

**GROUP OF EXPERTS FOR THE
CONTROL OF MONEY LAUNDERING
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Working Subgroups
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SECRETARIAT FOR MULTIDIMENSIONAL SECURITY

**Guide to procedures and best practices in asset seizure processes, including virtual
assets and their proper administration and return**

Working Subgroup on Forfeiture and International Cooperation

INTRODUCTION

The Department against Transnational Organized Crime (DTOC) of the Secretariat for Multidimensional Security (SMS) brought the permanent missions to the Organization of American States (OAS) together for the 54th Meeting of the Group of Experts for the Control of Money Laundering (GELAVEX).

That meeting was convened in keeping with the Work Plan approved at the 53rd meeting of GELAVEX, held in 2023. Two issues are assigned to the Subgroup on Forfeiture and International Cooperation under said work plan. The one with which we are concerned in this progress report is as follows:

- “Guide to procedures and best practices in asset seizure processes, including virtual assets and their proper administration and return.”

As detailed in the BIDAL project’s 2011 publication on the “Latin American asset administration system and guide for administering seized and confiscated organized crime assets,” Mr. José Miguel Insulza’s call to action when he was Secretary General of the OAS, on “how to use the money that both drug traffickers and money launderers made off our nations’ suffering and which our countries have managed to recover after so much effort,” still applies. However, it falls to this group of experts to update the seized assets-related procedures and best practices, adapting them to the changes that have come about as a result of the inevitable march of time and technological progress.

OVERALL OBJECTIVE

The overall objective is to update procedures and best practices relating to the seizure of assets and administering and disposing of them, which includes returning them, **but also including virtual assets.**

This guide is based on the “Latin American asset management system and guide for the management of seized and forfeited organized crime assets,” which was published by the BIDAL project. This will be the basis for undertaking a review to furnish the group of experts with a document for consultation and easy access to information, to guide the member states and

afford them a baseline for procedures and best practices with respect to the assets that are of most concern to us in the Americas today.

METHODOLOGY

The findings contained in the following documents will be used as a basis:

- Best practices in confiscation (recommendations 4 and 38), FATF, 2010
- Latin American asset management system and guide for the management of seized and forfeited organized crime assets, BIDAL Project, 2011.
- Regulatory aspects for the creation and development of specialized bodies for seized and forfeited assets management, GELAVEX, 2012
- Guide to the Seized Companies Administration, GELAVEX, 2014
- Analysis of applicability and effectiveness of modern legal instruments for seized and forfeited assets disposal, GELAVEX, 2015.
- Study on the rights of victims and good-faith third parties, GELAVEX, 2015
- Complementary study on the rights of victims and good faith third parties, GELAVEX 2016
- Study on challenges and solutions in managing complex assets, GELAVEX, 2016
- Virtual Assets, Money Laundering and Terrorist Financing Warning Signs, FATF

Additionally, as appropriate, provisions from the following legal instruments will be taken into consideration:

- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
- United Nations Convention against Transnational Organized Crime
- United Nations Convention against Corruption
- Inter-American Convention on Mutual Assistance in Criminal Matters
- Mercosur Protocol on Mutual Legal Assistance in Criminal Matters

FORMAT OF THE GUIDE

In order to streamline and facilitate access to information, the document to be delivered to the plenary in the second half of 2023 will be a guide – in other words, a document to give users general guidance on best practices with respect to seized assets, to enable them to determine suitable procedures to be applied.

This guide proposes to include the following:

- Receiving of seized assets: differentiating among movable assets, real estate, virtual assets, livestock, and complex assets.
- Registration, safeguarding, and packaging of assets: covering how to safeguard virtual assets in cold and hot wallets, as well as complex assets and animals.
- Assets valuation: using in-house appraisers or third-party appraisers hired for the purpose.
- Assets projection: assessment of an asset's special legal, administrative, and usage terms, in order to determine where best to use it.
- Administration and/or anticipated disposal: difference when compared to movable assets, real estate, virtual assets, livestock, and complex assets.
- Recruitment of specialized third parties to administer and/or dispose of complex assets.
- Rights of good-faith third parties
- Returning seized assets: objects or their monetary value, abandonment, storage, compensation.
- Restitution and compensation to crime victims.
- Virtual assets: special considerations.
- Businesses and complex assets: special considerations.
- International cooperation and administrative expenses.

The initial proposed content changed as a result of the analysis done for preparing this guide.

GUIDE TO PROCEDURES AND BEST PRACTICES IN ASSET SEIZURE PROCESSES AND THEIR PROPER ADMINISTRATION AND RETURN

Let's start by looking at why best practices in asset management and disposal are important.

That the only way to dismantle criminal organizations is to deprive them of their ill-gotten gains is a well-established and well-known fact. On top of that, we know that those ill-gotten gains hurt an economy by sending fake signals about the real situation, thereby distorting the price system through the injection of ill-gotten funds. Businesses operating with legitimate funds must therefore capitalize or leverage more heavily to offset any losses they incur as a result of distortions created by illicit capital. This inevitably leads to higher operating costs, which will be reflected in product prices, which in turn can run businesses into bankruptcy and to close down, causing more unemployment and a rise in the informal economy, with all the attendant adverse consequences.

This is precisely why it is important to mitigate the damage that money laundering and organized crime inflict on society, by finding ways to protect the economy and not neglecting to compensate victims and citizens. To do this, best practices in seized asset management must be adopted and implemented through policies and procedures to ensure transparency and efficiency in how seized assets are managed.

Among those best practices, the Inter-American Drug Abuse Control Commission (CICAD) includes “the creation of a centralized and specialized agency to ensure transparent management and administration of seized assets and to be in charge of the selling, auctioning, and allocating the confiscated assets.” Setting up agencies to administer seized and forfeited assets is intended not only to take custody of such assets, but also to guarantee their value and to create a self-sustaining system for them to be administered and disposed of, and for the proceeds of such administration and disposal to be reinvested in providing citizens security and better conditions.

Based on these organizations' experience and in keeping with the documents that have been created in recent years, this basic reference guide to best practices is being offered as a useful resource. Two underlying assumptions are made here: that an asset management agency exists; and an appropriate legal framework is in place for its operation.

BEST PRACTICES

1. Receiving seized assets:

- ❖ Information: Once an asset investigation has been conducted before the assets are seized, where possible the Public Prosecutor's Office will notify the asset management body (OAB) about the expected seizure of the proceeds, object, or property derived from the crime. The working group (prosecutor's office, investigative police, and OAB) may meet in person or virtually, or the information may be e-mailed to the official institutional addresses. The information - which is completely confidential - must be kept strictly as such by the OAB.
- ❖ Planning: with the information received, the OAB must make a preliminary evaluation of the possible assets to be received, and once these have been determined, it will plan preventive measures, logistical actions, and possible delivery costs, adjusting and coordinating as necessary in terms of the date of seizure, as well as choosing the storage space if the assets in question are movable. For real estate, information must be gathered as to the location, whether there are buildings, whether they are occupied, whether there are public services, whether it is a condominium or is residential, whether there is private security, whether there are private and/or public entrances, and any other information that is important for custody and administration. It must be ascertained whether there is any livestock or other animals, in order to arrange for them to be received, cared for, or disposed of.

Special attention should be paid to crypto-assets because, if they are not deposited in the defendant's personal wallet, their transfer should be coordinated with the company with which they are deposited, otherwise the defendant's private keys (seeds) should be used in effecting the seizure. It is absolutely necessary to evaluate the type of wallet to receive the crypto-assets, bearing in mind there are software wallets that allow multiple signature addresses to be configured with encryption-protected access.

- ❖ Delivery: once the assets have been seized, the Prosecutor's Office will coordinate the assets delivery, following the plans. The delivery shall be made using the legal form that is indicated under domestic law, such as a legal depository. The legal form used for the delivery to the OAB must include the date and time of delivery, details of the judicial file, the prosecutor office in charge, signature, and name of the delivering prosecutor, the regulations governing the delivery, signature, name and position of the OAB official receiving the goods, as well as

a sufficiently clear description of the goods for them to be identified. The document must clearly indicate the form of delivery, for example, legal depositary, which, for OABs, must state that the asset is being delivered for custody, but also to execute the administration and disposition actions authorized by domestic laws.

For crypto-assets held on platforms or with exchange operators, the judicial body must order their disposition in favor of the OAB by assigning them to an account created on the platform in the name of the agency or, possibly, by transferring them to addresses provided by the OAB itself. The protocols to be created must include the joint management of these addresses or software wallets, allowing those who have the relevant keys to execute a cross-checking system.

- ❖ **Receiving:** Through the designated official(s), the OAB will receive the assets according to its internal protocols, which may include inspection forms that record the state in which the assets are received and are signed off by the person delivering and receiving the goods, after verifying the goods physically, match the ones described in the documentation. If there is a positive match, the OAB will sign jointly with the competent prosecutor or judge and the goods will be deemed to have been received. The signed document is added to the judicial file and another original or a copy is delivered to the OAB.

Special attention should be paid when dealing with real estate, where the review must be done to ensure the description in the National Registry of the country matches the plan and the actual location of the asset.

As regards livestock and other animals, both the Judiciary and the OAB may be accompanied by the appropriate experts or public animal health officials who can provide technical opinions not only on species and breed, but also on their actual condition, which is critical for the purposes of their custody and subsequent anticipated sale projection.

Care must be taken when dealing with the delivery of crypto-assets because, by their very nature, the OAB must safeguard the keys as securely as possible due to their vulnerability in case someone else gets hold of them. Precisely because of their nature, according to the country's laws, guidelines, or protocols, the exchange of crypto-assets for money could be ordered. Again, an assessment of the value of having software wallets is suggested, as long as the inherent nature of the crypto-assets is preserved.

2. Registration, custody, and valuation of assets:

- ❖ Registration systems: Each country's OAB must have a technology system for recording seized and forfeited assets, associated with its legal proceedings and its judicial status, and to record all their movements. All of this must be accompanied by information on all the data for identification, location, photographs, inspections and appraisals or expert appraisals done with respect to the asset. The system must assign the asset a record number. Apart from recording the information, the system is expected to give the OAB useful data on asset custody, administration, disposal, end use, and reports on quantities and types, which will ensure transparency in the OAB's actions. The system should facilitate an inventory of seized and forfeited assets under the OAB's responsibility, since a suitable inventory system enables better custody and management of the assets.

Assets may be labeled based on the information contained in their registration. Everything must be documented and recorded. When crypto assets are involved, in order to be able to trace transactions with crypto assets and/or the wallets where they are kept under safekeeping. For real estate, geolocation coordinates must be recorded, and in the case of livestock and other animals, their health conditions and management and/or disposal actions must be documented. Movable assets other than motor vehicles, aircraft, or navigation equipment must be packed to avoid damage due to environmental conditions or dust, and the system's identification label may be placed on the outside of the packaging for easy identification on the shelves where they are stored.

- ❖ Valuation: For inventory, statistical, and transparency purposes, seized goods that are received should be valued. This appraisal may be done by OAB officials who are empowered to do so, or by the relevant governing state institution, or by a third party contracted based on the specific type of asset. The value will be entered in the asset management system and will be used by the OAB to plan the asset management or custodianship. These values must be kept updated for the assets disposal, taking into account the terms and percentage of depreciation depending on the type of asset.

3. Freezing or immobilization of assets and money, registration fee

- ❖ To be sure that seized assets are not diverted during the legal proceedings, the competent judicial or administrative authorities must, in keeping with domestic laws, arrange with their

National Registry to have the legal proceedings recorded so as to ensure that they are disclosed to third parties. With regard to money and financial products, the country's laws must empower the competent judicial or administrative authority to freeze them. Both measures may be executed without notice or prior hearing; when executed by an administrative authority, this must be for exceptional cases, for short periods of time, and must include a requirement for validation by the judicial authority. Since these actions are necessary to guarantee the seized assets, executing them will entail no administrative, civil, criminal, or other kind of liability for the officials executing them in good faith.

4. Exemption from taxes or tax obligations

- ❖ Under the principle that the state is one, as long as the assets remain under OAB's custody and are not productive, it must exempt them from all taxes and charges defined by its domestic law, such as taxes, stamp duty, royalties, fees, or any other form of levy. It should be made clear that such exemption applies from the moment of seizure, and thus it is not applicable to tax obligations existing prior to that moment. This exemption will likewise not be applicable after the definition of its purpose, as long as it is not for the benefit of institutions or organizations previously exempted under the country's laws.

5. Seized monies

- ❖ Accounts in local banks: the OAB should have a bank account, preferably a public financial institution, where the judicial authorities should deposit all seized monies. Its domestic laws will define the timing and whether another account is needed for depositing foreign currencies, such as dollars or euros. Monies earned from the anticipated sale of assets or from the sale of perishable goods or animals should also be deposited into this account.

The seized money accounts will earn interest, and so each country will have to legislate to determine how this interest is to be used. A legal order may be issued for this interest to be used by the OAB to cover the expenses incurred in the custody, maintenance, safekeeping, insurance, and administration of the assets. Some laws even stipulate that this interest may be used for enforcement or preventive programs to combat drugs, money laundering, or organized crime.

The seized money deposited into the OAB account may be invested under any financial arrangement, preferably offered by state-owned banks. Such investments should seek to maximize returns and minimize risks.

6. Special fund for administration

- ❖ The OAB must have the economic means needed to keep custody of and administer assets under its charge. That money may be earmarked from interest earned on confiscated or forfeited money and will be used to cover all expenses involved in keeping custody of the assets, including insurance and any private security that may need to be hired. Money to cover any losses or damages to the seized assets will also be drawn from this fund. Money may be drawn from this fund to pay any pledge or mortgage, meaning that once the property is sold or auctioned, the amount for such payments should be returned to the fund. Any expenses or costs incurred in disposing of the assets will come out of this alternative fund, which initially may be financed from state-allocated budget, but would be expected to be self-sustaining after a few years with proper disposal of the assets by the OAB.

7. Third parties acting in good faith

- ❖ Mechanisms must be established in the laws for third parties acting in good faith to be heard and to assert their rights over the seized assets. Hearings or mechanisms deemed suitable shall be established for this purpose, with clear requirements that must be met to demonstrate good faith. For registered assets, the annotation in the relevant Registry will be valid disclosure for the third party to be aware of the situation with the property over which it has a valid right *in rem* and may make the claim to the competent judicial authority. In the event of advance sale, the OAB must pay the third party acting in good faith as creditor or mortgagor any debt owed on the property.

8. Hiring of specialized third parties

- ❖ When necessary owing to the nature of the seized asset, the OAB may engage the services of specialized third parties to keep the asset productive. Those hirings call for provisions in the country's laws to exempt the OAB from the hiring regime applicable to state institutions – first of all, because of issues having to do with contract duration, which should be very short in most cases; but it should also be borne in mind that the assets to be handed over to be administered are not public assets.

Hiring must be done with sufficient advertising for the OAB to be able to get a suitable bid, but also to allow the administering agency to take such security precautions as it deems necessary. Oversight of the administration is entirely the responsibility of the OAB, which must establish and implement the necessary control mechanisms for effective and efficient oversight of the third party hired. If this third-party hiring is exempted from the state control regime, the OAB must establish rules for appointing and hiring them, so as not to compromise transparency and also to avoid risks of corruption in handling the assets.

Besides OAB oversight, monitoring, and control, this third-party administration should be subject to review by internal as well as external auditors, as provided for under domestic law. In the interest of transparency and accountability, but also mindful of security- and risk considerations, the findings of those audits should be made available to the public.

Where seized companies or businesses are still in operation, the best course of action is to approve third-party hiring to run them. On that note, what is recommended is to follow the instructions in the document entitled Guide for the Administration of Seized Companies, prepared by the CICAD/OAS BIDAL Project in 2014.

9. **Asset management and disposal**

- ❖ **Controls**: to avoid concentrations of power and risks of corruption, division of responsibilities for management and disposal of assets should be clearly defined, with no one person holding decision-making power over all aspects of management and disposal.
- ❖ **Interim use**: OAB should determine the criteria for authorizing seized assets to be used provisionally, perhaps as a kind of residual management of anything not disposed of in advance sale. Each country's legislation should define whether it is the OAB that authorizes such use and for what type of institutions and agencies it is authorized, giving priority to measures to prevent and combat drugs, money laundering, and organized crime.

OAB and beneficiary responsibilities and obligations must be set forth in an agreement of intent. This document must at the very least include the purposes for which the use is authorized, whether there is full-coverage insurance, the obligation to pay in full for the asset in the event of loss or destruction where the insurance does not – fully or partially – cover it, consideration regarding wear and tear from normal use of the goods, payment of liabilities

or charges on the assets on loan in the corresponding percentage or amount for public services or for any other service not exempt by law, obligation to return the asset upon request from the OAB, and condition in which the asset is received relative to its state of preservation and operation.

- ❖ **Sale**: Under domestic law, the competent judicial authority must be requested to authorize any advance sale of the seized property, on the grounds and reasons provided for in the regulations. Alternatively, the OAB may, by means of a justified decision, order advance sale of the assets, also strictly adhering to the provisions and grounds set forth in law. In any case, any sale of the assets must be for the purpose of securing the highest yield from the assets. The base price of the assets will be determined by the person designated by the country's law. This may be a competent officer of the OAB, a competent state body, or a third party recruited for such valuation purposes due to the special nature of the assets. The sale must be by public auction or by such procedure as may be designated in the country's laws, including a determination as to whether it will be a face-to-face or virtual process.

Sale of livestock or other animals must comply with animal health regulations as well as those issued by the relevant regulatory bodies. In certain countries, livestock may only be sold at public auction authorized by the Ministry of Agriculture, and the OAB must therefore comply with this obligation. Otherwise, they must be disposed of using the procedure approved for the OAB.

The conversion of crypto-assets to fiat money could be considered as an advance sale. The OAB must therefore make a decision taking into account the fluctuations and volatility of the crypto-assets, safeguarding third party interests in any possible return and the state interest in the event of confiscation. Volatility and fluctuation could mean that in exchanging crypto-assets for money, the former increase in value and trigger losses to their initial owner. But consideration could be given to the risk of constant variations, on top of the security risks and the costs involved in maintaining them, and thus determine that the most convenient thing to do is to change them.

Confiscated assets may also be sold by means of a final judgment or order. This must also be regulated.

The amounts received as proceeds from the sale of seized assets will be held in the OAB account until the judicial process is settled and their end use determined. The proceeds from

the sale of seized assets shall be distributed the same way as seized monies, if so provided by domestic law.

- ❖ **Leasing:** Per the criteria set by the administering agency, seized assets falling within the specified parameters and meeting the criteria may be designed for leasing. To that end, consideration should be given to possibly exempting the procedure from state procurement rules, based on the same considerations as those suggesting third-party procurement for asset management should be exempted. These are non-state assets which, moreover, should be immediately taken care of in order to prevent them from spoiling and, therefore, depreciating given their condition.

The OAB must issue a substantiated order allowing this form of administration and must have controls in place to supervise the leasing.

- ❖ **Perishable assets:** Domestic law should allow for the possibility of perishable assets being disposed of immediately. The options for disposal will depend on the condition and nature of the assets. The OAB should be legally empowered to destroy assets whose useful life is short, or which fall into disuse, disrepair, or scrap. Additionally, perishable goods may be donated if, despite their short useful life, they are still in good condition for use and, therefore, may be donated to prevention- or enforcement institutions dealing with drugs, money laundering, and organized crime.

In both cases, in addition to the possibility afforded the OAB by law, the Board must issue an order containing its rationale for choosing one or another form of disposal. To do so, any existing restrictions relating to public health, food safety, and security must be taken into account as a general rule.

10. **Returning seized assets**

- ❖ **Return order:** The judicial authority may rule that assets seized and held in legal deposit for the OAB should be returned. The reasons may be because of a loss of interest in further prosecuting as the investigation progressed or because the good-faith third party had a prior special claim invoked, leading to the return of the assets. In all such cases, the OAB must get a court return order from the judicial authority. Information about the ordering authority must be clearly indicated in this order, as should the details of the judicial file, the identification details of the assets (if possible, where stated in the document for delivery or

legal deposit with the OAB), the full name and identification number of the person to whom the assets are to be returned, and the means of communication, preferably e-mail, by which to send notification.

- ❖ Delivery of asset: The OAB must deliver the goods in the same condition as when they were received, except for normal wear and tear from use. A receipt or document will be drawn up, certifying the court order, the person receiving, the goods received, and their overall condition, as well as the date on which the delivery is being made.

Where the assets have been sold in advance, the OAB will deliver to the person indicated by the judicial authority the amount reported for the sale, minus any administrative expenses. Along with the money, the OAB will draw up a settlement or document confirming acceptance to receive the money as well as waiver of future claims.

If the assets to be returned were loaned out for temporary use, the procedure indicated in the agreement of intent and pledge signed with the beneficiary must be adhered to, and the beneficiary must deliver those assets to the OAB within the period indicated and in the same conditions as when they were loaned out, except for wear and tear from normal use of the asset. Once received as agreed, the OAB will deliver it to the person indicated by the judicial authority, with the document or record of delivery indicated above.

As regards companies that remained in business through the administration of a third party, the latter must render an account of its administration to the OAB, and must also hand over any assets, instruments, objects, money, financial products, and everything else that constitutes company property and was in its charge during the administration, deducting any administration expenses that were approved by the OAB.

11. End use

- ❖ Forfeiture: When a judicial body orders, in favor of the OAB, confiscation of the assets under its custody since the seizure, by domestic law the OAB must adhere to the intended use it is granted. This may be storage to fulfill the purposes of the OAB and the law, or it may be to sell or even donate them to state institutions and private organizations. In the latter case, it is recommended that priority for donation be given to prevention- or enforcement institutions dealing with drugs, money laundering, and organized crime. Domestic law should clearly specify who should decide among the different possible uses, and the

recommendation is for this to be a collegiate body with the highest level of authority within the OAB itself.

Where confiscated assets were already monetized, the amounts should be disposed of as ordered by domestic law on confiscated monies. It is recommended that a percentage of all forfeited monies should always be legally delivered to the OAB as a final allocation for the expenses related to the custody, securing, administration, and disposal of the assets.

Seized crypto-assets are usually held in a "cold" wallet created for safekeeping purposes, until a final ruling on the process is issued. Once the seizure is ordered, the assets must be converted into fiat money and handled according to the law.

12. Registration, deregistration and transfer of seized and forfeited registered assets

- ❖ **Seized assets:** Domestic laws should establish what documents the OAB may use to execute the National Registry actions described above. Regarding seized assets, it is recommended that the judicial deposit certificate or the document specified for the delivery of the assets to the OAB should be deemed to be the appropriate document whereby to request deregistration of the registered assets when, for administrative or disposal reasons determined by the administration agency, the procedure needs to be carried out. The same document may qualify as valid for the transfer of seized assets sold in advance, which also serves to justify chain of succession. This document may also be used to register those registered assets that are not registered in the country and which the OAB needs to facilitate for temporary use or advance sale.
- ❖ **Confiscated assets:** here, a court order issued by the competent body is sufficient for the National Registry to transfer or register the assets in the name of the OAB.

In both cases the OAB must coordinate with the National Registry to decide on procedures to ensure that these actions are carried out efficiently and effectively. Furthermore, any exemptions provided under the law regarding these registration procedures must be applied.

13. Restitution and compensation to victims

Restitution to victims is the compensation they receive for any damage suffered as a result of the crime. Restitution is a right to which victims are entitled and is widely recognized in

domestic laws and international conventions. For the purpose of restitution, domestic laws should clearly set out the procedure to be followed in these cases, as well the OAB's obligations with respect to the seized assets. In this regard, victims' rights with regard to the seized assets will be examined, and the competent judicial authority may decide to surrender the seized assets to the victims, on the grounds that they are more entitled to the assets. This includes restitution procedures available for matters arising from international cooperation. Procedures for the restitution of confiscated property should also be regulated, for the OAB be able to proceed accordingly.

14. International cooperation

Under the international conventions they have ratified, countries are required to cooperate with one another in tracing and recovering assets. Their domestic laws must implement these conventions through procedures that ensure that there is effective cooperation in the recovery of assets. It is suggested that the model of asset sharing between countries to execute mutual criminal assistance, developed by the OAS, be taken as a frame of reference.

The procedures to effect international cooperation must resolve not only asset recovery aspects, but also those involving jurisdiction of the cooperating OAB over the seized assets and the payment of administrative expenses incurred by the OAB of the country of which the request is made. Likewise, decision must be made regarding the sharing of confiscated assets, including the amounts of assets that were sold during the seizure stage.