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LEGAL ASPECTS IN THE ESTABLISHMENT AND DEVELOPMENT OF ENTITIES SPECIALIZED IN THE
ADMINISTRATION OF SEIZED
AND FORFEITED ASSETS
GROUP OF EXPERTS FOR THE CONTROL OF MONEY LAUNDERING



Organización de los
Estados Americanos

**“Legal Aspects in the Establishment and Development of
Entities Specialized in the Administration of Seized
and Forfeited Assets”**

**It contains a study of the legislation regulating the various systems used by
specialized entities to administer seized and forfeited assets in Latin America**

**Anti-Money Laundering Section
CICAD/OAS**



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Introduction

Historically, forfeiture has been relegated to the background, and, in penal proceedings, it should be acknowledged that judicial and police investigations seeking to quantify the proceeds or profits obtained in the commission of a specific crime have been conspicuously absent.

On the other hand, organized crime has grown stronger through the ties established among criminal organizations and the methods they have adopted to hide the illicit source of their assets, reason why, from a penal perspective, in the last few years, in particular, the fight against this new criminal enterprise has focused mainly on the application of two essential legal instruments: the criminalization of money laundering and the confiscation of assets that are the proceeds of crime.

In the past decade, efforts to combat organized crime, drug trafficking and money laundering have focused not only in incarcerating the perpetrators of or participants in punishable offenses, but have strategically and actively expanded to the identification, localization and recovery of illegally acquired assets through forfeiture. Thus, the intention is to reduce the incentive to engage in criminal activity through the imposition of criminal sanctions and penalties involving loss of property that can be applied regardless of the criminal responsibility in the commission of the crime which, in addition, hit the financial structure of criminal organizations to prevent them from continuing to finance their illegal and related activities.

This special vision of the criminal problem has not only helped establish various types of offenses based on the criminalization of certain economic aspects of other punishable conducts, but has also inspired the establishment of legal institutions and concepts that are “sui generis,” such as: extended forfeiture, seizure as an ancillary consequence, seizure of property of equivalent value, in rem forfeiture, forfeiture for unjustified increase in personal assets and the surrender, loss or deprivation of ownership of assets of illicit origin, which aim to overcome the limitations in the application of the traditional structures of criminal law.



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Furthermore, gathering the data necessary to establish the offense and determine the assets to be confiscated demands a precise and meticulous investigation of the property to identify the instruments and impact of the crime as well as the proceeds of the same, in order to locate, seize and later administer the assets until their definitive forfeiture.

The investigation of property, money laundering and the administration of assets associated with the various manifestations of organized crime constitutes a transnational phenomenon that challenges national authorities to search for a comprehensive, multidimensional and multidisciplinary response within the framework of institutional strengthening and capacity building that incorporates regional coordination and cooperation as one of its main components, strategic action.

The intent is, therefore, to prevent criminals from enjoying the outcome or the proceeds of their criminal activity by transferring those proceeds to the State so that they may be allocated to strengthening the institutions responsible for the control of the supply and demand of drugs as well as to strengthening the institutions that enforce and execute the law in accordance with each country's legal system and that respond to a criminal policy more in tune with the current reality of some of the States.

In addition to these efforts, States have come face to face with the overwhelming need to establish specialized entities responsible for administering these assets. These entities are staffed by highly qualified professionals and technicians who are charged with the receipt, identification, inventory, management, preservation and custody of assets both in the seizure phase and in the forfeiture and disposal phase since the traditional system of judicial storage is clearly inappropriate to handle the complex management of assets such as: condominiums, working businesses, hotels, farms, cattle, vehicles and luxury real estate, among others.

These specialized entities and the legal tools that seek transparency in the management and administration of assets are evolving into ever more complex entities and concepts which we will attempt to identify in this study through the analysis of the asset administration systems of certain countries.

The purpose of this document is to develop, research and analyze precisely these modern legal instruments, with citations in order to provide readers a better understanding, and to share experiences and best practices in the establishment and development of asset management units which are included throughout a study document for the establishment of these entities and their inherent legal authority to carry out a responsible and credible administration.



Asset Administration Entities

- I. International recommendations regarding the establishment and development of asset administration entities
 - a. Best Practices Manual for the Administration of Seized and Forfeited Assets, CICAD/OAS

In the course of the implementation of the Project on Forfeited Assets in Latin America (BIDAL) promoted by the Inter-American Drug Abuse Control Commission of the Organization of American States (CICAD/OAS), documents of transcendental importance and regional impact were developed, among them, the *Best Practices Manual for the Administration of Seized and Forfeited Assets*, which was approved during the Meeting of Experts for the Control of Money Laundering held in Montevideo, Uruguay, from August 31 to September 2, 2009, and in the Plenary Session of CICAD No. 46, held in Miami, United States, November 18 to 20, of the same year.

The objective of this first document was to provide CICAD/OAS member States relevant information to help them improve and guide their juridical systems. This document includes an extensive technical and legal analysis of the legislations and regulations of the various countries that have chosen to establish specialized units for the administration of seized and forfeited assets.

The document was discussed during several years and analyzed by the delegates of the countries that took part in the working meetings of the Forfeiture Subgroup through the Group of Experts for the Control of Money Laundering (GELAVEX). In this context, the countries shared their practical experiences in the implementation of efficient methods for the administration of assets.

The text promotes the establishment and strengthening of centralized units specialized in the administration of assets, “... *Each State should establish or strengthen the jurisdiction of the specialized national entity so that it can collaborate with the receipt, identification, inventory, administration, upkeep, preservation and custody of seized or forfeited assets that are the proceeds of illegal activities that generate large profits.*

The purpose of establishing such an entity is to achieve transparency in the management and administration of seized assets. To that end, the asset management entity should have highly qualified professional and technical personnel to carry out the specific responsibilities of the entity, such as: attorneys, business managers, accountants, experts, assessors, mechanics, information systems engineers, inspectors, among others, as well as the possibility of contracting outside services to ensure that the mission is accomplished.



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Once the proceedings have been completed, the entity should be authority responsible for managing the liquidation of forfeited assets through sales or auctions.

The distribution of the proceeds of the liquidation of assets and of the forfeited currency should be accomplished in accordance with the provisions of domestic legislation...

For its part, a second document from the BIDAL Project called “*Asset Management Systems in Latin America, with special reference to the evolution of the legal definition of forfeiture and asset recovery entities in Europe*”, makes reference to a study of comparative legislation of asset administration systems in America by Isidoro Blanco Cordero, Professor of Penal Law at the University of Alicante and Deputy Secretary General of the International Penal Law Association; a great friend and a great Spanish jurist and lecturer.

It is precisely in that text that Professor Cordero analyzes and develops certain international recommendations, made primarily by the G-8 and the Financial Action Task Force (FATF), regarding the establishment of these asset management entities.

b. OAS/CICAD Hemispheric Drug Strategy and Hemispheric Plan of Action on Drugs

Within the Hemispheric Drug Strategy adopted on May 3, 2010 by the Inter-American Drug Abuse Control Commission (CICAD) at its fortieth regular session in Washington DC, principle 45 states:

"It will be creates or strengthened, where appropriate, national agencies responsible for the management and disposition of seized and forfeited assets in cases of illicit drug trafficking, money laundering and other related criminal offences"

For its part, goal 12 related with the control measures on the Hemispheric Plan of Action on Drugs 2011-2015, states:

- a) To establish and/or strengthen national bodies with responsibility for the administration of seized and/or confiscated assets and disposal of confiscated property.
- b) To promote specialized programs for the improvement of systems of administration of seized and forfeited assts.
- c) To strengthen technical capacities in the administration and disposition of assets related with cases of illicit drug trafficking and related criminal offences.



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c. G8 Document on Best Practices for the Administration of Forfeited Assets¹

d. FATF: Document on Best Practices on Asset Forfeiture²

It is also important to mention that within the new FATF 40 recommendations relating to the document entitled "International Standards on Combating Money Laundering, Terrorist Financing and Proliferation", particularly as stated in the recommendations 4 and 38, related to issues of confiscation, provisional measures and mutual legal assistance on confiscation and freezing, states "... the countries must also have effective mechanisms to manage such property, equipment or goods of equivalent value, as well as agreements to coordinate seizure and confiscation orders, which should include the sharing of confiscated assets."

e. Model Law on In Rem Forfeiture, UNODC

Between 2010 and 2011, the Legal Assistance Program for Latin America and the Caribbean (LAPLAC) of the United Nations Office on Drugs and Crime (UNODC), developed a document called "*Model Law on In Rem Forfeiture*," which provided a best international practices model to serve as a guide to those countries interested in drafting laws on the definitive forfeiture of assets of illicit or criminal origin and which incorporates several articles regarding procedural matters.

Chapter VII of the Model Law, which pertains to the "*Management and Disposal of Assets*," suggests the establishment of a specialized entity, created and designated to oversee the proper management of assets seized or declared forfeited under the provisions of the law. The main purpose of this entity is the preservation and upkeep of the assets in accordance with the principles of efficiency and transparency of civil service.

II. Asset Management Systems in Latin America³

The legal provisions to establish and define the administrative authority of the existing specialized entities in Latin America as well as the final disposal of the assets forfeited under their administration are detailed below:

¹ BLANCO CORDERO, Isidoro, *Asset Management Systems in Latin: Special reference to the evolution of the legal definition of forfeiture and asset recovery entities*, OAS/CICAD, BIDAL PROJECT, 2011, pp. 16-18.

² *Ib.*, pp. 18-20.

³ *Ib.*, p. 21



a. Bolivia

In the case of Bolivia, the very Code of Penal Procedure, Law 1970, of March 25, 1999, in Section V, Chapter III, regarding precautionary measures that authorize the seizure of assets, provides for the establishment and jurisdiction of the General Directorate for the Registration, Control and Administration of Seized Assets (DIRCABI), which falls under the jurisdiction of the Ministry of Government and is assigned the following responsibilities:

1. Direct administration, or delegation of the task to private enterprises hired for that purpose, of seized, forfeited or confiscated assets until they are sold.
2. The registration and inventory of seized assets, specifying the type of asset and condition.
3. The establishment and updating of a registry of businesses qualified in asset administration.
4. Signing of the respective contracts for administrative services.
5. Control and supervision of contract administrators during the life of the contract, and,
6. Those established in the corresponding paragraphs.

b. Colombia

The office that manages seized and forfeited assets in Colombia was established in 1998 and has, therefore, been in operation the longest. However, as part of the process undertaken to improve government operations, this office is being eliminated as indicated in decree No. 3183 of the Ministry of Justice and Law, dated November 2, 2011, which in Article 1 states:

“ARTICLE 1°. REGARDING REDUCTION AND ELIMINATION. Consider abolished the National Narcotics Directorate, a technical entity in nature that was established by Decree No. 494 of 1990, and organized as a special administrative unit at the national level, attached to the Ministry of Justice and Law, with legal standing, administrative and budgetary independence and its own patrimony.

Consequently, the moment the present decree enters into force, said entity shall enter liquidation proceedings which shall be completed, at the latest, in a period of one (1) year beginning on the date this decree is issued, which could be extended by an administrative act



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based on solid grounds and shall, in all instances, use the denomination "National Narcotics Directorate in Liquidation Proceedings."

Once the established period for liquidation has expired, for all intents and purposes the National Narcotics Directorate in Liquidation Proceedings will no longer have any legal standing.

However, for the purposes of this study, it is important to point out the responsibilities and authority this entity had, which was established by Law 30 of 1998 and amendments, as part of the National Narcotics Directorate (DNE), which acted as the Executive Secretariat of the National Narcotics Council, attached to the Ministry of Justice.

The Under Directorate of Assets was part of the organizational structure of the DNE and had the following responsibilities:

1. Submit proposals to the National Directorate regarding the management of assets seized or placed at the disposal of the entity that were the proceeds of drug trafficking or connected offenses, as well as assets that were the outcome of in rem forfeiture proceedings, in accordance with the provisions of the legislation in force.
2. Guide and control the management of assets seized and deposited with the entity.
3. Carry out the necessary actions to guarantee the proper administration and the sustainability of an information system of assets seized and deposited with the entity in coordination with the Sub Directorate of Information Technology.
4. Carry out the necessary actions with the State's Security Agencies and judicial entities to achieve the appropriate flow of information for the administration of seized assets.
5. Carry out the necessary actions to ensure the appropriate flow of information to guarantee the efficient administration of the Fund for Rehabilitation, Social Investment and the Fight against Organized Crime.
6. Together with the Executive Secretariat, carry out the necessary actions to guarantee the proper administration of the resources of the Fund for Rehabilitation, Social Investment and the Fight against Organized Crime.
7. Any other responsibilities assigned to it by competent authority that are compatible with the nature of the entity.

Law 785 of 2002, assigned to the DNE through the Under Directorate of Assets, the administration of all assets involved in penal proceedings for drug trafficking and connected offenses or those assets under in rem forfeiture proceedings. Orders of seizure of assets are applied immediately and possession of the assets must be transferred to the DNE for their administration under the provisions of Law 785.



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Furthermore, in accordance with the provisions of Law 793-2002 (Law on In Rem Forfeiture), the DNE had the legal authority⁴ to be a party to in rem forfeiture proceedings brought by the Office of the Attorney General, of its own initiative, when it was in their legal interest to do so. It had the authority to introduce or to request engaging in discovery of any evidence that could help prove the illegal origin of the assets, request the implementation of precautionary measures on those assets, to challenge any decision stating lack of grounds for the action, or decisions that did not recognize the abandonment of assets in favor of the government when the requirements established in Article 10 of Law 793-2002 were met.⁵ However, these provisions were some times at odds with the actions carried out by the Public Ministry.

This same set of regulations established that “... assets on which precautionary measures are imposed shall be placed immediately at the disposal of the National Narcotics Directorate through the Fund for Rehabilitation, Social Investment and the Fight against Organized Crime;” however, as it was pointed out in the beginning, this fund known by its acronym FRISCO is now regulated by Decree No. 3183 of the Ministry of Justice and Law.

c. Costa Rica

In Costa Rica, Law 8204 on Narcotics, Psychotropic Substances, Unauthorized Drugs, Money Laundering and Connected Activities of 2002, established the Costa Rican Drug Institute (ICD) as an autonomous entity under the jurisdiction of the Ministry of the Presidency, with legal standing which is instrumental in being able to contract services and administer its resources and property. For its part, the Executive Council is the highest level, decision making body of the ICD and is chaired by the Minister or Vice Minister of the Presidency, who shall be the legal and out-of-court representative of the Institute with the powers provided for in Article 1253 of the Civil Code for representatives with full power of attorney, and the authority vested in them by the Executive Council in specific cases.

Article 139, Section XI of the same law, establishes the Seized and Forfeited Assets Management Unit as an agency of the ICD responsible for monitoring seized commercial assets that are the proceeds of offenses established in the law, in addition to overseeing the proper management and use of seized assets, and responsible for auctioning off or donating forfeited assets.

In addition, the unit is also responsible for:

⁴ Article 5, Law 793-2002.

⁵ Article 10, Law on In Rem Forfeiture. Regarding appearance at the proceedings.



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- a) **Ensure and monitor the preservation of seized or forfeited commercial assets.**
- b) **Maintain an updated inventory of seized and forfeited assets.**
- c) **Keep a registry of and monitor assets transferred to public entities in order to ensure their proper use.**
- d) **Regularly submit to the Executive Council the inventory of seized assets in order to schedule deliveries, use and management of the same.**
- e) **Require legal firms that are handling cases for offenses established in this law to provide information of seizures that have been carried out.**
- f) **Plan and carry out auctions of forfeited assets.**
- g) **Any other actions that may be considered necessary in order to achieve the objectives of the Institute.**

Thus, when the judicial authority orders the seizure of personal property or real estate property, vehicles, instruments, equipment, valuables, cash or any other objects used in the commission, as well as any assets or valuables that are the financial product or proceeds, of crimes established under the provisions of Law 8204, that belong to legal persons involved in the perpetration of those crimes, the assets must be deposited immediately and exclusively in judicial custody and under the supervision of the ICD. Once the assets were insured for their full value in order to guarantee the possibility of compensation for normal wear and tear or destruction of the same, these same provisions were expanded to include offenses established in Law 8754 against Organized Crime, published in Official Gazette No. 143 of July 24, 2009.

Except in very special cases that must be approved by the Executive Council, the ICD must immediately and exclusively use these assets to meet the objectives established in the legislation. In addition, the ICD may administer the assets or place them in a trust with a government bank depending on what better serves the Institute's interests.

d. Ecuador

In Ecuador, the Law on Narcotics and Psychotropic Substances of December 27, 2004, established the National Council for the Control of Narcotics and Psychotropic Substances (CONSEP), which is based in Quito. Pursuant to Article 8 of the above mentioned law,



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CONSEP is an autonomous public law entity with jurisdiction throughout the national territory. Being an autonomous entity, CONSEP is allocated its own patrimony and funds, a special budget and given the authority of coercive jurisdiction to collect the resources established in the Law. The Attorney General of Ecuador shall be responsible, among other things, for overseeing the operations of CONSEP (Article 11 of the Law). It is, therefore, an autonomous entity specialized in matters relating to toxic drugs or narcotics.⁶

Included within the operational structure of CONSEP is the Directorate for the Administration of Assets in Custody, which is responsible for the safeguard and administration of assets in custody. The administration of these assets is carried out by the Executive Secretary who, under the provisions of the regulations governing the custody of seized and forfeited assets placed under CONSEP jurisdiction, RO-S 637 of February 26, 1996, has the authority to contract receivers or trustees as needed. Every three months, the Executive Secretary must inform the Executive Council regarding the custody and administration of assets under CONSEP jurisdiction (Article 3 of the Regulations).

However, with regard to the custody and management of assets that are the proceeds of money laundering offenses, Section V of the Law to Suppress Money Laundering, No.12-2005, "Regarding the Administration and Disposal of Assets," grants the National Council against Money Laundering the custody, administration and control of assets under precautionary measures, to include carrying out whatever legal actions are necessary to guarantee the custody and preservation of the assets and prevent their deterioration, loss or destruction.

It should be noted that in a recent publication of the Official Registry No. 352, dated December 30, 2010, called the Law to Suppress Money Laundering Reform Act, states in its transitional provisions that: *Assets that have been placed under the temporary administration of the National Council against Money Laundering and those that, in the future, come under the scope of precautionary measures imposed in penal proceedings for money laundering offenses or financing of crimes, shall remain under the custody and safeguard of the National Council for the Control of Narcotics and Psychotropic Substances, which will act as a trustee until those assets are transferred to the specialized entity created to manage them within a period of no more than one hundred and eighty days.*"

Therefore, the custody and administration of assets connected to either drug trafficking or money laundering offenses is delegated to CONSEP through the Directorate for the Administration of Assets in Custody until this new entity described in the Reform Act mentioned above is created.

⁶ BLANCO CORDERO, Isidoro, Asset Management Systems in Latin America, *Op. Cit.*, p. 36.



e. Guatemala

In Guatemala, Section V of Law No. 55-2010 “*Law on In Rem Forfeiture*,” establishes the creation of the National Council and National Secretariat for the Administration of Forfeited Assets, a centralized and specialized entity with jurisdiction over the administration of seized assets and resources and those that have been declared definitively forfeited, which is also responsible for monitoring the proper administration of assets under its jurisdiction as well as those that have been the subject of in rem forfeiture. In addition, this entity shall be responsible for the receipt, identification, inventory, administration, upkeep and reasonable preservation of the assets as well as monitoring seized commercial assets. The entity is also responsible for transferring ownership, auctioning off or donating assets that have been forfeited.

The National Council for the Administration of Forfeited Assets (CONABED)⁷ is the administrative oversight entity with legal standing and, as indicated in the Regulations of the Law on In Rem Forfeiture,⁸ has among its primary responsibilities:

- *To hear, approve, award and provide final resolution for contracts regarding the structuring of administrative trusts in public banking institutions that are subject to surveillance and inspections by the Superintendency of Banks...*
- *Approve contracts executed by SENABED once that organ has completed the process to verify the background, qualifications and reputation of the contractors...*
- *Authorize SENABED to retain forfeited assets within its patrimony or to authorize the execution of contracts to transfer ownership, donate or destroy those assets when their worn condition would make it impossible or excessively expensive to preserve, repair or restore them...*
- *Approve the investment of funds or assets, whatever their nature, which are under precautionary measures or have been forfeited, as determined by the SENABED Investment Unit...*

⁷ Composed of:

- a) The Vice President of the Republic who chairs the council.
- b) A Magistrate designated by the Supreme Court of Justice
- c) The Attorney General and the Head of the Public Ministry.
- d) The Prosecutor General.
- e) The Minister of Government.
- f) The Minister of National Defense.
- g) The Minister of the Treasury.

⁸ Governmental Decision No. 514-2011 dated December 27, 2011.



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- *If useful, become party to enforcement proceedings regulated in the Code of Civil and Commercial procedures when:*
 1. *It affects assets subject to forfeiture*
 2. *There are secured guarantees in good faith...*

For its part, the National Secretariat for the Administration of Forfeited Assets (SENABED) is composed of a Secretary General, an Assistant Secretary General and by the following Directorates and Units:

- a) Financial Management Directorate
- b) Directorate for Asset Control and Registry
- c) Directorate for Asset Management
- d) Directorate for Juridical Affairs
- e) Directorate for Information Technology and Statistics
- f) Internal Auditing Unit
- g) Internal Control Unit
- h) Contractor Registry Unit
- i) Investment Unit

In searching for the self-financing of the asset management system, the rules allows SENABED, to cover operating expenses involved in investigations and asset forfeiture proceedings through fund investments created with money seized that can generate financial returns which are intended to maintain the seized assets (40%), to pay the expenses of the procedures (40%), and finally 20% to cover compensation for loss or destruction of property.

f. Honduras

In Honduras, Legislative Decree No. 113-2011, published in The Gazette No. 32,562 of July 8, 2011, called Law for Efficiency in Revenues and Public Expenditures, the administration of seized and forfeited assets was transferred to the Executive Branch through the Ministry of the Presidency, which until then was the responsibility of the Office for the Administration of Seized Assets (OABI) of the Public Ministry, which was established by Law 45-2002 called “*Law against Money Laundering*” published in The Gazette No. 29.781 of May 15, 2002.

Executive Decree PCM-070-2011 dated November 7, 2011, published in The Gazette No. 32,662, regarding “Regulations on the Organization, Operation and Powers of the Office for the Administration of Seized Assets (OABI)” indicates:



“Article 4. ON THE NATURE OF THE ENTITY. The Office for the Administration of Seized Assets (OABI), is the highest specialized technical body for the management and administration of seized and forfeited assets beginning with their reception, identification, inventory, custody, upkeep, administration, preservation and any other matters assigned to it under the provisions of the law. The Office for the Administration of Seized Assets (OABI) shall operate under the jurisdiction of the Ministry of the Presidency, which, together with the Inter-institutional Technical Committee,⁹ will oversee its administrative, technical and financial operation. The Ministry of Finance shall plan and allocate in a timely manner the budgetary resources necessary for OABI to carry out its responsibilities through the most expeditious, convenient and appropriate legal and/or regulatory means. Likewise, OABI’s budget shall include the percentage of resources established by Article 78, as amended, of the In Rem Forfeiture of Assets of Illicit Origin Law and the provisions of Article 40 of the Law against Money Laundering.

Article 5. RESPONSIBILITIES. The OABI shall be responsible for the safeguard, custody and administration of all assets, proceeds and instruments of criminal activity that the competent authority places under its charge. The establishment of such an entity indicates the search for transparency, legitimacy and effectiveness in the management and administration of seized assets, acknowledging that the main objective of administering these assets is guided by the need to preserve and maintain their productivity and/or value.”

For its part, the OABI has the following organizational structure:

- a) Inter-institutional Technical Committee¹⁰
- b) Internal Auditing Unit.
- c) Executive Board.
- d) Seized and Forfeited Assets Unit.
- e) Financial Administration Unit.
- f) Business Management and Administration Unit.
- g) Legal Unit.
- h) Administrative Service and Human Resources Unit.
- i) Information Technology and Communications Unit.
- j) Any other units created to meet the entity’s needs.

⁹ Decree PCM-070-2011, Article 7. ESTABLISHMENT.

¹⁰ The Inter-institutional Technical Committee is composed of:

- a) The Office of the President of the Republic which will serve as Chair;
- b) The Supreme Court of Justice;
- c) The Public Ministry;
- d) The Ministry of Finances;
- e) The Ministry of Security;
- f) The Ministry of National Defense;
- g) The Inter-institutional Commission to Prevent Money Laundering and the Financing of Terrorism (CIPLAFT).



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It is also important to point out, that the powers granted to the OABI were expanded by Decree 26-2010 of June 16, 2010, published in The Gazette No. 32.239, in the *“Law on In Rem Forfeiture of Assets of Illicit Origin,”*¹¹ which requires that all assets, proceeds, instruments, or profits under precautionary measures, as well as those seized or found abandoned or under any other circumstances be deposited in OABI custody for their administration, safeguard, custody or destruction, as the case may be.

g. Mexico

In Mexico, Section VI of the *“Federal Law for the Administration and Transfer of Public Sector Assets,”* published on December 19, 2002, establishes the Asset Management and Transfer Service (SAE), as a decentralized agency of the Federal Government under the jurisdiction of the Ministry of Finance (SHCP), with legal standing and its own patrimony, headquartered in the Federal District, whose mission will be the management, transfer and disposal of the following assets:

- a) Assets forfeited and secured in federal criminal proceedings.
- b) Assets surrendered as payment to cover all types of debts owed to the federal government, its entities or agencies, including those placed at the disposal of the Treasury or its legally authorized surrogates;
- c) Assets seized by federal authorities that have been deposited with transferring authorities in accordance with applicable laws;
- d) Assets abandoned in favor of the federal government;
- e) Assets that while being part of any of the proceedings established by customs legislation, federal tax regulations or any other laws applicable to Transferring Entities, must be sold, destroyed, donated or assigned because they are flammable, perishable, fungible or deteriorate rapidly, or when it involves livestock or vehicles;
- f) Assets that become government property;
- g) Bonds, securities, cash and other benefits that are subject to transfer when so determined by competent authorities;

¹¹ Article 34, Law on In Rem Forfeiture of Assets of Illicit Origin, No. 26-2010



- h) Assets that are the private property of the government and those that are proprietary assets of quasi-governmental entities;
- i) Any asset that, although not the property of the federal government under applicable laws, may be used by the federal government, its organs and agencies, and;
- j) All other assets designated by the Secretariat or the Comptroller's Office within their jurisdiction and in accordance with applicable legislation.

Those assets must be transferred to the SAE when mandated by law or by judicial authorities. In all other cases, the transferring entities, in accordance with applicable laws, will determine whether it better suits their purposes to transfer the assets to the SAE or to administer, destroy or transfer those assets themselves, in which case, the laws applicable to each type of asset shall also apply.

The SAE was established due to the need to bring together within one entity, regulated by one single set of laws with clear and simple rules, the transfer, recovery, administration, custody and, when applicable, the destruction of assets under federal government control, and to contribute to the specialized, efficient and transparent management of those assets for the benefit of the country's finances.

The Federal Law for the Administration and Transfer of Public Sector Assets establishes the regulations that govern asset transfer proceedings that may be used by SAE, such as: auctions and direct awards, concepts that were not contemplated in any other laws.

This same law establishes that the SAE shall incorporate agencies and responsibilities of the Federal Government, which independently carried out actions to monetize assets, in order to make the operation more specialized and achieve savings.

The SAE is composed of the following entities: Trust Fund for the Liquidation of Auxiliary Credit Institutions and Organizations (Fideliq), the Insured Assets Management Service (SERA), the Divestiture Unit of the Office of the Undersecretary of Expenditures, and the General Administration for the Disposal of Foreign Trade Assets of SAT, all of them under the jurisdiction of SHCP.¹²

The higher entity overseeing the SAE is the Governing Board which is composed as follows:

- I. - The Minister of Finance, who will serve as Chairman;

¹² <http://www.sae.gob.mx/Comunicacionsocial/Otroscomunicados/Paginas/Creaci%C3%B3ndelSAE.aspx>



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II. - Two Assistant Secretaries;

III. - The Secretary of the Treasury, and

IV. - The Chairman of the National Banking and Securities Commission.

Decisions are made by a majority of the votes present with the Chair having the deciding vote in case of a tie.

Under the provisions of Article 81¹³ the Governing Board is assigned the following responsibilities:

I. - To establish general policies and set the priorities that shall govern the SAE and which are compatible with sectoral programs;

II. - Subject to applicable provisions, it will adopt general policies, rules and programs to regulate agreements, contracts and accords that SAE will enter into with third parties in the areas of public works, acquisitions and provision of services. Such actions shall be the responsibility of the Director General, or civil servants who, under the provisions of the applicable legislation are authorized to act on his behalf, and shall follow any guidelines set therein by the Governing Board;

III. - Analyze and adopt the regular reports submitted by the Director General to include any pertinent comments by the Trustees;

IV. - Establish the general guidelines for the proper management and transfer of assets described in Article 1 of this law, and to prevent their alteration, deterioration, loss or destruction;

V. - Establish general guidelines for the use of assets to be followed by trustees, administrators, liquidators, comptrollers, as well as third parties described in Article 1 of this law;

VI. - Establish guidelines for the supervision of the database referred to in Article 4 of this law;

VII. - Approve SAE programs and budgets submitted by the Director General, as well as any amendments in accordance with applicable legislation;

¹³ Federal Law for the Administration and Transfer of Public Sector Assets.



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VIII. - Following report to the trustees and certification by external auditors, approve SAE Annual Financial Reports and authorize their publication;

IX. - Approve the SAE Organic Charter and the basic organizational structure of the body as well as any future amendments to them;

X.- At the request of the Director General, designate or remove SAE civil servants in positions two administrative ranks below the level of the Director General, and approve their salaries and other benefits to which they are entitled under the Organic Charter, in accordance with the provisions issued by the Secretariat for that purpose;

XI. Designate or remove the Governing Board's Technical Secretary and the Deputy Secretary;

XII. Authorize the various mechanisms for the sale of assets in accordance with the Regulations of this law;

XIII.- Issue the necessary guidelines for the destruction of assets in accordance with the provisions and Regulations of this law, as well as for the other actions relating to mission of the SAE;

XIV. - Issue guidelines for the sale of assets at various auctions taking into account market conditions in similar operations;

XV. - Designate and authorize the individuals who, on behalf of SAE, will serve summons within the scope of applicable penal legislation;

XVI.- Establish guidelines to ensure that, in the spirit of austerity and efficiency, the administrative structure of SAE operates with the resources that are strictly necessary to accomplish its mission, and

XVII. - Any other responsibilities established in this law and other applicable legislation.”

The Director General of the SAE is designated by the Secretariat, with the consent of the Federal Executive Branch and has, among others, the following responsibilities:

“Article 87.-The Director General of the SAE shall have the following responsibilities:

I. - Represent the SAE in all legal matters, including labor issues, and delegate that representation in accordance with the provisions of the Organic Charter;



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II. - Submit preliminary and reasoned reports in amparo proceedings when designated as the responsible authority;

III. - Manage the SAE budget in accordance with applicable provisions. In the event that expenditures not provided for in the budget are needed, the Director General shall obtain prior approval from the Governing Board;

IV.- Guide and coordinate SAE activities in accordance with the provisions and regulations of this law, and with any agreements adopted by the Governing Board for this purpose;

V. - Take active part in the meetings of the Governing Board but with no vote;

VI. - Nominate or remove interim trustees, comptrollers or managers of assets and submit nominations to the Governing Board for their consideration and final approval, and also carry out the dismissal of those individuals when an order to that effect has been issued by competent judicial or administrative authority;

VII. - Execute agreements adopted by the Governing Board;

VIII. - Submit SAE budgets and programs to the Governing Board for approval;

IX.- Submit to the Governing Board the designation or removal of civil servants who occupy positions two administrative ranks below the level of the Director General, as well as designate and hire all other SAE personnel;

X.- Submit to the Governing Board reports on the administration and management of asset; on the administration, transfer or disposal of assets, as well as on the performance of trustees, liquidators, comptrollers or administrators and of third parties described in Article 1 of this law;

XI. - Implement methods that will achieve the highest returns from SAE assets;

XII. - Gather information and statistical data that provide a picture of SAE's operations in order to improve its performance;

XIII. - Implement the necessary control systems in order to meet the goals and objectives set;

XIV.- Implement evaluation mechanisms that measure the efficiency and effectiveness of the entity's performance and, at least twice a year, submit to the Governing Board the performance evaluation, including the data previously agreed upon with the Governing Board, and with comments by the Public Trustee, and;



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XV. - Any other responsibilities established by this and other applicable laws, or those assigned to it with prior consent of the Governing Board.

h. Nicaragua

Recently, Nicaragua enacted Law 735-2010¹⁴, “*Law for the Prevention, Investigation and Prosecution of Organized Crime and for the Administration of Seized, Forfeited and Abandoned Assets*”, whose purpose is to regulate government actions aimed at preventing, detecting, investigate, and prosecute offenses connected to organized crime and with the administration or disposal of assets, objects, products, equipment or other instruments used or intended for use in the commission of the offenses established in this law.

Chapter VII of the Law establishes the creation of the Seized, Forfeited and Abandoned Assets Administrative Unit (UABIDA), as a decentralized entity with legal standing, its own property, technical and administrative autonomy, within the purview of the Ministry of Finance,¹⁵ whose objective is the reception, administration, safeguard, custody, investment, auction, donation, return or destruction of assets, objects or instruments that are the proceeds of criminal activity established in this Law.

The Public Ministry turns over seized assets, products or instruments exclusively to the UABIDA, which will keep them at the disposal of competent authorities until their forfeiture or confiscation is ordered and they are disposed of in accordance with the Law.

“Art. 44 Objective of the Unit. It shall be the Unit’s objective to receive, administer, safeguard, invest, auction of, donate, return or destroy the assets, objects and instruments that are the proceeds of criminal activity established in this Law.”

When the Unit deposits the assets, objects and instruments, the trustee shall guarantee the identification and integrity of the same, especially with regard to those aspects that are relevant to penal proceedings. When the assets, objects, products and instruments have been abandoned, the competent authority shall deposit them with the Unit and they will be distributed according to the provisions of this Law once all investigations have been completed and the Public Ministry has issued the corresponding order.

¹⁴ Law 735-2010, published in the Official Gazette No.199, dated October 19, 2010, and continuing on Official Gazette No.200, dated October 20, 2010.

¹⁵ Article 43, Law 735-2010.



In cases involving offenses established in this law, the judicial authority shall order the judicial deposit of the assets, products and instruments exclusively under the jurisdiction of the Unit which will keep them at the disposal of competent authorities which may, in turn, order their administrative deposit according to the criteria and proceedings established in this law. Likewise, when there are legal bases for seizure or forfeiture of assets in cases involving those offenses, the judicial authority shall order those measures in favor of the Unit and will place the assets under the Unit's jurisdiction."

The Seized, Forfeited and Abandoned Assets Administrative Unit is structured as follows:

1. General Directorate
2. Financial Administration Section
3. Custody and Registry Section
4. Juridical Section
5. Information Technology and Communications Section

The Director General shall have, among others, the following powers and duties:

- a) Administer, safeguard, and invest assets, objects, products and instruments deposited by competent authorities. To prevent the alteration, deterioration, loss or destruction of those assets, and, when legally justified, to sell them at auction, assign or donate them in accordance with this law and its regulations;
- b) To receive the assets, products and instruments that the competent authority, the National Police or the Public Ministry deposit with the Unit;
- c) Issue the rules and regulations to be followed by trustees, administrators, managers and comptrollers of seized assets;
- d) Organize, coordinate and execute the actions relating to the sale of assets in public auctions;
- e) Organize, coordinate and carry out the seizure of assets when required by competent authority;
- f) Establish controls for the effective and efficient management of storage facilities handling assets, products and instruments of crime, and maintaining an inventory of those assets from the moment they are placed in storage; and



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g) Any others established in this and other applicable laws.

i. Panama

Panama recently enacted Law No. 34, dated July 2010,¹⁶ which amends in part Law No. 23 of 1986, better known as the Law on Drugs.¹⁷ That law transfers the responsibility for administering those assets from the Center for Seized Assets and Funds¹⁸ to the Ministry of Economy and Finance, where instruments, real estate and personal property, securities and products that are the proceeds or related to criminal activity against the government, of money laundering, of financial offenses, of terrorism, drug trafficking or connected offenses temporarily seized by the Public Ministry will remain until a ruling is made by the competent court.¹⁹

However, it is possible that when an asset seized belongs to a third party not involved in the offense, the court with jurisdiction in the case, after consulting with the prosecutor, may designate that third party owner as trustee, granting him temporary administrative possession of the asset until a decision is rendered.

With regard to the granting of this provisional administrative possession, the amendment provides for a maximum period of sixty (60) days for the judge hearing the case to rule on the petition for possession or administration.²⁰

Specifically, the law institutes a proceeding for plea bargain in cases of seized assets for the offenses previously mentioned through an *extraordinary summary proceeding* which must be filed by Assistant Special Prosecutors for drug offenses and Assistant Special Prosecutors for offenses against Public Security.

In Panama's case, it seems very peculiar to find that Article 32 of the Law on Drugs mentions the possibility of "*inverting the burden of proof*", and that it has not been amended since it was included in the Single Text by Law 13 of 1994.

"Article 32: It shall fall on the person charged with drug trafficking and connected offenses whose assets have been temporarily seized, to demonstrate that those assets are of legal

¹⁶ Published in Official Gazette No. 26586, dated July 28, 2010.

¹⁷ Published in the Official Gazette No. 22628, dated September 22, 1994.

¹⁸ Custody and Administrative Management Unit under the jurisdiction of the Office of the Attorney General.

¹⁹ Amends Article 29 of Law 23 on Drugs of 1986.

²⁰ Legislation and Economy Magazine, by Querube del C. Herinquez.



origin and not the proceeds of the crime and that they have not been used in the commission of the crime.”

Furthermore, Article 3 of the Regulations for the administration and custody of seized assets²¹ of the Ministry of Economy and Finance (MEF) states that such entity shall have and carry out the temporary administration of assets seized which have been placed under its jurisdiction by the case investigator until the judge with jurisdiction in the criminal case issues a ruling. The Ministry of the Economy and Finance either administers the assets directly or through third parties.

j. Peru

In Peru, beginning with Legislative Decree No. 1104, published in the Official Gazette 464370, dated April 16, 2012, which amends the law on In Rem Forfeiture, the legislature establishes the National Commission on Seized Assets (CONABI)²², under the purview of the Chair of the Council of Ministers, with responsibility for reception, registration, identification, custody, safeguard, preservation, administration, leasing, assignment for temporary or permanent use, disposal and sale at public auction of objects, instruments, equipment and profits generated by the commission of crimes against the State established in the present Legislative Decree, as well as those included in regular or special laws on this subject matter but excluding those assets that are the proceeds of tax and customs violations.

The supplementary transitional provisions of the same entity, state:

“Second. - Transfers to CONABI

CONABI assumes the objectives, assets, budget and responsibilities of:

a. The Special Fund for the Administration of Money Obtained Illegally to the Detriment of the State - FEDADOI; b. The Commission for the Administration of Seized and Forfeited Assets - COMABID, of the Ministry of Justice and Human Rights; c. The Executive Office of Drug Control - OFECOD, of the Ministry of the Interior.

²¹ Official Gazette No. 26792-A, dated May 26, 2011.

²² CONABI has an Executive Council composed of the following members:

- a) A representative of the Chair of the Council of Ministers who shall serve as chair.
- b) A representative of the Judicial Branch;
- c) A representative of the of the Public Ministry;
- d) A representative of the Ministry of Justice and Human Rights.
- e) A representative of the Ministry of the Interior.
- f) A representative of the Ministry of Economy and Finance.
- g) A representative of the Ministry of Defense.
- h) A representative of the State Legal Defense Council.



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In a period of no more than ninety (90) business days beginning the day following the date this Legislative Decree enters into force, said entities shall report, or, as the case may be, begin to progressively transfer to CONABI all the seized and forfeited assets, money and property in their possession, with an updated inventory of those assets, indicating their status, geographical location, and also turning over the documentary archives under their responsibility. Until the transfer is completed, the transferring entity remains responsible for the custody and management of the assets under its charge.

If necessary, and for purposes of transferring budgetary allocations and respective documents to the Chair of the Council of Ministers, this is accomplished by Supreme Decree countersigned by the Ministry of Economy and Finance, at the request of the Chair of the Council of Ministers.”

CONABI has an Executive Secretariat that, among others, has the following responsibilities:

- a) Receive, register, identify, safeguard, administer, insure, preserve, assign for use, ease or arrange the sale at public auction, and make any other decisions allowed under the law regarding objects, instruments, property, and profits that are the proceeds of crimes against the State.
- b) Organize and manage the National Registry of Seized Assets - RENABI, which has a detailed record of the objects, instruments, property and profits that are the proceeds of crimes committed against the State.
- c) Request and receive from police, judicial and tax authorities information regarding seized and forfeited assets in order to meet its responsibilities.
- d) When appropriate, designate administrators, comptrollers, trustees or third parties specialized in the custody and preservation of objects, instruments, property and profits that are the proceeds of crimes committed against the State.
- e) Make use, either temporarily or permanently, of seized or forfeited objects, instruments, property and profits, as well as auctioning of and managing those assets.
- f) Establish the guidelines that public sector entities must follow for the proper upkeep, preservation and custody of objects, instruments, property and profits that are the proceeds of crimes committed against the State.



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- g) When appropriate, sell at public auction, either directly or indirectly, the seized or forfeited objects, instruments, property and profits that are the proceeds of crimes committed against the State.
- h) At or before the conclusion of proceedings and after their value has been assessed, order that seized or forfeited objects, instruments, property and profits that are the proceeds of crime be assigned for official use by various government entities and to private, non-profit organizations.
- i) Determine the allocation of resources obtained from the sale of assets at public auctions.
- j) Sign administration agreements with public and private entities for the purpose of managing objects, instruments, and profits that are the proceeds of crimes committed against the State.
- k) Request the budget for CONABI and for the resources used in the upkeep, preservation and custody of objects, instruments, property and profits that are the proceeds of crimes committed against the State.
- l) Any other responsibilities assigned by the regulations.

k. Dominican Republic

In the Dominican Republic, Article 51 of the Constitution of 2010 establishes the mandate to implement a system to manage assets seized or forfeited in penal proceedings which reads as follows:

“Article 51.- Right to property. The State recognizes and guarantees the right to property. Property plays a social role that implies responsibilities. Every person has the right to enjoy and dispose of his property...”

6) The law shall establish the system to manage and dispose of seized and abandoned assets in criminal proceedings and in In Rem Forfeiture proceedings as provided by law.”

For its part, Decree 288-96 which establishes the regulations of Law 50-88 on Drugs and Controlled Substances, defines seizure as the temporary custody or control of assets under order issued by a court or by the National Drug Control Directorate after all legal requirements have been met.



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Furthermore, the very Law on Drugs and Controlled Substances of the Dominican Republic,²³ establishes that personal property and real estate assets, equipment and other objects which are found to illegally store, preserve, manufacture, produce, sell or provide in any manner, heroin, cocaine, marihuana or any other drug classified as dangerous under the provisions of this law, as well as vehicles and other means of transportation, including airplanes, boats and seagoing vessels, as well as livestock used in the commission of drug trafficking offenses, and also money and property that are the proceeds of such activities, shall be seized and forfeited and placed at the disposal of the Dominican State.²⁴

Property seized or held under the provisions of this law shall not be recoverable but considered under the custody of the State through its competent entities, and subject to orders and judgments issued by the courts.

In addition, Law 72-0225 indicates that when money laundering or unjustified enrichment derived from criminal activity offenses are investigated, the competent judicial authority shall issue at any time, without notification or prior hearing, an order for seizure or temporary hold for the purpose of preserving the availability of assets, products, or instruments connected to the offense until a judicial judgment is issued with the authority of res judicata. This order includes the seizure or hold of money under investigation by the institutions described in Articles 38, 39 and 40 of the law relating to obligated subjects.

With regard to the entity responsible for the reception, custody and administration of seized assets, Article 58 of Law 72-02 established the asset management entity as follows:

“Under the purview of the National Committee against Money Laundering²⁶, the Office of Custody and Administration of Seized and Forfeited Assets, whose Director shall be designated by the Executive Branch and who will, in turn, recommend to the Committee the personnel to be designated as his staff, is hereby established.”

The main responsibility of the Office of Custody and Administration of Seized and Forfeited Assets (OCABI) is to maintain, protect, preserve, safeguard, manage, and sell seized and forfeited assets connected to the commission of any of the offenses established by Law No. 72-02 and which are not under a final sentence issued by the court. The office will also

²³ Law 50-88.

²⁴ Article 34.

²⁵ Law against Laundering the Proceeds of Trafficking in Drugs and Controlled Substances and Other Serious Offenses.

²⁶ Law 72-02 Money Laundering, Article 56: The National Committee against Money Laundering shall be chaired by the Chair of the National Drug Council and composed of the Magistrate Prosecutor General of the Republic, the Minister of Finance, the Superintendent of Banks, and the Chair of the National Drug Control Directorate. The members of the National Committee against Money Laundering perform their duties without remuneration.



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have the authority to contract private national or foreign companies for the administration of seized assets.

In addition, under the provisions of Decree 19-03, the regulations that govern the operations of OCABI, which was created by the law previously mentioned to administer assets placed in custody, and the entity's jurisdiction, to be addressed later in the study, enter into force.

However, there are differences of opinion among institutions regarding which office is responsible for the administration of seized and forfeited assets given that the Organic Law of the Public Ministry, Law No. 133.11, enacted on June 7, 2011, states in the following articles:

“Article 26.- Powers. Only the Public Ministry can initiate public criminal proceedings, without prejudice to the victims or citizens taking part in the proceedings, in accordance with the provisions of the law. To accomplish this, it shall have the following powers:

... 3) To safeguard and preserve without any damage, all objects and instruments, firearms or weapons of any kind, equipment, personal property and real estate assets, money in national or foreign currency, documents, property titles or titles of any kind, in other words, all the evidence and material property connected to the punishable offense or that have been seized or held as a result of an investigation. As an exception, the custody, analysis, and disposal of drugs and controlled substances shall be the responsibility of the National Forensic Sciences Institute (INACIF), which shall only retain the necessary samples, issue the appropriate certification, and order the incineration of the drugs or substances...

Article 47.-Responsibilities. The responsibilities of the Superior Council of the Public Ministry are the following:

- 6) Control the custody and administration of seized and forfeited assets...*
- 25) Adopt the regulations and guidelines for the implementation of this law...*

Article 108. - Annulments. This law repeals the Public Ministry Statute established by Law No.78-03 and any other law or regulation which either expressly or tacitly contradicts it.

Article 109.- Regulations. Until the regulations referred to by this law are enacted, the Public Ministry shall follow the legal framework in force as long as it is compatible with the provisions of this law.

1. Uruguay



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In Uruguay, Article 125 of Law 18046, later amended by Article 48 of Law 18362, establishes the Forfeited Assets Fund of the National Drug Board which is made up of the proceeds from the sale, lease and interests of the following assets:

- a. Assets and securities forfeited in any proceedings for offenses established in Law Decree 14.294 of December 31, 1974, as amended by Law No. 17.835 of September 23, 2004 and amendments.²⁷
- b. The proceeds from the sale, lease, administration, interest or any other benefit obtained from said assets and securities.
- c. The amount of the fines imposed by the Executive Branch in accordance with the provisions of Article 19 of Law No. 17.835 of September 23, 2004.
- d. Transportation vehicles forfeited in any proceedings for any of the customs offenses established in the Customs Code, as well as in later laws and decrees.

The National Drug Board (JND) is the highest authority and is responsible for approving, hearing and issuing a final decision regarding the assignment or transfer for any reason of forfeited assets as well as of determining their destruction when pertinent.

On the other hand, the Regulations of the Forfeited Assets Fund,²⁸ indicate that the National Drug Secretariat, Forfeited Assets Fund Section (SND/FBD), is responsible for the reception, inventory, and administration of the assets that make up the National Drug Board Fund, and is also responsible for adopting the necessary measures in order to implement and maintain a system that integrates the proceeding or stage prior to forfeiture through the registry and follow up of cases in proceedings where there are real property or real estate assets, money and/or financial products seized, as well as the later reception, registry, management and administration of forfeited assets that become part of the FBD.

Furthermore, without implying that this is a limiting list, it is the responsibility of the SND to:

- a. Follow up on the criminal proceedings that generated the seizure of economic assets maintaining a record of the pertinent information.
- b. File in competent courts the necessary measures to ensure the preservation of said assets and protect the eventual rights of the State.

²⁷ Law on Drugs and amendments.

²⁸ Decree 339-2010 dated November 18, 2010.



- c. Bring whatever pertinent actions are necessary before tax authorities in search of solutions that will help avoid the accumulation of debt for taxes, fines and extra charges due on seized assets.
- d. Implement the general rules and guidelines issued by the JND for the efficient administration of the assets that make up the FBD.
- e. File with the competent administrative and judicial authorities the necessary legal actions for the proper administration and reasonable preservation of forfeited assets.
- f. Update the inventory and appraisal of the assets by category, legal status and physical condition.
- g. Submit regular reports to the JND regarding the existing assets in the FBD of the Board for the purpose of taking the necessary measures for their assignment, transfer, donation, auction or sale.
- h. Carry out and coordinate the necessary actions to implement the resolutions of the JND that order the disposal of forfeited assets.
- i. Make reasoned recommendations to the JND regarding the disposal of forfeited assets.

- m. Venezuela

In Venezuela, Decree No. 8.013, published in the Official Gazette No. 39.602, dated January 26, 2011, establishes the National Service for the Administration and Transfer of Seized, Confiscated and Forfeited Assets (SNB), a specialized and decentralized service, with no legal standing, under the jurisdiction of the National Anti-Drug Office (ONA), technically autonomous and with administrative, operational, budgetary, financial and disposal management capacity, which will operate under the provisions of the Organic Law on Drugs.

The entity shall be responsible for the planning, organization, operation, administration, disposal, liquidation, transfer, custody, inspection, surveillance, proceedings and control within the country or abroad, of personal and real estate property, capital, boats and airplanes, automobiles, works of art and jewelry, livestock, assets and bank deposits, stock and rights allocated by the Criminal Courts, in accordance with the provisions of the law on drugs without prejudice to other assets, rights and stock that may be assigned to it in accordance with its jurisdiction.



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The SNB is managed and administered by an Executive Council which is the highest administrative body and is composed of the Chair of ONA, who serves as Chair of the Council, the Executive Secretary, a Director General and two Directors designated by the Chair of ONA.

Among the powers established by law are the following:

- a. Design, propose and select the general methodologies and procedures regarding the administration, disposal, preservation, and transfer of assets, stock and rights held, seized, forfeited and confiscated.
- b. Plan and design appropriate methodologies and mechanisms for award, use, preservation, upkeep, control, and taxation of assets, stock and rights, in accordance with the nature of the asset, guaranteeing the fairness and transparency of the process.
- c. Implement immediate and appropriate measures for the custody, preservation and administration of the assets with the goal of preventing their alteration, loss, deterioration or destruction.
- d. Supervise the custody, upkeep, preservation and security of assets assigned by special administrative agreements in accordance with the Law; and adopting whatever measures it considers necessary in the eventual non-compliance with the obligations established in this Decree.
- e. Implement the special procedures to be followed in preventive seizures, forfeiture and confiscation of assets, stock and rights in accordance with applicable law.
- f. Name or designate special trustees or administrators in accordance with the provisions of the Law on Drugs.
- g. Implement follow up and oversight of the performance of special administrators.
- h. Execute operations in foreign currencies in accordance with the provisions of the legislation in force regulating currency exchange operations.
- i. Develop the mechanisms to precisely identify the assets or instruments used in illicit activities in order to achieve the Service's objectives.
- j. Arrange for the restitution of expenses incurred in the upkeep and preservation of assets whose return has been ordered by the criminal courts.



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- k. Inform the National Anti-Drug Office and the Ministry of the Interior and Justice of the needs, plans and projects for optimizing the administration and disposal of assets, rights and allocations and any other aspect it considers relevant.**
- l. Implement an automatic information registry system of assets and allocated rights and stock.**
- m. Keep the Office of the Attorney General continuously informed regarding assets transferred by the Service in accordance with the law.**
- n. Control and supervise the proper use of allocated resources.**
- o. Figure out the amount of the expenses incurred by the Service in each case.**
- p. Arrange with banking institutions the transfer of funds in national or foreign currencies which have been ordered held or seized by the criminal courts.**
- q. Access any information, data or support necessary for performing its duties.**
- r. Employ the necessary special investigative techniques in order to obtain information on the assets and capital which are the object of this Decree.**
- s. Obtain appraisals of assets whose market value needs to be determined because of their nature.**
- t. Establish administrative or investment trusts, whichever is deemed more convenient, with the goal of guaranteeing administrative transparency and to optimize the return on the resources being managed.**
- u. Ensure compliance with the obligations established in the present Decree, as well as the application of sanctions necessary in accordance with applicable legislation.**
- v. Train and constantly update the training of Service personnel in their fields of competence.**
- w. Maintain a constant exchange of information and work developments with international organizations and networks in its area of competence.**
- x. Any other duties or powers established by law or assigned to it because of the nature of its responsibilities or specially assigned.**



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In accordance with SNB Regulations, the organizational structure of the Service is divided in three levels:

- a) **Higher Level.** Composed of the Executive Council, the Executive Secretariat and the Directorate General.
- b) **Support Level.** Composed of the Offices of Legal Counsel, Planning, Budget and Organizational Development, Administration and Finance, Information Systems and Technology and Human Resources.
- c) **Core Level.** Composed of the Department of Property Registration, Seizure and Identification, Asset Administration Department, Financial Management Department and Transfer Department.

For its part, the Property Registration, Seizure and Identification Department is responsible for implementing and enforcing the mandates issued by the Judicial Authority with jurisdiction over seizures of assets under the provisions of the Law on Drugs, as well as the identification of property, reception, registry, archives, safeguard and immediate custody of said assets.

The Asset Administration Department is responsible for the administration, control, safeguard, supervision and taxation of seized, confiscated and forfeited assets deposited with the SNB, overseeing their preservation, safekeeping, custody, use and upkeep in order to prevent those assets from being altered, lost or destroyed.

The Department of Financial Management is responsible for managing the administration and investment of the Special Administration Fund which includes the proceeds from the rents, yields and surpluses obtained from the administration and transfer of assets and from national or foreign currencies and securities certificates seized, confiscated or forfeited which are deposited with SNB.

Last, the Transfers Department is responsible for developing and implementing the mechanisms relating to the transfer of seized, confiscated, forfeited and abandoned assets that were used in the commission of offenses prosecuted under the provisions of the Law on Drugs, as well as for administering and coordinating their development.

III. Asset Reception, Custody and Administration

a. Bolivia



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Supreme Decree No. 26143, published on April 6, 2001, approves the Regulations for the Administration of Seized, Forfeited and Confiscated Assets whose purpose is to regulate the administration and control of seized assets subject to forfeiture and confiscation, from the moment of their seizure until their disposal in the manner ordered by the respective judgment, in accordance with the provisions of the Code of Penal Procedure adopted by Law No. 1970 and other legislation.

For its part, Supreme Decree No. 29305, published in the Official Gazette No. 3032, dated October 10, 2007, points out that DIRCABI may make direct use, according to the need for the use and the institutional administration, personal property and real estate assets seized which are under its jurisdiction and, also, loan them to public institutions that lack the necessary resources and which serve a public or social purpose.

Chapter I of the Regulations supra provides a step by step description of the actions regarding the direct administration of seized assets beginning with reception, inventory, and registration by DIRCABI.

If money is seized, whether in national or foreign currency, it should be deposited in DIRCABI's name in an account at a bank or financial institution of the national system, within a maximum period of twenty-four hours, thus ensuring that it will maintain its value and interest. If the money is to be returned, it should be done after a judicial order has been issued.

In the case of bills or coins bear markings, signs or other characteristics that need to be preserved for purposes of criminal prosecution, the prosecutor will instruct DIRCABI to maintain them in the same condition as they were received. In these cases the deposits will earn no interest.

With regard to seized jewelry and stock, these should be deposited under the name of the Directorate of Registration, Control and Administration in a safety deposit box at a bank or financial institution of the national system. The District Chief is the only authority responsible for handling safety deposit boxes.

Works of art or archeological or historical pieces seized shall be cared for and deposited in museums, cultural centers or institutions, taking into consideration the opinion of the Ministry of Education and Culture.

For its part, DIRCABI is responsible for the custody of any weapons seized until their disposal is ordered by judicial decision. Likewise, DIRCABI shall have the power to turn the weapons over to the Special Anti-Drug Trafficking Unit (FELCN), or to the country's Armed Forces in accordance with existing agreements and by judicial order. In case of acquittal,



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once the sentence has been executed, restitution of the weapons to the owner shall proceed except when it involves weapons that are not authorized for personal use.

In the case of airplanes, small planes, helicopters and flying equipment, and of river and lake vessels, and navigation equipment seized that have not been sold at public auction, they shall be deposited on loan with the Bolivian Air Force and the Bolivian Navy under their responsibility. Furthermore, prior authorization from the judge in the case, DIRCABI shall be able to make use of airplanes and vessels seized, forfeited and/or confiscated.

With regard to other seized personal property, those shall be placed in custody and preserved in whichever places DIRCABI determines, be it in its own warehouses or in storage where assets are seized or special storage may be requested in government or private entities.

Specifically, Bolivian legislation allows the advanced sale of seized assets without the consent of the owner when it involves edible goods, perishable goods, livestock or assets susceptible to loss of value due to aging technology. These will be sold directly or at public auction, whichever is more suitable. Edible and perishable goods shall be sold directly except in the following cases:

- When in the opinion of the Office of the District Chief with jurisdiction, the items are in danger of perishing in a period of less than fifteen days; or
- When the expenses of a public auction are more than fifty percent of the estimated value of the asset.

In all instances, the money obtained from the sale is deposited in an account under DIRCABI's name in a bank or financial institution of the national system ensuring that it retains its value and interest. When the judicial sentence orders the return of the assets that had been previously transferred, the return shall be considered fulfilled when the amount obtained from the sale of the assets plus interest accrued, minus regular and extraordinary expenses incurred in the administration of the assets, is paid to the owner.

However, in the case of personal property subject to registration, the transfer bill shall be signed by the Director General of DIRCABI, prior authorization of the judge hearing the case, except in cases stipulated in the Code of Criminal Procedure.

With regard to the administration of real estate assets the regulations include:

- a. Award as deposit to persons who hold title to the right to use and behoof the assets who can certify by registered means that their right was granted prior to the issuance of the seizure order;



- b. Award as deposit of a single real estate property seized to relatives of the defendant who lived in that property prior to the issuance of the seizure order. Live-in spouses or companions, adult children or parents of the defendant, in that order, shall be designated trustees. In all cases, those persons who have custody of the defendant's underage children shall have preference;
- c. The execution of lease and commodatum agreements with physical or juridical persons. Commodatum agreements shall only be entered into when all possibilities of generating profits or interest from the seized assets have been exhausted and when the custody of the asset, due to its nature, becomes overly expensive for the entity;
- d. Sale of the asset with the express and written consent of the defendant;
- e. Custody of the asset.

Anytime DIRCABI decides to lease a seized asset, the asset shall be publicly offered after its value has been assessed in order to establish the leasing fee. Interested parties shall submit their offer and a description of how the asset will be used in a sealed envelope to the Office of the District Chief. The Office of the District Chief shall rank the offers based on the same procedure provided for in Article 64 of the Regulations.

Once the report has been received, the Directorate will determine which offer to accept and execute the lease agreement. The money generated by the lease will be deposited in DIRCABI's name in an account at a bank or financial institution of the national system, ensuring that the capital retains its value and earns interest.

Lease or commodatum agreements shall be subject to a condition subsequent which will emanate from the judicial decision determining the final disposal of the asset.

b. Colombia

As it was previously indicated, the DNE is in the process of liquidation;²⁹ however, it is important to point out the procedures that regulated the administration of assets, particularly those, which under the provisions of Law 785-2002, established the parameters and procedures DNE had to follow regarding the transfer, contracts, temporary destination and temporary storage.

Once seized assets are made available by the competent authority, perishable or edible goods and, in general, assets vulnerable to deterioration as well as others that, in addition

²⁹ Executive Decree 3183 dated September, 2, 2011.



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to those just mentioned, the National Narcotics Council (CNE) determined, could be transferred in advance as long as it was convincingly established that those assets were vulnerable to a significant loss of their commercial value.

Transferred funds were deposited in a special subaccount of the Fund for Rehabilitation, Social Investment and the Fight against Organized Crime (FRISCO) and were managed by the National Narcotics Directorate and invested, primarily, in public debt securities in the primary market before opting for investments in the secondary market, depending on the liquidity needs of that Fund.

FRISCO was a special account, with no legal status and managed by DNE in accordance with the policies implemented by the CNE; however, through the provisions of the Executive Decree already mentioned,³⁰ it came under the direct administration of the Ministry of Justice and Law.

One special and specific power of the administrative processes of the DNE had to do with its contracting system which did not follow regulations governing administrative contracts of public entities but, rather, was able to select contractors and enter into lease, administration or fiduciary agreements with them under the provisions of the Civil Code and the Commercial Code.³¹

The purpose of that authority was to guarantee that seized assets continued to generate profits and employment and to prevent their preservation and custody to require expenditures from the government's budget.

In all instances involving the selection of a contractor, the DNE, as a minimum, had to publish an invitation to submit bids in a newspaper that was widely distributed nationally or post it on the entity's web page, in order to receive bids and decide, in a public hearing and based on at least three (3) bids, who had been selected. In the event that only one offer was made and the bid was eligible, the contract could be awarded making note of the circumstances of the award in the corresponding document.

In the case of leased seized real estate assets that were forfeited, the CNE could authorize the renewal or extension of the lease agreement while the disposal of the asset was determined. But, if in the contrary, the asset was ordered returned by final judicial sentence, the contract would continue until its term expired without prejudice to early termination provisions contemplated in the Civil Code and in the Commercial Code. In cases of physical return of the asset, the lease agreement with the holder of that right was rescinded.

³⁰ Executive Decree No. 3183 dated November 2, 2011.

³¹ Article 3, Law 785-2002.



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On the other hand, the DNE had the authority to enter into agency agreements or trust management agreements for seized real property or real estate assets with public or private entities subject to oversight and control of the Superintendency of Corporations when administration and custody costs became too steep.

In all cases, trust agreements were paid with charges to the assets being administered or their profits, the amount of remuneration and of the administrative costs incurred. Any shortages that existed to cover those costs were demandable at the same level of preference as administrative costs are given in an arrangement with creditors, based on the value of the assets once they are liquidated or sold at auction. This trust agreement was not subject, in its structure or development, to the rules of administrative contracts but to the provisions of ordinary commercial or financial law.

With regard to real estate trusts, the public or private entity could execute consignment agreements for their management with public or private entities whose sole purpose was to engage in the real estate business and which, in the opinion of the DNE, had moral integrity.

For its part, Colombian legislation allowed for the temporary award or assignment of seized assets from the moment they were placed at the disposal of DNE and once they had been entered into the inventory.

This temporary award had to be directed preferably towards official entities or, otherwise, towards private law non-profit entities in accordance with established requirements and procedures.³²

When the asset could not be awarded under the above mentioned terms, the CNE could, as an exception, give prior authorization to DNE for the award of an asset to a private law for-profit entity. In these last two instances, the private individuals had to guarantee the DNE that the exploitation of the asset would produce an economic return. In the award of vehicles, territorial entities would be given preference.

In order for the temporary award of assets to private law entities to be legal, the members of management and the founders or partners of such entities, when dealing with corporations other than publicly traded companies, need to have clean criminal backgrounds, and the award should never be granted when any of the founders, partners, members of management or administration, internal auditor or employee of the requesting entity or the entity itself, is or has been leaser or trustee of the asset to be placed in temporary assignment.

³² Decree 306 of 1998 and 461 of 2000.



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The asset being awarded temporarily should be protected, prior to being assigned, by security interests, bank guarantee or a full coverage insurance policy issued by an insurance company legally established in Colombia.

However, if rural assets with livestock production or fishing operations were assigned to the objectives established in Law 160 of 1994,³³ then, in accordance with the provisions of Decree 182 of 1998, the Colombian Institute of Agrarian Reform (INCORA) had a period of three months, beginning on the date the DNE provided the appropriate information to issue its opinion on the rural assets' reported aptitude for livestock production or fishing operations.

If at the end of the period indicated in the previous paragraph INCORA had not issued an opinion regarding the rural asset's aptitude and conditions for livestock production or fishing operations, the DNE could temporarily assign them in accordance with the general rules established in Decree 306 of 1998 and Decree 1461 of 2000, -regarding the administration of assets - or apply to them any other temporary administration system, in which case, it could resort to rural workers cooperatives, displaced persons cooperatives through the Solidarity Network, Livestock Funds (Fondo Ganadero) or other governmental or private entities whose objective is to develop agricultural production.

With regard to the return of assets ordered by competent authority which were administered or in the custody of the DNE, the process should follow the following provisions:

If the assets have not been transferred and remain under the administration of the DNE, those assets will be returned in their current condition or the proceeds of those assets, if there are any, will be returned minus the amount for any tax payments made.

If the transfer has already been done or if the asset has been destroyed, the current value of the sale price will be returned without prejudice to any action established by law.

For its part, the DNE, in cases in which legal action has been brought against the entity due to the condition of the assets to be returned, will seek to implead contractors, consignees and trustees who temporarily managed those assets.

³³ "ARTICLE 1. - Inspired by the constitutional principle that it is the duty of the State to promote the rural workers' progressive access to land and to other rural public services for the purpose of improving the income and quality of life of the rural population, the purpose of this law is to: First: promote and consolidate peace through mechanisms to achieve social justice, participatory democracy and the well being of the rural population..."



c. Costa Rica

In accordance with Law 8204³⁴ and Law 8754,³⁵ it is the responsibility of the ICD through the Seized and Forfeited Assets Unit (UAB), as the judicial trustee, to receive immediately and exclusively from judicial authorities all seized assets. Once received, identified and entered into the inventory, the UAB must administer those assets or deposit them in the form of an asset trust with a state bank depending to its needs and interests.

The UAB is composed of a group of professionals - business managers, asset inspectors, attorneys and other specialized professionals – who have the responsibility of monitoring judicial proceedings and provide support to the Public Ministry and to competent judicial authorities involved in the custody, administration and preservation of the assets received in judicial deposit.

In the case of seized assets loaned in commodatum agreements, before their delivery and use the beneficiary institution should insure them for their full value, in accordance with the law, for the purpose of guaranteeing a possible repayment due to loss or destruction. For that purpose, the ICD signs with law enforcement organizations³⁶ or institutions engaged in prevention,³⁷ commodatum agreements detailing the rights and obligations of the parties regarding the use, upkeep and preservation of seized assets, among them, the supervision and control by the UAB.

From the moment the ICD is designated judicial trustee, seized assets will be exempt from all types of taxes, fees, stamps, vehicle registration and any other form of contribution.

To prevent assets from deteriorating, being damaged and require expensive upkeep, Costa Rican legislation provides for the advanced sale³⁸ of the assets and the UAB can sell or auction them before the final sentence has been issued, prior issuance of a well founded administrative order to motivate the action which should include the asset's market value.

Funds that are the proceeds generated by the transfer must be deposited in the ICD checking accounts until the judicial proceedings are completed. Furthermore, the legislation authorizes the UAB to invest those funds generated by transfers in any financial instruments offered by state banks that will maximize returns and minimize risks. Profits generated by the investments may be reinvested in a similar manner or used for the

³⁴ Law on Narcotic Drugs, Psychotropic Substances, Unauthorized Drugs, Money Laundering and Connected Activities.

³⁵ Law against Organized Crime.

³⁶ Judicial Police, Administrative Police or Public Ministry involved in combating drugs and organized crime.

³⁷ Public and private institutions and NGOs involved in drug prevention.

³⁸ Article 31, Prior disposal of assets, Law 8754 against Organized Crime.



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development of policies, plans and strategies to combat those crimes established in the Law against Organized Crime.

With regard to perishable goods, fuel, construction materials, scrap metal, essential precursors and chemicals, and livestock, the entity may sell, donate or destroy them before a final judgment is issued in the respective criminal proceedings. To that effect, the UAB must issue a well founded administrative order to motivate the action and it should include the market value of those assets.

It bears mentioning that Costa Rican legislation provides for the forfeiture of abandoned and unclaimed assets through competent judicial authorities and which are placed under the jurisdiction of the ICD to be allocated in accordance with the law and the following cases:

First. During the investigation phase, after six months have elapsed since the seizure of personal property and real estate assets, vehicles, instruments, equipment, stock, and the money used in the commission of offenses established in Law 8204³⁹ and Law 8754,⁴⁰ as well as the seizure of the various assets or stock that are the proceeds of such crimes, and it has not been possible to establish the identity of the author or of the participant in the crime, or if that person has abandoned the assets, the tools and the means of transportation used.

Second. When more than three months have elapsed since the final sentence has been issued, and those persons who may claim a legitimate legal interest to the assets used in the commission of the offenses established in these laws have not initiated any action to reclaim them, the time period for the interested party to file any claim shall expire, and the ICD shall be able to dispose of the assets prior authorization from the court hearing the case.

On the other hand, when the national judicial authorities seized money, those funds must be deposited in an ICD checking account and a copy of the deposit slip, including information regarding the single number of the judicial file and the name of the defendant or person who is the subject of the seizure, must be submitted immediately for the purpose of controlling and supervising the checking accounts.

The interesting and uncommon aspect of the proceeding established in Costa Rican legislation⁴¹ is that it stipulates a specific destination for the interest or proceeds generated

³⁹ Law on Narcotic Drugs, Psychotropic Substances, Unauthorized Drugs, Money Laundering and Connected Activities.

⁴⁰ Law against Organized Crime.

⁴¹ Article 85, Law 8207 on Drugs and Article 30 of Law 8754 on Organized Crime.



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by the checking accounts of seized funds which, in accordance with the provisions of Law 8204, must be allocated to:

- a. 60% to the implementation of prevention programs. At least half of that percentage shall be allocated to programs to prevent drug use, and to treatment and rehabilitation programs operated by the Institute on Alcoholism and Drug Addiction (IAFA).
- b. 30% to repressive programs.
- c. 10% to the safeguard and upkeep of seized assets.

And in the case of offenses established in Law 8754:

- a. 40% to the Judicial Investigative Organ, for the service, maintenance and updating of the PIP⁴², and for the investigation of crimes and the protection of individuals.
- b. 20% to ICD, for expenses incurred in the administration, insurance, follow up and upkeep of seized and forfeited assets.
- c. 10% to the Judicial Power, for maintenance and updating of the Judicial Center for Wiretapping and Communications Intercepts (CJIC).
- d. 10% to the Ministry of Justice to cover the needs of the Correctional Police.
- e. 10% to the Public Ministry for the Crime Victims Assistance Office.
- f. 10% to the Ministry of Public Security and Governance to cover the needs of law enforcement agencies that are part of the Ministry.

The ICD currently has three accounts opened in a Costa Rican state bank, one in US dollars, one in Euros and one in Colones. When money in other currencies is seized, the UAB receives it and safeguards it by depositing it safety deposit boxes in a national bank. The same procedure is followed for jewelry, rings, precious stones, and any other asset with monetary value.

d. Ecuador

In Ecuador, the asset administration system is divided in two: the first part operates under

⁴² Article 11, Law 8754.



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the provisions of the Law on Narcotic and Psychotropic Substances of December 27, 2004, and the second, operates under the provisions of the Law against Money Laundering, No. 12-2005. Each one of these two parts issues its own regulations regarding the administration of assets but through the same entity.⁴³

In accordance with the Rules on the Deposit of Seized and Confiscated Assets delivered to CONSEP, number Ro-S 637 dated February 26, 1996, the custody and administration of assets is the responsibility of the Directorate for the Administration of Assets in Custody.⁴⁴

That law regulates the deposit of seized private assets with CONSEP by order of the competent judge, and deposit is understood to mean the custody of non-productive assets and the administration of productive ones. To that end, the Executive Secretariat shall determine the opening of as many checking accounts as necessary and shall provide guidance for their management and control. In addition, the Secretariat may contract the necessary administrative trustees or custodians and, at the same time, rescind contracts due to negligence or mistakes attributable to the contractor without prejudice to any civil or criminal action that may be filed.

Personal property that has been ordered seized and placed in deposit by a judge are received by personnel of the Directorate for the Administration of Assets in Custody in the corresponding jurisdiction, who will proceed to receive them after signing the proper documentation which will include the inventory of the assets.⁴⁵

Once the respective receipt and delivery documents have been signed, non-productive assets must be stored by the custodian in the entity's warehouses or in leased storage. Storage costs are the responsibility of the owner of the assets in custody.

In the case of productive assets, the trustee-administrator will manage them in accordance with the provisions of the Regulations. The proceeds obtained from the administration of the assets, minus operation and maintenance costs, will be deposited in the special escrow account of CONSEP.

In the case of money in national or foreign currency, stock certificates or negotiable instruments seized, those will be deposited in the Central Bank of Ecuador subject to applicable regulations. CONSEP may also deposit under the custody of the Central Bank, stock certificates and negotiable instruments seized.

⁴³ CONSEP through the Directorate for the Administration of Assets in Custody.

⁴⁴ Art. 2. - Custody and Administration. – It is the responsibility of CONSEP, through the Directorate for the Administration of Assets in Custody to safeguard and administer the assets mentioned in the preceding article...

⁴⁵ Article 5 of the Rules on the Deposit of Assets Seized and Confiscated delivered to CONSEP.



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With regard to non-productive real estate assets, once the respective receipt and delivery documents have been signed, they must be safeguarded by the respective trustees.

Real estate and industrial or commercial or services assets in operation shall be managed by the respective trustees-administrators. Any proceeds obtained from the administration of the asset, minus operation and maintenance costs, will be deposited in the special escrow account of CONSEP.

This CONSEP regulations in particular, authorizes the entity to transfer assets that could be damaged, deteriorate or be destroyed by the passage of time, such as paper, chemical products, chemical substance, beverages, edible goods, lumber, etc. In this case, transfer can be accomplished by CONSEP's Executive Secretary through direct sale or sealed-bid process, in accordance with the procedures established for that purpose. The proceeds from the transfer are deposited in the special escrow account of CONSEP.

The contracting of depositaries-administrators⁴⁶ is done by the Executive Secretary by direct invitation disseminated through the media which must comply with the requirements established in Article 14.2, and meet the obligations described in Article 15 of the Regulations.⁴⁷

The requirements to become a depositary-administrator are: to be 35 years or older, Ecuadorean national, with full citizenship rights, and to present certification of expertise and experience for the position.

CONSEP is authorized to enter into service contracts with natural or legal persons to carry out appraisals, auditing, supervision, leasing, sub-leasing and management of productive assets delivered for deposit.

In addition, CONSEP can contract with management companies for the organization, management and control of the financial and administrative actions taken with regard to productive assets, including the authority to sell the fruits or proceeds from the asset and reinvest them for the unit's benefit.

The control, management, supervision, and auditing of the management performance of private administration companies is the responsibility of the Directorate for the Removal of Assets in Custody, an authority that it can exercise at any time. In addition, it can oversee agreements, expenses, withdrawals, demand accounting, and receive the stipulated percentage of profits and other economic benefits generated by the assets.

⁴⁶ Section IV on depositaries and administrators and their obligations. Regulations on the Deposit of Seized and Confiscated Assets Delivered to CONSEP.

⁴⁷ Art.14.2.- Requirements for bidders.



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As pointed out in the beginning, in addition to these provisions the “Substitute Regulations of the Special Regulations for the Control of Assets of the National Anti-Money Laundering Council” published in Official Registry 146 of August 13, 2007, outline the procedures to follow for the administration of assets that are the proceeds of money laundering offenses.

Thus, in Resolution No. 002-2007 of March 9, 2007, the Executive Board of the National Anti-Money Laundering Council, through its Executive Secretary, designated CONSEP as the temporary administrator of assets subject to precautionary measures issued by judges with jurisdiction over the cases brought for money laundering offenses, in accordance with applicable provisions established in the Law to Suppress Money Laundering, its General Regulations and in the Special Rules for the Control of Assets of the National Anti-Money Laundering Council.

However, let’s remember that a recent publication dated December 30, 2010, in Official Registry No. 352, named, the Law to Suppress Money Laundering Reform Act in its transitional provisions stated that: *“Assets under the temporary administration of the National Anti-Money Laundering Council, and those which in the future are the object of precautionary measures issued in criminal proceedings for money laundering or crime financing offenses, shall remain in the custody and safeguard of the National Council for the Control of Narcotic and Psychotropic Substances acting only as depositary, until the same are delivered within a maximum period of one hundred and eighty days to the specialized public entity created to administer them.”*

Therefore, the custody and administration of assets connected to, both, drug and money laundering related crimes is delegated to CONSEP through the Directorate for the Administration of Assets in Custody, until this new institution mentioned in the reform act cited *supra* is created.

e. Guatemala

The administration of assets in *In Rem* Forfeiture proceedings is established in the Regulations of the same law enacted by Government Agreement No. 514-2011, dated December 27, 2011.

As previously pointed out, SENABED is composed of various departments and units, among them, the Asset Control and Registry Department which is responsible for the planning, organization, execution, management and control of all procedures regarding the reception, inventory, storage and preservation of assets in *in rem* forfeiture proceedings, their custody and administration, as well as having experts from the Ministry of Finance assess their value. In addition, the office is responsible for developing cost projections for



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upkeep costs and recommend, when necessary the sale of perishable goods or assets that are difficult to maintain and preserve in accordance with the provisions of the Law on In Rem Forfeiture No. 55-2010.

The Asset Administration Department is responsible for implementing the asset administration policy by itself or through third parties in order to guarantee their productivity. To that end, the department must have the assets appraised and recommend contracting the necessary services and propose the best investment options for money funds in accordance with the guidelines established in the investment policy which must be formulated annually by the Investment Unit and submitted through appropriate channels to CONABED for approval.

In addition, this department must have specialists in public trusts in order to supervise them.

The Contractors Registry Unit is responsible for developing lists of natural or legal persons, national or foreign, and any type of entity that could be contractors or have an interest in competing for all types of contract opportunities, such as: sales, donations, leasing, commodatum, administration or trusts involving assets subject to in rem forfeiture that have been forfeited.

These lists shall consist of contractors whose qualifications, background and honesty have been thoroughly checked and should be the ones SENABED resorts to for service contracts.

For its part, the Investment Unit is responsible for developing investment guidelines which it must formulate annually and submit through appropriate channels to CONABED for approval. Furthermore, the Unit shall play a role as an investment advisor together with the Secretary General or the Assistant Secretary General; two representatives designated by CONABED, who can come from outside CONABED entities; the Director of the Asset Control and Registry Department; the Director of the Asset Administration Department; the Financial Administration Director of SENABED, and the Internal Auditor of SENABED.

As part of the administration of assets, the Law and Regulations on In Rem Forfeiture authorize the temporary use of assets under SENABED administration by adhering to the following procedure:

Should SENABED have no interest in the temporary use of an asset, the entity will verify that the public organizations or institutions that request it played a direct role in the investigation or seizure of the asset, or are institutions that take part or collaborate in the investigations established in the Law on In Rem Forfeiture, or those relating to the fight against organized crime.



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Beneficiary institutions must take out an insurance policy on the asset payable to CONABED. The public organization or institution requesting the asset shall be responsible for obtaining and paying for the policy.

Once the policy has been issued, SENABED will release the asset after signing the corresponding document. In addition, asset maintenance and operation costs shall be borne by the entity having temporary use of the asset.

The expenses mentioned above may be covered by SENABED with part of the earnings from the funds seized designated to defray the operational costs of the entities that took part in investigations and actions relating to in rem forfeiture proceedings, as long as funds are available and the asset awarded for temporary use is dedicated exclusively to:

- 1. Investigations and actions relating to In Rem Forfeiture proceedings.**
- 2. The investigation of illicit activity established in the Law on In Rem Forfeiture;**
- 3. Support in the use of special investigative techniques in the offenses established in the Law against Organized Crime, Decree No. 21-2006 of the Guatemalan Congress.**

In the case of follow up and transfer of productive assets that have been the object of precautionary measures and, for the purpose of verifying the condition of those assets that have an economic interest for CONABED, that have been the object of any of the precautionary measures established in the Law on In Rem Forfeiture, SENABED shall proceed as follows:

Coordinate, through the Asset Control and Registry Department, with the authorities responsible for the precautionary measures in order to determine the methods and mechanisms for SENABED personnel to have access to the assets and determine that they represent an economic interest for CONABED. In addition, SENABED personnel will determine and document the actual condition of the assets and coordinate with the pertinent authority the transfer of the assets to SENABED.

The authorities responsible for the transfer or delivery to SENABED of the assets which are the object of in rem forfeiture proceedings shall have the responsibility, in coordination with law enforcement authorities, to ensure that the assets are delivered in the condition necessary for their effective reception, administration, use and custody, and the immediate contracting of any services.

Furthermore, Guatemalan legislation provides for the advanced sale of assets. When the Public Ministry has not required on its own initiative the advanced sale of the asset, SENABED will propose such action in order to have the Public Ministry request judicial



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authorization. All aspects relating to the transfer of ownership of the asset will be governed by the judicial order.

Once the judicial authorization has been issued, SENABED will proceed with the advanced sale at public auction in accordance with the following procedure established in the Regulations of the Law on In Rem Forfeiture:

1. For the appraisal of the asset, its type, condition and market value shall be taken into account bearing in mind CONABED's overriding preference for greater safety and earnings potential.
2. The appraisal of assets to be auctioned will be done by reputable experts under the strict oversight of the Secretary General of SENABED.
3. Once the appraisal has been done and the minimum bidding prices for the auction have been set, the day and time of the auction is announced in the Diario de Centro América (Central American Newspaper), another newspaper with wider distribution, and Guatecompras. The auction shall take place within a minimum of fifteen days and a maximum of thirty days from the date it was publicly announced.
4. Only bidders who are already registered with the Contractors Registry Unit will be admitted in accordance with the procedure established by SENABED and who, prior to the auction, have deposited the percentage established in the publication which shall never be less than five or greater than ten percent of the base price for the auction.
5. If there are several items to be auctioned, the sale can be done by lot or by unit, taking into consideration the bids made for each one separately. Once the highest bidder has been selected, the other bidders will get their deposits back.
6. In the event that the highest bidder fails to meet the conditions established for payment, the deposit to participate in the auction becomes part of the funds of CONABED and a new auction is held without need for new judicial authorization.
7. Expenses, taxes or fees of any kind which are generated by the award or transfer of the asset are the sole responsibility of the buyer.
8. SENABED informs the competent judicial authority within five days of the sale.
9. If the assets cannot be sold, SENABED, with the consent of CONABED, will request judicial authority to dispose of the assets.



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An interesting element introduced by the Law on In Rem Forfeiture is the matter of repatriation of assets, which comes into legal play when a judicial decision or sentence has ordered the in rem forfeiture of assets located abroad, without prejudice to judicial decisions regarding precautionary measures that can be executed abroad. CONABED should encourage the necessary agreements with its counterparts in other countries or, otherwise, follow the procedures established in international treaties and agreements or seek diplomatic channels, if suitable, for the purpose of ensuring the repatriation of those assets.

When, due to the nature the assets, their repatriation is not possible, CONABED shall urgently seek to monetize those assets in the country where they are located and, if successful, transfer those funds to the checking accounts of SENABED.

In addition, the Law on In Rem Forfeiture also introduces a new element with regard to liens and mortgages on assets subject to In Rem Forfeiture proceedings and, in this regard, it points out that the National Secretariat for the Administration of Assets Forfeited in In Rem Proceedings may cancel any amount owed for liens, security interests on moveable property, good faith or not fraudulent mortgages that may affect assets subject to in rem forfeiture when:

- 1) In rem forfeiture is ordered and in rem rights are recognized, the transfer or auction of the assets will proceed and the debt shall be paid off. The Secretariat may also award the asset in payment if it deems it convenient.
- 2) The National Council for the Administration of Assets in In Rem Proceedings deems it in its interest, may join as an interested third party at any stage of enforcement proceedings regulated by the Code of Civil Procedures and the Code of Commercial Procedures, Law Decree No. 107, and pay the amount owed to creditors in which case the rights of good faith creditors shall be subrogated.
- 3) The advanced auction or sale of assets subject to precautionary measures when they are at risk of perishing, deteriorating, depreciating, or losing their value or their preservation would cause harm or require expenses out of proportion with their value or administration, prior recognition of in rem rights and under the terms stipulated by the decision.

f. Honduras

Under the provisions of the Regulations on the Administration of Seized and Forfeited Assets of OABI, the asset reception process starts with the communication sent by the competent authority to OABI and concludes with the signing of the corresponding receipt-



delivery document and the inspection of the asset, which will determine the day in which the assets become subject to the provisions of the regulations.

Before the OABI receives the assets, personnel from the Seized and Forfeited Assets Unit (UBID) must confirm that the communication from the competent authority meets, at least, the following requirements:

- a) Case number of the judicial or administrative file
- b) Name of the defendant(s) or suspect(s)
- c) Offense or alleged cause for detention
- d) Designation of competent authority
- e) Copy of the seizure warrant for the asset
- f) In the case of accountable assets, a copy of the detention or seizure warrant or record of filing.
- g) Name of registered owner.
- h) Detailed description of the asset including the necessary information in order to correctly identify it; in the case of personal property: description of the brand, serial number, and/or model and/or year; for vehicles, vessels and airplanes – chassis number, engine number and license plates; and for real estate assets: title deed number, registry book and volume, and exact location, and must include whether it is for purposes of occupation in which case it must state the date and time when the property will be occupied.

If the examination of the application reveals that the requirements established have not been met, OABI, through its Executive Board, and prior notification of the UBID, notifies the competent authority in order to have it obtain the missing documentation.

Once the requirements have been met, the UBID will effect receipt of the asset through the signing of the receipt document which must include the following information:

- a) Place, date and time
- b) Serial number of the certificate.
- c) Name and signature of the officer of the competent authority making delivery.
- d) Name and signature of OABI officer receiving the asset.
- e) Clear and detailed physical description of the asset or assets.
- f) Current condition of the asset.
- g) Indication that the assets received are not elements of proof or evidence.
- h) For vehicles, vessels and airplanes an inventory inspection certificate shall be drawn up which will contain engine and chassis number, as well as all accessories, tools and equipment included with the asset.
- i) Indication of any obligations, liens or mortgages.



- j) For real estate property intended to be occupied, a detailed inventory of the asset's condition as well as of the personal property inside will be taken.
- k) For livestock, a description of the breed, gender, registration or branding if they have it.

In the case of businesses in operation that have been preventively seized, personnel of the Administration and Management Unit must verify that the written notice from the competent authority meets, at least, the following requirements::

- a) Inventory of assets of the business.
- b) Copy or certification of the corporate charter as the case may be.
- c) Copy of seizure warrants or freeze orders for corporate bank accounts.
- d) Profit and loss statements, accounting transactions, balance sheet, if available. In the event that these documents are the object of an investigation, copies of the same shall be provided to OABI..

Once the above mentioned requirements have been met, it is the responsibility of the UBID to proceed with the registration and custody of the assets seized and placed under OABI management. In addition, it is the responsibility of the Legal Unit to provide support to UBID and monitor the judicial file which originated the asset's seizure in order to determine their status in judicial or administrative proceedings, and, therefore, it must verify the precautionary seizure, detention or provisional filing in the appropriate public registry.

In order to optimize the administration of the assets, OABI takes into account the following provisions:

- a) The administration of the assets seeks the lowest possible costs without jeopardizing their preservation.
- b) Every effort is made to keep assets productive according to their type.
- c) If assets are difficult or too costly to maintain, the entity should pursue their sale at auction and the proceeds of the sale should be deposited in the OABI account until the judicial authority determines their final disposal.
- d) Any other provisions determined by the Law on In Rem Forfeiture of Assets of Illicit Origin, the Law against Money Laundering, the Law on the Illegal Use and Trafficking in Drugs and Psychotropic Substances, and the Law against the Financing of Terrorism, and the regulations and provisions of the Executive Board of OABI and/or the International Technical Committee.

The resources obtained from the administration of seized assets or operating businesses are used to cover the maintenance and administration costs of those assets and, if any funds are left, they shall be deposited in an OABI account until a judgment is issued to



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determine their final disposal, and may be invested in financial instruments of commercial banks in order to maximize returns.

OABI directly administers assets, objects, products or instruments seized and it may enter into contracts with trustees-administrators, custodians or specialized third parties⁴⁸ in order to have an efficient and transparent administration of seized assets.

Administrators, custodians and specialized third parties have administrative independence from owners or partners of the companies, small businesses or establishments they have been hired to manage. They are answerable to OABI with regard to their performance and, to that end, must submit any reports requested by the Business Management Unit.

In the case of the transfer, sale at auction or advanced sale of seized fungible goods and/or personal property, livestock or other animals at risk of perishing, getting lost or depreciation; or their administration may entail harm or disproportionate cost to the State when returned, or are unusable when the sentence is issued, may be transferred, sold at auction, or sold in advance by OABI, with the intention of maintaining their productivity.

Before proceeding with the transfer, auction or advanced sale referred to in the preceding paragraph, OABI submits the request to the competent authority hearing the case for its authorization, and notifies the Public Ministry of the actions taken.

If within a period of three (3) days OABI does not receive authorization from the competent authority, it will proceed with the transfer, auction or advanced sale of the assets in order to prevent their deterioration or destruction.

The proceeds from the transfer, auction or advanced sale are deposited by OABI in the bank accounts it manages, and the deposit slip is forwarded to the competent authority that authorized the sale for filing with the judicial file of the proceeding until final disposal is determined.

With regard to abandoned assets, the regulations establish that, once the deadline set for abandoning assets in accordance with applicable laws⁴⁹ has expired, and the owner of the assets has not been identified, and no person able to prove that they are the rightful owner of the assets under OABI jurisdiction has claimed their return, the OABI shall be able to request authorization from the competent judicial entity or from the Public Ministry, to, for one time only, publish in a nationally distributed print newspaper notice of the seizure of those assets, products or instruments, with the warning that if within a period of thirty (30) days, no person files a claim for their return and is able to provide legal title to the

⁴⁸ Regulations for the Administration of Seized and Forfeited Assets, Article 40, Regarding contracting procedures.

⁴⁹ 30 days.



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property, the competent judicial authority or the Public Ministry will declare the assets to have been abandoned for the purpose of disposing of them in accordance with the law.

The same procedure shall apply to those assets whose return has been ordered by the judicial authority and which have not been claimed within a period of 15 days.

With regard to the administration of businesses in operation, OABI may contract specialized third parties, administrators, custodians, and on, exceptional occasions, it may designate depositaries when dealing with a company or with a commercial, industrial or service enterprise in operation which is the object of precautionary or preventive measures and has been placed under OABI jurisdiction for its administration.

By the authority vested in them, the administrator, custodian or specialized third party,⁵⁰ shall carry out actions or activities necessary to keep companies, businesses or establishments in operation but may not transfer or tax the assets of the companies or businesses that are part of the assets without prior authorization from OABI.

Real estate property may be leased through OABI or third parties specialized in real estate in accordance with Article 4, paragraph relating to the Law on Leasing. Proceeds from the lease or rent shall be deposited in a special account belonging to OABI and shall be used to cover the administration and upkeep of that same asset.

The lease or rent price is set according to market rates taking into account the location and condition of the property.

Leasing agreements are subject to condition subsequent which shall emanate from the judicial decision that determines the final disposal of the asset.

g. Mexico

As we saw in the preceding chapter, the SAE of Mexico not only administers and transfers assets, products or instruments of federal criminal proceedings, but its authority extends to those assets that become the property of the State due to non-payment of taxes, including those established in customs legislation. In addition, SAE liquidates companies where the State has invested capital. To that end, it may administer, transfer or directly destroy those assets that have been transferred to its jurisdiction including bill or coins that are legal tender, foreign currency, precious metals, numismatic or philatelic assets, and assets with artistic or historic value, or it may designate depositaries, liquidators, custodians or administrators to manage them, or delegate to third parties their transfer or destruction.

⁵⁰ Regulations for the Administration of Seized and Forfeited Assets, Article 41.



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An exception to the preceding is the administration of firearms, ammunition and explosives which are administered by the Ministry of Defense. In the case of narcotic drugs, protected animal or plant species, dangerous materials and other assets whose ownership or possession is prohibited, restricted or specifically controlled, applicable federal legislation shall apply.

The administration of assets entails their reception, registration, custody, preservation and supervision. ASE preserves assets in the same condition they were received in order to return them in the same condition, except for normal wear and tear. Those assets may be used, destroyed, or transferred, as the case may be, in accordance with the requirements established in the law and in the regulations. To that end, SAE may take the necessary actions to regularize the assets in accordance with applicable legislation.

SAE may order the appraisal of the assets that have been transferred to its jurisdiction when so requested by the transferring entities or whenever SAE deems it necessary due to an obvious discrepancy between the appraisal provided by the transferring authority and the appraisal of similar assets under SAE administration. SAE may also order the appraisal of assets when no current appraisal exists, in order to determine a base price for their sale either by direct award or at auction or when it is deemed convenient for public bidding or auction proceedings.

Appraisers must be selected based on competitive rates in the market and the type of service provided that suits the particular appraisal.

On the other hand, assets may be used by the depositaries, administrators, liquidators or custodians and the SAE, but they may be used only when it is necessary in order for the authorities to meet their responsibilities. In addition, SAE, prior authorization from its Director General, may award assets to agencies of the federal government, including the administrative units of the Office of the President of the Republic and of the Attorney General, to be utilized in accordance with the requirements established by applicable legislation. In the case of assets that originate in foreign trade and are used for mitigation and assistance in natural disasters, those assets may only be awarded to the Ministry of Governance.

Ideally, the depositaries, liquidators, custodians, or administrators, as well as third parties, would be agencies or entities of the federal government or state and municipal authorities, after the proper request or agreement has been worked out, without prejudice to the possible designation of other professionally qualified individuals. Depositaries, liquidators, custodians or administrators who receive assets for deposit, custody, liquidation or administration are obligated to submit a monthly report to the SAE regarding every aspect of the assets under their jurisdiction, and help facilitate the control and supervision by SAE.



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SAE or the depositary, custodian, liquidator or administrator of the assets must take out insurance policies to cover the loss or damage to the assets. However, this does not apply when, due to the legal nature, characteristics or the type of risk the assets are exposed to, the cost of insurance bears no direct relation to the profit that could be earned.

The administrator shall have management independence from owners, administrative entities, shareholders, partners or others taking part in the operation or from any other entity in the companies, businesses or establishments placed under his administrative responsibility. Administrators must answer only to SAE for their performance, and if they were to violate the law, they will be subject to applicable legislation.

The profits or proceeds earned from the assets during the time they are under administration shall be handled in the same manner as the assets that generate them.

Gains obtained from the administration of the assets shall be used to recuperate the cost of administration and upkeep of the assets and the remnant, if there is one, shall be deposited in a fund managed by SAE, and will be turned over to the individual who provides proof of legal title in accordance with applicable law.

In the case of companies, businesses or establishments that lack the appropriate licenses, authorization, permits, franchise or any other type of requirement necessary to operate legally, the administrator will ensure that the business is brought into compliance. If this were not possible, the administrator will then suspend, cancel or liquidate those activities, in which case, it will only have the authority necessary to transfer the assets which shall proceed in accordance with established procedures.

When the return of the assets has been determined, the competent authority shall inform the SAE in order for them to be placed at the disposal of whoever is able to provide proof of legal title to those assets. The competent authority shall notify the interested party or legal representative of the decision so that, in accordance with applicable laws, they may appear to claim the property within a period of time beginning on the date of notification, with the understanding that failure to appear will constitute abandonment of the assets in favor of the federal government. The return of the assets shall also include any profits generated by those assets.

The return of cash⁵¹ will consist of principal and earnings obtained during the time it was placed under administration, in accordance with the terms and conditions established in applicable legislation.

⁵¹ Cash means the transfer of the assets and the deposit of the proceeds in the fund managed by SAE.



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When returning companies, businesses or establishments, the SAE shall provide an accounting of the administration of the asset to the rightful owner and will hand over documents, objects, cash, and everything else that was placed under its management.

Prior to the interested party receiving the assets, that individual shall be given the opportunity to inspect the condition of the property in order to verify the inventory and, in the event that there is disagreement over the condition, to proceed with the filing of the corresponding claim.

When the competent authority determines the return of assets that had been seized by SAE, or for any reason it is not possible to effect the return, the value of those assets must be charged to the fund being managed or to the person who holds title to the right of return in accordance with applicable provisions.

For purposes of the preceding determinations, the value of assets that have been sold will be the amount obtained in their sale, minus costs for administration, upkeep and preservation, remuneration for special custodians who are not public servants responsible for the proceedings, as well as payments for prior claims filed by those acquiring the assets or third parties, hidden liabilities, taxes or other fees, fictitious assets, matters under litigation and other similar expenses. In addition, any profits generated after the sale of the asset shall also be returned.

h. Nicaragua

With regard to the scope of Law 735-2010⁵², “*Law for the Prevention, Investigation and Prosecution of Organized Crime and for the Administration of Seized, Forfeited and Abandoned Assets*” already mentioned in the preceding chapter, we will analyze briefly the responsibilities of UABIDA with regard to the topic discussed in this paragraph.

UABIDA’s objective is the reception, administration, custody, safeguard, investment, auction, donation, return or destruction or return of assets, products and instruments of criminal activity established by the law.

In the case of assets in cash, securities certificates, credit certificates and monetary instruments, or any other instrument of that nature which are seized, held or attached must be turned over or deposited within twenty-four hours with UABIDA, which shall keep an account in a bank of the national banking system, except when an investigation of the asset is absolutely necessary, in which case, UABIDA must be informed within three hours

⁵² Law 735-2010, published in the Official Gazette No. 199, dated October 19, 2010 and continued in Official Gazette No. 200, dated October 20, 2010.



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of the seizure, holding or attachment of the asset. In this last case, assets will be turned over to UABIDA once the investigation has been completed.

UABIDA may invest the money in any financial instrument offered by banks which will maximize returns and minimize risks. Interest or profits generated may be reinvested in the same manner.⁵³

When the assets seized, held or attached are perishable goods, they must be immediately turned over to UABIDA which shall immediately place them for sale at public auction within forty-eight hours following their seizure, with a base price set according to their expert appraisal. In cases of this nature, the owner who has been charged or accused cannot oppose the sale nor the proceedings and the courts should dismiss any claims to that effect.

The monetary proceeds of the auction shall be placed at the disposal of the judicial authority. If there were no offers during the auction or the sale could not be accomplished for any other reason, UABIDA shall donate the goods to the Correctional System or to any other public or private charitable institution. This distribution shall be documented and carried out in a fair and transparent manner.

If real estate property occupied by relatives of the accused is seized or attached, that property will continue to serve as home for the relatives with whom the accused lived before the property was seized and, in that case, the spouse, adult children or parents of the accused should be designated depositaries .

In cases where the defendant only has underage children, their grandparents or legal guardians shall be designated depositaries or, in their absence, an *ad litem* guardian will be appointed. If there are no relatives, UABIDA will request that the judge designate another depositary. Under no circumstances can this system be applied to more than one asset per defendant and per family. The designation of a depositary shall be rescinded if during the proceedings evidence is presented to show that the depositary had taken part in the crime under trial.

Also, the Regulations of Law 735 add the administration of real estate assets and determine:

“Article 41. - Deposit and Forfeiture of Real Estate Assets. Any real estate property seized not serving as a home for the immediate family of the defendant, or which is not occupied, shall be placed in deposit with the Office of the Attorney General as the

⁵³ Article 48 of Law 735.



legal representative of the government, for their preservation and eventual forfeiture by judicial order.

Seized real estate assets that are the proceeds, instrument or means in the commission of the crimes established in the law, taking into account the social purpose and interest served by the property for which the government must provide custody and guarantee, shall be forfeited and transferred to the Government of Nicaragua through the Office of the Attorney General to be used for the social programs determined by that office.”

In order to meet its responsibilities, UABIDA may designate or contract administrators, depositaries, trustees or custodians of the assets and, in addition, it may enter into leasing agreements in accordance with the provisions of the Regulations of this law. The term of the leasing agreement shall be limited to the duration of the proceedings, and the lessee must provide the necessary guarantee that the real estate asset will be returned in the same condition it was received except for normal wear and tear.

When the case merits it and the intervention of custodians is required for the custody of the seized assets, the custodians may request the assistance of public institutions such as: the Department of the Revenue, the Office of the Comptroller General of the Republic, Municipalities and others, without prejudice to the possibility that UABIDA may determine who shall be designated custodian, and without losing sight of the objective in managing assets, objects, products or instruments and meeting the suitability requirements established.

Among the powers granted by the Law is the temporary use of personal property. In that regard, the law states:

“Art. 56 Temporary distribution of personal property assets. Immediately following seizure and once the investigation has been completed, the Unit shall order the administrative deposit of the asset as follows:

- a) Naval and air vessels, military communications equipment, global positioning systems (GPS), and firearms whose use is restricted shall be turned over to the Nicaraguan Army;***
- b) Firearms authorized for public use and civilian communications equipment shall be turned over to the National Police;***
- c) Land vehicles with engine displacement of less than three thousand cubic centimeters shall be turned over to the Public Ministry, the National Police or to the Judicial Branch depending on their operational needs;***



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Firearms whose use is restricted shall be seized even when a final decision to dismiss charges or insufficient grounds to proceed or acquittal is issued.

With regard to freight or public transportation vehicles, or vehicles used for agricultural, industrial or construction purposes, luxury yachts, as well as automobiles with engine displacement of more than three thousand cubic centimeters, those should be sold at public auction and the proceeds distributed according to the provisions of the present law;

In the case of money, securities or other types of assets, the Unit shall have exclusive responsibility for their management.”

i. Panama

In Panama, the administration of seized assets was recently transferred to MEF, and, therefore, the Public Ministry must notify that ministry any time assets have been seized that can be damaged or deteriorate so that they may be appraised and then placed for sale at public auction as soon as feasible.

Article 1 of Law 34 of July 7, 2010, which amended Article 29 of Law 23 of 1986, reads as follows:

“The judicial proceedings officer shall temporarily seize instruments, personal and real estate property, securities and the proceeds of crimes committed against the government, money laundering, financing of terrorism, drug trafficking and connected offenses, and place them under the jurisdiction of the Ministry of Economy and Finance until the case is decided by the competent court and, when appropriate, the seizure warrant shall be entered in the Public Registry or municipality.

Temporary seizure shall apply to assets directly or indirectly related to the crimes previously mentioned.

When the temporary seizure involves motor vehicles, boats and airplanes, personal or real estate property of third parties not connected to the punishable offense, the competent court, after consulting with the prosecutor, may designate owners as depositaries, granting them temporary and administrative possession of the asset until the case is decided. This designation must be ordered within a period no longer than sixty days.

When the temporary seizure involves companies or businesses with two or more owners or shareholders, the order shall apply only to the party who has been directly or indirectly connected to the commission of the offenses established in this article, and it shall be applied



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honoring the rights of third parties affected by this measure, by taking appropriate legal action.

Any person granted temporary possession and administration of personal property or real estate assets shall be bound by the duty to protect and preserve those assets and shall only be responsible for damage or deterioration due to improper use or negligence.”

This legislation in force makes a distinction between perishable goods and assets that may be damaged or deteriorate, therefore, the administrative process is also different, in the sense that when seizure applies to perishable goods that are instruments of the crime, the prosecutor may donate them to public charitable institutions or to churches.

When seizure applies to assets that may be damaged or deteriorate, the prosecutor must notify MEF which, in turn, after appraising the assets shall proceed to place them for sale at public auction as soon as possible. The proceeds of the sale are deposited in the account of the Custody Fund of the Office of the Attorney General in the National Bank of Panama and notify the judge with jurisdiction over the case.

In the case of personal and real estate property whose upkeep and custody becomes too expensive for the government, MEF may place them with a private individual for their temporary administration and upkeep. For that purpose, the MEF has a database of temporary administrators and custodians and makes selections based on the numbers or qualities required after verifying the prerequisites established in the regulations. In all cases, MEF oversees the management performance of the temporary administrators or custodians and may request any reports it deems necessary. The administrator or custodian of an asset is subject to the provisions regulating depositaries established in Section Two of the Judicial Code. Remuneration for administrators is set by NEF, and any expenses incurred by the administrator shall be deducted from the earnings obtained from that administration.

Starting with this amendment, it is the MEF and not the judge with jurisdiction over the case, as it was before the amendment, that sets the remuneration for administrators.

For its part, the Regulations for the administration and custody of seized assets⁵⁴ state that natural or legal persons who have been designated or granted temporary custody of one or several seized assets, must follow the rules established in the Judicial Code for depositaries in addition to meeting the obligations of responsible caretakers and answer for damages due to improper use or negligence.

⁵⁴ Official Gazette No. 26792-A, dated May 26, 2011.



Furthermore, the MEF, for justifiable reasons, may transfer the use and administration of seized assets under its custody to public institutions, following the rules and regulations established for that purpose. Beneficiary institutions must comply with the obligations of responsible caretakers and answer for damages or deterioration due to improper use or negligence.

j. Peru

The recent provisions establishing the CONABI established that the entity is responsible for the reception, registry, classification, custody, safeguard, preservation, administration, leasing, temporary or permanent assignment, disposal, and sale at public auction of the objects, instruments, products, and profits generated in the commission of crimes against the State established in the present Legislative Decree, as well as those crimes established in ordinary or special laws on this subject matter, excluding those assets that are the proceeds of tax or customs related offenses.

Although, at the time of this study, the CONABI still did not have regulations for the administration of assets, Decree DL 1104, introduces some procedures for that purpose:

“Fifth.- Seizure of financial resources

It is hereby established that any financial resources seized or forfeited shall be deposited in the accounts determined by the Department of the Treasury and Public Debt- DGETP of the Ministry of Economy and Finance in coordination with CONABI.

Sixth.- Authority of CONABI for the auctioning and liquidation of objects, instruments, assets, and profits generated by the commission of crimes against the State

6.1. Once the criminal responsibility of the defendant has been determined by final or executed sentence in accordance with ordinary criminal legislation and, the forfeiture of the objects, instruments, assets and profits that are the proceeds of crime taken place in accordance with the provisions of the present Legislative Decree, CONABI shall proceed to place the assets for sale at public auction and notify the judge.

6.2. Said entity is also authorized to sell at public auction, before the completion of the proceedings, objects, instruments, assets and profits seized or forfeited that are the proceeds of crime, which due to their nature or characteristics may be vulnerable to loss or deterioration or when the costs of custody and preservation of the assets are too high. In those cases, the assets and goods are appraised and placed for sale at public auction and the judge is notified. If the defendants are acquitted, CONABI shall return the proceeds from the public auction as well as the interest generated since the time the assets were appraised.



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6.3. CONABI may request that government entities that have under custody objects, instruments, goods and profits seized or forfeited that are the proceeds of crime to place them for sale at public auction. In these cases, after the costs for administration have been deducted, the net amount shall be deposited in an account determined by CONABI.

6.4. The auction releases liens, charges or rights of use and enjoyment, lease agreements or option contracts, and any actions filed or the successful bidder after all the proper documentation has been signed. Additional applicable law is the Code of Civil Procedure and other pertinent provisions.

6.5. Any filing or registration of actions or contracts after the seizure or forfeiture order has been issued by the judicial authority is prohibited and the certificate of public registry shall be blocked.

6.6. The distribution of the proceeds of the public auction shall be determined by Supreme Decree and the proceeds shall be used, preferably, in the fight against illegal mining, corruption and organized crime.”

k. Dominican Republic

As it has been previously pointed out, in accordance with Law 72-02⁵⁵, it is the responsibility of OCABI to oversee the upkeep, protection, preservation, custody, administration and sale of seized and forfeited assets.

In addition to the preceding, Article 10 of the same Law establishes that the assets, funds and instruments seized or held from an obligated subject shall be transferred to the OCABI by the competent authority, documented in an inventory certified by competent judicial authority, within thirty (30) days after the seizure or holding of the asset took place. With regard to the funds, these shall be transferred and deposited in a special account in OABI's name, in the same bank. Likewise, funds that continue to be transferred to the frozen account shall also be impacted in the same way.

The funds and the interest generated by those funds deposited in the special savings account previously described will be frozen until a sentence with the authority of res judicata has been issued.

Decree 19-03 dated January 14, 2003, establishes the procedure for the operation of OCABI. In that regard, OCABI has been authorized to administer ranching and farming operations, as well as to negotiate deals of any kind, involving properties under its custody

⁵⁵ Law against the Laundering of the Proceeds of the Illicit Trafficking in Drugs and Controlled Substances and other Serious Offenses.



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whose operations shall be guided and supervised by the Central Committee against Money Laundering, which has jurisdiction over OCABI, in accordance with Article 58 of Law 72-02, against Laundering Assets that are the Proceeds of Illicit Trafficking in Drugs and Controlled Substances and other Serious Offenses.

Likewise, the Committee against Money Laundering, for purposes of the management and supervision of the operation of ranches and farms, and the negotiation of deals of any kind, as well as for actions taken and decisions made regarding the sale of assets and contracting of private national or foreign companies for the administration of the properties seized that are under OCABI custody, shall operate through a committee designated by OCABI.

This committee shall be composed by the Chairman of the National Drug Council, who shall serve as chair, a member of this entity designated by the Executive Board, the Attorney General of the Republic, the Director of the National Drug Control Bureau, the General Administrator of National Assets, who may have representatives standing for them, and the Director of OCABI, who shall serve as Secretary and will be able to participate in meetings but will have no vote.

Officers and employees of OCABI shall be designated by the National Committee against Money Laundering, prior recommendation by the Director of OCABI.

The profits generated by the operation of ranches and farms, as well as from deals of any kind, shall be distributed according to the percentages established in Law No. 72-02.

When the competent judicial authority, through the issuance of a final judgment with the effect of *res judicata*, orders the return of the assets, OCABI, prior to the execution of the judgment, may deduct expenses incurred for the administration, custody or sale of those assets.

It is important to point out that, in a recent amendment to the Constitution of the Dominican Republic dated February 26, 2010, published in the Official Gazette No. 10561, Article 51, -relating to property rights – special mention is made regarding the establishment of the system of *administration and disposal of assets seized and abandoned in criminal proceedings and in in rem forfeiture proceedings provided for in the legislation*.

I. Uruguay

In Uruguay, the system of administration of seized assets has not yet been established, but that is not the case regarding forfeited assets. However, when the National Drug Secretary through the Fund of Forfeited Assets (SND-FBD) learns about the filing of charges in a case for any of the offenses established in Law Decree 14.294 of October 31, 1974; Law 17.016



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of October 22, 1988; Law No. 17.835 of September 23, 2004; Law No. 18.494 of June 5, 2009, similar and complementary laws, either by communication issued by the competent court or by any other means, as long as the information is properly verified, shall try to request, to the extent that the development of the proceedings allow it, information regarding the assets, products or instruments seized in those proceedings.

To that effect, the SND visits the respective courts, in accordance with an order of preference that will be established according to the status and importance of the case, based on the analysis of available information. The information obtained is registered and updated regularly in a registry called, “Registry of Judicial Proceedings and Seized Assets,” which includes the following information:

- a) Identification of the specific court;
- b) Precise identification of the case indicating the crime or crimes being investigated;
- c) Identification of the accused;
- d) Complete identification of assets, products and instruments seized, indicating type, description, registry information, location, characteristics, designated depository, temporary award that may be eventually determined by the court and estimated market value;
- e) Total amount of cash seized, type of currency, financial institution or other entity in which the money is deposited and copy of the bank deposit slip in that case;
- f) Copy of the seizure warrants obtained;
- g) Precautionary and temporary measures;
- h) Follow up of the judicial proceedings.

When the SND is notified by the competent court that it has ordered the forfeiture of the assets, products or instruments in the cases for the offenses previously established and that they have been placed at the disposal of the JND, the SND takes the necessary measures to take possession according to each type of asset forfeited and proceeds to register them in order to incorporate them to the FBD of the JND.

Those assets that are openly traded and are subject to market valuation, that are not cash or other monetary instruments, are, at first, transferred in accordance with applicable contracting procedures and the proceeds turned over to the FBD of the JND.

To that end, the entities have the assets appraised and conduct the necessary market analyses in order to ensure that the transfer produces the highest benefits for the State.

Security certificates shall be sold at the expiration date, without prejudice to the possibility that, for justifiable reasons, the JND may decide to discount the security certificates at financial institutions according to regular market conditions.



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At the request of the SND, the JND may authorize the investment of forfeited assets in the form of public debt securities or other safe financial instruments depending on their rating by reputable credit rating agencies.

With regard to administration, the SND shall adopt the necessary measures to ensure the proper administration of forfeited assets while their transfer is being executed. That may require the contracting of specialized or suitable personnel for specific tasks such as appraisals, inventory, technical assistance, upkeep, administration, or other tasks deemed pertinent based on the characteristics of the asset or assets and the nature of their eventual use for commercial or industrial purposes.

The expenses incurred shall be defrayed, at first, with the profits and returns produced by the asset or with the proceeds of its transfer, or they may be charged to the FBD to resolve temporary situations of shortage of liquidity or by determination of the JND based on justifiable reasons.

However, the Executive Branch may use a percentage of the funds deposited in FBD-JND accounts to the administration and upkeep costs of forfeited assets.

When forfeited assets received carry liens or mortgages, measures are immediately taken to effect their transfer and to use the proceeds of the transfer for payment of guaranteed debt, notwithstanding compliance with the terms of eventual agreements negotiated with creditors during the trying of the case.

The JND may, if it deems it convenient, credit is available and by justifiable decision, determine the payment of debts to settle all corresponding charges.

m. Venezuela

As it was previously mentioned, in Venezuela the administration of seized, forfeited and abandoned assets is established in Decree No. 8.013, published in Official Gazette No. 39.602, dated January 26, 2011, which creates the SNB.

In order to carry out the administration of these assets, the SNB is financed as follows:

- a) Resources allocated by the Budget Law under item “National Service for the Administration and Transfer of Seized, Forfeited and Confiscated Assets,” as well as extraordinary resources.
- b) Financial and non-financial resources allocated by the Executive Branch, state or municipal governments and support from private institutions.



- c) Resources allocated through agreements with private and public institutions.
- d) Donations, gifts, contributions, subsidies, transfers or any other type of legal allocations from natural persons, national or international organizations, and governmental or non-governmental organizations.
- e) Resources obtained through agreements, treaties or contracts signed with private or public, national and international entities or organs for the purpose of strengthening the Service.
- f) Benefits, proceeds, rent and interest earned from the administration of its resources and from financial operations of the Special Fund.⁵⁶
- g) Benefits obtained from providing administration services.
- h) National or foreign currency resources that come into the Service.
- i) Any other assets acquired for any reason in order to achieve its objective.
- j) Resources generated by special laws.
- k) Any other resources generated on its own initiative.

As part of its administrative authority, SNB may determine the advanced disposal of edible goods, beverages, perishable goods or goods that are difficult to manage that were temporarily seized, when determined by the competent authority, through their sale or use for social purposes in order to prevent their deterioration, damage or loss. The proceeds from the sale are deposited in the special fund until a final judgment is rendered.

Depositaries or administrators should be selected, preferably, from government agencies after the proper request and/or agreement has been made, without prejudice to the selection of other professionally qualified persons or legally organized communities.

In any case, those who receive assets held in deposit or under administration, are obligated to submit to SNB, every two months, an Assets Report and provide every assistance in their supervision and custody. Designated administrators may not transfer or tax assets under their management.

⁵⁶ The SNB shall establish a Special Administration or Trust Fund which shall be destined to the management of assets awarded to SNB.



IV. Disposal of Forfeited Assets

a. Argentina⁵⁷

With regard to the disposal of forfeited assets, although there is no specialized entity in Argentina for the administration of assets, legislation *inter alia* states that the property or the proceeds from its sale will go to the fight against illegal drug trafficking, prevention and rehabilitation of those affected by consumption.

Thus, according to Decree No. 1148/91, it is the responsibility of the Planning Secretariat for the Prevention of Drug Abuse and the Fight Against Drug Trafficking (SEDRONAR) of the Office of the Presidency, to engage in the fight against illicit drug trafficking, its prevention, and the rehabilitation of persons affected by drug abuse.

Likewise, that same law assigns the entity the following responsibilities:

a) Order the transfer of the same through the sale at auction carried out by the BANCO DE LA NACIÓN ARGENTINA or the BANCO DE LA CIUDAD DE BUENOS AIRES.

b) Award assets for use by national, provincial, municipal or other public or private entities which work on or have as their objective or purpose the prevention of drug abuse, the rehabilitation of the victims of drug abuse or the fight against drug trafficking.

c) Grant subsidies to public or private entities whose objective is the prevention of drug abuse, the rehabilitation of the victims of drug abuse and the fight against drug trafficking.

d) Use assets for the organization of national and international meetings or conferences for the purpose stated in the preceding paragraph.

e) Use assets for the formulation and planning of strategies and actions to combat drug abuse and illicit drug trafficking.

f) Use assets to conduct technical and social studies and for the training of specialized human resources.

g) Organize and promote actions and operations with security agencies or public or private entities aimed at the prevention of drug abuse and the fight against drug trafficking.

⁵⁷ Conclusions and recommendations, BIDAL Project, Argentina 2009.



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h) Use assets to develop databases and information and intelligence exchange systems to be shared by security agencies engaged in combating illicit drug trafficking.

j) Use them for improving the organization, structure and infrastructure of that Ministry.

When the forfeited assets include firearms or explosives, said Ministry shall assign them to entities of the national government responsible for combating and controlling illicit drug trafficking.

In the case of sums of money, those will be deposited directly in an account set up for that purpose with the Banco de la Nación Argentina in the name of SEDRONAR.

Last, on December 15, 2000, the Supreme Court of Justice and SEDRONAR signed an agreement with the force of complementary law to Decree 1148/91, creating the "Joint Committee for Registry, Administration and Disposal," Law 23.737, for the administration of forfeited assets and money, as well as those originated by the payment of fines imposed in accordance with the provisions of the Law on Drugs.

With regard to recordable assets, once a final judgment has been issued ordering the forfeiture of those assets, the competent judicial authority orders, through registration order, the registration of the assets in favor of the Joint Committee, including the embargoes, liens or mortgages that the asset may carry. Then, third party creditors are notified of the holding of the auction of the assets so that they may appear and enforce their claims in the proceedings and, in the event creditors do not appear, the auction will proceed and the asset is cleared of any liens or other claims filed.

It is noteworthy that recently in Argentina, through the Decree 826/2011 of June 2011, it has been created the National Register of Property Seized and Confiscated During the Penal Process, whose main function is the identification, registration, valuation and location of all of the property seized, confiscated or affected to an injunction in the context of criminal proceedings.

Moreover, Law 25246, and its amendments on "Concealment and Laundering of crime", provides in Article 27 that "In all cases, the proceeds from the sale or management of property or instruments of offenses under this Act and in consequence ordered confiscations as well as unlawfully obtained profits and the proceeds of the fines imposed in consequence, will go to a special account of the National Treasury. Such funds will be earmarked for financing the functioning of the Financial Intelligence Unit (FIU), the programs provided for in Article 39 of Law 23,737 and its amending law 24 424, the health and training, as required under the relevant regulations. " Furthermore, the article also states that "The money and other assets or resources judicially seized for committing offenses under this Act, shall be delivered by the court to a a special fund that will be



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defined by the Executive Branch. This fund may manage and dispose of the money as provided above, being responsible for its return to the appropriate when so provides a final judicial decision. "

Finally, the Act 26,348 provides that vehicles abandoned, lost, confiscated or seized, whose domain belongs to national government or individual states under the provisions of Article 2342 of the Civil Code, must be decontaminated and compacted prior to their disposal as scrap.

With regard to international cooperation, there are no useful mechanisms for providing international judicial assistance in the seizure and forfeiture of assets or to share the forfeited assets with other States.

If a request for judicial assistance is required in accordance with Argentinean legislation or applicable treaty, this shall be processed through the central authority (Ministry of Foreign Relations through the Department of Juridical Affairs).

In this regard, Law 24,767 establishes in its Article 1 that Argentina will offer "all possible assistance" to all States that so request with in the investigation, prosecution and punishment of offenses under the jurisdiction of another State. Moreover, under this section "any authority concerned shall act as quickly as possible to ensure that the procedure is completed in an expeditious manner and does not hinder the operation." This law regulates all matters related to countries with which Argentina does not have a mutual legal assistance treaty, guaranteeing assistance on the basis of reciprocity or offer (Article 3). When such treaties exist, its provisions must determine attendance procedures and the provisions of Law 24767 should be used to interpret the text of treaties and determine aspects not covered by them (Article 2).

As for international assistance, the Judicial Power applies the same methods for the purpose of obtaining evidence for internal procedures.

Law 24,767 allows a wide range of mechanisms for mutual legal assistance in production, search and seizure of evidence in investigations and prosecutions of crimes of money laundering and terrorist financing, to be adopted in the general terms of Articles 67-81 of the Act.

Under this Act, Argentina can also identify, freeze, seize and confiscate property laundered or have tried to be laundered, the product of money laundering and assets used for or who have tried to use for terrorist financing and instruments such crimes.

b. Bolivia



Under the provisions of the Code of Penal Procedure adopted in Law 1970 and the Regulations for the Administration of Seized, Forfeited and Confiscated Assets of DIRCABI, in Bolivia, forfeited assets are disposed of as follows:

“Article 260 of the Code of Penal Procedure. (Administration and disposal of seized and forfeited assets).

I. At the time a judgment is issued, the Court or judge shall determine the disposal of seized assets that were not returned with regard to the incident presented before the judge during the preliminary hearing.

II. The Department of Registration, Control and Administration of Seized Assets shall dispose of the assets described in the judgment with the effect of res judicata and, depending on the case, shall determine or order the management company:

- *To return seized assets and, as the case may be, money and the interest generated by their sale, to persons who can prove holding title to that same property and shall cancel any preventive filings;*
- *The sale at public auction of seized or forfeited assets that were not previously disposed of, a proceeding that shall be initiated within thirty days of the execution of judgment.*
- *The deposit to the name of the National Council to Combat Illicit Drug Trafficking in a bank of the national system of money seized and forfeited money generated by the sale of seized and forfeited assets.*
- *Payment to creditors with collateral on the seized or forfeited asset that was registered prior to the order of seizure being issued and legally recognized, from the proceeds from the asset’s sale.*

III. The National Council to Combat Illicit Drug Trafficking shall use the proceeds of the sale of seized and forfeited assets to:

- 1. Meet the objectives of prevention, interdiction, rehabilitation and penitentiary system established in the Law to Regulate Coca and Controlled Substances; and,*
- 2. Defray administration costs.”*

For its part, the Regulations establish the final disposal of the assets described in Section V:

I. Once notification of executed sentence has been made, the Office of the Chief of the District in which the assets are located shall enforce the sentence and inform the Board within forty-eight hours of receiving notification.

II. If the sentence did not set a deadline for the execution of final disposal of the assets,



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the District Government with jurisdiction, shall have a period of sixty days to comply with the execution of disposal and shall submit a final report to the judge and to the Board in order to have the documentation archived.

- III. In case of acquittal, the District Office of Registration, Control and Administration of Seized Assets shall enforce without objection or delays of any kind the decisions of the judge.

Having the judge with jurisdiction of the case ordered the sale of seized and forfeited assets at public auction, the Board will order that the entity responsible for custody of the assets call for a public auction to be verified within the following thirty (30) days.

The profits obtained from the forfeiture or auction of assets forfeited and confiscated in criminal proceedings plus the interest generated, shall be deposited in a revenue account in the name of the Department of the Treasury (TGN).

Out of the total amount of money deposited in the TGN Revenue Account, the TGN will transfer 25% to DIRCABI through a revenue account to defray administration costs which shall be regulated by the National Council to Combat Illicit Drug Trafficking (CONALTID) in a period of 20 days following the enactment of the present Supreme Decree. The remaining 75% will be used by the TGN exclusively for the purposes determined by CONALTID.

c. Colombia

In Colombia, Law 793 on In Rem Forfeiture created FRISCO, which is a special account, without legal status, administered by the DNE, in accordance with the policies developed by the CNE.

Assets and resources subject to in rem forfeiture are deposited in FRISCO and are assigned by CNE for investment in social objectives, security and the fight against organized crime.

However, and as it was previously mentioned, in accordance with Ministry of Justice and La Decree No. 3183, dated November 2, 2011, the DNE and FRISCO are currently in the process of liquidation.

d. Costa Rica

In Costa Rica, the UAB is responsible for follow up of seized and forfeited assets that are the proceeds of crimes established in the Law on Drugs and, in addition, oversees the proper



administration and use of forfeited assets and is responsible for donating or placing those assets for sale at auction.

If the final sentence orders the forfeiture of personal property and real estate assets, as well as of securities and cash in favor of the ICD, the ICD may retain them in order to fulfill its mission, donate them to public interest institutions, but preferably to organizations whose goal is prevention or suppression of drugs, or place them for sale at auction.

In the case of cash, securities of the proceeds of the sale of assets at auction, the ICD should allocate them to:

- a) 60% for prevention programs; of this percentage at least half should go to drug abuse prevention, treatment and rehabilitation programs being implemented by the Institute on Alcoholism and Drug Addiction (IAFA).
- b) 30% to suppression programs.
- c) 10% to the follow up and upkeep of seized assets.

In addition to this law, the Law against Organized Crime, No. 8754, establishes that assets or products seized or forfeited under the provisions of this law,⁵⁸ may be retained for meeting its objectives, donated to public interest entities, given, preferably, to organizations whose purpose is to combat organized crime, or placed for sale at auction. The proceeds of this sale or seized must be allocated to:

- a) 20% to ICD, to defray costs of custody, storage, follow up and upkeep of seized and forfeited assets.
- b) 10% to the Judicial Branch for the maintenance and updating of the Judicial Center for Communications Intercepts (CJIC).
- c) 10% to the Public Ministry, for the Office of Victims Assistance and to combat organized crime.
- d) 50% to the Judicial Investigations Agency, for the operation, maintenance and updating of the Police Investigations Platform, as well as for crime investigations and citizens' protection.
- e) 10% to the Ministry of Public Security and Governance, to cover the needs of its law enforcement units.

⁵⁸ Articles 34 and 36.



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- f) **These resources are transferred to the beneficiary entities named in compliance of with the provisions of Law No. 8131, Financial Administration of the Republic and Public Budgets.**

e. Ecuador

In Ecuador, the Law on Narcotic and Psychotropic Substances⁵⁹ establishes that personal property or perishable goods may be sold by the Executive Board of CONSEP before a final judgment is issued in the respective penal proceedings, in accordance with the regulations. Money, monetary instruments, bank, financial or commercial paper or other securities are deposited in a fund whose interest and investments shall be divided equally among the Office of the Attorney General, National Police, CONSEP, National Social Rehabilitation Bureau and the National Child and Family Institute (INNFA).

With regard to the final disposal of the funds, the law establishes that once a guilty sentence has been issued and executed against the defendants with ownership title to personal property and real estate assets that were sold, securities deposited in the Central Bank of Ecuador that were the proceeds of the sale and seized or forfeited funds as well as monetary instruments, bank, financial or commercial paper that were sold, shall be distributed to the following institutions according to these percentages:

- a) **50% for the National Police to be used in the fight against drug trafficking;**
- b) **15% for CONSEP, to be used in meeting its objectives;**
- c) **20% for the National Social Rehabilitation Bureau to be used in the rehabilitation of patients admitted in the respective facilities;**
- d) **15% shall be distributed equally among the National Child and Family Institute, the National Women Council, the National Disability Council, and the Psychiatric Hospitals: Lorenzo Ponce of the Charitable Board of Guayaquil and Julio Endara of Quito.**

The Central Bank automatically deposits these amounts in the accounts of the respective entities.

On the other hand, the Law against Money Laundering establishes a specific disposal for assets seized under the provisions of that law indicating that, after final sentencing, they

⁵⁹ Official Registry Supplement 490, dated December 27, 2004.



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will become the property of the National Council against Money Laundering and shall be distributed in the following manner:

- a) Thirty percent (30%) of the profits generated by the fund shall be divided equally among CONSEP, the Money Laundering Unit of the Public Ministry; the Money Laundering Unit of the National Police and the Financial Intelligence Unit of the National Council against Money Laundering.
- b) Sixty percent (60%) for the National Social Rehabilitation Bureau which shall be used for improvements and construction of the infrastructure of detention and social rehabilitation centers across the country, for the specific purpose of implementing the classification of jails by type of crime, in accordance with the provisions of the Code of Execution of Sentences and Social Rehabilitation;
- c) Five percent (5%) for the Law School for Judges; and,
- d) Five percent (5%) for the Prosecutors' School of the Public Ministry.

Forfeited personal property or real estate assets and, in general, assets that have become the property of the National Council against Money Laundering, shall be sold in accordance with the provisions of this law and respective regulations.

Proceeds from the sale of assets as well as funds in national or foreign currency that have been forfeited will be deposited in the Special Deposit Account of the National Council against Money Laundering at the Central Bank of Ecuador and shall be distributed as indicated.

f. El Salvador

Although El Salvador does not currently have an entity specialized in the administration of seized and forfeited, it does have legislation relating to the disposal of the proceeds of drug offenses and money laundering crimes through two special funds: the first refers to the Law for the Control of Drug Related Activities which, in Article 5, states: *"A special trust shall be established in which the funds generated by the liquidation of forfeited assets that are the illicit proceeds of criminal activity are deposited to be distributed in the following order of preference:*

- a) *To financially strengthen government entities responsible for or providing support in combating drug trafficking in the country;*
- b) *To support the Victims and Witness Protection Program;*



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- c) *To grant rewards to persons who have provided duly corroborated useful information leading to uncovering offenses established under the provisions of this law;*
- d) *To rehabilitation programs for drug abuse victims, and,*
- e) *To social programs targeting the prevention of drug abuse.*

The liquidation of securities or assets shall be carried out at public auction in accordance with the provisions of the Law on Storage, unless said assets or equipment can be used to strengthen the institutions responsible for combating the offenses established in the Law. In that case, the assets shall be awarded to those entities in accordance with the procedures established by the Office of the Attorney General.

The use of assets must be audited by the Office of the Comptroller of the Republic.

The second fund is created by Article 23 of the Law against Money Laundering,⁶⁰ which states: “A special trust shall be established which will receive resources generated by the liquidation of seized assets of illicit origin to be used in the following endeavors:

- a. *To financially strengthen government institutions responsible for combating drug trafficking and money laundering;*
- b. *To support the Witness Protection Program in the investigation of criminal activity relating to money laundering;*
- c. *To give rewards to private individuals who have provided corroborated information leading to the uncovering of money laundering offenses;*
- d. *To rehabilitation programs for victims of drug abuse, and;*
- e. *Social programs targeting the prevention of drug abuse among children and youth.*

The liquidation of said securities or asset shall be carried out through sale at public auction in accordance with the provisions of the Law on Storage, unless said assets or equipment can be used to strengthen institutions engaged in combating money laundering. In that case, the assets shall be awarded to these institutions in accordance with the procedures established by the regulations of the Financial Intelligence Unit.

⁶⁰ Law against Money Laundering, Decree 498, published in the Official Newspaper 23-12-1998.



If the profits, objects, vehicles, or securities used in the commission of the money laundering crime were not the property of the accused, they shall be returned to their rightful owner if he were found to bear no responsibility in the crime and can prove their legitimate origin.

The award or disposal referred to in the above mentioned article shall be the responsibility of the Attorney General of the Republic who will have full legal authority to implement the disposal of the assets, exclusively for the sole purpose of meeting the objectives indicated.

However, it bears mentioning that through the BIDAL Project of CICAD/OAS, a bill is being drafted which will create an entity specialized in the administration of seized and forfeited assets called, National Council for the Administration of Seized and Forfeited Assets (CONABID).

g. Guatemala

In Guatemala, the In Rem Forfeiture Law ⁶¹ establishes the disposal of assets as follows:

- 1) 20% to be used exclusively to defray the expenses of the special investigative techniques units established under the provisions of the Law against Organized Crime, Decree No. 21-2006 of the Nicaraguan Congress; the task forces or units responsible for air and sea interdiction of drugs.
- 2) 20%, shall be exclusive funds of the Public Ministry and shall be invested in witness protection programs; the enforcement of the present law, and the investigation and prosecution of money laundering offenses, drug trafficking and organized crime.
- 3) 18% shall be destined exclusively to the Ministry of Governance to be used in training and acquisition of equipment in direct support of the investigative units relating to the present law and for the Center for the Collection, Analysis and Dissemination of Criminal Information of the National Civil Police.
- 4) 15% shall go to the exclusive funds of the National Secretariat for the Administration of Forfeited Assets to be used exclusively to defray costs for the administration of seized and forfeited assets until their sale takes effect.
- 5) 25% for the exclusive funds of the Judicial Branch.

⁶¹ Law 55-2010.



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6) 2% for the Office of the Attorney General.

SENABED must inform CONABED of the actions taken every six months or when requested by CONABED.

With regard to personal property or real estate assets whose forfeiture has been ordered by competent authority, it should be noted that SENABED may retain them to use in meeting its objectives, transfer them or sell them at auction in accordance with the present law.

It may also donate them to public interest institutions, but, the priority should be:

- a) The special units of the Ministry of Governance, the National Civil Police and of the Public Ministry when it involves vehicles, equipment and weapons that are not for the exclusive use of the Army.**
- b) To the Ministry of Defense when it involves assets, equipment, or weapons that are for the exclusive use of the Army, sea vessels or fixed-wing aircraft or helicopters which must be used in support of the Public Ministry, the Ministry of Governance and the National Civil Police for the prevention and the fight against organized crime.**
- c) To the Judicial Branch when appropriate.**

On the other hand, forfeited assets that have deteriorated to the point that their repair or improvement would be either impossible or extremely expensive may be destroyed or donated by order of SENABED after proper authorization by CONABED.

An interesting element introduced by Guatemalan legislation is the power to share assets in joint operations through CONABED, which can authorize the sharing, with other States, of assets or resources that have been declared forfeited for joint operations in accordance with the principles established in international cooperation agreements or bilateral or multilateral treaties.⁶²

The Law on In Rem Forfeiture added provisions both, to the Law against Drug Trafficking and to the Law against Organized Crime with regard to the distribution of assets forfeited under the provisions of both laws.

⁶² Article 53, Law on In Rem Forfeiture.



h. Honduras

The provisions of the latest amendment to Article 78 of the Law on In Rem Forfeiture of Assets of Illicit Origin, dated December 14, 2011, enacted by the National Congress of Honduras, state that the distribution of assets shall be carried out as follows:

- 1) *55% for units directly engaged in the fight against organized crime which are under the jurisdiction of the Ministry of Security, the Ministry of Defense and the Public Ministry and that have taken part in the investigation, identification or seizure of assets, products, instruments or profits subject to a final judgment of in rem forfeiture. When several units take part of the operation, the assets shall be distributed equally among them. The Judicial Branch shall be included in any distribution done under the provisions of this Article.*

Likewise, any other unit or institution, national or foreign, that has, at some point, taken part in the investigation, identification or seizure of assets, products, instruments or profits referred to in this Law may be included in the distribution, and;

- 2) *4% for OABI for its budgetary needs and to defray costs of implementing this Law;*
- 3) *2% for institutions implementing programs to provide assistance to victims of the criminal activity established in this Law or for their compensation if applicable;*
- 4) *2% for witness protection programs;*
- 5) *1% for natural persons who, in a timely and effective manner, provided or helped uncover evidence that led to the issuance of a judgment for in rem forfeiture of assets. If several persons contributed to the effort, OABI shall divide the percentage among them. The information regarding this collaboration shall be provided by UCLA.*
- 6) *15% for the National Committee for Sports Facilities (CONAPID);*
- 7) *2% for assistance programs and centers providing prevention and rehabilitation services to youth with addiction problems such as: drug addiction, alcoholism and prescription drug addiction to be distributed proportionally by the Ministry of Health to centers in the amounts the ministry deems appropriate;*



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- 8) 10% to the Ministry of Social Development;**
- 9) 9% for the Honduran Social Investment Fund (FHIS).**

On the other hand, the Regulations for the Administration of Seized and Forfeited Assets of OABI,⁶³ authorizes the donation of assets to:

- a) The Public Ministry, especially to the special units that combat organized crime.
- b) The Ministry of Defense.
- c) The Ministry of Public Security, giving preference to the units that took part in the investigation.
- d) The Judicial Branch, giving preference to specialized entities with jurisdiction over in rem forfeiture and the fight against organized crime.
- e) National Bank and Insurance Committee of the Financial Intelligence Unit.
- f) Projects for the prevention and control of illicit drug trafficking and organized crime.
- g) Public Educational Centers.

The decision regarding the donation of assets is made by the Inter-institutional Technical Committee. In addition to the entities already mentioned, assets may be donated to projects of national interest if the full Inter-Institutional Technical Committee so determines.

i. Mexico

In accordance with the provisions of the Federal Law for the Administration of Public Sector Assets, assets may be donated or awarded, as the case may be, to federal, state or municipal quasi-governmental entities for their use in local public services, educational or social assistance objectives, or to institutions authorized to receive deductible donations under the provisions of the Income Tax Law, that need it to carry out their activities.

In the case of assets originating in foreign trade, only flammables, explosives, contaminants, radioactive, corrosive, perishable, vulnerable to decomposition or deterioration, plants, live animals, or assets used to provide mitigation or assistance in natural disasters, and those used to provide care in highly marginalized areas may be donated.

⁶³ Article 64.



The procedures to donate to the above mentioned institutions are regulated by the provisions of the Regulations of the Law of SAE, and through the Governing Board which has, among other powers, the authority to issue guidelines for the donation of assets and which, in addition, has the support of a Donations Committee established by Article 35 of the Federal Law for the Administration of Public Sector Assets.

Article 25 bis⁶⁴. - SAE, prior authorization from its Director General, may award assets to agencies of the federal government, including the administrative units of the Office of the President of the Republic and the Office of the Attorney General to be used for their purposes in accordance with applicable provisions.

The provisions of Article 57 of these Regulations shall apply to the award of assets when pertinent.

If the assets originate in foreign trade and are used for mitigation or to provide assistance in natural disasters they may only be awarded to the Ministry of Governance.

SAE may donate the following assets:

- a) Those that are transferred to be donated;
- b) Perishable goods or assets vulnerable to decomposition;
- c) Those that are placed for sale but cannot be sold, and for which there is prior authorization from the transferring authority;
- d) Those that are too expensive to preserve;
- e) Those which, due to unforeseen circumstances or acts of God, are impossible to sell, and
- f) All similar cases determined by the Committee.

j. Nicaragua

Law 735-2010 states that when a final judgment for conviction is issued, assets will be awarded to the institutions to which they were temporarily awarded or distributed to the institutions previously mentioned. Verification of the issuance of the final sentence by the competent judicial authority shall suffice to effect the transfer or registration of the assets in the corresponding registry.

Funds that have been forfeited, abandoned or are the proceeds of the sale of assets at public auction are distributed by the Ministry of Finance and the Public Credit, through the

⁶⁴ Regulations of the Law of the SAE.



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Department of the Treasury, to be used only and exclusively for programs, projects and objectives relating to the prevention, investigation and prosecution of the crimes established in this law, as well as in rehabilitation and social reinsertion programs, the formulation of public policy, inter-institutional coordination and the protection of individuals involved in the fight against organized crime and its consequences, and also to defray the administrative costs of UABIDA. The funds shall be distributed annually in accordance with the operational needs demonstrated by the following entities:

- a) National Police;
- b) Public Ministry;
- c) Ministry of Education;
- d) Ministry of Health;
- e) Supreme Court of Justice;
- f) National Penitentiary System;
- g) National Council against Organized Crime; and
- h) Unit for the Administration of Seized, Forfeited or Abandoned Assets.

Furthermore, when the competent authority declares the assets forfeited, they should be placed for sale at public auction with a minimum bid price based on the expert appraisal and in accordance with the provisions of the Regulations of this Law, except when prohibited by the Law.

UABIDA shall publish a public invitation for bids and will decide the award based on, at least, three bids. In the event that only one bid is submitted and the bid is eligible, the asset or assets may be awarded to that bidder, making note of the circumstances in the appropriate document. The proceeds of the sale shall be distributed in the manner previously outlined.

In addition, the Regulations of Law 735-2010⁶⁵ state:

“Article 40.- Temporary distribution of personal property and final disposal: In addition to the institutions named in Articles 56 and 58 of the Law, assets shall also be distributed to the Office of the Attorney General when it represents the State in investigations and penal proceedings; land vehicles with engine displacement of less than 3,000 cubic centimeters as well as money forfeited or abandoned or originating from the sale of assets at public auction.

Article 41.- Deposit and Forfeiture of Real Estate Assets. Real estate assets seized that are not inhabited by the immediate family of the defendant or are unoccupied, shall be placed in deposit with the Office of the Attorney General of the Republic, as the

⁶⁵ Decree No. 70-2010, Adopted November 12, 2010, and published in the Official Gazette No. 223 of November 22, 2010.



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legal representative of the State, for their preservation and eventual forfeiture by judicial order.

All real estate assets seized that have been the product, instrument or means for the commission of the criminal offenses established in the law, without ignoring the purpose and social role served by property which the State must protect and guarantee, shall be forfeited and title transferred to the Nicaraguan State through the Office of the Attorney General, to be used for social programs selected by that office.

Article 43.- Request and distribution of funds: The sums collected by the Department of the Treasury shall be distributed by the MHCP to the institutions indicated in the second paragraph of Article 58 of the Law, based on the requests received. The MHCP shall grant those requests if they meet the specific objectives and uses to which the funds must be destined, the priorities set by the CNCCO and subject to the availability of funds.”

k. Panama

As it was previously mentioned, Law No.34 of July 27, 2010,⁶⁶ which partially amended Law 23 of 1986, better known as the Law on Drugs,⁶⁷ included, among the modifications worth pointing out, the fact that, when an judgment of guilt issued orders the forfeiture of assets, instruments, money or securities that were used in or are the proceeds of any of the offenses previously mentioned, those assets shall be placed at the disposal of the MEF to be sold at auction and awarded and not any more at the disposal of the National Committee for the Study and Prevention of Offenses Relating to Drugs (CONAPRED), an entity under the jurisdiction of the Public Ministry.

Notwithstanding the preceding, CONAPRED is entitled to receive 50% of the proceeds of the auction sale or award if the assets were money or securities since the remaining 50% shall be distributed to the various levels of security of Law Enforcement (National Police, National Border Service, Naval Air Service), under the jurisdiction of the Ministry of Public Security, for its financial strengthening.

By the same token, CONAPRED has the obligation to submit an annual report to the Office of the Comptroller General providing a detailed account of how the funds awarded to the entity were used, a report that, the amendment states, shall also be public.

⁶⁶ Published in the Official Gazette No. 26586, of July 28, 2010.

⁶⁷ Published in the Official Gazette No. 22628, of September 22, 1994.



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In addition, Article 25 of the Regulations for the Administration of Seized Assets⁶⁸ establishes that the sale at auction or award of seized or forfeited assets shall be carried out by a contract auctioneer of public assets.

Once the payments from the sale and from the award of the seized assets are received, the Ministry of Economy and Finance shall distribute the funds as previously outlined and, to that end, the institutions shall open bank accounts in the National Bank of Panama in order to have the funds deposited.

When the payment is in the form of securities, the MEF will convert them into cash in the securities market in accordance with the laws enacted for that purpose.

I. Peru

The recent amendment to the Law on In Rem Forfeiture⁶⁹ states that in cases of temporary or definitive use or award, the assets or rights whose title is transferred to the State may be sold at public auction within the following ninety (90) days. Furthermore, the amendment states that the Regulations of the present Legislative Decree will determine the procedure to be followed in the public auction. However, because the amendment was just recently enacted, the regulations are not yet available.

An important aspect that Peruvian legislation specifically includes is that the State may sign bilateral or multilateral agreements to help facilitate the administration of the assets.

m. Dominican Republic

All assets forfeited must be liquidated and the proceeds distributed according to the provisions of Law No. 196-11, which amends Article 33 of Law No. 72-02 of June 7, 2002, on the Laundering of Assets that are the proceeds of the Illicit Trafficking in Drugs and Controlled Substances, and other Serious Offenses.

- a) 25% to the Office of the Attorney General of the Republic.
- b) 25% to the National Drug Council.
- c) 25% to the National Drug Control Directorate.
- d) 15% to non-governmental organizations (NGOs) that work on drug abuse prevention.

⁶⁸ Published in the Official Gazette No. 26792-A, of May 25, 2011.

⁶⁹ Decree DL-1104, dated April 14, 2012.



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e) 10% to the National Police.

If the judgment recognizes the rights of a lien holder or mortgagee in good faith, the Public Ministry shall proceed to the sale at public auction of the assets, products or instruments forfeited and pay the debt according to the terms established by the judgment.

The entity responsible for the sale is National Assets, the only entity with the authority to sell assets that are the property of the State, and either the National Committee against Money Laundering or the Public Ministry shall create committees to carry out the sale.

n. Uruguay

In Uruguay, Law 18362 created the FBD which is composed of:

- a) Assets and securities forfeited in any of the proceedings for offenses established in Law Decree No. 14.294, dated October 31, 1974, as redacted in Law No. 17.835, dated September 23, 2004 and amendments.**
- b) The proceeds from the sale, lease, administration, interest, or any other benefit obtained from those assets or securities.**
- c) The amount of the fines imposed by the Executive Branch in accordance with the provisions of Article 19 of Law No. 17.835, dated September 23, 2004.**
- d) Transportation vehicles forfeited in any of the proceedings for any customs offense established in the Customs Code as well as in later laws and decrees.**

The National Drug Board (JND) shall have title and access to all the funds in the FBD, and is exempt from the limits established in Article 594 of Law No. 15.903 dated November 10, 1987.

Furthermore, the Regulations of the FBD of the JND⁷⁰ establish the procedures for the disposal of funds deposited in the FBD, which must be used to support drug abuse prevention, treatment and rehabilitation programs and to strengthen law enforcement and drug trafficking interdiction agencies as well as money laundering units.

⁷⁰ Decree 339/2010, dated November 18, 2010.



This being the case, the money collected by the Fund is distributed, proportionally, to the following areas:

- a) Drug abuse prevention, treatment and assistance and social insertion of users.**
- b) Improvement in the prevention, investigation and in combating drug and money laundering offenses.**
- c) To improve material and human resources to enforce compliance with the law.**
- d) For entities responsible for the implementation and follow up to ensure compliance with national or international public policies in this area, and for public or private institutions with public interest objectives in accordance with these regulations.**

On the other hand, the JND determines the disposal of forfeited assets in accordance with the provisions of Article 67 of Law Decree No. 14.294, dated October 31, 1974, redacted in Article 68 of Law No. 17.930 of December 19, 2005, to:

- a) Retain them for official use in the programs and projects under its jurisdiction.**
- b) Transfer the assets for any purpose, or the proceeds of their transfer, to any public entity that took part, directly or indirectly, in their seizure, or in the coordination of drug prevention or control programs.**
- c) Transfer for any purpose, those assets, products, or instruments or the proceeds from their sale to any public or private entity working on the prevention of drug abuse, and on treatment, rehabilitation and social reinsertion of the victims or drug abuse.**

The SND forwards to the JND proposals for the disposal, transfer or assignment assets it deems appropriate, which shall include all supporting documentation for the action as well as for the draft contract that will eventually cover the operation selected.

The National Secretariat for the Control of Money Laundering may also submit proposals as may any of the members of the JND, and request the SND to draft the necessary documents for their approval in case the entity agrees with the proposal.

If the decision is made to transfer the property or in rem right to forfeited assets free to a public entity, the JND may establish the conditions to be met by the beneficiary.

When the beneficiary is a private entity the donation shall always be modal, and the terms in which the donation is made must be specified and provide for the rescission of the contract should the beneficiary fail to comply with the terms.

When it is deemed convenient to grant forfeited assets in commodatum, an agreement shall be signed with the beneficiary detailing the terms of the agreement, specifically:



- a) how the asset will be used by the beneficiary;
- b) estimated value of the asset;
- c) the terms of attachment of assets that may be subject to it;
- d) obligations of the beneficiary regarding upkeep and related costs;
- e) term of the agreement and conditions for extension;
- f) conditions for the eventual control to be carried out by SND;
- g) obligations regarding the restitution of the asset.

In the case of assets, especially vehicles of any type, which were transformed or underwent alterations which makes it impractical to place them in the market or to be used by private individuals, those may only be transferred or assigned to public entities.

With regard to international cooperation, the JND shall promote the signing of bilateral and multilateral agreements that will provide for the sharing, with other States, of assets that were forfeited by final judgment as a result of joint operations, in accordance with the principles and conventions of international cooperation.

o. Venezuela

In Venezuela, Article 66 of the Organic Law against the Illicit Trafficking in and Use of Narcotic and Psychotropic Drugs,⁷¹ states with regard to attached, seized or forfeited assets:

“Personal or real estate assets, capital, vessels, airplanes, land motor vehicles, livestock, equipment, instruments, and other objects used in the commission of the crime being investigated; as well as those assets about which there are grounds to suspect that they are the proceeds of criminal activity established in this Law; or connected offenses, such as assets and capital whose legal origin cannot be determined, bank accounts and lifestyles that are not in line with income; or any other legal revenue, false imports or exports, over or double billing, carrying cash in violation of customs regulations, bank or financial transactions from or to other countries without proof of being legally deposited or invested, suspicious transactions, no longer used, unconventional, suspiciously structured or routed according to obligated subjects; or have fictitious companies, businesses or partnerships or any other punishable element, unless it is specifically prohibited by law to admit it, shall be temporarily seized and, when there is a final judgment, their forfeiture shall be ordered and they will be deposited with the competent decentralized entity which shall have use of the assets in order to allocate resources for the implementation of its

⁷¹ Official Gazette No. 38.337, dated December 16, 2005.



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programs and those being operated by public organs engaged in the suppression, prevention, control and prosecution of the offenses established in this Law, as well as for the support of entities implementing programs for the prevention, treatment, rehabilitation and social reinsertion of victims of narcotic and psychotropic substance abuse. Likewise, resources shall be allocated for the establishment and strengthening of the national and international networks mentioned in this Law.”

With regard to assets that are the proceeds of money laundering offenses, Article 209, paragraph 3 of the same law states:

“... In the final judgment is for acquittal, the judge shall suspend the measures or provisions imposed and order the return of the assets in question. Improvements and gains as well as the maintenance costs of these assets shall go to the defendant who has been acquitted. If the judgment is for conviction, the judge will order the execution of the measures and forfeiture of the assets, without the need for judicial auction, in accordance with the provisions of this Law. The proceeds shall be allocated to the funds used by the State in control, regulation, prevention, rehabilitation, social reinsertion and suppression.”

V. Legal Guide for the Establishment and Development of Asset Administration Entities

Introduction:

This legislative guide contains relevant information that helps direct and improve the legal systems of every State toward the establishment and functioning of structures to promote the responsible and transparent administration of assets. This is based on the experiences of some countries in the continent, as well as on the experience acquired in the development and execution of the BIDAL project promoted by CICAD/OAS.

The document includes technical and legal analyses of the legislation and regulations of the various countries in the Americas which have asset administration units and their practical experience in the implementation of mechanisms for the efficient management of those assets.



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Establishment⁷²: Seek the establishment of a specialized and centralized entity which shall be responsible for the proper management of all seized and forfeited assets whose ownership is being surrendered, lost or transferred to the State, which are under its jurisdiction as provided by Law, in addition to being responsible for the reception, identification, inventory, supervision, custody, upkeep and reasonable preservation of the assets.

The purpose of this entity is to promote transparency in the management and administration of seized and forfeited assets. To that end, the asset administration entity must have highly qualified technical and professional staff to carry out the specific functions of the institution, as well as to be able to contract outside services through specialized third parties in order to accomplish its mission. Therefore, it is recommended that the entity have legal standing and an independent budget in order to carry out its responsibilities in an efficient manner, even if it answers to a ministry or oversight organ.

In addition, it shall be responsible for following up on seized and forfeited assets and to transfer, sell, sale at auction, or donate assets that have been declared forfeited in *in rem* forfeiture proceedings.

The technical and administrative structure, functions and procedures should be established by regulation.

Entity with oversight authority: Final decisions should be made by a higher collegial authority which shall be chaired by a representative empowered with the judicial and extrajudicial representation of the asset administration entity, with the authority granted by the Civil Code to individuals with unlimited general power of attorney, and the specific powers vested in him by the collegial authority, which shall be composed of the entities that are directly engaged in preventing and combating organized crime.

The collegial entity shall be responsible for hearing, adopting, assigning and final resolution of investment decisions regarding the seized money fund and for lease agreements, administration or trust agreements, transfer, auction or donation of seized and forfeited assets.

⁷² Article 7 of the Model Regulations on Money Laundering Offenses relating to Illicit Drug Trafficking and other Serious Offenses.



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A Director and Deputy Director, answerable to the collegial authority, could be designated as the highest level authorities with responsibility for guiding and managing the asset administration entity.

They would be responsible for collaborating, supporting and implementing the decisions emanating from the collegial authority and follow up on its policies, as well as for the planning, organization and control of the institution and any other responsibilities stipulated in this law and its regulations.

Property system: The patrimony of the specialized asset administration entity may consist of:

- a) An initial allocation from the General Budget as original capital, sufficient to establish the entity and begin operations.
- b) The transfer of resources that must be earmarked annually in the government's General Budget;
- c) Transfers from the percentage from the Special Fund allocated for the upkeep, administration and preservation of seized and forfeited assets;
- d) Extraordinary contributions made by the government for any purpose;
- e) National and international contributions intended to assist the asset administration entity meet its objectives;
- f) Personal and real estate property and securities acquired under any circumstances at the time the entity was established or during its operation;
- g) Financial returns of the Special Funds,
- h) Donations from international organizations.

Asset Administration.⁷³ Economic goods, on which precautionary measures have been imposed, shall be immediately placed at the disposal of the asset administration entity, which shall, preferably, create administrative trusts, in any of the trust companies under the oversight of the Superintendence of Banks, depending on its interests. Barring that, it may lease or enter into fair trade contracts with specialized natural or legal persons for the purpose of maintaining the productivity and value of the assets.

⁷³ Document on Best Practices of Asset Administration Entities BIDAL CICAD/OAS.



When the assets in question are evidence in criminal proceedings, they shall be preserved and safeguarded by the competent authority until introduced in trial.

However, these measures do not change, and are not suspended or interrupted when it involves in rem forfeiture proceedings, but even under those circumstances a ruling may be made. At the conclusion of the proceedings, the competent authority shall transport the assets to the asset administration entity for proper processing according to the law.

Designation of depositaries, administrators, custodians and specialized third parties: The Asset Administration Entity may administer the seized and forfeited assets directly or it may designate depositaries, administrators, custodians or specialized third parties who shall have the duties and responsibilities they have been granted in order to best carry out the actions for which they have been chosen.

Regarding assets unclaimed or abandoned during the proceedings. The competent judicial authority shall declare assets abandoned and, consequently, order their in rem forfeiture and transfer them to the State, in the following circumstances:

- 1. When person(s) are ruled to be in contempt of court for failure to appear at in rem forfeiture proceedings.**
- 2. When person(s) are ruled to be in contempt of court by the competent judicial authority at criminal proceedings.**
- 3. When more than three months have elapsed after the conclusion of the criminal proceedings and no one who can claim legitimate title to the economic goods has initiated any action to retrieve them. The deadline for the interested party to file any claim will expire and the asset administration entity will have access to the assets prior authorization of the competent authority who heard the case.**
- 4. When three months have elapsed since the assets were seized or attached and the identity of the perpetrator or participant in the crime cannot be established or that individual has abandoned the assets, resources, elements and means of transportation used. In this case, before the asset is declared abandoned, a public notification shall be published in the nationally distributed official newspaper inviting any interested party to take part in the proceedings and exercise their rights.**

Regarding the advanced sale of assets.⁷⁴ At the request of the Public Ministry or of the Asset Administration Entity, the competent judicial authority shall authorize the advance

⁷⁴ Article 7 of the Model Regulations on money laundering offenses relating to illicit drug trafficking and other serious crimes.



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sale of assets subject to precautionary measures when they are at risk of perishing, deteriorating, depreciating or becoming devalued or whose preservation entails losses or expenses disproportionate to their value or administration. The same will apply to livestock or other animals.

The proceeds from the sale or auction of the assets previously mentioned shall be deposited in the seized money fund and will be at the disposal of the competent judicial authority to be used at the appropriate stage of the proceedings in application of this law.

Donations of seized perishable consumer goods. After technical or expert analysis, seized perishable goods that deteriorate quickly and easily or that cannot be sold due to their low monetary value that are under the entity's administration, may be donated to public institutions or private charitable organizations dedicated to provide social assistance.

The Asset Administration Entity will submit to the competent judge or court verification of the donation certificate and of the technical or expert appraisal of the donated asset.

Temporary use of assets.⁷⁵ The Asset Administration Entity may authorize the use of the seized assets after they have been insured for their full value in order to guarantee the eventual recovery of their value in case of deterioration or destruction, if the characteristics and the value of the asset merit it. The cost of the insurance policy shall be borne by the requesting institution.⁷⁶

The procedure for awarding assets shall be carried out in accordance with the regulations of the entity. However, the temporary use of assets could be limited, exclusively, to public entities that take part or collaborate in the investigation of offenses relating to organized crime, drug trafficking, money laundering, terrorism financing, in rem forfeitures and for the Asset Administration Entity.

Regarding contracts.⁷⁷ In order to guarantee that seized assets continue to be productive and generators of employment, and avoid their preservation and custody from becoming a monetary burden on the public budget, asset administration entities may enter into lease,

⁷⁵ Document on Best Practices for the Administration of Seized and Forfeited Assets, page 15.

⁷⁶ Article 7 of the Model Regulations on Money Laundering Offenses relating to Drug Trafficking and other Serious Crimes.

⁷⁷ In order to carry out an efficient administration of seized and forfeited assets, certain countries are exempt by law from the regular contracting procedures regulated by the Law on Government Contracting.



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administration or trust agreements⁷⁸ to manage any of the assets under their custody. The procedures to select contractors and to execute contracts shall be governed by the regulations provided for in the Law on Administrative Contracts,⁷⁹ without prejudice to oversight by a higher authority.

Regardless of the circumstances, in order to select a contractor the asset administration entity shall, at the very least, publish in a newspaper of wide national circulation or on the entity's website, an invitation to submit bids and then, in a public hearing and based on at least three (3) bids, determine which bidder shall be awarded the asset. In the event that only one bidder is present and the bid is eligible, the contract may be awarded to that bidder but the corresponding document must reflect the circumstances of the award.

In the process of selection of contractors as well as in the execution of contracts, contractors shall be required to present the proper guarantees in accordance with the type of contractor and the nature of the contract.

Approval of the contractor and award of the contract shall be the responsibility of the collegial authority and will be governed by the principles of urgency and speed, independent of applicable regulations.

Trusts. When possible, personal property, real estate assets, businesses or industrial companies should be placed in administrative trusts, eased or deposited in order to avoid loss of value. The approval of the creation of the trust shall be the responsibility of the collegiate authority.

Trustee services, remuneration and administrative costs shall, in all cases, be charged to the asset being managed or its proceeds, and every effort should be made to prevent expenses from exceeding the value of the asset or its productivity. Any shortage of resources to cover expenses shall be payable based on the same order of preference accorded to administrative costs at a meeting of creditors, based on the value of the assets after auction or liquidation.

Administration costs. Costs for the administration of the assets submitted to the asset administration entity shall be charged to the financial returns generated by the assets that

⁷⁸ Article 7 of the Model Regulations on Money Laundering Offenses relating to Drug Trafficking and other Serious Crimes.

⁷⁹ Law 785 -2002 in Colombia authorizes the DNE to execute contracts in accordance with the provisions of the Civil Code and the Commercial Code.



have become part of the fund of that entity, or to the profits generated by the assets or businesses themselves.

Seized money fund:⁸⁰ The asset administration entity shall be authorized to open a checking account in any state bank in order to have seized cash, monetary resources, securities certificates or any financial product subject to precautionary measures, as well as the proceeds from the sale of perishable goods, livestock, and the advanced transfer of assets, either transferred or deposited in the seized money fund, and become part of its total amount of deposits and capital.

The fund may earn interest at market rates and the proceeds must be proportionally distributed in percentages to:⁸¹

1. Cover operational expenses of the entities that took part in in rem forfeitures.
2. Maintenance and custody of seized assets.
3. Cover compensation for lost or damaged assets.

The distribution of money to cover operational expenses among entities shall be determined by regulations.

In any case, whenever the competent judicial authority orders the return of cash, this must include the interest earned if the judicial authority so determines.

Seized or forfeited money fund. The asset administration entity shall be authorized to open a checking account in any state bank in order to have cash, monetary resources, securities certificates, any financial product or the proceeds from the sale of assets or services that were the subject of in rem forfeiture, deposited or transferred into the account.

Disposal of seized or forfeited money:⁸² Securities, forfeited cash and the proceeds from the sale or auction of assets should be used for:

⁸⁰ Document on Best Practices of Asset Administration Entities in Latin America.

⁸¹ Document on Best Practices for the Administration of Seized and Forfeited Assets, page 10, footer of page 1.

⁸² United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, Article 5(a).

United Nations Convention against Transnational Organized Crime, Article 14.3. When acting at the request of another State Party in accordance with Articles 12 and 13.



- a) To support the asset administration program.
- b) To compensate the victims of the crime that led to the forfeiture or in rem forfeiture of the assets.
- c) In accordance with national legislation, to strengthen institutions whose purpose is to prevent crime or drug use; to suppress drug trafficking; to combat organized crime; to combat money laundering; to combat terrorism financing and, if the national laws permit it, a percentage should be allocated to help finance projects developed by international organizations in this area.
- d) Share them with other States, in cases of joint operations, in accordance with the principles that govern international cooperation or through bilateral or multilateral agreements.

The Asset Administration Entity shall submit to the collegiate authority a report of its activities every six months or when the authority requests it.

Assets forfeited in *in rem* forfeiture proceedings: When assets are forfeited in in rem forfeiture proceedings, the asset administration entity may dispose of them thus:

- a. Retain them to help the entity accomplish its mission.
- b. Dispose of them in accordance with Article 11 of the Model Regulations CICAD/OAS.⁸³
- c. Sell them at auction or sell them in order to distribute the proceeds in accordance with national legislation.
- d. Share them with other States, when conducting joint operations, in accordance with the principles that govern international cooperation or under the provisions of bilateral or multilateral agreements.

Unclaimed assets. If assets affected by precautionary measures remain unclaimed thirty days after the judicial authority had ordered their return, those assets shall be declared abandoned by the competent judge or court and permanently transferred to the Asset

⁸³ Document on Best Practices for the Administration of Seized and Forfeited Assets, page 10, footer of page 1.



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Administration Entity to become part of the Special Fund and to be distributed according to law.

Tax system. Taxes on assets that are under the administration of the asset administration entity shall not generate compensatory or moratory interest during criminal proceedings or in rem forfeiture proceedings, and, during that time, the deadline for initiating or continuing with tax collection proceedings shall be suspended. Once forfeiture has been ordered and assets have been transferred, any taxes owed for payments charged to the proceeds from the sale of the asset shall be cancelled. The State will not, under any circumstances, assume responsibility for tax liabilities incurred before the seizure of assets.

Registration of assets: Should in rem forfeiture of assets subject to registration in the National Registry be ordered, the order from the competent judicial authority will suffice for the particular section of said registry to proceed to register or transfer the asset to the asset administration entity. Such registration or transfer shall be exempt from all taxes, duties, royalties, transfer or property charges, as well as from tax stamps and registration charges.

In the case of vehicles, vessels, airplanes, or others whose brands and markings have undergone alterations that would prevent or make it impossible to duly register them, the particular section of the National Registry will assign them a special number and proceed to register them in the name of the asset administration entity.

Those assets may only be used by the State and cannot be transferred or sold at auction.

Prejudiciality. When in rem forfeiture proceedings are initiated affecting assets in civil collection proceedings regarding rights *in rem*, the civil court judge, at the request of the asset administration entity, may suspend the effects of the proceedings until a final ruling on in rem forfeiture has been issued. However, there shall be no ruling of suspension if sufficient collateral is posted to cover all the benefits obtained from the judgment plus any costs incurred.

Liens and mortgages. The asset administration entity may cancel amounts owed for liens or mortgages on assets subject to in rem forfeiture proceedings when:

1. Once a ruling for in rem forfeiture has been issued and the rights in rem recognized, assets shall be transferred or sold at auction and the debt shall be paid under the terms established by the judgment, or, instead, given in payment.



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2. If the asset remains under seizure and the suspension of the civil collection proceedings has been requested in accordance with the prejudiciality proceeding previously mentioned. In this case, under the principle of sound and responsible administration of resources, the asset administration entity could pay off the amount owed creditors and have the same subrogation rights as creditors in good faith.
3. Once the auction, sale or advanced sale of assets on which precautionary measures have been imposed has been authorized because of the risk that they may perish, deteriorate, depreciate or lose value, or because their preservation may entail harm or expenses disproportionate to their value or administration, after rights in rem have been recognized and under the terms established in the documentation.

Authority to share assets in joint operations.⁸⁴ The collegial authority may authorize the sharing of assets or resources whose in rem forfeiture was ordered with other States in cases of joint operations in accordance with the principles that govern international cooperation or through bilateral or multilateral agreements.⁸⁵

On international cooperation in the administration of assets. When acting at the request of another State, under the principles governing international cooperation or under the provisions of bilateral or multilateral agreements, it is necessary for a State to order the seizure and administration of assets, the requesting State, once the assets have been forfeited, shall compensate the requested State for the administration costs incurred and, in addition, share with that State part of the proceeds from the sale or auction of those assets.

⁸⁴ Document on Best Practices, BIDAD Project CICAD/OAS, page135, Chapter V, Disposal of Seized Assets.

⁸⁵ United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances Article 5(ii).



Index of Acronyms

BIDAL Project	-	Project on Forfeited Assets in Latin America (Proyecto Bienes Decomisados América Latina)
CICAD	-	Inter-American Drug Abuse Control Commission
CNE	-	National Narcotics Council, Colombia
CONABED	-	National Council for the Administration of Forfeited Assets, Guatemala
CONABI	-	National Commission on Seized Assets, Peru
CONABID	-	National Council for the Administration of Seized and Forfeited Assets, El Salvador
CONALTID	-	National Council to Combat Illicit Drug Trafficking, Bolivia
CONAPRED	-	National Committee for the Study and Prevention of Offenses Relating to Drugs, Panama
CONSEP	-	National Council for the Control of Narcotics and Psychotropic Substances, Ecuador
DIRCABI	-	General Directorate for the Registration, Control and Administration of Seized Assets, Bolivia
DNE	-	National Narcotics Directorate, Colombia
FATF	-	Financial Action Task Force
FBD	-	Forfeited Assets Fund, Uruguay
FELCN	-	Special Anti-Drug Trafficking Unit, Bolivia
Fideliq	-	Trust Fund for the Liquidation of Auxiliary Credit Institutions and Organizations, Mexico



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FRISCO	-	Fund for Rehabilitation, Social Investment and the Fight Against Organized Crime, Colombia
GELAVEX	-	Group of Experts for the Control of Money Laundering
IAFA	-	Institute on Alcoholism and Drug Addiction, Costa Rica
ICD	-	Costa Rican Drug Institute, Costa Rica
INCORA	-	Colombian Institute of Agrarian Reform, Colombia
JND	-	National Drug Board, Uruguay
LAPLAC	-	Legal Assistance Program for Latin America and the Caribbean
MEF	-	Ministry of Economy and Finance, Panamá
OABI	-	Office for the Administration of Seized Assets, Honduras
OCABI	-	Oficina de Custodia y Administración de Bienes Incautados y Decomisados, Dominican Republic
OEA	-	Organization of American States
ONA	-	National Anti-Drug Office, Venezuela
SAE	-	Assets Management and Transfer Service, Mexico
SEDRONAR	-	Planning Secretariat for the Prevention of Drug Abuse and the Fight Against Drug Trafficking, Argentina
SENABED	-	National Secretariat for the Administration of Forfeited Assets, Guatemala
SERA	-	Insured Assets Management Service, Mexico
SHCP	-	Ministry of Finance, Mexico
SNB	-	National Service for the Administration and Transfer of Seized, Confiscated and Forfeited Assets, Venezuela



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- SND** - **National Drug Secretariat, Uruguay**
- TGN** - **Department of the Treasury, Bolivia**
- UAB** - **Seized and Forfeited Assets Unit, Costa Rica**
- UABIDA** - **Seized, Forfeited and Abandoned Assets Administrative Unit, Nicaragua**
- UBID** - **Seized and Forfeited Assets Unit, Honduras**
- UNODC** - **United Nations Office on Drugs and Crime**

BOBRAADOR