFEITURE ASSETS UNDER PRECAUTIONARY MEASURES UP TO 2018



SOURCE UIF

CHALLENGES TO IN REM FORFEITURE



CHALLENGES TO IN REM FORFEITURE IN ARGENTINA

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